

Parliament and Community

Theory and Practice in the Insular World,
c.1399–c.1460

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DECLARATION

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SUMMARY

This thesis presents a comparative study of the communitarian language and ideas which underpinned parliamentary institutions in English Ireland and Scotland from c. 1399–c.1460. Recent years have seen a proliferation of studies on the medieval English parliament, which offer new frameworks of interpretation for how ideological concepts—especially those which pertain to parliament and community—were located within the realm of political discourse and governance. This thesis extends the intellectual framework of the ‘new constitutional history’ in England to a comparative study of Irish and Scottish parliaments, but with a closely contextualised approach giving primacy to the idea that there was no one ‘ideal’ model of parliament in the insular world. As such, the comparative element of this thesis is firmly focused upon Ireland and Scotland, whereas England occasionally serves as a ‘backdrop’ against which dominant interpretations can be contested and challenged by testing their application in these two structurally different polities: ‘colonial’ Ireland and ‘sovereign’ Scotland.

The present study is structured around four fundamental ideological concepts which together underpin current conceptions of parliament’s political function: legitimacy, counsel, representation, and community. These concepts are treated thematically; each ‘part’ of this thesis presents a unifying theme around which indicative case studies are presented. Much as these concepts and ideas overlapped and interlinked in contemporary medieval political thought, treatment of these distinct concepts also overlaps throughout this thesis; however, the idea of ‘community’, or communal authority, is given primacy as our overarching concept. Crucially, this thesis rejects the idea—implicit in much of the historiography—of a unified, cohesive and, above-all, *enduring* ‘political community’, particularly one which acted as a corrective to the worst excesses of royal power in the fifteenth century. Instead, this thesis presents an analysis of how ideas of community and communal authority could be asserted, negotiated, contested and rejected in a variety of circumstances. The unifying theme around which the concept of ‘community’ (and the thesis as a whole) has been organised is twofold: around political structures, and around the body of political thought that parliamentarians in England, English Ireland and Scotland shared with one another, and indeed with other European polities in the later Middle Ages. The different ways in which these concepts functioned in each polity are highlighted by their altered use, application and expression in superficially similar documents. Comparative analysis of such records suggests that political ideas and principles—and specifically those which underpinned communal authority—both enabled and constrained political action in English Ireland and Scotland to a much greater degree than has yet been appreciated.

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ABBREVIATIONS & CONVENTIONS

<i>AClon</i>	<i>The Annals of Clonmacnoise, Being the Annals of Ireland from the Earliest Period to A.D. 1408, Translated into English A.D. 1627 by Conell Mageoghagan</i> , ed D. Murphy (Dublin, 1896).
<i>Affairs. Ire.</i>	G.O. Sayles (ed.), <i>Documents on the Affairs of Ireland Before the King's Council</i> (Dublin, 1979).
<i>AU</i>	<i>Annala Uladh ('Annals of Ulster'), Otherwise Annala Senait ('Annals of Senat'): A Chronicle of Irish Affairs, A.D. 431 to A.D. 1540</i> , ed W.M. Henessey and B. MacCarthy (4 vols, Dublin 1887–1901; repr 1998).
<i>Aquinas, De Regimine Principum</i>	Thomas Aquinas, 'De Regimini Principum', in <i>Aquinas: Political Writings</i> , ed. R.W. Dyson (Cambridge, 2002).
<i>Aquinas, Summa Theologiæ</i>	Thomas Aquinas, <i>Summa Theologiæ</i> (Vol. 36: Prudence), ed and trans. T. Gilby (Cambridge, 1974).
<i>CCR</i>	<i>Calendar of the Close Rolls Preserved in the Public Record Office, 1272–[1509]</i> (PRO, 47 vols, London, 1892–1963).
<i>Chron. Auchinleck</i>	'The Auchinleck Chronicle', ed C. McGladdery in <i>James II</i> (Edinburgh, 2015).
<i>Chron. Bower</i>	Walter Bower, <i>Scotichronicon</i> , ed D.E.R. Watt <i>et al.</i> (9 vols, Aberdeen, 1989-98).
<i>Chron. Marlborough</i>	Bibliothèque Municipale de Troyes Ms 1316 (Henry Marlborough's chronicle).
<i>Chron. Knighton</i>	<i>Knighton's Chronicle, 1337–1396</i> , ed G.H. Martin (Oxford, 1995).
<i>Chron. Pluscarden</i>	<i>Liber Pluscardensis</i> , ed F.J.H. Skene (2 vols, Edinburgh, 1877-80).
<i>Chron. Usk</i>	<i>The Chronicle of Adam Usk, 1377–1421</i> , ed C. Given-Wilson (Oxford, 1997).

<i>Chron. Walsingham</i>	<i>The Saint Albans Chronicle: The Chronica Maiora of Thomas Walsingham, i: 1376–1394</i> , ed J. Taylor, W.R. Childs and L. Watkiss (2 vols, Oxford 2003).
<i>Chron. Wyntoun</i>	<i>The Original Chronicle of Andrew of Wyntoun</i> , ed F.J. Amours (6 vols, Edinburgh and London, 1903–1914).
<i>CIRCLE</i>	<i>A Calendar of Irish Chancery Letters, c. 1244–1509</i> , ed P. Crooks (Dublin, 2012), online edn at www.chancery.tcd.ie .
<i>COD</i>	E. Curtis (ed.), <i>Calendar of Ormond Deeds, 1172–1603</i> (6 vols, Dublin, 1932–43).
<i>Copiale</i>	<i>Copiale Prioratus Sanctiandree: The Letter-Book of James Haldenstone, Prior of St Andrews (1418–1443)</i> , ed J.H. Baxter (London, 1930).
<i>CPR</i>	<i>Calendar of the Patent Rolls Preserved in the Public Record Office, 1232–[1509]</i> (53 vols, London, 1911–).
<i>CTNA</i>	P. Dryburgh and B. Smith (eds), <i>Handbook and Select Calendar of Sources for Medieval Ireland in the National Archives of the United Kingdom</i> (Dublin, 2005).
<i>Dethe</i>	M. Connolly (ed.), ‘The Dethe of the Kynge of Scotis: A New Edition’, <i>Scottish Historical Review</i> , 71:191/192, parts 1 & 2 (1992), pp. 46–69.
<i>DSL</i>	<i>The Dictionary of the Scots Language</i> , ed V. Skretcowicz <i>et al.</i> (Dundee and Edinburgh, 2003–2015), www.dsl.ac.uk .
<i>Ellis, Letters</i>	H. Ellis (ed.), <i>Original Letters Illustrative of English History</i> (Series 2, 4 vols, London 1827).
<i>ER</i>	<i>The Exchequer Rolls of Scotland</i> , ed J. Stuart and G. Burnett (23 vols, Edinburgh, 1878–1908).
<i>Gilbert, Viceroy</i>	J.T. Gilbert, <i>History of the Viceroy of Ireland with Notices of the Castle of Dublin and its Chief Occupants in Former Times</i> (Dublin, 1865).

Hay, <i>Gouvernaunce</i>	Gilbert Hay, ‘The Buke of the Gouvernaunce of Princis’, in J.H. Stevenson (ed.), <i>Gilbert of the Haye’s Prose Manuscript, Vol. II</i> (Edinburgh, 1914).
Hay, <i>Knychthede</i>	Gilbert Hay, ‘The Buke of the Ordre of Knychthede’ in J.H. Stevenson (ed.), <i>Gilbert of the Haye’s Prose Manuscript, Vol. II</i> (Edinburgh, 1914).
Hay, <i>Law of Armys</i>	Gilbert Hay, ‘The Buke of the Law of Armys’ in J.H. Stevenson (ed.), <i>Gilbert of the Haye’s Prose Manuscript, Vol. I</i> (Edinburgh, 1901).
Justinian Code	F.H. Blume, Annotated Justinian Code, 2 nd Edition, ed T. Kearley (Unpublished Blume text 1920–52, 2 nd Edition 2008, University of Wyoming), online edn at http://hdl.handle.net/10176/wyu:12399 .
NAI	National Archives of Ireland.
NLI	National Library of Ireland.
NLS	National Library of Scotland.
NRS	National Records of Scotland.
OED	<i>Oxford English Dictionary Online</i> , ed J. Pearsall <i>et al.</i> (Oxford, 2015), online edn at www.oed.com .
ODNB	<i>Oxford Dictionary of National Biography</i> , ed D. Cannadine <i>et al.</i> (Oxford, 2018), online edn at www.oxforddnb.com .
Peerage	G.E. Cokayne, <i>The Complete Peerage of England, Scotland, Ireland, Great Britain and the United Kingdom</i> , ed V. Gibbs <i>et al.</i> (12 vols, London, 1910–59).
PKCI	<i>A Roll of the Proceedings of the King’s Council in Ireland, for a Portion of the Sixteenth Year of the Reign of Richard the Second, A.D. 1392–93</i> , ed J. Graves (London, 1877).
<i>Policraticus</i>	John of Salisbury, <i>Policraticus</i> , ed and trans. C.J. Nederman (Cambridge, 1990).
PPC	<i>Proceedings and Ordinances of the Privy Council of England</i> , ed N.H. Nicolas (7 vols, London, 1834–7).

PRO	Public Record Office [now TNA].
PROME	<i>The Parliament Rolls of Medieval England</i> , ed C. Given-Wilson <i>et al.</i> (Leicester, 2005), online edn at www.sd-editions.com/PROME .
RCH	E. Tresham (ed.), <i>Rotulorum Patentium et Clausorum Cancellariae Hiberniae Calendarium, Hen. II–Hen. VII</i> (Dublin, 1828).
Reg. Fleming	<i>The Register of Nicholas Fleming, Archbishop of Armagh, 1404–1416</i> , ed B. Smith (Dublin, 2003).
Reg. Swayne	<i>The Register of John Swayne, Archbishop of Armagh and Primate of Ireland, 1418–39</i> , ed D.A. Chart (Belfast, 1935).
RHL Hen IV	<i>Royal and Historical Letters During the Reign of Henry IV</i> , ed F.C. Hingeston (2 vols, London, 1860–65).
RMS	<i>The Register of the Great Seal of Scotland</i> , ed J.M. Thompson (11 vols, Edinburgh, 1882–1914).
RPS	<i>The Records of the Parliaments of Scotland to 1707</i> , ed K.M. Brown <i>et al.</i> (St Andrews, 2007–15), online edn at www.rps.ac.uk .
Statutes, John–Hen. V	<i>Statutes and Ordinances and Acts of the Parliament of Ireland, King John to Henry V</i> , ed H.F. Berry (Dublin, 1907).
Statutes, Hen. VI	<i>Statute Rolls of the Parliament of Ireland in the Reign of King Henry the Sixth</i> , ed H.F. Berry (Dublin, 1910).
TCD	Trinity College Dublin.
TNA	The National Archives of the United Kingdom.

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LK

INTRODUCTION

Community, Contrasts and Comparisons

BY THE FIFTEENTH CENTURY, parliaments in the insular world—as well as representative assemblies further afield—had become formalized settings in which dialogue between politically-empowered sections of society could take place. In theory, these assemblies gained much of their power, real or imagined, from their representative and consultative characteristics—in other words, from the capacity of a group of individuals to exercise legitimate authority on behalf of a given community as a whole. This idea of communal authority, as vested in some sort of ‘political community’, remains fundamental to our understanding of medieval representative assemblies: what they were, how they functioned, and why they gained such an enduring position in the political structures of so many polities across medieval Europe.¹ Of course, in medieval society more broadly, ideas of communal authority were both ubiquitous and multifarious. They were articulated at the highest levels of international politics—in the conciliarist debates of the papal schism, to take a high-profile example—as well as in the day-to-day politics of urban communities across a swathe of European polities.² Yet within representative assemblies like parliaments, communitarian ideas and principles acquired unusual force. In terms of larger political structures, these institutions provided the space, means and mechanisms by which a broader ‘community’ could engage actively with governance and effect political change at the highest levels of what we might advisedly describe as national politics. More

¹ A. Cosgrove and J.I. McGuire, *Parliament and Community* (Belfast, 1983). This thesis shares a title with a study which explicitly linked together the subjects of ‘parliament’ and ‘community’, and more importantly, placed studies of medieval Irish representative assemblies firmly within an international, *long durée*, context. The papers published in that volume had been read at a meeting of the Irish Conference of Historians which gathered at University College, Dublin in 1981. The choice of ‘parliament and community’ as an organising theme derived from the organisers’ wishes to ‘reflect a revived and growing interest...in legislative and representative assemblies’. It has to be said that in the three decades which followed, very little attention was paid to the medieval Irish institution; however, the intellectual setting in which the conference organisers placed the study of parliament—‘in its wider setting, in its relationship with society, with the community or communities it represented, served or dominated’—has served as a guiding inspiration for this thesis (Cosgrove and McGuire, *Parliament and Community*, p. 3).

² J. Watts, *The Making of Polities: Europe, 1300–1500* (Cambridge, 2009), pp. 132–3. See S. Reynolds, *Kingdoms and Communities in Western Europe, 900–1300* (Oxford, 1997); B. Guenée, *States and Rulers in Later Medieval Europe*, trans. J. Vale (Oxford, 1985).

importantly, for insular parliaments in the fifteenth century, representative assemblies enabled political actors to do so on a relatively *thoroughgoing* basis, rather than in highly exceptional or extraordinary circumstances.³

Any study of the ways in which communitarian ideas were used and articulated in such circumstances—in other words, how communitarian ideas gained expression in dynamic practice, rather than simply in a theoretical context—must engage, from the outset, with a set of serious methodological and conceptual questions regarding the term ‘community’. Firstly, with respect to methodology, historians differ considerably in their interpretations as to what—or who—might have constituted a ‘community’ in the Middle Ages. Of course, this is hardly a new observation; the problems associated with studies which place ‘community’ as a central organising theme have long been recognised. From an analytical perspective, as Susan Reynolds put it, a key problem is that ‘almost any class or category of people is sometimes called a community, even if they do not act collectively or form anything that most sociologists or anthropologists would call a group.’⁴ Quite so. Problems of definition abound: to take but a few obvious examples, the term ‘community’ could be used to describe a group of people who live in the same geographically-bounded area, or to refer to groups who share particular characteristics or identities, or even to groups of people who simply share common interests or beliefs. For medieval studies, lack of precision in the way that the word ‘community’ is used has attracted no small degree of criticism. In 1994, Christine Carpenter argued memorably that the word ‘community’ should be banned from all academic writing.⁵ Carpenter rightly criticised the way in which this particular analytical category had been reduced to a ‘shorthand’ which obscured, rather than

³ For a recent comparative study of political representation in medieval Europe, see M. Damen, J. Haemers and A.J. Mann (eds), *Political Representation: Communities, Ideas and Institutions in Europe, c. 1200–c.1690* (Leiden, 2018). For an older survey of medieval parliaments see A. Marongiu, *Medieval Parliaments: A Comparative Study*, trans. S.J. Woolf (London, 1968).

⁴ Reynolds, *Kingdoms and Communities*, pp. 1–2.

⁵ C. Carpenter, ‘Gentry and Community in Medieval England’, *Journal of British Studies*, 33:4 (1994), pp. 340–380, at p. 340. Incidentally, Carpenter also commented—wryly—that there was an ‘even stronger case’ for banning the term from modern political vocabulary, and especially the lexicon of those politicians who believe, in Carpenter’s words, that ‘if they call things “communities” often enough, that will somehow create them’ (Carpenter, ‘Gentry and Community’, p. 340). Medieval political actors, though, may have had rather more in common with their modern counterparts than they have been given credit for; as we shall see, this was *precisely* the purpose for which communitarian language was invoked on certain occasions in English Ireland and Scotland during the fifteenth century.

illuminated, the complex ways in which medieval groups and societies were organised.⁶ Yet 'community' remains a 'fashionable' word, and continued use of 'community' as an organising theme and intellectual framework suggests that this analytical category is still a valuable heuristic device.⁷ It is one that is (or should be) of particular importance for historians who engage explicitly with central historical questions of power and legitimate authority: who could exercise power (and who could not), who could claim legitimate authority to do so, and on what basis. These are issues of particular relevance to historians of representative assemblies, precisely because communal power and authority is commonly described as being exercised by that most ubiquitous and ill-defined historiographical expression of all: the 'political community'.⁸

From a conceptual perspective, too, there are significant difficulties associated with the study of 'community' in a medieval context. Most obviously, there is a pressing need for historians who engage with the term community to distinguish clearly between community as an 'analytical category' employed to frame historical research, and the 'historical idea' or concept of community as it was understood and used by contemporaries.⁹ After all, communitarian language became a fundamental aspect of political discourse in Europe from the thirteenth century, and concepts of community were expressed in a broad variety of forms and expressions.¹⁰ For insular

⁶ Carpenter, 'Gentry and Community', p. 380.

⁷ Reynolds, *Kingdoms and Communities*, p. 1. See, for instance, E. Hoyden, C. Lutter and W. Pohl (eds), *Meanings of Community across Medieval Eurasia: Comparative Approaches* (Leiden, 2016).

⁸ 'In passing', Norman Macdougall clearly articulated this central problem in a Scottish context in 1994; Macdougall posed the highly important question of 'whether the term "political community", a useful shorthand to describe those who played a major role in Scottish politics, is not now becoming over-used to the point of losing its meaning. The danger is that this ill-defined community takes on the character of a hugely influential organ of government, apparently regulating feuds between Crown and aristocracy, pursuing a *via media* in major crises, acting in general as the political conscience of the nation...I wonder whether the term means anything more, in the final analysis, than the establishment of the day, or, in time of crisis, any faction temporarily in power' (N. Macdougall, 'Response: At the Medieval Bedrock', *Scottish Historical Review*, 73:195, pp. 25–29, at p. 26).

⁹ For this distinction see P. Crooks and T. Parsons, 'Empire, Bureaucracy and the Paradox of Power', in P. Crooks and T. Parsons (eds), *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge, 2016), pp. 3–29, at p. 4.

¹⁰ For discussion of the development of concepts of 'community' in England from the thirteenth century see M. Prestwich, 'Parliament and the Community of the Realm in the Fourteenth Century,' in A. Cosgrove & J.I. Maguire (eds), *Parliament and Community* (Dublin, 1981), pp. 5–24. For a broader discussion of 'community' in European assemblies see Marongiu, *Medieval Parliaments* and Watts, *Making of Politics*, pp. 131–145.

parliamentarians in the fifteenth century, the connotations and meanings attached to the term community were often very different to those with which the modern reader will be familiar. The same point applies to related terms; as John Watts observed, ‘community’ was just one of a body of words which designated a collectivity—these included ‘commons’, ‘commune’, ‘commonalty’, ‘commoner’, and so on.¹¹ It is, however, imperative to bear in mind that any search for the concept—indeed, the phenomenon—of community in our medieval records must not be limited to *only* those circumstances in which the term (or its etymological variants) appeared. The concept of community (and the language by which communal authority was invoked) underwent significant changes between the mid-twelfth and fifteenth centuries. Contemporary usage differed depending upon location and application, whether that was political, doctrinal, philosophical or legal in nature.¹² It therefore seems reasonable to expect that similar ideas or phenomena might be expressed in words, phrases or formulae that could be highly particularistic to distinct groups, societies and, indeed, polities.

Paying close attention to historical, geographical and cultural contingencies, however, does not preclude the objective to search for a shared conceptual framework concerning power, authority, representation, and political legitimacy which transcended the territorial and political boundaries of medieval polities. The point is rather that to ask “‘what’—or even “‘who’”—is a community’ (and then how did it consequently acquire or exercise power) may be *une question mal posée*. If we wish to understand the ways in which communal authority worked—in other words, what was actually going on in the parliamentary politics of the fifteenth century—a better starting point might be to survey the ways in which ideas of communal authority and communitarian language were invoked by a variety of political actors, rather than those most readily identifiable with a particular social grouping (like the commons of the

¹¹ J. Watts, ‘Public or Plebs: The Changing Meaning of ‘the Commons’, 1381–1549,’ in J. Watts and H. Pryce (eds), *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007), pp. 242–260, at p. 244.

¹² See J. Quillet, ‘Community, Counsel and Representation’, in J.H. Burns (ed.) *The Cambridge History of Medieval Political Thought, c. 350–c.1450* (Cambridge, 1988), pp. 520–572. Quillet argues that by the late-fourteenth and early-fifteenth century, ‘theorists had to deal with the political community from more or less fixed viewpoints, in particular that of the kingdom. The persistence of the communitarian vision of society, however, led them now to speak of the ‘community of the realm’ (Quillet, ‘Community’, p. 538).

English parliament). To take this approach is to begin with an investigation of dynamic processes, rather than static institutions, and to explore how power and legitimate authority was claimed, negotiated, mediated, contested and—not least—rejected.

The present study engages with such questions through a comparative analysis of the communitarian language and ideas which underpinned parliamentary institutions in English Ireland and Scotland between c.1399 and c.1460. Thus far, this introduction has been purposefully broad in its treatment of parliament and community; my intention is to suggest that there is considerable value in analysing insular studies of parliament and politics with one eye trained on their broader European ideological context. Observations made in the following chapters will be of obvious relevance to Scottish and Irish historians, but it is hoped that scholars of the medieval English parliament and other European representative assemblies will find that studies of fifteenth-century Irish and Scottish parliaments can not only reflect but also challenge prevailing historiographical ideas and assumptions.¹³ Certainly, the extent to which structural phenomena influenced modes of political behaviour in three distinct structures of politics—‘imperial’ England, ‘colonial’ Ireland and ‘sovereign’ Scotland—should stimulate new questions for historians engaged in comparative or transnational research in later medieval Europe. The great advantage of comparative research is not so much that it allows us to recognise similarities and parallels—although identifying what John Watts terms ‘shared consonances and patterns’ across the insular world is certainly an objective here—but rather that it enables us to identify genuine *specificities* which are not readily apparent when analysis is confined to ‘national’ historiographies.¹⁴

¹³ In many respects, the medieval English parliament has been viewed as highly exceptional (or, from another perspective, anomalous) by comparison to the representative institutions and political cultures of other European polities. This was a theme that emerged clearly in the work of Antonio Marongiu, whose comparative study of medieval parliaments in Europe remains the only single-authored study on this topic to date. The ‘exceptional’ development of the medieval English parliament—principally seen as a result of their ‘distinctive origins’ in the assemblies which met during the reign of Æthelstan (924–39)—has been expounded upon in J. Maddicott, *The Origins of the English Parliament, 924–1327* (Oxford, 2010).

¹⁴ A. Gingrich, ‘Medieval Eurasian Communities by Comparison: Methods, Concepts, Insights’, in Hovden *et al.* (eds), *Meanings of Community*, pp. 468–497, at p. 472; Watts, *Making of Politics*, p. 3.

Comparative history, however, can be a thorny enterprise, and it is worth interrogating the value of such an approach for English Ireland, Scotland and (to a lesser extent) England. One obvious justification for this approach has already been mentioned. The case studies presented here were selected primarily in order to highlight instructive contrasts between the ‘imperial’ English parliament, Irish ‘colonial’ parliaments and ‘sovereign’ Scottish parliaments, and therefore make it possible to explore the impact of both institutional and ideological differences upon political activity. The ‘colonial’ Irish parliament was a highly unusual representative assembly, in the context of its constitutional relationship to the ‘imperial’ English parliament; by the same token, the authority English kings commanded over Irish assemblies lent the English parliament ‘imperial’ concerns.¹⁵ The fifteenth-century Scottish parliament, on the other hand, neither had ‘imperial’ concerns (that is, in a structural sense, although in Chapter 6 particular attention is paid to the influence of imperial *ideas* in Scotland’s parliamentary culture) nor ‘colonial’ constraints; during the fifteenth century, the Scottish parliament operated within a ‘sovereign’ kingdom under unitary kingship. To draw out these structural contrasts more fully, a closely contextualised approach has been adopted in this thesis. Primacy is given to the idea that there was no one ‘ideal type’ or model of ‘parliament’ in the insular world.¹⁶ For this reason—and also, as we shall see, because the historiography of insular representative institutions has been dominated by studies of the English parliament—the comparative element of this thesis is focused firmly upon Ireland and Scotland. England, meanwhile, occasionally serves as a ‘backdrop’, or springboard, against which dominant interpretations can be contested and challenged by testing their application in two structurally-different polities.

¹⁵ Bear in mind that this is a structural characterisation, which did not necessarily reflect any particular ‘imperial outlook’ in English parliaments. Gwilym Dodd has recently argued that, in the fifteenth century, the outlook of the English parliament was ‘overwhelmingly’ oriented *inward*, in part because the English parliament ‘came to be defined more clearly as an English institution by the English representatives who attended it’ (G. Dodd, ‘Law, Legislation and Consent in the Plantagenet Empire: Wales and Ireland, 1272–1461’, *Journal of British Studies*, 56 (2017), pp. 225–249, at pp. 248–9). This ‘parochial’ outlook of fifteenth-century English parliaments is to a certain extent reflected in the primarily reactive (as opposed to interventionist) English attitudes toward colonial politics and governance.

¹⁶ Cf. M. Weber, *Methodology of Social Sciences*, ed and trans. E.A. Shils and H.A. Finch (London, 2011), pp. 49–112.

In part, this is because there are very, very few comparative studies of *English* Ireland and Scotland. Many of the most important and successful comparisons, contrasts and connections identified between medieval Ireland and Scotland have tended to focus on interactions within the Gaelic world, leaving the English of Ireland somewhat in a state of limbo.¹⁷ An important exception to this general trend has been provided by Michael Brown, who noted that there has been ‘no direct attempt to draw comparisons in which England is not the major component’.¹⁸ One reason as to why this was the case may simply stem from a more generalised dearth of comparative studies located in the fifteenth century, by contrast with the more well-studied fourteenth century. Other explanations may relate to the ways in which structures of politics developed and changed during the later Middle Ages. Robin Frame, for instance, wrote that during the fourteenth century, ‘in its composition and working the Scottish polity was further removed from its two English counterparts than they were from one another’.¹⁹ And yet there are, as Brown outlined, good reasons to consider the kingdom of Scotland and the lordship of Ireland side-by-side as ‘models of political society’.²⁰ Scotland and Ireland exhibited structural similarities to one another in the sense that both polities were relatively decentralized, and depended to a considerable degree upon governance being devolved to powerful and wealthy landowners; in these respects the two polities were rather more similar to one another in geographic and

¹⁷ For studies of the Irish-Scottish Gaelic world, see S. Duffy, D. Ditchburn and P. Crooks (eds), *The Irish-Scottish World in the Middle Ages* (forthcoming, Spring 2019); S. Duffy (ed), *The World of the Galloglass: Kings, Warlords and Warriors in Ireland and Scotland, 1200–1600* (Dublin, 2007); S. Duffy, ‘The Bruce Brothers and the Irish Sea World, 1306–1329’, *Cambridge Medieval Celtic Studies*, 21 (1991), pp. 55–86; S. Duffy, ‘The Turnberry Band’, in S. Duffy (ed), *Princes, Prelates and Poets in Medieval Ireland: Essays in Honour of Katharine Simms* (Dublin, 2013), pp. 124–38; J. Lydon, ‘The Scottish Soldier in Medieval Ireland: The Bruce Invasion and the Galloglass’, in G.G. Simpson (ed.), *The Scottish Soldier Abroad, 1247–1967* (Edinburgh, 1992), pp. 1–15; S. Hewer, ‘Scots in “English Ireland” in the Thirteenth and Fourteenth Centuries’, *Scottish Historical Review*, 97:2 (2018), pp. 211–17. See also an important article in which it is argued that events in the Irish-Scottish Gaelic world were ‘capable of exerting a far greater degree of influence on the course of “British” politics’ than has yet been appreciated: S. Egan, ‘Richard II and the Wider Gaelic World: A Reassessment’, *Journal of British Studies*, 57 (2018), pp. 221–252.

¹⁸ M. Brown, ‘Realms, Regions and Lords: Ireland and Scotland in the Later Middle Ages’, *Anales de la Universidad de Alicante: Historia Medieval*, 19 (2015–2016), pp. 153–174, at p. 155.

¹⁹ R. Frame, *The Political Development of the British Isles, 1100–1400* (Oxford, 1995), pp. 187–188.

²⁰ Brown, ‘Realms, Regions and Lords’, p. 153.

demographic terms than either were to England.²¹ More surprisingly, as Brown noted, the parallels between Irish and Scottish parliamentary politics and institutions seem to be more acute than those between English and Irish parliaments, or English and Scottish parliaments in the same period.²² Certainly, while it is true that ‘the roles played by parliamentary bodies in Ireland and Scotland were directly comparable to the English parliament’ (and indeed that the parliamentary institutions of England, English Ireland and Scotland may be regarded as ‘interrelated bodies’), there is no good reason why Irish and Scottish representative assemblies and parliamentary politics should not be compared to one another directly.²³

With respect to ‘insular’ history in particular, some qualifications must be made. Of necessity, a comparative study of the ways in which communitarian ideas were expressed and used by parliamentarians of English Ireland and Scotland in the fifteenth century must be highly selective, in respect of both primary source material and secondary literature: I cannot hope to do full justice to the many historiographical strands which are of relevance to this subject. More specific historiographical debates and developments are addressed in the course of each individual chapter, as well as in the introductory sections provided for each ‘part’ of the thesis. The influence of one important historiographical strand, though, should be mentioned from the outset. It will be obvious that the present study draws much inspiration from the ‘British Isles’ approach, pioneered by historians like Rees Davies, Robin Frame, and, more recently, Michael Brown, which (despite occasional criticism) continues to produce a wealth of invaluable scholarship for historians of the insular world.²⁴ But it is perhaps useful at

²¹ See M. Brown, ‘Kingdom and Lordship: Scotland and Ireland in the Later Middle Ages’, in S. Duffy, D. Ditchburn and P. Crooks (eds), *The Irish Scottish World in the Middle Ages* (forthcoming, Spring 2019). I am very grateful to Dr Brown for allowing me to read an advance copy of this chapter.

²² Brown, ‘Realms, Regions and Lords’, p. 160.

²³ Brown, ‘Realms, Regions and Lords’, p. 161.

²⁴ See Frame, *Political Development*; R.R. Davies (ed.), *The British Isles, 1100–1500: Comparisons, Contrasts and Connections* (Edinburgh, 1988); R.R. Davies, *Domination and Conquest: The Experience of Ireland, Scotland and Wales, 1100–1300* (Cambridge, 1990). More recently see M. Brown, *Disunited Kingdoms: Peoples and Politics in the British Isles, 1280–1460* (Harlow, 2013). See also B. Smith (ed.), *Ireland and the English World in the Late Middle Ages: Essays in Honour of Robin Frame* (London, 2009), especially Brendan Smith’s introduction. For criticism of the model, see A. Ruddick, ‘Gascony and the Limits of British Isles History’ in B. Smith (ed.) *Ireland and the English World in the Late Middle Ages: Essays in Honour of Robin Frame* (Basingstoke, 2009), pp. 68–88. For a study which encompasses much of the insular world, but is conceived along different lines see P. Crooks, D. Green and W.M. Ormrod (eds), *The Plantagenet Empire, 1259–1453: Proceedings of the 2014 Harlaxton Symposium* (Donington, 2016).

this point to identify certain important ways in which the present study *differs* from other projects associated with ‘British Isles’ history. For one, this thesis is not intended to provide a comprehensive overview of the politics of the insular world in the fifteenth century. Additionally, what will quickly become apparent in the following chapters is that there is very little—if any—mention of the Gaelic Irish in this thesis. On a superficial level, this could be simply explained by the absence of the Gaelic Irish from English parliaments: it is crucial to remember that medieval ‘representative’ assemblies in English Ireland effectively ‘represented’ only the *English* of Ireland, and not their Gaelic neighbours. When legislation in the Irish parliamentary record made reference to ‘common people’, ‘lieges’, ‘commonalty’, or ‘commons’, it was referring to the loyal *English* subjects of the king, subject to the common law. It can fairly be said that in fifteenth-century Ireland, the language of community was as much exclusionary as it was inclusive. Recent research, however, has demonstrated that the basic notion of total Gaelic exclusion from English political life occludes more complex realities.²⁵ And snippets of evidence in the Irish Statute Rolls suggest that Gaelic ‘incursions’ just might have extended into the parliamentary sphere. While such an investigation lies far beyond the scope of the present study, a study of the interactions between English and Gaelic Irish in the broad arena of Ireland’s parliamentary politics would provide a valuable contribution to the field.²⁶ As it stands, though, this thesis does not include any particular attempt to trace connections and interactions between the different peoples and polities under consideration. Instead, in the context of this particular strand of the historiography, this thesis is intended to offer a framework in which analyses of ‘insular’ parliamentary politics may be located; it is hoped that this will stimulate new ways of thinking about politics, ideas and political structures in England, Ireland and Scotland, and open up new modes of contrast and comparison between these polities.

²⁵ See, for example, S. Booker, *Cultural Exchange and Identity in Late Medieval Ireland: The English and Irish of the Four Obedient Shires* (Cambridge, 2018); S. Hewer, *Justice for All? Access by Ethnic Groups to the English Royal Courts in Ireland, 1252–1318* (Ph.D. thesis, University of Dublin, 2017).

²⁶ Gaelic ecclesiastical representatives would provide one starting point for such an investigation: the interaction of Gaelic Irish granted access to English common law could provide another.

One general problem which will confront any comparative historian is that of deciding which analytical and comparative categories ‘make sense’.²⁷ If our criteria for analysis is so broad as to apply to *every* unit of comparison under consideration (a polity, for example), then it is surely likely that such a study will identify ‘shared consonances and patterns’; and the more all-encompassing the typology, the less it tells us about the individual units under consideration.²⁸ A second problem with choosing analytical categories and bases of comparison is more specific to the historiography of medieval Irish and Scottish parliaments. This problem has already been alluded to above, and it relates to the application or assumption of ‘ideal types’ against which units of comparison may be assessed. For much of the twentieth century, the English parliament was employed implicitly as an ideal type—the quintessential parliament, as it were—against which Scottish and Irish assemblies were assessed.

