# Empirical Explanations of Functional Fusion: Contingency vs. Relative Power

How does functional fusion occur? And what are the conditions that turn fusion into a productive mechanism enabling institutional consolidation rather than institutional dysfunction? Functional fusion has traditionally been a target of the theory of separation of powers, which advocates instead that judicial powers be distinct from legislative.[[1]](#footnote-1) By contrast, there is no “fear of judicial lawmaking” in the Common Law tradition—the principle of separation is French in origin.[[2]](#footnote-2) The trajectory of the English Parliament and the French *Parlement* traces this divergence to its roots and exemplifies the conditions under which such functional fusion has constitutional effects. It shows that, in conditions of emergence, where a single institution may be inadequate in providing incentives on all parties involved, functional fusion can create an interdependence that overcomes this obstacle.

Explaining such a pattern is thus important, yet no systematic explanation exists in historical or in social science accounts. An important puzzle remains therefore. Existing arguments about variation between England and France in general typically invoke contingent or structural factors. Next I show why they are inadequate. Instead, institutional fusion in the English case and ultimately the success of the English parliament were tied to the crown’s superior strength in enforcing both judicial and military service across society. This capacity was relative, not absolute. Historians have painstakingly shown the constant struggles and failures involved in enforcing English royal power, as I discuss below. But the fact remains: institutional life was more integrated and encompassing in the English case than on the European continent. Explaining this requires moving beyond the micro level, where power failures loom large, to a more aggregate picture, where distributional issues dominate.

Furthermore, the question—how differential state capacity causes institutional outcomes to diverge—opens up broader theoretical concerns that this analysis can inform. Power was long neglected in the rational choice emphasis on cooperation and equilibrium in institutional analysis, which often assumed that change was exogenous,[[3]](#footnote-3) as did much sociological theory.[[4]](#footnote-4) Change was thus left effectively unexplained, a charge that also applies to New Institutional Economics.[[5]](#footnote-5) Similarly, some institutional accounts, especially those predicated on path dependency and critical junctures, also assume exogeneity:[[6]](#footnote-6) once in equilibrium or stable conditions, internal modes of change are precluded.

Distributional conflict was re-introduced by Jack Knight[[7]](#footnote-7) and historical institutionalists Kathy Thelen and Jim Mahoney have used power and distributional conflict to explain institutional change as endogenous.[[8]](#footnote-8) Their cases focus on contexts where institutions are already formed and binding. Change is endogenized, in such accounts, as institutions provide incentives to “change agents” seeking to appropriate resources.[[9]](#footnote-9) Agent strategies thus mostly reflect pre-existing rules, veto-powers, assumptions, and the procedures of implementation that govern the institutions they wish to change, as well as their cognitive limits.[[10]](#footnote-10) As a result, agent power shapes choices and strategies through its absence and its future distributional implications. Most of the strategies described, accordingly, tend to be those of weaker actors seeking change, confronted with institutional powerholders.

Institutional origins offer an additional mine of inquiry to trace the mechanisms of endogeneity and exogeneity. Periods of origins cannot take pre-existing structures for granted: actor power is critical.[[11]](#footnote-11) In fact, power resources shape rule choice itself, even before distributional outcomes could be considered or foreseen. Power affects rule choice in a pattern that is discerned throughout the book: counterintuitively, *weak* power resources force actors to opt for *rational* (in the Weberian sense) procedures initially displaying *proto-bureaucratic* elements and clear official roles, as in France, or even Russia and the Ottoman Empire;[[12]](#footnote-12) actors with *high capacity* to compel can choose strategies that effectively conscript local structures and agents, as in England, generating more *patrimonial* institutions.[[13]](#footnote-13)

Ruler power also shaped service to the state. English justices of the peace were not serving because of some superior civic culture. Rather, their duty, to guard the king’s peace by performing policing functions, flowed from legal obligation to the crown as ultimate landlord: it was “self-government at the King’s command.”[[14]](#footnote-14) Once imposed, service produced returns, and demand for rights grew, creating a long-term equilibrium. Originally, however, it was compelled. This paradox (“free” local service in response to central orders) gives the English context the appearance of decentralization and to the French that of centralization; the reality, however, is the inverse. At the same time, we will see that England and France were set on different paths as far as judicial procedure was concerned, through something of a natural experiment: the Pope’s abolition of the ordeal as a method of proof, which impacted both procedure and the substance of the law differently, with long-term institutional consequences. Yet again, however variation in power between the two rulers was the “switch” here as well, as later sections will argue.

In the next section, I first assess the alternative explanations that have been advanced to explain institutional variation between England and France, based mainly on geography or contingency, and show why they are incomplete. I then trace the four components of my alternative claim, that it is power over the most powerful that shapes outcomes. First, I discuss the land regime that endowed the English crown with such power. I then explain why noble attendance at the central institutions and the degree of their involvement in judicial duty should originally be seen as indicators of royal power.

Although evidence about attendance is reasonably suggestive for England, it is poor for France, albeit clearly in the direction suggested here. Further support is thus sought at a higher level of aggregation. A crown able to summon the nobility at the center should also be able to impose obligations across society as a whole. Such differential capacity to enlist judicial service is confirmed by the long-standing literature on the evolution of the two legal systems (Common Law and Civil Law), that of Legal Origins. I conclude the chapter with empirical evidence of the precocious mobilization of subjects for judicial duty in the English case, which challenges our stereotypes of a “small” English state and establishes the preconditions for the territorial “anchoring” of Parliament in local structures of governance.

## Alternative Explanations: Size, Distance, and Adverse or Contingent Events

Geographic and contingent factors undoubtedly affected the consolidation of constitutional structures. Geography explains institutional weakness in France in many accounts, as it agglomerated provinces with independent traditions and powerful lords.[[15]](#footnote-15) Large size meant that rulers had difficulty regularly summoning subjects and thus dictated meetings beyond Paris and closer to the southern provinces, as at Tours, Orléans and Blois. The logistics of assembling large assemblies from all provinces were daunting.[[16]](#footnote-16) When Paris fell to the English during the Hundred Years’ War, Charles VII (1422-1461) established a *Parlement* further to the south, at Poitiers. The “grande distance” between Poitiers, Languedoc, and Guienne, was the reason he gave, as well as the “poor safety of the roads from the multitudes of armed men who are found throughout the kingdom.”[[17]](#footnote-17) Distance weighed heavily among contemporaries. By contrast, in the words of the nineteenth-century legal historian, Frederic Maitland, in England “rivers were narrow and hills were low. [It] was meant by nature to be the land of one law.”[[18]](#footnote-18)

However, geography cannot fully explain outcomes. Its effects are underestimated in small territories and overestimated in large ones. First, though France was larger overall, that cannot explain why rulers did not develop sufficient control over territories that were within comparable distance. Brittany and Flanders were not further from Paris than the North or Cornwall were from London. Moreover, when cities or provinces wished to send delegates to Paris on business, commercial or otherwise, they could do so and paid for the task. Already in the 1250s, as many as twelve deputations from towns throughout France could be sent to three or four *parlements* a year. Such was the frequency and size of these delegations, that an ordinance in 1262 limited the number of trips for town business (*pro negociis ville*).[[19]](#footnote-19) High business levels continued into the 1400s. The critical factor for attendance was, therefore, not distance, but incentives. Where need arose and incentives existed, distance was not debilitating.[[20]](#footnote-20) Moreover, committee systems were used to overcome the problem of large size in 1356 and 1484.[[21]](#footnote-21)

French nobles too had a solid presence in Paris. Many of the most powerful bishops and magnates had residences, *hôtels*, there. The duke of Berry had at least six. “Paris served as a magnet for the Flemish court…[centered] at the count’s Parisian *hôtel*.”[[22]](#footnote-22) They also resided there for parts of the year.[[23]](#footnote-23) Though they would be reluctant to attend a meeting where concessions or work were demanded of them, a visit to the royal court on the major religious feasts (when the *Parlement* was held) was highly coveted. Apart from the importance of ceremony, the *Parlement* gave access to the king and his officials and allowed the cultivation of networks of patronage. Moreover, lords did actually attend the *Parlement* when legal judgments concerning them or peers were made. It was also where the twelve peers of France were tried.[[24]](#footnote-24) Logistical problems may have been more serious than in England, therefore, but they were far from insurmountable.

Further, smaller distances could impede attendance of local actors just as much. Travel appears easier in smaller units, but it was burdensome enough to elicit the widespread use of proctorial representation even there: nobles and especially clergy would send representatives to Parliament instead.[[25]](#footnote-25) Moreover, as Stasavage notes, travel was expensive and so was the cost of sending representatives.[[26]](#footnote-26) The typical wage for each knight would be the equivalent of £9,000 in 2010 values for 100 days.[[27]](#footnote-27) Such cost caused bitter debates within communities.[[28]](#footnote-28)

Conditions were also dangerous in England.[[29]](#footnote-29) In the 1310s and 1320s, a critical period for parliamentary consolidation, some magnates were threatened by enemies seriously enough to avoid attendance.[[30]](#footnote-30) Accordingly, the king had to offer safe conduct to parliamentarians. Similarly, after the crisis of 1340-41, “it was the very involvement of the nobility in the king’s wars, rather than any negative political feeling, that now prevented men from attending.”[[31]](#footnote-31) Had these conditions been constant, the institution may have never consolidated.

Contingent events cannot explain why the *Parlement* did not become the central political institution either. Paris did have a troubled history in the fifteenth century, as it was captured by the English between 1420 and the 1450s, as mentioned.[[32]](#footnote-32) However, by that time, the *Parlement* had been an active institution for two hundred years. These military crises only amplified tensions and weaknesses that existed from the early stages of institutional formation. Indeed, the weakness of the *Parlement* at the national level enabled regional institutional proliferation, as ancient jurisdictions were raised to the status of independent *parlements*, a process that continued into the sixteenth century.[[33]](#footnote-33)

Further, the military crisis itself was not the result of contingent factors: the king’s capture and the serious territorial losses followed, rather, a crisis of government. Charles VI’s (1380-1422) incapacity to rule caused a struggle between two factions claiming the throne, the Armagnacs and the Burgundians. This was exploited by the English king Henry V (1413-1422), who successfully attacked France. The effects on the *Parlement* were serious.[[34]](#footnote-34) External crises and attacks are disruptive when domestic conditions are already precarious.[[35]](#footnote-35) By contrast, a similar succession crisis occurred in England in 1399, when the Lancastrian line of the Plantagenets defeated the Yorkists. Yet institutional life was not eliminated: parliaments were held about once per year between 1390 and 1420. Nor is insularity determining for institutional development in England, which avoided a foreign invader from 1066 until 1688, but invaded others repeatedly itself in that period.[[36]](#footnote-36) If the “stopping power of water” offered extra protection to the English, it should have prevented the English from attacking south as well; yet they repeatedly succeeded. England’s institutional make-up was just more robust.

Specific explanations for the institutional divergence by historians focus on differential patterns of timing and specialization or the assumed strength of societal groups. For instance, it could be said that the *Parlement* specialized because no alternative judicial bodies existed, unlike in England where they were already formed.[[37]](#footnote-37) English central courts formed in the 1190s, before Parliament, French central courts in the 1290s, about four decades after the *Parlement*. Therefore, when petitions increased, more lay professionals were needed to handle business than in England and the *Parlement* became specialized, absent alternative venues.[[38]](#footnote-38) In other words, had specialized courts emerged before the *Parlement* to relieve it of some pressure, the institution could have later diversified.

But the logic is not airtight. Granted, in England, judicial specialization had developed before Parliament emerged, with the Courts of King's Bench and of Common Pleas handling cases where royal (i.e. common) law applied.[[39]](#footnote-39) But this did not reduce judicial pressures on Parliament itself—the crown was equally overwhelmed and reluctant to hear petitions as in France.[[40]](#footnote-40) Yet the English institution still added to its judicial functions fiscal and political ones. Plus, as we will see, fiscal business was originally infrequent. Moreover, even if in France the Chamber of Inquests (*Chambre des Enquêtes*), where investigations were handled, and the Chamber of Pleas (*Chambre des Requêtes*), where petitions were heard,[[41]](#footnote-41) only emerged in the 1290s, there was no reason for excess business not to be diverted to them, leaving the *Grand’ Chambre* itself for instance to deal with other functions; it already handled some “high politics” functions, as we will see. Yet that is not what happened. In any case, the prior existence of central royal courts in England and their delay in France are themselves endogenous to the master variable proposed here, ruler strength. England formed central courts earlier because the crown already had jurisdictional near-monopoly, as argued in the next section.

Finally, perhaps the most intuitive explanation is that weak English kings were unable to prevent the magnates or the representatives from “laying claim to their rights” to representation in Parliament, a claim made for Edward III ( 1327-1377).[[42]](#footnote-42) The assumed strength of constitutional forces in England, in this view, explains parliament’s political role. By the 1320s, however, Parliament was fully formed as an institution and the nobility’s strength was endogenous to the institution, as I will show. To explain the divergence between the two institutions, therefore, the period of origins is more relevant. This takes us to the early 1220s in England and the 1250s in France, when first meetings are officially recorded.

## Social Causes of Institutional Variation: Power over the Most Powerful

If geographic and contingent causes cannot explain variation in institutional fusion, what does? I argue the capacity of England’s rulers to compel social actors, especially the most powerful ones, ensured attendance at Parliament both for judicial and political purposes. Demanding taxation was easier in the same institution where the nobility and later broader social groups congregated to present petitions, receive high-stakes justice, and witness the ordinances and statutes passed by the king, as well as participate in the regular business of governing and administration, as occurred in the English Parliament—than in ad hoc meetings for a single, extractive purpose. Where these activities were integrated, institutions consolidated: the deficient incentives flowing from the fiscal dynamic were compensated for from the steadfast demand for justice. When the nobility was forced to participate in court activities, they had a regular presence in the institution.

