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2015

# Staging Power in Tudor and Stuart English History Plays: History, Political Thought, and the Redefinition of Sovereignty

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## Recommended Citation

Bezio, Kristin M.S. *Staging Power in Tudor and Stuart English History Plays: History, Political Thought, and the Redefinition of Sovereignty*. Burlington, VT: Ashgate, 2015.

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# Staging Power in Tudor and Stuart English History Plays

History, Political Thought, and the  
Redefinition of Sovereignty

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Introduction

# Of Parliaments and Kings: The Origins of Monarchy and the Sovereign-Subject Compact in the English Middle Ages (to 1400)

The purpose of this study is to examine the intersection between early modern political thought, the history that produced the late Tudor and early Stuart monarchies, and the critical interrogation of both taking place on the public theatrical stage. The plays I examine here are those which rely on chronicle histories for their source materials; are set in England, Scotland, or Wales; focus primarily on governance and sovereignty; and whose interest in history is didactic and actively political. Although, as Irving Ribner has explained, early moderns had a different conception of “history” than contemporary scholars in terms of factuality, I have excluded those plays grounded primarily in legend, such as William Shakespeare’s *King Lear*, Thomas Norton and Thomas Sackville’s *Gorboduc*, or William Rowley’s *Birth of Merlin*.<sup>1</sup>

Any examination of the sociopolitical implications of sovereignty in the history plays written and produced during the Elizabethan, Jacobean, and Caroline periods must take into consideration the political traditions that led to their production. Before the accession of Henry VII, England’s understanding of rule was rooted in what we today might describe as populism augmented by a belief in the metaphysical superiority of the sovereign, encapsulated in what were referred to as common law and the ancient constitution. Current scholarship, particularly of early modern drama and literature, often tends to associate absolutism with an older, medieval era, and populism with the Rousseauian social contract of the mid-eighteenth century. However, as Robert Eccleshall explains, both forms sprang from the same surprisingly progressive ideological construct based on ancient traditions founded in both parochial tribalism and proto-imperialism.<sup>2</sup> These common roots reemerged in later claims for both absolutism and limited monarchism, producing the theoretical debates at the heart of early modern politics.

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<sup>1</sup> Irving Ribner defines history plays as those featuring “material drawn from national chronicles and assumed by the dramatist to be true, whether in the light of our modern knowledge they be true or not” (*The English History Play in the Age of Shakespeare* [Princeton: Princeton University Press, 1957], 26).

<sup>2</sup> Robert Eccleshall, *Order and Reason in Politics: Theories of Absolute and Limited Monarchy in Early Modern England* (Oxford: Oxford University Press, 1978), 2.

## Gods, Kings, and *Communitas*

Both limited and absolute monarchies claimed a foundation in the divine, whether directly endowed by a god or gods, or endorsed through popular election or sanction. Throughout ancient and medieval Europe, kings were thought to possess a connection to or aspect of the supernatural, termed *Heil* by Germanic peoples.<sup>3</sup> This concept drew upon an understanding shared with the ancient Norse and early Anglo-Saxons of “luck” as a characteristic rather than an indicator of one’s relationship to external forces—individuals in possession of “luck” had an increased likelihood of success in their endeavors because they were blessed.<sup>4</sup> This sense of *Heil* came to be associated with the Christian God and holiness in the high middle ages, a theoretical precursor to divine right.<sup>5</sup>

Belief in the connection between king and God, which arose in the eleventh through the thirteenth centuries from popular belief that the monarch had a closer connection to divinity, reflected the metaphoric understanding of God himself as a monarch (the King of Kings) and of the world as a reflection of divine law. Additionally, it produced the understanding that the monarch served as the community’s representative to those higher powers in transactional terms. It was the king’s duty to be the symbolic manifestation of his people’s needs and will, a characterization that gave rise to the common use of the “royal we” as a linguistic signifier of the king’s collective identity.

As the representative of the nation as a whole, the monarch was responsible for embodying the collective identity of the nation; this understanding also worked in reverse, and the populace came to expect that it was also an extension of its king. This contributed significantly to both a sense of proto-nationalism which arose at this juncture in history and also to the understanding of the mutual reliance of both sovereign and subjects upon each other. The role of king as the collective head—a bodily metaphor common to the sixteenth and seventeenth centuries—was that of the proverbial “first among equals,” both greater than and one among his subjects. During this period, tribalism produced in burgeoning medieval nation-states an awareness of the self as a part of a unified national whole that encompassed all levels of the social hierarchy up to and including the king.

But despite his inclusion in this political—and often religious—*communitas*, the monarch was nevertheless offset from the collective by virtue of his transactional link to the divine. This separation created the sense that the monarch served as the head of the nation as a unit, typically characterized in familial terms. Henry Allen Myers notes that

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<sup>3</sup> For the sake of brevity, I have chosen to default to the male pronoun since, until the sixteenth century, England was ruled almost exclusively by male monarchs, and theories of sovereignty universally reflected a presumption of male rule.

<sup>4</sup> Bettina Sejbjerg Sommer, “The Norse Concept of Luck,” *Scandinavian Studies* 79, no. 3 (2007): 275. One of the Norse words for this type of luck was *Heill*, indicating either that it had a common origin with the Germanic term or that the Norse term is the origin for the Germanic concept (279).

<sup>5</sup> Henry Allen Myers, *Medieval Kingship* (Chicago: Nelson-Hall, 1982), 164.

The English term “king” (Old English *cyning*) derives, as do its cognates in other Germanic languages, from “kin” (*cyn*). The king was the man whose *Heil* was sufficiently impressive to a group who considered themselves kin to each other that they saw him as mediating for all of them with the powers of light and darkness.<sup>6</sup>

As mediator, the king was under obligation to act as intercessory for the nation on both material and spiritual levels. His primary responsibility was the safety and security of the realm—and, by extension, of its people. This belief was reiterated by John of Salisbury (1159), who augmented the obligation of the monarch to ensure peace with the belief that he was also required to administer justice.<sup>7</sup> Linked to his responsibilities of security and prosperity was the reciprocal duty of atonement if these goals could not be achieved. Sergio Bertelli explains that “Like a priest, the king was both the advocate of his people before heaven and the sacrificial hostage of heaven among his people. He assumed the traits of a scapegoat for the sins of his subjects.”<sup>8</sup> This notion of “scapegoating” meant that the monarch could be expected to render sacrifice—spiritual, material, and even bodily—for the common weal.