This is understandable (if not necessarily very useful) in the context of Irish representative assemblies, given that this was an institution like the medieval chancery and exchequer which had initially been transmitted from England to the lordship of Ireland. Historians of the Irish parliament have tended not to compare explicitly colonial assemblies to their counterparts in England; more attention has generally been paid to the ways in which parliamentary developments in Ireland deviated from those in England. Unsurprisingly, the English parliament has provided the ‘ideal type’ in such analyses. Historians of the Irish parliament must, of course, be highly conscious of the ways in which political structures in England influenced those in Ireland, but it seems equally important that Irish parliamentary institutions and culture should also be analysed and understood on their *own* terms, as well as in conjunction with those of England.

²⁷ W. Pohl, ‘Meanings of Community in Medieval Eurasia’, in E. Hovden *et al* (eds), *Meanings of Community across Medieval Eurasia* (Leiden, 2016), pp. 1–23, at pp. 3–4.

²⁸ Pohl, ‘Meanings of Community’, pp. 3–4; Watts, *Making of Polities*, p. 3. The present study draws many insights from Watts’s survey of political development in late medieval Europe, and particularly his approach, which ‘notes the consonances and shared patterns—the structures—of European political life’ (Watts, *Making of Polities*, p. 3). It might be argued, however, that, given the broadness of Watts’ definitions of key concepts such as ‘structure’ or ‘polities’, it is occasionally difficult to imagine that those ‘different structures... and common forms across Europe’ would *not* produce ‘consonances and shared patterns’. ‘Structures’, incidentally, are described in Watts’ survey as ‘the frames and forms and patterns in which politics took place; frames, forms and patterns which conditioned these politics, and which also...had some role to play in causing, as well as explaining, political action’ (Watts, *Making of Polities*, p. 35).

By contrast, Scottish parliaments obviously differed in structure, in composition, and in objective from their English counterparts. With respect to Scottish historiography, past tendencies to conceptualise the medieval English parliament as an ideal type, often implicitly rather than explicitly, were both less historically and less methodologically justifiable. Indeed, it has previously been argued that the differences between Scottish and English assemblies were significant enough that comparison between the two is misplaced, and that more meaningful comparison might be made between the Scottish parliament and the Spanish *cortes* or the French *Etates General*.²⁹ Such sentiments are unsurprising, given the unfavourable treatment that the Scottish parliament received at the hands of certain Anglo-Scottish comparisons.³⁰ For a long time, the Scottish parliament suffered, as Brown and Tanner put it, ‘from a tendency to judge its importance and role in terms of the functions of foreign or more modern representative assemblies and the values of later generations.’³¹ The influence of Robert Rait’s study on the medieval Scottish parliament, for one, cast a long shadow across the historiography of the twentieth century; virtually nothing was written of the Scottish parliament in the seventy years after the publication of *The Parliaments of Scotland* in 1924. Rait’s constitutional approach presupposed the superiority of the English parliament over Scottish assemblies, and this problematic early comparison may explain why later Scottish historians have exhibited a certain reluctance to locate study of Scottish parliaments in a truly international context.³² On the other hand, as

²⁹ K.M. Brown and R.J. Tanner, ‘Introduction’, in K.M. Brown and R.J. Tanner (eds), *The History of the Scottish Parliament: Parliament and Politics in Scotland, 1235–1500* (Edinburgh, 2004), pp. 6–7.

³⁰ Rait’s work tends to bear the brunt of the criticism in this regard, primarily because it influenced Scottish parliamentary historiography unchallenged for the greater part of the twentieth century (R. Rait, *The Parliaments of Scotland* (Glasgow, 1924); R. Rait, ‘Parliamentary Representation in Scotland’, *Scottish Historical Review*, 12:47 (1915), pp. 247–270). In many respects Rait’s work should be considered invaluable: it was the first major historical account of the Scottish parliament comparable to similar English studies, and covered a vast amount of material which remains an invaluable guide to the procedures and practices of the Scottish parliament. Tanner suggests that amongst the reasons for Rait’s dismissive conclusions was partially that he was not a medievalist, but instead focused more on parliament after the sixteenth century, but—more importantly—that Rait worked ‘in the tradition of English historians such as Bishop William Stubbs and F.W. Maitland who had portrayed in exalted fashion the ‘steady and virtually predestined’ development of the English parliament from its origins to its status as the ‘Mother of Parliaments’ (Tanner, *Scottish Parliament*, pp. 2–3).

³¹ Brown and Tanner, ‘Introduction’, pp. 1–2.

³² Indeed, this comment could arguably be applied to Scottish medieval historiography more broadly (for an exceptional treatment, see D. Ditchburn, *Scotland and Europe: The Medieval Kingdom and its Contacts with Christendom, c.1215–1545: Vol. I: Religion, Culture and Commerce*

we shall see below, the medieval Scottish parliament as studied on its own merits has been thoroughly rehabilitated in recent decades.

At this point, given the extent to which the separate parliamentary historiographies of medieval Ireland and Scotland clearly reflected developments in English parliamentary historiography, it may be helpful to reflect briefly upon developments in this quarter. The interplay between royal and communal authority and modes of governance in the medieval period has attracted enduring interest across the years. From a historiographical perspective, concern with parliamentary institutions and development—particularly for Anglophone scholars—has proved to be remarkably persistent, if intermittently so. In other disciplines, the very endurance of the term ‘parliament’—or the idea of representative assemblies more generally, unburdened by the word ‘parliament’—has provided an all-too-convenient avenue by which to travel back in search of the origins of the modern democratic government, wrapped up neatly in all its characteristic connotations of democracy, representation, consent, and legitimacy, and so on.³³ Political studies of today’s representative institutions

(East Linton, 2000). Given the dearth of such scholarship, one can scarcely take issue with a recent and rather perplexing comment to the effect that ‘the same may be said of the Scottish parliament [as with the English]...but I left this point out of further consideration simply because Scotland fell outside the geographical scope of this article’, which was limited to ‘core areas reaching from England and the Low Countries in the north to the Iberian kingdoms in the south’ (P. Hoppenbrouwers, ‘Assemblies of Estates and Parliamentarianism in Late Medieval Europe’, in M. Damen, J. Haemers and A.J. Mann (eds), *Political Representation: Communities, Ideas and Institutions in Europe, c. 1200–c.1690* (Leiden, 2018), pp. 19–53, at p. 20, n. 7).

³³ As Gwilym Dodd observed, ‘any attempt to suggest that parliament played a significant role in the polity, or that the commons were instrumental in limiting the power of the king, or even simply that the influence of parliament grew over time, smacked of a Stubbsian framework and immediately exposed the work to damaging charges of whiggism...and yet parliament did occupy an important place in the late medieval English polity, and the commons were part of a political system in which the king was held to account for his actions’ (G. Dodd, ‘Historians of the Late Medieval English Parliament,’ *History Compass*, 12:6 (2014), pp. 473–488, at p. 482). Cf. W. Stubbs, *The Constitutional History of England, Vol. II* (Oxford, 1875). The most important aspect of Stubbs’ argument was his view that the presence of representatives of the ‘commons’ in the English parliament drove the development of the institution, and lent it its form and character. In essence, the idea was that the commons in medieval English parliaments ‘personified’ the beginnings of contemporary parliamentary democracy. This focus on the commons in medieval parliaments, and the significance of the ‘representative’ element of parliament, provided the springboard for a decidedly polarised debate after 1875. As Pollard noted in 1920, the ‘starting point’ for his own study of the English parliament, as well the work of C.H. McIlwain and J.F. Baldwin, was drawn from the conclusions of an early critic of Stubbs’ ‘whig’ approach, F.W. Maitland (A.F. Pollard, *The Evolution of Parliament* (London, 1920), p. v–vi; F.W. Maitland, “Introduction” to Memorando de

periodically make reference to that historical shibboleth—the medieval English parliament conceived as the ‘mother’ of all parliaments—in explaining the ‘origins’ of modern representative government.³⁴ Historians have long since been leery of any such whiggish interpretations. Nowadays, as Gwilym Dodd put it, the medieval parliament is ‘no longer studied for its own sake, or as a means to glorify the phenomenon of modern representative government’.³⁵ Of course, Dodd was commenting on English parliamentary historiography, but given the impact of early ‘whig’ perspectives upon other national historiographies (especially those relevant to the present study, of Ireland and Scotland), and indeed also of the revisionist debate which occupied historians of the medieval English parliament for much of the twentieth century, this comment has a broader resonance.

For English parliamentary studies, it was precisely the revisionist backlash against the ‘political’ history of parliament written in the late-nineteenth century that shaped academic discourse throughout the twentieth century. For a time, anything redolent of ‘whiggery’—which, to a certain extent, encompassed study of associated ideas and key concepts of representation, consent, legitimacy and so on—became tantamount to taboo. The early polarisation of these debates had far-reaching consequences for parliamentary historiography; the characterisation of medieval parliaments was less concerned, it seems, with what a medieval parliament ‘was’ than what it emphatically was *not*.³⁶ As a consequence of this polarisation, alternative avenues to explore

Parlamento,’ repr. in E.B. Fryde and E. Miller (eds), *Historical Studies of the English Parliament* (1970), pp. 91–135). Maitland concluded that ‘a session of the king’s council is the core and essence of every *parliamentum*’ (Maitland, ‘Introduction’, p. 133). This well-known statement was to have a lasting impact on the debate as to how exactly medieval parliaments should be characterised, and began a tradition which lasted until the mid-twentieth century of focusing upon the institutional, or administrative, approach to parliamentary studies. The most influential proponents of this view, H.G. Richardson and G.O. Sayles, similarly concluded in their studies of medieval English and Irish parliaments that ‘the essence of [parliaments] is the dispensation of justice,’ and they continued to emphasise this aspect of the institution (H.G. Richardson and G.O. Sayles, *The English Parliament in the Middle Ages* (London, 1981), p. 78). The commons, as K.B. McFarlane observed, had essentially been relegated from their position in the historiography of latent power and burgeoning influence (for Stubbs) to a position of ‘absolute insignificance in the political struggles of the late middle ages’ (K.B. McFarlane, *England in the Fifteenth Century: Collected Essays of K.B. McFarlane* (London, 1981), p. 1).

³⁴ For an in-depth overview see Dodd, ‘Historians’, pp. 473–488.

³⁵ Dodd, ‘Historians,’ p. 482.

³⁶ J.G. Edwards—in challenging the work of Richardson and Sayles, who argued that the ‘core and essence’ of every parliament was a session of the king’s council—commented adroitly that the functional ‘essence’ of medieval parliaments ‘was not specifically judicial, any more than it was

parliamentary development were explored rather ponderously. Focus shifted away from questions of characterisation and ‘institutional’ history to social interpretations of political activity. As part of a broader discourse on how medieval governance and society functioned, parliament—which had variously been examined as a weapon of the commons, a tool of the king or an instrument of the lords—was, in a sense, rehabilitated. No longer a political battleground, parliament came to be seen as a conduit for political dialogue between different constituent elements of the ‘political community’.³⁷ While these developments in English parliamentary historiography provided an important corrective to the polarised debates of the early twentieth century, they have also been criticised. In particular, the emphasis on political dialogue and negotiation—on representative assemblies as ‘brokers of power’ between a typically royal elite and lower-class subjects—has been criticised for presenting an overly consensual view of political activity in the later Middle Ages.³⁸ Recent years, though, have seen a proliferation of studies on the English parliament, which offer new frameworks of interpretation for how ideological concepts—especially those which pertain to parliament and community—were located within the realm of political discourse and governance. These sorts of questions have provoked a good deal of interest amongst medievalists, and English parliamentary historiography has been greatly enriched in recent years by research focused on the interactions of community and government.³⁹ Much of this research reflects a broader trend of examining medieval institutions through interdisciplinary lenses, and of using theoretical

specifically legislative, or specifically taxative, or specifically anything. The essence of its function consisted in being *unspecific*’ (J.S. Roskell, *Parliament and Politics in Late Medieval England* (1981–83); J.G. Edwards, *Historians and the Medieval English Parliament* (Glasgow, 1960), pp. 18–19).

³⁷ This socio-political trend was (and indeed continues to be) exemplified by the remarkable prosopographical surveys of the History of Parliament Project.

³⁸ Similar criticisms have been made in a slightly different Scottish context. See M. Brown, ‘Scotland Tamed? Kings and Magnates in Late Medieval Scotland: A Review of Recent Work’, *Innes Review*, 45 (1994), pp. 120–146.

³⁹ See T. Thornton (ed.), *Social Attitudes and Political Structures in the Fifteenth Century* (Sutton, 2000); L. Clark and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004); R.H. Britnell and A.J. Pollard (eds), *The McFarlane Legacy : Studies in Late Medieval Politics and Society* (Stroud, 1995); M. Giancarlo, *Parliament and Literature in Late Medieval England* (Cambridge, 2007); C. Oliver, *Parliament and Political Pamphleteering in Fourteenth-Century England* (Woodbridge, 2010); G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007); W.M. Ormrod, *Parliament and Literature in Late Medieval England* (Cambridge, 2007); J. Nuttall, *The Creation of Lancastrian Kingship: Literature, Languages and Politics in Late Medieval England* (Oxford, 2007).

frameworks drawn from disciplines such as literature, sociology or political science to contribute new perspectives to the field. The contributions to late medieval England's 'new constitutional history', a project pioneered by Christine Carpenter and John Watts in particular, are of particular importance to the present study.⁴⁰

Indeed, the present study represents an attempt to extend the intellectual framework of the 'new constitutional history' in England to a comparative study of Irish and Scottish parliaments. The approach of England's 'new constitutional historians' goes beyond simply analysing the 'activities of government': it acknowledges that political activity was 'invariably' conducted with reference to 'expectations, institutions and mutualities of various kinds', and that the study of 'languages, attitudes and cultural codes' must be studied alongside 'political dynamics, social and institutional structures, and economic imperatives'.⁴¹ Since the inception of the 'new constitutional history' in the 1980s, scholarship of the late medieval English parliament and polity has advanced considerably. One important strand of this scholarship was influenced broadly by the 'linguistic turn' of the twentieth century, but more specifically by the contextualised approach made prominent by J.G.A. Pocock and Quentin Skinner of the so-called 'Cambridge school'.⁴² It is now well-recognised that the study of political language constitutes an integral part of understanding the ideas, beliefs and value systems which underpin political and governmental institutions. Inasmuch as any history of political language and discourse is also, to a degree, a history of ideas and concepts, this approach has particular merits for our attempt to understand something of the political ideas and beliefs that informed medieval parliamentarians.⁴³ Thus, a contextualised approach to the study of language allows us to trace changes in how political concepts were employed by contemporaries.

⁴⁰ See C. Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c. 1437–1509* (Cambridge, 2002); J. Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996).

⁴¹ J. Watts, 'Introduction' in B. Thompson and J. Watts (eds), *Political Society in Later Medieval England: A Festschrift for Christine Carpenter* (Woodbridge, 2015), pp. 1–7, at pp. 3–5.

⁴² Q. Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge, 2002); J.G.A. Pocock, *Political Thought and History: Essays on Theory and Method* (Cambridge, 2009).

⁴³ See W.M. Ormrod, "'Common Profit' and "the Profit of the King and Kingdom": Parliament and the Development of Political Language in England, 1250–1450', *Viator*, 46:2 (2015), pp. 219–52.

Linguistic analysis of this sort seems highly appropriate for a study of communitarian ideas, and the language through which such ideas were expressed in Ireland and Scotland. How was communitarian language used in different situations and locations? Who was engaged in communitarian political discourse? What functions did communitarian terminologies perform, and what did contemporaries understand by these terminologies? All of these questions are useful inroads into the broader question of how communal authority was exercised in the fifteenth century. Before moving on, though, one methodological challenge related to the use of linguistic analysis should be addressed. A not-insignificant difficulty presented in writing a history that compares political *language* is that of translation. G.O. Sayles aptly surmised the problem when he broke ‘the habit of a lifetime’ and rendered in English documents originally in Latin or Old French. ‘It is harder to give a translation than to copy the text’, wrote Sayles, for ‘we can print the Latin *communitas* or the French *commune* without difficulty, but how do we translate this word into English to give it its proper contemporary meaning?’⁴⁴ There are no simple answers to this question, for superficially similar terms were frequently employed in markedly different ways in later medieval English Ireland, Scotland and England. The rhetoric employed by parliamentarians in these polities was inflected by structure, space and time; paying attention to these modalities through close contextualisation is necessary to avoid misunderstandings or misreadings of this highly-politicised language.

Only recently have attempts been made to integrate explicitly the lessons of England’s new constitutional history into the historiographies of later medieval Scotland and English Ireland, although it has been recognised for some time that there was a need to integrate the study of political ideas and languages into political histories conceived along traditional empiricist models. In 2002, Robin Frame highlighted the need for investigation into English ‘political culture’ in Ireland, noting that the field in general was ‘not exactly crowded’.⁴⁵ Yet even now, in many respects, scholarship which pays attention to the ideas and language that underpinned political activity in Ireland remains in its infancy. While it is true that much attention has been paid to the administrative and institutional history of the polity, it is also striking that the editor

⁴⁴ G.O. Sayles, *The Functions of the Medieval Parliament of England* (London, 1988), pp. viii, ix.

⁴⁵ R. Frame, ‘English Political Culture in Later Medieval Ireland’, *History Review*, 13 (2002), pp. 1–11, at pp. 3, 11.

of the recently published *Cambridge History of Ireland* found it possible to observe that only in 2018 did ‘medieval Irish political theory [make] its historiographical debut’.⁴⁶ This comment is perhaps a little unfair, for Maude Clarke’s study on medieval representation and consent, published in 1936, represented an early, innovatory attempt to highlight Irish political ‘theory’, and the importance of political ideas and language, in a field which came to be dominated by the rather dry administrative approach of Richardson and Sayles.⁴⁷ In recent years, however, there have been developments of enormous significance in this field, largely been pioneered by the work of Peter Crooks in ‘exploring the complexities of the colony’s political culture’.⁴⁸ Of particular relevance to the present study is Crooks’ approach to the study of ‘parliamentarianism’—the ‘choreography and vocabulary of parliamentary disputes’—which shifts focus from the ‘austerity’ of an institutional approach toward the ‘dynamics’ of parliamentary activity in the colony.⁴⁹

In Scotland, research inspired by movements in England’s new constitutional history is considerably more advanced.⁵⁰ In 1994, Alexander Grant called for Scottish

⁴⁶ B. Smith, ‘Introduction’, in B. Smith (ed.), *The Cambridge History of Ireland, Vol. I: 600–1550* (Cambridge, 2018), pp. 1–12, at p. 10. See J. Otway-Ruthven, *A History of Medieval Ireland* (London, 1968); H.G. Richardson & G.O. Sayles, *The Irish Parliament in the Middle Ages* (Philadelphia, 1952). For an important unpublished study of the politics of the fifteenth century, see E.A.E. Matthew, *The Governing of the Lancastrian Lordship of Ireland in the Time of James Butler, Fourth Earl of Ormond, c. 1420–1452* (Ph.D. thesis, University of Durham, 1994).

⁴⁷ See M.V. Clarke, *Medieval Representation and Consent* (London, 1936). Richardson and Sayles’ authoritative stamp on the parliamentary history of Ireland put paid to the ‘old’ constitutional approach early in the twentieth century, and the ‘institutional’ approach they favoured, which emphasised the administrative and procedural aspects of the Irish parliament, still casts a long shadow across the historiography (See Richardson and Sayles, *Irish Parliament*; H.G. Richardson, ‘English Institutions in Medieval Ireland’, *Irish Historical Studies*, 1:4 (1939), pp. 382–92). Richardson’s dismissive comments regarding Maude Clarke’s efforts to highlight the conceptual basis upon which parliamentary activity operated represents the clear disavowal by Richardson and Sayles of a ‘constitutional’ approach.

⁴⁸ P. Crooks, ‘Representation and Dissent: “Parliamentarianism” and the Structure of Politics in English Ireland, c. 1370–1420’, *English Historical Review*, 125:512 (2010), pp. 1–34, at pp. 8, 32–33; P. Crooks, ‘The Structure of Politics in Theory and Practice, 1210–1541’, in B. Smith (ed.), *The Cambridge History of Ireland, Vol. I, 600–1550* (Cambridge, 2018), pp. 441–468.

⁴⁹ Crooks, ‘Representation and Dissent’, p. 8.

⁵⁰ As a parallel development within Scottish historiography, one important historiographical debate has fixated on the extent to which the relationship between the crown and magnates was ‘cooperative’ or ‘confrontational’ in nature. At the core of the so-called ‘new orthodoxy’, arguing for a view of Scottish politics as essentially ‘cooperative’, were Alexander Grant and Jenny Wormald, while others, notably Michael Brown, countered by arguing that this framework ‘smoothed over’ much of the conflict within Scotland during the long fifteenth century (See A. Grant, *Independence and Nationhood: Scotland, 1306–1469* (Edinburgh, 1984); J. Wormald, *Court, Kirk and Community:*

historians to address more clearly the question of ‘what was “going on” as well as “what happened”’ in medieval Scottish history.⁵¹ Grant explicitly addressed the issue of Scotland’s ‘political community’, suggesting that the ‘high politics’ of traditional narratives needed to consider the ‘underlying mechanisms and principles’ of Scottish politics.⁵² Some of the questions outlined in Grant’s article are central elements of investigation in the present study: ‘how was power legitimised? Were different legitimisations valid at different times? If so, how did a new legitimisation become established?’⁵³ These are important issues, and in the years since Grant’s call for a ‘new constitutional history of Scotland’, Scottish historians have begun to pay serious attention to the ideas and ‘political culture’ which underpinned Scotland’s structures of governance.⁵⁴ Of particular note, with respect to parliamentary institutions, is the

Scotland, 1470–1625 (Edinburgh, 1981); M. Brown, ‘Scotland Tamed? Kings and Magnates in Late Medieval Scotland: A Review of Recent Work’, *Innes Review*, 45:2 (1994), pp. 120–46, at p. 146). For our purposes, this debate is relevant mainly in the sense that posits an inherently oppositional model of Scottish politics, based as it is upon a view of politics as a phenomenon dominated more by individuals and factional solidarities than by the institutional and ideological structures in which they operated; this stands in contrast to the perspective argued for by Watts, for instance, which proposes ‘a particular way of understanding politics—as a phenomenon dominated by structures more than by individuals or collective solidarities’ (Watts, *Making of Politics*, p. 420). More recently, Claire Hawes has proposed an alternative model by which the politics of fifteenth-century Scotland might be understood. Hawes argued for a change of emphasis from both the dominant crown-magnate narrative, and the prevailing emphasis on the unclear role of the ‘political community’, located in opposition to the ‘private’ interests of kings or magnates. Instead, she examined the exercise of political authority in the context of a ‘public domain’, by focusing on discourses of politics and how they were utilised in later fifteenth-century Scotland, beyond strictly governmental institutions (C. Hawes, *Community and Public Authority in Later Fifteenth-Century Scotland* (Ph.D. thesis, University of St Andrews, 2015). I am very grateful to Dr Hawes for permitting me to consult her recent Ph.D. thesis, which proposes a research agenda that will no doubt stimulate questions in Scottish historiography for years to come.

⁵¹ A. Grant, ‘To the Medieval Foundations’, *Scottish Historical Review*, 73:195 (1994), pp. 4–24, at p. 5.

⁵² Grant, ‘Medieval Foundations’, p. 6.

⁵³ Grant, ‘Medieval Foundations’, p. 6.

⁵⁴ Grant, ‘Medieval Foundations’, p. 6. See, for example, J. Wormald, ‘National Pride, Decentralised Nation: The Political Culture of Fifteenth-Century Scotland’, in L. Clark and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 181–194. For political thought see R. Mason, *Kingship and the Commonwealth: Political Thought in Renaissance and Reformation Scotland* (Tuckwell Press, 1998); R. Mason, ‘Kingship, Tyranny and the Right to Resist in Fifteenth Century Scotland’, *Scottish Historical Review*, 66:182 (1987), 125–151; R. Mason, ‘This Realm of Scotland is an Empire? Imperial Ideas and Iconography in Early Renaissance Scotland’, in B.E. Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (Edinburgh, 1999), pp. 73–91; R. Mason, ‘Beyond the Declaration of Arbroath: Kingship, Counsel and Consent in Late Medieval and Early Modern Scotland’, in S. Boardman and J. Goodare (eds), *Kings, Lords and Men in Scotland and Britain, 1300–1625*

work of Roland Tanner on the late medieval Scottish parliament. This thesis owes a large intellectual debt to Tanner's study; his detailed narrative account of parliaments and general councils in fifteenth-century Scotland thoroughly rehabilitated these representative assemblies from the pessimistic conclusions of Robert Rait discussed above.⁵⁵ In addition to Tanner's work, a number of detailed studies contained in two volumes which stemmed from the St Andrews History of Parliament Project are essential reading for any student of the Scottish parliament. The chapters by Stephen Boardman and Michael Brown, in particular, have guided much of my thinking on how political ideas and institutional structures affected the ways in which governance was negotiated in the later medieval Scottish polity.⁵⁶

The challenge is bringing together these separate parliamentary histories in a way that advances beyond overly restrictive or inappropriate typologies, but which does not—crucially—impose upon them 'a more unnatural form of tyranny'.⁵⁷ For this reason, I have avoided emphasizing over-arching meta-narratives conceived along traditional lines of development or decline, and so on. And the parliamentary politics of Scotland and Ireland (and England) in the later Middle Ages do not lend themselves to a unified historical narrative, which would almost certainly obfuscate the most important developments in the exercise of communal authority and the dynamics of parliamentary politics. The attempt made in this thesis to reconcile the separate

(Edinburgh, 2014), pp. 265–82. For political advice-writing see S.L. Mapstone, *The Advice to Princes Tradition in Scottish Literature, 1450–1500* (Ph.D. thesis, University of Oxford, 1986), as well as J. Martin and E. Wingfield (eds), *Premodern Scotland: Literature and Governance, 1420–1587: Essays for Sally Mapstone* (Oxford, 2017).

⁵⁵ See R. Tanner, *The Late Medieval Scottish Parliament: Politics and the Three Estates, 1424–1488* (East Linton, 2001). Tanner took a narrative approach to the relationship between crown and parliament between 1424 and 1488. Tanner's forensic approach sheds an indispensable light on the activities of the 'three estates' in fifteenth-century Scotland; he argued that parliament 'had substantial and recognised powers to act as a check on royal power'. Much less attention, however, was paid to the structural and ideological features of the institution which might (or might not) have allowed it to do so (Tanner, *Scottish Parliament*, p. 264, *passim*).

⁵⁶ M. Brown, 'Public Authority and Factional Conflict: Crown, Parliament and Polity', in K.M. Brown and R.J. Tanner (eds), *The History of the Scottish Parliament Volume 1: Parliament and Politics in Scotland, 1235–1560* (Edinburgh, 2004), pp. 123–144; S. Boardman, 'Coronations, Kings and Guardians: Politics, Parliaments and General Councils, 1371–1406', in K.M. Brown and R.J. Tanner (eds), *The History of the Scottish Parliament I: Parliament and Politics in Scotland, 1235–1560* (Edinburgh, 2004), pp. 102–122.

⁵⁷ Frame, *Political Development*, p. 3.

historiographies of medieval England, Ireland and Scotland is conceived along different lines. To return to a point made earlier, I suggest that by analysing these polities in a *European* intellectual context—specifically, in this case, in the context of medieval European political thought—it becomes possible to identify a consistent baseline for meaningful comparison. This is because a shared body of medieval European political thought broadly informed the chroniclers, advice-writers, political theorists, and—not least—‘parliamentarians’ of medieval England, Ireland and Scotland. It is axiomatic that contemporary ideas about fundamental aspects of medieval government—kingship, counsel, representation, and community—were informed by the writings of classical philosophers, political theology derived from the Bible and the writings of Church fathers, as well as Roman law.⁵⁸ Investigating these sources of political thought permits us to draw together a disparate body of sources in a way that would not otherwise be possible. An investigation of ways in which ideas and principles derived from this body of thought informed and inflected political activity and behaviour—and, crucially, the ways in which contemporaries modified these ideas to suit their own particular needs and circumstances—forms a central element of this thesis.

In terms of the parliamentary focus, it should also be noted that the intention of the present study is not to advance an older and now outmoded interpretation which suggested that parliamentary assemblies were, if not *the* most important feature of medieval governance, then at least close enough that study of ‘parliament’ could be justified for its own sake. Instead, this thesis takes the view that parliamentary *culture*, and especially the theory and practice of communal authority, exercised an important influence upon the way in which governance was mediated and conducted in the insular world. Historians who have sought to shed light upon medieval political culture

⁵⁸ The following represents a selection of the secondary works, some old, some new, which have been especially useful: E.H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957; repr 1981); A. Black, *Political Thought in Europe, 1250–1450* (Cambridge, 1992); A. Black, *Monarchy and Community: Political Ideas in the Later Conciliar Controversy, 1430–1450* (Cambridge, 1970); J.H. Burns (ed.), *The Cambridge History of Medieval Political Thought, c. 350–c. 1450* (Cambridge, 1988); J. Canning, *Ideas of Power in the late Middle Ages, 1296–1417* (Cambridge, 2011); S.B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936); R. Mason, *Kingship and the Commonweal: Political Thought in Renaissance and Reformation Scotland* (East Linton, 1998); G. Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100–1322* (Princeton, 1964); B. Tierney, *Religion, Law and the Growth of Constitutional Thought, 1150–1650* (Cambridge, 1982); W. Ullman, *Principles of Government and Politics in the Middle Ages* (London, 1978).

have traditionally turned to literary source material: chronicles, prose-writing, letters and so on. These sources are unquestionably valuable, but naturally there exists considerable variation in terms of the volume and availability of such sources for each polity under consideration. Furthermore, there are significant differences in the types of extant source material which can be used to interrogate how contemporaries employed political principles in interacting with structures of governance in Ireland and Scotland respectively. Perhaps surprisingly, documentary evidence for Ireland is comparatively rich in terms of administrative and bureaucratic records; by contrast, far fewer examples of such documents survive for Scotland during this period. The evidence for Scotland, however, is much richer than that of English Ireland in terms of literary sources (namely, contemporary chronicles and political advice-literature).

In the main, though, analysis in the present study has been grounded in the official records of government institutions. The fifteenth-century records for parliaments in the insular world offer a rich corpus of evidence for language and rhetoric in which contemporaries framed their political activity. It may therefore seem odd that there has been—to date—no single-authored comparative study of the medieval parliaments in the insular world. In fact, this lacuna in the historiography is quite understandable. The present study depends upon close analysis of the parliamentary records of England, Ireland and Scotland, but only in recent years have advances in digital humanities projects allowed for the consultation of a vast range of these primary sources (rather than secondary syntheses) in a way that enables sufficiently broad investigation and analysis. The online database of the *Parliament Rolls of Medieval England (PROME)*, as well as the *Records of the Parliaments of Scotland before 1707 (RPS)* and the *Calendar of Irish Chancery Letters, c. 1244–1509 (CIRCLE)* are invaluable resources for any historian engaged in comparative parliamentary research; the present study largely depends on analyses of the sources compiled in these databases.⁵⁹ Currently, the majority of our extant Irish parliamentary records for the fifteenth century are available as part of the Early Irish Statutes series, a project

⁵⁹ *The Parliament Rolls of Medieval England, 1275–1504 (PROME)*, ed C. Given-Wilson *et al.* (Leicester, 2005), online edition at www.sd-editions.com/PROME; *The Records of the Parliaments of Scotland to 1707 (RPS)*, ed K.M. Brown *et al.* (St Andrews, 2007–2015), online edn at www.rps.ac.uk; *A Calendar of Irish Chancery Letters, c.1244–1509 (CIRCLE)*, ed P. Crooks, online edn at www.chancery.tcd.ie.

initiated by the Irish Record Commission in 1811.⁶⁰ The present study takes the view that the records of parliament (the bureaucratic records of government administration) may in fact reveal a great deal about the political culture of contemporaries. The formulaic nature of these records tends to disguise more than it reveals—but then, as Mark Ormrod observed, the role of the parliamentary clerk was not to produce a comprehensive record, but rather to ‘conceal the fact that anything unusual or untoward was going on.’⁶¹

The ‘unusual’ (and occasionally untoward) goings-on of a number of episodes in the parliaments of English Ireland and Scotland form the basis of the case studies which follow. Partially as a way of balancing out the tendency for studies of counsel and councils to portray an overly ‘consensual’ portrayal of political activity, but principally because these circumstances forced contemporaries to articulate ideas and language they normally did not have to voice, this thesis often focuses upon moments of crisis. Some of these ‘crises’ were relatively minor; others, as we shall see, were of a more serious nature. More broadly, analysis of these case studies is structured around four fundamental ideological concepts which together underpin current conceptions of parliament’s political function: legitimacy, counsel, representation, and community. In even a brief overview of the historiography of parliament in each polity, these are concepts which make up a running undercurrent to the more well-studied administrative aspects of medieval parliaments: the rules and procedures which

⁶⁰ *Statutes and Ordinances and Acts of the Parliament of Ireland, King John to Henry V*, ed H.F. Berry (Dublin, 1907); *Statute Rolls of the Parliament of Ireland: Reign of King Henry VI*, ed H.F. Berry (Dublin, 1910). See also *Statute Rolls of the Parliament of Ireland, Edward IV, Vol. 1*, ed H.F. Berry (Dublin, 1914); *Statute Rolls of the Parliament of Ireland, Edward IV, Vol. 2*, ed J.F. Morrissey (Dublin, 1939); *Statute Rolls of the Irish Parliament: Richard III–Henry VIII*, ed P. Connolly (Dublin, 2002). These transcriptions and translations are not a comprehensive record of all material related to the Irish parliament: additional material is scattered broadly throughout material printed prior to the destruction of the original records. By comparison to the rich online parliamentary databases available to historians of England and Scotland, this state of affairs obviously presents limitations in terms of wider access for historians of the medieval Irish parliament. Fortunately, these difficulties will be alleviated in the future by a project of enormous significance for historians of all periods of Irish history—Beyond 2022: Ireland’s Virtual Record Treasury, a digital reconstruction of the collections lost in the destruction of the Public Record Office of Ireland on 30 June 1922. For the Irish rolls of parliament in the fifteenth century, see H.G. Richardson, ‘The Irish Parliament Rolls of the Fifteenth Century’, *English Historical Review*, 58:232 (1943), pp. 448–461.