An argument about representation based on compulsion, however, appears incongruous because we assume representation to have been originally a right. As I explain more fully in chapter 4, it began instead as an obligation.[[43]](#footnote-43) Attendance was thus higher where the ruler was stronger. Once compelled to participate in a common forum, however, social groups solved their collective action problem and could gradually increase their resistance to the crown. By contrast, in France, kings were unable to attract sufficient numbers of nobles and involve them *systematically* in judicial affairs either centrally or locally—though they were present on occasion.[[44]](#footnote-44)

As explained in the previous chapter, however, a robust explanation must not only explain how regularity was established and the collective action problem solved; it must also show how local structures were integrated into central governance—which I’ve argued occurred through judicial practices. This is the missing link tying developments at the center to governance throughout the polity, ensuring that central institutions were responsive to social groups at large. At both levels, local and central, royal capacity to enforce its law was critical in securing the institutionalization of exchange. For a polity-wide system, predicated on central institutions and on eliminating private jurisdictions, judicial centralization was key.

Claiming, as I do, that the crown compelled attendance alsocounters stereotypes about English royal weakness. These mostly draw from a later period,[[45]](#footnote-45) but low attendance at Parliament is lamented even by medieval historians.[[46]](#footnote-46) Cumulative evidence in this book aims to show that this perception is misleading. Numbers appear low because they are compared to potential English totals, not to European equivalents—compared to these, England was precocious. English kings appear constantly pressed to extract from recalcitrant subjects;[[47]](#footnote-47) yet again, however, they were matching in absolute terms competitors multiple times as large, as I show in chapter 6. English royal revenue was higher partly because the nobility was not exempt, which gave them extra reasons to be present in Parliament.[[48]](#footnote-48) Mutually reinforcing incentives thus flowed from original royal capacity, with limits wanted by both sides: subjects wanted limits to taxation, kings wanted limits to petitions and judicial concerns that distracted them. Typically, kings prevailed, but the interaction around petitions shaped the English institution.

Next I examine the land regime in the two cases, the evidence on noble attendance at the two institutions and why it is an indicator of royal power, and finally the macro-level judicial and legal organization in the two cases that reflect their differential distribution of power.

### Initial Conditions: Royal Control over Land and The Social Basis of Power

The fundamental background to all these developments revolved around control of the most important economic resource in the period, land. As explained in more technical detail in chapter 10, all land in England was held by the crown, which distributed it selectively to its followers. Despite the legal revolution of the nineteenth century that has made this fact mostly a formality, all land is still held of the English crown to this day. Although “ruler ownership” of land is typically identified with autocratic or “sultanic” regimes, like the Ottoman Empire and Russia, rights to all or most land being distributed by rulers were the common condition of most premodern political entities. Nobles did not “own” land, certainly not in England; they were “tenants.” What varied was the capacity of the ruler to enforce these rights.

This is what distinguished the English crown, which, after the Norman Conquest, had two advantages. It inherited an “ubiquitous” system of counties and hundreds (itself the product of strong Danish kings), whereas its Carolingian equivalent in France was no longer enforced.[[49]](#footnote-49) But the crown also managed to overturn the Anglo-Saxon distribution of power and to hold about 64 percent of the land, with other nobles holding individually less than 10 percent.[[50]](#footnote-50) By 1086, the crown held one fifth of the land as personal domain, it granted about half the land to the barons for their military service as tenurial holdings, and a quarter to the church, with the bishops and abbots holding their lands as fiefs as well, as tenants of the crown.[[51]](#footnote-51) It was this group of landholders, about 1500 in all, conditionally tied to the crown through obligations mostly stemming from the holding of land, that provided the main political actor in the early stages of institution building. Control over this group involved violence. With the Angevins, of whom John I was the last king, tactics became more subtle: “The destruction of castles and the payment of ransom replaced the blunt instrument of confiscation and disinheritance.”[[52]](#footnote-52)

The dependence of especially the upper echelons of society, the tenants-in-chief, on the crown remained pronounced and certainly much more intense than anywhere on the Continent. Noble obligations were initially focused on military service, but these were gradually sidelined through the monetization of exchange during the thirteenth century. Tenure did not become more secure for those “at the top of society,” however, since disruption of tenures was “most common.”[[53]](#footnote-53) This is obscured by the fact that the rights of tenants against their lords were being fortified in royal courts through the spread of Common Law.

As discussed in chapter 2, however, greater security in tenure existed at the lower ends of the social scale of free tenants, with vassals “even surviving the fall of their lords.”[[54]](#footnote-54) Kings readily discontinued earldoms or disposed them in the interests of the Crown, into the thirteenth century.[[55]](#footnote-55) So, the capacity of the ruler “to disinherit his tenants-in-chief [was] a key element in their power.”[[56]](#footnote-56) Relations were far from peaceful: historical studies trace in vivid detail the conflicts of Henry III and Edward I with their barons, the intensity of which can easily create an image of weakness and contestation.[[57]](#footnote-57) From a more macro-perspective, however, the structural distribution of power was tilted in the crown’s favor.

Conditions were inverted in France, where the king’s de facto jurisdiction was confined to the royal domain, in the Île-de-France.[[58]](#footnote-58) Yet, de jure, his claims covered most of the territory identified today as France. The legal foundations of his power were similarly based on feudal grants of land to nobles, some of which harkened back to the Carolingian partition. Faced with feudal vassals that often controlled forces equal to his own,[[59]](#footnote-59) however, the French king did not have analogous compelling powers. The limited reach of the crown is also reflected in the main mechanism for pacification employed: French kings had to invoke the Peace of God and rely explicitly on the cooperation of the Church; in England, the king imposed the King’s Peace.[[60]](#footnote-60)

### The Micro-Level: Noble Attendance in Representative Institutions—Solving the Collective Action Problem

How did this land distribution and power balance affect interaction with the center? Did holding land of the crown increase presence in central institutions? Showing the degree of compulsion in noble attendance at Parliament helps explain how nobles solved their collective action problem. Assessing numbers of nobility present in the two institutions is precarious, as we can mainly infer them only from lists of summonses: unlike representatives who were paid, no expense forms can be used to cross-reference and parliamentary rolls and records that recorded those present are too inconsistent.[[61]](#footnote-61) Further, comparing the two nobilities is also problematic, because categories of nobility are not identical.

In thirteenth century England, about 12 earls[[62]](#footnote-62) and 250 barons[[63]](#footnote-63) comprised the landed nobility, in a population reaching 4.7 million.[[64]](#footnote-64) Other estimates place them at 500 people, i.e. still only 0.01% of the population, by the 1300s.[[65]](#footnote-65) Knights numbered around 1,250, but they were not part of the nobility. In France, the knightly class was included in the nobility, bringing the total up to 200,000 in the thirteenth century after a sharp increase, namely about 2% of the population.[[66]](#footnote-66) This disparity in itself suggests that the English kings were much better able to control the expansion of the nobility, through the control of land rights and status.

In general, we find that the weaker the monarchy, the more open the class of the nobility; in Spain and Poland, it numbered about 10% of the population.[[67]](#footnote-67) This differential capacity is reflected in the numbers the respective kings were able to compel into regular attendance and service. An alternative view would be that of Tocqueville, that expanding the nobility was a royal strategy to weaken competition.[[68]](#footnote-68) Though extending rights to new groups in order to coopt them and undercut higher social orders was a recurrent ruler strategy, it was typically undertaken from a position of weakness. The key difference is that in England nobility was institutionally and politically defined, as explained next.

#### English Parliament.

Nobles were originally summoned to Parliament as tenants of the crown, owing counsel and aid. High ecclesiastics were also nobles, so also summoned as royal tenants. From the fourteenth century, nobility was specifically endowed through the summons to Parliament. In a very distinct way, the English nobility was “made” by the crown—it was not a given societal force defined by legal privilege and family heritage, as on the continent. “The estate of the peerage is identical with the house of lords.”[[69]](#footnote-69) Accordingly, from an obligation in the thirteenth century, the summons eventually become a social privilege in the fourteenth.[[70]](#footnote-70) But the institutional designation was not fixed in the period of emergence; major landholders could be noble, but not summoned.

Data on attendance are problematic, as no systematic lists exist. Accordingly, I combine different sources to establish levels. I draw on existing historical estimates, but I supplement these with an aggregate picture from biographical information on members of the nobility provided in the *Oxford Dictionary of National Biography*.[[71]](#footnote-71) The *ODNB* entries are written by historians and are culled from historical sources; they thus do not inform us of frequency of attendance for each person, but they record a minimum of actual practice and establish a baseline of comparison.

A search on all aristocrats in the *ODNB* active between 1200 and 1350, generates about 756 entries (which includes knights).[[72]](#footnote-72) Of these, 571 have sufficient biographical information; 467 are noble (406 lay nobles, 61 ecclesiastics) and 129 are knights and other gentry.[[73]](#footnote-73) How representative is this sample (Table 1)? Between 15 and 18 earls appear in specific years throughout the century, so consistent with estimates of about 12 around 1200. For 1250, the *ODNB* lists 59 barons and magnates, compared to 200-250 listed by historians.[[74]](#footnote-74) This is approximately a third or a quarter of the total, but, as seen next, it is about the number recorded in surviving lists of attendees.[[75]](#footnote-75) Gentry were the non-aristocratic part of the nobility, typically aristocratic offspring; knights (titled “sir”) were a subgroup holding land in exchange for military service, but were also not aristocratic.[[76]](#footnote-76) This group is less well represented, but we have more reliable records of attendance from expense receipts, which I present in chapter 4.[[77]](#footnote-77)

Table : Historians’ Estimates and *ODNB* Records for Earls, Barons, and Gentry

|  |  |  |
| --- | --- | --- |
|  | Aristocracy | Gentry/Knights |
|  | Earls | Barons |  |
| Historians’ Estimate 1250s | 12 | 200-250 | 1,250 |
| *ODNB* Average ca. 1250 | 18 | 59 | 35 |
|  |  |  |  |
| *ODNB* Total, 1200-1350 | 89 | 221 | 129 |

Sources: See footnotes in text. The estimates for gentry and knights is from the 1290s.

Before 1250, 44% of the aristocracy mentioned in the *ODNB* are known to have been summoned to Parliament or to the King’s court (the two were not as yet clearly separated). After 1250, almost 80% of those in the dataset were summoned at least once to parliament (see Table 2). Attendance by high-level ecclesiastics, such as archbishops and bishops who were also tenants-in-chief, was higher in the early period than that of the lay nobility; for lower clergy, negotiations shifted to Convocation after the 1330s. The numbers are only suggestive: information may not have survived, but it is also the case that selection effects in who is included in the database to start with, those for whom more information survives, may overstate real numbers in other ways. But they are indicative.

Table : Noble Attendance in Parliament or the King’s Court

|  |  |  |
| --- | --- | --- |
| Nobility | Pre-1250 | Post-1250 |
|  | Number | Percentage | Number  | Percentage |
| Nobles | 77 | 44% | 232 | 79% |
| Ecclesiastics | 11† | 69% | 34 | 76% |

Source: Oxford Dictionary of National Biography. †I have assumed that archbishops pre-1250 would be present at the king’s court, even if this is not explicitly mentioned in the ODNB entry.

We can crosscheck this data through lists of summonses from parliamentary records for later periods. An average of 63 lay peers per session are recorded from 1283 to the 1480s (Table 3)—about the maximum recorded for the much larger France.[[78]](#footnote-78) If the nobility as a whole was about 200, approximately 31% of the aristocracy was summoned at each session.[[79]](#footnote-79)

What do we know about actual attendance? Two sources offer direct evidence, albeit unsystematic: royal charter witness lists and rolls of parliament. The former suggest that earls were present at least 60% of the Parliaments of Edward I, an impressive number given how often they were abroad fighting or tending to the king’s business, and that Parliament was occasionally held far from London.[[80]](#footnote-80) Parliamentary rolls can sometimes be cross-checked with summonses. These show that English kings obtained attendance from 41% to 79% of those summoned between 1307 and 1397 respectively (we cannot infer a secular increase, as early attendance is also assumed to be high; see Table 3). The constant letters of excuse and of proxies show the pressure of obligation.[[81]](#footnote-81)

But even the lowest ratio would be in absolute terms higher than what we know about the French *Parlement*: 41 lay and ecclesiastical English nobles attended at the low point of 1307, but this was probably higher than recorded attendance for the French institution that covered a population five times the size of England. Accordingly, when English historians note that “only” half of those summoned attended, we need to keep the comparative data in mind.[[82]](#footnote-82) In any case, the regular presence of the nobility in the institution for consultation or justice meant Parliament was a ready forum for fiscal demands to be raised as well.

Table : Number of Nobles Summoned to the English Parliament

|  |  |  |
| --- | --- | --- |
|  | *Lay Peers in Parliament* | *Lay Peers Per 100,000 of Population* |
| 1283 | *110* | 2.42 |
| 1295 | 48 | 1.01 |
| 1301 | 101 | 2.14 |
| 1304 | 103 | 2.18 |
| 1306 | 78 | 1.66 |
| 1307 | 98 | 2.08 |
| 1341 | 53 | 1.15 |
| 1377 | 60 | 2.40 |
| 1399 | 50 | 2.38 |
| 1413 | 38 | 1.85 |
| 1449 | 48 | 2.51 |
| 1453 | 56 | 2.92 |
| 1483 | 45 | 2.14 |
| Average | 63.5 | 2.07 |

*Source*: (Maddicott 2010, 286-7; Sayles 1974, 72; Roskell 1956, 155). For population, Broadberry (2010).

#### Petitions

What are the implications of this presence for the functional fusion being explained? In the previous section, the surge of bottom-up demand for justice via petitions was described, explaining why broad social groups might be incentivized to support a regular central institution. But the nobility’s presence was critical in the early stages. Not only was their status crucial for a practice to take root, but early petitions of a supra-individual character originated with them; only after the 1310s were representatives able to take over the petition-making process.[[83]](#footnote-83) “Common petitions” were common not because they originated in the Commons; they did not. It was their content that referred to common, not particularistic, concerns. And it was the nobility that originally expressed these concerns.

