# A Theory of Institutional Emergence: Functional Fusion and the Origins of Parliament

“Representation,” the medieval historian Wim Blockmans has written, “appears whenever a government finds itself forced by the concentration of power in the hands of its subjects to share power with them through institutionalized consultation.”[[1]](#footnote-1) This formulation best encapsulates the most widely held intuitions about the subject. It is intricately connected to the equally widely held belief that the “third estate” was the main agent of progress. The assumption is the bedrock of most liberal and Marxist historiography, drawing on classic statements by Adam Smith, Augustin Thierry, and others, with different versions emphasizing either the middle or the working classes.[[2]](#footnote-2) Increasing prosperity endowed these groups with greater material powers, strengthening their bargaining position and capacity for collective action, and leading them to demand greater political powers, in such accounts. Only with such participation will some scholars assert that we have a “fully developed parliament.”[[3]](#footnote-3) Such developments did take place; the question is, do they explain representative *institutions?*

A central theme in this book is that we cannot deduce the emergence and consolidation of regular institutions structuring governance in an inclusive way from material change alone. This is especially so because we need to distinguish between the process that generated representative *institutions* (the subject of Part Two) from that which generated representative *practices* (the subject of Part Three). The former depend on the most powerful social actors, who were not strictly representative, whereas the latter involve broader social groups, who were. The two are routinely conflated. Distinguishing between them allows us to avoid the functionalism that besets many explanations. But it also allows us to highlight how harder the process of representative emergence is. We assume that one dynamic explains all aspects of institutional development, but there are multiple ones that often do not evolve in the same way and may even be in tension with each other.[[4]](#footnote-4) Nonetheless, they all depend on the same necessary condition: the capacity of the crown to overpower its most powerful competitors in some key ways and over time.

Analyzing this complex process requires three prior steps. First, I define the dependent variable with some precision. Then I assess the theoretical perspectives that draw on the above assumptions, both functionalist and conjunctural, and evaluate the evidence used to support them, concluding they are insufficient. Finally, I show how my argument addresses the weaknesses of alternatives and move to demonstrate the principles of functional fusion and institutional layering through a comparison of the English Parliament and Paris *Parlement*. I supplement this account by a sub-national analysis of France in Appendix B: provincial variation in institutional form allows additional tests of the logic proposed. Indeed, we find that the cases that survived, displayed stronger elements of institutional fusion.

## Dependent Variable Defined: Polity-Wide Representative Institutions

The term “representative” should be cautiously used regarding the Middle Ages, to avoid anachronism. Whereas today we identify the concept with elections, a body representing the whole electorate, and an executive that is accountable to the people, these restrictions did not fuse until after the early modern period. The concept of “trusteeship” that undergirds modern democratic politics cannot be projected into the past.[[5]](#footnote-5) Rather, medieval conceptions of representation could either be descriptive (when similar individuals stood in for each other), symbolic (when the most prestigious part of society embodied the lesser), or they could denote authorization or delegation.[[6]](#footnote-6)

In practice, however, the most important distinction from the perspective of this account was whether representatives were sent by their communities with full powers to commit them to what the king requested (*plena potestas*) or whether they had an *imperative mandate*, i.e. strict instructions, typically to hear and report, stripping them of the authority to bind the community to a central decision.[[7]](#footnote-7) Although the latter format appears more “democratic,” it was least conducive to effective governance and encouraged fragmentation across the polity. Only where central decisions were uniformly binding across the polity can we conclude that parliament was the central organ of governance, rather than just a bargaining device with groups that were socially and geographically separate—the latter condition, widely observed in Europe precisely in polities that turned absolutist, does not drastically differentiate Europe from other regions.

Most literature, by contrast, classifies assemblies on the basis of criteria that proved critical for the later, modern history of effective representation: inclusion of the third estate, voting, collection and administration of taxation, veto power, frequency of meetings, even election of the executive.[[8]](#footnote-8) However, the pattern that emerges from the historical record is that the more advanced an institution on radical dimensions such as these in its early stages, the less long-lived it was—these features therefore do not correlate with the consolidation of the institution overtime. This is the key paradox of representative dynamics: what is important for modern outcomes was inhibiting in the early stages of emergence.

Many common indicators of parliamentary strength, moreover, are beset by problems. Frequency often serves as a primary indicator of assembly strength.[[9]](#footnote-9) However, a parliament that meets twice a year is not necessarily more effective in constraining a ruler than one that meets once over two years. This is especially so given the point made in this book, that parliaments often reflect the will of the ruler, not the people. In the early period, fewer meetings may indicate greater societal capacity to resist. Moreover, frequency has to be weighted by duration. English parliaments, for instance, could last from 17 days to 190.[[10]](#footnote-10) What this means is not straightforward either. It could mean an excess of business. But it could also occur because parliament would not grant taxation, in which case extended sessions were “open forms of coercion of a reluctant assembly” by the ruler.[[11]](#footnote-11) Without juxtaposing these measures to ultimate outcomes, frequency cannot inform us about the strength of an assembly.

Regarding the dependent variable itself, the question answered by this book is not how representative practice emerges *in general*—on which, Blockmans’ challenge to top-down theories is dispositive: he shows how even “emancipated communes of free peasants gradually developed representative systems from the bottom up” and princes were not necessary in many cases.[[12]](#footnote-12) Instead, my dependent variable is more specific: the emergence of polity-wide institutions as central organs of governance, as institutions that process the rules and decisions that apply to all citizens and that integrate all social groups: not only urban dwellers or communes, but landholders and peasants as well, i.e. a diversified society over an extended territory. This is distinct from the emergence of assemblies of representatives or of citizens: both of these were widespread throughout Europe, in villages, cities, city-leagues, and principalities. It is the former that is rare (because harder) but consequential for modern political development. Localized assemblies don’t naturally scale up to representative governance at the polity level.

As we shall see, in fact, some key continental assemblies instead mainly included the towns, not the broader countryside. But this typically happened because the lords of the countryside, the nobility, were not effectively controlled by state governance. Whole swathes of the population were therefore outside its reach, which precluded the regime from being representative even in rudimentary ways.

England was different on this front, as were to a certain extent Catalonia and Hungary.[[13]](#footnote-13) Identifying some conditions that caused this difference is key to explaining the comparative advantage of the English system and why it survived periods of extreme pressure and evolved, unlike its continental counterparts. The logics of emergence and consolidation are intricately linked. Developing a structure that included, at least originally, broad sections of the population was key to the institutional consolidation of the English Parliament, even when socio-economic and legal conditions drastically altered the balance of power later in time. Emergence cannot be identified with a discrete point in time. There was no “founding moment,” no specific date of inauguration. Parliamentary emergence was a process, not an event.

Yet, although conditions of emergence created a path-dependent trajectory, by establishing institutional practices that continued under different conditions, they are analytically distinct from the problem of survival into the modern period. As Wim Blockmans writes, “eventual survival was not the privilege of one particular type of institution: until the end of the *ancien regime*, federations of towns and villages, as well as regional and general estates and parliaments, *Landtage* and *Reichstage*, with two, three or four chambers continued to function.”[[14]](#footnote-14) Although this account does not explain why the English Parliament has lasted almost uninterrupted and relatively uniquely into the modern period—voluminous historical and theoretical accounts offer such explanations—it does identify a set of interrelated necessary conditions for this outcome.

## Functionalist Theories of Institutional Origins and their Limits

Most typically, representative institutions are explained as a function of societal strength, as we expect to see in liberal democracies, and, conversely, their absence as a function of an “overstrong” ruler.[[15]](#footnote-15) Theories draw on the bargaining model with its distinguished lineage: a ruler in need of resources is forced to grant rights to social actors who control them and thus have matching power.[[16]](#footnote-16) The bargaining logic, for instance, underlies such varying perspectives as the refinements of the bellicist logic in Tilly, Downing and Ertman, the rational actor models in Bates, Levi, Kiser et al, and the political economy models of Hoffman, Van Zanden et al.[[17]](#footnote-17) Some approaches specify the conditions under which such bargaining can more optimally occur; Stasavage, for instance, demonstrates the effects of distance.[[18]](#footnote-18)

These assumptions also influence the burgeoning literature on non-democratic regimes, such as on the resource curse.[[19]](#footnote-19) Often, claims about societal and ruler strength have to be made without independent measures of either variable; the strengths of society or the state are then deduced from the presence or absence of representative institutions, drawing on assumptions derived from the European experience.[[20]](#footnote-20) In any case, the bargaining hypothesis underlies most approaches across the social sciences.

The explanations that rely on bargaining logic connect actor preferences, strategic constraints, and resources through the dynamic of war and taxation. But explanatory models based on bargaining are essentially functionalist: the institution emerges because contracting parties need to exchange goods (resources in exchange for rights) and rulers are not strong enough to secure them without concessions. Representative institutions are absent or weak when the ruler is powerful enough to dispense with societal resources. A direct, linear relation exists between the need and the outcome—although, critically, it is the need of the ruler that is the driving force. Where conditions were favorable, as in England, Parliament emerged; where not, absolutism prevailed.

Functionalist approaches conceive institutions as goal-serving organizations: “specific groups of individuals pursuing a mix of common and individual goals through partially coordinated behavior,” and organized around their “own internal institutional structure” shaped by a set of “rules, norms and beliefs.”[[21]](#footnote-21) Others call these formal institutions, as products of purposive action, and it is this definition I adopt.[[22]](#footnote-22)

That functionalist explanations attribute a specific function to an institution (in this case, the intermittent need for taxation), however, is not in itself problematic. As the result of deliberate human action, institutions could hardly be assumed *not* to serve some function. Some institutions do form to serve intended purposes.[[23]](#footnote-23) The problem is instead when functionalism is taken to imply that if an institution currently serves a major purpose, this was necessarily the *original* function it served.[[24]](#footnote-24)

Continuity of function, further, is not an unreasonable assumption in advanced states with high infrastructural power.[[25]](#footnote-25) Under conditions of low institutional development, however, the assumption is problematic and discrepancies between original and later functions are not surprising. Many scholars address this problem through the concept of unintended consequences:[[26]](#footnote-26) an institution may develop new functions and purposes over time, not intended by its founders. But how new functions ultimately come to serve major social goals, like representation, often remains unexplained. It is both odd and inaccurate to describe representation as unintended. Some social actors *must* have intended it, even if not all did.