⁶¹ W.M. Ormrod, ‘Richard II: Parliament of October 1377, Introduction’, *PROME*.

governed their activities. Issues of political legitimacy, counsel, representation and community are an integral part of each historiography, yet these are difficult concepts to draw out within the context of national histories. It is hoped that by using a comparative methodology these issues might be examined in a way which demonstrates their continued importance and relevance to the study of political activity in this period.

These four concepts are treated thematically; each ‘part’ of this thesis also presents a unifying theme around which indicative case studies are presented. Much as these concepts and ideas overlapped and interlinked in contemporary medieval political thought, treatment of these distinct concepts invariably overlaps throughout this thesis: however, the idea of ‘community’—or communal authority—is given primacy as an overarching concept. Crucially, this thesis rejects the idea—implicit in much of the historiography—of a unified, cohesive and, above-all, *enduring* ‘political community’, particularly one which acted as a corrective to the worst excesses of royal power in the fifteenth century. Instead, a primary argument of this thesis is that ideas of community and communal authority could be asserted, negotiated, contested and rejected in a variety of circumstances and by an ever-changing body of elites. Most importantly, I argue that *structures* of politics and governance modulated the *ways* in which these ideas were utilised by contemporaries, to a much greater degree than has, as yet, been appreciated in the historiography of the late medieval insular world.

As such, the unifying theme by which the concept of ‘community’—and the thesis as a whole—has been organised is twofold: around political structures, and around the body of political thought that parliamentarians in England, English Ireland and Scotland shared with one another (and indeed with other European polities in the later Middle Ages). Meanwhile, treatment of ‘legitimacy’ in Chapters 1 and 2 is structured around the organising theme of ‘absentee kingship’, a problem which parliamentarians in both English Ireland and Scotland shared during both the fourteenth and fifteenth centuries. The case studies on ‘counsel’ offered for Ireland and Scotland in Chapters 3 and 4 are organised around the theme of ‘resistance’, a decision made in order to give primacy to the central political question of power in a field of study which tends to stress consensus over conflict and, as such, occludes analysis of this central historical problem. The concept of ‘representation’, covered in Chapters 5 and 6 is organised around the theme of ‘political solidarities’—in essence, how ideas of community were constructed and contested—rather than traditional (and restrictive) analyses which

focus on representation as ‘fact’, rather than an idea—a political concept—which could, like legitimacy, be claimed and therefore rejected. Together, these themes guide the key objective of this thesis: the investigation into how medieval theory and practice intertwined and translated into the *dynamics* of political life in parliaments of the insular world.

PART I

LEGITIMACY

The Absent King

‘SUDDEN AND TERRIBLE’ was the change brought to England upon the death of Henry V—at least in the view of one chronicler, an early fifteenth-century continuator of Thomas of Walsingham’s *Chronica Maiora*.¹ As news of the king’s unexpected death in France on 31 August 1422 slowly filtered back across the Channel, the king’s subjects were left both ‘fearful’ and ‘unspeakably distressed’.² And ‘no wonder’, the same chronicler lamented, ‘when, in place of so powerful a king and wise a lord, a man characterized by his many good qualities, they were receiving his son, not yet a year old, who was weak and without knowledge, to rule so many great realms and domains which belonged to him by inheritance. They feared the words of Solomon: “Woe betide the land whose king is a child”.’³

No wonder indeed. Of course, such expressions of despair at the prospect of a minority were the stuff of literary convention, and, despite the serious problems minority governance could generate, the ‘vile times’ alluded to in contemporary chronicles occasionally seem at variance with later historians’ accounts of continuity and stability after the premature death of an adult monarch.⁴ In this case, any such fears the king’s subjects might have held were misplaced, for it was not during the new king’s minority, but rather his adult rule that tumultuous change was brought to England in the shape of the Wars of the Roses. Henry VI, whose reign officially began on 1 September 1422, has been described by one historian as ‘one of the most

¹ *Chron. Walsingham*, pp. 774–5. For a discussion of the composition and authorship of the *Chronica maiora*’s continuation from 1419–1422, see Taylor *et al*, ‘Introduction’, especially pp. xxxv–xlii.

² *Chron. Walsingham*, pp. 774–5.

³ *Chron. Walsingham*, pp. 774–5; Eccles. 10:16.

⁴ *Chron. Bower* pp. 324–5: The phrase belongs to Walter Bower, who was commenting on James II of Scotland’s minority after the murder of James I. For treatment of medieval and early-modern minorities of English kings see C. Beem (ed.), *The Royal Minorities of Medieval and Early Modern England* (New York, 2008). As Ormrod has commented, ‘the whole point of preferring a legitimate heir who was unable to rule rather than allowing the succession of a royal cousin or uncle amply qualified to do so was that the former maintained the stability of the dynasty and, thus, of the realm at large’ (W.M. Ormrod, ‘Review of *The Royal Minorities of Medieval and Early Modern England* by Charles Beem’, *Journal of British Studies*, 48:4 (2009), pp. 986–7, at p. 986).

spectacularly inadequate kings of England'.⁵ This view surely deserves some qualification—Henry VI faced unprecedented challenges to his kingship from the very start—but few can deny the role that his personal kingship played in leaving England a kingdom of divided loyalties, embroiled in civil war, and in precipitating Henry's own ignominious death as a prisoner in the Tower of London on 21 May 1471.⁶ At the beginning of his reign, however, Henry could no more play an active role in governing his kingdom than he could physically wear its crown, the symbol of royal authority which he would eventually receive on 5 November 1429.⁷ Henry V's only son and heir was not only a child at the time of his father's death; he was, at barely nine months old, the youngest king ever to succeed to the throne of England.⁸ A long minority was set to follow. Accordingly, proceedings of the first parliament of Henry VI's reign in November 1422 were dominated by the tricky question of how, with no prospect of personal kingship for nigh on two decades, the kingdom was to be governed.⁹ For England in 1422, the political landscape was defined not by the presence of the king, but rather by his *absence*.

Minorities were just one way in which a king might be seen as 'absent' from his kingdom, but of all circumstances in which kings were deprived or incapable of active rule, this phenomenon has received the bulk of attention. It is not difficult to see why. 'Royal minorities', as Mark Ormrod has noted, 'have always intrigued historians. The ultimate anomaly in the dynastic principle arose where the enormous panoply of royal power had to be borne by monarchs who at their accession were sometimes only adolescents, sometimes barely within the age of reason, or sometimes mere mewling babies.'¹⁰ There was no one prescribed formula which governed the exercise of royal authority in such circumstances, and the redistribution of power during a minority

⁵ J. Watts, *Henry VI and the Politics of Kingship* (Cambridge, 1996), p. i.

⁶ See Watts, *Politics of Kingship* (1996), pp. 8–9, and C. Carpenter, *The Wars of the Roses: Politics and the constitution in England, c. 1437–1509* (Cambridge, 1997), especially chapters 5, 6 and 12. For a more sympathetic view of Henry VI, see R.A. Griffiths, *The Reign of Henry VI: The Exercise of Royal Authority, 1422–1461* (Sparkford, 2004); R.A. Griffiths, 'Henry VI (1421–1471)', *ODNB* (2004), online edn at www.oxforddnb.com/view/article/12953 [accessed 25 Sept 2017].

⁷ Griffiths, 'Henry VI (1421–1471)'.

⁸ Griffiths, 'Henry VI (1421–1471)'.

⁹ *PROME*, 'Henry VI: Parliament of November 1422', *passim*.

¹⁰ Ormrod, 'Review of *Royal Minorities*', p. 986.

could have serious long-term consequences for the future practice of governance. But the possibility of minority rule was a predictable—if undesirable—consequence of dynastic kingship, and its associated problems were by nature temporary. At least in theory, so long as the principle of dynastic integrity was maintained, a return to conventional rule would occur in the fullness of time. Other forms of ‘absent kingship’ could have more serious implications. K.B. McFarlane once wrote that Henry VI’s adult reign amounted to ‘forty years of virtual minority’; John Watts saw in those years an absence of the independent will of the king, which was itself ‘the only source of fully legitimate authority’, ‘rooted in the king’s own person’.¹¹ Deprived of his independent will, Henry’s subjects—who therefore had to both maintain both the king (as the source of legitimate authority) alongside conciliar modes of rule—were ‘surely doomed to failure’.¹² In Watts’ view, then, governance merely in the name of the king was not enough to prevent the political crisis which followed; the king, perforce, had to play his ‘small but necessary part’ of exercising his independent will, but Henry was completely incapable of doing so.¹³ The long-term consequences of absent kingship, in this particular sense, were dire.

The problem of the ‘absent king’ was not confined to the reign of Henry VI. It was one England shared with both its colony and closest neighbour at various points during the fifteenth century. In both Ireland and Scotland, absentee kingship was a much more thoroughgoing feature of political life. For English Ireland, the king was a permanent absentee—Richard II’s brief expeditions to Ireland in 1394 and 1397 had seen the first visit of a reigning English king to Ireland since King John in 1210—while Scotland, already having experienced prolonged and repeated absences of active kingship during the fourteenth century, had to contend not only with the minorities of James II, James III and James IV, but also with the extraordinary circumstances of

¹¹ K.B. McFarlane, *The Nobility of Later Medieval England* (Oxford, 1973), p. 284; Watts, *Politics of Kingship*, pp. 115, 363–4.

¹² Watts, *Politics of Kingship*, p. 364.

¹³ Watts, *Politics of Kingship*, p. 364. While this problem underscores the centrality of personal kingship in England’s governance, it may also, reading between the lines, imply something of *brittleness*—a lack of flexibility, both in political structures and culture, which might effectively accommodate the absence or incapacity of a reigning monarch without everyday resistance turning to outright rebellion. Whether or to what extent this was actually the case is difficult to say—and such an investigation lies far beyond the scope of this thesis—but in this respect a re-examination of the much-studied structure of the English polity in more rigorous comparative context might well raise serious questions for future research.

James I's eighteen-year captivity in England from 1406–1424. From a comparative perspective, this shared problem raises some interesting questions. If 'forty years of virtual minority' and long-term deprivation of the independent will of the king 'doomed to failure' efforts to govern England in the fifteenth century, how then did Scotland survive so many absences of active kingship without a similar breakdown of the political system? If *personal* kingship was really the cornerstone of effective governance, how then did English Ireland cope with a king who was a perpetual absentee? The key question with which I am concerned is how a kingdom absent a king could be *legitimately* governed in practice when contemporary political theory saw personal, active kingship as a key ordering principle—a *sine qua non*—of medieval government. For in theory, at any rate, the absence of personal kingship should have been a major cause for concern. This was not because contemporaries expected the day-to-day machinery of governance to grind to a halt in his absence (although, as we shall see, this could and did on occasion occur), but because the end to which that governance was directed—good governance for the common profit—became inherently suspect. The shared problem of 'absent kingship' has provided us with a central organising theme, yet if we are to explore how political ideas and language could be used to legitimise governance in the absence of a king, we must also at least briefly consider how they were used to legitimise governance when he was present.

I

The idea that kingship—the rule of a single, unitary actor who both represented and embodied the realm—constituted the 'ideal' form of government was an integral feature of medieval political thought. In one sense, even to speak of governance was to speak of kingship. 'Kings', observed Isidore of Seville, writing in the early seventh century, 'are so called from "governing", and as "priests" are named from "sacrificing", so "kings" from "governing".'¹⁴ As time went on, medieval theorists drew on various strands of Christian theology, classical philosophy, and Roman law to produce a medley of ideas which justified the monarchical structures of politics within which they themselves lived. Due to structural differences between the polities in which these theorists variously resided, a single theory of the precise relationship of the king to

¹⁴ *The Etymologies of Isidore of Seville*, ed and trans. S.A. Barney *et al.* (Cambridge, 2006), p. 200 [L: *Reges a regendo vocati. Sicut enim sacerdos a sacrificando, ita et rex a regendo* (Etymologiae, IX. iii. 4)]; A. Black, *Political Thought in Europe, 1250–1450* (Cambridge, 1992), p. 136.

those he governed never achieved unqualified consensus—indeed, the question of how and in what circumstances a king might be held accountable for his governance provoked a variety of responses—yet in Europe (with a few exceptions, most notably the Italian city-states) the idea that the ship of state should be steered by one man predominated.¹⁵ It was thought that unity of purpose—governance directed toward the common good of all—was best achieved through the direction of a single will, vested in the person of the king.

The source of the king's own authority was twofold. On the one hand, it derived from God; on the other, it was understood to derive in some way from the collective body of people over whom he governed.¹⁶ John Fortescue, for instance, drew upon the analogy of the body politic to explain the origins of kingship as he saw it. He reasoned that 'as the physical body grows out of the embryo, regulated by one head, so the kingdom issues from the people, and exists as a body mystical, governed by one man as head'.¹⁷ By this token, the king did not just represent *and* embody the realm; in a sense, he represented the realm *by* embodying it. Fortescue went on to explain that:

'Just as in the body natural, the heart is the source of life, having in itself the blood which it transmits to all the members thereof, whereby they quicken and live, so in the body politic the will of the people is the source of life, having in it the blood, namely, political forethought for the interest of the people, which it transmits to the head and all the members of the body, by which the body is maintained and quickened'.¹⁸

The idea that the king's authority in some sense derived from the will of the people had the value of strengthening the king's legitimate right to rule, rather than placing limitations upon it—'especially', as Antony Black has observed, 'when one interpreted this as meaning that what the king does is done in the name of his people'.¹⁹

¹⁵ Aquinas, *De Regimine Principum*, pp. 5, 10, 39; Black, *Political Thought*, pp. 136–7.

¹⁶ Black, *Political Thought*, p. 137.

¹⁷ John Fortescue, *De Laudibus Legum Anglie*, ed and trans. S.B. Chrimes (Cambridge, 1949), pp. 30–1 [L: *Hoc ordine sicut ex embrione corpus surgit phisicum, uno capite regulatum, sic ex populo erumpit regnum, quod corpus extat mysticum, uno homine ut capite gubernatum*].

¹⁸ *De Laudibus*, pp. 30–1.

¹⁹ Black, *Political Thought*, p. 138.

On a practical level, the theoretical transmission of the ‘blood’ (the will of the people) to the ‘head’ (the king) could be achieved by the giving and taking of counsel. The mechanisms and language by which counsel was transmitted—and indeed the uses to which it could be put—are of special significance, and are considered more fully in Part II of this thesis. For now the key point is that, as John Watts has argued, counsel (‘itself a form of will’) represented the *private* interests of individuals or groups.²⁰ The counsel that the king received thus derived from the private ‘wills’ of many; only the king could unite the partisan ‘lobbies’ of sectional interest groups into a single will which could direct governance toward the common profit of all.²¹ Concurrently, to ensure that governance was directed toward the common good, it was of paramount importance that the king be a man of both integrity and independence—a man of ‘outstanding excellence’.²² Medieval theorists were well aware of the potential problems which could arise from governance dependant on a single will: just as kingship was thought to be the best type of government, its antithesis, tyranny, was regarded as the worst.²³ The difference between the two lay not chiefly in execution, but in intent; whereas a king governed for the common profit of all, a tyrant exercised power only for his private gain, at the expense of the good of the community.²⁴ For his subjects, the rule of a tyrant had not only serious practical but also spiritual repercussions. ‘The iniquitous king’, wrote John of Salisbury, ‘has entirely impious ministers; and of whatever kind is a city’s leader, of the same kind also are its inhabitants’.²⁵

The personal qualities of the single ruler were therefore one of the primary means of ensuring that his intent should be directed toward the common good rather than private gain. Aristotle wrote that kingship was the most appropriate form of government when ‘a single individual among the ordinary people is of merit so outstanding as to surpass that of all the rest’, but he also recognised that this was likely to be a rare occurrence (thereby necessitating less ‘ideal’ but more practical forms of

²⁰ Watts, *Politics of Kingship*, p. 27.

²¹ Watts, *Politics of Kingship*, p. 27.

²² Aristotle, *Politics*, III: 13, 1284^b22.

²³ Aquinas, *De Regimine Principum*, p. 12; Aristotle, *Ethics*, VIII: 10, 1160b.

²⁴ Aristotle, *Politics*, V: 10, 1310^b31.

²⁵ John of Salisbury, *Policraticus*, VI: 1, p. 105; Proverbs, 29:12.

government better suited to the contemporary Greek *polis*).²⁶ In some ways, the difficulty of finding such a virtuous man posed less of a problem for medieval theorists, who could draw upon moral theology and the teachings of the church to explain what they saw as lacking in the writings of pagan philosophers. Christian concepts of sacral kingship not only aligned with common practice, but also offered a pre-emptory solution to the potential problem of governance directed by a single will vested in one man. Just as the king was said to be a 'likeness on earth of divine majesty', his position in the temporal hierarchy reflecting God's position in the celestial, he was also expected to *act* like God.²⁷ First and foremost, this meant that a king should embody the four cardinal virtues of Justice, Temperance, Fortitude and Wisdom, as well as the theological virtues of Faith, Hope and Charity. If the king's primary duties were to defend the realm and to administer justice, then the importance of him doing so *personally* is attested to by the emphasis contemporaries placed upon these virtues in the *speculum principis*, the genre of political advice literature commonly termed mirrors for princes. For the writers of these didactic works, it made practical sense to focus their attention upon these aspects of the king's personality. As John Watts has argued, virtue 'bound the king *internally* to exercise his powers according to the common interest. There was no need for external restraints which raised difficult questions about the location of authority'.²⁸

II

Theory, of course, did not necessarily equate to practice. Indeed, the case of Henry VI offers a sharp reminder that kings did not always meet the high standards set for them by medieval theorists and advice-writers. But even if a king did not necessarily embody the four cardinal virtues, the very act of being available—of taking counsel and exercising his independent will—could maintain governance that was, if not necessarily 'good', then at least good-enough. Active, personal kingship was both the ideal and the basis for the theories of medieval governance, and, howevermuch the conduct of a king's governance might inspire debate, the fundamental premise of nearly all theories

²⁶ Aristotle, *Politics*, III: 18, 1288^a15.

²⁷ John of Salisbury, *Policraticus*, IV: 1, p. 28.

²⁸ Watts, *Politics of Kingship*, p. 25. In other words, as Watts argued, 'to achieve the common welfare, the simple and overlapping unities of king and realm could suffice...the four cardinal virtues justified the king's sovereignty by making him *inherently* responsive to the common interest of the people' [emphasis added].

of medieval secular government was that there was a king actually *there* to do the governing. Regardless of whether, as Joseph Canning has argued, ‘power can be justified as legitimate authority on the grounds either that it is derived from God in some way or that it is derived from the people (however broadly or narrowly defined) by some sort of consent’, at the end of the day the king was the one who was understood to be exercising this power on a day-to-day basis.²⁹ In this respect, then, it might be fairly said that, for contemporary political theorists, ‘the only source of fully legitimate authority was the will of the king, rooted in his own person’.³⁰

From a methodological perspective, however, we need treat the concept of legitimacy carefully. As social scientist David Beetham has cautioned, ‘what makes power legitimate in one society may differ for others, and the criteria for legitimacy in one may be rejected in another’.³¹ It does not, therefore, seem helpful to identify a certain ‘standard’, or abstract notion of what constituted the exercise of legitimate power, and consequently investigate whether the actions of political actors ‘measured up’. Neither is it particularly helpful for us to follow the Weberian understanding of ‘legitimacy’ as ‘*belief in legitimacy*’ (*legitimitätsglaube*), and conduct our analysis accordingly; contemporaries did not have to believe personally in the ideas and principles they articulated in order to use them to justify or legitimise political action.³² Beetham’s definition offers an advance: he states that a ‘power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of their beliefs*’.³³ This definition has the benefit of shifting our attention from Weber’s normative definition to the more dynamic relationship between political ideas and political action, allowing us to focus upon actual processes of legitimation, rather than descriptions of a static abstract. An important lesson regarding the nature of this relationship, which informs much of the argument in this chapter, may be gleaned from the writings of Quentin Skinner: that is, that the range of political actions that contemporaries might take was constrained by the parameters of the ideological

²⁹ J. Canning, *Ideas of Power in the Late Middle Ages, 1296–1417* (Cambridge, 2011), p. 195.

³⁰ Watts, *Politics of Kinship*, p. 115.

³¹ D. Beetham, *The Legitimation of Power* (Basingstoke, 1991), p. 6.

³² Beetham, *Legitimation*, p. 8.

³³ Beetham, *Legitimation*, p. 11.

vocabulary available to them.³⁴ Each process of legitimation used by contemporaries to justify any given exercise of authority must therefore be located not only within the specific historical context in which they operated, but crucially, its linguistic and intellectual context too.

The focus of the following two chapters (and indeed, this thesis as a whole) therefore lies not so much upon the administrative procedures and mechanisms by which everyday governance functioned in the absence of the king, but rather upon how contemporaries *used* political ideas and principles, expressed through a highly sophisticated discourse of politics, to *legitimise* these procedures and mechanisms. For the following discussion upon 'legitimacy', analysis of this sort is made possible precisely because of the unusual circumstances brought about by the absence of the monarch, when contemporaries were forced to articulate—and, crucially, adapt—ideas and concepts concerning the nature of medieval governance which, in more normal circumstances, could be left unspoken. And from a comparative perspective, it is important to bear in mind that while circumstances obviously differed between English Ireland and Scotland, the body of political thought which contemporaries drew upon to legitimise governance in the absence of the king, and the political language through which these ideas were expressed, transcended the geographical and legal bounds of these polities.

³⁴ Q. Skinner, *Visions of Politics, Vol. I: Regarding Method* (Cambridge, 2002), pp. 78, 102, 114, 156.

Representative Assemblies and the Right to Rule in English Ireland

LET US BEGIN with the young Thomas of Lancaster, who—having been appointed officially as the king’s lieutenant in Ireland on 27 June 1401—first set foot in the Lordship of Ireland on 13 November of the same year.¹ No doubt his father, Henry IV, had considered this appointment carefully; given that Lancaster could have been no more than thirteen years old at this point, the king evidently thought it politically expedient to appoint a member of his own family to the office of lieutenant.² Certainly Lancaster’s appointment—once described as having been made ‘with the poorest of judgement’ by the king—was neither rash nor unorthodox.³ Only a few months beforehand, the appointment of the previous lieutenant, John Stanley, had stipulated explicitly that Stanley might be removed from office if the king himself, one of his sons, or an earl of royal blood came to Ireland. Whether Henry IV himself ever seriously intended to travel across to Ireland must remain a matter for speculation, of course, but the caveats outlined in Stanley’s letters patent suggest that the king and his counsellors were considering their options in respect to the colony carefully—as well they might, given that Henry IV had every reason to be cautious of his new lieutenant’s reception in Ireland. A combination of recent political events and the results of longer-term processes meant that the decision of who to appoint to the lieutenancy was of special moment in 1400. In the broadest sense, Lancaster’s appointment was a logical one in respect of his royal blood and proximity to the king; from around the mid-fourteenth century, it had become *de rigueur* to appoint a man of great stature, or of royal favour, as the king’s representative in Ireland.⁴ In 1360, for instance, a general council at Kilkenny elected messengers to petition Edward III for ‘a good sufficient

¹ *CPR, 1399–1401*, p. 507.

² Otway-Ruthven, *Medieval Ireland*, pp. 340–1.

³ Richardson and Sayles, *Irish Parliament*, p. 163.

⁴ A.J. Otway-Ruthven, ‘The Chief Governors of Medieval Ireland’, *Journal of the Royal Society of Antiquaries of Ireland*, 95 (1965), pp. 227–236, at p. 234.

chieftain...out of England, as a noble and gracious prince is bound to do for his lieges'.⁵ 'Determined lobbying' in England by the earl of Ormond (amongst others) had resulted in the high-profile appointment in 1361 of Lionel, duke of Clarence, undoubtedly much to the satisfaction of the English in Ireland, who had felt keenly the absence of the king in the fourteenth century.⁶ But because these fourteenth-century petitions for royal intervention in the colony had culminated in Richard II's 1394–5 and 1399 expeditions to Ireland, Richard II had enjoyed levels of support in Ireland that stood at stark contrast to his experience as king in England. For English Ireland, then, particular political weight was attached to the position of the king's representative after Richard II's deposition. As such, Lancaster's appointment in 1401 probably speaks more to the uncertainty which the events of 1399 had created in Ireland than anything else; it provided Henry IV with an opportunity to bolster his own authority there, and to safeguard against any support which might develop for the earl of March as Richard II's 'rightful' heir.⁷

Against this background, Lancaster's appointment might well be interpreted as a statement of intent regarding royal authority—or, more specifically, *Henry IV's* royal authority, and the political legitimacy thereof—in Ireland at that time. After all, the new Lancastrian regime had already appointed Stanley as lieutenant in his own right on 10 December 1399; that he was replaced in office by a boy of thirteen surely highlights the extent to which Lancaster's role was symbolic rather than practical. From this perspective, it is difficult to avoid the impression that the new lieutenant's dynastic connection to Henry IV, with all the attendant prestige that that involved, was intended to supplement or even enhance the character of the office as representative of the king. Such an action is understandable in the context of Richard II's recent visits to Ireland, the support he received there, and the anxieties that that support may have provoked within the new Lancastrian government. But, to take a broader perspective, the appointment of a new lieutenant in Ireland was, in a sense, *always* a politically-charged issue (and arguably to a greater extent within the colony than for the king and

⁵ *Parliaments and Councils of Medieval Ireland*, ed H.G. Richardson and G.O. Sayles (Dublin, 1947); Otway-Ruthven, *Medieval Ireland*, pp. 284–5, 341; Matthew, *Lancastrian Lordship*, pp. 15–16; H. Wood, 'The Office of Chief Governor of Ireland, 1172–1509', *Proceedings of the Royal Irish Academy*, C:36 (1923), pp. 206–238.

⁶ R. Frame, *English Lordship in Ireland, 1318–1361* (Oxford, 1982), pp. 320–5.

⁷ Otway-Ruthven, *Medieval Ireland*, pp. 340–1.

his administration in England). The reasons as to why this was the case have much to do with the unique framework of politics in medieval English Ireland, and the place of the lieutenant within the institutional but also—crucially—the ideological structures which underpinned its governance. As such, Lancaster’s appointment provides us with a good opportunity to interrogate in a broader sense the role of the king’s representative, and why representative assemblies and communal authority played such a large role in how contemporaries negotiated their governance there.

To interrogate this claim, however, we must begin not with parliaments, or ideas of communal authority, but rather with a set of issues concerning *royal* authority, wielded by the men who represented the king in Ireland during his perennial absence from the land. The responsibilities of medieval monarchs (in England, in particular) have already been outlined above, but the Irish commissions of lieutenandry serve as a good means of sketching out their role in the Lordship and how they were expected to exercise royal authority on behalf of the king. Take Lancaster’s terms of appointment: charged with defending the land and administering justice, the young lieutenant’s remit was theoretically much the same as that of the king. He was empowered to:

‘keep the king’s peace and punish all who offend against it, to receive and pardon rebels and grant them letters of pardon under the seal used in Ireland, to receive to the king’s use fines and ransoms, to make war upon and pacify the king’s enemies and rebels, and to do all things pertaining to his office, and to take victuals necessary for his household and his men’.⁸

As a complement to the practical list of powers allocated to the king’s representative in his letters patent, there also existed a more ideological or symbolic component which perhaps serves as a more salient indicator of how the role was intended to function: the lieutenant’s oath, generally taken upon entry to office. By the fifteenth century, this oath was nearly identical to the English coronation oath.⁹ Some parliamentarians in fifteenth-century Ireland were familiar with a certain version of the king’s oath from a 1419 exemplification (which appeared alongside an exemplification of the *Modus Tenendi Parliamentum*, in curious circumstances) which asked the king to ‘preserve

⁸ *CPR, 1399–1401*, p. 507.

⁹ Otway-Ruthven, ‘Chief Governors’, p. 228.

for the church of God, for the clergy and for the people, entire peace and concord', 'cause equal and right justice to be done in all [his] judgements, and discretion in mercy and truth according to [his] power', and 'grant that the just laws which your people choose are to be kept and guarded by [him] and strengthened to the honour of God, according to his power'.¹⁰ The similarity of the lieutenant's oath to that of the king was not accidental. The commission of a later lieutenant, Edmund, earl of March, who was appointed by the council in England on 9 May 1423 for a term of nine years, made the status of the lieutenant's office more explicit.¹¹ 'Each and every one' of the powers which pertained to the office of lieutenant, and any actions he felt necessary to take, were to be exercised 'for the good governance and for the salvation and peace of our said land and the quiet of our people there...in our name, to our honour and advantage in our said land...as if we were there in our proper person'.¹²

Variants of this phrase, 'as if we were there in our proper person', occur repeatedly in the records of the English administration in Ireland, and the claim that was being made in it is of paramount importance to understanding the colonial structure of politics and how it operated. And yet—the king was not there in his own person. Indeed, the men appointed as the king's representative in Ireland were often absent themselves, and frequently governed through deputies.¹³ Lancaster's own deputy, Sir Stephen Scrope, had arrived back in Ireland in advance of the new lieutenant on 23 August 1401.¹⁴ It seems that Scrope was only formally appointed as Lancaster's deputy on 19 December; he was also to act as 'governor of the wars', and was given full power to maintain the peace in his efforts to subdue unrest 'just as the lieutenant would do in person'.¹⁵ One could hardly expect the experienced Scrope, appointed to govern in practice on behalf of the adolescent lieutenant, to have taken this clause as anything but a stock formula of officialdom which had become a commonplace in the colony's bureaucratic lexicon. It might have been passed over as equally pedestrian by the

¹⁰ *CIRCLE*, PR 6 Hen. V §15.

¹¹ *CPR*, 1422–9, p. 96.

¹² T. Rymer (ed.), *Foedera, Conventiones, Literae...* (3rd edn, 10 vols, The Hague, 1745), 10, p. 285.

¹³ Otway-Ruthven, 'Chief Governors', p. 227.

¹⁴ Otway-Ruthven, *Medieval Ireland*, p. 341.

¹⁵ *CIRCLE*, PR 3 Hen. IV §84.

broader audience which chancery clerks needed to keep in mind as they composed these missives. Yet, as with other bureaucratic constructions, the phrasing was not designed to provoke, but rather to reinforce in more subtle fashion political and ideological norms for contemporaries. Unpacked, this type of clause can help to illustrate more significant themes. On one level, we are reminded of the representative character of Scrope's office, and of how central the position of king's representative was to the structure of colonial politics in Ireland—regardless of who was occupying the office at any given time. On another, such stipulations should serve to emphasize that the office of king's representative was one which *required* frequent ideological reinforcement to function effectively. Finally, this legitimizing exercise was in fact a bilateral enterprise; while Scrope was ordered to act as Lancaster would, and was thus granted the power to exercise royal authority, this condition also in turn served as a reminder of the king's authority and presence (by proxy or not) to his subjects in Ireland.

I

The fact that these reminders were so frequently necessary might lead us to think that the 'perpetually vexed' office of lieutenant in Ireland rested on unstable constitutional foundations. Granted, the commissions of John Stanley, John Talbot, the fifth earl of Ormond, and Richard, duke of York, were all made on an 'explicitly vice-regal basis', in that they 'were to enjoy all the powers commonly held by justiciars of the lordship and were to do all that was necessary for the governing of Ireland, in the king's name, just as if he were there himself in person'.¹⁶ Likewise their remit was much the same as that of the king: to maintain peace, and to administer justice—or, put in more conventional terms, to defend the realm and provide good governance. Thus, in theory, the office of chief governor in Ireland was designed to occupy the structural space normally filled by the king (much in the same way that we might suppose colonial institutions like the chancery, exchequer and parliament had been transmitted from England to Ireland, where they had been 'adapted' to suit the needs of the colonial administration).¹⁷ Given the extent to which governance was agreed to be most

¹⁶ Matthew, *Lancastrian Lordship*, pp. 37–8.