### King, Common Law, and the Ancient Constitution

The monarch’s singular responsibility for the collective state relied on the duality of the king as both of and above the national *communitas*, reflected in the perception of the monarch’s relationship to the law. In *The Beast and the Sovereign*, Jacques Derrida describes the sovereign as both of the law and “outside-the-law”:

Being-outside-the-law can, no doubt, on the one hand (and this is the figure of sovereignty), take the form of being-above-the-law, and therefore take the form of the Law itself, of the origin of laws, the guarantor of laws, as though the Law, with a capital L, the condition of the law, were before, above, and therefore outside the law, external or even heterogeneous to the law.<sup>9</sup>

By being both “outside-the-law” and being “the Law itself,” the monarch serves as the embodiment of the rules that bind *communitas*, even as he is himself a member of that *communitas* and is thus also bound to the law.

Because the medieval monarch was the recorder of law, he came to be associated not only with its documentation, but with its production on all levels, leading to his equation with law itself. However, as J.W. Gough observes, “Law,

<sup>6</sup> Myers, 3.

<sup>7</sup> Myers, 247.

<sup>8</sup> Sergio Bertelli, *The King’s Body: Sacred Rituals of Power in Medieval and Early Modern Europe*, trans. R. Burr Litchfield (University Park: Pennsylvania State University Press, 2001), 22.

<sup>9</sup> Jacques Derrida, *The Beast & the Sovereign*, trans. Geoffrey Bennington, vol. I (Chicago: University of Chicago Press, 2009), 17.

in the earliest times barely distinguishable from custom, was in medieval thought prior to rather than the creature of government; the whole people, in some sense, was its repository, and though the king's function was to declare it, it was not in his power to manufacture it arbitrarily."<sup>10</sup> This meant that even though the king was the recorder of the law, he was not its ultimate author, that role being reserved for God. This idea persevered throughout the middle ages, surfacing in John Fortescue's treatise to Prince Edward, son of Henry VI, *The Difference Between an Absolute and Limited Monarchy*, and again in Richard Hooker's *Of the Laws of Ecclesiastical Polity* under Elizabeth.<sup>11</sup> For despite being the origin of the law—or, at least, of *some* law—the monarch was nevertheless widely considered subject to “natural law,” or the law of God, which the king could neither make nor unmake.<sup>12</sup>

The English understanding of this relationship between king and law made a very particular distinction between natural, “common” law and recorded, statute law. Medieval English society contained both the king's recorded laws, or statutes, and the natural, common law. Legalists up until—and, indeed, throughout—the early modern period preferred to rely upon ancient tradition rather than recent historical precedence, rarely, if ever, making reference even to statutes from the sixteenth century.<sup>13</sup> Instead, common law drew upon the immemorial construct of an unrecorded, ancient constitution as the basis for its authority. Howell A. Lloyd remarks that it is important to remember that the term “constitution” had a different connotation for early moderns, meaning “an explicit declaration of law by the prime political authority.”<sup>14</sup> This meant, then, that the ancient constitution, unwritten as it was, was seen as tantamount to “an explicit declaration” of God and in accordance with natural law, a unique claim in which the law's legitimacy relied upon the fact that it was unwritten; Glenn Burgess explains:

the common law, and consequently the ancient constitution itself, were customary. By this was meant two things: first, that English common law was unwritten (*lex non scripta*), not written as the Roman law was. ... Thus common law became seen as the national law of England, yet was unusual in being (in origin at least) unwritten. So, where did it come from? how was it known? The answer to this provided the second feature of the customary common law, it was *immemorial*.<sup>15</sup>

<sup>10</sup> J.W. Gough, *The Social Contract: A Critical Study of Its Development*, Second Edition (Oxford: Clarendon Press, 1957), 26.

<sup>11</sup> Bertelli, 38; Eccleshall, 148.

<sup>12</sup> Franklin Le Van Baumer, *The Early Tudor Theory of Kingship* (New York: Russell & Russell, 1966), 5.

<sup>13</sup> Howard Nenner, *By Colour of Law: Legal Culture and Constitutional Politics in England, 1660–1689* (Chicago: University of Chicago Press, 1977), 14.

<sup>14</sup> Howell A. Lloyd, “Constitutionalism,” in *The Cambridge History of Political Thought 1450–1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 254.

<sup>15</sup> Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603–1642* (University Park: Pennsylvania State University Press, 1993), 4.

In other words, the power of the ancient constitution—which drew on the traditions of ancient Britons rather than the Roman law upon which statutes were based—was a product both of its inherent alliance with natural (God's) law and its intrinsic "Englishness."

Derived from natural law, English common law set forth the assumed rights of and limitations upon both sovereign and subjects and took precedence over written law. The traditional nature of this legal practice permitted the continuation of the ancient constitution through the Norman conquest, allowing for sociopolitical continuity through the religious and governmental upheavals of the medieval and early modern periods. And because of its power to maintain an ideological foothold, the ancient constitution—and the common law that claimed it as a foundation—became the framework to which later proponents of limited monarchy turned for legal justification.

Foremost among the rights claimed by subjects under common law were those of property, including land, movables, and monetary wealth.<sup>16</sup> The inviolability of these rights formed the basis of Parliamentary approval for taxation: the king needed the consent of the people qua Parliament to levy taxes, a legal requirement that formed the basis for many Parliamentary disputes throughout the medieval and early modern eras.<sup>17</sup> The expectation among both medievals and early moderns was that the monarch was expected explicitly to defend those rights, whether against others within the nation or against threat of invasion from without. Because this defense was a "duty" of the monarch, a king who himself violated these rights could expect not only resistance from Parliament, but also rebellion from his subjects.