Functionalist bargaining explanations of the rise of parliament, however, cannot address two further key questions. First, for social groups to counteract central authority, they must be able to act collectively.[[27]](#footnote-27) Even when distance was not inhibiting,[[28]](#footnote-28) the question remains how typically fractious social groups solved their collective action problem and opposed the ruler in tandem. Moreover, existing models cannot explain why groups would request collective rights, rather than individual rents, as widely observed both historically and in the modern world.[[29]](#footnote-29)

Second, why should an *institution* emerge out of such bargaining dynamics? Institutions, by definition, require regularity. Bargaining happens when rulers face military pressures, but these are intermittent, as I show in this chapter. So why would resource-holders have any incentives to make such bargaining regular, when that carries the risk of regularizing tax demands (as indeed happened)?[[30]](#footnote-30) Subjects instead consistently demanded that taxation remain rare. Kings were forced to use this as a bargaining commitment: when they demanded taxes, they had to claim that taxes would not be re-imposed, would not create precedent, and would only be raised in case of emergency.[[31]](#footnote-31) We know the English king promised aid or a subsidy would not be asked again in 1237, 1242, 1298, 1332 and in 1348 and surely on other occasions too. Demands for consent were certainly made; but they are not the same as demands for an *institution* to regularize the exchange.

We also often assume demand for representative institutions would be strong because we tend to assume that institutionalized bargaining allows social groups to impose harder limits on ruler extraction. P. K. O’Brian and Philip Hoffman long ago warned against this misunderstanding, by provocatively showing that limited states achieved higher extraction in the fifteenth century.[[32]](#footnote-32) Mark Dincecco has equally strikingly shown the same in a systematic study of the post-1660 period.[[33]](#footnote-33) Chapter 6 extends these findings back into the Middle Ages, showing that higher extraction actually preceded parliaments themselves. So, this explanation also founders.

Ultimately, the approach relies on the assumption that war is a “common good.”[[34]](#footnote-34) But most wars at the time were dynastic, i.e. not “national”—although contemporaries would not posit the distinction in those terms. Collective action thus should be harder to generate. Subjects’ preferred strategy towards taxes should be avoidance and shirking, increasing the ruler’s extraction costs—not supporting an institution. Such dynamics should appear even more strongly in states with decreased security concerns, such as some hold England to be;[[35]](#footnote-35) yet this is where representative institutions were strongest. Shorter distances certainly made interaction easier, but they did not necessitate collective action.

Rulers certainly had strong incentives to institutionalize interaction as long as their purposes continued to be served, as they did in England, but social actors originally had contrary incentives, so no self-sustaining equilibrium could emerge. In short, a regular institution integrating two parties requires a regular demand by both parties. Yet even a regular need for an institution on one side does not suffice to explain its emergence, as functionalist approaches assume.[[36]](#footnote-36) Functionalist approaches therefore cannot explain either how the collective action problem is solved or why a regular institution emerges.

## Conjunctural and Path Dependent Explanations, and their Limits

Better empirically grounded are approaches based on path dependence, as they explicitly theorize temporality and sequencing. They integrate history and highlight the long-term effects of small or contingent events.[[37]](#footnote-37) Existing theories draw on factors such as historical legacies, timing, the pressures of war and geopolitics, and the extent of commercial development, thus avoiding the perils of functionalism. As we will see, the medieval institutional heritage invoked by these approaches ultimately involves explaining variation in the anchoring of central government within the localities. Probing deeper into this variation will provide the third building block of this argument.

In Brian Downing’s account, constitutional regimes survived if medieval representative institutions[[38]](#footnote-38) escaped the pressures of the sixteenth century Military Revolution[[39]](#footnote-39) and if rulers were able to raise financial support externally, through loans, rather than internally, through coercion (England was the exemplary case). But the medieval institutional heritage is exogenous to the argument. Thomas Ertman also focused on the timing of warfare and the impact of the Military Revolution in conjunction with historical legacies. But he offers an explanation for the variation in the medieval heritage of representative institutions. He draws on the classic distinction between these two types of representative institutions formulated by Otto Hintze, between bicameral and tricurial ones.[[40]](#footnote-40) He argues that the former emerged where a tradition of local, territorial ties were strong and estate divisions weak when geopolitical pressures begun, as in England, Poland and Hungary; rulers there could depend on this robust participatory tradition to meet military pressures.[[41]](#footnote-41) Where the Carolingian legacy had bequeathed a pattern of fragmentation, as in Latin Europe, territorial ties were weak and estate divisions between the nobility, the clergy, and the burghers were deep; this produced the tricurial system, so only top-down administrative government could establish control.[[42]](#footnote-42)

As we will see, however, historical legacies were important, but not determinative. English royal power went through strong upheavals before the late twelfth century that did not guarantee the survival of existing structures. Conversely, many regions on the Continent showed great variation in their capacity to reconstitute ruler power: Castilian rulers were stronger in the twelfth century than they were in the early fifteenth, whilst the former were weaker in their capacity to control local rivals than Catalan counts were, for instance.

Moreover, we need to explain why it was, like Ertman importantly points out, that in the English Parliament “members of the different orders were mixed together in both chambers.”[[43]](#footnote-43) This is especially puzzling since the higher aristocracy met with the higher clergy in the upper house because the king summoned both on the same basis, tenurial obligation, but this was no different than France: clergy and nobility also received individual summonses.[[44]](#footnote-44) To explain the emergent institutional difference we need to look instead at the societal conditions they reflected.

Social orders lacked strict boundaries in England because Henry II had “set the legal dividing line English society between the free and the villeins [unfree], and not between noble and non-noble.”[[45]](#footnote-45) The fundamental principle was legal equality for the free, regardless of status. As the nineteenth-century historian William Stubbs noted, “the union of the prelacy and barony” had much to do with the common fiscal burden of both as tenants-in-chief.[[46]](#footnote-46) It was not “a nobility of the blood,” unlike the French or German ones.[[47]](#footnote-47) “English law recognises simply the [institutional] right of peerage, not the privilege of nobility as properly understood; it recognizes office, dignity, estate, and class, but not caste.”[[48]](#footnote-48) In France, by contrast, legal privilege and custom sharply divided social groups. The nobility defined itself by the prerogatives, franchises, and liberties it possessed, by its access to laws and customs that were “private.”[[49]](#footnote-49) As we shall see in the following chapters, this difference flows from the greater power of the English crown to impose equal burdens on all social orders.

Conversely, it was precisely the strength of local ties that made French particularism such a daunting obstacle to state expansion. The historian J. Russell Major, looking at the sixteenth century, has argued that representatives had as much local roots as in England, with deputies tied to the other orders of their community. The same local assemblies gave mandates to the representatives of the different orders, which could cooperate between them. From the 1300s, in fact, the three orders were summoned “par baillage et sénéchaussée” and elected in local assemblies.[[50]](#footnote-50) As we will see, part of why the Estates-General were so weak is because a multitude of local assemblies, representing territorial units with distinct identities, undertook similar tasks much more effectively.

Estate-based representation, in any case, the type Hintze assumed to dominate many continental polities, did not really consolidate until well into the sixteenth century.[[51]](#footnote-51) In the medieval period, as the historian Thomas Bisson noted, local attachments were much stronger across all orders, though perhaps somewhat less for the Church.[[52]](#footnote-52) The weakness of the Estates-General thus emerge as the consequence of a *lack* of cohesion *within* all orders, which were separated by provincial identity. Conversely, the English nobility failed to develop strong local ties in the early period, as opposed to France.[[53]](#footnote-53) What pushed the different English orders together *in Parliament* was the common fiscal burden they faced, meaning outcomes were endogenous to royal strength.[[54]](#footnote-54)

Even if we accepted that what distinguished England compared to France was greater *territorial, local* ties, however, this still cannot explain bicameralism. For one thing, the division between the Houses of Lords and of Commons did not occur until 1341, almost half a century after the institution was fully fledged.[[55]](#footnote-55) So this structural feature cannot help explain the process of emergence, even if it bears upon the issue of survival.[[56]](#footnote-56) Moreover, technically it is not correct to say that the English system was bicameral—only that the third arm was institutionally separated. In fact, the diocesan clergy met separately, dealing with royal taxation in religious assemblies, the convocations, only after the 1330s, following protracted conflicts with the king.[[57]](#footnote-57) Even “after the decisive separation, clerical assemblies continued to be summoned at the king’s request and to be attended by the king’s agents.”[[58]](#footnote-58)

Why that was the case is a complex and understudied question, and recent scholarship is showing the record is complicated.[[59]](#footnote-59) Originally, it was a symptom of the greater independence of the clergy.[[60]](#footnote-60) Eventually, it ended up weakening the church. In the words of the historian Pollard, “In course of time, the side which rejected the union for the sake of independence fell into a state of subjection,” illustrating a common pattern observed in the book, that the more independent a social group originally, the more it was weakened over time.[[61]](#footnote-61) “Nothing more clearly illustrates the long-term failure of the church than the fact that the issues of 1280 were still being presented twenty, thirty and forty years later…And always the royal response is guarded, evasive, or an uncompromising refusal.”[[62]](#footnote-62) Historians often present this as a failure of Edward I to compel the clergy. An assessment requires comparing tax yields with those from Parliament itself, as he succeeded in competing with the Pope for clerical taxes. The parochial clergy was taxed at 10 percent, like the towns, a rate higher than the fifteenth (6.6 percent) levied from the counties and the barons.[[63]](#footnote-63) Eventually the yields declined on all groups, but in the period of emergence the tax rate offers one indicator of royal capacity.

Moreover, as will be extensively argued in the following chapters, what appears as territoriality in England in fact reflects the greater penetration of the crown and its capacity to subject uniform obligations across social orders.[[64]](#footnote-64) Ultimately, the Hintzean division between bicameral and tricurial assemblies can be traced back (though not necessarily reduced) to the key condition in this account: variation in ruler power.

## Solutions: Collective Action, Incentives to Regularize, and Territorial Anchoring

For it is written that, if we shall be divided, immediately we shall perish.

—Robert Grosseteste (bishop, theologian, philosopher, statesman) to bishops in 1244.[[65]](#footnote-65)

A theory that successfully overcomes the concerns raised regarding existing theories must therefore meet three main conditions. It must explain where the incentives to regularize institutionalized exchange originate, since we can’t deduce a regular institution from irregular demand. It must explain how social actors solve their collective action problem and why they successfully organize to oppose the ruler, instead of shirking any burdens. It must also explain why the greater “territorial,” i.e. local, organization in England, if that is what it is, translated into more efficient action at the center.

How did regularity materialize, given that war and taxation were irregular? Royal preponderance of power alone cannot generate results. Incentives had to systematically motivate behavior in subjects, especially when the top-down demands from power-holders were intermittent, as were those related to financing war. This was also the case because those taxed had counter-incentives to avoid institutionalizing this exchange, since extraction was heavier where it was institutionalized, not more “limited.”[[66]](#footnote-66) Given contrary incentives, a potent mechanism generating institutional regularity was necessary. Such regularity in premodern Europe, I argue, came from judicial concerns, primarily about land, which applied across social orders—as remains the case in the developing world.[[67]](#footnote-67) Without these “bottom-up” incentives, conditions for institutional consolidation were absent.