¹⁷ The term 'adapted' probably understates the extent to which these institutions actually differed from their counterparts in England, and certainly does not adequately account for significant divergences between the development of these institutions in Ireland and England.

effective when directed by one man—by an individual, albeit one counselled—in medieval political thought, this arrangement would seem to make a great deal of sense. However, at this juncture we must bear in mind two important points. The first is that medieval political theorists generally formulated their arguments to justify systems of government which were *already* in operation; in practice, this meant that structures of governance which diverged from the norm were largely absent a theoretical basis that could underpin their legitimacy. As to the second: recall the extent to which medieval theorists and advice-writers themselves recognised that good governance—or successful kingship—depended upon not just the personal role and qualities of *individual* kings, but also the innate legitimacy that only a king could attain through his divine attributes and (theoretically) independent and non-partisan character. The first problem—that English Ireland’s structure of politics did not map very easily onto contemporary political theory—was one that Irish parliamentarians found various ways and means of circumventing (or, indeed, turning to their direct advantage). The second problem was of a more thoroughgoing sort, for chief governors in Ireland were simply unable to draw upon the same wellspring of innate ‘legitimacy’ as a reigning monarch. This point is worth emphasizing, because the reason as to why governors were ‘perpetually vexed’, as memorably described in one recent article—and, concurrently, as will become apparent, why parliaments and representative assemblies gained such a central position in the structure of colonial politics—derives in no small part from the fact that the institutions of ‘governor’ and ‘king’ were, if not at odds ideologically with one another, at least highly suspect in terms of their supposed equivalency.¹⁸ The point is worth stating baldly: the king’s representative in Ireland, for all that he acted by and exercised royal authority, was not the king. By continuing to bear in mind how governance was conceptualised in medieval English political thought, it becomes easier to understand why the exercise of ‘legitimate’ authority by lieutenants and their deputies in English Ireland was so frequently contested, and why parliament in particular acquired a more important role with regard to questions of ‘legitimacy’.

Perhaps the greatest problem from a theoretical standpoint was the issue of counsel and the king’s will: in English Ireland, counsel did not reach the ears of the king

¹⁸ K. Kerby-Fulton and S. Justice, ‘Reformist Intellectual Culture in the English and Irish Civil Service: the “Modus Tenendi Parliamentum” and its Literary Relations’, *Traditio*, 53 (1998), pp. 149–202, p. 172.

himself, where it could be formed into a 'fair' 'common policy': it stopped with the king's representative. This problem had serious practical repercussions and is discussed in detail in Chapter 3. But in a more immediate sense, the greatest problem for Irish lieutenants was that, unlike the king in England, they did not have the advantage of security of tenure. This problem went far beyond the 'insecurity' that a reigning monarch could face when confronted with accusations of tyranny (as in the case of Richard II); not only were appointments to the lieutenancy limited to specific terms, but they could also be cut short prematurely. This insecurity of tenure meant that the office was open to competition, and thus vulnerable to the ambitions of rivals. Furthermore, even if there was not active competition for the office itself, those who were dissatisfied with the incumbent lieutenant could always be aware of the possibility of an alternative. It follows that, in the event of conflict with the chief governor himself, final recourse to justice did not ultimately lie with the king's representative, but the superior authority of the king himself. In some ways, despite its presentation, the position of the king's representative was much closer to lordship than it was to kingship. His office was not only open to 'competitive tender', but like the local lord, the king's representative was 'much more directly accountable to his constituents' than the king himself.¹⁹ All of these issues posed structural problems for the office of king's representative in Ireland, and certainly made it nigh-on impossible for the king's representative to attain the *innate* legitimacy that the institution of kingship conferred, or indeed, that the king himself embodied.

How, then, could the king's representative actually function in English Ireland, bereft of the king's 'untouchable legitimacy'? Governors in practice obviously *were* substitutes for the king, and functioned as such in the Lordship of Ireland throughout the Middle Ages. This is not to say that the king's subjects in Ireland were not perfectly well-aware of the vast disparity between the status of the king and his colonial representative, as well as the associated problems (or, as it might be, opportunities) that this entailed. The point is that the structural and ideological underpinnings of the office had a direct impact on how contemporaries in English Ireland could actually *legitimately* engage with governance at the highest levels, and that the available options for how both contemporaries and governors could present their actions were dictated by the nature of the office of lieutenant. In itself, the office had a direct,

¹⁹ Watts, *Politics of Kingship*, p. 66.

meaningful and practical function for the king's subject in English Ireland. The requirement that someone was there to represent the king was no mere formality. If he had cause to leave the land, even the deputy lieutenant could appoint his own representative. To highlight precisely why the lieutenant's position representing the king was so important, it may be helpful to examine in detail a peculiar situation which arose just after the end of Lancaster's first residency in Ireland.

II

The young Lancaster set out back to England on 8 November 1403, his time in the colony beset by financial difficulties. A few months later, though, on 2 February 1404, his deputy suddenly left for England, leaving the colony without any appointed governor.²⁰ On 3 March 1404, a council met at Castledermot, afforced by the 'prelates, magnates, peers, clergy and commons' of Dublin, Meath, Louth, Waterford and

²⁰ Otway-Ruthven, *Medieval Ireland*, pp. 343–4. The suddenness of Scrope's departure is curious; it seems clear that it had not been anticipated by either Scrope himself or his council. It is possible that Scrope's sudden departure was connected to the death of his brother, Roger Scrope, second baron of Bolton (who had died on 3 December 1403, leaving his son and heir, Richard, a minor) and a need to settle financial affairs in England (*Peerage*, xi, pp. 541–2). One current explanation for Scrope's suddenly departure—that he had been summoned, or decided to present a petition, to a parliament in England—does not seem convincing. Scrope was present at a parliament in England in 1404, but it was the Coventry parliament which ran from 6 October–14 November 1404, and not the parliament summoned to Westminster which ran from 14 January–c.20 March 1404 (*PROME*, Hen. IV: Parliament October 1404, item 27; introduction). Writs were initially issued for this parliament to take place on 3 December 1403 at Coventry. However, new writs were issued on 24 November 1403, and parliament was prorogued until 14 January 1404 to take place at Westminster (*PROME*, Hen. IV: Parliament January 1404, Introduction). Among those summoned to attend was Roger, second baron Scrope of Bolton (Stephen Scrope's elder brother). But, as we know, Roger died on 3 December 1403, *before* parliament began on 14 January. Scrope only left Ireland on 2 February 1404. Parliament ended around 20 March, but there is no record of Scrope's presence there, or of any petition from Scrope personally, or any pressing issues raised about the colony. Given-Wilson noted that despite Glyn Dŵr's continuing revolt in Wales, there was 'remarkably little' said about it in this parliament, so the issue of Wales does not seem to fit as a reason for Scrope's sudden departure either. Stephen Scrope did however stay in England, and he was both present at and submitted a petition to the next parliament, in Coventry, from 6 October to 14 November 1404. He returned to Ireland sometime after 18 October 1404. It was not until June 1405 that he left the colony again, this time to defend Wales. Moreover, the nature of Scrope's petition to the 'unlearned parliament' in October 1404 was private: he wished to gain possession of his rents and lands in England. Given that there was some controversy over Roger Scrope's heir (Richard, third baron Scrope of Bolton, who as a minor was given into the queen's wardship), it seems more plausible that Scrope's sudden departure was connected with family affairs rather than colonial politics; and, given the reaction of the Castledermot assembly in the wake of his departure, it might be concluded that Scrope merely took advantage of his time in England to attend parliament while he was there, rather than having responded to an urgent summons.

Tipperary.²¹ They had been summoned to appear before the king's council to discuss how Scrope had departed Ireland 'without having made provision for its governance or rule'.²² Having been informed that the land was 'in great desolation', they were warned that the king's enemies and rebels planned to take advantage the governor's absence, and that there remained little or no money to finance a defence against them.²³ The response of the assembled prelates, magnates, peers, clergy and commons was to 'grant of their common assent and consent' the governorship to James, third earl of Ormond, who was (like Scrope in 1401) to act as 'governor of the wars'; Henry Marlborough, writing almost contemporaneously, noted his election with interest, although he included this information under the entry for 1403 in his chronicle.²⁴ Although

²¹ *CIRCLE*, PR 5 Hen. IV §131; *PKCI*, pp. 269–72; Otway-Ruthven, *Medieval Ireland*, p. 344; H.G. Richardson and G.O. Sayles, *The Irish Parliament in the Middle Ages* (Philadelphia, 1952) p. 155.

²² *CIRCLE*, PR 5 Hen. IV §131; *PKCI*, pp. 269–72; Richardson and Sayles, *Irish Parliament*, pp. 155–6.

²³ *CIRCLE*, PR 5 Hen. IV §131.

²⁴ *CIRCLE*, PR 5 Hen. IV §131; *Chron. Marlborough*, f. 50v [L: *tunc magnates terrae elegerunt comitem de Ormound in justiciarium Hibernie*]. Marlborough seems to have followed the actions of the governors and parliaments of the colony with keen interest throughout the period in which he was writing. In an Irish context, he pays an unusually large degree of attention to assemblies of parliament and great councils, and evidently considered them to be of central importance; of the entries between 1400 and 1421 alone, he recorded at least ten of the thirty-odd assemblies (whether parliaments, great councils or councils) known to have taken place, and accords them a prominent place in his narrative alongside accounts of the activities of chief governors and other events of contemporary interest in the colony. It seems that he was mostly resident in and around Dublin throughout his career, placing him close to the centre of the colonial administration. As a clerk, he held lands in Backweston prior to 1395, after which he deeded them to the king, who in turn granted them to the prior of St Wolstan [*CIRCLE*, CR 19 Ric. II §1; *CIRCLE*, PR 18 Ric. II §38; *CIRCLE*, CR 21 Ric. II §12; B.A. Williams, 'Marlborough, Henry', *ODNB* (2004), online edn at www.oxforddnb.com/view/article/12971]. In 1398 Marlborough was a rector at Killadown, while in 1412 and 1413 he was named as vicar of Balcadden and Donabate respectively, and Gilbert recorded that two deeds (no longer extant) for property in Dublin were executed by Marlborough in 1418 [Williams, 'Marlborough']. In 1406, 1407, and 1408 there are records of a Henry Marburgh (chaplain) in connection with property in Dublin, specifically Oxmantown, which could possibly refer to Marlborough [M.J. McEnery and R. Refaüssé (eds), *Christ Church Deeds* (Dublin, 2001), items 820–4, 828, 830, 841–3]. We also know that he had interests in England, as he was granted letters of attorney to travel there in 1413, 1419 and 1421 [*CIRCLE*, PR 7 Hen. V §32; *CIRCLE*, PR 9 Hen. V §6; Williams, 'Marlborough']. It is generally assumed that he began his chronicle in 1406, and the final entry that may reliably be attributed to Marlborough is an account of the 1421 parliament at which emissaries were chosen to report upon the state of the land to Henry V in England [Williams, 'Marlborough']. According to Richardson and Sayles, the only extant medieval copy of Marlborough's Chronicle may be found in Troyes MS 1316, and they suggest that the later transcripts of the chronicle in Cotton MS Vitellius E.V., Bodleian Laud Misc. 614 and TCD MS 574 (previously E. 3. 20) are derived from this text [Troyes MS 1316; Richardson and Sayles, *Irish Parliament*, p. x].

Ormond's office in the *inspeximus* of 12 March 1404 was described as 'soldier and governor of the wars', Ormond attested his letters as justiciar whilst acting as chief governor. Crooks has argued that the offices were seen as distinct, and this seems supported by the fact that the subsidy was granted to Ormond as 'soldier and governor of the wars'.²⁵ The Castledermot assembly also granted a subsidy to Ormond for the 'salvation and defence of the said lieges', which was to be levied on the whole of Leinster, the counties of Meath, Louth, Waterford and Tipperary, with contributions from the commons of Dublin, Waterford and Drogheda also.²⁶ Richardson and Sayles noted that, comparatively, the sum granted was much higher than was usual for this period, but—crucially—Scrope's departure meant that there was no one with sufficient authority in the land to use the resources supplied by the English exchequer for the defence of the land.²⁷ The subsidy was therefore granted for Ormond's use in his position as 'governor of the wars', and not justiciar.²⁸

It is almost certainly the case that the Castledermot assembly granted Ormond a subsidy for use in his position as 'governor of the wars'—and explicitly *not* as justiciar—because this impromptu assembly could not grant Ormond the authority to draw upon the English exchequer funds; that was a power reserved to the king's representative. In these vexed circumstances, though, the council's only option was to take it upon itself to appoint a governor. Ormond actually complained about the situation brought about by Scrope's sudden departure in a letter to the king's council, given at Waterford on 18 March 1404, only two weeks after his election at Castledermot.²⁹ He reported that

'a common council there, where the more eminent and greater prelates, lords, and commons of the same land, by their united advice, considering the great mischiefs and perils of the said land, imposed on me, against my wish, the office of the justiciarship and government of the said land'.³⁰

²⁵ P. Crooks, *Factionalism and Noble Power in English Ireland, c. 1361–1423* (Ph.D. thesis, University of Dublin, 2007), p. 286–7, n. 209.

²⁶ *CIRCLE*, PR 5 Hen. IV §131; Otway-Ruthven, *Medieval Ireland*, p. 344.

²⁷ *CIRCLE*, PR 5 Hen. IV §131; Richardson and Sayles, *Irish Parliament*, pp. 155–6.

²⁸ Richardson and Sayles, *Irish Parliament*, p. 156.

²⁹ A. Cosgrove, 'The emergence of the Pale, 1399–1447', in A. Cosgrove (ed.), *A New History of Medieval Ireland, II: Medieval Ireland, 1169–1534* (Oxford, 1993), pp. 533–56, p. 538.

³⁰ *PKCI*, pp. xxi–xxiii.

The earl continued, explaining that this charge was not one he could

‘eschew or refuse...although I [am] poor, unable and insufficient to support such a charge on account of the great expenditure which I have made and sustained...and the poor lieges there are so feeble, and nothing in the treasury to bear the said charge, to the great injury and ruin of myself and my estate’.³¹

Ormond finally enjoined the council in England to ‘stir up our most sovereign lord the King quickly to take order in sufficient manner for the government of the said land, and to discharge [him] thereof’.³² All of this suggests reluctance on Ormond’s part to accept his new charge, but the fact that Ormond was chosen to act in Scrope’s place by the Castledermot assembly does not in itself seem surprising. Ormond had not only gained previous experience as justiciar under Richard II (in 1384–5 and 1394–5), but had successfully aligned Butler interests with the Lancastrian regime after Henry IV’s usurpation; later, he also cultivated a close relationship with Thomas of Lancaster himself.³³ The men appointed to the new Lancastrian regime in Ireland on the whole tended to be ‘amenable to Butler interests’.³⁴ Ormond’s close alignment with the Irish government, then, taken together with the threat posed to the colony by the king’s enemies, and the vacuum created by Scrope’s abrupt departure, must have made him an obvious choice in the circumstances, and—most importantly—one which did not risk antagonizing the Lancastrian government in England. We might, however, wonder whether Ormond really desired to vacate the office of governor as stated in the letter of 18 March; he made good use of the position before Scrope returned, granting various positions and privileges to his supporters.³⁵ Certainly, his election to the deputyship demonstrates a forbearance by Castledermot council, and the assembled prelates, magnates and commons, toward his ongoing conflict with Thomas, earl of Desmond, which had come to a head the previous year; this should also indicate something of the make-up of that assembly, although records of attendance are not extant.

³¹ *PKCI*, pp. xxi–xxiii.

³² *PKCI*, pp. xxi–xxiii.

³³ C.A. Empey, ‘Butler, James, third earl of Ormond (c.1360–1405)’, *ODNB* (2004), online edition at www.oxforddnb.com/view/article/50022; Crooks, *Factionalism and Noble Power*, pp. 256–68.

³⁴ Crooks, *Factionalism and Noble Power*, p. 260, pp. 257–63.

³⁵ Crooks, *Factionalism and Noble Power*, p. 290–1.

On the other hand, though, the fact the Ormond was writing so soon after his impromptu appointment to the king and council in England may further underscore the peculiarity, and indeed volatility, of his position. Of most immediate concern must have been the fact that he was in receipt of no finance from England and could not draw upon the funds of the English exchequer. Even with the subsidy which had been granted at Castledermot, the pressure was on Ormond to finance the defence of the colony, so it is small wonder that he petitioned the king to replace him so soon. Nonetheless, we can see that Ormond was at pains to underscore the ‘legitimizing’ characteristics of his election in the 18 March letter to the king’s council. Plainly, Ormond was worried about accepting a position to which he had not been formally appointed—in the usual fashion, at least. He described the assembly as a ‘common council’, and he emphasized that the prelates, magnates, peers, clergy and commons were summoned (as they would have been to a parliament), and that he had been appointed by their ‘united advice’.³⁶ In doing so, the earl was not only referencing a broader political discourse which drew upon the principles of good governance and the common good of the ‘poor lieges’ of the land—his letter demonstrates that he was also drawing upon the legitimizing power of representative assemblies and communal authority in colonial Ireland to justify his actions and authority.³⁷

The assembly which appointed Ormond seems to have been equally concerned with the necessity for a formally appointed representative to be returned by the king at the nearest opportunity. Crucially, it was *not* a parliament, or even a general council—neither could have been convened, as there was no appointed representative of the king to do so—and the carefully worded provisions for the governor of the wars’ subsidy indicates their caution. It was certainly unable to appoint Ormond to any office above that of the justiciarship: to do otherwise would have superseded the royal authority by which both Lancaster and Scrope were appointed. Furthermore, the second half of its grant was only to be awarded ‘if the king [did] not sufficiently ordain for the said good governance, salvation and defence’ of the colony within the next six months, indicating that they expected a more prompt remedy from England.³⁸ Yet it was also decided that if Ormond ‘manfully and with force saves and defends [that land] in the

³⁶ *PKCI*, pp. xxi–xxiii.

³⁷ *PKCI*, pp. xxi–xxiii.

³⁸ *CIRCLE*, PR 5 Hen. IV §131.

meantime...then whenever the earl wishes after that he may cause them to be convoked' so that they could grant another subsidy in aid of his expenses in defence of the land.³⁹ Cautious as it was, the assembly recognised that Ormond might well need to draw upon the authority of a representative assembly again in the course of his impromptu governorship.

Finally, the Castledermot assembly stipulated that Ormond should not impose coign and livery during his tenure as governor, and—significantly—that the grant, 'made by them for their salvation and defence in this their exceptional necessity, should [not] be taken as an example henceforth, nor as a precedent in new appointments of justiciars or other governors of the lands in future times'.⁴⁰ As regards this clause, both Richardson and Sayles and Otway-Ruthven emphasized that the aim of the Castledermot assembly was to avoid setting a precedent for future grants to a governor on such high a scale.⁴¹ In a sense, this proviso in itself indicates the cautious nature of this assembly, and an unwillingness to overstep the bounds of its authority. Taken alongside the fact that Ormond was far from a controversial choice for justiciar, this caution indicates that the assembly was highly conscious of the superior authority of the Lancastrian government in Westminster. Yet at the same time, this very caution in itself hints at the latent authority possessed by representative assemblies like that of the Castledermot council.

Concomitantly, it is important to recognise that this process of legitimation stemmed from unusual circumstances. In 1404, it was for *lack* of intervention from superior authorities in England that the Castledermot assembly was forced to elect its own justiciar, and avoid offending royal prerogatives in the process; as we shall see in Chapter 4, the *intervention* of the imperial English government into colonial affairs caused serious problems for the king's representative and the political community there, and forced Irish parliamentarians to rely on different strategies. Nonetheless, while the events of 1404 can hardly but call attention to the instability of the position of king's representative within the structure of politics in English Ireland, they also have the virtue of vividly illustrating the consequent importance of communitarian

³⁹ *CIRCLE*, PR 5 Hen. IV §131; Ormond did indeed summon other assemblies during his deputyship: *Chron. Marlborough*, f. 50v; *CIRCLE*, PR 5 Hen. IV §93, dated 12 May 1404; *CIRCLE*, PR 5 Hen. IV §84, before 4 August; *Analecta Hib.* ii. 207).

⁴⁰ *CIRCLE*, PR 5 Hen. IV §131.

⁴¹ Richardson and Sayles, *Irish Parliament*, p. 156; Otway-Ruthven, *Medieval Ireland*, p. 344.

ideological principles, communal authority and representative institutions in the same political system.

In Ireland, it might be argued, representative assemblies had much more immediacy in the governance of the land than equivalent institutions in England. Watts, for instance, did not include parliament in his discussion of ‘the way in which...political structures...provided for the seminal task of government: the representation of the common weal’.⁴² In England, for Watts, while parliament also ‘in a sense, fulfilled this function...it was not strictly part of the government and its representativeness was highly formal and specialised’.⁴³ In addressing why the monarchy, ‘a system founded above all on representative authority, did not make more use of representative institutions’, Watts suggested that theories of representative authority were ‘riven with flaws...*Faute de mieux*, a council could possess an interim legitimacy and standing; it could even achieve certain things which a delinquent or ineffectual king could not; but it could not hold out for long against royal authority’.⁴⁴ This all begs questions of how we are to locate theories of representative authority, and indeed concepts or principals of political thought, within a given structure of politics. If these things existed in the minds of medieval theorists, and were given expression in literature and political tracts, their function was surely changed by dint of their application in an institutional setting. In 1404, it seems clear that what was happening at the Castledermot assembly was no contest for authority, nor indeed an accroachment of the authority or personal legitimacy possessed by the king. What was actually going on at Castledermot in 1404 was instead an attempt to *create* legitimacy for Ormond’s justiciarship. Moreover, this was an attempt which depended upon ideas of communal authority being adapted to suit the particular needs of the colonial structure of politics. At the same time, while we may recognise the relatively large degree of power that a representative assembly could wield (especially in such unusual circumstances), it is also worth bearing in mind that the same political principles which informed contemporary responses to the events of 1404 could also be co-opted to considerable effect in very different circumstances. The events of 1417, for instance, involved *resistance* to the incumbent

⁴² Watts, *Politics of Kingship*, p. 82.

⁴³ Watts, *Politics of Kingship*, p. 82.

⁴⁴ Watts, *Politics of Kingship*, pp. 76–7.

lieutenant, rather than support; nevertheless, the actual *processes* of legitimation that were employed to justify particular political actions were more of an extension of established principles than innovatory in and of themselves.

III

Clearly, it was beneficial for chief governors to work *with* representative assemblies if they wished to rule effectively. Stephen Scrope, for instance, was careful not to place the king's subjects in Ireland in the same position twice under his governance.⁴⁵ When the deputy lieutenant left again in January 1408, he selected the fourth earl of Ormond (then a minor, aged seventeen) as his deputy.⁴⁶ Ormond's appointment in 1408 marked the beginning of a long political career in which the earl would occupy the office of chief governor intermittently, as both deputy and lieutenant in his own right, until his death in 1452.⁴⁷ Much of Ormond's career, of course, was defined by the

⁴⁵ He returned to Ireland in October 1404, having spent more than seven months in England. It must have been late October when he left England, for he was present at the Coventry parliament of October 1404, where he petitioned the king to confirm his estates in England, and it was only on 18 October that arrangements were made for ships to return the deputy to Ireland (*PROME*, Hen. IV, Parliament October 1404, item 27; *CPR*, 1401–5, pp. 454, 503). Yet Scrope was not to remain in Ireland long. He once again departed in late June 1405, this time with a clear purpose; during this period, he led a raid on Anglesey and recaptured Beaumaris Castle, as part of efforts to combat the Welsh revolt of Owain Glyn Dŵr—a conflict which had escalated in 1404, to the growing concern of Henry IV's government (R.R. Davies, *The Revolt of Owain Glyn Dŵr* (Oxford, 1995), pp. 187–9). It is possible that during his eight months in England during 1404, when the revolt was reaching a new high point, with the making of a treaty between Glyn Dŵr and Charles VI of France against Henry IV, that the deputy had been involved in plans to use the colony as a base from which to attack Glyn Dŵr (L. Smith, 'Glyn Dŵr, Owain (c.1359–c.1416)', *ODNB* (2004), online edn at www.oxforddnb.com/view/article/10816). Glyn Dŵr had, from 1401–2, sent ambassadors to Ireland to seek aid in his revolt, so it should not be surprising that the English government thought to use the colony as a 'launching-pad for attacks against him' in 1405 (Davies, *Owain Glyn Dŵr*, p. 188). In any case, on this occasion when Scrope departed, lesson learned, he made sure to provide for the governance of the land in his absence, and formally appointed Ormond as his deputy on 25 June (*CIRCLE*, PR 6 Hen. IV §30).

⁴⁶ Despite the fact that at this point Ormond was in minority, he was appointed on 8 December 1407, and granted 'authority to keep our peace and the laws and customs of that our land, and to chastise and repress all, both English and Irish enemies...by all means that seems best for the good governance of our land, lieges and subjects, according to the discretion of the said earl, if necessary with the royal power' (*COD*, ii, pp. 282–3, item 391). 'All archbishops, bishops, abbots, priors, earls, barons, knights and all our ministers, officers and lieges' were ordered to be obedient to Ormond, 'as becomes them to the said earl as deputy to [Scrope] or as deputy to our son' (*COD*, ii, pp. 282–3, item 391).

⁴⁷ Otway-Ruthven, *Medieval Ireland*, p. 345; Crooks, *Factionalism and Noble Power*, p. 300; E. Matthew, 'Butler, James, fourth earl of Ormond (1390–1452)', *ODNB* (2004) online edn at www.oxforddnb.com/view/article/4187. Curiously, Marlborough stated in his chronicle that Ormond was elected by the land [*L: electus est per terram justicarium Hibernie*] to his office in 1408;

famous Ormond-Talbot conflict. What follows concerns an early episode in this much longer saga, but it has much to reveal about the way in which political legitimacy was bound up with the politics of representative assemblies and ideas of communal authority in English Ireland. Ormond himself was not to play a central role in the events discussed below, but because many of the main parties were either part of or linked with the earl's affinity in Ireland, it is worth noting the earl's early approach to governance in Ireland. Interestingly, one of Ormond's first actions as deputy lieutenant in 1408 was to summon a parliament held at Dublin near the end of March in 1408; it is not immediately clear as to why Ormond did so, but Marlborough tells us that both the Statutes of Kilkenny and the Statutes of Dublin (of 1402) were confirmed at this assembly.⁴⁸ This may be significant, as at Thomas of Lancaster's first parliament in 1402, not only were the Statutes of Kilkenny confirmed, but the collection of acts later referred to as the Statutes of Dublin were also established.⁴⁹ We must admit the possibility that Marlborough was seeking to emphasise similarities and continuities

and presumably he was referring to the date upon which Ormond assumed the justiciarship before the council, rather than to the date of his appointment by Scrope (*Chron. Marlborough*, f. 51v). It seems evident from what we have seen that councils only 'elected' justiciars for themselves in the unusual circumstances of an unexpected vacancy, as in the case of 1404 at Castledermot, and almost certainly in the case of Gerald, earl of Kildare, who seems to have been elected as justiciar by a council when the third earl of Ormond died during his deputyship in 1405 (*Chron. Marlborough*, f.50v, f.51r; Crooks, *Factionalism and Noble Power*, p. 294, n. 7). We know that the fourth earl was appointed well in advance of Scrope's departure, as Scrope only left Ireland in January 1408, more than a month after Ormond's letter patent had been created. It is interesting, then, that Marlborough, who was writing contemporaneously, chose to emphasise this more 'communitarian' feature of an appointment to the office of king's representative. We should not necessarily take this to indicate any ambiguity surrounding Ormond's appointment, but perhaps rather as a reflection of Marlborough's own preoccupation with the politics of parliaments and assemblies in Ireland at that time.

⁴⁸ Williams, 'Marlborough'; *Chron. Marlborough*, f.51v; There is another interesting aspect to Marlborough's account of the 1408 parliament. It closely reflects a prior entry under 1404, where Marlborough recorded the beginning of a parliament held in Dublin before the third earl of Ormond, on 28 April 1404, just shy of two months after his election as justiciar by the Castledermot assembly (*Chron. Marlborough*, f.50v; Richardson and Sayles, *Irish Parliament*, p. 348). As in 1408, Marlborough's only comment on the activities on the parliament was that the Statutes of Kilkenny and Dublin, as well as the Charter of Ireland, were confirmed (*Chron. Marlborough*, f.50v). It is possible, then, that in 1408 the young earl of Ormond was emulating his father's example in 1404, but it is also possible that Marlborough could have been promoting these 'communitarian' characteristics of Butler governance in Ireland; while he included a record of Lancaster's 1402 parliament in his chronicle, no mention is made of either Statute, but the murder of John Dowdall, sheriff of Louth, by Bartholomew Verdon, James White and Stephen Gernond, in the course of parliament, on the other hand, may have overshadowed other events for Marlborough (*Chron. Marlborough*, f. 50v).

⁴⁹ *Statutes, John–Henry V*, pp. 504–9; *Chron. Marlborough*, f. 50v.

between the governance of Lancaster and Ormond, but equally, it may also be the case that Ormond *himself* was seeking to emulate the actions of the king's son, which were quickly becoming standard form in the colony (much as in England, where parliaments conventionally began with a confirmation of the Great Charter). As we know, the third earl of Ormond had successfully aligned Butler interests with the Lancastrian regime earlier in the decade; Scrope's selection of the fourth earl as his deputy in 1408 demonstrates that the Lancastrian government intended to continue the association. The personal relationship between Ormond and Lancaster was only set to deepen over the course of the next decade. Thomas of Lancaster was granted Ormond's wardship in 1405, until proof of his majority in August 1411, and thereafter continued to act as Ormond's patron.⁵⁰ For the young earl, 1408 not only marked a new high point in his political career, but also played host to Lancaster's return to Ireland, after an absence of nearly five years, on 2 August 1408.⁵¹ Lancaster, however, spent only eight months in Ireland, leaving on 13 March 1409 to return to his ailing father in England and fortify his position in light of his elder brother's increasingly firm grasp upon royal government there.⁵² In the intervening years, governance of Ireland was left chiefly in the hands of Thomas Butler, prior of the Hospital of St John of Jerusalem in Kilmainham, who was appointed as deputy lieutenant on 4 March 1409.⁵³ Thomas Butler was none other than the earl of Ormond's half brother, and it was this enigmatic figure who would play a central role in one of early fifteenth-century Ireland's more perplexing episodes—the arrest of the earl of Kildare and Sir Christopher Preston in 1418.⁵⁴

The episode in question did not occur during Lancaster's lieutenancy, but under that of John Talbot, Lord Furnival. Talbot had not been Henry V's initial choice for the

⁵⁰ *COD*, ii, pp. 277–8, item 386; *CPR*, 1405–8, p. 88; Crooks, *Factionalism and Noble Power*, pp. 293–296; Matthew, 'Butler, James, fourth earl of Ormond (1390–1452)'.

⁵¹ Otway-Ruthven, *Medieval Ireland*, p. 345.

⁵² Otway-Ruthven, *Medieval Ireland*, pp. 345–6; Crooks, *Factionalism and Noble Power*, p. 301.

⁵³ *CIRCLE*, PR 10 Hen IV §92; see also §95, §96, §146, §170, §208.

⁵⁴ In part, as Peter Crooks notes, 'the choice of Prior Thomas reflects the value Lancaster placed on the Butler party in Ireland', and indeed, in his position as governor, the Prior appears to have had considerable military success in the early years of his tenure, winning him praise from one anonymous annalist for his efforts subduing English rebels and Irish enemies around the country early in his tenure (Crooks, *Factionalism and Noble Power*, p. 305; *Annales Anonymi*, ed K. Nicholls, 'Late medieval Irish annals: two fragments', *Peritia*, 2 (1983), pp. 90–2).

office of king's representative in Ireland. Lancaster's lieutenancy had expired with the death of Henry IV, but Henry V's first appointee—Sir John Stanley, who had been appointed on 8 June 1413 for a term of six years—had been in Ireland for barely four months before he died on 8 January 1414.⁵⁵ With no representative of the king in Ireland once again, Marlborough tells us that Archbishop Cranley was elected as justiciar on 22 January; he remained effectively in charge of the colony's administration until November 1414.⁵⁶ On two occasions during this period, ambassadors from Ireland travelled to the king in England to report on the state of the colony; the treasurer, Laurence Merbury, travelled there 'to expound to the king and council the state of Ireland and to sue for a remedy for its good governance' in February (presumably only shortly before Talbot's appointment), while Cranley himself apparently travelled to England in late September 1414 with Hugh Bavent, 'to declare to the king and his council concerning the state of Ireland'.⁵⁷ During this period, however, Henry V had already appointed his new lieutenant. Talbot was appointed as the king's representative on 24 February 1414, although he only arrived in Ireland on 10 November, landing at Dalkey—his letters patent were read out before Cranley and the council, who were gathered at Christ Church on 13 November.⁵⁸

⁵⁵ *CPR, 1413–16*, pp. 53–4; *Chron. Marlborough*, f. 52r. Crooks notes that James Ware incorrectly gave the date of Stanley's death as 18 January, not 8 January, in his English edition of Marlborough's Chronicle (Factionalism and Noble Power, p. 320, n.8). Crooks' correction also eliminates some confusion as to what would otherwise have been a highly-accelerated election of the new justiciar, which would have been only a day or so after Stanley's death had he died on 18 January. Marlborough may not be entirely correct as to the date of Cranley's election, for the Archbishop had already attested as justiciar a commission granted to William Tynbegh in Dublin on 20 January 1414 (*CIRCLE*, PR 1 Hen. V §48).

⁵⁶ *Chron. Marlborough*, f. 52r [L: *elegitur*].

⁵⁷ *CIRCLE*, PR 1 Hen. V §57; *CIRCLE*, PR 2 Hen. V §197.