By extension, the laws governing the practice of how that property—owned or tenured—was transferred also formed a vital component of common law. The protections afforded to inheritance were intertwined with English political identity and extended beyond material property to include the rights of Parliamentary representation, courtly privilege, and political influence.<sup>18</sup> The fact that the inheritance of the crown was governed by the same common law as any other position of property and political rank contributed significantly to the limitation of medieval English monarchy. John Neville Figgis, in his nineteenth-century exploration of absolutism, explains that

It is only because the notions of public law and sovereignty were as yet undeveloped that this [primogeniture] was possible. Because men cannot think of the king as other than a natural person, or of the rules governing the succession except as a part of the ordinary law of inheritance, they were driven to assimilate the succession to the Crown to the succession to a fief. The king

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<sup>16</sup> Burgess, 142.

<sup>17</sup> Paul Birdsall, "'Non Obstante': A Study of the Dispensing Power of English Kings," in *Essays in History and Political Theory in Honor of Charles Howard McIlwain*, ed. Carl Wittke (New York: Russell & Russell, 1967), 37.

<sup>18</sup> Nenner, 33.

was the landowner *par excellence*; his lands must descend by the same rules as those of other men.<sup>19</sup>

For Figgis, an ardent supporter of absolutism, this reliance in medieval England upon common law served as a political detriment because the parallel between the monarch as “landowner *par excellence*” and any other property-holder produced limitations on monarchical power.

Nevertheless, the recognition of the similarity between inheritance and succession did not preclude others—such as Edmund Plowden—from distinguishing between them. Marie Axton observes that “To prove how radically royal *succession* differed from ordinary *inheritance* Plowden proposed legal cases and historical episodes showing the finality of a subject’s death as opposed to the momentary disjunction of the king’s body natural from the body politic which was then instantaneously vested in his successor.”<sup>20</sup> The difference, in other words, between “an ordinary man” and the monarch was the understanding that the monarch was not a person in the same sense that an “ordinary man” was a person. Monarchy was a role, and continued perpetually regardless of the individual who occupied it.

### King and Compact

Despite this legal division, the monarchy was still held both subject to and accountable for the enforcement of common law throughout the medieval period. The similarities between the king’s relationship to his subjects and that of any feudal lord to his vassals led to the understanding that the king had similar legal obligations. This both increased and limited monarchical power through the quasi-contractual relationship between monarch as ultimate feudal lord and his subject-vassals, which formed the basis for the unwritten, yet sacred compact between sovereign and subjects that underpinned sixteenth- and seventeenth-century arguments for the right of popular rebellion, deposition, and even tyrannicide.

Furthermore, this legal framework permitted a kind of fictional equality, according to Mervyn James: “Common wealth was rooted in a customary order handed down from the past which had the nature of law, defining the extent and limits even of the lord’s authority, as well as the rights and duties of the tenant.”<sup>21</sup> Although the reality of the lord-vassal relationship was based in a rigid hierarchy, the legalistic fiction behind that relationship produced an understanding that the submissive party would never be wholly deprived of rights. Since the monarch

<sup>19</sup> John Neville Figgis, *The Divine Right of Kings*, ed. G.R. Elton, Second Edition (New York: Harper Torchbooks, 1965), 23.

<sup>20</sup> Marie Axton, *The Queen’s Two Bodies: Drama and the Elizabethan Succession* (London: Royal Historical Society, 1977), 27–28.

<sup>21</sup> Mervyn James, *Society, Politics and Culture: Studies in Early Modern England* (Cambridge: Cambridge University Press, 1986), 284.

was conceived as the ultimate liege-lord, the same legal restrictions applied; the king was accountable to and responsible for the entire common wealth: nobles, commons, lands, and capital.

This relationship—which I will henceforth term the “sovereign-subject compact”—arose out of the mutual obligations of common law and the ancient constitution and was symbolized in the coronation oath. The sovereign-subject compact—like common law and the ancient constitution—is unwritten and immemorial; it binds the *role* of the sovereign to the national *communitas*. Legalistically, it functioned as an implied contract of rights and responsibilities, and permitted extreme action on the part of subjects whose common law rights had been violated by their king, as R.H. Wells explains: “While strongly deprecating rebellion, medieval writers conceded that a king who violated his coronation oath could no longer expect obedience from his subjects.”<sup>22</sup> In other words, the subjects are held capable of judging the behaviors of their king, an ideology that naturally produces—as it did in England—the impetus to limit monarchical authority in favor of subjects’ rights.

The justification offered by legalists and political theorists alike for the limitations placed on the monarchy by the sovereign-subject compact may be found in the nation’s foundational myths. In nations evincing a sovereign-subject compact—like medieval England—the compact was predicated on the origin of the nation in the *communitas* rather than the king. Gough refers to this as an “original contract”:

the *Gesellschaftsvertrag*, or *pacte d’association*—which supposes that a number of individuals, living in a “state of nature,” agreed together to form an organized society ... This is a theory, then, of the origin of the state; it is commonly, though not necessarily, associated with the doctrine of “natural rights,” which belonged to individual men as such, and of which they agreed by the contract to surrender some, in return for a guarantee of the remainder.<sup>23</sup>

The implications of this “original” sovereign-subject compact, as Jean Bethke Elshtain remarks, is “that this grant of authority is conditional.”<sup>24</sup> Because the *communitas* is seen as the source of the monarch’s authority, it has the ability to limit or even rescind that authority as it sees fit, a sentiment articulated in the sixteenth-century tract *Vindiciae, Contra Tyrannos* (1577) by Hubert Languet: “So, as kings are constituted by the people, it seems definitely to follow that the whole people [*populus universus*] is more powerful than the king.”<sup>25</sup>

<sup>22</sup> Robin Headlam Wells, *Shakespeare’s Politics: A Contextual Introduction* (London: A&C Black, 2009), 116.

<sup>23</sup> Gough, 2–3.

<sup>24</sup> Jean Bethke Elshtain, *Sovereignty: God, State, and Self*, The Gifford Lectures (New York: Basic Books, 2008), 43.