The key here is that although the English Parliament is typically considered a political institution, it had the same judicial origins as the Paris *Parlement*; their common name, *“parlemenz,*” was not coincidental.[[68]](#footnote-68) The former is the central institution of English constitutional governance, with a political and legislative function, as well as a judicial one. The French institution was instead a judicial court, with an initially restricted regional jurisdiction.[[69]](#footnote-69) It was either considered a bastion of aristocratic reaction and instrument of the crown;[[70]](#footnote-70) or, following Montesquieu on the later period, it is taken as the French version of “intermediary powers” that counteracted the monarchy, despite lacking a popular mandate.[[71]](#footnote-71) French political and fiscal functions devolved to representative assemblies instead, the Estates-General and other local institutions, which were also called *parlamenta* in the early period.[[72]](#footnote-72) As the general Estates were infrequent and were ultimately suppressed, the French pre-modern regime is classified as “absolutist,” whilst its English counterpart became the prototypical representative regime.[[73]](#footnote-73)

Institutional variation between England and France lay in kings’ differential ability to oblige their subjects, including the nobility, to participate in meetings at these central institutions. Where all social actors gravitated to the royal court for the resolution of major judicial concerns, the institution provided a ready forum for the superimposition of other functions, including fiscal ones. With nobles both obliged and incentivized to regularly attend Parliament, tax demands could be presented to them at the same time. This generated “institutional layering,” which I explore in greater detail in the next section. In France, as nobles and broader representative groups were scarce in the judicial institution, the *Parlement*, a separate political/fiscal institution was needed, the Estates-General. This was irregular, however, being called only when taxation was required, so it never became the central institution of governance in the polity.[[74]](#footnote-74) Hence, the greater judicial centralization of the English system underlies the differential path between the English Parliament and the Paris *Parlement* and Estates-General.[[75]](#footnote-75)

So how is the collective action problem of the nobility solved? The key, I argue, is the capacity of the ruler to enforce social ties of dependence, which endow actors with common interests. In England, social groups were able to act collectively because the tenurial system of land distribution imposed on them a common frame of obligations.[[76]](#footnote-76) The freeholders, not least the lay and ecclesiastical nobility, held land of the crown and were bound to the performance of certain duties. France had the same tenurial regime as England did;[[77]](#footnote-77) but it was weakly and inconsistently enforced, because the French crown was weaker.

More specifically, nobles developed a common front of action where the ruler could compel them to contribute to taxation: no taxation of the nobility, no representative institutions. If the most powerful actors had no incentives to institutionally engage the ruler, a polity-wide parliament would either not consolidate, as in France, or it would not become an inclusive organ of governance, only a sectorally-specific one, as in Castile (where only towns were summoned). Ruler capacity to compel, in turn, was predicated on controlling land, which was the critical economic resource.

Judicial centralization does not only provide incentives to regularize interatction and to solve the collective action problem; it also explains how the territorial, participatory organization that authors have stressed for the English case was effectively integrated in a central political system culminating in Parliament.[[78]](#footnote-78) This local organization is assumed to be predicated on the voluntary, local, consensual, and less centralized governance believed to undergird England’s constitutional tradition already in the Middle Ages—epitomized by the “amateur” administrator.[[79]](#footnote-79) This view also sustains the assumption that the English state was “small” or “weak.”[[80]](#footnote-80) However, this assumption about the English system must be qualified by the obligatory character of English offices, judicial ones in particular, which flowed from tenurial duties. Locals were obligated to contribute to a remarkable array of public functions in the service of the crown, as I show in the next chapter. This mobilization dwarfed the number of officials the French crown, for instance, had to conscript on pay to get similar business done.

Furthermore, this nexus of obligation was centered around the county court, under royal, i.e. central, supervision, in an institutional network that integrated center and locality in a systematic way across all administrative units, the counties. The centrally mobilized local court was the lynchpin of what appears to be English self-governance; it was that, but only at the “king’s command.”[[81]](#footnote-81) Over time, office generated rewards to its holders and thus incentives to sustain the system, but this was endogenous to original compulsion. In the meantime, however, service generated multi-layered ties to the center. These patterns explain who local governance was so well-integrated with the center. In the following section, I explain the process of regularization. Chapter 3 addresses the problems of collective action and territorial anchoring.

## Regularization: Functional Fusion and Institutional Layering

The interaction of the factors described above enabled a pattern of institutional layering and functional fusion in the English case that was central to its emergence and survival over time.[[82]](#footnote-82) Institutional layering is a form of institutional emergence. In layering, change occurs when new institutions are superimposed over pre-existing structures that have achieved lock-in; the combination may lead to new institutional directions and procedurally fuse formerly distinct functions. Observed across different domains, layering accounts for path-dependent institutional change without reliance on increasing returns. Similar initial conditions lead to widely divergent outcomes due to variation, for instance in asymmetries of power between actors (here, rulers and ruled).[[83]](#footnote-83)

Most examples of layering, however, involve an antagonistic relation between the institutional layers. In such instances, the different layers work at cross-purposes and inhibit smooth, linear change. Layering is thus promoted by weaker actors seeking to subvert the status quo, as they are not strong enough to radically change it.[[84]](#footnote-84) In my account, however, the logic is slightly different: an institution, combining more than one function, consolidates because one function necessitates procedures that compensate for the weaknesses of the other function, which may later become dominant.

The institutions that were regular across cases in Europe were the judicial ones, which responded to constant bottom-up demand. As we will see in more detail in chapter 4, judicial demands were the major preoccupation even in documents like Magna Carta. This regularity also institutionalized interaction by including the social actors most capable of constraining the ruler, the nobility. Where fiscal and political functions were later superimposed on this interaction, they too gained regularity and were thus institutionalized. The key to English institutional development thus is that Parliament combined functions under a single institutional frame, thereby securing longevity to certain practices (namely representation) which elsewhere, as in France, were consigned to an irregular institutional framework: the Estates-General were only called when taxation was needed, which was an irregular event.

Functional fusion, in other words, was key to institutional consolidation. This is surprising, however, as modern constitutional theory emphasizes the importance of separation of powers.[[85]](#footnote-85) Institutional *emergence and consolidation*, on the other hand, prescribes the opposite. In conditions of low political development, institutional autonomy may impede growth, rather than secure it. This is one more case of the normative/empirical inversion I find throughout the book and discuss in the conclusion. Norms that appear fundamental for a political order are often directly contrary to the empirical conditions of its emergence. In the following section, I present this empirical context in more detail.

## The Regularization of the English and the French Parlements: Paths of Institutional Layering and Functional Fusion

Both institutions, Parliament and *Parlement*, originated in the king’s court, the *curia regis*, and its outgrowth, the King’s Council, a small group of magnates and officials that helped the king govern*.*[[86]](#footnote-86)The Council is where political and military decisions were taken, where “counsel and aid” were given.[[87]](#footnote-87) The “parallels between the development of [the English parliament] and the growth of the French king’s *parlement* are unmistakable.”[[88]](#footnote-88) Both institutions originally had political, i.e. consultative, administrative, and fiscal functions, a fusion definitively described for the French case by the historians Thomas Bisson and Joseph Shennan and the English one by John Maddicott.[[89]](#footnote-89) The *Parlement* even issued incessant diplomatic missions to European crowns and mediated disputes between French kings and feudal vassals or foreign rulers[[90]](#footnote-90)—precisely because conflict was becoming judicialized.[[91]](#footnote-91) It “represented” the king, as opposed to the English formula, the “king-in-parliament.”[[92]](#footnote-92)

Yet, the two diverged and this can be traced to how fiscal functions were separated from judicial ones in the French case, whereas they overlapped in the English institution. The next chapters will explain this difference as a function of the greater strength of the English crown. Here, however, I first provide evidence that isolates fiscal demands in the English Parliament, showing that their frequency was similarly low to that of the French Estates-General and thus cannot explain a regular institution (this will also be observed in other cases where evidence permits, e.g. Catalonia). If this is so, we need to explore the functions that did generate incentives for regularity, those flowing from legal and judicial concerns, especially petitions and especially regarding relations to land.

Before proceeding, however, the main counterargument for parliamentary emergence needs to be addressed: war. War increased both the amount of taxation raised and its incidence—this will be seen in the data presented in chapter 6 and is not disupted by this account. It no doubt spurred rulers to invest in their judicial infrastructure. As the English historian Caroline Burt has noted, the “sudden and dramatic expansion in the jurisdiction of the royal courts” was tied to the financial duress of the king due to war.[[93]](#footnote-93)

What is disputed, rather, is the idea that the increase in taxation itself can explain institutional creation. It is not simply that taxation, like all state-building, involves judicial organization, a point admitted even by eminent bellicists like Charles Tilly;[[94]](#footnote-94) it is that taxation does not suffice to create institutions, because it both lacks regularity in the early stages and, more relevantly even for modern contexts, because taxpayers will seek to free-ride, as they do even in advanced economies where public goods are abundant. Only where ruler capacity is strong can this be avoided. But this strength is sustained in large part through building and controlling adjudicatory institutions. The task therefore is to prove that this strength and institutional formation was temporally prior and not endogenous to the pressures of war.

Since medieval rulers were regularly involved in war, it is not possible to completely isolate military pressures from internal institution building. Nonetheless, the taxation data on England presented in more detail in chapter 6 identify two key periods when war-induced pressures caused a major spike in revenue: after 1200 and after 1270. The following sections will show how major moments of judicial and legislative expansion preceded and later overlapped with the taxation increases.

### Regularity and Taxation?

That taxation was irregular can be discerned institutionally most clearly in the low frequency of the Estates-General, all the more so since some of the early meetings had policy, not tax-raising, agendas (Figure 1).[[95]](#footnote-95) The Estates-General were infrequent in the early period, and suppressed between 1484 and 1560 and also from 1614 until the French Revolution. This irregularity accounts for the French regime being labeled “absolutist.” However, the same irregularity of taxation is observed by isolating the meetings in the English Parliament that dealt with taxation: they are similar in frequency to the Estates-General (Figure 2).[[96]](#footnote-96) Instead, it is the judicial functions that are regular. The *Parlement* had an almost identical regularity with Parliament.

Figure : Comparison of Meeting Frequency of English Parliament, French Estates-General, and Paris Parlement Per Decade



Sources: (Fryde 1996; Actes Du Parlement de Paris 1863; Furgeot 1920; Soule 1968). The English Parliament has fewer sessions over time, although they lasted longer. The English list in Fryde includes both councils and meetings designated as “parliaments,” but I include both as most likely “contemporaries were far less concerned than modern scholarship” about these distinctions; (Dodd 2007, 70, n.58). The Paris Parlement changed location during the Hundred Years' War but continued its functions; see chapter 5.