⁵⁸ Otway-Ruthven, *Medieval Ireland*, p. 348; *Chron. Marlborough*, f.52r; *CIRCLE*, PR 2 Hen. V § 93, §94. John Talbot's appointment by Henry V was logical enough. He had gained considerable military experience in Wales before his appointment to the lieutenancy in Ireland, which he would bring to bear upon the Gaelic Irish with considerable force while he held the office (A.J. Pollard, 'Talbot, John, first earl of Shrewsbury and first earl of Waterford (c.1387–1453)', *ODNB* (2004) online edn at <http://www.oxforddnb.com/view/article/26932>; *AClon*, 1415:2, 1416:3, 1417:12, 1418:12). During the five years between the effective cessation of the Welsh wars and his appointment as lieutenant, Talbot began to attend parliaments in England as Lord Furnivall, having first been summoned to sit amongst the lords temporal in 1409 for the Westminster parliament of January 1410 (Pollard, 'Talbot, John'; Davies, *Owain Glyn Dŵr*, pp. 125–6; *PROME*, Hen. IV, Parliament January 1410, Introduction). Talbot also gained lands in Wexford and Waterford in right of his marriage to Maud Neville, daughter and heir of Thomas Neville, Baron Furnival—a marriage which, as Pollard observes, 'brought together two families that had long been prominent in the service of the house of Lancaster, and linked Talbot with a man high in Henry IV's favour'—and the Talbots

By all appearances, a relatively genial relationship between Talbot and Butler existed in the first period of Talbot's residency in Ireland, before he departed for England on 7 February 1416; it was only upon his return to Ireland later in the year that the relationship so drastically soured.⁵⁹ But Talbot seems to have had a knack for upsetting the king's subjects in Ireland. At a parliament held in Dublin before the lieutenant on 27 January 1417, for instance, Archbishop Cranley—who had only recently acted as deputy to the lieutenant during his absence in England—was elected as a messenger to the king, 'to declare the state and government of your aforesaid land', and deliver a message 'engrossed and made out by certain engrossers appointed thereto by authority of the said parliament'.⁶⁰ As others have observed, the contents of Cranley's message must have been critical of Talbot's lieutenancy, or at least the state of the land under his governance. Although there is no extant record of the missive, Laurence Merbury, the chancellor and a Talbot adherent besides, refused to set the great seal of Ireland to the message, 'but withheld [it], to the very great detriment of your said land'.⁶¹ Evidently Talbot was worried by such actions (and presumably also unsettled at being faced with an obstinate assembly, with men confident enough in the collective strength and the communal authority that parliament conferred to have made such criticisms before him), for a letter defending his record, dated 26 June 1417, was composed a few months later at an afforced council in Naas.⁶² Care was

in any case had long-established connections in Ireland (A.J. Pollard, *The Family of Talbot, Lords Talbot and Earls of Shrewsbury in the Fifteenth Century* (PhD Thesis, University of Bristol, 1968), pp. 103–6; Pollard, 'Talbot, John'). Crooks, moreover, observed that 'the choice of Talbot as lieutenant may have been considered appropriate in part because of the blood relationship that existed between the Talbots and the Butlers of Ormond', a relationship which was reinforced by grants of patronage and indentures of service upon the new lieutenant's arrival in Ireland (P. Crooks, 'James the Usurper and the Origins of the Talbot–Ormond feud', in S. Duffy (ed.), *Princes, Prelates and Poets in Medieval Ireland: Essays in Honour of Katharine Simms* (Dublin, 2013), pp. 159–84, at p. 163).

⁵⁹ Crooks, 'James the Usurper', pp. 163–165; *CIRCLE*, PR 3 Hen. V §102.

⁶⁰ *CIRCLE*, PR 3 Hen. V §101, §102; *Statutes, John–Henry V*, pp. 566–7.

⁶¹ *Statutes, John–Henry V*, pp. 566–7; Crooks, 'James the Usurper', p. 164; Otway-Ruthven, *Medieval Ireland*, p. 351; Richardson and Sayles, *Irish Parliament*, pp. 149–50. It is probable that the order, given on 28 February 1417, for all 'men born of Ireland' to return there from England for the defence of the land was made in response to complaints of the 'faithful lieges of Ireland' which had been passed on by the ambassadors of the 1417 parliament (*PPC*, ii, pp. 219–20). Adam of Usk appears to have been confused by this order, stating that before his departure to Normandy, the king 'banned all Irishmen from the kingdom' (*Chron. Usk*, pp. 264–5).

⁶² Ellis, *Original Letters*, ii, pp. 53–64; Otway-Ruthven, *Medieval Ireland*, p. 349.

taken in the report to emphasise both Talbot's military achievements in Ireland (and, not least, to request payment for the lieutenant, 'as especially recommended to your sovereign lordship'), but also the *manner* in which Talbot had carried out his military campaigns.⁶³ By emphasising that his first action was to take the 'advice of your council on this side, and of other lords temporal, knights, esquires, and other good commoners', before commencing his campaign against the Gaelic Irish, reference was made not just to the princely virtue of advice-taking, but the value of counsel from a 'representative' body.⁶⁴ More effective than this invocation of communitarian principle, however, was the long list of witnesses with which the report was concluded—a 'representative' sample of the clergy, magnates and commons lent their seal of approval to Talbot's governance.⁶⁵ However, Talbot clearly lacked cohesive support from within the colony; as Crooks has outlined, Butler associates were 'conspicuously absent' from Talbot's list of supporters (and, it follows, from the 1417 Naas assembly too), and barely a month later, Talbot had confiscated all lands held by the earl of Ormond in Ireland.⁶⁶

A few notables amongst the missing Butler associates were to play frontline roles in the events which followed later in 1417, but both the lieutenant himself and the earl of Ormond were absent for its apogee in the summer of 1418—namely, the arrest of the earl of Kildare and Sir Christopher Preston, who were charged with parliamentary manipulation, accroaching royal power, and, not least, plotting to murder the deputy lieutenant. The earl of Ormond had left Ireland to participate in Henry V's French campaigns on 7 June 1416.⁶⁷ Talbot, on the other hand, had remained in Ireland longer, and left for England in late February 1418.⁶⁸ The extended series of events which led up to their arrest need not be detailed here, as they have been recounted and analysed in depth elsewhere.⁶⁹ What is of most concern to the present discussion of 'legitimacy' is what this episode can tell us about contemporary ideas about the

⁶³ Ellis, *Original Letters*, ii, p. 61.

⁶⁴ Ellis, *Original Letters*, ii, p. 56.

⁶⁵ Ellis, *Original Letters*, ii, pp. 61–3.

⁶⁶ Crooks, 'James the Usurper', p. 165.

⁶⁷ Matthew, *Lancastrian Lordship*, p. 113.

⁶⁸ Matthew, *Lancastrian Lordship*, p. 484, n12.

⁶⁹ See Crooks, 'James the Usurper'.

structure of governance in Ireland, and particularly the ways in which ideas of communal authority could be used to assert political legitimacy in a variety of circumstances.

Our knowledge of events from 1417–19 is derived from a report, dated 12 January 1419, sent by John Talbot to the king in response to a royal writ demanding an explanation for the arrest of Kildare and Preston.⁷⁰ It survives in two parts. The first (TNA E 163/7/12) was found by Jocelyn Otway-Ruthven; her edition was published in 1980.⁷¹ The second (TNA E 101/698/34), which comprises a crucial missing fragment of the third membrane of the report, was more recently located by Peter Crooks; his edition, published in 2007, has been integrated with Otway-Ruthven's text, so that we may now examine the report in its entirety.⁷² From the outset, it is as well to bear in mind Crooks' warning that 'not all of its testimony can be accepted at face value...it was an apologia, crafted to discredit Talbot's political enemies'.⁷³ This remains cause for caution. Taken in the context of the Ormond-Talbot feud in particular, we must remain mindful of the role factional conflict within the colony played during this period, and the impact this had upon the course of events recounted in the report.

The report began by informing the king that, on 16 October 1417, the lieutenant became aware of 'a great debate' between Prior Thomas and Walter Burke, 'chieftain of his lineage in parts of Munster', both having assembled 'Irish enemies and English rebels' to make war and destroy the king's lieges in Kilkenny, Limerick, Cork and Tipperary.⁷⁴ Upon hearing this, the lieutenant immediately sent for the king's council to gather at Naas on 23 October to inform them of the matter; Talbot's intention, apparently, was to take 'advice and counsel' from the men gathered there as to how he should proceed.⁷⁵ His next action was to order, 'by the advice of the said council',

⁷⁰ P. Crooks, 'The Background to the Arrest of the Fifth Earl of Kildare and Sir Christopher Preston in 1418: A Missing Membrane', *Analecta Hibernica*, 40 (2007), pp. 1, 3–15; A.J. Otway-Ruthven, 'The Background to the Arrest of Sir Christopher Preston in 1418', *Analecta Hibernica*, 29 (1980), pp. 71, 73–94.

⁷¹ Otway-Ruthven, 'Background to the Arrest'; TNA, E 163/7/12.

⁷² Crooks, 'Missing Membrane'; TNA, E 101/698/34.

⁷³ Crooks, 'Missing Membrane', p. 7.

⁷⁴ Otway-Ruthven, 'Background to the Arrest', pp. 74–5, transcribed from TNA, E 163/7/12; *CIRCLE*, PR 6 Hen. V §14.

⁷⁵ Otway-Ruthven, 'Background to the Arrest', pp. 75.

several royal writs to be sent to the Prior and Burke, commanding them to disband their men and cease their conflict without delay.⁷⁶ The lieutenant—again, ‘by the advice of the said council’—assigned a great council to be held in Naas on 20 November, to take the ‘advice of the said lords and commons of all the land’ on what might best be done ‘for the salvation of all the king’s lieges’.⁷⁷ Additionally, the lieutenant sent several writs which directed Prior Thomas and Burke to depart as they had been commanded, and charged them to appear before the council at Naas.⁷⁸ Next we learn that neither the Prior nor Walter had appeared on the appointed day, and that the lieutenant, ‘by the advice of the said earl and Christopher and all the other lords as well spiritual as temporal assembled at the said council’, had adjourned the council until 14 December.⁷⁹ Also by advice of the council, the lieutenant reissued writs to Prior Thomas and Burke, ordering them to attend the adjourned council.⁸⁰ Neither man initially appeared on the set date, but after some degree of vacillation, Burke eventually appeared before Talbot; the Prior remained conspicuously absent.

The lieutenant, ‘seeing that the same prior was absent and disobedient in the manner declared, and that the said matters were great and heinous’, ‘demanded and charged by their allegiance the lords assembled at the council’ to advise him on what should be done.⁸¹ Upon this demand, ‘the earl of Kildare and Christopher and all the other lords assembled at the council declared to the lieutenant that their wish and purpose was and always would be to loyally acquit themselves to [their] lord the king’, and that, ‘because the said matters were great and heinous’ and considering how ‘by the custom of the land the lords spiritual and temporal were summoned by royal writ to appear in the king’s council held in the said land’, they doubted if they had or could have the power to determine such matters in council as they could in parliament’.⁸² At that, ‘by the special request of the earl of Kildare and Christopher and the other lords’,

⁷⁶ Otway-Ruthven, ‘Background to the Arrest’, p. 75, 81–2; *CIRCLE*, CR 5 Hen. V §7, §8. (*Dated 20 October 1417).

⁷⁷ Otway-Ruthven, ‘Background to the Arrest’, p. 75.

⁷⁸ Otway-Ruthven, ‘Background to the Arrest’, p. 75.

⁷⁹ Otway-Ruthven, ‘Background to the Arrest’, p. 75.

⁸⁰ Otway-Ruthven, ‘Background to the Arrest’, p. 75; see *CIRCLE*, CR 5 Hen. V §9, §10.

⁸¹ Otway-Ruthven, ‘Background to the Arrest’, p. 77.

⁸² Otway-Ruthven, ‘Background to the Arrest’, p. 77.

the lieutenant assigned a parliament to be held in Dublin on 14 February 1418, with writs of parliamentary summons to be sent out immediately by the sheriff of Dublin, the seneschal of Meath, and 'by the sheriffs of all other counties where the Prior has possessions', so that upon that date parliament could respond to the 'high crimes and contempt and other offences'.⁸³ Yet the report goes on to say that 'on the first day of parliament, and the second, third and fourth days following, as formally requested', the Prior did not appear.⁸⁴ Because of the Prior's non-appearance, we learn, 'by the advice and assent of all the lords assembled at the said parliament, the default of the prior from the parliament was recorded', and, as 'the lords at that time had no advice as to the judgement of the case they had been given', the lieutenant 'at their instance and request adjourned the parliament', which was to be held at Trim on 30 May 1418.⁸⁵ After the adjournment, the lieutenant appointed his brother, Thomas Talbot, as his deputy in his absence, for Talbot was travelling to England 'for certain matters touching the estate of the king and the profit of the land'.⁸⁶

This is where things become interesting. The report claimed that on 18 May at Kilmainham, 'Christopher and many others his allies and adherents came to the said Prior, having secret council and communing together with no regard for the rebellion, contempt and offences against the king...by the said Prior'.⁸⁷ After that the Prior apparently departed, and left in the company of O'Connor of Offaly to make war in Dublin, Kildare, Meath, Carlow, Kilkenny and Connaught; the Prior was then accused of laying siege to the king's castle of Roscommon with William O'Kelly, another 'Irish enemy', and attacking men fighting under the king's banner.⁸⁸ At the same time, we are told, Thomas Talbot came to Trim on 30 May to hold the adjourned parliament.⁸⁹ But because not all the lords of the land who had been summoned to parliament had arrived, the deputy adjourned the parliament again, to be continued instead the next

⁸³ Otway-Ruthven, 'Background to the Arrest', p. 77; *CIRCLE*, CR 5 Hen. V §12, §13 (dated 17 December 1417).

⁸⁴ Otway-Ruthven, 'Background to the Arrest', p. 77.

⁸⁵ Otway-Ruthven, 'Background to the Arrest', p. 78; Crooks, *Factionalism and Noble Power*, p. 335.

⁸⁶ Otway-Ruthven, 'Background to the Arrest', p. 78.

⁸⁷ Otway-Ruthven, 'Background to the Arrest', p. 78.

⁸⁸ Otway-Ruthven, 'Background to the Arrest', p. 78.

⁸⁹ Otway-Ruthven, 'Background to the Arrest', p. 79.

day.⁹⁰ Yet after having done so, the deputy was apparently informed that both Irish enemies and English rebels had assembled a short distance from Trim ‘to burn and destroy all the surrounding country’, whereupon Talbot immediately assembled his retinue to counter the attack.⁹¹ One of the ‘wilder accusations’ in the report goes on to claim that on the following day, the king’s enemies tried to prevent Talbot from returning to Trim, because they knew from ‘certain false English’ that, if the deputy did not return on the same day to hold the parliament, it would then be discontinued.⁹² Being so occupied, the deputy sent a message to the chancellor, Laurence Merbury, and the king’s council, informing them that he could not leave ‘if all the lands surrounding were not to be destroyed’, and he prayed that the message be shown to the lords spiritual and temporal and the commons assembled at parliament.⁹³ But before the arrival of the message, ‘the lords and commons had departed to their lodgings because it was near night’; it was not until the following morning that the chancellor and other members of the council assembled with the lords and commons, and informed them of the message, ‘asking for their advice in that regard’.⁹⁴

The response, as it was recorded in the report, is startling. We are told that ‘Christopher openly declared that because the deputy had not arrived on the Tuesday, the parliament was discontinued’, and it was said moreover that if all the English lands were burned and destroyed all the way to Trim, it would remain a loss all the same if the same parliament were thus discontinued.⁹⁵ ‘A great murmur’, the report continued, ‘arose among the lords and commons’, and there were ‘great and heinous and threatening speeches from the earl of Kildare and Christopher against the deputy and the king’s council’.⁹⁶ Furthermore, when the chancellor and the king’s council had departed, ‘the said lords and commons immediately closed the doors of the room upon them and accroached to them royal power, by their own authority ordering that they should all

⁹⁰ Otway-Ruthven, ‘Background to the Arrest’, p. 79.

⁹¹ Otway-Ruthven, ‘Background to the Arrest’, p. 79.

⁹² Otway-Ruthven, ‘Background to the Arrest’, p. 79; Crooks, ‘Missing Membrane’, p. 7.

⁹³ Otway-Ruthven, ‘Background to the Arrest’, p. 79.

⁹⁴ Otway-Ruthven, ‘Background to the Arrest’, p. 79.

⁹⁵ Otway-Ruthven, ‘Background to the Arrest’, p. 80.

⁹⁶ Otway-Ruthven, ‘Background to the Arrest’, p. 80.

meet at Dublin in the house of the Friars Minor', with Prior Thomas, on 6 June 1418.⁹⁷ Because the Prior was apparently unable to attend the meeting on that date, although many of the commons summoned to the previous parliament arrived, 'Christopher continued his wicked plans', and (once again accused of accroaching royal power), postponed the meeting until 14 June.⁹⁸ As the report goes—just before the gap in the report's third membrane breaks off—it was at this point that Thomas Talbot learned that the earl of Kildare and Christopher, along with their 'confederates', were accused of holding councils 'against the estate and dignity of our lord the king, and the good governance and profit of the land'.⁹⁹ Next, we learn that Talbot sent for the king's council to assemble with him at Trim on 16 June.¹⁰⁰ They were apparently informed the same day, 'by certain trustworthy persons', of Christopher and the earl's intentions to capture the deputy, take all his soldiers (as well as the chancellor and the council), and put them to death, and, moreover, that they wished to elect a justiciar of their own to govern the land.¹⁰¹

At this point, we would be in the dark as to the final days of the affair, were it not for Crooks' identification of the missing fragment from the third membrane of the report.¹⁰² Talbot's response was to send writs to the sheriffs of Dublin, Kildare and Louth, the seneschal of Meath, and the mayor and bailiffs of Dublin, ordering that proclamations which forbade the holding of 'secret or illicit councils' should be made.¹⁰³ While the Prior was reportedly making war with the O'Connors in Kildare, the deputy had travelled to Carlow to restore the peace, but upon his return, he was advised that he should not go through Clane, because the earl, Prior and Christopher were gathered there in wait 'with wicked intent and purpose'.¹⁰⁴ Talbot proceeded to Clane, and, in the chapel of the Friars Minor, demanded to know why the earl and

⁹⁷ Otway-Ruthven, 'Background to the Arrest', p. 80; Crooks, *Factionalism and Noble Power*, p. 326.

⁹⁸ Otway-Ruthven, 'Background to the Arrest', p. 80.

⁹⁹ Otway-Ruthven, 'Background to the Arrest', p. 80.

¹⁰⁰ Otway-Ruthven, 'Background to the Arrest', p. 80.

¹⁰¹ Otway-Ruthven, 'Background to the Arrest', p. 80.

¹⁰² Crooks, 'Missing Membrane', p. 12 (transcribed from TNA E 101/698/34).

¹⁰³ Crooks, 'Missing Membrane', p. 12; *CIRCLE*, CR 6 Hen. V §1.

¹⁰⁴ Crooks, 'Missing Membrane', p. 14.

Christopher had come there. Their excuses to the deputy, according to the tenor of the report, were decidedly lacking; the earl apparently stated that he went to there speak with the Prior about negotiating for him with the king, 'his good friend', while Preston claimed that he was there because the Prior had sent him a letter instructing him to meet him at that time.¹⁰⁵ Talbot countered that they had no right to do so, and 'considering the matters declared above with the said circumstances' arrested the earl of Kildare and Christopher and brought them to Trim castle, to keep them secure until it otherwise ordered by the king or the lieutenant.¹⁰⁶ At the end of the missing membrane, we discover that, at the time of his arrest, Preston had been in possession of a roll of parchment and certain scraps of paper, in which certain articles were contained—these articles, we learn, were exemplified under the great seal of Ireland 'by the advice of the lieutenant and council', and thus were attached to the report.¹⁰⁷ On 10 July, John Talbot returned from England and immediately sent for the deputy, to explain in the presence of the council, the cause of the arrest of the earl of Kildare and Christopher. The deputy obliged, and we are told that, thus judged by the lieutenant and council, his actions were found 'good and reasonable'.¹⁰⁸

Clearly, Talbot's report provides a veritable feast of information from which we may gain insight into the relationships between the king's representative, the colonial administration, representative assemblies and the king's subjects in English Ireland. It is obvious at a glance that councils and representative assemblies played a central role in the series of events which took place between autumn 1417 and summer 1418. The deeply-politicised application of various political ideas and principles in the report itself is of considerable interest, but more striking still is the evidence concerning how these ideas and principles were also used to considerable effect by those acting in *opposition* to Talbot and his deputy lieutenant, Thomas Talbot. A crucial point that must be addressed at the outset is that Talbot's report 'reveals a parliamentary episode tailor-made for, or perhaps by, the manipulative use of the *Modus*', and, especially given the treatise was attached to the report, means that the two documents must be

¹⁰⁵ Crooks, 'Missing Membrane', p. 14.

¹⁰⁶ Crooks, 'Missing Membrane', pp. 14–15.

¹⁰⁷ Crooks, 'Missing Membrane', p. 14.

¹⁰⁸ Crooks, 'Missing Membrane', p. 14.

analysed in conjunction with one another.¹⁰⁹ That an exemplification of Preston's copy of the *Modus Tenendi Parliamentum* was appended to Talbot's report is deeply significant, for it explains why the report itself is so concerned with points of parliamentary procedure.¹¹⁰ Take, for example, 'the report's excessive concern to show that the parliaments called by the lieutenant were legitimate (the summons having been issued by the chancery under the great seal of Ireland), while Preston's were not'; as Crooks says, 'by emphasising that Preston and Kildare acted in violation of the *Modus*...Talbot bolstered his case of treason against them'.¹¹¹ Kerby-Fulton and Justice also note how it was that Kildare and Preston, on the other hand, were so confident employing the *Modus* that Preston's copy 'must have been dog-eared with overuse', such that they could appropriate 'an entire parliament apparently on the strength of its insistence that the presence of the commons is the one *sine qua non* of a valid parliament'.¹¹² Their resistance to the lieutenant, as Crooks says, was 'bolstered by a supremely confident comprehension of parliamentary rights'.¹¹³ In late-fourteenth and early-fifteenth century Ireland, a fundamental characteristic of the *Modus*, shared with 'legitimizing' institutions like representative assemblies and political principles, was its malleability. To see this appropriation of the *Modus* for multiple political purposes, even those at variance with one another, we need but look to Talbot's report.¹¹⁴

However, what is also apparent in Talbot's report is the recourse to communitarian language and principle, with particular emphasis given to the importance (and riskiness) of advice-taking. For our purposes, this is highly significant. Peppered throughout the report are numerous examples of the lieutenant both summoning the council to take their advice, and prefacing his actions (and the deputy's) with qualifications that they were in accordance with the advice of the council. When Talbot summoned a great council to be held on 20 November at Naas, it was for the express

¹⁰⁹ Kerby-Fulton and Justice, 'Reformist Intellectual Culture', p. 173.

¹¹⁰ Kerby-Fulton and Justice, 'Reformist Intellectual Culture', p. 174; Crooks, 'Missing Membrane', p. 10.

¹¹¹ Kerby-Fulton and Justice, 'Reformist Intellectual Culture', p. 175; Crooks, 'Missing Membrane', p. 10.

¹¹² Kerby-Fulton and Justice, 'Reformist Intellectual Culture', pp. 174, 176.

¹¹³ Crooks, 'Representation and Dissent', p. 30.

¹¹⁴ Crooks, 'Missing Membrane', p. 9.

purpose of taking the ‘advice of all the lords and commons of all the land’.¹¹⁵ Likewise, when the Prior again failed to appear before the adjourned great council on 17 December, Talbot demanded that the lords assembled there advise him on what action should be taken regarding such ‘great and heinous matters’.¹¹⁶ When Preston and Kildare were the ones reportedly counselling the lieutenant and the deputy to take particular actions, on the other hand, their advice was given in conjunction with ‘all the other lords as well spiritual as temporal assembled at the council’.¹¹⁷ The commons in Talbot’s report are portrayed more as credulous and easily-led by Kildare and Preston than as proactive supporters, but the framing of Kildare and Preston’s advice having been *supported* by members of a representative assembly was actually an effective method of exoneration for Talbot, who might otherwise have been criticised for having taken counsel from men with such ‘wicked intent and purpose’, and it thus served to retrospectively legitimize his actions.¹¹⁸

Another significant political principle with communitarian overtones that was emphasized in Talbot’s report was the distinction between public and private—or open and secret—actions. This is most vividly illustrated in the report in two contrasting episodes, the first in which Prior Thomas was summoned on the first, second, third and fourth days of the parliament held at Dublin on 14 February 1418.¹¹⁹ In a later section of the report, much was made of the process by which the Prior had been summoned. ‘By order of the lieutenant’, the king’s serjeant-at-arms, Laurence Newton, called for the Prior three time ‘at the barriers of the place of parliament’ and thrice again ‘at the doors of parliament’, saying ‘Brother Thomas Bulter...come and appear in this parliament to answer the king on high crimes, contempts and offences which will be charged against you according to the tenor of the writs of proclamation made concerning this, on pain of law’.¹²⁰ This episode stands out in stark contrast to the ‘secret councils’ reportedly held by Preston, the Prior and their adherents on 18 May

¹¹⁵ Otway-Ruthven, ‘Background to the Arrest’, p. 75.

¹¹⁶ Otway-Ruthven, ‘Background to the Arrest’, p. 77.

¹¹⁷ Otway-Ruthven, ‘Background to the Arrest’, p. 77.

¹¹⁸ Crooks, ‘Missing Membrane’, p. 14.

¹¹⁹ Otway-Ruthven, ‘Background to the Arrest’, p. 77.

¹²⁰ Otway-Ruthven, ‘Background to the Arrest’, p. 92; *CIRCLE*, PR 6 Hen. V §14.

at Kilmainham, but even more so to the next scandal said to have occurred.¹²¹ The deputy lieutenant was detained, apparently by Irish enemies who knew from ‘certain false English’ that if he was delayed in returning to the adjourned parliament at Trim it would be discontinued, and Preston declared, precipitating a ‘great murmur...among the lords and commons’, that parliament was discontinued (and, moreover, that ‘if all the English lands were burned and destroyed all the way to Trim, it would remain a loss all the same if parliament was thus discontinued’).¹²² When the chancellor and the king’s council had departed, ‘the said lords and commons immediately closed the doors of the room upon them and accroached to themselves royal power, by their own authority ordering that they should all meet at Dublin in the house of the Friars Minor’ with Prior Thomas on 6 June 1418.¹²³ More such meetings, in which ‘certain evil persons, full of ill-will, have held various conventicles, gatherings and secret councils in secret locations, to the discord and subversion from day-to-day of the king’s faithful people’, precipitated the deputy’s order (sent to the sheriffs of Dublin, Kildare and Louth, the seneschal of Meath, and the mayor and bailiffs of Dublin) to proclaim ‘that all such persons full of bad doctrine’ were forbidden from holding such meetings, under pain of forfeiture.¹²⁴

The account of the lords and commons closing the parliament-house door illustrates amply the physical as well as intellectual iterations of communitarian political thought and principles, and reminds us that in practice, such concepts were not only employed in political discourse, but also in ritual and space (in a sense, evoking an explicitly *material* process of legitimization, which worked in conjunction with complementary political and ideological processes). This is an interesting point in itself, because it is a reminder that both access to and hegemony of physical institutional *space*, whether that was the parliament-house, or the market cross, were needed to assert legitimacy too. The question is one of degree—did sophisticated verbal or written invocations of political principles have sufficient weight or political capital outside of physical institutional trappings, to compete with the same principles employed ‘inside’ the parliament-house, as it were? A later parallel, though in Scotland,

¹²¹ Otway-Ruthven, ‘Background to the Arrest’, p. 78.

¹²² Otway-Ruthven, ‘Background to the Arrest’, pp. 79, 80.

¹²³ Otway-Ruthven, ‘Background to the Arrest’, p. 80.

¹²⁴ Crooks, ‘Missing Membrane’, p. 12; *CIRCLE*, CR 6 Hen. V §1.

invites the same question. In the context of the current discussion, however, the issue of door-keeping leads us back to the role of the *Modus* in this episode—more immediately, perhaps, in terms of how the report was framed, but also in a broader sense, in terms of the version of the *Modus* which was circulating in Ireland at that time, and what that can tell us about contemporary ideas regarding the structure of governance there.

In a recent article, Kerby-Fulton stated that ‘one surprising absence from the Irish version [of the *Modus*] indicated that it was an English version Talbot knew and used for his own defence in the report: the detail about door-keeping in parliament occurs in the English Latin versions, but not in the Irish copy found on Preston’.¹²⁵ Kerby-Fulton goes on to say that ‘since Talbot knew and trusted the standard text of the *Modus* well enough to make his arguments against Preston from it, his instruction to make an exemplification of Preston’s copy can only mean that he was nervous about the version that he saw there: he was apparently seeing the Irish version for the first time’.¹²⁶ The reference to door-keeping also shows that Talbot preferred the English version, and was unwilling to accept that a document tailor-made for *Ireland* might supersede it, which is perhaps reasonable given the final destination of the report. However, that he felt the need to exemplify Preston’s version might equally mean that he wished to flag a document seen as contentious to the king in England, as well as that he was nervous about its contents. There is also more evidence that the English version was generally better-known in Ireland before 1419; Richard O’Hedigan, archbishop of Cashel, was almost certainly in possession of a copy sometime around 1408–9.¹²⁷ On the back of the Finch-Hatton roll, upon which there is a French translation of the C text of the English *Modus*, there is a petition to Thomas of Lancaster (then lieutenant, as we know) from the Archbishop.¹²⁸ The Irish version of the *Modus*, moreover, is said to have derived from a French translation of the C text, and it is quite possible that it was created from O’Hedigan’s copy.¹²⁹ To be sure, the remarkable interpolation which exists *only* in the Preston exemplification indicates that O’Hedigan felt he had a right

¹²⁵ Kerby-Fulton, ‘Competing Archives’, p. 686.

¹²⁶ Kerby-Fulton, ‘Competing Archives’, p. 686.

¹²⁷ Crooks, ‘Representation and Dissent’, p. 30, n. 202. Cf. Kerby-Fulton and Justice, ‘Reformist Intellectual Culture’, p. 175, n. 3.

¹²⁸ N. Pronay and J. Taylor, *Parliamentary Texts of the Later Middle Ages* (Oxford, 1980), p. 120.

¹²⁹ Pronay and Taylor, *Parliamentary Texts*, p. 120.

to the document, for article XXI states that ‘this writing shall be held for the people of the said land in the custody of the archbishop of Cashel, since it is in the middle of Ireland’.¹³⁰ Many words have been spent on the differences of the Irish version of the *Modus* to the English (and still more on when to date them), but the crucial differences between the two which are of relevance to the present discussion concern the articles about the oath of the chief governor, and the section concerning the election of a governor. Naturally, both are absent from the English *Modus*, but even so, it is ‘telling’, as Kerby-Fulton observes, that ‘all three copies associated with Ireland (one Latin and two French) were connected with high-level politicians struggling with or over the perpetually vexed office of lieutenant’.¹³¹ It is also equally telling that, as Pronay and Taylor observed, ‘the Irish *Modus* [Preston’s copy] survives...in the exemplification in company with a number of documents which related to the position of the justiciar, which was by definition a controversial matter’.¹³²

In a sense, then we are brought full-circle back to the discussion of the status of the chief governor in Ireland. Articles XX–XXIII in the Preston *Modus* directly concern the status of the chief governor:

XX. And also the king wills that in the absence of the king from the same land without a procurator or governor of the same land or someone by whatever other name he may be known, having been appointed by the king himself, the king’s council shall directly and speedily send for the archbishops, bishops, abbots, priors, earls, barons, and their peers, with other nobles and discreet men at least to the nearest three adjacent counties, in order that they may more quickly assemble on a certain convenient day and at a place where they decide amongst themselves for deliberating, counselling, and agreeing [concerning] a Justicar of the king of the land of Ireland, who in place of the king, and as the lord of Ireland, and in the name of the king, shall supply all things. Upon which directly the king’s council aforesaid under the king’s great seal for the land may appoint him justiciar of Ireland for governing the said land in the name of the king in all things.¹³³

XXI. The king wills that this form shall be observed in all things in his land of Ireland and that this writing shall be held for the people of the aforesaid

¹³⁰ *CIRCLE*, PR 6 Hen. V §15; Pronay and Taylor, *Parliamentary Texts*, pp. 135, 145.

¹³¹ Kerby-Fulton, ‘Competing Archives’, p. 683.

¹³² Pronay and Taylor, *Parliamentary Texts*, p. 123.

¹³³ Pronay and Taylor, *Parliamentary Texts*, pp. 145, 135.

land in the custody of the Archbishop of Cashel, since it is in the middle of the land. He who is appointed by the king his keeper of the land of Ireland by whatever name he is known having touched the Holy Gospel shall swear this oath in the presence of the chancellor, council, and people; he shall keep for God, and the people of the land of Ireland the laws, liberties and true customs which ancient kings of England, predecessors of the present king, and the king himself, have granted to God, the people of England, and the land of Ireland. And that he shall observe peace and concord for God, holy church, the clergy and the people, in God undiminished according to his power. And that in all judgement he will cause equal and true justice to be done with discrimination, mercy and truth. And that he will hold and guard the true laws and customs which the people of the land shall have chosen to be kept by him, and that he ought to defend and strengthen them to the honour of God as far as he can.¹³⁴

XXII. And note that this oath is from the oath of the king of England.¹³⁵

XXIII. And having taken the oath he is invested on oath with power granted to him and not before.¹³⁶

Richardson and Sayles believe that these articles cannot date to long before 1419.¹³⁷ In a seventeenth-century transcript of the other Irish version of the *Modus* (the Waterford version) published by Anthony Dopping in 1692, the section concerning the oath of the governor does not appear, and the section concerning the election of a justiciar simply states that in the absence of the king or his deputy another should be made.¹³⁸ Because there is no remaining medieval copy of the Waterford text, it is difficult to say if there were any Irish versions of the *Modus* circulating before 1419, which included these articles, and this, in any case, is not the place for speculation. What we *do* know is that copies of the English *Modus* had been in circulation in Ireland from the late-fourteenth century, and were familiar thus not only to lieutenants like Talbot, travelling over from England, but to the English of Ireland themselves.