<sup>25</sup> Hubert Languet, *Vindiciae, Contra Tyrannos*, ed. and trans. George Garnett (Cambridge: Cambridge University Press, 1994), 74.

The sovereign-subject compact required subjects' obedience as well as the monarch's compliance. If subjects committed treason without adequate reason, the monarch was justified in seizing their property or issuing warrants for their arrest, imprisonment, and even execution. If, on the other hand, the monarch violated this compact, his subjects were no longer obligated to obey or revere him, and (depending on the severity of the violation) may even justify rebellion, deposition, and regicide.<sup>26</sup> The reciprocity of this implicit agreement, argues Nenner, implies its contractual nature:

If a binding obligation was attempted on one side but was absent on the other, the agreement would be merely illusory. It would not, in fact, be a contract. This is why it was argued that the people, as a party to the original contract, could not promise to be bound to the terms of the agreement if the king chose not to be.<sup>27</sup>

Put simply, because both the monarch and subjects were expected to fulfill their side of the implied bargain, the sovereign-subject compact functioned as legally binding.

This understanding of sovereign accountability was being espoused in England before the Norman conquest, and the sentiment continued to place ideological and practical limitations on monarchical power up to the Revolution, in spite of some monarchs' attempts to resist them.<sup>28</sup> This sense of monarchical obligation argued that even regicide itself was justifiable when committed in the name of the common weal; the Shaftesbury Papers argue this case, claiming that "For though this wounds, yet it destroyes not the government; for though the King is killed in his naturall capacity; yet he dies not in his politique as King; for by the demise of the King, another immediately succeeds."<sup>29</sup> It is important to note, however, that in order to be legally permissible, regicide had to be the only means to secure the safety and dignity of the realm, as well as be justified by the monarch's neglect or abuse of common law and *communitas*. This meant, J.P. Sommerville notes, that "there was little point in advocating resistance to the king unless it had some chance of success. Those who did admit the legitimacy of resistance were

<sup>26</sup> James, 327, 374.

<sup>27</sup> Nenner, 40.

<sup>28</sup> Manegold of Lautenbach argued in the eleventh century that "If a king violates the compact under which he was elected (*si quando pactum, quo eligitur, infringit*), and disturbs and confounds what it was his business to set in order, the people is justly and reasonably absolved from its allegiance, since he was the first to break that faith which bound them together (*quipped cum fidem prior ipse deseruerit, que alterutrum altero fidelitate colligavit*). The people never binds itself by an oath to obey a ruler who is possessed by fury, and is under no obligation to follow such a man wherever his madness drives him" (Gough, 30). John of Salisbury echoed the sentiment in the twelfth century, Fortescue would repeat it again in the fifteenth, and Languet, Robert Persons, Christopher Goodman, and others in the sixteenth would continue the tradition in spite of monarchical insistence on absolutism during the Tudor dynasty under Henry VII, Henry VIII, Edward VI, Mary, and Elizabeth.

<sup>29</sup> *The Shaftesbury Papers*, Public Records Office (30/24/6B/425), qtd. in Nenner, 89.

unanimous in declaring that it had to take place on *public*, not private authority."<sup>30</sup> Resistance required public authority because the sovereign-subject compact itself was a public agreement between the *communitas* and the position, rather than the person, of the king.

The significance of the sovereign-subject compact in England, particularly when compared with more absolute continental monarchies, was its emphasis on cooperative governance. In order to assure that the terms of the sovereign-subject compact were properly maintained, the monarch was expected to rule with the assistance of his subjects. The development of communal policymaking—which culminated in the king-in-Parliament of the late medieval period—was the natural product of avoiding tyranny.<sup>31</sup> Put explicitly, Nenner observes, "Contract was England's guarantee against absolutism. As long as a compact, any compact, existed between king and people, there would be some restraint upon the freedom of the sovereign."<sup>32</sup> This notion of "restraint" or limitation on monarchical power formed the crux of nearly every internal governmental dispute in England, and ultimately produced the period of post-Wars of the Roses absolutism that, in turn, culminated in the legal execution of an anointed English king.

### English Tradition and Limited Sovereignty

Early English traditions were the product of Roman influence, but were more the consequence of the rejection of Roman rule than an embrasure of Roman law and hierarchy. David Starkey notes that the rejection of Roman practice by the Anglo-Saxons made the English monarchy—and common law—distinctive: "There is, uniquely in the Western Empire, an absolute rupture between the Roman province of *Britannia* and the eventual successor-state of Anglo-Saxon England."<sup>33</sup> Anglo-Saxon traditions and institutions persevered even through the Norman conquest, and, in fact, were demanded by the earls in their agreement to crown Henry I in 1100. Anglo-Saxon society was, broadly speaking, participatory, a unique system containing "a powerful and effective monarchy at the centre with institutions of local government which required—and got—the active involvement of most free men."<sup>34</sup> The elements present in Anglo-Saxon Wessex, a participatory government with a centralized monarchy that not only allowed but demanded subject involvement, became the staples of later English common law, providing the basis for arguments against absolutist monarchy in the fifteenth and sixteenth centuries.

By the late ninth century, monarchy in England was established enough to produce a sense of English proto-nationalism rooted in the belief that "*Cyning*

<sup>30</sup> Johann P. Sommerville, *Royalists and Patriots: Politics and Ideology in England 1603–1640*, Second Edition (London: Longman, 1999), 75.

<sup>31</sup> Eccleshall, 40–41.

<sup>32</sup> Nenner, 40.

<sup>33</sup> David Starkey, *Crown and Country: The Kings & Queens of England: A History* (London: HarperPress, 2006), 4.

<sup>34</sup> Starkey, *Crown*, 19.