Figure : Comparison of Frequency of Meetings Per Decade of the English Parliament, English Parliament Sessions Granting Taxation, French Estates-General, and Paris *Parlement*



*Sources:* (Fryde 1996; *Actes Du Parlement de Paris* 1863; Furgeot 1920; Soule 1968; Bradford 2007).

That the judicial function accounts for regularity is shown by disaggregating the English meetings into those that involved taxation and those that did not. On average, only about 25% of the sessions of the English Parliament dealt with taxation in the critical period of emergence, around the turn of the thirteenth century. The percentage is even lower for the previous period. Out of the 82 parliaments recorded by Maddicott between 1235 and 1255, only 12 (15%) deal with taxation.[[97]](#footnote-97) Later we will see that tax sessions broadly coincide with the representation of the non-noble classes, from the towns and counties. But if the English Parliament had had an exclusively fiscal purpose, its frequency would likely have been similar to that of the Estates-General. Such low frequency inhibited institutionalization and in the long term affected the nature of the regime. Institutional layering and functional fusion of fiscal and judicial activities was thus key. Chapter 3 will examine why that fusion occurred in England but not France and will tie it to the greater powers of the English crown.

First, however, we need to explain what forces did propel the demand for a centralized institution which layered functions, if taxation alone did not: they are all tied to the overwhelming, constant, and universal need for law, justice, and peace.

### Legislation

Legislation, especially on land rights, affected core interests of subjects, especially the nobility, so incentives to be institutionally present were high at its passing. Two of the most important phases of legislative transformation in England were the second half of the twelfth century and the late thirteenth. War of course always loomed in the background, but both phases preceded the military engagements typically focused on in the literature. They preceded the Saladin Tithe of 1188, a major tax with national incidence highlighted in Blaydes and Paik’s analysis of the impact of the Crusades.[[98]](#footnote-98) They also preceded the wars of King John in the early 1200s, which produced Magna Carta and the first “constitutional moment” of English history, and those of Edward I from the 1290s, during which Parliament acquired its full form.

The first phase occurred in a period of relative peace.[[99]](#footnote-99) For “most legal historians it is the period when it first becomes possible to recognize the existence of an English “Common Law.”[[100]](#footnote-100) Common Law was mostly land law in its origins.[[101]](#footnote-101) It was “common” because it was the law of the crown, that could be heard only in royal courts. Yet, it is typically identified with case law and is presumed to be judge-made, a classic instance of bottom-up creation.[[102]](#footnote-102) However, a series of legislative acts (either writs or charters) were issued by Henry II (1154-89) in his court, some of which continue to shape English Law—they were typically acknowledged to reflect the counsel of the nobility.[[103]](#footnote-103)

As we will see in more detail in the next chapter, the first period saw a remarkable expansion of royal jurisdiction through the emergence of a network of royal courts that removed judicial business from local courts. These undercut the power of the local lords in a manner that French kings were unable to do. Royal jurisdiction was asserted over all serious crimes and most land disputes held by free tenure already from the Assizes of Clarendon (1166) and Northampton (1176; an assize was a session of a court of justice; or a piece of legislation, as in these uses of the word; or a form of action).[[104]](#footnote-104) Two profoundly important and popular legal forms of action, *novel disseisin* and *mort d’ancestor*, protected tenant rights and the power of the crown to control them: all such actions could only be initiated through a royal writ and be tried in a royal court.[[105]](#footnote-105)

In social science, the growth of English land law has been explained by North, Wallis, and Weinstein as a process where “the dominant coalition manipulates the economy to provide the incentives for powerful individuals not to use violence.”[[106]](#footnote-106) But this view cannot account for some surprising aspects of the emerging law. It effectively undermined honorial lordship by making royal justice available to all free men.[[107]](#footnote-107) It empowered weak tenants to act against powerful lords, a “remarkable fact;”[[108]](#footnote-108) it gave free sub-tenants far more security than tenants-in-chief;[[109]](#footnote-109) it subjected the nobility often to more onerous impositions;[[110]](#footnote-110) and it thus applied to all free men throughout the realm.[[111]](#footnote-111) Indeed, at least after the 1150s, tenure was more commonly disrupted at the top of society.[[112]](#footnote-112) This state capacity obviously incentivized the upper ranks of society to become part of the institution that regulated these relations, the king’s court originally and eventually Parliament.

Attendance was high in such events: fifty-two magnates attended the council of Clarendon in 1164, with retinues at about thirty-five, bringing the total to approximately eighteen-hundred people.[[113]](#footnote-113) A century later, up to eight hundred nobles, heads of religious houses, and local representatives—“many earls and barons and innumerable people” in the words of a contemporary chronicler—joined the promulgation of the Statute of Westminster I and other similar events[[114]](#footnote-114) and then disseminated the information locally through the county court system.[[115]](#footnote-115) By contrast, the French king seems to have been unable to summon more than thirty magnates for his few polity-wide ordinances pushed by popular demand, such as those on Jews, despite having about four times the population.[[116]](#footnote-116)

The most critical stage for the consolidation of Parliament, after the 1260s, saw the next momentous steps in the formulation of Common Law—once again incentivizing the nobility to be present.[[117]](#footnote-117) Parliament had begun to grow in England after the 1220s[[118]](#footnote-118) but in 1275, the king passed the Statute of Westminster I in Parliament, dealing with an array of civil, criminal, and administrative matters, from debt, to slander, extortion, murder, rape, and the timing of assizes—all these followed an inquest into official corruption and claims to jurisdictional rights. The Statute, “promulgated in a crowded parliament, marked the growing importance of that assembly as a focal point for reform and contact between king and subjects.”[[119]](#footnote-119)

Further ground-breaking legislation responded to magnate demands.[[120]](#footnote-120) Westminster II (1285) enabled land-holders to bequeath property across generations and to foreclose its alienation, through the legal mechanism of entails—a law that shaped English land-holding until its abolition in 1925 and that undergirded the eventual entrenchment of the landholding class.[[121]](#footnote-121) Another major statute, *Quia Emptores* of 1290, blocked fief-holders from creating subtenants, i.e. ended the practice of subinfeudation that expanded the feudal hierarchy and diluted the rights of lords and the king; it is still in force.[[122]](#footnote-122) But this measure that protected lords from the “uncontrolled alienations of their tenants”[[123]](#footnote-123) also asserted direct royal control over all subjects. As Max Weber noted, it was a key way for a feudal lord “to improve his position.”[[124]](#footnote-124) Further, the same year, a country-wide royal inquest (*Quo Warranto*) asked with what warrant lords held their lands and jurisdictional rights over subjects—an enquiry pursued by rulers across Europe, but which English kings were better equipped to implement. These were interactions with the nobility: “The legislation…of the reign of Henry III, and most of that of Edward I, was the work of assemblies to which the commons were not summoned.”[[125]](#footnote-125)

Ironically, in France, the land identified with codified law, the coordinating role of a central institution was much weaker. Records of concrete legislation are scanty: France exemplifies much better Hayek’s conception of the law as an organic growth through practice.[[126]](#footnote-126) Customary law was mostly codified privately at the time, by practitioners who redacted collections called *coutumiers*.[[127]](#footnote-127) Jurisdictional fragmentation contributed to that. Not much royal legislation survives from the 11th and 12th centuries,[[128]](#footnote-128) whilst magnates had the right to also legislate in their domains.[[129]](#footnote-129) Royal legislation typically affirmed local customs[[130]](#footnote-130) and it expanded in the thirteenth century, through the “the slow conquest by the writing stand.”[[131]](#footnote-131) That which applied throughout the kingdom was often religious (as were the first Estates-General in the early 1300s), such as the ordinances on Jews; even these were signed by no more than 26 barons.[[132]](#footnote-132)

The key feature of this process was the relative weakness of the French crown. When law on property was passed, as in 1209 or 1210 on the succession of fiefs, it was limited to the royal domain. The king had no monopoly on this issue; “he could not place the ban in the land of a baron without his consent,” as affirmed in the *Établissements* of Saint Louis.[[133]](#footnote-133) In England, by contrast, the Assize of Northampton in 1176 was enforced in thirty-four out of thirty-seven counties.[[134]](#footnote-134) Historians observe that, unlike English kings who promulgated both, French kings issued only ordinances, not statutes.[[135]](#footnote-135) These restrictions also account for the legal particularism that gave the French nobility a privileged legal status compared to commoners.[[136]](#footnote-136) Towns, however, also striving to contain the nobility, accepted royal legislation, for instance regulating the corruption and incompetence of town governments—though not without resistance.[[137]](#footnote-137) This jurisdictional variation eventually shaped representation in the Estates: the nobility was not effectively integrated and the Third Estate only involved towns, not the countryside.[[138]](#footnote-138)

### Judicial Functions

Seeking to control adjudication and legislation is not confined to the premodern period. As striking social science research has shown, even violent modern warlords, such as ISIS in Syria or rebels in Colombia, not only seek to control adjudication, they seem to succeed better in ruling the more they do so.[[139]](#footnote-139) Medieval rulers applied a similar logic. Controlling conflict resolution was a key way to establish control over a population.

But subjects constantly sought out rulers for justice, as we saw from Magna Carta at the opening of the book. The concerns were part of a fairly universal repertory of grievances: land title, official corruption, and crime. By the 1200s, most legal cases were already diverted from local courts to the king’s royal court, generating two institutional outgrowths, the King’s Bench and the Court of Common Pleas.[[140]](#footnote-140) The popularity of the royal court in general as an adjudication center is attested by the fact that “suitors paid money to the king to have their cases tried there,” and by “the number of fines which litigants paid for writs, for pleas, for trials, for judgment, for expedition, or for delay.”[[141]](#footnote-141)

But in the sessions of the royal court to which the term “Parliament” was applied, kings dispensed extraordinary justice “and this on a very large scale.”[[142]](#footnote-142) Hence the term “High Court of Parliament,”[[143]](#footnote-143) a role inherited by the House of Lords until the formation of a Supreme Court in 2005—an aspect of Parliament typically neglected. There kings heard cases as varied as on land leases, fines, disputes between nobles, bishops, and laity, city franchises, reprisals against foreign enemies, corruption of judges and royal officials and more.[[144]](#footnote-144) The cases heard there were deemed “important,” either because they concerned magnates or the king himself, or they involved “grave questions of public law,” or they required the king’s equity.[[145]](#footnote-145) Thus the term “parliament:” it meant “the king talking” (*parler*). By 1290, Parliament’s role was acknowledged in legal literature: “doubts are determined there regarding judgment, new remedies are devised for wrongs newly brought to light, and there also justice is dispensed to everyone according to his deserts.”[[146]](#footnote-146)

This was a process that, as Stubbs noted, did not in the beginning include the Commons, only nobles, lay and clerical.[[147]](#footnote-147) Noble incentives to be present at court stemmed from their property disputes being decided there and them being personally tried there,[[148]](#footnote-148) not least after the law of treason expanded in scope from the mid-fourteenth century.[[149]](#footnote-149) The Parliament which tried the last native Prince of Wales, in 1283, attracted the highest number of nobles known to have been summoned, 110.[[150]](#footnote-150) We will see in the next chapter how strong this presence was on a comparative basis with France—despite the concerns of English historians, who compare noble presence to possible totals and find it often wanting. Accordingly, when the crown sought to raise taxes, Parliament offered a ready forum with a critical mass of the most powerful actors.