¹³⁴ Pronay and Taylor, *Parliamentary Texts*, pp. 145, 135.

¹³⁵ Pronay and Taylor, *Parliamentary Texts*, pp. 145, 135.

¹³⁶ Pronay and Taylor, *Parliamentary Texts*, pp. 145, 135.

¹³⁷ Richardson and Sayles, *Irish Parliament*, p. 234, n. 2.

¹³⁸ *Modus Tenendi Parliamenta et Consilia in Hibernia*, ed A. Dopping (Dublin, 1629), p. 22.

The interpolated Preston *Modus* demonstrates another important fact; not only was the English *Modus* being adapted with considerable sophistication for an Irish audience, but those who were involved in the interpolation of the Preston version were seriously thinking about the nature of governance in Ireland, and *particularly* the status of the king's representative there. Whether this was because of more seditious motivations than an inquiring mind is beside the point; the construction of Articles XX–XXIII show a real concern, not with the legitimate authority of the king, but with his representative in Ireland. If the process described in article XX on the election of a new justicar calls to mind the process of legitimation discussed above in the case of 1404, we might conclude that the interpolaters were either drawing off their own past experiences, in the sense of merely formalizing a process which was already established, or that this procedure had already been outlined at an earlier point than 1419.

Either way, the events of 1417–18 (and indeed the first quarter of the fifteenth century more broadly) demonstrate that the parliamentarians of English Ireland were adept politicians, possessed of sophisticated ideas of political thought and less 'working knowledge' than knowledge gained from extensive practical experience working in the colony's institutions of governance. Armed with this knowledge and experience—and no small dose of opportunism—both the king's representative and Irish parliamentarians were able to adapt communitarian principles and ideas to uses which suited the structure of governance in the colony. The malleability of communitarian concepts, particularly when employed in communitarian institutions, meant that legitimacy could be asserted and contested in a wide variety of ways. In a sense, then, if the 'constitutional' status of the king's representative in Ireland rested on unsteady conceptual foundations, the precariousness of his position was offset by the very flexibility of the colony's *other* institutions. It might well be said, perhaps somewhat paradoxically, that in the long term this lent the colonial structure of governance a remarkable degree of stability—a stability that stemmed more from *continuities* in the practice of communal authority as exercised through representative assemblies, than from the royal authority which was exercised by the king's representative in Ireland.

Communal Authority and Absentee Kingship in Scotland

ON 22 MARCH 1406, the *Maryenknecht*, a Danzig ship carrying ‘wool, hides and wool-fells of Scotland’, was captured off the coast of Yorkshire by a number of enterprising burgesses of Yarmouth.¹ No doubt these men were better rewarded for their act of piracy than they might have anticipated, for on board the ship was none other than the twelve-year-old James Stewart, heir apparent to the Scottish throne.² The young prince (by that stage the only surviving son of Robert III, after his elder brother, David, duke of Rothesay, had died in suspicious circumstances in 1402 whilst in the custody of his uncle, Robert, duke of Albany) had been *en route* to France—a measure taken for his safety which, in the event, went disastrously wrong.³ For Scotland, the situation only worsened when the already-declining Robert III died on 4 April 1406, shortly after receiving news of his son’s capture.⁴ The young James was left the rightful—but, crucially, uncrowned—king of Scotland. Meanwhile, the English pirates had turned James over to Henry IV’s agents. The English king—whose young captive had appreciated remarkably in diplomatic value since the death of his father—richly rewarded James’s captors on 30 April 1406.⁵ James, for his part, was promptly sent to London, and so began the period of captivity which would not see him return to Scotland for more than eighteen years.

Even at that early stage, on 30 April 1406, Henry IV was careful not to recognise James I as king of Scots, instead referring to him in a grant of reward to his captors as the ‘son of the king’s late adversary of Scotland’.⁶ Over the course of the next eighteen years, James’s status as the uncrowned king of Scots was to become a key issue not just

¹ *CPR, 1405–1408*, p. 168.

² *CPR, 1405–1408*, p. 168.

³ M. Brown, *James I* (East Linton, 1994), pp. 16–7.

⁴ S.I. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371–1406* (East Linton, 1996), p. 297.

⁵ *CPR, 1405–1408*, p. 168.

⁶ *CPR, 1405–1408*, p. 168.

for Henry IV and his successor, both of whom could (and did) use James's contested or indeterminate constitutional status as a tool in negotiations with the Scots, but also for the Scots themselves. It was not the first time that a Scottish king had been taken captive by the English. David II had been an unwilling guest of Edward III for eleven years between 1346 and 1357.⁷ Even so, not since the years between Alexander III's death in 1286 and the accession of Robert I had Scotland been left in such a uncertain position in relation to the structure of governance. The line of succession, however, was clear. James's uncle, Robert, duke of Albany and brother to the late Robert III, became heir presumptive; as such, according to Alexander Grant, 'Albany, as James's nearest relative, had every right to be governor'.⁸ Yet even had he not been so closely related to James, Albany was the obvious choice. The duke was not only James's closest relative, but one of the foremost magnates of the kingdom, who moreover had gained considerable previous experience governing the polity as a guardian for both his father, Robert II, and his brother, Robert III; he had already been acting as lieutenant even at the time of the king's death. For our purposes here, however, it is not Albany's legitimate 'right' to the position of governor which is of most importance, but rather the 'right' by which and to what extent he could exercise authority as governor of Scotland.

Upon hearing the news of his son's capture, according to Bower, Robert III's 'spirit failed directly, the strength of his body dwindled, and his face grew pale, and in his grief he ate no more food until he breathed out his spirit to his creator'.⁹ Clearly for Walter Bower—who was at the time of the king's death an Augustinian canon at St Andrews Cathedral, but wrote these words more than forty years later—the circumstances merited such a reaction; if these events 'caused only the briefest of constitutional crisis', it was a crisis nonetheless.¹⁰ In at least one documented instance, the everyday business of the kingdom was put on hold while the Scots reacted to the sudden absence of both their king and his heir. In Aberdeen, the burgh court which was originally supposed to meet on 19 April 1406 was deferred until 5 July, 'because,

⁷ See M. Penman, *David II* (Edinburgh, 2004), pp. 140–185.

⁸ A. Grant, *Independence and Nationhood: Scotland, 1306–1469* (Edinburgh, 1984), p. 185.

⁹ *Chron. Bower*, viii, p. 63.

¹⁰ D.E.R. Watt, 'Bower, Walter (1385–1449)', *ODNB* (2004), online edn at www.oxforddnb.com/view/article/3045; M. Penman, 'Scotland in 1406: a kingdom in crisis?', *ODNB* (2004), online edn at www.oxforddnb.com/view/theme/95106.

in the meantime, a certain general council was held at Perth, where it was necessary, among the other things determined there, to see how courts ought to be established in the kingdom after the death of the most noble prince Lord Robert, illustrious king of Scotland'.¹¹ While, to date, most attention has been paid to the increased threat to Scotland's sovereignty in the wake of Robert III's death, the plight of the Aberdeen burgh court illustrates amply the very real and immediate problems caused by the absence of the king. It was an issue not just confined to the highest echelons of political society, but also one which—at least briefly—threw even the everyday activities of local communities into disarray. The king, as the ultimate dispenser of justice, upon whose authority the justice of the burgh court itself rested, was missing not just in person, but from the very structure of governance. Without a king in whose name the court could be fenced, as the Aberdeen burgesses saw it, there could be no court—and without the court, more importantly, there could be no justice.¹²

The men who assembled at the general council had, 'in the meantime' (that is, between 19 April and 5 July 1406), come up with a solution, as the burgh record goes on to convey. On 5 July, the Aberdeen court was fenced 'on the part of Lord Robert, duke of Albany, general governor of the kingdom of Scotland'.¹³ Evidently, it had not taken overly long to devise a remedy for the situation, but unfortunately there is no extant official record of the proceedings of this general council which details exactly how this remedy was formulated. We can rely only on the chronicle of Andrew of Wyntoun for an account of the proceedings. Wyntoun, who wrote his chronicle at the behest of Sir John Wemyss, was prior of St Serf's, Loch Leven, from 1393 to 1421; Edginton writes that '1420 has long been accepted as the date of Wyntoun's final revision of the chronicle', but as there is no mention of James I's return, we have a *de facto* end-date of 1424 in any case.¹⁴ In 1406, however, Wyntoun was apparently occupied with pursuing a case against William Berkely in the court of the bishop of St Andrews, which does not place him far from the centre of activity at that time, nor

¹¹ *RPS*, A1406/1.

¹² It is important, however, to bear in mind that Aberdeen was a *royal* burgh: the same problem would not have existed in an ecclesiastical and baronial burgh.

¹³ *RPS*, A1406/1.

¹⁴ C. Edington, 'Wyntoun, Andrew (c.1350–c.1422)', *ODNB* (2004), online edn at www.oxforddnb.com/view/article/30164.

without informed sources for the activities of the Perth assembly.¹⁵ The then bishop of St Andrews, moreover, was none other than Henry Wardlaw—the man to whom Robert III had entrusted the young James for safety sometime between 1404 and 1406—who, in his capacity as bishop of St Andrews, would almost certainly have been personally present at the Perth general council of 1406.¹⁶

I

Wyntoun's account of the Perth assembly merits more attention than it has received to date. An element of doubt concerning Wyntoun's reliability on issues related to the governor must be addressed—not least because political historians have been reluctant to use Wyntoun's account for much more than a confirmation that the assembly took place (a consequence of both the literary nature of the source, and Wyntoun's overt political leanings). Andrew of Wyntoun was undeniably a fervent supporter of Albany. His high opinions of the governor are nowhere better illustrated than in the lengthy eulogy following the account of the Perth assembly, which concludes with Wyntoun's statement that of Albany 'ineuchte I can noct speke'.¹⁷ The chronicler's esteemed view has generally been attributed to the connections which existed between Wyntoun's patron, Sir John Wemyss, and Robert Steward.¹⁸ To be sure, the connections between Wemyss and Albany may have accounted for Wyntoun's political biases to some degree. Wemyss had received considerable landed patronage from Albany in the years before 1392 (when Albany was earl of Fife and Menteith), and evidently maintained a relatively close relationship with Albany in the years which followed; the duke, for instance, may be found promising to give pledges for Wemyss (then involved in a dispute with Walter Lindsay) at a council held in Linlithgow on 20 November 1399, while David, duke of Rothesay, was lieutenant for Robert III.¹⁹ But their relationship was not always cordial. In June 1400, Wemyss became involved in a short dispute over

¹⁵ Edington, 'Wyntoun, Andrew (c.1350–c.1422)'.

¹⁶ *Chron. Bower*, viii, pp. 60–1; *Chron. Pluscarden*, ii, p. 261; Edington, 'Wyntoun, Andrew (c.1350–c.1422)'.

¹⁷ *Chron. Wyntoun*, ix, pp. 417–9, at p. 419. Incidentally, the eulogy amounts to sixty-eight lines of verse.

¹⁸ *Chron. Wyntoun*, i, p. 6; Edington, 'Wyntoun, Andrew (c.1350–c.1422)'.

¹⁹ W. Fraser, *Memorials of the Family of Wemyss of Wemyss, Vol. II: Charters* (Edinburgh, 1888), pp. 17–8, 18–20, 29–30, 31–2; *RPS*, 1399/11/3.

his wife's inheritance with Albany (who was apparently seeking to promote the interests of Robert Livingstone).²⁰ Wemyss does not appear to have had any hesitation in pursuing his own interests; in the course of this dispute, he was summoned to Albany's court but left without resolution, claiming that the court was not 'legitimate', and eliciting a protest against Albany from John Erskine, then chancellor of Glasgow; a year later, moreover, the duke of Rothesay was even besieging Wemyss in his castle at Reses.²¹ Yet he seems to have returned to the fold during Albany's governorship, becoming an occasional witness to Albany's charters and even travelling to England with the ambassadors appointed to negotiate James's release.²²

Whether or not Wyntoun was party to all of this is difficult to tell, but it seems remiss to assume that the chronicler's opinions of Albany were formed mainly off the back of his patron's connections. Emily Wingfield has recently suggested that the *Original Chronicle* should be viewed 'not simply as a work of history—following its editorial title—but rather—following Wyntoun's own label, *tretise*—as a pioneering text in the Older Scots Advice to Princes tradition'.²³ Wingfield's proposition has much to offer. If we view Wyntoun's work both in the literary context of the advice to princes tradition, and in the immediate historical context in which it was composed—the Albany governorship—both Wyntoun's view of Albany himself and the circumstances in which he became governor take on new significance. Apparently, Wyntoun had originally intended to end his *Chronicle* after the death of Alexander III; he then decided, upon revision, to end it after the death of Robert II, and subsequently, in the final revision, at the end of Albany's governorship.²⁴ As Wingfield observed, 'in all three redactions the *Chronicle* thus ends at or shortly after the death of a Scottish leader and at similar periods of uncertain transition between reigns'.²⁵ Wyntoun's attention throughout the *Chronicle* to both the matters of kingship and good governance, as well

²⁰ Fraser, *Wemyss*, ii, pp. 38–40.

²¹ Fraser, *Wemyss*, ii, pp. 41–2; *ER*, iii, p. 559.

²² Fraser, *Wemyss*, i, p. 54.

²³ E. Wingfield, "'Qwhen Alexander our Kynge was Dede": Kingship and Good Governance in Andrew of Wyntoun's *Original Chronicle*', in J. Martin and E. Wingfield (eds), *Premodern Scotland: Literature and Governance, 1420–1587: Essays for Sally Mapstone* (Oxford, 2017), pp. 19–30, at p. 30.

²⁴ Wingfield, 'Kingship and Good Governance', p. 21.

²⁵ Wingfield, 'Kingship and Good Governance', p. 21.

as the ‘moments of fraught transition between reigns, and periods when the king was either absent or a minor’, evidently both reflected and influenced his portrayal of the recent governorship.²⁶ His personal experience of Scottish governance is reflected in his attitudes to Albany. As Eleanor Commander noted, the reigns of both Robert III and James I, the two kings who ‘reigned’ during Wyntoun’s lifetime, were ‘characterised by the appointment of guardians and governors to rule in their stead’.²⁷ Wingfield has demonstrated that Wyntoun’s praise for those who ‘acted in the king’s stead’ was not confined to Albany, for he also praised the guardians from David II’s minority, like Thomas Randolph and Andrew Murray.²⁸ Wyntoun’s definition of kingship and good governance was, therefore, an elastic one which reflected Scotland’s considerable experience of governance in the absence of active kingship, for it included not just kings, but also—significantly—the men who rule as the king’s representative in his absence.

This may allow us to examine the chronicler’s account of the governor in a different light. Wyntoun, although he was at pains to justify Albany’s appointment retrospectively by praising his virtues and governance, appears to have been deeply concerned with explaining the circumstances and procedure by which Albany was appointed in the first instance—to portray his appointment as a *legitimate* act, in and of itself.²⁹ Not unlike Walter Bower, Andrew of Wyntoun had not just a historical purpose in mind, but a didactic one too. He was writing almost contemporaneously, and in vernacular Scots, indicating that he had a broad secular audience in mind—and indeed the survival of nine manuscripts of the *Original Chronicle* indicates the level of popularity it had attained in later medieval Scotland.³⁰ If Wyntoun wished to portray the Albany governorship favourably, then he had to do so in such a way that would both appeal to and seem believable to this broader audience. As such, it may be significant

²⁶ Wingfield, ‘Kingship and Good Governance’, pp. 26–7.

²⁷ E. Commander, ‘Andrew of Wyntoun, Historical Propagandist: The Four Kingdoms in his *Original Chronicle*’, in A. Macdonald and K. Dekker (eds), *Rhetoric, Royalty and Reality: Essays on the Literary Culture of Medieval and Renaissance Scotland* (Leuven, 2005), pp. 1–16, at pp. 1–2.

²⁸ Wingfield, ‘Kingship and Good Governance’, pp. 27–8.

²⁹ *Chron. Wyntoun*, ix, pp. 417–9.

³⁰ Wingfield, ‘Kingship and Good Governance’, p. 20.

that Wyntoun chose to begin his account of the Albany governorship with a reference to all the estates of the kingdom, gathered together in a general council:

Pe statis of oure kynrik haile
Held at Sanct Ihonstone a consaile.
Pare was it declaryt, oure kingis sone,
Sen þat his faderis days ware done,
Pan as oure prynce Iames 3ing,
Hys sone, sulde be oure king,
And be þat titill suld he
Oure king fra þine further callit be.³¹

In his account of the political community's reaction to Robert III's death, Wyntoun accords a role of much greater agency to the 'three estates' than we might reasonably have expected. Whereas communitarian language highlighting the *presence* of the three estates, or communal authority referencing the assent or consent of the three estates, was commonly invoked to legitimise actions taken by political elites or councils, the portrayal of the three estates as the initiators or architects—the primary actors—of political action is more unusual. In Wyntoun's framing, it was the three estates which summoned and held the council, at which it was declared—again, by the three estates—that James should be the king of Scots. No reference is made to royal authority, and James is portrayed as a passive actor (on account of both his youth and absence) unto whom the three estates chose to confer the right of kingship. It seems implicit in the way Wyntoun sets up the discussion that he believed that their authority to make decisions about the crown and the kingdom derived from two things: one, the representative element of the council, given expression through the presence of all the estates of the kingdom; and two, their assembly in the formalized institutional setting of a general council.

Wyntoun was no doubt well aware that such councils had been utilized to considerable effect in Scotland's recent past, in not-entirely dissimilar circumstances. Given the paucity of sources for Albany's governorship, Scotland's most recent experience of guardianship under Robert II and Robert III must of necessity play a significant role in our analysis. Yet even had a record of Albany's commission of 1406

³¹ *Chron. Wyntoun*, ix, p. 416.

survived, examination of recent guardianships would remain imperative. Karen Hunt suggested that we take as a guide for Albany's governorship the events which followed Alexander III's death in 1286, and it is true that the circumstances were to some extent structurally similar (in that Scotland had no formally inaugurated monarch).³² Yet frequent periods of absent kingship punctuated Scotland's history between 1286 and 1406, and so, as Brown wrote, 'the regular appointment of lieutenants...left a legacy on the structures of the kingdom'.³³ It therefore seems unlikely that the constitutional minutiae of more than a century past directly informed the actions of fifteenth-century parliamentarians in Scotland—especially in the case of a man like Albany, who had personally acted as a king's representative under both Robert II and Robert III. It seems more realistic to expect that Scottish responses to the king's absence in 1406 were informed by more recent experiences of guardianship than by the 'political and legal undercurrents' of 1286–1314.³⁴ By 1406, Albany was a seasoned politician and administrator and could draw upon his own personal experience gained during the reigns of his father and brother. Even before Albany's guardianship under Robert II and Robert III, he had gained considerable experience in the administration of the kingdom. He married Margaret Graham, countess of Menteith, sometime before 14 May 1363, and consequentially, only shortly after his father ascended the throne, acquired the earldom of Fife, following a settlement in 1372 with John Dunbar, who had disputed Robert's claim to the earldom.³⁵ As earl of Fife and Menteith, he had been much involved in the royal administration of Scotland; he became a regular witness to charters issued in Robert II's name after 1371, was granted the constableness of Stirling Castle in 1373, and was appointed as chamberlain in 1382.³⁶ Boardman has

³² K. Hunt, 'The governorship of Robert Duke of Albany, 1406–20', in M. Brown and R. Tanner (eds), *Scottish Kingship 1306–1488: Essays in Honour of Norman Macdougall* (Edinburgh, 2008), pp. 126–54, at p. 127.

³³ M. Brown, 'Introduction', in M. Brown and R. Tanner (eds), *Scottish Kingship, 1306–1542: Essays in Honour of Norman Macdougall* (Edinburgh, 2008), pp. 1–19, at p. 8.

³⁴ Hunt, 'Governorship of Robert Duke of Albany', p. 127.

³⁵ S.I. Boardman, 'Stewart, Robert, first duke of Albany (c.1340–1420)', *ODNB* (2004) online edn at www.oxforddnb.com/view/article/26502.

³⁶ Boardman, 'Stewart, Robert, first duke of Albany (c.1340–1420)'. See, for example, *RPS* 1372/3/13; *RPS* 1373/1; *RPS* 1382/10/1; *RPS* 1384/9/1. For examples of charters Fife witnessed between 1372–1385, see *NRS* GD 124/1/416; *NRS* GD 3/1/7/7/1; *NRS* GD 39/1/8; *NRS* GD 45/16/2320; *NRS* GD 39/1/11. Descriptions available on the NRS online catalogue at www.catalogue.nrscotland.gov.uk [Accessed 23 August 2017]; *ER*, iii, p. 84.

suggested the latter appointment was made by Robert II to offset the influence of the earl of Carrick at a time of ‘growing rivalry’ between the king and his eldest son, but the earl of Fife maintained both the position of chamberlain (until 1407) and, apparently, his involvement in the administration even after Carrick’s acquisition of the guardianship in 1384.³⁷

II

It is Albany’s previous experiences of guardianships which are of most concern at present. Representative assemblies had played host to the political coups undertaken by the lieutenants of both Robert II and Robert III, and the presence of the three estates at these assemblies had also been utilized to justify the transfer of royal authority from the king to the lieutenants.³⁸ In November 1384, for instance, the ‘general ordinance or statute made and agreed in the council of our lord King Robert II held at the monastery of Holyrood of Edinburgh’, which saw the appointment of John, earl of Carrick (the future Robert III) as lieutenant of the king, was made with ‘the common counsel and consent of the three communities assembled in the same place, so to speak at a general council’.³⁹ Albany himself was present in his capacity as ‘the lord earl of Fife’, and he ‘voluntarily and for the advantage of the country which he controls as head of the law of Clan MacDuff, granted and promised that he will protect the present statute and ordinance and cause it to be protected in all its respects within his limits through the term ordained, protesting for the freedom of his right, namely, since this was done freely and on account of the common good, as was said before, it should not turn out to his prejudice nor prejudice the said law in future’—demonstrating not only how he could use communitarian language and principle to protect his own position, but also the attitude which would cause him to be portrayed in contemporary chronicles as a man of ‘scrupulous probity’.⁴⁰

³⁷ Boardman, ‘Stewart, Robert, first duke of Albany’; S.I. Boardman, ‘Robert III (d. 1406)’, *ODNB* (2004), online edn at www.oxforddnb.com/view/article/23714.

³⁸ See S. Boardman, ‘Coronations, Kings and Guardians: Politics, Parliaments and General Councils, 1371–1406’, in K.M. Brown and R. Tanner (eds), *The History of the Scottish Parliament I: Parliament and Politics in Scotland, 1235–1560* (Edinburgh, 2004), pp. 102–122.

³⁹ *RPS*, 1384/11/2 [L: *de communi consilio et consensu trium communitatum congregatarum ibidem tamquam ad consilium generale*]; (NRS, Haddington MS, PA5/5, f. 10r).

⁴⁰ *RPS*, 1384/11/12 (Haddington MS, PA5/5, f.11r); Boardman, ‘Coronations, Kings and Guardians’, p. 111.

The reason for Carrick's assumption of royal authority was set out clearly: it was because 'the king himself is unable on each occasion to be attentive continually to the execution of justice and law of his kingdom in person'.⁴¹ Despite the assumption of royal authority by a lieutenant, who was therefore technically occupying the space in Scotland's structure of politics functionally reserved for the king, the circumstances were in truth fundamentally different from those of 1406. Robert III, incapacitated or not, was very much 'present'. It was clearly not enough to invoke communal authority—the authority of the three estates gathered in council—to legitimise such an assumption of the royal prerogative, nor, as will become evident, did Carrick wish to leave himself open to accusations that he had forcibly usurped his father's position. Robert II's own royal authority, in conjunction with counsel given by his council, was needed to legitimise Carrick's coup. It was therefore recorded that the king 'desired, granted and ordained, by the counsel and ordinance of his council, that his firstborn son and heir the lord [John Stewart], earl of Carrick, should cause execution of common justice throughout the realm...either personally or by persons to be deputed by him, for whom the same earl shall be held to answer to the king and council'.⁴²

The references to political principle and use of communitarian language in which the acts of this assembly were framed should be treated carefully. Carrick and his supporters clearly knew the value of using ideological principles and language to achieve political ends. On this occasion, the language of community and communal authority was invoked not just to sanction the appointment of Carrick as the king's lieutenant, but also to assert Carrick's authority over the three estates themselves:

'All the aforesaid three communities have bound themselves, expressly undertaking in the same place, that, in the case that the same lord earl should happen to incur the king's displeasure... or in the case that any resistance or rebellion shall be made against him by anyone within the realm, with their counsel and help they will strengthen, support and assist him in settling the king's displeasure and in the repressing of this resistance or rebellion, at the request and command of the said earl'.⁴³

⁴¹ *RPS*, 1384/11/4 (Haddington MS, PA5/5, f. 10v).

⁴² *RPS*, 1384/11/4 (Haddington MS, PA5/5, f. 10v).

⁴³ *RPS*, 1384/11/5 (Haddington MS, PA5/5, f. 10v).

Carrick was clearly worried about potential resistance to his new position, but he also seems to have anticipated the possibility that such resistance might utilise the communitarian authority of the three estates. If this was a pre-emptive act on Carrick's part, however, it also serves as an indication that such communitarian concepts could be utilised to powerful effect, and that Carrick and his supporters were well aware of this. The final acts of this assembly vividly illustrate their concerns. We are told that the king, having commanded letters patent to be made concerning the statute, with his seal appended, ordered the contents to be proclaimed publicly.⁴⁴ But additionally, 'since it is not possible for these writings to be made for each sheriff as speedily as might, perhaps, be expedient, *in order that the dangers be avoided which arise from an absence of a swift proclamation of the statute (which may truly threaten in various instances)*' each sheriff was also ordered to make copies, and send the copies on to nearby sheriffs and bailies as well.⁴⁵ However confidently Carrick and his supporters had articulated their coup in the Holyrood general council, it is equally clear that the participants knew they were venturing into uncharted waters.

But it appears that because Robert II was still alive—because the king was *not* absent—the communal authority of the three estates was not employed for much beyond a rubber-stamping of the coup. The penultimate act of the Holyrood assembly was designed to consolidate Carrick's authority as lieutenant. The clause reads as follows:

'The king in his council bound himself on the royal word faithfully to protect and fully implement all and singular these things, as far as pertained to him. And the lord [John Stewart] earl of Carrick, *as the person established in the same place by the king for the execution of the foregoing*, as far as pertains to him, performed his oath personally, touching the Holy Gospels. And furthermore all and singular the prelates, procurators of prelates and others from the clergy, earls and barons, and the burgesses who were present in the said council, personally performed their oaths, touching the Holy Gospels, in the presence of the king himself and in full council, for protecting all and singular of the foregoing as far as they are able, and for maintaining, strengthening and supporting

⁴⁴ *RPS*, 1384/11/17 (Haddington MS, PA5/5, f. 12r-12v).

⁴⁵ *RPS*, 1384/11/17 [emphasis added] (Haddington MS, PA5/5, f. 12r-12v). The question of *why* it was 'not possible' to convey this information as speedily as required invites speculation regarding the operation of the royal bureaucracy in these circumstances.

the said lord earl of Carrick, *appointed under the king to the government of the law and fulfilling of justice*'.⁴⁶

It was by the king's authority, not the communal authority of the three communities, that Carrick was appointed to the lieutenancy. More significantly still, both the grant of royal authority to Carrick, as well as the restrictions upon or qualifications to that authority, were framed in the language of counsel, rather than community, and were under the purview not of the three communities of all the kingdom, but of the king (at least in theory, but certainly not in practice) and his council.⁴⁷ A final point of significance arises from our examination of the Holyrood assembly of 1384. Nowhere in the record is Carrick referred to as 'lieutenant', 'guardian' or even 'deputy'. The term guardian [L: *custos*] might certainly be expected, given that this was the term the Scots had previously used for those who occupied a similar position as king's representative, both in the years after Alexander III's death, or more recently during David II's absence. Much has been made of Scotland's previous experience of intermittent periods of guardianship, but that Carrick's position was articulated as such may be an indication of the relative novelty of the situation in a Scottish context. Throughout the document, Carrick is instead referred to in a way which reinforced the idea that Carrick's authority derived directly from the king's; frequently, even his name and title are omitted, and instead we see 'the person having power of governing the law under the king', 'the person having power from the king', or 'the person established...by the king'.⁴⁸

By contrast, when Robert Stewart, then earl of Fife and Menteith (the future duke of Albany and governor) was appointed as king's representative for Robert II in a general council in Edinburgh on 1 December 1388, 'the three communities having assembled and been called together', he was explicitly referred to as 'guardian'.⁴⁹ The circumstances surrounding his appointment had changed since 1384, but the key

⁴⁶ RPS, 1384/11/16 [emphasis added] (Haddington MS, PA5/5, f. 12r).

⁴⁷ See Brown's comments on the 'conciliar character' of the appointment: M. Brown, 'Lele consail for the comoun profite': Kings, Guardians and Councils in the Scottish Kingdom, c. 1250–1450', in J. Rose (ed.), *The Politics of Counsel in England and Scotland, 1286–1707* (Oxford, 2016), pp. 45–62, at pp. 57–8.

⁴⁸ RPS, 1384/11/11 (Haddington MS, PA5/5, f. 11r); RPS, 1384/11/14 (Haddington MS, PA5/5, f. 12r); RPS, 1384/11/16 (Haddington MS, PA5/5, f. 12r).

⁴⁹ RPS, 1388/12/1.

difference was one which related to factional relationships rather than underlying structural issues. According to the general council record,

‘after many talks, consultations and a discussion had been held, the three communities at length agreeing, and considering that there are...great and numerous defects in the governing of the kingdom by reason of the king’s disposition, both by reason of age and for other reasons, and the infirmity of the lord his firstborn son [John Stewart], and the minority of the son [David Stewart] of the same son and heir...have amicably chosen [L: *elegerunt concorditer*] Sir [Robert Stewart], earl of Fife...as guardian of the kingdom [L: *regni custodem*] under the king, and his firstborn, and his son and heir’.⁵⁰

Carrick’s infirmity (according to Bower, he had ‘become lame following a kick from a horse belonging to Sir James Douglas’) may only partially account for the change in leadership.⁵¹ The relationship between Robert II and Carrick soured further in the years after 1384—it appears that Robert II was even arrested at Carrick’s behest on 7 February 1388, although the details surrounding this incident remain unclear—and Carrick had lost political support after the death of his brother-in-law, the second earl of Douglas, on account of the ensuing struggle for control of the earldom within the Douglas affinity.⁵² Accounts of Fife in contemporary chronicles paint an image of the earl in sharp contrast to that of Carrick. As Boardman commented, Fife was positively portrayed (especially by Wyntoun and Bower) as a ‘strict upholder of the political hierarchy’, a man of ‘scrupulous probity’, and a ‘war-leader and a principled supporter of the dignity of the king’.⁵³ Yet even taking into account the political biases of Wyntoun and Bower, the language and framing of the legislation of 1388 indicates that this assembly was more concerned with the ideological principles which underpinned the exercise of royal authority by a guardian at a time when the king was absent from neither the kingdom nor Scotland’s structure of politics. More emphasis was placed in this act on the role of the ‘three communities’ in providing for the governance of the

⁵⁰ *RPS*, 1388/12/1. It should be noted that the translation given in *RPS* of ‘amicably’ for *concorditer* does not quite convey the important point that the ‘three communities’ elected Fife not only amicably, but *together*—of one heart—harmoniously.

⁵¹ *Chron. Bower*, vii, pp. 442–3.

⁵² *Chron. Pluscarden*, ii, p. 262; See Boardman, ‘Coronations, Kings and Guardians’, pp. 106–10.

⁵³ Boardman, ‘Coronations, Kings and Guardians’, p. 111.

kingdom; it was the ‘three communities’ who ‘elected’ Fife as guardian, having agreed ‘after many talks, consultations and a discussion’ that Scotland lacked good governance, and thus Fife was tasked with ‘putting into effect justice and keeping the law internally’, and with ‘the defence of the kingdom with the king’s force...against those attempting to rise up as enemies’.⁵⁴

We must be careful not to overstate this increased emphasis on the role of the three communities and use of communitarian language. As in 1384, reference to communal authority was not enough by itself to legitimise the appointment of a guardian while the king remained present, and so Fife’s authority was framed in such a way as to reinforce the idea that his authority derived from that of Robert II. Thus, ‘the king himself admitted in his council with joy the aforementioned earl of Fife, his son, thus chosen as guardian of his kingdom in this way and presented to him by the council, by the counsel and consent also of his firstborn son’.⁵⁵ Furthermore,

‘the intention and will of the king having been put forth, first in a schedule sealed by his signet ring, then by an authoritative utterance, the king submitted himself briefly and fully to the ordinance of his general council as far as putting into effect the administration of justice through the whole kingdom and as far as the defence of the kingdom against his enemies by force’.⁵⁶

The statement that the king ‘submitted himself to the ordinance of his general council’ should also be approached with caution—firstly, because it was qualified by the fact that it pertained specifically to the king’s two principles duties of administering justice and defending the kingdom (providing good governance, in other words), and secondly, because it specified that he had submitted to an act made in general council—a representative assembly. Although the king’s ‘submission to the ordinance of his general council’ could ostensibly be taken as an example of conciliar authority taking precedence over royal authority, to advance such an interpretation would be misleading, and more characteristic of an older oppositional historiographical model which (in Boardman’s words) ‘portrays medieval politics in terms of a long-term struggle between unfettered royal authority and the concerns and aspiration of the

⁵⁴ *RPS*, 1388/12/1.

⁵⁵ *RPS*, 1388/12/1.