*sceal rice healdan* (a king must protect his kingdom).<sup>35</sup> Furthermore, there was a historical precedent for election—or at least for performative designation—in Anglo-Saxon tradition; H.R. Loyn remarks that “In all Anglo-Saxon communities—as throughout the Germanic world—the general custom was for the man from the royal kin who was fittest to rule to be selected as successor.”<sup>36</sup> The concept of fitness is therefore integral to the ancient constitution; the next monarch was the nearest blood-kin who was also worthy of the crown.<sup>37</sup> The selection process produced a “government by consent, in which the leader is chosen by the people, or at least is answerable to them.”<sup>38</sup>

One of the earliest examples of subjects’ interference with the powers of the monarchy may be found in the *Anglo-Saxon Chronicle*, dated 1014, under the governance of Æthelred (subsequently known as the Unready), what Starkey refers to as “the Anglo-Saxon Magna Carta.”<sup>39</sup> The *Chronicle* reads:

Then all the councillors, both ordained and lay, advised that King Æthelred should be sent for, and declared that no lord was dearer to them than their natural lord—if he would govern them more justly than he did before. Then the king sent his son Edward here with his messengers, and ordered [them] to greet all his nation, and said that he would be a gracious lord to them, and would improve each of the things which they all hated, and each of those things that were done or declared against him should be forgiven, on condition that they all resolutely and without treachery turned to him. And full friendship was secured with word and pledge on either side, and [they] declared every Danish king outlawed from England for ever. Then during that spring King Æthelred came home to his own people, and he was gladly received by them all.<sup>40</sup>

<sup>35</sup> H.R. Loyn, *The Governance of Anglo-Saxon England 500–1087* (Stanford: Stanford University Press, 1984), 12.

<sup>36</sup> Loyn, 15.

<sup>37</sup> Loyn notes that “How closely the kin was defined is not easy to estimate,” but suggests that it was not restricted to primogeniture (15).

<sup>38</sup> Starkey, *Crown*, 24.

<sup>39</sup> Starkey, *Crown*, 69.

<sup>40</sup> Michael Swanton, ed., *The Anglo-Saxon Chronicle*, trans. Michael Swanton (New York: Routledge, 1998), 145. Insertions in the original. The Old English reads: “þy ilcan geare man hadode ælfrwig bisceop on Eoforwic to Lundenburuh on Sancta Iuliana mæssedæg. se flota þa eall gecuron Cnut to cyninge. þa ræddon þa witan ealle, gehadode læwede, þæt man æfter þam cyninge æþelrede sende, cwædon þæt him nan hlaford leofra nære þonne hyra gecynda hlaford, gif he hi rihtlicor healdan wolde þonne he ær dyde. þa sende se cyning his sunu Eadweard hider mid his ærenddracan het gretan ealne his leodscype, cwæð þæt he him hold hlaford beon wolde, ælc þæra þinga betan þe hi ealle ascunodon, ælc þara þinga forgyfon beon sceolde þe him gedon oððe cwæden wære, wið þam þe hi ealle anrædllice butan swicdome to him gecyrdon. man þa fulne freondscipe gefæstnode mid worde mid wedde on ægþre healfe, æfre ælcne Dæniscne cyning utlah of ænglalande gecwædon. þa com æþelred cyning innan þam læncotentid ham to his agenre þeode, he glædlice fram him eallum on fangen wæs” (Manuscript D: Cotton Tiberius

The agreement between Æthelred and his counselors that he would “be a gracious lord” and “improve each of the things which they all hated” indicates the power of the counselors to place limitations upon Æthelred as king. The fact that Æthelred and his counselors cemented their contract “with word and pledge on either side” indicates its mutuality, the sovereign-subject compact formalized in writing.

This foundation of limited participatory governance relied upon the mutual powers of the monarch and the *witan*, a consular body that provided the precedent for both Parliament and a powerful Privy Council. The role of the *witan* was both advisory and legislative, as Loyn explains:

The *witan* was of course a royal council. Yet it could in moments of crisis acquire not only a dignity but a function of its own. On the death of a king the process of election was carried out through the *witan* ... Those who acquired the throne by conquest or by physical strength were most careful to gain the general assent of the *witan*.<sup>41</sup>

The parallels between the later Parliament and the *witan* are obvious, and the *witan*'s duty of electing the new ruler even provided a conceptual basis for a sixteenth-century proposition made by William Cecil Lord Burghley for a Great Council to serve the same purpose upon Elizabeth's death. The combination of these Anglo-Saxon institutions with feudal Norman tradition formed the unique backbone of English common law and participatory monarchy for centuries to come.

Following the death of Cnut's son Hardecnut in 1042, the *witan* chose Æthelred's son, Edward (“the Confessor”), to succeed.<sup>42</sup> Edward had been raised in exile in Normandy, a fact that would ultimately smooth the transition to Norman rule following his own death early in 1066, although the feudal practices and customs he brought to England were not entirely welcomed by the *Jarls* who had risen to power under Cnut.<sup>43</sup> Upon Edward's death, William of Normandy and Harold Godwinson both proclaimed themselves heir to the throne of England.<sup>44</sup> William of Poitiers recorded in *The Deeds of William* (1071) that William was the rightful heir and that “This insensate Englishman did not wait for the public choice, but breaking his oath, and with the support of a few ill-disposed partisans, he seized the throne of the best of kings on the very day of his funeral, and when all the people were bewailing their loss.”<sup>45</sup> That the chronicle records the

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B.iv, The Anglo-Saxon Chronicle: An Electronic Edition [vol. 4] literary edition, accessed March 14, 2014, <http://asc.jebbo.co.uk/d/d-L.html>).

<sup>41</sup> Loyn, 101.

<sup>42</sup> C. Warren Hollister, *The Making of England: 55 B.C. to 1399*, Seventh Edition (Lexington: D.C. Heath and Company, 1996), 94.

<sup>43</sup> Hollister, 95.

<sup>44</sup> Loyn, 97.

<sup>45</sup> William of Poitiers, “The Deeds of William (c. 1071). Background to the Norman Conquest, 1064–1066,” in *Documents in British History, Volume I: Early Times to 1714*, Second Edition, ed. Brian L. Blakeley and Jacquelin Collins (New York: McGraw Hill, 1993), 33.

succession in terms of “the public choice” emphasizes not only the importance, but also the continuance of the sovereign-subject compact in English rule, despite the transition from an ostensibly English to a Norman king.