 Nobles became increasingly involved in parliamentary business from the 1280s. A “preponderance of magnates”[[84]](#footnote-84) was typical in meetings, as without them its functions could not be performed.[[85]](#footnote-85) Often, proceedings were delayed for days until “grantz et autres” arrived.[[86]](#footnote-86) The crown denied nobles the right of proctorial representation, i.e. the right to send a proctor to save the time and trouble of attending Parliament.[[87]](#footnote-87) When peers and prelates did not show up in 1316, Parliament was delayed for day and a commission examined the letters of proxy and excusation—leading to stricter monitoring of attendance.[[88]](#footnote-88)

Parliament was unable to decide on petitions when the majority of peers were absent. Evidence is lacking for the early period of emergence, but the records that survive suggest nobles served as *triers* or *auditors* of petitions from across the realm after the 1310s. In 1315 a petition by Roger Mortimer of Chirk could not be decided because magnates were absent, nor could one by Griffin de la Pole, regarding his right to land at Powis.[[89]](#footnote-89) By the 1340s, “earls were frequently being appointed auditors. Thus the judicial committees begun under Edward I had become larger and more distinguished by 1348, with the clergy and magnates outnumbering the officials.”[[90]](#footnote-90) By the end of the 1300s, about fifty nobles were trying petitions alone.[[91]](#footnote-91)

Nobles were not keen to hear large numbers of petitions. Just like their French counterparts, they had to be commanded to “sit in one place and hear the whole of the petition.”[[92]](#footnote-92) But once forced to participate, petitions were important enough for them to seek control of the process. Nobles were even blamed for the decline in petitions after 1311, as they tried to control all Parliament business that was not purely technical. They displaced civil servants, but were no longer able or willing to handle the influx of public business, eliciting resistance from the Commons.[[93]](#footnote-93) At times of crisis, royal capacity to coerce the nobility to attend and handle business declined; even threats were ineffective in the early 1340s.[[94]](#footnote-94) To the degree that was the case, it was a harbinger of political troubles ahead; however, the institutional machinery of parliament was already entrenched.

In other words, the original capacity of the crown to compel the nobility into attendance and service helped solve their collective action problem, provided incentives for them to increasingly try to capture the institution. Their regular presence there made Parliament the obvious institution in which to also engage in political and fiscal exchange.

#### Paris Parlement

Whilst the role of English nobles in petition-handling consolidated after the 1310s, in France the opposite trend traspired: in the *Parlement* it was the “gens de loi” (law professionals, such as justices and clerks) that became the key staff, as “without them it was impossible to answer petitions” and nobles were scarcely involved.[[95]](#footnote-95) For France, micro-evidence is lacking on noble involvement in royal meetings and the true extent of royal power over them. Assessing attendance is fraught with far greater difficulties than for England, as sources are incomplete.[[96]](#footnote-96) Instead, we must infer difference from general trends both at the micro and the macro level (examined in the next section): these show the nobility’s gradual exclusion, which weakened the institution itself.[[97]](#footnote-97) Judicial specialization meant that a different forum needed to form for political and fiscal exchange.

The Paris *Parlement* acquired institutional regularity in the 1250s. The high nobility and clergy were summoned to the institution on the same basis as English peers were: their tenurial status and social standing.[[98]](#footnote-98) By feudal custom, nobles could be summoned to the king’s court at his pleasure and without payment.[[99]](#footnote-99) But prelated and nobles were scarce: “We catch glimpses of great men in occasional attendance.”[[100]](#footnote-100) Some high-ranking ecclesiastics seem to have been regular members of the main pleading institution, the Grand’ Chambre until 1319.[[101]](#footnote-101)

The powerful twelve Peers of France retained the privilege to be tried by each other there, however.[[102]](#footnote-102) But their attendance was far from regular: only seven cases were submitted to them.[[103]](#footnote-103) Some were in conflict with the king and others preferred to avoid judgment in contentious cases. Conflict was often similar in England with the earls and great barons, but on the aggregate, French peers were better able to act as they wished; so, eventually the king co-opted the institution by granting the lands involved, the *appanages,* to relatives and by creating new peers.[[104]](#footnote-104) By far the strongest peer was the king of England: Edward I lost Gascony for failure to appear in *Parlement*; failure to perform feudal duties was, after all, the trigger for the Hundred Years' War (1337-1453).[[105]](#footnote-105) The strength of local competitors thus severely restricted the institutional reach of the French crown.

Surviving lists of summonses to a *Parlement* do not prove attendance,[[106]](#footnote-106) as nobles did not always respond to them.[[107]](#footnote-107) Total numbers attending were initially very small and are known mostly from summaries, without listed names.[[108]](#footnote-108) The highest known number of named nobles for any single year, 17, is from 1331, long after the *Parlement* had consolidated. It included three kings[[109]](#footnote-109), two dukes,[[110]](#footnote-110) seven counts,[[111]](#footnote-111) and others. Participation was high for judicial reasons, as my argument predicts: the *Parlement* was judging the Duke of Burgundy against the count of Beaumont in Normandy (ruling in the Duke’s favor).[[112]](#footnote-112) At that level, incentives to attend assisted the fulfillment of obligation to the crown.[[113]](#footnote-113) Another highly attended session also involved a trial, the appeal of the count of Flanders in 1290; the sixty persons named include bailiffs and other officials, who usually outnumbered nobles, as well as the duke of Burgundy and various barons.[[114]](#footnote-114) If we estimate 40 or even all of those named to have been nobles, rather than officials, this is still lower than the English average. These figures are very precarious; but they suggest 0.2-0.3 nobles attending per hundred thousand of population, compared to 2 in the English case.[[115]](#footnote-115)

A distinguished body of scholarship has emphasized the mobilizing impact of war and the evidence is strong for this. The French king was more succesful in summoning faced with external threat or military endeavors in assemblies not related to the *Parlement*: an “*infinita multitudo*” of nobles is mentioned in the twelfth century,[[116]](#footnote-116) and an average of 400 nobles summoned in six baronial assemblies between 1315 and 1320 (we have no records of actual attendance).[[117]](#footnote-117) This is on a par with English summoning patterns. However, few institutional after-effects of war are observed: there was no comparable capacity to enlist nobles for judicial service or to force them into regular attendance and no permanent institution followed. As Bisson notes, these assemblies had stopped overlapping with *parlements* after the 1270s, as the latter specialized in judicial affairs, which were dominated by specialists.[[118]](#footnote-118)

The great lords and princes would increasingly send procurators or give pensions to advocates (*avocats*) to represent them. They would only appear in important cases, as judges.[[119]](#footnote-119) Procuration was a constant source of contestation in the English Parliament as well, perhaps mostly for ecclesiastics;[[120]](#footnote-120) but not allowed in the same way as in France. There, by contrast, noble “elimination from the *Parlement* happened softly, imperceptibly.” Over time attendance “was narrowed even further [and] confined to the great lords only.”[[121]](#footnote-121) As in England, the higher the rank for the temporal lords, the better the attendance. It was the barons and the bannerets that were indifferent.[[122]](#footnote-122) But the higher lords were not systematically there either, only for “important affairs.”[[123]](#footnote-123) So although regular judicial service was delegated to knights and officials up until the 1360s,[[124]](#footnote-124) after this the latter replaced the former. Even knights were no more than one in five of total personnel and appeared exceptionally in the *Parlement* by the early fifteenth century.[[125]](#footnote-125)

*Parlement* procedures were thus institutionalized without reliance on nobles, as in England. Professional members gained office that eventually became hereditary and venal.[[126]](#footnote-126) By 1346 the king was issuing ordinances limiting even how many professional members of the *Parlement* could attend, because they needed to be paid.[[127]](#footnote-127) The domination of the *Parlement* by lay professionals is suggested by Figure 1, which shows the occupational distribution of members of the Paris institution.[[128]](#footnote-128) The professional masters of law (*maîtres*) were from the early period the main group in the *Parlement*.[[129]](#footnote-129) That the lists are incomplete cannot be emphasized too strongly, far more so than the English ones. However, they capture trends confirmed by detailed historical scholarship, as discussed in section 3.

Figure : Noble and Professional Members of the Paris *Parlement*, 1255-1350



Sources: The numbers derive from cross-referencing two sources. Aubert ([1890] 1977, 297ff) provides a list of all the counselors, lay and professional, of the Parlement from 1255 to 1418. However, he only lists a counselor in the first year encountered. I have thus cross-referenced this list with those of Ducoudray (1902, 105-115), who gives attendance dates for all nobility from surviving lists.

#### Compulsion or Weakness: Inferences about Power from Observed Attendance Patterns.

A key question remains to be answered: how can we determine whether noble presence was the result of royal compulsion rather than noble demand and noble marginalization was the result of royal weakness rather than royal design? Although the answer will be fully developed in Part 3, I present some additional evidence here.

First, the language of the summons itself clearly indicates compulsion. To the lords, the English king wrote, “We command and require you, as you love us and our honour;” to the bishops, “we command you, strictly enjoining you in the fidelity and love in which you are bound to us;” and to the knights of shires and to towns, “we strictly require you” to elect representatives “to have full and sufficient power for themselves and for the community…for doing what shall then be ordained according to the common counsel in the premises, so that the aforesaid business shall not remain unfinished in any way for defect of this power.”[[130]](#footnote-130) This language was used throughout Europe; the formula was almost identical in Germany and similar in Ireland, France, and elsewhere, having Roman law origins.[[131]](#footnote-131)

Older scholarship derived the obligatory character of the early sessions of Parliament from an assumed unwillingness to attend or from limited re-election,[[132]](#footnote-132) but the data can be interpreted different ways.[[133]](#footnote-133) However, the contrary evidence, for instance frequent re-elections, mostly comes from the early fourteenth century, when Parliament was a fact of political life and absence meant lack of input: decisions taken at the center were binding on those not present, after all.[[134]](#footnote-134) Similarly for barons; as Stubbs noted, the majority of them were “glad to escape the burden of attendance…to avoid the expenses by which their richer brethren maintained their high dignity.”[[135]](#footnote-135) This evolved over time, however: “The vassal’s duty to give counsel, transmuted as it later came to be into the vassal’s *right* to give counsel, was one of the building blocks of parliament.”[[136]](#footnote-136) Attendance and re-election do not offer independent evidence of preferences, if royal power to compel is the question; comparative evidence is better suited for this.

Second, those summoned needed to present excuses to be granted a pardon for non-attendance, a practice that stemmed from court duty.[[137]](#footnote-137) Although enforcement varied widely and is hard to document for the early period, excuses were not granted freely. The historian Roskell claimed to have found only 16 temporal lords excused, mostly on the grounds of illness or old age, between 1327 to about 1500.[[138]](#footnote-138) This did not mean attendance did not suffer, as we saw, since threats of forfeiture were not always credible.[[139]](#footnote-139) But attendance numbers, as we’ve seen, still matched in absolute terms what we know regarding France, with five times England’s population. In France too, the “important nobles” were obligated to attend and had to be “hindered by legitimate impediment” in order to be excused.[[140]](#footnote-140) The same held in subnational *parlements*, as in Brittany.[[141]](#footnote-141)

In the French case, nobles were marginalized followed protracted royal attempt to secure this more systematic presence. More so than English kings, French kings struggled to get sufficient numbers of prelates and nobility to tend regularly to their duties.[[142]](#footnote-142) An ordinance of Philip V (1316-22) required prelates to tend “continuement aux besognes sans être occupés d’autres grandes occupations.” Their irregular presence created an instability that undermined the institution.[[143]](#footnote-143) The king, however, was “aware of obstructing them from the government of their affairs.”[[144]](#footnote-144) So in 1319, the crown finally exempted prelates from the obligation to be present and turned to professionals instead.[[145]](#footnote-145) An act typically seen as an indication of autocratic tendencies is in fact a strategic response to weakness, under the pressures of mounting demand.

Dynamics were inverse in the body that met to govern the realm, the French royal Council. This was attached to the king’s household (*Hôtel du Roi*), summoned both nobles and professionals to consult on state affairs, and had a master to receive petitions.[[146]](#footnote-146) It was the real center of decision and governance, so noble interest in it was higher—it gave access to power, rather than simply burden with obligation. Where strong interest in attendance existed, royal preference should be to limit it, if nobles would be collectively unmanageable. For as long as the nobility remained strong, even overpowering, kings had incentives to restrict them. This explains why even rulers historians consider “strong,” such as Philip the Fair, who called the first Estates-General, limited attendance in the Council. But it also explains why weaker English kings would restrict parliament, once this had become a coveted activity for a strengthened baronage, as under Edward II.[[147]](#footnote-147)

Conversely, under weak rulers, nobles were more active in executive governance (as opposed to service), as under Louis X or Philip VI.[[148]](#footnote-148) Noble activism, typically expressed through presence in, if not control of, governing institutions, rose when a power vacuum emerged. We will see the same pattern temporarily in England too, during royal weakness in the 1250s-60s, when the nobility took control. As Hungary, Poland, and the Italian cases also illustrate, however, noble activism absent royal strength was not a stable equilibrium.[[149]](#footnote-149) In short, when the baronage was too strong for the crown to control, outcomes were unstable and drifted into autocracy. We see representation at the polity level when the kings were stronger than the nobility; when both were weak, no institutional outcome could be expected (Table 4).

Table : Distribution of power affecting capacity to compel

|  |  |
| --- | --- |
|  | **Nobles** |
| **Kings** | **Weaker** | **Stronger** |
| **Weaker** | No Collective action/ Low Institutionalization | Drift to Autocracy |
| **Stronger** | High Collective action/ High Institutionalization  | Unstable Balance of Power[[150]](#footnote-150) |

A final mechanism compelling the nobility was the presence of the king in court sessions. In the *Parlement* this was “extraordinary” by 1290;[[151]](#footnote-151) only when high-stakes cases were considered would he attend, giving rise to the later tradition of *lit de justice*.[[152]](#footnote-152) With kings and nobles absent, this could not serve as an executive organ. By contrast, in England it was exceptional and a cause of contention if he did *not* attend. Strikingly, between 1275 and 1399, English kings were absent from only 12 out of 154 parliaments.[[153]](#footnote-153) Consistent with the logic of the book, they tended to avoid parliament in periods where baronial power was heightened, as in the 1310s.[[154]](#footnote-154) Power over the nobility had unintended consequences, as it enabled their coordination. Further evidence on royal compulsion will be presented in Part 3, on taxation.