The essential role of the French king was also that of “grand justicier,” widely attested in contemporary literature.[[151]](#footnote-151) Louis IX (1226-70) judging under the oak tree at Vincennes, reported by chroniclers, is a classic image.[[152]](#footnote-152) His reign was instrumental in consolidating the *Parlement* as an institution: the term was applied to the judicial sessions of the meetings of his court.[[153]](#footnote-153)

The trajectory of the French institution also devolves around feudal property, although the jurisdictional reach of the crown was far more limited than the English one. From the 1250s, matters brought to the court ranged from the mundane, like villagers complaining that the king no longer heated the banal-oven (his obligation as a feudal lord), to feudal rights of homage, hunting, and feudal justice affecting the high nobility.[[154]](#footnote-154) Conditional land-holding was a central preoccupation. Many of the *Parlement*’*s* judgments were “enforcements of the king’s rights to homage and jurisdiction in the fiefs of his tenants-in-chief; or the punishment of unlicensed alienations of royal fiefs, especially into the “dead hand” of the Church (churches never died, so their fiefs never escheated to the king).”[[155]](#footnote-155) Ecclesiastics also complained of noble incursions, as the king had a special duty to protect the lands held of him. When royal judgments affected broad groups of tenants, decisions amounted to legislation.[[156]](#footnote-156)

Traffic was so high, eligibility to be heard had to be regulated: for instance, actions to recover land seized(the same act of *novel disseisin* that helped spread the Common Law in English royal courts) were sent to the local tribunals of the *baillis* and *sénéschaux* instead (the bailiffs of north and south, respectively).[[157]](#footnote-157)

The communes especially sought justice at the royal court, as they did with legislation.[[158]](#footnote-158) They needed royal assistance to stake out their own growing jurisdiction vis-à-vis the local lords with whom they competed for power, not least in the creation and patronage of markets and fairs. The *Parlement* was called in to adjudicate in conflicts, often splitting jurisdiction across litigants.[[159]](#footnote-159) The alliance between crown and cities that the political scientist Hendrik Spruyt focused on in his account of state emergence was forged through the courts.[[160]](#footnote-160)

The nobility was thus also affected by the growth in jurisdiction of the *Parlement.* Noble resistance was strong, especially regarding serious crime and as the crown sought to abolish the privilege of judicial duel.[[161]](#footnote-161) Yet nobles sometimes brought their own disputes to court. In 1312, the count of Namur submitted his dispute with Charles of Valois, brother of king Philip IV, to the *Parlement*; in 1342, the duke of Lorraine and his brother-in-law did the same. The *Parlement* was also where the peers (*Pairs de France*) were judged by the king.[[162]](#footnote-162)But local seigneurial conflict remained rampant, suggesting the limits of royal jurisdiction.[[163]](#footnote-163)

The increasing demand for justice even under “weak kings,” from Louis VII (1137-80)[[164]](#footnote-164) to Charles VI (1380-1422), demonstrates that justice itself is a genuine bottom-up demand, not one predicated on the organizational powers of the crown. But this justice was delivered from a condition of relative weakness and that impacted its reach. Initially the king’s jurisdiction applied only in the royal domain, around the Île-de-France, though in theory all his direct subjects could be tried in his Court, including the dukes of Normandy, Burgundy, Aquitaine, as well as the counts of Flanders, Champagne, Anjou etc. Even the English king was due in his court. But these were vassals who competed with him in strength and holdings—an internal power balance English kings were never forced to face. Absent a regular noble presence in the royal court under a common frame of obligations, when the king needed to raise tax demands the *Parlement* was not an effective body and different ones needed to be called, either locally or at the polity-level.

This did not mean that taxation was imposed arbitrarily and without consent, however. It meant that negotiation, when taxes were levied, was judicialized. Matters of taxation were also adjudicated in the *Parlement* since about 1270. “Parliamentary investigations of right [on taxation issues] became, in effect, or eventuated in, negotiations for payments.” For instance, the *Parlement* of 1271 rejected the pleas of three cities and instead imposed assessments on them. But subjects, including nobles and towns, would seek relief from aids or other impositions in the *Parlement*, as in 1309.[[165]](#footnote-165)

### Petitions

One specific form of adjudication, however, was to prove a “momentous innovation,” in the words of John Maddicott:[[166]](#footnote-166) petitions flowing from subjects around the realm to the center.[[167]](#footnote-167) Petitions were the vehicle that tied local grievances to central deliberative action: “for the first time the voice of the aggrieved and of the socially insignificant could be heard at the centre of government.”[[168]](#footnote-168) It is petitions that allowed the people to contribute to government; as Stubbs noted, by contrast, “Counsel and consent are ascribed [only] to the magnates.”[[169]](#footnote-169)

Eventually petitions formed the basis for bills of legislation and statutes. This is, after all, what became the definitional function of parliament: popularly-based legislation. No account of origins can be complete if it does not account for how this link was forged. Taxation was secondary and war cannot account for the variation between the two cases, because it afflicted England, if anything, less, as we will see.

Petitions were extra-judicial, i.e. they were used where regular law offered no remedy or where court decisions conflicted.[[170]](#footnote-170) A slow trickle in the twelfth century became an unstoppable flood in the late thirteenth, of requests submitted to kings to respond to grievances that could not be addressed through normal judicial channels. Addressing petitions was part of the core responsibility of rulers, a practice that was far from exclusive to western Europe and the Middle Ages, but was, instead, prevalent since antiquity from East to West and continues to this day.[[171]](#footnote-171) Petitions to the Pope were a critical precedent—tens of thousands survive from this period.[[172]](#footnote-172) The king dispensing justice through petitions was a central feature of medieval kingship as well as of representative emergence and it is perhaps no accident that petitions are a re-emerging part of modern governance in a period of democratic crisis.[[173]](#footnote-173)

Petitioning was, moreover, pervasive: in England, “in the late Middle Ages assiduous petitioners sought out the king in all manner of locations and occasions, and by the seventeenth century it was necessary to provide the monarch with a special bodyguard on state days specifically to prevent unwanted (and unwashed) supplicants from thrusting petitions into his hand.”[[174]](#footnote-174) French kings had clerks (*juges de la porte*) following them around the country to handle petitions submitted to them personally.[[175]](#footnote-175) Parliaments transformed kings from roving to stationary judges, but itineration never ceased to be part of royal activity.

The English Parliament became the “focal point” for petitions, which were presented to the king and his Council, not Parliament per se, starting in the 1270s,[[176]](#footnote-176) the same period Parliament is considered to take on its final form (Figure 3).[[177]](#footnote-177) This followed a process the historian Alan Harding has called “the bill revolution,”[[178]](#footnote-178) which occurred not only in France and England, but throughout Europe, from Spain, to Germany, to Poland and elsewhere; it is the level of organization that varied across cases.[[179]](#footnote-179)

Kings would seek information about the state of their realm and the behavior of their agents through formal inquests or informal requests for information.[[180]](#footnote-180) Formal, written complaints were submitted by a broad spectrum of subjects to the royal court for resolution by the king or his officers. Just as in communist China to this day, authorities encouraged petitions to obtain information about conditions in the provinces.[[181]](#footnote-181) Although we lack systematic data, royal responsiveness to these complaints seems to have been high, unlike in modern China.[[182]](#footnote-182) Petitions allowed rulers to enforce their jurisdiction, including in critical territories such as Gascony that had no direct representation and Scotland, and to “reinforce military conquest.”[[183]](#footnote-183) They directly benefited rulers, despite being burdensome, therefore, thus encouraging supply.

Figure : Number of Petitions and Parliamentary Frequency, England, 1270-1399

Sources: Ancient Petitions (SC8), National Archives. Note that the petitions included are only what survive in the special collection that compiled existing petitions.[[184]](#footnote-184)

The “revolution” increased access. Originally in England complaints required purchasing a writ from Chancery, which authorized a legal action from a fixed number of available templates.[[185]](#footnote-185) This was accessible, though not easily to everyone.[[186]](#footnote-186) However, from the 1270s, oral complaints were accepted locally (“in eyre”) and transcribed into written “bills” that were sent to the center, thus opening the petition process to broader sections of the population and “poor people” and establishing an institutional connection between local grievance and government response.[[187]](#footnote-187) This was a major step in enabling popularly-supplied legislation in Parliament, in response to vibrant bottom-up demand.

Petitions originated from all social strata, from the lay and ecclesiastical nobility to knights and burgesses and religious houses. Members of the higher nobility would press claims to lands, franchises, and money. Land disputes were brought to the king directly, since all land was held of him; major spikes came after internal war, such as the Baron’s War of 1263-5.[[188]](#footnote-188) But shire and borough communities would also petition, for instance, to challenge the exchequer’s fiscal claims upon them or to make “requests for keeping roads and bridges in repair and complaints of the abuse of tolls, the privileges of the stannaries, or the inconvenient situation of a county gaol.”[[189]](#footnote-189) The gentry would seek redress from intimidation or other miscarriage of justice. Even free tenants and villains would petition against the exercise of lordship and “communities of places or estates of men, for instance, the tin-miners in Cornwall or the king's clerks in chancery” would petittion.[[190]](#footnote-190)

Communities could be “formally constituted,” such as the villeins on a manor in the king’s demesne or the company of the Hanse, or “pragmatically imagined,” such as the “poor commons of various cities and boroughs.”[[191]](#footnote-191) They presented grievances about universal problems: abuses and corruption of royal officials (about a third of the total in the early period),[[192]](#footnote-192) but also rampant crime and wrongdoing.[[193]](#footnote-193) Fundamentally petitions appealed to royal grace.