In ideological terms, the notion that English law and governance were inherently Anglo-Saxon rather than Anglo-Norman—known as the “Norman Yoke”—argued that “Before 1066 the Anglo-Saxon inhabitants of this country lived as free and equal citizens, governing themselves through representative institutions. The Norman Conquest deprived them of this liberty, and established the tyranny of an alien King and landlords. They fought continuously to recover them, with varying success.”<sup>46</sup> Participatory and limited governance was seen as the true English form of rule, based upon the ancient unwritten constitution and reliant upon the tenets of common law. Therefore, any rejection of absolute monarchy was a rejection of a form of governance that was *un-English*, permanently linking limited monarchy with national identity.

Anxiety about the “loss” of this pure (Anglo-Saxon) English identity grew out of a specifically English origin myth, which predated English law to before the invasion of the Romans or the assertions of divine intercession in the Biblical new Testament. Derek Wilson explains that in Fortescue’s narrative, common law “had been established, pure and entire, in ‘Albion’ by a band of heroes returning from the Trojan Wars, led by one Brute and therefore antedated not only Roman law (the basis of most continental legislation) but also those systems which drew their inspiration from the Christian Gospel.”<sup>47</sup> Although “Theories of lost rights, of a primitive happy state, have existed in nearly all communities,” in England this “original state” of rights was aligned with the Anglo-Saxons or Arthurian Britain, rather than with an idyllic fictional locale (although those, like Arcadia or Eden, also existed).<sup>48</sup> However, the prevalence of this attitude led “William [I] ... to use existing English institutions to the full,” rather than supplanting them with his own Norman practices.<sup>49</sup>

For my purposes, the next significant development in English sovereignty occurred with the accession of Henry I in 1100. What is notable about Henry I’s accession is his coronation oath, written in response to his predecessor’s continual attempts to seize lands from the heirs of earls and clergy upon their deaths:

Neither sell nor put at farm nor, on the death of an archbishop, bishop, or abbot, take anything from a church’s demesne or from its vassals during the interval before a successor is installed ... If any of my barons or earls or other tenants shall die, his heir shall not redeem his land as he did in my brother’s time, but shall henceforth redeem it by a just and lawful relief.<sup>50</sup>

<sup>46</sup> Christopher Hill, *Puritanism & Revolution: The English Revolution of the 17th Century* (New York: Schocken Books, 1970), 57.

<sup>47</sup> Derek Wilson, *In the Lion’s Court: Power, Ambition and Sudden Death in the Reign of Henry VIII* (New York: St. Martin’s Press, 2001), 21.

<sup>48</sup> Hill, 50.

<sup>49</sup> Loyn, 183.

<sup>50</sup> Qtd. in Hollister, 132.

Although Henry I did not keep all of the promises contained in this oath, it nevertheless provides legal contractual precedent for the understanding of inheritance preserved in common law tradition.<sup>51</sup> Moreover, Henry was specifically required to return England to the traditions observed under Edward the Confessor. His reign is noted as “the coming of age of the royal administration,” the period when Anglo-Saxon and Norman traditions solidified into the institution of the English monarchy as it would persist into the fifteenth century.<sup>52</sup>

Based on Henry I’s coronation oath, Magna Carta, established in 1215, went into much greater detail in terms of the king’s obligations, subjects’ rights, and their recourse if those rights were violated.<sup>53</sup> It reflected an ethos that was uniquely English, but applied a methodology (as a written and ratified contract) that had appeared elsewhere on the continent, namely in Germany, Italy, Hungary, and Sicily.<sup>54</sup> Elshtain observes that while Magna Carta was in some ways highly progressive, in other ways it was profoundly traditionalist: “The famous Magna Carta, one signpost on the road to freedom in the standard story, was a restorationist act, seeking to bind the king in the standard medieval ways.”<sup>55</sup> Although the most commemorated, like later invocations of common law and the ancient constitution, Magna Carta was powerful because it drew upon a tradition of participatory government that formed the basis of later understandings of limited monarchy, republicanism, and even democracy.

In the final clause of Magna Carta, the king agrees to submit himself to the judgment of his barons, who are permitted to elect representatives from among themselves for the express purpose of passing judgment on the king’s ability to uphold Magna Carta and the rights contained therein. And if the king should fail both to uphold them and to subsequently address this failure, this baronial body,

together with the community of the entire country, shall distress and injure us in all ways possible—namely, by capturing our castles, lands, and possessions and in all ways that they can—until they secure redress according to their own decision, saving our person and [the person] of our queen and [the persons] of

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<sup>51</sup> William I brought with him a continental understanding of feudalism that included primogeniture. Prior to this, widows, daughters, and non-eldest sons were able to inherit land based on the will of the original landowner (Clayton Roberts and David Roberts, *A History of England: Prehistory to 1714*, vol. 1, Second Edition [Englewood Cliffs: Prentice-Hall, Inc., 1985], 78). Despite the introduction of the feudal system, William (and his heirs) retained the Anglo-Saxon institutions of “the chancery, the chamber, the geld, the sheriff, the fyrd, and shire and hundred courts” (Roberts and Roberts, 85). This fusion of Norman and Anglo-Saxon tradition permitted the success of Norman rule through Henry I and produced the common law traditions to which later kings were held accountable.

<sup>52</sup> Hollister, 141.

<sup>53</sup> Hollister, 180.

<sup>54</sup> Hollister, 181.

<sup>55</sup> Elshtain, 66.

our children. And when redress has been made, they shall be obedient to us as they were before.<sup>56</sup>

In other words, the barons insisted upon the legal ability not simply to censure their monarch, but to actively pursue their rights, and to obtain redress if their rights are violated. It also reinforces the reciprocal nature of the sovereign-subject compact by stating that once the monarch has made amends, his subjects "shall be obedient to us as they were before." While proscribed by Magna Carta, regicide would be debated as a viable option in later treatises and pamphlets, particularly following the rise of absolutism under the Tudor and Stuart dynasties.