### The Macro-Level: Compellence at the Local Level and the Divergence of Common and Civil Law

The preceding evidence has suggested differential patterns in the capacity of the two crowns to engage the nobility in government routine at the center and thus endow them with common interests; this capacity was also critical for judicial fusion and institutional layering. But surviving evidence, especially for France, is not always strong. It receives additional support, however, by the pre-existing literature on probably the most important divergence in European premodern law: that between Common and Civil Law. Historians have long ascribed this divergence to the greater strength of the English crown in establishing centralized institutions for adjudication: the micro-evidence in the previous section can thus draw support from the macro-scholarship on “Legal Origins.”[[155]](#footnote-155) I discuss this next.

#### Legal Origins: A Natural Experiment and The Hidden Hand of Government Compellence

The divergence between Common and Civil Law in England and France with only a brief time lag is taken for granted as the expression of deep-rooted differences in legal approach and philosophy.[[156]](#footnote-156) Ertman, for instance, sees the legislative involvement of the Commons as the natural result of local governance and the lesser influence of Roman traditions, viewing instead the law “as custom of the community, not as a body of (manmade) rules promulgated by the empreror or king for the public good.”[[157]](#footnote-157) Although this view accurately captures later conceptions of the two systems, in fact the two societies applied very similar legal mechanisms before the twelfth century for the adjudication of disputes, often emerging out of common traditions.[[158]](#footnote-158)

Their divergence is thus a much bigger puzzle. Part of it can be traced to something of a natural experiment. When the Pope abolished the judicial duel and ordeal as a mechanism of adjudicating guilt in Church proceedings at the Lateran Council of 1215, a tidal wave of reform swept secular authorities. England acted soon thereafter, in 1219, and France in 1258. Abolition required replacement, and here the two kingdoms parted ways. One response was the adoption of the jury-based trial in England as the means through which adjudication occurred; the other was the selection of the canonist inquisition in France. Juries involved the conscription of local men, whereas the inquisition relied on a judge directing an inquiry, collecting related facts, and interviewing individual witnesses via increasingly large numbers of judicial officials.[[159]](#footnote-159)

The French path differed in more ways, two of which I will highlight here. It further responded to the abolition of the ordeal by instituting the *Parlement* as a final court of appeal, in order to assert its jurisdiction over the powerful and independent seigneurial courts throughout the realm. English kings, by contrast, just erected parallel structures and sidelined older local courts. France also sought to homogenize its great customary variation through substantive, namely Roman, law, which was a long-drawn out process, whereas English kings relied mostly on procedure, namely the writ giving access to its courts, for the same effect but in far less time. I show how this variation depended on the greater powers of the English crown.

#### From Procedure to Personnel

Why did England adopt the jury whilst France rejected it? Why did the two crowns take a different path? Juries were a common European heritage. They could be found in the Frankish (hence also Norman and Continental) and Scandinavian (hence also Anglo-Saxon) traditions.[[160]](#footnote-160) They began to be used in England from the 1160s in a systematic way, first in civil and then criminal procedures; they are still used in the latter case, but were restricted in civil cases in the nineteenth and twentieth centuries.[[161]](#footnote-161) Yet juries were also used in France in the early period; they survived until the 1600s in regions of customary law, as the standard mode to establish valid custom (the *enquête par turbe*).[[162]](#footnote-162) However, they were gradually phased out of the French judicial system and became a privilege of the higher nobility.[[163]](#footnote-163) Despite the option being available, Louis IX ordered instead in 1258 that “his judges should use secret examination of individual witnesses under oath.”[[164]](#footnote-164) This procedure, taken from the canonist inquisition, developed Roman law concepts and practices and imposed a more formal and careful examination of the evidence by experts, not lay people.[[165]](#footnote-165)

Why did the English not turn to the Roman procedure, which was more “rational” in Weberian terms, as it became available? As we will see, the English jury imposed a tremendously heavy burden on local communities that increased after the thirteenth century.[[166]](#footnote-166) Moreover, like its modern counterparts, it tended to exonerate most defendants through jury nullification, so it was not without problems.[[167]](#footnote-167)

A common explanation is that England was isolated from Roman law. However, although Common Law is typically assumed to have emerged in isolation from the Continental Roman and Civil Law traditions, this impression is more the result of choices by secular authorities than a background condition.[[168]](#footnote-168) Roman law was used in the English Church from the Anglo-Saxon period;[[169]](#footnote-169) the twelfth-century legal theorist Glanvill was familiar with Roman terms;[[170]](#footnote-170) even some of Magna Carta’s clauses “represented a choice among competing rules of law,” customary, canon, and Roman law.[[171]](#footnote-171) Rationalizing tendencies from canon and civil law were changing many English native customs in the thirteenth century. In Bracton (c. 1210 – c. 1268), trial by witness, where the judge selected the most convincing testimony, “threatened to be a serious rival of trial by jury.”[[172]](#footnote-172) But it was abandoned. There was thus a broad menu for choice, which some have called the European *ius commune*, that was available across these cases; some options, however, were preferred in some cases, thus gaining in salience.[[173]](#footnote-173)

Timing is another potential explanation. The use of the jury was institutionalized in the 1160s in England, whilst Canonist procedure was not yet fully developed before the 1250s.[[174]](#footnote-174) But if a practice was adopted a century before, it was not predetermined to survive, if superior alternatives later emerged. This was still a period of profound institutional transformation, where royal reach was extending forcefully and transforming established practices at many levels. New practices and rules were being widely introduced: in 1290, the crown even prevented lords from subinfeudating their lands, breaking with decades of feudal practice, and establishing tight control over land rights, as argued above.[[175]](#footnote-175) Why was the jury not displaced, as it was in France?

Thomas Ertman and others have amplified the timing argument by pointing to availability of personnel: professionally trained clergy were more abundant in the later period.[[176]](#footnote-176) Maybe kings were constrained and had no choice but to continue with custome. But new research has dispelled the impression of an early scarcity in England. About 500 *magistri*, i.e. clerics with advanced education, have been identified from the middle third of the twelfth century, with totals maybe reaching a thousand.[[177]](#footnote-177) By the first quarter of the thirteenth century, *magistri* provided approximately between a third and half of the canons[[178]](#footnote-178) and were increasingly present in administration.[[179]](#footnote-179) Only by 1300 does the clergy get replaced by laymen.[[180]](#footnote-180) So supply certainly sufficed for demand at the time—as we will see, officials in the French system were not that many. Moreover, no formal qualification was needed to practice law in France until the fifteenth century, so specialization was not too pronounced.[[181]](#footnote-181) Weber on the other hand has argued that English justices and lawyers formed a guild that resisted the introduction of foreign ideas. But as the above has suggested, this is not accurate either; custom prevailed instead and justices applied the law that was used in each court: common law in royal courts and Roman-inspired canon law in ecclesiastical courts.[[182]](#footnote-182)

Finally, it may be argued that English lords raised little resistance to juries because they could manipulate them.[[183]](#footnote-183) This applies indeed to the later period, when the nobility had organized collectively and was more unconstrained: by the fourteenth century, jury corruption was an obsession for the Commons.[[184]](#footnote-184) That the jury system suffered during periods of weak kingship, however, suggests that this dynamic was a symptom of decline;[[185]](#footnote-185) a well-functioning jury system required a crown capable of containing the nobility, even though these are equilibria that are always relative, not absolute.

English rulers thus turned to the jury because they could: the crown had the capacity to mobilize society en masse and this served them well. They were able to obtain information, to control society, and to secure a wide range of services without payment. It was part of a general system of subject conscription that was necessary for governance and that economized on the expenditures for officials that Continental crowns were heavily burdened by. As the system proved to be efficient and popular, not least by upholding the tradition of judgment by peers, it consolidated.

But as historians have emphasized, this would not have been a viable option if rulers could not prevent nobilities from usurping local justice, at least initially. By contrast, in “France the royal power was obliged to struggle for supremacy against great feudatories.” In England, it could control them better.[[186]](#footnote-186) Maitland, who saw timing as the key issue, ultimately also relied on the strength of the crown to intervene in local power relations. The jury became entrenched, he affirmed, because the possessory assizes that spread them were widely popular: “it was associated with the protection of the weak against the strong…What made it possible was the subjection of the England of the Angevin time to a strong central government, the like of which was to be found in no other land.”[[187]](#footnote-187)

It was especially the capacity of the crown to restrict the jurisdictional rights of the nobility and their influence over the judicial system that made the jury a viable option, when in France noble power meant it was not. Power is not the only factor of course, but the emphasis in this account is on necessary conditions.

#### Writ vs. Roman Law

This strength was also visible in the way in which the two crowns addressed the problem of variation in customary rules. To establish legal uniformity, France mostly turned to Roman law, whereas in England the Common Law was established through the royal writ giving access to royal courts. The French crown was faced with numerous provinces that applied a great variety of customary laws, which started to be transcribed when private actors, legal practitioners most often, began recording them to streamline the application of legal knowledge.[[188]](#footnote-188) Roman law, i.e. substantive law, provided formal criteria to harmonize conflicting claims. The *Parlement*, for instance, rather than establish independent law, would respond to calls to adjudicate on which customary rules could claim precedence.[[189]](#footnote-189)

England also had great customary variation, but the Crown harmonized legal practice through procedure to large extent, especially writs.[[190]](#footnote-190) Writs had Anglo-Saxon precedent.[[191]](#footnote-191) They were “royal commands, given by the chancellor, for the resolution of individual disputes,”[[192]](#footnote-192) which gave access to a royal court. By 1258, about fifty set forms existed, but they grew to about 900 by the early fourteenth century, reaching 2,500 in the sixteenth century until their abolition in 1832.[[193]](#footnote-193) For a case to be heard in royal court it had to conform to the available remedies offered by royal, i.e. Common Law.[[194]](#footnote-194)

The Common Law thus became common mostly because it flowed from the legal actions formalized in writs, which only the crown could grant. As these remedies proved speedier and more efficient than existing custom, traffic to the royal courts steadily increased, such that by the 1250s thousands of writs were issued removing cases from local courts; county courts consequently were eclipsed by the start of the fourteenth century.[[195]](#footnote-195) It was procedure that harmonized substantive legal practice, but this required a greater capacity to impose such procedure at the polity-level on an obligatory basis. Writs meant a direct intervention in the adjudicatory structure of local communities, which required the capacity to undercut noble control over them—a capacity the French crown lacked, as discussed next.

#### Replacement vs. Appeal

Differences in procedure accordingly also affected judicial structure and again reflected the differential capacity to compel the nobility, as well as lower social orders. In England, the crown established royal jurisdiction by using the writ to give freeholders access to parallel royal courts, which gradually outcompeted local ones.[[196]](#footnote-196) In France, by contrast, the Crown established jurisdiction primarily by claiming for the *Parlement* the final right of appeal from the independent local seigniorial or provincial courts,[[197]](#footnote-197) especially after the ordeal was restricted.[[198]](#footnote-198)

French subjects from across regions and social orders would seek to overturn local seigneurial decisions, from lowly locals to the subjects of the count of Flanders, who turned to the king for complaints against their feudal overlord.[[199]](#footnote-199) The “French Crown had to develop an appellate jurisdiction precisely because so much jurisdictional initiative remained intact at a local level.”[[200]](#footnote-200) The improved efficiency of royal courts assisted their appeal.[[201]](#footnote-201) “L’exercise du droit d’appel a contribué, plus que toute politique concertée, à la formation de l’unité française.”[[202]](#footnote-202) But this unity was weakened by the robustness of the local *parlements* established over time.

 The English Parliament was not technically a court of appeals, unlike its French equivalent.[[203]](#footnote-203) The Crown already had monopoly over both capital and lesser causes, such as trespass which covered property disputes; these were heard in the royal courts, the King’s Bench and Common Pleas, as well as by royal commissions. Instead, Parliament accepted petitioners who could not gain justice in the localities or who were asking for royal grace.[[204]](#footnote-204)

Local courts were replaced by the spread of the writ giving access to royal courts and by compelling service to royal courts, thus gutting rival jurisdictions. The courts of the nobility saw their jurisdiction challenged in both ways. The writ of right, for instance, obliged lords to render justice to their tenants, allowing the sheriff to intervene in case of non-compliance.[[205]](#footnote-205) Barons had tried to stop their loss of jurisdiction (by the writ *præcipe*) with clause 34 of Magna Carta, but failed, leading to reactions discussed in the next section. But the main challenge came when spreading royal courts (mostly itinerant ones, as we will see) conscripted local tenants for service, making them unavailable to serve as judges (“suitors”) in baronial courts. “Suit of court became an issue of the first political importance”[[206]](#footnote-206) in the thirteenth century, especially during the revolt of the 1250s and 60s: barons protested that royal inroads undermined both revenue from seigneurial courts and the barons’ capacity for local patronage, even in county courts.[[207]](#footnote-207) But the nobility lost, as local courts were effectively displaced by royal ones, after the 1270s.[[208]](#footnote-208)

But equally important was the judicial weakening of the county court. This went back to Anglo-Saxon times, could bind all grades of landholders, and was an onerous duty: county courts met every 28 days.[[209]](#footnote-209) As it was under the control of the sheriff, the county court was a royally administered institution in the locality. Yet it lost jurisdiction over most civil and criminal cases by the end of the thirteenth century to the central royal courts (King’s Bench and Common Pleas) and their extensions in the localities, the itinerant commissions.[[210]](#footnote-210) The territorial anchoring of the central government into local justice was thus not attached so much to the historical local institutions, such as county and baronial courts, but to the policy of recurrent commissions from central courts. These are examined next.

### The English Parliament, Jurisdictional Integration, and Territorial Anchoring

The last two sections have accounted for the conditions that helped the nobility solve its collective action problem and emerge as the fairly coherent actor described in most historical and social scientific accounts.[[211]](#footnote-211) Royal capacity to compel the nobility has been traced both at the micro-level, through attendance at parliament and participation in judicial procedures, but also at the macro-level, through explanations of the great divergence in legal systems, Common Law and Civil Law. This capacity is necessary to explain how functional fusion and institutional layering occurred in the English Parliament, thus ensuring the regularity established in chapter 2.