Petitions and the king’s presence were soon considered central to parliament.[[194]](#footnote-194) “It was widely accepted that the king had a responsibility to provide answers to all petitions before a parliament closed.”[[195]](#footnote-195) Edward I thus had to request, in 1280 and 1293, that the “flood” of petitions reaching hundreds per session be regulated because they distracted him from the “*grosses busoignes de sun reaume*.”[[196]](#footnote-196) When fewer were admitted in the 1280s, social reaction was sharp. The anonymous author of the *Mirror of Justices*, from the early 1300s, protested that “it is an abuse that whereas parliaments ought to be held for the salvation of the souls of trespassers, twice a year and in London, they are now held but rarely and at the king’s will for the purpose of obtaining aids and collection of treasure.”[[197]](#footnote-197) Whatever the *crown’s* purposes for convening Parliament, bottom-up demand viewed it through the prism of justice and the imposition of fiscal demands as a perversion.

The impact of these petitions was profound: they were increasingly the conduit for legislation.[[198]](#footnote-198) “As Stubbs said long ago, nearly all the legislation of the fourteenth century is based upon parliamentary petitions.”[[199]](#footnote-199) The first known “bills” to parliament date from 1278.[[200]](#footnote-200) But the process accelerated when petitions also started being submitted in “common,” aggregating local demands into generalizable requests after the 1330s.[[201]](#footnote-201) Originally, such petitions invoked the ‘community of England’, whereby “it is clearly the lords who are meant.”[[202]](#footnote-202) But by 1315, “the public and frequent complaint of middling people” could secure legislation in response to demands, for instance on appointing sufficient people to juries.[[203]](#footnote-203) It is only after this date that representatives of counties and boroughs consulted together in Parliament to draft petitions that presented aggregated, rather than particularistic, concerns.[[204]](#footnote-204)

The Commons had an “agenda for legislation” by the 1320s.[[205]](#footnote-205) By the 1340s, only “common petitions” were enrolled,[[206]](#footnote-206) making the Commons the conduit for popularly-supplied legislation in Parliament.[[207]](#footnote-207) By the 1370s, various actors would seek to have their petitions presented through the Commons, because this route ensured they were heard by the king in Parliament, rather than by committees of nobles.[[208]](#footnote-208) By 1377, all statutes required the assent of the full parliament.[[209]](#footnote-209) By 1450, the Commons were not only presenting the issues via petitions; they were proposing the remedy that became legislation.[[210]](#footnote-210)

In France, royal justice also spread in response to petitions (*supplicatio, requesta*), especially by the church.[[211]](#footnote-211) Supplications appealed to the king’s grace, on issues outside ordinary justice.[[212]](#footnote-212) Alternatively, any “plaintiff seeking to bring a civil action before the Parlement, whether on appeal or in first instance, had to present a formal written request to the king.”[[213]](#footnote-213) The role of the *Parlement*, specifically of the *Chambre de Requêtes*, was to handle these cases from customary law and issue “letters of justice” that referred the case to a different authority, whether to the Grand Chambre or to local authorities.[[214]](#footnote-214) However, originally, “only aggrieved churches and substantial landowners” could access the king.[[215]](#footnote-215) But with the great inquest (*enquête*) of 1247, the crown ushered its own “bill revolution,” as in England.[[216]](#footnote-216)

Oral complaints against the king and his officers could now be accepted from broad sections of the population and submission to the local clergy meant they were written down and submitted to the *curia regis.* Complaints targeted the local representatives of the crown with judicial, military, fiscal, and administrative powers, the *baillis* and the *sénéschaux* (bailiffs of the south). They could range from a *bailli* favoring the cases of the rich over the poor to extorting money from a prisoner. Crime was also pervasive and complaints could now be directed against other subjects.

Grievances often led to legislation, as with the “*établissement général*” of Louis the Pious in 1254.[[217]](#footnote-217) The reforming ordinances of the fourteenth and fifteenth centuries were responding to public petitions or requests, for instance the one from 1303 on royal officials or the provincial charters of 1315.[[218]](#footnote-218) More well-known from later history are the related *doléances*, associated with the Estates-General.[[219]](#footnote-219) But these were effectively petitions too. The French trajectory splintered their submission process, however, between the *Parlement* and the Estates-General, weakening the institutional mechanisms of centralization.

A major factor affecting institutional regularization was whether the king was present in the institution; this incentivized other groups to attend. In France, the increasing absence of the king after 1290 occurred at the same time as the nobility was sidelined in court activities.[[220]](#footnote-220) Louis IX had a personal investment in justice, but his successor only appeared in court to bestow favor on a plaintiff or due to the importance of the case.[[221]](#footnote-221) The English king remained present in the formative period; his presence is sometimes considered the difference between parliaments and other assemblies.[[222]](#footnote-222) This did not mean that in a later period he could not go rowing whilst appointing nobles to hear petitions;[[223]](#footnote-223) but by that time, Parliament was regular and nobles and all subjects had incentives to be present as well.

Demand for institutional regularity therefore came from the constant and polity-wide demand for royal justice or grace. This was common to the two cases, as it was throughout Europe and beyond (later chapters will support this). Demand for rights or law across cases cannot be assumed to have varied in obvious ways. Neither, however, can we say did the demand for taxation, which many Whiggish accounts place at the center of the rise of English constitutionalism, differ across cases.[[224]](#footnote-224) Both rulers were asking for taxation and subjects were uniformly asking for redress of wrongs. Yet a representative institution only consolidated as a polity-wide institution in England. Why? What follows probes the comparison with France to identify key conditions for this variation.