The first provision of Magna Carta states that "We have also granted to all freemen of our kingdom, for us and our heirs forever, all the liberties hereinunder written, to be had and held by them and their heirs of us and our heirs."<sup>57</sup> Included in these "liberties" were rights of landholding and tenancy, the right not to be imprisoned without cause, the right of widows not to marry without their consent, the rights of the cities to create their own laws, and the stipulation that the monarch would call together a baronial body to oversee his actions.<sup>58</sup>

One major consequence of Magna Carta was felt immediately: a small baronial council was inadequate to accomplish the task of regulating the monarchy. Under Henry III (1216–1272), this council grew increasingly belligerent as Henry attempted to seize lands and property to support his futile efforts to reclaim the Angevin Empire in France.<sup>59</sup> Ultimately, Henry was forced to concede baronial authority following his inability to repay a papal debt in the Provisions of Oxford (1258) and Westminster (1259), which stipulated the inclusion of the clergy as well as the barons in the royal council.<sup>60</sup> The Provisions themselves contain an explicit reference to the term "parliament" in conjunction with a meeting of the king with a specific group of councilors and elected magnates in order to "treat about the business of the king and kingdom."<sup>61</sup> After a failed arbitration by the French King Louis IX in 1263, the barons took up arms, and in the ensuing struggle two notable events transpired: first, Henry's son Edward assumed increasing power and influence; and second, the baronial council assumed the more formal name and role of Parliament, arguably the most important constitutional innovation, after Magna Carta itself, in English rule.<sup>62</sup> Although drawn from the Anglo-Saxon *witan*, Parliament as a legislative authority composed of both nobles and elected

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<sup>56</sup> Brian L. Blakeley and Jacquelin Collins, eds., "Magna Carta, 1215," in *Documents in British History: Early Times to 1714*, Second Edition, vol. 1, 2 vols (New York: McGraw Hill, 1993), 67.

<sup>57</sup> Blakeley and Collins, 64.

<sup>58</sup> Blakeley and Collins, 64–67.

<sup>59</sup> Hollister, 236.

<sup>60</sup> Hollister, 238–39; Roberts and Roberts, 153.

<sup>61</sup> A.L. Brown, *The Governance of Late Medieval England 1272–1461* (Stanford: Stanford University Press, 1989), 157.

<sup>62</sup> Hollister, 242–43.

representatives extended the scope of participatory governance from the nobility to the entire commonwealth by proxy.

Parliament's primary role in the early years after its official inception was financial in nature, rather than legislative; it was convened for the purpose of ratifying taxation as a "representative institution," and it took this role very seriously, resisting royal attempts to levy taxes without what it deemed adequate necessity and establishing a tradition of resisting the crown, particularly in fiscal matters.<sup>63</sup> By 1295, the makeup and relationship of Parliament to the king had altered, coming to resemble—in the aptly named "Model Parliament"—the form which it would take for the centuries to come, including "magnates, bishops, councillors, knights of the shire, burgesses from the towns, and proctors elected to represent the national clergy," in addition to bishops, abbots, barons, and earls.<sup>64</sup> During the reign of Edward II, "knights and burgesses as well as prelates, earls, barons and possibly representatives of the lower clergy" were all present at the king's deposition.<sup>65</sup> By the first summons of Parliament under Edward III in 1327, the commons were actively presenting petitions, "describing themselves," Michael Prestwich explains, "as 'the community of the land,' to the king and council."<sup>66</sup> This notion of a "community of the land" prefigures the early modern obsession with the idea of the "common weal" or "commonwealth," significant for my purposes because of its deliberate inclusion of the nation as a whole in the sovereign-subject compact.<sup>67</sup>

Although during the sixteenth and seventeenth centuries Parliament would come to represent (and enact) limitations on monarchical authority, in its early forms it was viewed as an extension of the king's power rather than a hindrance to it. G.R. Elton notes that Parliament evolved as a unification of the "political and judicial tasks once discharged by the *curia regis* ['king's court']," and that "The original reason for calling Parliaments was not to call into being a 'counterbalance' or restraint, but simply that the king wanted assistance in the tasks of government."<sup>68</sup> So although the emergence of Parliament in the thirteenth century as a body composed of both Lords and Commons indicates progression toward a more unilaterally representative government, it also produced the conditions necessary for the emergence of absolutism in England by differentiating the monarch from the lords of his court.

<sup>63</sup> Roberts and Roberts, 153.

<sup>64</sup> Roberts and Roberts, 155–56. See also Hollister, 246 and Michael Prestwich, *The Three Edwards: War and State in England 1272–1377* (London: Routledge, 1990), 119.

<sup>65</sup> Prestwich, 129.

<sup>66</sup> Prestwich, 129.

<sup>67</sup> See Chapter 1 for a more detailed discussion of the origins of the term "commonwealth."

<sup>68</sup> G.R. Elton, *"The Body of the Whole Realm": Parliament and Representation in Medieval and Tudor England*, for the Jamestown Foundation of the Commonwealth Foundation of Virginia (Charlottesville: University Press of Virginia, 1969), 3, 16.

With the introduction of statute law in 1275 in the First Statute of Westminster, the groundwork was laid for the later limiting capacity of Parliament as a participatory body in English polity, and, Prestwich notes, "By 1327 they were initiating legislation on a large scale."<sup>69</sup> This significant increase in power enabled the first legal deposition, in 1327, of an English king, Edward II, who was, it is worth noting, also the first monarch to have succeeded to the throne without baronial confirmation.<sup>70</sup> Some of the newly introduced questions asked in his coronation oath indicate that Edward's subjects were skeptical from the start about his (un)willingness to preserve their rights:

Sire, will you grant and keep and confirm to the people of England by your oath the laws and customs given them by the previous just and God-fearing kings, your ancestors, and particularly the laws, customs, and liberties granted the clergy and people by the glorious king, the sainted Edward [the Confessor], your predecessor?

...