But the third condition for an adequate explanation remains crucial: how the centralized exchange of Parliament was territorially anchored throughout the polity. This allowed Parliament to become an effective organ of governance, the decisions of which were binding throughout the polity and across social groups. Scholars routinely focus on England’s local institutions and self-governance, centered around the county court. But provincial integration actually happened by the itinerant courts (specifically commissions) dispatched from the center. Though the institutional machinery of the county court was central to this process, it was its conscription by the crown that integrated all counties and this eventually sidelined those local institutions, as already described. Territorial integration thus happened through itinerant centralization—this is how the English regime became “territorial” and “participatory.”

To show this, I first present a schematic treatment of the evolution of justice in the formative thirteenth century, to explain how the crown penetrated the localities, only to trigger a counter-reaction from a threatened (or mobilized) nobility. Alternatives existed, such as local courts and arbitration.[[212]](#footnote-212) But integration was achieved through the conscription of remarkably broad service from across the population—service that flowed originally at least from royal control of land rights.[[213]](#footnote-213) The “self-governing, self-taxing, participatory elite of England” that historians and social scientists contrast to that of other states was the product of a rather unparalleled conscription of subjects to unpaid service at the king’s command.[[214]](#footnote-214) I show that in its early phase, what shaped the regime was not that it was territorial and participatory, but that it was homogeneous and compelled.

#### England: Territoriality or Unit Homogeneity?

England is described as a case of “territorial” organization to denote the strong local institutions that depended on community involvement and participation. However, as many studies have noted for different periods, this does not appear too different at the micro level from many other European countries, like France, Russia, Germany, Spain. Institutions of justice and administration display similar structures when examined in their regular routines across cases: the role of land is central, subjects are tied to judicial duty as a function of property rights, elections of officials take place, instruments of accountability are installed, the role of the ruler as judge is common, and similar legal procedures are available, not least through diffusion.[[215]](#footnote-215)

A key difference is that in England this organization was polity-wide, with limited exceptions, as it was predicated on royal control to a large extent exercised through Parliament. What appears as territoriality is therefore only the optical effect emerging from uniformity, when all subjects were bound to central court structures across many similar territorial units. This is harder to observe when immersed in the daily conflicts that constantly strained royal resources and absorb historians. But the English difference appears clearly when we examine aggregate outcomes. In France, by contrast, “the main body of judicial business [was] being conducted in the courts of dukes, counts, viscounts, barons and seigneurs of all sort.”[[216]](#footnote-216)

The institutional mechanism that anchored subjects, whose status is defined via land, to a homogeneous judicial and governing structure, in England and throughout Europe, was obligatory judicial service. Court duty remained central, for instance, in Germany and Russia into the Early Modern period.[[217]](#footnote-217) In England, however, it was systematically applied throughout the polity and increasingly after the twelfth century under the control of the crown. Apart from the county and seigniorial courts already discussed, a multitude of local courts were also in operation, some franchise courts and many smaller manorial and feudal courts, under noble control. Ecclesiastical courts also had separate jurisdiction.[[218]](#footnote-218) But Common Law spread by diverting cases, especially regarding the most important economic resource, land, to royal courts and enlisting the local population to jury service there was central to this.

This was achieved by the itinerant commissions dispatched by the crown from the center to the counties, under justices often extracted from the central courts, King’s Bench and Common Pleas (see Figure 2). Itinerant commissions were used across Europe, but were effective only where rulers could penetrate outlying territories: in Germany, for instance, the Emperor lacked such reach.[[219]](#footnote-219) Αnd although it is common to contrast the English with the French system, seeing the former as “participatory” and the latter as “top-down,” in reality similar administrative measures were used in both: the *baillis* and *sénéchaussaux* in France were originally collegiate bodies dispatched from the center to dispense justice locally. Once stationary, they were similar to sheriffs.[[220]](#footnote-220)

The most important itineration was the general eyre, which visited counties to hear pleas, criminal and civil, relating to the Crown. “This provision apparently imposed from above was seized upon hungrily from below, and the system developed with a rapidity that now seems startling.”[[221]](#footnote-221) It was an extraordinary event, every seven years or so; historians disagree on whether it was phased out because it was “catastrophic,” putting county business to a standstill, or because war intervened and it had run its course.[[222]](#footnote-222) In either case, it engaged the entire county—in some counties almost two thousand could attend.[[223]](#footnote-223) Juries, usually of twelve, sometimes twenty-four, members, had thus to cater to a large number of cases.

But the bulk of judicial business, which also depended on juries, was carried out by two more regular itinerant commissions, the assizes and gaol delivery. Assizes dealt with possessory actions, such as novel disseisin, allowing even lowly free tenants to protect their rights against their lords; assizes were so successful they could reach two to three thousand per year in the 1270s[[224]](#footnote-224) and lasted until 1971.[[225]](#footnote-225) Gaol delivery ordered that prisoners in a certain jail be tried.[[226]](#footnote-226)

Figure : Judicial Structure of Medieval England



This judicial activity was coordinated by the King’s court and Parliament played an increasing role. Petitioners complaining about local abuses could purchase commissions, for instance to “hear and determine” (*oyer et* terminer) cases, especially for trespass, which allowed the crown to both collect information and prosecute wrongdoing by his officials.[[227]](#footnote-227) When criminality increased, other extraordinary commissions were instituted, as when gangs trailing clubs terrorized the counties, eliciting the Trailbaston commissions.[[228]](#footnote-228) The key here, however, is that this royal judicial penetration extended throughout the polity, with only localized exceptions, for instance the three main palatinates and the border Marches (areas under the autonomous jurisdiction of a nobleman, the latter with a military defensive mandate—yet even these applied the same writs as crown courts).[[229]](#footnote-229)

These itinerant commissions were in most cases anchored in the localities via the conscription of juries. Jury service was obligatory, unless a legitimate excuse (*essoin*) could be proffered. Legal texts gave extremely detailed instructions as to what excuse was permissible—in the thirteenth century text of Bracton, they run to seventy printed pages of the standard modern edition. If injury was involved, for instance, special investigations needed to be made to determine if the petitioner “has fallen into an accident willingly, when he would easily have avoided it…”[[230]](#footnote-230) Penalties ranged from physical restraint, even chains and imprisonment, to excommunication, to, more commonly, distraint, the removal of goods or land until the subject complied—although in time, fines were the chief mechanism of enforcement.[[231]](#footnote-231)

The systematic mobilization of juries throughout the polity, in every county, would have been impossible without the powers of the sheriff. Though locally stationed, he was a royal appointee, serving “at the king’s pleasure.”[[232]](#footnote-232) The crown retained control overall, by reducing the powers of officials as they tried to encroach and by preventing the office from becoming either hereditary or locally elected and thus subject to local pressures.[[233]](#footnote-233) Corruption was endemic of course, as with equivalent positions on the continent, so they were eventually superseded by the justices of the peace. But they directed the business of the county court throughout the period of parliamentary emergence.

This was fundamental since, despite how the itinerant commissions were subsuming the judicial business of the county court, the latter remained critical to local life. It went back to Anglo-Saxon times, could bind all grades of landholders, and was an onerous duty: county courts met every 28 days.[[234]](#footnote-234) It has been described both as a “microcosm” of county society and as, in Stubbs’ words, “a local parliament.” It incorporated all members of the body politic: “the archbishops, bishops, abbots, priors, earls, barons, knights and freeholders, the reeve and four men from each township, and twelve burghers from each borough.”[[235]](#footnote-235) The court remained a major administrative organ, responsible for executing laws, raising juries and military contingents and assessing and collecting taxes. It is also where royal laws and decisions were proclaimed, where information was shared to shape public opinion, and where petitions were drafted to be presented in Parliament.[[236]](#footnote-236)

Most importantly, however, it is where elections for many offices, but especially for Parliament were held.[[237]](#footnote-237) The king would direct the sheriff to initiate the election of representatives in the county (and in boroughs), an assembly would be called and the selection would be made by other knights and “honest men.”[[238]](#footnote-238) The same sheriff who summoned jurors also supervised the election of representatives to Parliament, through the same process in the county court.[[239]](#footnote-239) The men who served as suitors also elected the representatives.[[240]](#footnote-240) This meant that the “institution of electing representative knights for local purposes was in active operation for nearly eighty years before such representatives were summoned to parliament.”[[241]](#footnote-241)

Once again, this is not different from France or elsewhere, courts served similar functions across Europe. [[242]](#footnote-242) The difference was that it was systematic across the realm and enforced with fewer limits; in France and Castile, as will be discussed in chapter \*5, it was mainly towns that were represented in the Estates-General, as the countryside was under noble control.[[243]](#footnote-243) This is how homogeneity appears as territoriality and effective centralization as its opposite, local participation.

#### Amateur Officials and Paid Bureaucrats

The preceding account, however, is at odds with the wide-spread assumptions about the “amateur,” “participatory” nature of local government in England. The lack of well-paid officials is traditionally seen as evidence of the weakness of the crown in the thirteenth century, the period of parliamentary emergence:[[244]](#footnote-244) this is why, according to the historian Fryde, “only landowners of independent means could find the office worth holding because of the temporary power and prestige it conferred.”[[245]](#footnote-245) Justices of the peace had a long trajectory into the modern period as bastions of local governance, which has undergirded this perspective. The county courts thus appear as “democratic” laboratories for political participation. Indeed, the role of knights and other gentry became increasingly central.[[246]](#footnote-246) But this implies that locals unspecialized in law handled most legal business—making the courts also appear “irrevocably amateurto the historian.”[[247]](#footnote-247) It also gives the impression of a local society improvising on its precocious governance with little central supervision—leaving England’s system unexplained, as the spontaneous emergence of local practice, which appeared in one part of Europe but not others, because historical legacies allowed it.[[248]](#footnote-248)

The preceding analysis should suggest these assumptions are misleading, and further evidence corroborates this. That much service in England was unpaid does **not** mean it was **voluntary**: rather, it was compelled by the crown, which retained the right to revoke the powers commissioned. “Like other medieval offices the person nominated [for sheriff] was and is **compelled** to serve, and to serve without payment.”[[249]](#footnote-249) The reason why only “landowners of independent means” would accept the position is because in the mid-twelfth century, the sheriff’s office “could set a man on the road to ruin,” precisely due to the civil obligations it entailed.[[250]](#footnote-250) The crown would only select those able to serve, accordingly. The same applied to other commissioned officers, as well as to juries.

One may see this as a sign of **weakness**, if we assume that the optimal solution was to pay officials from the royal purse. But this overlooks the crucial point that the crown could compel powerful locals on a systematic basis and across the country to take on heavy burdens and do its bidding, as we have seen. Of course, such pressures led to under-performance, as well as corruption, but it was no less with paid officials, especially after offices became hereditary.[[251]](#footnote-251) Sheriffdoms were almost never hereditary, however.[[252]](#footnote-252) Crucially, the optimality of this path has to be judged against results: as I show in chapter 6, English kings, through this system of officials, were able to raise multiple times per capita, in funds and men, what their French counterparts could. This capacity mitigates against assumptions of weakness.

Moreover, the “**amateur**” nature of these lay judges has been strongly questioned by scholars who have shown both that protracted service endowed locals with experience in law and that trained professionals had a strong presence in local procedures, either as dispatched by the center or residing in the localities and co-opted by the crown.[[253]](#footnote-253) Even lords who administered local justice in the counties had legal knowledge that was invaluable in Parliament.[[254]](#footnote-254) To the degree that they were not “amateur” therefore, it is due to the consistent capacity of the crown to compel them to serve.

**Not all English service was unpaid, moreover**. From the 1250s, justices in the central royal courts were paid a regular salary by the crown.[[255]](#footnote-255) These salaries were initially neither large nor regular, so they were supplemented by fees from court procedures, which could often equal the salary.[[256]](#footnote-256) This is not to say that England lacked offices that were sold as freeholds, as in France: staff beneath the central court justices had such freeholds, lasting into the nineteenth century, with all the pathologies this entailed (restrictions on new positions, appointments as lucrative patronage etc.).[[257]](#footnote-257) Nonetheless, the most powerful officials, the **justices** themselves, served at the pleasure of the crown and “for good behavior;” as with the nobility in general, the crown retained the greatest liberty of intervention with the top echelons in the hierarchy.[[258]](#footnote-258) When Edward I was faced with a torrent of complaints, he **removed** two out three judges from the King’s Bench and four out of five from Common Pleas, punishing them with large fines for crimes as serious as murder and fraud. Although such a purge remained extraordinary, royal control was strong, even though English justices had higher status than their French counterparts.[[259]](#footnote-259)

At the same time, however, the French system is considered exemplary of **patrimonialism**, of offices as private, inheritable property and of office sales.[[260]](#footnote-260) However, judicial officials were **originally appointed** by the crown, in full bureaucratic mode, eventually from candidates proposed by other members of the *Parlement*. It was only gradually that they became informally hereditary and alienable. The practice of office sales was institutionalized under Francis I (1515-1547).[[261]](#footnote-261) But it was ruler weakness that forced these concessions. It was only “after several abortive attempts at abolishing [the practice of inheritance that] the royal treasury began to share in the deal, from 1567 on, by receiving a fixed fee from the successor,” a practice systematized a few decades later with the *paulette.[[262]](#footnote-262)*

#### Estimating the Size of English Judicial Apparatus, also in Comparison to France.

The final step in demonstrating the greater capacity of the English crown to shape the judicial structure of the realm—and thus to foster the institutional layering and functional fusion I have claimed central to parliamentary emergence—consists in breaking down the extent of this popular mobilization.