⁵⁶ *RPS*, 1388/12/1.

king's subjects expressed through representative assemblies'.⁵⁷ Instead, this statement is more helpfully considered in the immediate context of how the Edinburgh assembly conceptualised the role and purview of representative assemblies as opposed to more specific institutions like the king's council, or limited councils.

The qualification is directly related to another significant difference between the acts of the 1384 assembly and those of the 1388 general council, which supports the idea that communitarian ideas and communal authority played a more important role in Fife's appointment; namely, the emphasis placed upon the role of general councils and parliaments—representative assemblies—in both maintaining and limiting Fife's authority as guardian under the king. Both Boardman and Brown have rightly emphasised 'the primacy of conciliar authority in the creation and regulation of his new office'.⁵⁸ It is clear that the Edinburgh assembly was relying upon both the idea of counsel and the institution of council to legitimise its actions—indeed, the entire act is so heavily peppered with the term *consilium* (used to refer to both the act of giving counsel and the institution of council) that the original meaning is sometimes obscured by the phraseology. Furthermore, as Brown notes, 'the phrase used for [Fife's] appointment (*per consilio in suo consilio*) placed the heaviest stress on this as a conciliar action to which the king consented'.⁵⁹ However, it is not so clear that 'the language suggests that no firm distinction was being made between councils as large, occasional gatherings and the smaller, more frequent gatherings of councils which have been identified in the preceding decades'.⁶⁰ In fact, the language used in this act of general council may suggest quite the opposite.

The king, we are told,

'instructed his chancellor to release a commission to him in the form that it is to last until his said firstborn son recovers from his infirmity by God's grace or until his [Carrick's] firstborn son and heir arrives at the ability of governing his *office according to and by the determination of the council of the kingdom*, and as long as this lord earl of Fife shall manage himself well and usefully in the said office, *according to the*

⁵⁷ Boardman, 'Coronations, Kings and Guardians', p. 119.

⁵⁸ Boardman, 'Coronations, Kings and Guardians', p. 110; Brown, 'Lele Consail', p. 58.

⁵⁹ Brown, 'Lele Consail', p. 58.

⁶⁰ Brown, 'Lele Consail', p. 58.

determination and declaration of the general council or parliament. Which very determination will be made every year hence forth in full parliament or general council which the king has now ordained and instructed to be held before the end of each year during six weeks or a month'.⁶¹

Whilst the king's council was responsible for determining the fitness of each individual to govern (in this case relating to their physical capacity), it was the responsibility of a representative assembly (given that both parliament and general councils were characterised by the presence of the three communities) to determine the quality of the governance itself—that is, the administration of justice and the defence of the realm—subject (at least in theory) to annual review. Thus when the king was said to have 'submitted to the ordinance of the general council' this does not necessarily signify much more than the already-established right of representative assemblies to engage with the king in the interests of ensuring good governance for the realm. A distinction between representative and non-representative assemblies has little bearing upon Brown's claim that 'the events of both 1384 and 1388 demonstrated the use of councils as bodies capable of directing, regulating, even transferring the exercise of royal authority'—counsel and councils were unquestionably integral features of this process.⁶² But to avoid such a distinction entirely risks eclipsing the role that communitarian principles and communal authority played in providing and channelling such counsel, and—more importantly—in *legitimizing* its application, such that it was acceptable to the king's subjects as a whole. More immediately, in any case, a lack of historiographical qualification of such institutions risks glossing over the very distinction made by the Scots themselves at the Edinburgh general council of December 1388.

In the event, however, neither the quality of Fife's governance nor the earl of Carrick's incapacity technically determined the length of the guardianship. Robert II died on 19 April 1390.⁶³ By all accounts, Fife's rule as guardian between his appointment in December 1388 and Robert II's death in 1390 seems to have been a

⁶¹ *RPS*, 1388/12/1.

⁶² Brown, 'Lele Consail', p. 58.

⁶³ *Chron. Bower*, vii, pp. 446–7. There has been some degree of confusion over the conflicting dates given in contemporary accounts for Robert II's death and Robert III's coronation. See Boardman 'Coronations, Kings and Guardians', pp. 112–3 for an updated chronology.

success; it has been suggested that his good governance and popular image, in conjunction with Carrick's continued physical incapacity, may partially explain why there was a gap of more than four months between Robert II's death and Carrick's coronation as Robert III on 14 August 1390.⁶⁴ If there was any wrangling over whether Robert III should succeed to the throne, the matter was resolved by this date, and a solution had been devised to accommodate both Carrick's assumed ineptitude and Fife's popular support.⁶⁵ According to Bower, Fife simply continued in the role of guardian.⁶⁶ Bower implies that Fife was entrusted with guardianship before Robert III's coronation, and Boardman suggests that an extension of the 1388 appointment (the terms of which 'might not have been entirely unacceptable to those upholding the hereditary rights of Earl John and his family') had probably been agreed upon in April after the king's death.⁶⁷

Yet even had the circumstances not allowed for this 'pragmatic' solution, it seems highly unlikely that there was any serious prospect of removing Carrick from the line of succession, regardless of either popular support for Fife or Carrick's unfitness to rule. The 'political ideology' of the Scots, moreover, has been described by Roger Mason as 'as conservative as it was patriotic, and one in which the idea of resisting the crown—far less deposing a king—was stated (if at all) in only the most hesitant and ambiguous of terms'.⁶⁸ Resistance, of course, can take different forms, and Mason was chiefly concerned with literary sources, which, taken in isolation, can reveal to us only one aspect of the 'political ideology' of a given medieval society. But the importance of that 'innate' personal legitimacy possessed by the king—the rightful king—should not be underestimated, given its basis for the exercise of legitimate authority within the realm, and its location in Scotland's structure of politics. Moreover, research in recent years has emphasised that 'there is little indication that late fourteenth-century Scots recognised any natural fault line between the interests of the crown and the welfare of the wider community that needed to be safeguarded by royal guardians or

⁶⁴ *Chron. Bower*, viii, pp. 2–3; Boardman, 'Coronations, Kings and Guardians', pp. 111, 115–7.

⁶⁵ For a fuller discussion, see Boardman, 'Coronations, Kings and Guardians', pp. 111–7.

⁶⁶ *Chron. Bower*, viii, pp. 2–3.

⁶⁷ *Chron. Bower*, viii, pp. 2–3; Boardman, 'Coronations, Kings and Guardians', p. 116.

⁶⁸ R. Mason, 'Kingship, Tyranny and the Right to Resist in Fifteenth-Century Scotland', *Scottish Historical Review*, 66:182 (1987), pp. 125–51, at p. 126.

lieutenants'.⁶⁹ Put simply, guardians or lieutenants could be used to safeguard the 'wider community' from individual kings, but not from kingship as an institution. But theory aside, in practice there was already a mechanism in place to ensure the good governance of the realm in the event of an inept or incapacitated king: the institution of king's representative, of guardianship. Secondly, as we have seen, even when guardians were appointed to this position, their right to govern derived not from their status as a representative of the three communities, but from their status as a representative of the *king*. Both structurally and ideologically speaking, their authority was not communal, but royal, and so depended upon the maintenance of the king if it was to be legitimately exercised.

Over the course of the twenty-two years between Carrick's appointment as guardian in 1384 and Albany's appointment as governor in 1406, the institution of king's representative seems to have undergone considerable refinement. By January 1399, for instance, when David, duke of Rothesay, was appointed as 'lieutenant' under Robert III, both the theoretical and ideological underpinnings of the office, as well as the structural-institutional features by which it was defined, were set out much more explicitly. The language and rhetoric used in the commission of 1399 was far less circumspect than that seen in both 1384 and 1388, and, indeed, the more forthright style of expression which appears is visible not just in the articles which dealt with the lieutenant's status, but also in those critical of the kingdom's misgovernance under Robert III. Arguably, this more forceful rhetoric might simply reflect a change in the language of record (from Latin to vernacular Scots), but even so, it is difficult to avoid the impression that there had been a distinct change in how Scotland's structure of governance—particularly with regard to the relationship between the king, his representative, and the three communities—was being conceptualised.

This development is illustrated in the second article of the Perth general council, where it was stated that:

'Upon various points touching our lord the king and the estate of his realm, given to the deliberation of the three communities of the kingdom gathered there...it is delivered that the misgovernance of the realm and the failure in keeping of the common law should be imputed against the king and his officers. And therefore, if our lord the king pleases to

⁶⁹ Boardman, 'Coronations, Kings and Guardians', p. 119.

excuse his failing, he may at his pleasure cause summon his officers to whom he has given commission, and accuse them in the presence of his council. And their answer heard, the council shall be ready to judge their failings'.⁷⁰

While, on the one hand, the three communities' dissatisfaction with the king's misgovernance was presented in more forthright rhetoric than that used in 1384 and 1388, this was matched—on the other—by a more confident assertion of the position of his representative. It was thus 'seen as most expedient by the council that [David Stewart] duke of Rothesay, be the king's lieutenant generally through the whole kingdom for the term of three years, having full power and commission of the king to govern the land in all ways as the king should do in his person if he were present'.⁷¹ The phrasing is more formalized than that used in prior appointments (and indeed, calls to mind the language used for similar appointments in English Ireland, as seen above).⁷² The lieutenant's responsibilities were also set out with greater clarity, and thus he was:

'sworn to fulfil after his ability all the things that the king at his crowning was sworn to do for the Holy Kirk and the people, since he is to bear the king's power in these things, that is to say to keep the freedom and right of the kirk undiminished, to cause the laws and loveable customs to be kept for the people, to restrain and punish manslaughterers, robbers, burners and all misdoers generally through strength, and especially to restrain at the request of the kirk cursed men, heretics and [people] generally excluded from the kirk'.⁷³

Certain 'conditions' were attached to the execution of these duties. The lieutenant was 'obliged by his letters and sworn to govern his person and the office committed to him with the general council, and in the absence of them with the council of wise and loyal men', who were themselves to take counsel 'from others...about things that need to be done, as is seen as speedful for the common profit, according to the nature of the

⁷⁰ *RPS*, 1399/1/2 (Haddington MS, PA5/5, f. 4r-4v).

⁷¹ *RPS*, 1399/1/3 (Haddington MS, PA5/5, f. 4v-5r).

⁷² See above, pp. 37–8.

⁷³ *RPS*, 1399/1/3 (Haddington MS, PA5/5, f. 4v-5r).

causes'.⁷⁴ Both the general council and the individual councillors, in turn, were 'obliged and sworn by their letters to give him loyal counsel for the common profit, not having eye for feud nor friendship'.⁷⁵ Additionally, it was also 'ordained that articles that are done or executed in the said office shall be put in act, with the day and place and names of those that are councillors in that deed, so that the council being with him shall answer for his deed and be punished through the sight of the general council for this, as the cause requires'.⁷⁶ Brown has suggested that this body of councillors may have been imposed upon Rothesay on account of his youth, such that 'the onus was placed upon his councillors to govern his actions and to present the wider concerns of the kingdom to him'.⁷⁷ It is possible that Rothesay's relative inexperience, rather than youth—he was twenty-one at the time of his appointment—may account for these stipulations to some degree. Yet, taken in isolation, Rothesay's age alone does not satisfactorily explain why the concept and language of counsel were used to impose powers of conciliar oversight and accountability over the king's representative to such a large—and restrictive—degree.

It may be possible, however, to offer an alternative explanation. There are similarities to the imposition of conciliar oversight and control between Rothesay's 1399 appointment and Carrick's appointment in 1384; when in 1384, for instance, the king undertook 'with a willing spirit' to 'reform and repair all and singular things which shall have been committed by him', he was also bound to reform and repair any 'negligent' acts which 'any party' complained of to the king's council, 'according to the way it seems to his council it ought to be repaired and reformed, the merits and circumstances of the deed committed having been heard and considered by his council'.⁷⁸ What stands out in the 1399 legislation, however, is the stipulation that 'the king be obliged that he shall not hinder [the duke's] office nor the execution of it by any countermandments as sometimes has been seen; and if anything is done contrary to these letters or in any other way through our lord the king's bidding, the countermandment will be of no value or effect, and the aforesaid lieutenant not held to

⁷⁴ *RPS*, 1399/1/3 (Haddington MS, PA5/5, f. 4v-5r).

⁷⁵ *RPS*, 1399/1/3 (Haddington MS, PA5/5, f. 4v-5r).

⁷⁶ *RPS*, 1399/1/4 (Haddington MS, PA5/5, f. 5r).

⁷⁷ Brown, 'Lele Consail', p. 59.

⁷⁸ *RPS*, 1384/11/3 (Haddington MS, PA5/5, f. 10r-10v).

answer such countermandments, and excused for not doing his office by virtue of them'.⁷⁹ Clearly, in this instance, it was not the absence of the king that was perceived to be problematic for the exercise of governance, but rather his *presence*. To date, the periods of lieutenancies under both Robert II and Robert III have been treated as, in effect, episodes of 'absent' kingship, given that these monarchs had virtually no active role in the governance of the land whilst representatives like Carrick, Fife or Rothesay were governing on their behalf. However, if the lieutenant's authority could only be presented as 'legitimate' insofar as it derived from the king's royal authority, it follows that if Robert III, the rightful king, countermanded Rothesay, then the office of lieutenant could not, in practice, function, and the system of governance would break down.

Evidently, a mechanism had to be devised which could pre-empt such a scenario. Is it therefore possible that the reason as to why conciliar control and authority were drawn upon to such a great extent by the Perth assembly was to guard against precisely this situation? Arguably, the use of counsel and councils in this way might itself be viewed as a process of legitimation by which the inferior institutional authority of the lieutenant could be safeguarded and maintained against the innately superior authority of the king, whilst still maintaining the *royal* authority upon which the position of *both* institutions rested. If this was the case, then the process rested on shaky ideological foundations, but this in turn may explain why duties and powers of the lieutenant were set out so explicitly thereafter. It was ordained, for example, that 'the lieutenant's letters shall be answered in all things that pertain to his office as the king's own letters [would be], and that the chancellor shall answer all his letters as to the king's letters under his privy seal in all articles comprised in this act, and give letters under the king's great seal thereupon'.⁸⁰ 'All other officers', likewise, 'shall answer his letters as to the king's own letters in all things that pertain to [their] office'.⁸¹ Crucially for the execution of his office in practice, the lieutenant was also granted 'power to make reward to those that are deserving of all escheats and forfeits falling to his office, as his council being with him at the time will avow and answer for before the king and

⁷⁹ *RPS*, 1399/1/3 (Haddington MS, PA5/5, f. 4v).

⁸⁰ *RPS*, 1399/1/7 (Haddington MS, PA5/5, f. 5v).

⁸¹ *RPS*, 1399/1/7 (Haddington MS, PA5/5, f. 5v).

his general council'.⁸² Most importantly, of course, it was ordained that 'all the lieges and subjects of our sovereign lord the king shall answer, obey, counsel, maintain and support the said lieutenant in his office, and travel with him as they should do with the king's person'.⁸³

This may explain why, as Brown noted, 'it is hard to identify any sustained legacy arising from the experiences of the late fourteenth century' and why 'the ways in which ideas of counsel were deployed in the early fifteenth century appear as if entirely rooted in the needs of specific conditions and regimes'.⁸⁴ But rather than this being due to 'the failure of the Rothesay lieutenancy and the experience of his successor, Robert, duke of Albany', it may actually be explained by a more fundamental change in Scotland's structure of politics which precipitated the reliance on different political principles to underpin legitimate governance predicated on uncontested royal authority.⁸⁵ As Brown says, 'there are very few direct references to the council as a body or to the issue of giving council to' James I—the same might be said for Albany's governorship too—while, 'by contrast, in the minority of his son, James II, a much higher profile was given to conciliar bodies'.⁸⁶ When Albany was governor, of course, the king was *literally* absent from the kingdom and thus removed, as an individual, from Scotland's structure of governance (moreover, while James was recognised as the rightful king, he had never technically been inaugurated as such). Once he returned from captivity in England, James I, unlike his father and grandfather, was an 'active and assertive ruler', and thus no lieutenancies were required during his reign, necessitating the mediatory processes of legitimation which their authority required in such circumstances, offered by limited councils of advisors. The use of lieutenancies and councils during James II's reign were confined to his minority, and thus functioned in fundamentally different circumstances than those of the preceding half-century. The apparent differences between the nature of governance in Scotland in the latefourteenth and that of the early fifteenth century thus correspond to structural changes (rather than a change in the political ideology of the Scots) which *consequently*

⁸² *RPS*, 1399/1/7 (Haddington MS, PA5/5, f. 5v).

⁸³ *RPS*, 1399/1/6 (Haddington MS, PA5/5, f. 5v).

⁸⁴ Brown, 'Lele Consail', p. 60.

⁸⁵ Brown, 'Lele Consail', p. 60.

⁸⁶ Brown, 'Lele Consail', p. 60.

resulted in the greater application and use of a different set of political principles. Yet if change is apparent in some respects, consistency may be seen in others. A persistent feature of all pre-1406 appointments was the need for the approval of the three estates, and representative assemblies (whether parliaments or general councils) were given the ultimate role of oversight regarding the quality of Scotland's governance under Carrick, Fife, and Rothesay respectively. After Robert III's death, the need for counsel which was conveyed through limited councils attached to the lieutenant was diminished. Conversely, it appears that ideas of communal authority—articulated though communitarian language and given expression in representative assemblies—acquired a more prominent role in legitimising Albany's governorship both on an initial and ongoing basis, owing to the unforeseeable situation brought about by the combined issues of James's youth, absence, and uncrowned status, beginning with his capture in 1406.

III

There is no small degree of irony in the fact that the twist of fate which resulted in James's capture occurred just as a more ideologically sophisticated solution to address the problem of rule under an inept king was being advanced. The actual absence of the king evidently precipitated a reassessment of how his representative's governance could be both presented and legitimised in such circumstances. If Wyntoun is any guide, a key issue for those who assembled at Perth from the outset was how the imperative to maintain good governance—the provision of justice and, crucially, the defence of the realm—could be reconciled with obedience to the rightful king, who was held captive by a hostile enemy outwith the kingdom. In this context, the seriousness of the problem at hand cannot be overstated. Periodic English claims to lordship over Scotland posed 'an ever-present threat to the status of Scottish kings and thus to the integrity of the Scottish kingdom', as Roger Mason noted, and consequentially 'in a Scottish context, the conventional belief in the king's duty to defend the realm was more than unusually significant'.⁸⁷ If in 1406 the Scots feared that Henry IV might use his possession of James to leverage such claims once more, we need only look back at

⁸⁷ Mason, 'Kingship, Tyranny and the Right to Resist', pp. 125–51, p. 128.

the captivity of David II to understand why. According to the English chronicler Henry Knighton, in 1352:

‘David Bruce, king of Scotland, who had been a prisoner until then, was sent into Scotland, under guard, sworn to recall the Scots into fealty to the king of England, as they used to be, and as that same King David had once been the sworn liegeman of the king of England, as the Scots kings are accustomed to be. However, the Scots answered with *one assent and one voice*, that whilst they wished to ransom their king, they would never submit themselves to the king of England, so King David returned to the Tower of London’.⁸⁸

There were obviously fundamental differences between David II and James’s captivities, the most important of which was that because of James’s youth, and uncrowned status, there was no one who could occupy the position the king normally did in Scotland’s structure of politics—no figure who could in practice ‘govern’ the polity.

This, more than anything else, explains the difference in title accorded to Albany in 1406, of ‘governor’ rather than ‘guardian’ or ‘lieutenant’.⁸⁹ The title of ‘governor’ may

⁸⁸ *Chron. Knighton*, pp. 112–3 [emphasis added].

⁸⁹ Hunt suggested that Albany’s new title was derived from reference to ‘feudal law’ or ‘private law’, stating that ‘not only was the title ‘lieutenant’ used interchangeably with that of ‘guardian’...it is also notable that, in contemporary France, Charles VI used the terms ‘tutor’ and ‘governor’ when providing with the wardship of his children in the event of his death. Although not cited as ‘tutor’ in 1388, the earl of Fife’s title as guardian and the fact that he was the closest male relative to the heir to the throne demonstrates that some recourse was made to the theory of land law’ (Hunt, ‘Governorship of Robert Duke of Albany’, pp. 128–9). Although this does not explain the differences in title, ‘private law’ in the sense of the legal ages of majority evidently played some role in judging when rulers were seen to be capable of exercising authority in their own right, rather than subject to guardians or councils; as Hunt notes, ‘according to the compilation of medieval legal practices, *Regiam Majestatem*, male heirs were regarded as being in pupillarity until they were fourteen years of age, and did not reach their full majority until they were aged twenty-one. Born in 1378, David Stewart was fourteen years old when he was appointed as justiciar south of the Forth in 1392...this date also marks the point at which the future governor ceased to act as guardian, and also coincides with David’s increasingly prominent role in government over the next seven years. In 1399, [when] David was appointed lieutenant...it should be noted that Rothesay’s appointment came when he was twenty-one years old, as stipulated by the general council of 1388’ (Hunt, ‘Governorship’, p. 129). The sole reference to the term ‘tutor’ appears in 1402, when the chancellor referred to Albany in a letter as ‘lieutenant and tutor of our lord the king’ (Hunt, ‘Governorship of Robert Duke of Albany’, p. 130). Hunt rightly noted that Albany’s ‘nomination by the Three Estates was the sole derivation of his authority’, but it seems extremely unlikely that the extent and exercise of that authority were

suggest a deliberate attempt by the Perth assembly to accord a status to Albany which reflected the fact that he was not so much representing the king—as in, James I specifically—as representing the *crown*, the king's estate, or his mystical body. In fact, the novelty of the term 'governor' in itself may indicate explicit recourse to political thought in the search for means of legitimizing Albany's position, and, moreover, to indicate the capacity in which he was to govern—not as a custodian or guardian, but as a *steersman*. Aquinas, as we have already seen, compared the governance of the king to the steering of a ship, writing,

'Now in all cases where things are directed towards some end but it is possible to proceed in more than one way, it is necessary for there to be some guiding principle, so that the due end may be properly achieved. For example, a ship is driven in different directions according to the force of different winds, and it will not reach its final destination except by the industry of the steersman who guides it into port. Now man has a certain end towards which the whole of his life and activity is directed; for as a creature who acts by intelligence, it is clearly his nature to work towards some end. But men can proceed towards that end in different ways, as the very diversity of human efforts and activities shows. Man therefore needs something to guide him towards his end'.⁹⁰

Aquinas continued the analogy, picking up on it again to write,

'To govern is to guide what is governed in a suitable fashion to its proper end. Thus a ship is said to be governed when it is steered on its right course to port by the industry of sailors. If, therefore, something is directed towards an end external to itself, as a ship is to harbour, the duty of its governor will be not only to preserve the thing itself, but also to guide it towards its final end'.⁹¹

Of course, for Aquinas, the point of these passages was to highlight the importance of unitary governance, vested in one man. But the language used to describe such unitary governance—kingship—is significant. The semantics of *gubernator* are very different to those of *custos* or *locum tenens*. *Locum tenens*, for instance, literally means

predicated on the role of 'tutor' in private law (Hunt, 'Governorship of Robert Duke of Albany', p. 130).

⁹⁰ Aquinas, *De Regimine Principum*, p. 5.

⁹¹ Aquinas, *De Regimine Principum*, p. 39.

‘holding the place of’ the king; *custos* translates as ‘keeper’ or, more commonly in Scottish historiography, ‘guardian’. *Gubernator*, on the other hand, implies an office based on active leadership and direction, rather than one of preservation and safekeeping.

The peculiarity of Albany’s title in a Scottish context has not escaped notice. Katie Stevenson wrote, for instance, that ‘the novelty of the title of governor thus enabled an independence from the oversight and authority of James, who had not sanctioned the position or appointment. Crucially, Albany was thus not answerable to someone who was in the control of the English crown’.⁹² This title, moreover, and the fact that the burgh court was fenced in Albany’s name (rather than James’s), prompted W. Croft Dickinson to comment that ‘the general council at Perth must have invested Albany with a regency of unusual status’.⁹³ It is clear that Albany’s governorship was intrinsically different from those of previous lieutenancies or guardianships in Scotland, but to date in the historiography this difference has almost always been linked with the criticism of Albany’s supposed personal ambitions to become king of Scotland in truth, rather than merely in practice.⁹⁴ Dickinson set out these ideas explicitly:

⁹² K. Stevenson, *Power and Propaganda: Scotland, 1306–1488* (Edinburgh, 2014), p. 67. The ‘novelty’ of *gubernatoris* is interesting in itself; rhetorical or terminological originality has not been seen as a characteristic of ‘constitutional’ crises in England or English Ireland, for example, where we more commonly find fictitious claims to custom or antiquity used to legitimise political innovation.

⁹³ W. Croft Dickinson, ‘Robert, Duke of Albany, Governor of Scotland’, *Scottish Historical Review*, 32:114 (1953), pp. 199–200, at p. 199.

⁹⁴ Fulsome contemporary praise of the duke’s governorship has not removed doubts of more ‘sinister’ ambitions Albany might have held for the crown. In one memorable phrase, Nicholson described both Albany and Henry IV alike as ‘men of the same stamp, politic, ruthless, dissimulating, seekers of cheap popularity’, and noted ominously that, after the death of Rothesay in March 1402, ‘only two lives lay between Albany and the throne’ (R. Nicholson, *Scotland in the Later Middle Ages* (Edinburgh, 1974), p. 225). Whether or not this comparison between the two men is accurate, it is nonetheless fundamentally misplaced; Albany and Henry IV were operating in vastly different circumstances to one another, in fundamentally different structures of governance and society. But other reservations may be better founded. Brown saw an obvious source in the Albany Stewarts’ half-hearted attempts to negotiate for James’s release from England, particularly after the release of Albany’s own heir, Murdac Stewart (who had been captured at the battle of Homildon Hill), from English captivity in 1415 (Brown, *James I*, p. 26). Yet, beyond the ‘clues’ found in the assumption of pseudo-regal styles and prerogatives by Albany (in dating his acta and using his own regnal year, etc.), taken together with his complacent attitude to James’s captivity, there is still a limited basis for evidence that Albany sought to actively usurp James’s position in the years after 1406. Indeed, it may rather be around the time of Robert II’s death, just before the accession of the earl of Carrick as Robert III, that Albany (then earl of Fife), or at least those around him, may have been nursing royal

‘Albany at once assumed royal powers and a royal style...A new great seal was struck, bearing the legend ‘*sigillum Roberti ducis Albanie, gubernatoris Scocie*’; charters issued under the great seal ran in Albany’s name and not in the name of James, and were dated, not by the year of the king’s reign, but by the year of Albany’s regency; and great councils and exchequers were held in the name of ‘*domini Roberti ducis Albanie, comitis de Fife et de Menteith, regni Scocie gubernatoris*’. In 1409, in the exchequer rolls, James is referred to, not as king, but as ‘the prince, son of the king, now in England’; and in 1410, in a letter to Henry IV, Albany speaks of *his* subjects of Scotland’.⁹⁵

Karen Hunt, moreover, also commented that the new governor enjoyed a ‘status and authority that, hitherto, Albany had not enjoyed as guardian during the reigns of his father and brother’.⁹⁶ Hunt was making particular reference to Wyntoun’s comment, in his account of Albany’s governorship—both lengthy and laudatory—that the duke ‘semyt to be a mychty king’.⁹⁷ However, Hunt also provided important qualifications to Dickinson’s observations. Like Alexander Grant, Hunt concluded that the fact that Albany’s *acta* are dated by the year of his governorship, rather than

ambitions. Dauvit Broun suggested as much in noting that, in a recension of Fordun’s *Chronica Gentis Scotorum*, compiled sometime between 1388 and c.1405, William the Lion was presented as the younger brother of David, earl of Huntington. The timing would seem to be significant; as Broun noted, ‘such a remodelling...seems strikingly relevant to the extraordinary situation after 1388 when Robert, earl of Fife, displaced his elder brother from government despite his elder brother being heir to the crown (and later king). Was it produced by a zealot of the earl of Fife wishing to show that there was a precedent if Fife decided to leapfrog his older brother in the succession?’ (See D. Broun, review, *Scottish Historical Review*, 73: 195 (1994), pp. 132–5, at p. 135) Also commenting on this ‘extraordinary situation’, Stephen Boardman hinted that, even if Albany himself did not explicitly make known his royal ambitions, the ‘political community’ might well have supported such an eventuality. Boardman went on to note that ‘the legitimate reservations about John’s fitness to rule were no doubt exacerbated by the ambitions of the powerful political constituency...moreover, Earl John’s treatment of his father in February 1388 meant that, in 1390, many lords must have regarded Fife as Robert II’s true heir in personal and political terms, if clearly not in a legal sense’ (Boardman, ‘Coronations, Kings and Guardians’, p. 115). Certainly, Albany enjoyed a large degree of political support in the years before 1406; whether or not, as Grant argued, ‘the entire political community, even former retainers of Robert III, apparently accepted his rule without question’ after Robert III’s death, in the past the duke had clearly exhibited many qualities of an ‘ideal guardian’ (Grant, *Independence and Nationhood*, p. 185; Boardman, ‘Coronations, Kings and Guardians’, p. 115).

⁹⁵ W. Croft Dickinson, *Scotland from the Earliest Times to 1603* (London, 1965), p. 204.

⁹⁶ Hunt, ‘Governorship of Robert Duke of Albany’, p. 127.

⁹⁷ *Chron. Wyntoun*, ix, p. 418.

James's regnal year, reflects James's uncrowned status.⁹⁸ This represents a difference from English practice (and by extension, practice in English Ireland), where from the death of King John, the king succeeds immediately upon the death of his father. The crafting and use of the governor's seal, likewise, was a necessary expedient, even if just for its sheer importance in the bureaucratic governance of the kingdom.⁹⁹ As to whether Albany sought to become king in his own right, it is difficult to know, but at any rate, Albany's ambitions (or lack thereof) are rather besides the point of the present discussion. The point is rather that regardless of his personal motivations, Albany's actions were inherently constrained by the parameters of what was socially and ideologically acceptable to those whom he governed, and thus had to be presented and conducted with a view to maintaining the legitimacy of his position as well as the successful governance of the polity. With this in mind, by examining how Albany's governorship was presented, both in Scotland and further afield, and by looking at the language and principles employed in the appointments of guardians (i.e. the way in which his governance was *legitimised*), we gain new insight into how political principles informed Scottish governance—particularly the exercise of legitimate authority—and how contemporaries could adapt these principles in order to achieve political ends. If we dispense, therefore, with the idea that Albany sought to gain the throne for himself, we may more clearly begin to analyse the significance of his title and the conceptualisation of his office. For as much as the 'regal' powers and styles adopted by Albany indicate a 'pragmatic' response to James's absence by the Perth assembly, there is no reason to suppose that they were not equally concerned with the principles which underpinned the governor's appointment, and the legitimate exercise of his authority in the absence of the king.

Wyntoun's account of the 1406 Perth assembly would certainly seem to indicate as much. Wingfield proposes that Wyntoun was not so much concerned with individual kings, and 'the political and biological intricacies of kingly inheritance' but rather with 'the maintenance of *regia dignitas*'.¹⁰⁰ The idea of the 'royal dignity' as being integral to the exercise of royal authority in the absence of the king is not in itself new and has

⁹⁸ Hunt, 'Governorship of Robert Duke of Albany', p. 127; Grant, *Independence and Nationhood*, p. 185.

⁹⁹ For elements of Albany's seal which indicate his ducal, rather than royal, status, see Hunt, 'Governorship of Robert Duke of Albany', pp. 127–8.

¹⁰⁰ Wingfield, 'Kingship and Governance', p. 28.

indeed been previously addressed in a Scottish context, notably by Norman Reid in his detailed treatment of the role of guardians in Scotland's governance after the death of Alexander III.¹⁰¹ Karen J. Hunt, who has provided the only extended study of Albany's governorship to date, also made a brief reference to the *regia dignitas* in her discussion of the 'constitutional basis' for the duke's rule, but seems to have viewed it primarily as a mechanism by which authority could legitimately be transferred to a 'delegated representative' in the event that the reigning monarch was either incapacitated or incompetent.¹⁰² Reid has described the concept of *regia dignitas* as, in effect, the 'theory of continuity in monarchy', where 'the kingdom, its rights, liberties, and the power which went with its rule, did not belong to the king' but rather to the royal dignity, which was 'entrusted to the king in his inauguration ceremony...by the community', after which point the king held 'the royal dignity and therefore the right to rule the country'.¹⁰³ What Reid is essentially describing here is the difference between the king as an individual, and the institution of the crown. For the Albany governorship, this distinction is important, not just conceptually but also methodologically. It allows us to separate the person of the king from the institution, and thereby facilitates an examination of the principles involved in such a unique period of 'absent kingship'. Moreover, this not a distinction often seen in studies of Scottish kingship, an absence due at least in part to the historiographical emphasis on the importance of *personal* kingship in Scotland and the consequent focus on the reigns of individual kings.¹⁰⁴ Aside from its utility as a conceptual tool for analysis, however, the distinction between king and crown also had a contemporary significance. The concept of *regia dignitas* was one which Wyntoun may have been explicitly drawing upon in his account of the Perth assembly and Albany's appointment. As Reid notes, the 'throne, the crown, the sceptre [and] the coat of arms were all symbols of the royal dignity', bestowed upon the king at his inauguration ceremony (this is why so much has been made of Albany's 'assumption of the royal powers and style').¹⁰⁵ The bestowal of these symbols upon the king at his coronation

¹⁰¹ N. Reid, 'The Kingless Kingdom: the Scottish Guardianships of 1286–1306', *Scottish Historical Review*, 61:172 (1982), pp. 105–29. See especially pp. 126–9.

¹⁰² Hunt, 'Governorship', pp. 131–2.

¹⁰³ Reid, 'Kingless Kingdom', p. 126.