Sire, do you grant to be held and kept the laws and just customs which the community of your realm shall choose, and, to the best of your ability, defend and enforce them to the honor of God?<sup>71</sup>

The emphasis on "laws and just customs" not only of Edward's ancestors, but also of "the community of your realm," demonstrates the degree to which participatory discourse was becoming a standard component of rule. The terms presented to Edward in his oath are the terms of the sovereign-subject compact, revised specifically for him in an attempt to ensure that he would uphold his duties as king.

As several historians have noted, the fact that Parliament deposed Edward served as a precedent that future English kings could not ignore.<sup>72</sup> Also of significance was the fact that Edward's deposition was framed as coming from "the whole of the political nation," as well as with "principles of both feudal and Roman law."<sup>73</sup> The 1326 Articles of Accusation, Starkey observes, enumerated the reasons for the need to remove Edward from the throne:

The articles accused the king, the fount of justice, of a series of high crimes against his country. Instead of good government by good laws he had ruled by evil counsel. Instead of justice he had sent noblemen to shameful and illegal deaths.

<sup>69</sup> Helen M. Cam, *Studies in the Hundred Rolls: Some Aspects of Thirteenth-Century Administration*, vol. 6, Oxford Studies in Social and Legal History 11 (Oxford: Clarendon Press, 1921), 39; Prestwich, 135. Although Parliament began to enact and ratify statute law under Edward I, it was not until 1312, in the reign of Edward II, that Parliament proclaimed that its consent was necessary for all legislative decisions, which also required "common assent" in order to be ratified (Prestwich, 125–26).

<sup>70</sup> Figgis, 27.

<sup>71</sup> Qtd. in Hollister, 275.

<sup>72</sup> Hollister, 281–83; Prestwich, 98–99; Roberts and Roberts, 161; Starkey, *Crown*, 225.

<sup>73</sup> Prestwich, 98.

He had lost Scotland and Gascony and he had oppressed and impoverished England. In short, he had broken his coronation oath—here treated as a solemn contract with his people and his country—and he must pay the price.<sup>74</sup>

What is most significant about the Articles is that the responsibility for removing Edward became attributed to the entire *communitas*, not simply the barons, and placed the onus for Edward's downfall on the king's incompetence and his failure to fulfill his portion of the sovereign-subject compact. Edward's deposition thereby served as a precedent for direct Parliamentary intervention in all matters of sovereignty.

However, despite the conflicts which arose as a consequence of disagreements between Parliament and the monarch, the overall relationship between the king and Parliament was one, Prestwich argues, "of co-operation and collaboration" rather than "a constant struggle."<sup>75</sup> Even in the deposition of Edward II, as Prestwich notes, "no attempt was made to alter the constitutional position of the monarchy."<sup>76</sup> It is clear that the intention of Parliament was not to disrupt the already existing order of common law, but, rather, to indicate that a monarch who contravened that law was subject to removal and punishment enacted by the *communitas* within the extant framework of the English polity.

Up until the English Civil War the discourse of rebellion reflected this ethos of correction rather than revolution; the tradition of the ancient constitution and limited participatory monarchy was so deeply entrenched that even the rhetoric of the Civil War, like nearly every rebellion (noble and common) that preceded it, sought to reiterate the natural rights of English citizens in nationalistic terms. Despite nearly six centuries of rule from Norman descent, the invocation of Anglo-Saxon traditions and "the Norman Yoke theory also stirred far profounder feelings of English patriotism and English Protestantism. Herein," notes Christopher Hill, "lay its strength. Men fought for the liberties of *England*, for the birthrights of *Englishmen*."<sup>77</sup> This appeal to Englishness enabled the sovereign-subject compact to endure up to and during the Wars of the Roses, and even to temper the popular rhetoric of absolutism and providential divine right that arose under the early Tudors. Furthermore, it is undoubtedly the pervasiveness of this chthonic Englishness that encouraged the rise of the English history play as a subgenre in the final decades of Elizabeth's reign, and which contributed to the willingness of Parliament to consider and then commit regicide in the name of the English Commonwealth.

But before such a radical act of independence could be possible, the English tradition of common law, the ancient constitution, the sovereign-subject compact, and Parliament itself would be threatened by the importation of a foreign ideology of rule, that of absolutist divine right. By the end of Richard II's reign in 1399, Parliament had come to resemble its present bicameral form, and had also

<sup>74</sup> Starkey, *Crown*, 225.

<sup>75</sup> Prestwich, 146.

<sup>76</sup> Prestwich, 99.

<sup>77</sup> Hill, 67.

become an entrenched and indispensable part of English government and national identity. When Richard II himself was deposed and the line of succession from William I fractured (for the first time), it was Parliament alone that possessed the unquestioned power to designate Henry IV.<sup>78</sup> By the mid-fifteenth century, it was to the authority of Parliament, rather than the king, that statute and taxation appealed, as Elton observes: "The critical issue is the addition of the phrase 'by authority of Parliament'; this occurred first in 1432. It was used off and on, till from 1455 it became customary."<sup>79</sup>

This was the political atmosphere that greeted the close of the fourteenth century and the rise of Parliament as a representative governing body with the capacity to tax, legislate, and render judgment, even on the king himself. By the beginning of the fifteenth century, Parliament had been responsible for the deposition of two kings—Edward II and Richard II—and had established itself as capable of altering the line of succession, a right it would reassert again under Elizabeth, when it would declare questioning its right to do so treasonous.<sup>80</sup> The role of not only Parliament, but the monarch himself (or herself) would change dramatically with the civil unrest of the Wars of the Roses and the rise of the Tudor and Stuart dynasties. In the struggle to find political stability, England would begin to loosen its grip on the participatory traditions of the Anglo-Saxons and become more continental under the influence of the kings who began to espouse absolutism at the end of the feudal period and the desire of the nation as a whole for clarity and stability in succession.

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<sup>78</sup> Starkey, *Crown*, 243.

<sup>79</sup> Elton, *Body*, 15.

<sup>80</sup> England, *13 Eliz. Cap. 1*, 1571, Calendar of State Papers Domestic; Figgis, 87.