The assumed small size of the royal English bureaucracy is routinely contrasted to the large number of French officials. Comparisons typically draw from the early modern period, however. For instance, in France in 1665, 46,047 paid *officiers* served a population of 17.5 million, i.e. one for every 380.[[263]](#footnote-263) In England, in 1689, justices of the peace totaled 3,000 (of which 700 to 800 were active), and served four million, i.e. in 1 in 1,333.[[264]](#footnote-264) The assumption even appears in the work of major historians, like John Brewer, whose thesis was precisely the strength of the English state in the early modern period.[[265]](#footnote-265) For the medieval period, scholars typically contrast a single region of France with the whole of England to display the contrast; for instance, the *sénéchaussée* of Beaucaire-Nîmes had almost three quarters as many royal judges (14) as the whole of England, which numbered around 20 judges in the central and circuit courts of England in 1278. Languedoc alone had 40 judges, despite being a third of the size of England.[[266]](#footnote-266)

However, a narrow focus on official judges ignores the functions we have just covered: the freeholder obligations that mobilized large numbers of people in England, such as suit of court and jury duty, as well as other commissioned services. Though we cannot describe jurors and suitors as officials, they performed a public, procedural service in an obligatory way.[[267]](#footnote-267) The same tasks in France were entrusted to the royal judge and inquisitor (such as fact-finding, provision of local information, and judgment), so their numbers indicate the extent of lay involvement in a key part of public service in England. Instead of “an appropriation of public power by the private lord, [in England] the private lord had been appropriated as an agent by the public power.”[[268]](#footnote-268)

To approximate French numbers, I rely on the *Gallia Regia,* a list of royal officials from 1328 to 1515, which lists judges, royal procurators, advocates, their lieutenants and substitutes, as well as some assistants from all royal provinces (Table 5).[[269]](#footnote-269) Out of about 5,000 records on officials active until 1399, there are about 690 judicial officials and about 500 *baillis*, who were equivalents to the English sheriff and thus had supervisory duties over justice. So, although these are at various ranks and not all of them performed duties similar to jurors, they include key officials involved in judicial procedure that were held in administrative subdivisions, the *baillages* and *sénéchaussées*.

Table : Number of French Judicial Officials, 1327-1519

|  |  |
| --- | --- |
| **Title** | **Number Recorded** |
| Baillis | 498 |
| Judges | 298 |
| Royal Procurators  | 150 |
| Judge Lieutenants  | 62 |
| Royal Fiscal Procurators | 56 |
| Royal Advocates  | 51 |
| Royal Procurator Substitutes  | 55 |
| Royal Couriers | 4 |
| **Total**  | **1190** |

Source: (Gallia Regia; ou, État des Officiers Royaux des Bailliages et des Sénéchaussées de 1328 à 1515 1942, volumes I-VI).

To glean English judicial service by lay persons we need to consider both suit of court at the county court and jury service in royal commissions. Suit of court was owed in the county and hundred court and was a prevalent obligation until royal courts took over judicial business after the 1270s. Suitors were the judges, summoned once every month, thus placing high demands on powerful locals as part of their tenurial obligations.[[270]](#footnote-270) They bore collective responsibility for any “false judgment” by the court, which was punishable by fine.[[271]](#footnote-271) Non-attendance incurred heavy fines too.[[272]](#footnote-272) Failure to appear in five successive court summons caused a man to be outlawed.[[273]](#footnote-273) Their function was equivalent to the French judge in the royal courts—comparing *state* structures requires sidestepping the extensive machinery of local seigniorial courts in both cases.[[274]](#footnote-274)

The extent of county mobilization was impressive. Cambridgeshire (about the size of Rhode Island) had 162 suitors, typically knights.[[275]](#footnote-275) Suitor numbers per county in the early thirteenth century were between 60 and 200, though numbers were often halved by the end of the century.[[276]](#footnote-276) Extrapolating numbers across England is hazardous, but with 39 counties in the medieval period, taking an average suggests about 5,070 and 2,535 suitors at the start and end of the century throughout England. Not all of these were expected to serve at each session; Oxfordshire in 1279 had over 60 suitors, but only eight suitors (13.3%) were needed at any one time.[[277]](#footnote-277) Using this as a basis, we can project about 670 to 340 lay judges serving per month and performing duties assigned to royal officials in France.

Juries were also conscripted in this period, causing participation to increase exponentially. They were employed in royal courts to assert facts relating to the case, which is why they had to be local. Their function substituted not just for witnesses, but also for the investigating officials that assisted French judges. To calculate the full extent of jury service in England, both county and hundred service must be included. Each county could summon 12 jurors once a month, though in some cases it could rise to 18 or 24. Hundred courts numbered around 628 in 1272, of which 270 were royal and 358 in private hands.[[278]](#footnote-278) Private hundreds are best not included; like their equivalents in France, they were administered by local lords, though their juries often sent business to the royal courts.[[279]](#footnote-279)

The judicial procedures for which juries were summoned were mainly the sheriff’s tourn, at both hundred and county, the commissions of assize, the general eyre, the commissions of oyer et terminer, and gaol delivery. Most of these were held three times a year, though the general eyre was held one every 7 (so I enter only 6 instances per year). We have no estimates of how many juries were called for each session of the eyre, however. By contrast, we have records of how many assizes were issued in the 1270s. Though not all of these would result in a jury, estimates exist: as many as two to three thousand commissions of assize alone appear on the records per year and between one third to two thirds may have actually called on juries—elevating totals to between 8,400 to maybe 48,000 jurors called every year for assizes alone.[[280]](#footnote-280) The table thus aggregates hypothetical estimates, which are selected to be on the lower bound, with the specific estimates for the assizes, where lower and upper bounds are included. The lowest estimate of total number of jurors involved generates about 17,755jurors throughout the kingdom. A high estimate would reach 66,710, which may still underestimate numbers for the all commissions (Table 6).

Table : Basiline Estimates of Jury Size in England, 1270s[[281]](#footnote-281)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Judicial Process** | **Administrative level** | **Number of units** | **Frequency per year** |  **Total Summonses** | **Jurors (I)** | **Total Jurors** | **Jurors (II)** | **Total Jurors** |
| **Sheriff's tourn** | Hundred | 270 | 2 |  540  | 12 |  6,480  | 24 |  12,960  |
| County  | 39 | 3 |  117  | 12 |  1,404  | 24 |  2,808  |
| **Commissions of Assize I** | County  | 39 | - |  700  | 12 |  8,400  | 24 |  16,800  |
| ***Commissions of Assize II*** | *County*  | *39* | *-* |  *2000*  | *12* |  *24,000*  | *24* |  *48,800*  |
| **General Eyre** | County  | 6 (per year) | 1 |  6  | 12 |  67  | 24 |  134  |
| **Oyer et Terminer** | County  | 39 | 3 |  117  | 12 |  1,404  | 24 |  2,808  |
| **Gaol Delivery** | County  | 39 | 3 |  117  | 12 |  1,404  | 24 |  2,808  |
| **Total with Low Estimate** |  |  |  |  **1,480**  | **12** |  **17,755**  | **24** |  **35,510**  |
| ***Total with High Estimate*** |  |  |  |  ***2,780***  | ***12*** |  ***33,355***  | ***24*** |  ***66,710***  |

Sources: See text for sources.

The conscription of a veritable army of subjects to serve the courts and perform duties that had to be entrusted to paid officials in the French side is a striking example of the mobilizing power of the English crown. It also suggests that comparing numbers of officials, who acted as professionals, is not an accurate measure of the bureaucratic capacity of the English state.

If we simply contrast the number of judges alone in the two systems at the time (298 versus 20), it appears more in line with preconceptions: there were 1.9 judges versus 0.5 judges for every hundred thousand inhabitants in France and England respectively. But when we include the suitors and the jurors, who performed important tasks assigned to judicial officials in France, the balance appears very different (Table 7).[[282]](#footnote-282)

Table : Estimates for English Judges, Jurors, and French Officials

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | England, per Hundred Thousand Inhabitants | Year | France, per Hundred Thousand Inhabitants |  |
| Judges | 0.5 | *1270s/1350s* | 1.9 | Judges |
| Officials | 29 | *1600/1505* | 80 | Officials |
| Suitors | 340 | *1270s/1350s* | 1.9 | Judges |
| Jurors | 410-830 | *1270s/1350s* | 8 | Officials |
| Jurors and JPs | 420-780 | *1689/1665* | 263 | Officials[[283]](#footnote-283) |

This comparison is highly imperfect of course, not least because jurors served once a month, but French royal officials were on continuous duty. Plus, French estimates are also minima and don’t include members of the population that would serve on ad hoc basis.[[284]](#footnote-284) But unlike witnesses which were called by case, for instance, English jurors had a fixed obligation to serve. Moreover, those serving as jurors would also be charged with temporary and unpaid appointments to perform other tasks both for local governance and for the convenience of the king, at their own expense and on continuous basis throughout the year. This was “self-government at the King’s command.”[[285]](#footnote-285) Subjects were conscripted because of their tenurial obligations. Similar obligations also held in France (and elsewhere in Europe, even Russia, as we will see).[[286]](#footnote-286) But the ruler’s command in those polities was limited by jurisdictional fragmentation and enforcement was weak and limited.

The list of tasks in England was astonishing. It included ascertaining rights and obligation inhering to land, estimating land values and surveying or measuring land or the value of agricultural equipment, crops and movables. It extended to matters relating to the royal forest (areas set aside for hunting) and the king’s hunting, to shipping, even the purchase of ships for the king, to conveying provisions and equipment required for the king’s travels (especially wine), to building and repairing the king’s houses and castles, bridges and roads, as well as many more.[[287]](#footnote-287) All these functions would have otherwise required an extensive bureaucracy; the English crown could compel its subjects, at least as effectively as to avoid creating a paid personnel. As a result, by “the fourteenth century, the tradition that all work at the local level should be done at no cost to the king by the propertied men living in the counties and boroughs was firmly established.”[[288]](#footnote-288)

Comparing the full bureaucracies of the two states thus requires moving beyond those strictly serving as officials of the English crown. The actual members of the English royal bureaucracy, such as sheriffs, escheators, keepers, coroners, constables, bailiffs, collectors of taxes and customs, were indeed not large in number, as there were one or two per county.[[289]](#footnote-289) But their numbers did not cover all performing service to the crown. The same people serving as jurors also performed bureaucratic duties, which in France would be performed by paid royal officials. The comparison with France is striking.

Even if we acknowledge limitations in the French estimates due to the more problematic sources, which would suggest an underestimation, the differences between the two cases is striking. We will note the impact of these bureaucratic savings when we compare the extraction rates of the two countries in chapter 6.

\*

In this second part of the book, I presented an alternative explanation for the emergence of representative institutions, predicated on the concepts of institutional layering and functional fusion and focused on the strength of the ruler to compel especially the most powerful. Demand for justice gives institutions the regularity that war-motivated taxation does not. I demonstrated the relative capacity of the English crown by comparing patterns of attendance by the nobility and showing the role of petitionary demands. I supplemented this argument by invoking the long-standing literature on Legal Origins, which is also predicated on royal strength. Finally, I provided additional empirical evidence by showing the remarkable mobilization of English subjects for compulsory service that in France was carried out by salaried officials. This completes an account that aimed to explain how the institution was regularized, how powerful actors solved their collective action problem, and how a central institution was anchored into local governance, eliciting the label of territorial and participatory so common in the literature.

All this amounts to an account of *institutional* emergence, which is predicated on noble presence; it does not explain how broad-based *participation* was achieved, although judicial demand, especially via petitions, is key here as well. In Part 3, I explain how the precondition of institutional emergence interacted with the increasing royal demands for taxation under the pressures of war. Such pressures were fairly universal across Europe and certainly not weaker in England; but they did not produce inclusive parliamentary structures everywhere. The reason for the difference, once again, was the greater power of the crown to ensure enforcement of subject obligations. In the next chapter, this capacity will be shown to have preceded the emergence of parliament.