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1. Blockmans (1978, 192). [↑](#footnote-ref-1)
2. Smith ([1776] 1976), Thierry (1853). In more recent scholarship, the third estate was not an “agent,” only conditionally conducive to democracy Moore (1967), Rueschemeyer*, et al.* (1992); c.f. Collier (1999). [↑](#footnote-ref-2)
3. van Zanden*, et al.* (2012, 4). [↑](#footnote-ref-3)
4. \* [↑](#footnote-ref-4)
5. Burke and O'Brien (1968, 115). [↑](#footnote-ref-5)
6. Tierney (1983); see also Weber ([1922] 1978, 292-3). It is only after the sixteenth century that the concept of Parliament representign the whole people, especially the Commons, emerged; Smith ([1581] 1982) [↑](#footnote-ref-6)
7. See Part 3. [↑](#footnote-ref-7)
8. Herb (2003), Stasavage (2010), van Zanden*, et al.* (2012). [↑](#footnote-ref-8)
9. van Zanden*, et al.* (2012), Stasavage (2010). [↑](#footnote-ref-9)
10. Under Edward I and in 1445-6 respectively; Maddicott (2010, 339)(Ormrod 1995, 36). [↑](#footnote-ref-10)
11. (Lewis 1962, 14). [↑](#footnote-ref-11)
12. Blockmans (1998, 34). [↑](#footnote-ref-12)
13. McIlwain (1932, 691). [↑](#footnote-ref-13)
14. Blockmans (1998, 61). [↑](#footnote-ref-14)
15. De Long (2000). [↑](#footnote-ref-15)
16. Schumpeter ([1918] 1991), Bates and Lien (1985), Levi (1988), van Zanden*, et al.* (2012, 6, 13). [↑](#footnote-ref-16)
17. Tilly (1990), Downing (1992), Ertman (1997), Bates and Lien (1985), Barzel and Kiser (2002), Kiser and Barzel (1991), Levi (1988), Hoffman and Rosenthal (1997), van Zanden*, et al.* (2012). [↑](#footnote-ref-17)
18. Stasavage (2010). [↑](#footnote-ref-18)
19. Gandhi (2008), Ross (2012). [↑](#footnote-ref-19)
20. For instance, in Kuwait “ruler autonomy” suppressed representative institutions: the discovery of mineral resources obviated the need of “concessions” to citizens; Gandhi (2008). [↑](#footnote-ref-20)
21. North*, et al.* (2009, 15-6). [↑](#footnote-ref-21)
22. Pierson (2000b). [↑](#footnote-ref-22)
23. Pierson (2000a, 13-14). [↑](#footnote-ref-23)
24. van Bavel*, et al.* (2012, 348). [↑](#footnote-ref-24)
25. But see Mahoney and Thelen (2010a). [↑](#footnote-ref-25)
26. Tilly (1990, 90), Acemoglu*, et al.* (2005, 425-7). [↑](#footnote-ref-26)
27. Olson (1965). [↑](#footnote-ref-27)
28. Stasavage (2010). [↑](#footnote-ref-28)
29. Haber*, et al.* (2003). [↑](#footnote-ref-29)
30. Contamine (1976, 247). [↑](#footnote-ref-30)
31. Harriss (1975, 427, 431), Baker (1961, 28-9), Prestwich (1990, 122), Mitchell (1951, 59), Matthew Paris (1852, 401-2). Castilian kings affirmed the same, for instance in 1277 and 1282; O'Callaghan (1989, 131). An exception is peacetime taxation, but, as we will see, this is less tied to representative outcomes in the early stages. [↑](#footnote-ref-31)
32. O'Brien and Hunt (1993), Hoffman and Norberg (1994). [↑](#footnote-ref-32)
33. Dincecco (2011). [↑](#footnote-ref-33)
34. Besley and Persson (2011). [↑](#footnote-ref-34)
35. See footnote \* [↑](#footnote-ref-35)
36. Pierson makes the same point regarding efficiency; (2000a, 264). [↑](#footnote-ref-36)
37. Pierson (2000a), Pierson (2004), Mahoney (2000). [↑](#footnote-ref-37)
38. Medieval constitutionalism refers to the “system of decentralized government that obtained in most of Western Europe in the late medieval period,” and which was predicated on the representative assemblies that are found throughout Europe Downing (1992). The widespread prevalence of assemblies, estates, diets and other forms of institutions with consultative or administrative functions across Europe has long been pointed out by historians; Guizot (1861, 10), Lord (1930), Blickle (1997), Blockmans (1978, 192), Marongiu (1968). [↑](#footnote-ref-38)
39. The “military revolution” “refers to the process whereby small, decentralized, self-equipped feudal hosts were replaced by increasingly large, centrally financed and supplied armies that equipped themselves with ever more sophisticated and expensive weaponry;” Downing (1992, 10). [↑](#footnote-ref-39)
40. Hintze (1970). [↑](#footnote-ref-40)
41. Ertman (1997). [↑](#footnote-ref-41)
42. Ertman also has a rich argument explaining variation in bureaucracy, but the focus here is on the institutional part of the dynamic. [↑](#footnote-ref-42)
43. Ertman (1997, 21). [↑](#footnote-ref-43)
44. Decoster (2002, 25), Hébert (2014, 165-9)\*. In England, the king had greater powers of discretion; Denton (1981, 89-90). [↑](#footnote-ref-44)
45. Maddicott (2010, 435), Stubbs (1880, 191-2). [↑](#footnote-ref-45)
46. Stubbs (1880, 185). [↑](#footnote-ref-46)
47. Stubbs (1880, 192-4). [↑](#footnote-ref-47)
48. Stubbs (1880, 194). [↑](#footnote-ref-48)
49. Contamine (1997, 21, 21-45). [↑](#footnote-ref-49)
50. Luchaire (1892, 503). [↑](#footnote-ref-50)
51. Major (1951, 73-5). [↑](#footnote-ref-51)
52. Bisson (1972, 562), Lewis (1962, 9). [↑](#footnote-ref-52)
53. Maddicott (2010, 393). [↑](#footnote-ref-53)
54. Maddicott (2010, 435-6). [↑](#footnote-ref-54)
55. Powell and Wallis (1968, 335-46), McIlwain (1932, 680), Clarke (1936, 126-7), Wilkinson (1977, 378). [↑](#footnote-ref-55)
56. . [↑](#footnote-ref-56)
57. Finer (1999, 1040), Denton (1981). [↑](#footnote-ref-57)
58. Denton (1981, 100). [↑](#footnote-ref-58)
59. Bradford and McHardy (2017). Also, Jones (1966), Kemp (1961), Hébert (2014, 194). [↑](#footnote-ref-59)
60. Denton (1981, 107), Clarke (1964, 126-40). [↑](#footnote-ref-60)
61. Pollard (1920, 194). [↑](#footnote-ref-61)
62. Bradford (2007, 163). [↑](#footnote-ref-62)
63. Stubbs (1878, 339, 335-41). [↑](#footnote-ref-63)
64. Some historians even argue that the gentry did not have territorial ties to the county community, but rather to the lords; Prestwich (1990, 60-3), Maddicott (2010, 435-6). [↑](#footnote-ref-64)
65. Wilkinson (1977, 374). [↑](#footnote-ref-65)
66. See Part 3. [↑](#footnote-ref-66)
67. Land and tenure are increasingly the focus of studies in the developing world, not only as fundamental loci of conflict, but also as structuring institutions and politics; Boone (2014), Albertus (2015). [↑](#footnote-ref-67)
68. The term was applied in both England and France to refer to assemblies where the king spoke or to courts; Harding (1973, 87), Langlois (1888, 99). English reformers of 1258-9 used the term *parlement* Maddicott (2010, 159). [↑](#footnote-ref-68)
69. Bisson (1969). [↑](#footnote-ref-69)
70. Lot and Fawtier (1958, 580). [↑](#footnote-ref-70)
71. Montesquieu\*. Ducoudray (1902, 21), Swann (1995). [↑](#footnote-ref-71)
72. Rigaudière (1994, 164). [↑](#footnote-ref-72)
73. The functions of the English Parliament were bitterly debated in English historiography: two historians emphasizing the judicial functions of Parliament, as here, were deeply conservative Richardson and Sayles (1981). Yet the argument originated with Maitland, who was squarely in the nineteenth century liberal tradition; Fifoot (1971). A strong reaction against the judicial interpretation prevailed; Boucoyannis (2015). However, the historical evidence in its favor was incontrovertible. For instance, “chancery clerks restricted the term *parliamentum* to royal assemblies in which justice was rendered” and records of parliament (called rolls) were “almost exclusively concerned with judicial business” up to 1316; it was the king’s summonses that prioritized politics and money; Spufford (1967, 15-6), Langmuir (1966, 52). Most historians today acknowledge the role of justice, but place it in the context of other functions, as done here. No such tensions exist in French historiography. [↑](#footnote-ref-73)
74. The *Parlement* judges of course eventually became the nobility of the robe, but that was a later development. [↑](#footnote-ref-74)
75. In both England and France, the term referred to assemblies where the king spoke (*parler*) or to courts; Harding (1973, 87), Langlois (1888, 99). [↑](#footnote-ref-75)
76. The tenurial bond meshed with pre-Conquest obligations flowing from land ownership; Hudson (1996a, \*). [↑](#footnote-ref-76)
77. Lemarignier (1970, 329-337). [↑](#footnote-ref-77)
78. Ertman (1997). [↑](#footnote-ref-78)
79. White (1983, 805), Ertman (1997, 16, 172). [↑](#footnote-ref-79)
80. Brewer (1989, 15). [↑](#footnote-ref-80)
81. White (1933). [↑](#footnote-ref-81)
82. Thelen (2003, 225-8). [↑](#footnote-ref-82)
83. Pierson (2000a, 259). [↑](#footnote-ref-83)
84. Schickler (2001, 15-16), Thelen (2003, 226-8), Mahoney and Thelen (2010b, 25-6, 29). For instance, layering occurs in private-sector social services that develop alongside public-sector ones and undermine middle class support for the latter, Rothstein (1998); or in transitions from communism in Eastern Europe, where old institutions survived under new formations; Stark and Bruszt (1998). [↑](#footnote-ref-84)
85. Vile (1967). Its absence in the English political system until the modern period is discussed in Jay (1994). [↑](#footnote-ref-85)
86. Shennan (1998, 14), Ducoudray (1902, 22-46), Fayard (1876), Langlois (1890), Doucet (1948, 167). For the royal Council, see Lot and Fawtier (1958, 75-82), Lapsley ([1914] 1925, 8), Tout (1920, 146-9). [↑](#footnote-ref-86)
87. Harding (2002, 171), Bisson (1973). See the distinction between counsel and council in Spencer (2014, 51-64). [↑](#footnote-ref-87)
88. Harding (2002, 170), Fawtier (1953, 275). [↑](#footnote-ref-88)
89. Bisson (1969), Maddicott (2010), Shennan (1968). A major recent statement covering England, France, and Spain \* is by Michel Hébert (2014). [↑](#footnote-ref-89)
90. Ducoudray (1902, 319), Aubert ([1890] 1977, 187-226) [↑](#footnote-ref-90)
91. Bisson (1969), Bisson (1972, 547-8). [↑](#footnote-ref-91)
92. Krynen (2000). These similarities raise the question of diffusion. The term *parlement* appears in both countries in the 1230s; in the 1250s Henry III appealed to the *Parlement* concerning his lands in Gascony, which he held as feudal vassal of the French king, and continued to send proctors to represent him; Harding (2002, 163, 152, 170), Richardson and Sayles (1981, 170-2). Edward I had representatives in the *Parlement* to monitor his landed interests as well; Powicke (1953, 287-93, 296-8, 310-13). The practice was part of a common European tradition, stemming from Church practice, as I explain in chapter 6\*. Its incidence only varied locally. Arguments about diffusion don’t affect prior causal explanations, however, as key conditions need to be present if diffusion is to succeed. [↑](#footnote-ref-92)
93. Burt (2013, 29). [↑](#footnote-ref-93)
94. Tilly (1990). [↑](#footnote-ref-94)
95. Bisson (1972), Strayer and Taylor (1939). Even early meetings were not focused on taxation. [↑](#footnote-ref-95)
96. See the works by C. H. Taylor cited. Many meetings on taxation were held at the sub-national level in France, for which systematic data are not available. But this was also true in England, where localized meetings with clergy and merchants would also deal with taxation. [↑](#footnote-ref-96)
97. Maddicott (2010, 455-72). [↑](#footnote-ref-97)
98. \* [↑](#footnote-ref-98)
99. Contamine (1984, 65), Harriss (1975, 39). [↑](#footnote-ref-99)
100. Brand (2007), Hudson (1996a, 22-3). Historians disagree about whether common law is the product of deliberate action or an unintended consequence of Henry’s drive to rule; Milsom (1981), Milsom (1985). The judicious conclusion is that he was “the driving force” of reforms, even if not the direct origin of all of them; White (2000, 215), Hudson (1994), Hudson (2012, 528-30), van Caenegem (1988), Brand (1997). [↑](#footnote-ref-100)