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1. Vile (1967), Montesquieu ([1748] 1989). [↑](#footnote-ref-1)
2. Merryman and Pérez-Perdomo (2007, 17). [↑](#footnote-ref-2)
3. Shepsle (1989), Calvert (1995). [↑](#footnote-ref-3)
4. DiMaggio and Powell (1983), Fligstein (1996); cf. Moe (2005). [↑](#footnote-ref-4)
5. Ménard and Shirley (2014). [↑](#footnote-ref-5)
6. Capoccia and Kelemen (2007). [↑](#footnote-ref-6)
7. Knight (1992); see also Moe (2005). [↑](#footnote-ref-7)
8. Thelen (2003), Mahoney and Thelen (2010). [↑](#footnote-ref-8)
9. Mahoney and Thelen (2010, 13, 27). [↑](#footnote-ref-9)
10. Mahoney and Thelen (2010, 12-3). [↑](#footnote-ref-10)
11. See Slater and Simmons (2010). [↑](#footnote-ref-11)
12. France is often classified as patrimonial; Ertman (1997). As I show in the last section, however, judicial officials were originally appointed. It was ruler weakness that allowed them to become hereditary and alienable. [↑](#footnote-ref-12)
13. The terms “rational” and “patrimonial” are used in their Weberian sense. [↑](#footnote-ref-13)
14. White (1933). [↑](#footnote-ref-14)
15. Lewis (1962), Stasavage (2010), Fawtier (1953). [↑](#footnote-ref-15)
16. Bisson (1972, 55-6). [↑](#footnote-ref-16)
17. Du Mège (1844, 206). Hébert vividly brings out the hazards of travel; (2014, 278-293). [↑](#footnote-ref-17)
18. Maitland (1910-11, ix, 601). [↑](#footnote-ref-18)
19. Bisson (1969, 360, 362), Lewis (1962, 10). [↑](#footnote-ref-19)
20. Finer (1999, 1044). [↑](#footnote-ref-20)
21. Lewis (1962, 9-10). [↑](#footnote-ref-21)
22. Vale (2001, 147). [↑](#footnote-ref-22)
23. Favier (1974, 99-103). [↑](#footnote-ref-23)
24. Desportes (1989), Sautel-Boulet (1955) [↑](#footnote-ref-24)
25. Roskell (1956, 156-7, 172-4). [↑](#footnote-ref-25)
26. Stasavage (2010). [↑](#footnote-ref-26)
27. Knight’s wages were fixed at 4 shillings daily, double the wage for military campaigns; Maddicott (1981, 78-80), Cam (1963a, 239). For value conversion, see Officer and Williamson (2011). [↑](#footnote-ref-27)
28. Cam (1963a, 239-47). [↑](#footnote-ref-28)
29. See Bradford (2007, Chapter 1, 99). [↑](#footnote-ref-29)
30. For instance, Thomas and Henry of Lancaster; Bradford (2007, Chapter 1, 99). [↑](#footnote-ref-30)
31. Ormrod (1990, 102). For the continent, see Hébert (2014, 278-293). [↑](#footnote-ref-31)
32. Favier (1974, 113). [↑](#footnote-ref-32)
33. Lemarignier (1970, 364?\*). \*Tables of dates of parlements/Estates Generals. [↑](#footnote-ref-33)
34. Lot and Fawtier (1958, 346, 348). [↑](#footnote-ref-34)
35. See Skocpol (1979). [↑](#footnote-ref-35)
36. Some invasions were unsuccessful, as with the Franco-Scottish invasion of 1385 or the French invasion of 1405. Other invasions were part of royal succession battles. [↑](#footnote-ref-36)
37. Langlois (1890), Harding (2002, 185). [↑](#footnote-ref-37)
38. Langlois (1890), Aubert ([1890] 1977, v). [↑](#footnote-ref-38)
39. Hudson (2012, 540-1), Milsom (1981), Sayles (1959), Turner (1977). [↑](#footnote-ref-39)
40. Only after the 1400s was Parliament’s judicial role eclipsed by its political and legislative functions; Autrand and Contamine (1979, 148). [↑](#footnote-ref-40)
41. Lot*, et al.* (1957, 333-54, 386-392), Ducoudray (1902, 73-84), Shennan (1998, 1-23). [↑](#footnote-ref-41)
42. Prestwich (1981, 119). [↑](#footnote-ref-42)
43. Boucoyannis (2015). [↑](#footnote-ref-43)
44. Rigaudière (1994, 152). [↑](#footnote-ref-44)
45. Moore (1967, 7), Carruthers (1996, 14), Lachmann (1987, 148-9). [↑](#footnote-ref-45)
46. Roskell (1956), Ormrod (1990). [↑](#footnote-ref-46)
47. Kaeuper (1988, 63), Fryde (1991, 250). [↑](#footnote-ref-47)
48. Early exceptions are discussed in Maddicott (2010, \*). [↑](#footnote-ref-48)
49. Cam (1935, 196, 199). [↑](#footnote-ref-49)
50. Fleming (1991, 227), Ormrod (1999, 22), Corbett (1957), Bartlett (2000, 213), Maddicott (2010, 443). [↑](#footnote-ref-50)
51. Warren (1987, 55). [↑](#footnote-ref-51)
52. Holt (1972), Kosto (2012). [↑](#footnote-ref-52)
53. Hudson (1994b, 59), Waugh (1986, 812). [↑](#footnote-ref-53)
54. Holt (1972, 30-6), Holt (1982, 207-10). [↑](#footnote-ref-54)
55. McFarlane (1965), Holt (1972, 50-86, 131-6), Spencer (2014, 66-8). [↑](#footnote-ref-55)
56. Hudson (1994b, 15). [↑](#footnote-ref-56)
57. Prestwich (1990, 38-46). [↑](#footnote-ref-57)
58. Lot and Fawtier (1958, 99-182), Lot (1904), Soule (1968, 14). [↑](#footnote-ref-58)
59. Bisson (1989). [↑](#footnote-ref-59)
60. Maddicott (2010, 434), Guillot*, et al.* (1994, 273-8). [↑](#footnote-ref-60)
61. Roskell (1956). [↑](#footnote-ref-61)
62. Prestwich (1990, 29), Sanders (1960, 354), McFarlane (1965). Dukes appeared in 1337; Ormrod (1990, 95). [↑](#footnote-ref-62)
63. Powell and Wallis (1968, 225), Prestwich (1990, 30). [↑](#footnote-ref-63)
64. Prestwich (1990, 62). [↑](#footnote-ref-64)
65. Ormrod (1990, 96). [↑](#footnote-ref-65)
66. Kibler and Zinn (1995, 666), McEvedy and Jones (1978). Contamine (1997, 53) estimates about 350,000 nobles around 1300. Nobles were 30% in the Estates of 1468 and 1484; Bulst (1992, 346-7). [↑](#footnote-ref-66)
67. Maddicott (2010, 435). [↑](#footnote-ref-67)
68. Tocqueville (1866, 132). [↑](#footnote-ref-68)
69. Stubbs (1880, 201). [↑](#footnote-ref-69)
70. Holdsworth (1922, 357), Powell and Wallis (1968, 219-31, 285), Bush (1983), Maddicott (1981, 73-5). [↑](#footnote-ref-70)
71. The criteria for inclusion in the Dictionary were that the person had “left their mark on an aspect of national life, worldwide, from the Romans to the early 21st century;” ODNB “Frequently Asked Questions,” accessed February 1, 2016, http://global.oup.com/oxforddnb/info/faqs/#biographies1. [↑](#footnote-ref-71)
72. The search criteria were: “field of interest: (Royalty, rulers, and aristocracy) - active between 1200 and 1350.” [↑](#footnote-ref-72)
73. Ormrod (1990, 95). Barons were titled “lord” and were tenants-in-chief holding enough land to pay an entry fine (*relief*) of £100. [↑](#footnote-ref-73)
74. The total is 89 earls for the whole period and 221 barons. [↑](#footnote-ref-74)
75. Sanders (1960) identified about 135 baronies and 72 probables. [↑](#footnote-ref-75)
76. Coss (2003, 1-19), Coss (1997). [↑](#footnote-ref-76)
77. Coss (1995), Coss (2003). [↑](#footnote-ref-77)
78. These numbers do not include clergy. [↑](#footnote-ref-78)
79. Prestwich (1990, 30). The *ODNB* returns 101 entries for that date for magnates, noblemen, and barons. [↑](#footnote-ref-79)
80. Spencer (2014, 57). [↑](#footnote-ref-80)
81. Roskell (1956, 160-177). [↑](#footnote-ref-81)
82. Prestwich (1997, 447). [↑](#footnote-ref-82)
83. Dodd (2007), Rayner (1941a), (1941b). [↑](#footnote-ref-83)
84. Plucknett (1940, 114-5), Maddicott (2010, 286-7). [↑](#footnote-ref-84)
85. Roskell (1956, 163). [↑](#footnote-ref-85)
86. Musson (2001, 199). [↑](#footnote-ref-86)
87. Roskell (1956). [↑](#footnote-ref-87)
88. Roskell (1956, 163), Rotuli Parliamentorum (1783, 347-348), Snow (1963, 334). [↑](#footnote-ref-88)
89. Roskell (1956, 163). [↑](#footnote-ref-89)
90. Bradford (2007, 160). [↑](#footnote-ref-90)
91. Pollard (1942, 208). [↑](#footnote-ref-91)
92. Richardson and Sayles (1931, 385, footnote 10), from the rolls of the Hilary Parliament of 1352. [↑](#footnote-ref-92)
93. Sayles (1950, 460), Holdsworth (1922, 359). [↑](#footnote-ref-93)
94. Powell and Wallis (1968, 351-3), Roskell (1956, 166-7). [↑](#footnote-ref-94)
95. Richardson and Sayles (1931, 382). [↑](#footnote-ref-95)
96. Les Olim ou Registres des Arrêts Rendus Par La Cour Du Roi, 1254-1318 (1842), Ducoudray (1902). These list all surviving documents in the Archives; Hildesheimer and Morgat-Bonnet (2011). The problem affected all royal meetings; Bisson (1972, 544, n.15). [↑](#footnote-ref-96)
97. Shennan (1998, 14-5), Harding (2002, 163). [↑](#footnote-ref-97)
98. Beaumanoir (1899, 37, 41-2, 158), Lot and Fawtier (1958, 355), Aubert ([1890] 1977), Villers (1984, 96), Rigaudière (1994, 164). [↑](#footnote-ref-98)
99. Lot and Fawtier (1958, 355-6). [↑](#footnote-ref-99)
100. Bisson (1969, 355). [↑](#footnote-ref-100)
101. Lot and Fawtier (1958, 336). [↑](#footnote-ref-101)
102. Dawson (1960, 65)\*Lot and Fawtier (1958, 297, 507). [↑](#footnote-ref-102)
103. Sautel-Boulet (1955, 512-3, 515). [↑](#footnote-ref-103)
104. Sautel-Boulet (1955, 509), Desportes (1989, 329). [↑](#footnote-ref-104)
105. Harding (2002, 168, 207)\*. [↑](#footnote-ref-105)
106. Lewis (2001, 11). [↑](#footnote-ref-106)
107. Rigaudière (1994, 153). [↑](#footnote-ref-107)
108. Over the 60-year reigns of Louis IX and Philip III (1226-85), 36 lords are recorded, 32 lords over 30 years under Philip the Fair (1285-1314), and 82 in the five sessions under Louis X (1314-1316); Ducoudray (1902, 107), Lot and Fawtier (1958, 334-5). [↑](#footnote-ref-108)
109. Of Bohemia, John, the Dauphin, and Peter of Aragon. Names are from Ducoudray (1902, 108). [↑](#footnote-ref-109)
110. Of Lorraine and of Burgundy. [↑](#footnote-ref-110)
111. Of Forez, Flanders, of Foix, of Auxerre, John of Hainault, Louis I of Bourbon, of Biaumont. [↑](#footnote-ref-111)
112. Les Grandes Chroniques de France (1837, 343-9). [↑](#footnote-ref-112)
113. Lot and Fawtier (1958, 356), Shennan (1998, 157), Aubert ([1890] 1977, 1-21, 44-49). [↑](#footnote-ref-113)
114. Langlois (1888, 149-150), Bisson (1969, 355). [↑](#footnote-ref-114)
115. Population in the early fourteenth century was 17.7 million; McEvedy and Jones (1978). [↑](#footnote-ref-115)
116. Langmuir (1961), Bournazel (1975, 157-61). [↑](#footnote-ref-116)
117. Taylor (1954). [↑](#footnote-ref-117)
118. Bisson (1969, 366). [↑](#footnote-ref-118)
119. Ducoudray (1902, 112, 320). [↑](#footnote-ref-119)
120. Roskell (1956), Plucknett (1970, 219). [↑](#footnote-ref-120)
121. Lot and Fawtier (1958, 356, 342). [↑](#footnote-ref-121)
122. Roskell (1956, 199). [↑](#footnote-ref-122)
123. Lot and Fawtier (1958, 356). [↑](#footnote-ref-123)
124. Lot and Fawtier (1958, 358). [↑](#footnote-ref-124)
125. Shennan (1998, 110). [↑](#footnote-ref-125)
126. Shennan (1998, 111-48). [↑](#footnote-ref-126)
127. Lot and Fawtier (1958, 355). [↑](#footnote-ref-127)
128. Menes (2010). [↑](#footnote-ref-128)
129. Lot and Fawtier (1958, 355ff). [↑](#footnote-ref-129)
130. Lord's Report on the Dignity of a Peer (1826, 7, 67, 66)\*original document. Maitland (1893, xxxiv-xxxvi, lxxxvi-lxxxix), Bisson (1973, 25). [↑](#footnote-ref-130)
131. Richardson and Sayles (1981, 172-3), Picot (1901, 1, 27), McIlwain (1932, 686). [↑](#footnote-ref-131)
132. Pollard (1920), Richardson and Sayles (1981). [↑](#footnote-ref-132)
133. Edwards (1925), Edwards (1926). [↑](#footnote-ref-133)
134. Mitchell (1951, 205), Post (1946, 230). [↑](#footnote-ref-134)
135. Stubbs (1880, 211). [↑](#footnote-ref-135)
136. Maddicott (2010, 77, 443). [↑](#footnote-ref-136)
137. McIlwain (1932, 687), Picot (1901, 63-70), Aubert, 39-41). [↑](#footnote-ref-137)
138. Roskell (1956, 159). [↑](#footnote-ref-138)
139. Roskell (1956, 162). [↑](#footnote-ref-139)
140. Bisson (1961, 260). Similarly for the French Estates-General: to be represented by attorney, one needed a valid reason, even a broken leg, though this had to be “known in the whole neighborhood;” Picot (1901, 63-93), McIlwain (1932, 688). [↑](#footnote-ref-140)
141. Lewis (1962, 23). [↑](#footnote-ref-141)
142. Ducoudray (1902, 101). [↑](#footnote-ref-142)
143. Lot and Fawtier (1958, 342). [↑](#footnote-ref-143)
144. Edict of 1319 quoted in Floquet (1840, 42). [↑](#footnote-ref-144)
145. Dawson (1960, 66), Harding (2002, 169), Ducoudray (1902, 101). [↑](#footnote-ref-145)
146. Lemarignier (1970, 324). The English Council had a similarly central role; Holdsworth (1922, 477-92), Maddicott (2010, 285-6). [↑](#footnote-ref-146)
147. Holdsworth (1922, 356), Maddicott (2010, 382). [↑](#footnote-ref-147)
148. Rigaudière (1994, 153-4). [↑](#footnote-ref-148)
149. Rigaudière (1994, 167-8). [↑](#footnote-ref-149)
150. In this case, both nobility and crown are strong, without a clear advantage. [↑](#footnote-ref-150)
151. Lot and Fawtier (1958, 335, 365). [↑](#footnote-ref-151)
152. Brown (1994), Hanley (1983). [↑](#footnote-ref-152)
153. Bradford (2011, 6). [↑](#footnote-ref-153)
154. Prestwich (2005).\* [↑](#footnote-ref-154)
155. Dawson (1960), Dawson (1968), Bongert (1949), Berman (1983). Some key social scientific statements on legal origins are Glaeser and Shleifer (2002), Porta*, et al.* (2008). [↑](#footnote-ref-155)
156. Hayek (1960, 131-249). [↑](#footnote-ref-156)
157. Ertman (1997, 168)(McIlwain 1932, 710-711). [↑](#footnote-ref-157)
158. Cam (1935), Berman (1983, 478), Dawson (1960). [↑](#footnote-ref-158)
159. Dawson (1960). [↑](#footnote-ref-159)
160. A Frankish/Norman origin is mostly admitted for England; van Caenegem (1988, 79), Pollock and Maitland (1899, 142), Haskins (1915, 110) However, similar Anglo-Saxon practices (for instance, recognitions) existed that also secured the popularity of juries, especially in possessory assizes; Turner (1968, 10). [↑](#footnote-ref-160)
161. Holdsworth (1922, 312-332), Brown (2011, 204-5). [↑](#footnote-ref-161)
162. Dawson (1960, 46-7), Holdsworth (1922, 314-5). [↑](#footnote-ref-162)
163. Dawson (1960, 62-66). [↑](#footnote-ref-163)
164. Dawson (1960, 47). [↑](#footnote-ref-164)
165. Lot and Fawtier (1958, 388-89). [↑](#footnote-ref-165)
166. Masschaele (2008, 11). [↑](#footnote-ref-166)
167. Green (1985). [↑](#footnote-ref-167)
168. Roman Law refers mainly to the *Corpus Iuris Civilis* of the sixth century; Civil Law begins in the eleventh century with the work of the Glossators commenting on the *Corpus.* [↑](#footnote-ref-168)
169. Helmholz (2003, especially 123-4), Zimmermann (1993). [↑](#footnote-ref-169)
170. Turner (1990), Hudson (2012). [↑](#footnote-ref-170)
171. Helmholz (1990, 1207-14), Helmholz (1999). C.f. Garnett and Hudson (2015, 15-25). [↑](#footnote-ref-171)
172. Pollock and Maitland (1899, 637-41), Holdsworth (1922, 303). [↑](#footnote-ref-172)
173. Bellomo (1995), Ibbetson (2001). [↑](#footnote-ref-173)
174. Pollock and Maitland (1899, 639), Dawson (1960, 47), Ertman (1997, \*), Harriss (1975, 159). [↑](#footnote-ref-174)
175. See pages 43ff. [↑](#footnote-ref-175)
176. Ertman (1997, \*), Pollock and Maitland (1899, 631-2). [↑](#footnote-ref-176)
177. Thomas (2014, 243). [↑](#footnote-ref-177)
178. Thomas (2014, 112). [↑](#footnote-ref-178)
179. Baldwin (1985), Barrow (1989). [↑](#footnote-ref-179)
180. Prestwich (1990, 76), Maddicott (1978b, 17-8). [↑](#footnote-ref-180)
181. Bubenicek and Partington (2015, 159). [↑](#footnote-ref-181)
182. Hudson (2012, 533). [↑](#footnote-ref-182)
183. Brown (2011, 205-6). [↑](#footnote-ref-183)
184. Maddicott (1978b), Carpenter (1983, 215). [↑](#footnote-ref-184)
185. Carpenter (1992). [↑](#footnote-ref-185)
186. Holdsworth (1922, 315-6) [↑](#footnote-ref-186)
187. Pollock and Maitland (1899, 631-2). See also Dawson (1960, 47-8). [↑](#footnote-ref-187)
188. Cohen (1993, 31), Robinson*, et al.* (2000, chapters 7&12), Rigaudière (1994, 138-144). [↑](#footnote-ref-188)
189. Hébert (2014), Hilaire (2011), Rigaudière (1988), Rigaudière (1994)\*. [↑](#footnote-ref-189)
190. Hudson (2012, 535). [↑](#footnote-ref-190)
191. Hollond (1942). [↑](#footnote-ref-191)
192. Glenn (2004, 228), Holdsworth (1923b, 172). [↑](#footnote-ref-192)
193. Musson and Ormrod (1999, 118). [↑](#footnote-ref-193)
194. “Legal fictions” developed for cases that did not fit the templates; Maine (1906, 20-42), Baker (2002, 201-2, 255-56). [↑](#footnote-ref-194)
195. Palmer (1982), Hudson (1994a, 262-5), Milsom (1981, 125-0, 134-41), Spencer (2014, 110).\* [↑](#footnote-ref-195)
196. Holdsworth (1922, 71). [↑](#footnote-ref-196)
197. Dawson (1960, 55). [↑](#footnote-ref-197)
198. Rigaudière (1994, 192), Hilaire (2011, 39-57). The nobility reclaimed the right to duel some decades later\*. [↑](#footnote-ref-198)
199. Harding (2002, 123-46), van Caenegem (1966), Small (1977). [↑](#footnote-ref-199)
200. Dodd (2007, 40). [↑](#footnote-ref-200)
201. Rigaudière (1994, 189-90, 218). [↑](#footnote-ref-201)
202. Lot and Fawtier (1958, 508). Jurisdiction was also claimed by intervening in local jurisdictional conflicts or in matters pertaining to the king, e.g. licenses, and by subordinating ecclesiastical jurisdiction; Rigaudière (1994, 190-7 and 197-204). [↑](#footnote-ref-202)
203. Berman (1983, 468), Dodd (2007, 41). [↑](#footnote-ref-203)
204. Dodd (2007, 41-3). [↑](#footnote-ref-204)
205. Hudson (2012, 557-60\*), Pollock and Maitland (1899, 62ff), Langlois (1890, 83). [↑](#footnote-ref-205)
206. Carpenter (2000, 45), Brand (2003). [↑](#footnote-ref-206)
207. Spencer (2014, 122, 145), Prestwich (1990, 52-3). [↑](#footnote-ref-207)
208. Palmer (1982, 56, 81), Brand (2003). [↑](#footnote-ref-208)
209. Hudson (2012, 46-50, 276-80, 550-4). [↑](#footnote-ref-209)
210. Holdsworth (1922, 64-75). [↑](#footnote-ref-210)
211. For expert discussions, see \* [↑](#footnote-ref-211)
212. Powell (1983), Holdsworth (1922, \*). [↑](#footnote-ref-212)
213. Hudson (2012, 277). [↑](#footnote-ref-213)
214. Kivelson (1996, 152), Ertman (1997). [↑](#footnote-ref-214)
215. Lewis (1962, 5), Rigaudière (1994, 219), Bubenicek and Partington (2015), Kivelson (1994), von Oer (1983)Spain\*. [↑](#footnote-ref-215)
216. Cam (1935, 192). [↑](#footnote-ref-216)
217. von Oer (1983), Kollmann (2012). [↑](#footnote-ref-217)
218. Hundred courts were mostly private, but presided by a royal sheriff; Harding (1973, 41). Manorial, merchant, franchise, and ecclesiastical courts had delimited jurisdictions. For an overview of all specialized courts, see Holdsworth (1922, 64-193). [↑](#footnote-ref-218)
219. Harding (2002, 160). [↑](#footnote-ref-219)
220. \* Also question of diffusion Fesler 85 [↑](#footnote-ref-220)
221. Brand (2003). [↑](#footnote-ref-221)
222. Milsom (1981, 27), Holdsworth (1922, 265-76), Brown (1989, 117), Harding (1973, 86), Baker (2002, 16). Challenging this view is Burt (2013, 141-7). [↑](#footnote-ref-222)
223. Brown (1989, 117), Holdsworth (1922). [↑](#footnote-ref-223)
224. Masschaele (2008, 72). [↑](#footnote-ref-224)
225. Holdsworth (1922, 265-76), Baker (2002, 20-22), Musson and Ormrod (1999, 116-7). [↑](#footnote-ref-225)
226. Baker (2002, 17). [↑](#footnote-ref-226)
227. Maddicott (1986), Dodd (2007, 21), Burt (2013, 19-20), Harding (2002, 183), Holdsworth (1922, 272). [↑](#footnote-ref-227)
228. Musson and Ormrod (1999, 48), Harding (2002, 184). [↑](#footnote-ref-228)
229. The three palatinates were Cheshire, Lancaster, and the bishopric of Durham.\* [↑](#footnote-ref-229)
230. Bracton (1977, 72, 71-146), Bartlett (2000, 699). [↑](#footnote-ref-230)
231. Hudson (2012, 310-12, 588-91), Holdsworth (1923b, 104), Holdsworth (1922, 337-9). [↑](#footnote-ref-231)
232. Bartlett (2000, 149). [↑](#footnote-ref-232)
233. Holdsworth (1922, 66). [↑](#footnote-ref-233)
234. Hudson (2012, 46-50, 276-80, 550-4). [↑](#footnote-ref-234)
235. Maddicott (1978a, 33), Stubbs (1880, 215). [↑](#footnote-ref-235)
236. Maddicott (1978a, 33-4, 40), Plucknett (1948, 145). [↑](#footnote-ref-236)
237. Cam (1963b), Cam (1935, 193, 196), Morris (1926, 139-142). [↑](#footnote-ref-237)
238. Holt (1981, 16). [↑](#footnote-ref-238)
239. Cam (1963b), Palmer (1982, 263, 291), Holdsworth (1922, 68-9). [↑](#footnote-ref-239)
240. Maddicott (1981, 72). [↑](#footnote-ref-240)
241. Stubbs (1880, 246). [↑](#footnote-ref-241)
242. [Information on *baillis*] [↑](#footnote-ref-242)
243. Maddicott (2010, 408-17) ascribes the difference to the representation of lesser landholders and the lack of equivalents of counties in continental cases; I argue both of these features are endogenous to power dynamics. [↑](#footnote-ref-243)
244. Ertman (1997, 172), Fryde (1991, 245), Hopcroft (1999, 78, 86). See the dissenting, but historically far more nuanced, position of Margaret Somers (1993, 600). [↑](#footnote-ref-244)
245. Fryde (1991, 245). [↑](#footnote-ref-245)
246. Putnam (1929, 26), Coss (2003, 182ff, 165-201). [↑](#footnote-ref-246)
247. Palmer (1982, 56). [↑](#footnote-ref-247)
248. Hayek (1973). [↑](#footnote-ref-248)
249. Holdsworth (1922, 67). [↑](#footnote-ref-249)
250. Maddicott (1993, 673). [↑](#footnote-ref-250)
251. For the tendency of unpaid tax assessors to under-assess, see Morris and Strayer (1940, 36). [↑](#footnote-ref-251)
252. Holdsworth (1922, 66). [↑](#footnote-ref-252)
253. Burt (2013, 32), Bubenicek and Partington (2015, 163), Musson and Ormrod (1999, 55, 139-146). [↑](#footnote-ref-253)
254. Musson (2001, 200-1). [↑](#footnote-ref-254)
255. Brand (1992, 144-8), Holdsworth (1922, 246-62). [↑](#footnote-ref-255)
256. Holdsworth (1922, 255). [↑](#footnote-ref-256)
257. Holdsworth (1922, 262-4). [↑](#footnote-ref-257)
258. Holdsworth (1922, 252), Brand (1992, 144-8). [↑](#footnote-ref-258)
259. Holdsworth (1923b, 294-99), Brand (1992, 144-8), Holdsworth (1923b).\* [↑](#footnote-ref-259)
260. Ertman (1997) [↑](#footnote-ref-260)
261. Shennan (1968, 112-9). [↑](#footnote-ref-261)
262. Weber ([1922] 1978, 1033). [↑](#footnote-ref-262)
263. Ertman (1997, 119). [↑](#footnote-ref-263)
264. Dawson (1960, 142) citing Webb and Webb (1908, 502-7). See also Aylmer (1961, 440). [↑](#footnote-ref-264)
265. Brewer (1989, 15, 79-85, 102-14). [↑](#footnote-ref-265)
266. Strayer (1970, 28-9, 48), Strayer (1977, 273), Baker (2002). [↑](#footnote-ref-266)
267. Coss (2003, 44, 64, 149). [↑](#footnote-ref-267)
268. Hilton and Le Goff (1980, 44). [↑](#footnote-ref-268)
269. The book is claimed to contain “the majority” of officials, though it excludes some central bodies; Gallia Regia; ou, État des Officiers Royaux des Bailliages et des Sénéchaussées de 1328 à 1515 (1942, viii, ix). [↑](#footnote-ref-269)
270. Suit could also be owed by agreement; Palmer (1982, 3). [↑](#footnote-ref-270)
271. Holdsworth (1923a, 9-10), Pollock and Maitland (1898, 536-8, 542) Palmer (1982, 76). [↑](#footnote-ref-271)
272. Capua (1983, 63-84). [↑](#footnote-ref-272)
273. Pollock and Maitland (1899, 525). [↑](#footnote-ref-273)
274. The comparison does not include the large number of individuals involved in customary courts, as these were not part of the royal structure. [↑](#footnote-ref-274)
275. Cam (1960, 110), Maddicott (1978a, 29), Hudson (2012, 277), Palmer (1982, 56-88). [↑](#footnote-ref-275)
276. Palmer (1982, 81). [↑](#footnote-ref-276)
277. Prestwich (1990, 53). [↑](#footnote-ref-277)
278. Cam (1960, 137), Milsom (1981, 15). The number had risen to 720 in 1334, although this included units that consisted only of single manors; Glasscock (1975). [↑](#footnote-ref-278)
279. Intermingling of private and public functions happened between the manorial and the hundred courts, for instance; Masschaele (2008, 57). Hundreds also varied considerably in size, some being too small to hold any court (although we lack numbers for those). The number of jurors varied accordingly, from 12 as minimum to about 80 as a maximum; Cam (1960, 175). [↑](#footnote-ref-279)
280. These calculations come from Masschaele (2008, 72), based on Haydon’s calendar. [↑](#footnote-ref-280)
281. The estimates were constructed with the invaluable help of Dr. Richard Partington and are meant as conservative lower bound figures. [↑](#footnote-ref-281)
282. English population in the 1270s was about 4.3 million; Broadberry*, et al.* (2010). French population estimates are from McEvedy and Jones (1978). [↑](#footnote-ref-282)
283. See footnotes 257-259 for the seventeenth-century figures. [↑](#footnote-ref-283)
284. Rigaudière (1994, 219). [↑](#footnote-ref-284)
285. White (1933). [↑](#footnote-ref-285)
286. Baldwin (1986)\*. [↑](#footnote-ref-286)
287. White (1933, 76-130). White’s examples come from the early 1200s. [↑](#footnote-ref-287)
288. Baker (1961, 50). [↑](#footnote-ref-288)
289. A search in the *ODNB* returns 312 records for officials of the crown in the period between 1250 and 1300; again, a bare minimum. For local administration, see Willard*, et al.* (1940a), Willard*, et al.* (1940b), Chrimes (1966). [↑](#footnote-ref-289)