101. The definitive account now is by John Hudson (2012). [↑](#footnote-ref-101)
102. This was often the case; Procter (1936, 533). [↑](#footnote-ref-102)
103. Baker (2002, see list of statutes, pp. xiii-xix and chapter 12), Harding (2002, 186-90), Hudson (2012, 258-60, 498-500). [↑](#footnote-ref-103)
104. Rigaudière (2003, 126). [↑](#footnote-ref-104)
105. Cam (1962, 96), Hudson (2012). See next chapter. [↑](#footnote-ref-105)
106. North*, et al.* (2009, 77). [↑](#footnote-ref-106)
107. Milsom (1976). [↑](#footnote-ref-107)
108. Milsom (1981, 139), Hudson (2012, 856). [↑](#footnote-ref-108)
109. Hudson (1994, 280), Hudson (1996b, 212-18, 219), Hudson (2012, 848), Harding (2002, 132). [↑](#footnote-ref-109)
110. Holdsworth escheat. [↑](#footnote-ref-110)
111. Hudson (2012, 849). [↑](#footnote-ref-111)
112. Holt (1972, 30-6), Holt (1982, 207-10), Holt (1983), Hudson (1994, 59). [↑](#footnote-ref-112)
113. Bartlett (2000, 144). [↑](#footnote-ref-113)
114. Maddicott (2010, 244, 292). [↑](#footnote-ref-114)
115. Maddicott (2010, 448). [↑](#footnote-ref-115)
116. Rigaudière (1994, 127), Lot and Fawtier (1958, 290-1). Caution is required with the French evidence, as records on this are scant; Decoster (2002). [↑](#footnote-ref-116)
117. Maddicott (2010, 233ff). [↑](#footnote-ref-117)
118. Maddicott (2010) sees “The First Age of Parliamentary Politics” as starting in 1227. 1295 is the conventional date at which key elements of Parliament are in full formation; hence the term, “Model Parliament.” [↑](#footnote-ref-118)
119. Coss (1989, 47). [↑](#footnote-ref-119)
120. Miller (1960, 17). [↑](#footnote-ref-120)
121. The Statutes of the Realm (1810, 71-95). [↑](#footnote-ref-121)
122. Megarry and Wade (1975, 32). [↑](#footnote-ref-122)
123. Raban (2000, 124). [↑](#footnote-ref-123)
124. Weber ([1922] 1978, 258). [↑](#footnote-ref-124)
125. Stubbs (1880, 259). [↑](#footnote-ref-125)
126. Hayek (1973). In fact, this is precisely why codification was later necessary, to overcome the tremendous diversity of France’s mostly customary, regional law; Dawson (1940). [↑](#footnote-ref-126)
127. Cohen (1993, 28-39), Rigaudière (1994, 135-138). [↑](#footnote-ref-127)
128. Ordonnances des Roys de France de La Troisième Race (1723). [↑](#footnote-ref-128)
129. Beaumanoir (1900, nos 1499, 1513). [↑](#footnote-ref-129)
130. Shennan (1968, 51). [↑](#footnote-ref-130)
131. Ordonnances des Roys de France de La Troisième Race (1723). The quote my Mirabeau, “lente conquête par l’écritoire,” is cited in (Dubédat 1885, 12). [↑](#footnote-ref-131)
132. Lot and Fawtier (1958, 291). [↑](#footnote-ref-132)
133. Rigaudière (1994, 127), Lot and Fawtier (1958, 290-1). [↑](#footnote-ref-133)
134. Maddicott (2010, 400). Some limited franchises existed, such as the Palatinates of Durham and Lancaster, as well as some private courts, and the powerful Marcher lordships; Holdsworth (1922, 109-132, 17-32). But common law procedure penetrated even there; Hudson (2012, 855). Edward I succeeded in curtailing their claims to autonomy; Spencer (2014, 71-6). [↑](#footnote-ref-134)
135. Fawtier (1953, 282). Fawtier ascribed it to the power of the French kign that did not accept equals, but this only holds as a normative statement, not an empirical description, given all the restrictions to this power he subsequenlty admits. [↑](#footnote-ref-135)
136. Rigaudière (1994, 162-3). [↑](#footnote-ref-136)
137. Bisson (1969, 360). [↑](#footnote-ref-137)
138. For the emerging legislative control by the officials of the *Parlement*, see Rigaudière (1994, 215-7). [↑](#footnote-ref-138)
139. Revkin (2016), Arjona (2016). [↑](#footnote-ref-139)
140. Hudson (2012, 537-42), Baker (2002, 18-20). [↑](#footnote-ref-140)
141. Holdsworth (1922, 48). [↑](#footnote-ref-141)
142. Maitland (1893, lxxxiii ). [↑](#footnote-ref-142)
143. The term is first recorded in 1399; Given-Wilson*, et al.* (2005, Oct. 1399 2nd Roll §9. m. 2), McIlwain (1910). [↑](#footnote-ref-143)
144. See Sayles (1988, 21-2), for a list of such cases under Henry III (1216-72); Harriss (1981, 44-5). [↑](#footnote-ref-144)
145. Holdsworth (1922, 172). [↑](#footnote-ref-145)
146. *Fleta* is a treatise on the Common Law; Fleta (1955, 109). [↑](#footnote-ref-146)
147. Stubbs (1896, 261). [↑](#footnote-ref-147)
148. Holdsworth (1922, 40), Powell and Wallis (1968, 406), Musson and Ormrod (1999, 27). [↑](#footnote-ref-148)
149. For the two central royal courts, see Turner (1977), Hastings (1947). Treason law allowed members of parliament to prosecute ministers of the crown and to exercise some control over the crown’s actions Bellamy (1970). [↑](#footnote-ref-149)
150. Maddicott (2010, 287). [↑](#footnote-ref-150)
151. Lot and Fawtier (1958, 289), Rigaudière (1994, 188). [↑](#footnote-ref-151)
152. Joinville (1821-7, 184-5). [↑](#footnote-ref-152)
153. Ducoudray (1902, 22-45), Fayard (1876, 4-10), Langlois (1890, esp. p. 78 ), Shennan (1998, 10ff), Lemarignier (1970, 347), Lot*, et al.* (1957, 296-300). [↑](#footnote-ref-153)
154. Ducoudray (1902, 302), McIlwain (1932, 686). [↑](#footnote-ref-154)
155. Harding (2002, 110-2, 160-64, 208), Le Mené (2000). [↑](#footnote-ref-155)
156. Harding (2002, 123). [↑](#footnote-ref-156)
157. Lot and Fawtier (1958, 333). [↑](#footnote-ref-157)
158. This went back to the 1140s; Lot and Fawtier (1958, 298), Harding (2002, 157). [↑](#footnote-ref-158)
159. Hilaire (2011, 287-324). [↑](#footnote-ref-159)
160. Spruyt (1994). [↑](#footnote-ref-160)
161. Harding (2002, 124), Lot and Fawtier (1958, 421-30, 296, 299). [↑](#footnote-ref-161)
162. Ducoudray (1902, 307-12), Langlois (1890, 84-5). [↑](#footnote-ref-162)
163. Firnhaber-Baker (2012). [↑](#footnote-ref-163)
164. Lot and Fawtier (1958, 298). [↑](#footnote-ref-164)
165. Bisson (1969, 368-71). [↑](#footnote-ref-165)
166. Maddicott (1981, 62), Harding (2002, 147-86), Brand (2004). [↑](#footnote-ref-166)
167. The innovation lay in its political use, as petitions (gravamina) had been presented by clergy to the king long before; Jones (1966). [↑](#footnote-ref-167)
168. Maddicott (1981, 62). [↑](#footnote-ref-168)
169. Stubbs (1896, 260). [↑](#footnote-ref-169)
170. As I explain below, Parliament did not serve as a court of appeal. [↑](#footnote-ref-170)
171. For different types across Europe, see the sweeping review in Hébert (2014, 476-502). [↑](#footnote-ref-171)
172. Millet (2003). [↑](#footnote-ref-172)
173. Weiler (2009), Krotoszynski (2012). [↑](#footnote-ref-173)
174. Ormrod (2009a, 7). [↑](#footnote-ref-174)
175. Rigaudière (1994, 150-1). [↑](#footnote-ref-175)
176. Most petitions were addressed to the King and his Council and some to queens; Dodd (2007, 52), Harding (2002, 178-86), Plucknett (1940, 113-4), Musson (2009). [↑](#footnote-ref-176)
177. Maddicott (2010)\*. [↑](#footnote-ref-177)
178. The *OED* defines a bill as the “draft of an Act of Parliament submitted to the legislature for discussion and adoption as an ‘Act,’” passed through a petition. [↑](#footnote-ref-178)
179. Harding (2002, 160-190). See Dumolyn (2015), Hébert (2014, 465-496). [↑](#footnote-ref-179)
180. Harding (2002, 109-28), Hoyt (1961, 15). [↑](#footnote-ref-180)
181. Takeuchi (2014, 22). [↑](#footnote-ref-181)
182. A survey, admittedly limited, indicated that only 0.2 percent of Chinese petitions were resolved in 2003; Takeuchi (2014, 2). [↑](#footnote-ref-182)
183. Maitland (1893, lx), Pollard (1942, 202), Dodd (2007, 40-6). [↑](#footnote-ref-183)
184. Ormrod (2009a, 5). A major project under the direction of Mark Ormrod and Gwilym Dodd has digitized and processed the massive corpus from the period; Ormrod*, et al.* (2009). [↑](#footnote-ref-184)
185. Baker (2002, 53-69). [↑](#footnote-ref-185)
186. Musson and Ormrod (1999, 127-33). [↑](#footnote-ref-186)
187. Musson and Ormrod (1999, 44). [↑](#footnote-ref-187)
188. Harding (2002, 174). [↑](#footnote-ref-188)
189. Lapsley (1951, 141). [↑](#footnote-ref-189)
190. Haskins (1938, 7), Harriss (1981, 49), Brand (2009). [↑](#footnote-ref-190)
191. Ormrod (2009b, 137). The article is a fascinating analysis of the usage of sound words like murmur and clamour to denote public dissent to official policy. [↑](#footnote-ref-191)
192. Maddicott (1981, 65). [↑](#footnote-ref-192)
193. Inquests on corruption were used extensively by previous kings, such as Henry II; Harding (2002, 128-46). Whether fluctuations in judicial measures reflect variation in the levels of violence or administrative capacity remains a contested topic, as evidence is poor; Bellamy (1973), Clanchy (1974), Kaeuper (1988). [↑](#footnote-ref-193)
194. They were simply delivered, however, not heard in parliament Maddicott (2010, 295-6). [↑](#footnote-ref-194)
195. Ormrod (2009a, 7), Harding (2002, 180). [↑](#footnote-ref-195)
196. Maddicott (2010, 442), Dodd (2007, 50-1). [↑](#footnote-ref-196)
197. The Mirror of Justices (1895, 155), Dodd (2007, 72). [↑](#footnote-ref-197)
198. Musson and Ormrod (1999, 151-7). [↑](#footnote-ref-198)
199. Hébert (2014, 503-6, 487-490), Harding (2002, 187-8), Cam (1970). [↑](#footnote-ref-199)
200. Harding (2002, 179), Brand (2004). [↑](#footnote-ref-200)
201. Dodd (2001, 133), Ormrod (1995, 35), Harriss (1963), Myers (1937), Rayner (1941a), Rayner (1941b), Dodd (2007, 126-155). [↑](#footnote-ref-201)
202. Harding (2002, 188), Dodd (2007, 128), Haskins (1938), Sayles (1974, 102). [↑](#footnote-ref-202)
203. Dodd (2007, 130), Rotuli Parliamentorum (1783, 117). See the discussion in Ormrod (1995, 30-7). [↑](#footnote-ref-203)
204. Dodd (2007, 126-55), Rayner (1941a), Rayner (1941b). [↑](#footnote-ref-204)
205. Ormrod (1990). [↑](#footnote-ref-205)
206. Rayner (1941a), Rayner (1941b), Richardson and Sayles (1961, 15). But individual petitions continued; Dodd (2001). [↑](#footnote-ref-206)
207. Ormrod (1995, 33), Musson and Ormrod (1999, 146-57), Harding (2002), Dodd (2007). [↑](#footnote-ref-207)
208. Cam (1970, 181), Ormrod (2009b, 137). [↑](#footnote-ref-208)
209. Holt (1981, 45). [↑](#footnote-ref-209)
210. Ormrod (1995, 37). [↑](#footnote-ref-210)
211. In France, the term *petitio* was connected to ordinary, not extra-ordinary, justice, contrary to English practice; Hilaire (2011, 225). [↑](#footnote-ref-211)
212. Hilaire (2011, 152-60, 217-230). [↑](#footnote-ref-212)
213. Shennan (1968, 58). [↑](#footnote-ref-213)
214. Lot and Fawtier (1958, 341), Lot and Fawtier (1958, 82-4). [↑](#footnote-ref-214)
215. Harding (2002, 161). [↑](#footnote-ref-215)
216. Harding (2002, 122). [↑](#footnote-ref-216)
217. Harding (2002, 152, 151, 149). [↑](#footnote-ref-217)
218. Rigaudière (1994, 183). [↑](#footnote-ref-218)
219. Rigaudière (1994, 176), Langlois (1909), Contamine (1976) [↑](#footnote-ref-219)
220. Shennan (1998, 24), Hilaire (2011, 158). [↑](#footnote-ref-220)
221. Shennan (1998, 24). [↑](#footnote-ref-221)
222. Prestwich (1988, 442). [↑](#footnote-ref-222)
223. Prestwich (2003, 103). [↑](#footnote-ref-223)
224. Even Maddicott, who pioneered the revival of the study of justice and petitions, ultimately focuses on taxation to explain the growth of representation in England; Maddicott (2010). [↑](#footnote-ref-224)