¹⁰⁴ See Brown, 'Introduction', *Scottish Kingship*, pp. 3–4.

¹⁰⁵ Reid, 'Kingless Kingdom', pp. 126–7.

was in itself a way of legitimating the exercise of his royal authority, but, as Wyntoun noted, it was not one which had been available to James:

‘Set he was in Ingland styll,
Haldyn all agane his will,
Pat he mycht not on nakyn wys,
Tak ony of his insignys,
As crowne, ceptoure, suerd ore ring,
Sky as afferis till a king,
Off kynd be rycht’.¹⁰⁶

Wyntoun clearly saw it as deeply significant that James I was denied these symbols, which were, in the normal course of events, the most obvious material representations of the crown’s authority, publicly bestowed upon the monarch at his coronation ceremony. Moreover, the coronation, as Lucinda Dean has noted, ‘was usually the first key event at which there was a chance to project the authority of the new monarch, often in the face of extreme adversity’.¹⁰⁷ This ‘adversity’ could take different forms, but was evidently particularly apparent when the king was a minor, and consequently depended more heavily on the ‘enhancement of authority for both the minor monarch and his regency government through public events’.¹⁰⁸ If coronations were thus used ‘to express stability, continuity [and] reconciliation’ in the event of a minority, the situation in 1406 was unpropitious, given that there was no such opportunity to present such a visual representation of James’s authority to the kingdom at all.¹⁰⁹ The best alternative, perhaps, was a public declaration of James’s right to be king by a gathering of the three estates in general council. This may be why Wyntoun made such an impassioned defence of the James’s right to be recognised as king in the following section:

¹⁰⁶ *Chron. Wyntoun*, ix, p. 416.

¹⁰⁷ L.H.S. Dean, ‘Crowning the Child: Representing Authority in the Inaugurations and Coronations of Minors in Scotland, c. 1214 to 1567’, in S. McGlynn and E. Woodacre (eds), *The Image and Perception of Monarchy in Medieval and Early Modern Europe* (Newcastle upon Tyne, 2014), pp. 254–81, at p. 265.

¹⁰⁸ Dean, ‘Crowning the Child’, p. 256.

¹⁰⁹ Dean, ‘Crowning the Child’, p. 256.

‘...; 3it neuripless,
 Oure lege lorde and king he was,
 Set he had beyn bot a nycht aulde,
 Quhen his fadyre þe sprite 3aulde,
 To God, þat was hys Creature,
 And hys body tyll sepulture,
 Hys ayre, þat was of kynd king,
 And of all rycht wiþout demyng’.¹¹⁰

In the circumstances, it does not seem wholly improbable that these might have been the very lines along which the Perth general council devised a means by which the *regia dignitas* could be maintained (that is, in protecting the institution of kingship by affirming publicly James’s right to succeed his father) while also ensuring that governance of the kingdom could be carried out in practice (by emphasising that he was denied the most obvious symbols of his authority, which could then be effectively granted to another). The next section of Wyntoun’s account is telling, for we learn that consequently:

‘Be ordynance als of þat consall,
 Off oure kynrik þe gouernall,
 Robert, þan Duke of Albany,
 Tuk, and gouernyt it wetuusly.
 Cownte he was of cownttis twa,
 Fyf be first, and Menteith ware þa,
 And gouernoure þai maide þat he,
 Haldyn be tityll and seile sulde be’.¹¹¹

By Wyntoun’s account, it was the general council—at which all the estates of the kingdom were gathered—which deliberated and decided upon not only James’s status, but also the larger question of how the kingdom was to be governed, and it was the general council which ‘made’ Albany governor, an office which he then held by ‘title and seal’. It seems clear from not only Albany’s appointment as governor, but also from the appointment of guardians during the reigns of Robert II and Robert III too, that

¹¹⁰ *Chron. Wyntoun*, ix, p. 416.

¹¹¹ *Chron. Wyntoun*, ix, pp. 416–7.

‘the Scottish parliament’s role in royal succession and acclamation, minorities and the provision of lieutenants’ provided, if not perhaps the ‘foundation of its power’, an integral role for a broad section of political society in directing and shaping Scotland’s governance at this time.¹¹² And it was not the idea of counsel, but the idea of communal authority, which was expressed through reference to the gathering of the estates in the formalised institutional setting of a general council (in other words through communitarian language), that Wyntoun presented to his audience as the means by which Albany’s appointment as governor and subsequent rule was legitimised. The central role played by representative assemblies in granting, limiting and legitimising the authority of the king’s representative in Scotland is clear, and demonstrates the continuing centrality of ideas of communal authority expressed through communitarian language in Scotland’s structure of politics.

¹¹² Dean, ‘Crowning the Child’, p. 270.

PART II
COUNSEL

The Politics of Resistance

On Monday 30 April 1425, the lords and commons who had been summoned to Westminster for the third parliament of Henry VI's reign (and the first at which the young king was present) assembled for the ceremonial opening address of parliament, traditionally a sermon performed by the king's chancellor.¹ The incumbent chancellor, Henry Beaufort, bishop of Winchester, took as his theme 'glory, honour and peace to all who do good'.² He told the men gathered together in the Painted Chamber that there were three forms of 'good'; the first, the 'honourable good', meant obedience to the king, while the last, 'useful and beneficial good', entailed the 'willing support'—an allusion to the parliamentary subsidy—of the king.³ The second, though, Bishop Beaufort called the 'pleasing good', which might be found in the 'giving of sound counsel'.⁴ 'Desiring counsel of any kind', proclaimed Bishop Beaufort, 'can be compared with the three qualities of an elephant. An elephant is truly without enmity, is steadfast, and has an immense memory; thus anyone giving advice should be without the enmity of bitterness, odium and rancour; steadfast, unmoved by the acceptance of a person or gift; and of considerable reflection, by deliberation upon and foresight of the past, present and future'.⁵

Beaufort's first invocation of 'honourable good', entailing obedience to the king, should be unsurprising given the broader circumstances in which the April 1425 parliament had been summoned. Now three years of age, Henry VI was still a minor, and England's governance rested in the hands of a formally-constituted minority council, composed of 'certain persons of the estate both spiritual and temporal...nominated and elected as councillors to assist with the governance'.⁶ The minority council was supplemented by a 'protector and defender of the realm', who simultaneously occupied the office of the king's 'chief counsellor'—a position accorded to Humphrey, duke of Gloucester, only in the absence of his elder brother, the duke of

¹ *PROME*, Hen. VI: Parliament April 1425, item 1.

² *PROME*, Hen. VI: Parliament April 1425, item 2.

³ *PROME*, Hen. VI: Parliament April 1425, item 2.

⁴ *PROME*, Hen. VI: Parliament April 1425, item 2.

⁵ *PROME*, Hen. VI: Parliament April 1425, item 3.

⁶ *PROME*, Hen. VI: Parliament November 1422, item 26 [F: *a la requeste de la dite commune furent, par l'avis et assent de trestoutz les seignurs avantditz, nomez et eslutz certains persones d'estate sibien espiertuelx come temporelx, pur conseillers assistentz a la governance*].

Bedford, in France.⁷ There is considerable evidence to suggest that, when this framework for governance was agreed upon at the outset of Henry VI's rule, Gloucester had been less than pleased with the title of 'protector and defender'; not only was it structurally ambiguous in terms of his authority as a representative of the king, but it also placed him in a position of some uncertainty with respect to the authority of his fellow councillors. In a chancery document (not enrolled in the official record of the 1422 parliament) which references a now-lost petition from the commons, Gloucester argued that 'it seems to him that unless he has the name of governor under the king or another name which is equivalent, the said petition is not answered'.⁸ The title 'governor', as we have just seen, connoted significantly more quasi-regal authority than the lords at the 1422 parliament were willing to grant Gloucester, for his request was refused.⁹ Indeed, the omission of this 'debate' from the enrolled proceedings of Henry

⁷ *PROME*, Hen. VI: Parliament November 1422, item 24.

⁸ *PROME*, Hen. VI: Parliament November 1422, Appendix, item 1. The full text of this document (TNA/PRO C 49/53/12) may be found in S. B. Chrimes, 'The Pretensions of the Duke of Gloucester in 1422', *English Historical Review*, 45;177 (1930), pp. 101–3, at pp. 102–3 [ME: 'ffirst for as much as it is desired and asked by the commune who shuld haue the gouernance of this Reme undre our souverain lord bi his high auctorite, It semeth to my lord that by the word Defensor the petition of the commune nys nat satisfied. Wherfor it semeth hym that, lesse than he haue the name of *gouernour* undre the kyng or an othir name equivalent therto, the seid petition nys nat answered' (my emphasis)].

⁹ See C1; *PROME*, Hen. VI: Parliament November 1422, Appendix, item 1. As it happened, the refusal of the lords in 1422 did not prevent Gloucester from returning to the issue. In 1422, it seems that both Gloucester and the lords had searched the records for precedents which might be used to support their respective cases for and against the title of 'governor'; the lords 'assented to call [Gloucester] 'defender of the realm and chief councillor' even though they could find no records except for the time of King Richard when my lord of Lancaster did not have the name of governor, but had only his brother, my lords of York and Gloucester, associated with him in order to survey and correct the faults of those who were appointed to be members of the king's council'. Gloucester, for his part, 'had old records searched, and has found that, in the time of Henry the third, William Marshal, earl of Pembroke, who was not as close to the king as my lord is to our liege lord, was called ruler of the king and kingdom of England [*rector regis et regni Angliae*]. So in conclusion he thinks it reasonable that he should, in accordance with the desire of the commons, be called governor, or else, according to this record, ruler of the kingdom [*rector regni*] but not of the king [*regis*] as he does not wish to claim as much authority as William Marshal did' (*PROME*, Hen. VI: Parliament November 1422, Appendix, item 1). Despite this setback, Gloucester revisited the issue again at the October parliament of 1427–8 (*PROME*, Hen. VI, Parliament October 1427, item 24). He was, however, strongly rebuked by the lords assembled there. They 'recalled how, in the first parliament held at Westminster by the king our present sovereign lord, you wished to have the governance of this realm, affirming that it pertained to you by right as well as by your inheritance by the last will of the late king, your brother, whom God absolve, claiming for yourself such grounds and motives as you considered supported your intention', and further 'found your said desire to be not in accordance with the laws of this realm and against the rights and freedom of the estates of the same realm' (*PROME*, Hen. VI, Parliament October 1427, item 25). The next article following is of considerable importance for the light it sheds on how contemporaries of fifteenth-century England associated

VI's first parliament is telling, for it offers a sharp contrast to the picture of unity and 'obedience to the king' painted by the official record.¹⁰ Less attention, however, has been paid to the following clause in this document, which was not related to Gloucester's title, but rather to his relationship with the other men named and elected to the minority council. Here, we find that Gloucester:

'desires that it should be enacted that, just as he shall do nothing of substance except by the advice of the council, so it should be ordered that the council may do nothing which relates as a matter of course to common law except with my lord's advice, just as it has been permitted and declared by the lords before this time, and that there is no need to have unanimous assent but only that of the majority in the council, and there when there are as many on one side as on the other, then the side on which my lord is on should be considered the majority'.¹¹

Gloucester's attempt to anticipate and overrule direct opposition within the minority council by calling for only the assent of the majority, weighted in his favour, was unlikely to endear him to his fellow councillors—as an ideal, medieval assemblies strived for unanimity—and, predictably, it was not wholly successful. Apparently recognising that Gloucester would have been granted an inordinate amount of influence within the council had his stipulation been accepted, the framers of the corresponding clause in the parliament roll left the question of majority assent (and Gloucester's weighted vote) purposefully vague. Instead, it was conceded that

certain terminologies with specific functions of governance in the absence of the king; although the lords stated that they did not think Gloucester 'knowingly planned any such thing' (i.e. accroaching royal authority), they reminded him that they had 'devised for you a different name from the other councillors, not the name of tutor, lieutenant, governor or of regent, nor any name that might imply authority for the governance of the realm, but the name of protector and defender, which implies a personal duty of attention to the actual defence of the realm...granting you certain power thereupon which is specified and stated in an act of the said parliament, to remain in force during the king's pleasure. In which, if it had been the intention of the estates that greater power or authority should have been given, more should have been mentioned therein' (*PROME*, Hen.VI, Parliament October 1427, item 26).

¹⁰ In many ways, this was a necessary fiction, designed to firmly establish the continuity and stability of Henry IV's reign from that of Henry V, and one that was reflected throughout Henry VI's minority through constant reaffirmations and reminders of the young king's authority, despite his obvious inability as a child to rule in practice. See Watts, *Politics of Kingship*, pp. 111–22.

¹¹ *PROME*, Hen. VI: Parliament November 1422, Appendix, item 1.

‘if anything should be enacted by the council, that six, or at least four of them shall be present, not counting the officers of the said council; and that on all important matters that shall be dealt with by the council, all shall be present, or at least the majority’.¹²

It is, however, significant that Gloucester also presented ‘advice’ as an issue equal in importance to that of ‘assent’ in his stipulations. If this document was designed on all points to strengthen the duke’s authority, then the stipulation regarding ‘advice’ is of considerable interest for what it implies about how this authority—or indeed, practical power—could be achieved. In this case, it might be argued, the duke was attempting to use the language of ‘advice’, or ‘counsel’, to establish a further degree of oversight over the council (and reinforce his own individual authority accordingly) by asserting control over a precious resource: information. In this respect, Gloucester achieved greater success, as it was decided at the 1422 parliament that ‘if it shall be such a matter as the king has been customarily consulted about, that then the said lords shall not proceed thereupon without the advice of my lords of Bedford or of Gloucester’.¹³ The duke’s stipulation regarding advice should therefore remind us that despite the image of cooperative governance this rhetoric was designed to evoke, it could also function as a powerful tool which could be used to undermine political rivals.

It is this particular aspect of ‘counsel’, or ‘advice-giving’ which informs the following two chapters—namely, use of ‘counsel’ as a tool, which could be employed by a variety of individuals and groups, in both formal and informal settings, to affect the decision-making process of governance. This conceptualisation of counsel entails something of a departure from the otherwise straightforward definition of counsel as ‘advice-giving’. As such, it may be useful to explore what is meant by ‘counsel’—what the concept may be said to encompass, and how it is used in the following analyses—in a little more detail.¹⁴ Firstly, I distinguish ‘counsel’ from councils. Studies of counsel, as Jaqueline Rose noted, have tended to focus upon the *formal* structures through which political

¹² *PROME*, Hen. VI: Parliament November 1422, item 30.

¹³ *PROME*, Hen. VI: Parliament November 1422, item 30.

¹⁴ Much of the following discussion has been informed by the salutary introduction recently provided by Jaqueline Rose. See J. Rose, ‘The Problem of Political Counsel in Medieval and Early Modern England and Scotland’, in J. Rose (ed.), *The Politics of Counsel in England and Scotland, 1286–1707* (Oxford, 2016), pp. 1–44.

advice was transmitted: the importance (and, indeed, relevance) of *councils* as located within a broader structure of governance; emphasis has largely been placed upon the composition and procedural role of conciliar ‘institutions’, rather than on the principles, language, and—most importantly—strategies employed by those tasked with providing counsel.¹⁵ The emphasis in the following case studies is different: counsel is broadly considered as both practice and process: the focus is upon counsel as exercised by those who operated within a parliamentary sphere of activity, but is not confined to the political activity which took place only *within* actual meetings of representative assemblies.

Secondly, it is important to note that we should exercise caution in equating ‘counsel’ with ‘advice’. As Jacqueline Rose has observed, ‘on a handful of occasions people insisted that they were giving “advice” not “counsel”.’¹⁶ The distinction between the two is important, particularly in respect of how counsel is conceptualised in the present study (that is, as a means by which contemporaries could actively, rather than passively, engage with the governance they experienced). What differentiates ‘counsel’ from the term used by political scientists to describe similar activity—political lobbying, as conducted by various interest groups—was the moral imperative attached to advice-giving in the Middle Ages.¹⁷ Counsel was supposed to be directed toward the advancement of the common good, rather than private ends.¹⁸ For this reason (and because counsellors needed to avoid the appearance of ‘stirring’ the royal will, lest they be charged with accroachment of royal authority) counsellors tended to frame the information they were transmitting in language which reflected this moral imperative.¹⁹ Consequently, as will become apparent below (especially in Chapter 3),

¹⁵ Rose, ‘Political Counsel’, p. 4.

¹⁶ Rose, ‘Political Counsel’, p. 7. The distinction Rose highlights may indicate the difference between ‘advice’ as used interchangeably with ‘counsel’, and ‘advice’ as used to indicate ‘the view which a person holds in regard to a given matter’ (‘Advice, n.’, *OED*, online edn at www.oed.com/view/Entry/2987). The latter not only signifies a personal opinion held but is disassociated from the action of giving that ‘view’ to another with the intent to inform or persuade; in this sense, however, ‘advice’ lacks the moral imperative to offer that view to another *for the common good*.

¹⁷ Rose, ‘Political Counsel’, p. 6. For one extension of this term to a medieval context, see H. Kleineke, ‘Lobbying and Access: The Canons of Windsor and the Matter of the Poor Knights in the Parliament of 1485,’ *Parliamentary History*, 25:2 (2006), pp. 145–159.

¹⁸ Aquinas, *Summa Theologiæ*, p. 109.

¹⁹ Watts, *Politics of Kingship*, p. 62. The language in which contemporaries framed such counsel is examined in Chapter 3, below.

this produced quite frequent invocations of communitarian ideas and political principles. Yet, as we shall see, such ideological constraints did not prevent either formally-instituted councillors or even would-be counsellors from using both the rhetoric and mechanisms of counsel as a political tool. In this sense, then, the *practice* of counsel was perhaps closer to the modern practice of ‘political lobbying’ than historians have hitherto acknowledged.

Historians of medieval Ireland and Scotland have been leery of applying frameworks drawn from political science to their analyses of the Middle Ages, yet a marriage of approaches (or at least a tryst) may draw out themes of direct significance for the history of counsel. While there is not precisely any one distinct ‘theory’ of counsel in modern political theory, the characteristics which have been associated with counsel seem to provide a very workable schematic for historians to apply to medieval governance.²⁰ Braun described counsel as ‘one of the activities closely associated with the thought, actions, and the institutions of politics’.²¹ Aside from treatment of actual *councils*, medieval historians have not explicitly considered counsel as ‘an intrinsic part of the decision-making process’—as a structure in and of itself, rather than an ancillary feature of monarchical rule.²² This is somewhat surprising; the level of disquiet engendered when rulers *failed* to listen to counsel suggests that contemporaries were not simply expressing disapproval at a clear violation of contemporary norms and expectations; it may indicate that they were responding to the removal of actual political *agency*. ‘Counsel’, as described by Braun, usefully encompasses ‘knowledge technologies and intellectual cultures’, in addition to ‘procedures and processes of communication’ which enable executive authorities to make informed decisions.²³ Indeed, much of the utility of the modern concept of counsel for historians lies precisely in its broad application across a ‘wide range of terminologies and media’, and for the questions it raises concerning ‘the individual counsellor, group or political body dispensing counsel as well as those receiving it’.²⁴

²⁰ H.E. Braun, ‘Counsel’, in M. Bevir (ed.), *Encyclopedia of Political Theory*, Vol. I (London, 2010), pp. 326–7, at p. 326).

²¹ Braun, ‘Counsel’, p. 326.

²² Braun, ‘Counsel’, p. 326.

²³ Braun, ‘Counsel’, p. 326.

²⁴ Braun, ‘Counsel’, p. 326.

Concurrently, though, we must appreciate that counsel's ideological parameters—how contemporaries *thought* counsel should operate—exerted a powerful influence over how political communication was mediated and conducted.²⁵ Indeed, counsel cannot be comprehended either as a phenomenon or political activity without reference to the moral imperatives which underpinned contemporary understanding of the concept, and therefore guided its practice.²⁶ As we have already seen, medieval theorists, in reflecting upon the shape of the societies and governments in which they lived, tended to structure their arguments around 'ideals' of governance, rather than actual day-to-day practice (although it should be noted that day-to-day practice, particularly when it could be construed as *less* than 'ideal', could certainly prompt theorists to offer some pointed 'counsel' of their own in the guise of conventional advice literature).²⁷ We have already witnessed some of these 'ideals', so eloquently surmised in Bishop Beaufort's pachydermal analogy; his criteria for giving sound counsel also provide a good indication of the standards to which would-be counsellors were expected to adhere.²⁸ But it may be useful to delve deeper into the subject of counsel as expressed in medieval political thought, if only momentarily. Thomas Aquinas, for example, framed the issue of counsel chiefly in theological terms. One important point regarding counsel (specifically, who could *give* counsel) is revealed in his argument that 'counsel' was 'a gift from the Holy Spirit'.²⁹ Whereas some 'gifts' were granted to all, Aquinas reasoned that 'counsel' was a gift given to only select individuals who displayed the prudence required to give advice about 'what is to be done for the sake of an end'.³⁰ As we shall see below, these criteria or typologies did not necessarily exclude

²⁵ See J. Quillet, 'Community, Counsel and Representation', in J.H. Burns (ed.), *The Cambridge History of Medieval Political Thought, c. 350–1450* (Cambridge, 1988), pp. 520–72.

²⁶ According to Jeannine Quillet, who was concerned with exploring the doctrinal and classical roots of the term 'counsel', it was 'a decision, a deliberation, advice, plan or opinion; the reference is thus to practical wisdom, to action, whether by one or a number of individuals or by one or a number of groups. It is essentially an ethical concept...[and] also a political virtue...there is also the sense of a private virtue' (Quillet, 'Community, Counsel and Representation', p. 545).

²⁷ Black, *Political Thought*, p. 3.

²⁸ Indeed, that Beaufort's comments regarding sound counsel might well have been directed at Gloucester himself has been suggested by Anne Curry, who noted that 'in the gloss on this, he specifically mentioned the need to avoid not only bitterness and rancour, but also partiality occasioned by bribery and corruption' (*PROME*, Hen. VI: Parliament April 1425, Introduction). If so, this may be viewed as an early example of the divisions that would later develop into open conflict between Gloucester and Beaufort.

²⁹ Aquinas, *Summa Theologiæ*, p. 109.

³⁰ Aquinas, *Summa Theologiæ*, pp. 109–15.

prospective counsellors from offering advice: instead, they occasionally provided the means by which a counsellor's credibility could be enhanced.

'Counsel' was therefore, in a theoretical sense, generally conceived to be a cornerstone of good governance. But, I argue, it also served a highly practical role as one of the most important mechanisms by which contemporaries could influence decision-making processes, and thereby actively participate in *shaping* governance. Moreover, counsel provided one of the few channels that allowed contemporaries to do so without undermining the conceptual basis of a monarch's legitimate right to rule. We should not, however, paint too rosy a picture of political dialogue, communication and joint enterprise. Indeed, one objective of the following two chapters is to re-situate explicitly discussion of counsel within a framework of power relations—or, more specifically, unequal power relations. As Jan Dumolyn wrote, part of the problem inherent in studies which focus on political communication is that they very often tend toward an overly-consensual model which obscures, or occludes, the central historical issue of power.³¹ Very often, as we shall see, counsel and resistance went hand in hand: they might usefully be regarded not as diametrically opposed, but rather as political tools located on a sliding scale that contemporaries could adopt as and when circumstances suited. Thus counsel in the following studies is framed by the overarching theme of the 'politics of *resistance*'. For both English Ireland and Scotland, the second quarter of the fifteenth century witnessed varying degrees of political turbulence, much of which centered upon, or played out within, representative assemblies. By contrast with Part I of this thesis, with the return of the king to Scotland, the two polities under consideration did not exhibit the same degree of structural similarity, but rather an important structural differences which, it will be argued, exerted a powerful influence over the way in which Irish and Scottish parliamentarians employed strategies of both counsel and resistance to shape the governance they experienced at this time.

³¹ See J. Dumolyn, 'Political Communication and Political Power in the Middle Ages: A Conceptual Journey', *Edad Media. Revista de Historia*, 13 (2012), pp. 33–55, at p. 35.

Political Communication in Colonial Ireland: Subtlety and Subterfuge

ON 16 MARCH 1422, shortly before the death of Henry V, the commons of the county of Limerick together wrote to ‘all faithful Christians who shall see or hear the contents of’ a letter sent to England in recommendation of the fourth earl of Ormond, whose lieutenancy of Ireland was due to expire the following month.¹ They wished to make it known that James Butler, ‘in most bold, courageous and commendable manner’, had ‘restored us, who through the wars and destructions of the Irish enemy and the English rebels of our lord the king had been in great part subjugated by hostile force to their laws and customs, to English manners, the laws of the kingdom and the customs of the land of Ireland’.² The ‘restoration’ of Limerick—comparatively far-flung from the English administrative heartland centred around Dublin—was no small feat, given that only a few years later John Swayne, archbishop of Armagh, found it possible to claim that ‘in good faith the Englyssch groundes that ys obeying to the Kyngis laue in this londe as I suppos is not so moche of quantite as is on schir in Englonde’.³ As if to further underscore their remoteness (and thereby further emphasize Ormond’s achievement) the commons of Limerick advised their audience that, ‘because our seals are unknown to many’, they had requested that a string of regional notables and representatives of local communities also affix their seals to the letter, ‘in witness and guarantee of all matters aforesaid’.⁴ We have already seen that similar applications of representative and communitarian principles provided a useful means of asserting legitimacy, and so the guarantees of such witnesses were likely also intended to lend weight to this

¹ Letter recommending Ormond, 16 March 1422, ed and trans. M.C. Griffith, in M.C. Griffith, ‘The Talbot-Ormond Struggle for Control of the Anglo-Irish Government, 1414–17’, *Irish Historical Studies*, 2:8 (1941), pp. 376–97, at p. 392 [TNA, C 47/10/26/5].

² Griffith, ‘Struggle for Control’, p. 392.

³ *Reg. Swayne*, p. 108.

⁴ Griffith, ‘Struggle for Control’, p. 392. These notables included ‘Cornelius, bishop of Limerick, Nicholas, bishop of Emly, the prior of the house of the Holy Cross of the city of Limerick, the sheriff of the county of Limerick, the mayor and commonalty of that city and the commons of the same county, and the superior and commons of the town of Kilmallock’.

projection of unified support. Revealed in the letter's *exordium*, however, is a hint of why such strategies were needed:

‘Because it is a pious and worthy action to bear witness to the truth...in order that the truth may shine out and those who doubt be deprived of all reason for hesitating, and in order that where the spoken testimony of the truth cannot stand fast by reason of the malicious obstructions caused by the clamour of treacherous men, the companions of Satan, it may be supplemented in writing, therefore we bring ourselves to the notice of you all’.⁵

This final word of warning suggests that the purported authors of this letter—the distant ‘commons’ of Limerick—were not quite so far removed from the English government administration in fifteenth-century Ireland as historians of the polity have tended to accept. Of course, the comment concerning Limerick’s ‘restoration’ might equally be read as an attempt by the letter’s signatories to underscore their *connectedness* with the Dublin administration, rather than their remoteness (as suggested above). But certainly the oblique reference to the ‘clamour of treacherous men’ indicates above all that the authors of this letter were all too aware that criticisms of Ormond’s governance had been raised at the royal court. Evidently the authors were also aware that Butler supporters had been advocating on Ormond’s behalf in England, by giving their ‘spoken testimony of the truth’ to Henry V regarding the state of his lordship in Ireland and presumably their advice as to whom he should appoint (or reappoint) as his representative there. From this warning, then, we can infer two important points. The first is that the king had been in receipt of mixed—even highly contradictory—‘counsels’, which stemmed from two opposing factions in the colony, concerning the appointment of a new lieutenant. The second—which usefully channels our attention toward an underutilized set of sources of considerable value to the study of medieval counsel—is that there was evidently a perception in Ireland that the ‘spoken testimony of the truth’ was insufficient on its own as an effective and, above all, *convincing* means of communicating information and advice to the superior authority of the king in England.

⁵ Possibly a reference to John 18:37; Griffith, ‘Talbot-Ormond Struggle’, p. 392.

As we have seen in Chapter 1, messages to this effect from Irish parliamentarians were not unusual; the structural insecurity of the chief governor's position meant that competition for office almost inevitably resulted in a certain amount of 'lobbying' to influence the decision-making process in England. But in 1422, ongoing factional conflict seems to have encouraged the English of Ireland to pursue their lobbying with an unusual degree of intensity. This particular testimonial of Ormond's conduct was but one of a series of supportive letters sent to Henry V's government around the time the earl's lieutenancy was due to expire on 10 April 1422.⁶ Set alongside the fears of 'malicious obstructionism' expressed in the Limerick commons' letter, this flurry of encomiastic missives, sent as his term of office neared its end, betrays Ormond's anxieties. They were not misplaced. Over the course of his lieutenancy, having been appointed for a two-year term on 10 February 1420, the earl had made full use of the influence and authority granted to him.⁷ Successful military campaigns and efforts to reduce the burden on both the English and Irish exchequers were no doubt well received in England, especially at a time when Henry V's attention and resources were focused on France.⁸ Likewise in English Ireland, the earl's avoidance of coign, enabled by his practice of supplementing government expenditure and military campaigns with funding and manpower from his private resources, gained him both popularity and—crucially—material support, in the shape of generous subsidies granted by local and general assemblies.⁹

⁶ Matthew, *Lancastrian Lordship*, p. 153; No doubt composed at Ormond's (or his supporters) behest, they originated from a remarkably broad geographical spread of localities—although, as Elizabeth Matthew has noted, not all were quite as optimistic as that from Limerick regarding the long-term effects of Ormond's achievements (Matthew, *Lancastrian Lordship*, p. 154). Those from Kildare and Carlow respectively (which date from after Ormond's term had concluded) warned that the Gaelic Irish were aware that Ormond's successor was not sufficiently powerful to maintain the earl's achievements in Kildare, and that plundering, burning and destruction of settlements and castles in Carlow had followed in the wake of Ormond's departure from office (Matthew, *Lancastrian Lordship*, p. 154). That said, it seems likely that these qualifications, given that they in essence compared Ormond's successful governance to less satisfactory conditions under his immediate successor (a Talbot supporter, William fitzThomas, prior of Kilmainham, who had been elected as justiciar after Ormond's term expired) were designed to advance Ormond's case rather than undermine it.

⁷ *CPR, 1416–1422*, p. 256.

⁸ Matthew, 'Butler, James, fourth earl of Ormond (1390–1452)'.

⁹ Matthew, 'Butler, James, fourth earl of Ormond (1390–1452)'.

Yet these very achievements may well have kindled a more robust spirit of resistance to Butler dominance from Ormond's critics—the Talbot party, with whom Butler adherents had clashed in 1417–19. John Talbot himself had long since left the colony; in 1420, he had travelled to France with Henry V, returned to England with him to participate in the queen's coronation, and then headed back to France in 1422, to participate in the expedition which would cost Henry V his life.¹⁰ Despite Talbot's physical absence from Ireland, complacency was a luxury James Butler could ill-afford. For the earl of Ormond, like other chief governors in English Ireland, practical successes in the governance of the polity meant little if they could not be effectively communicated back to the king in England. Herein lay the source of Ormond's concern, for, in this respect, he faced a twofold challenge. On the one hand, the earl had to contend with the fact that John Talbot's proximity to Henry V from 1420–22 granted his rival a significant advantage: direct access to the king's presence. Talbot was therefore in a position to take advantage of the traditional role the nobility played in counselling the king by providing, on an informal basis, advice or information that could potentially promote Talbot interests in Ireland, at the expense of those of the Butlers. On the other, Ormond also had to be wary of criticisms stemming from *within* the colony, from those who could employ a variety of strategies or tools to convey unfavourable reports of his lieutenancy back to England, to a similar end.

I

As different as the sources of these potential threats to Ormond's political career were, though, they may in fact be seen as two examples of the same political phenomenon: use of the concept and mechanism of 'counsel' to pursue political ends (and, from the perspective of Ormond and his supporters, both could well be viewed as 'malicious obstructions caused by the clamour of treacherous men', whether through the written or spoken word). This proposition perhaps requires some justification. In the first instance, 'counsel' (and how it functioned in a colonial context) is not an aspect of English Ireland's political history to which attention has been explicitly drawn. Only recently in the historiographies of England and Scotland have attempts been made to bridge the gap between those 'institutional' histories which focus on councils (i.e. as formalised bodies), and 'intellectual' histories, which consider the *idea* or language of counsel (i.e. its conceptual basis as found in the writings of medieval chroniclers,

¹⁰ Griffith, 'Talbot-Ormond Struggle', p. 378.

theologians, theorists and literary advice-writers).¹¹ Historians of English Ireland will be much more familiar with the former—the history of *councils*, particularly the administrative bodies and representative assemblies of English Ireland—than the latter. In part, this state of affairs reflects a contested historiographical tradition which has given primacy to ‘institutional’ over ‘constitutional’ history, but in another sense, it reflects an oddly pervasive view of late medieval colonial politics wherein, as Margaret Griffith reflected, ‘political principle is conspicuous in its absence’.¹² Given the plethora of complaint and counter-complaint produced over the course of the Talbot-Ormond dispute (to which Griffith was referring), and indeed the personal animosity by which it was fuelled, her despondent conclusion is perhaps understandable, if not sustainable in light of more recent research. As one historian recently commented, ‘it seems safe to assert that colonial politics in the late Middle Ages had a “conceptual basis” and that this was a major influence on the course of political conflicts’.¹³ With this we may fully agree, but in many respects, the myriad of ways in which political principle manifested itself—how contemporaries *used* these principles and interacted with the ‘conceptual basis’ of their political system—have not as yet been fully explored.

As to the second—the historiographical dearth of attention to political principle has arguably led to an excessively negative view of colonial politics in this period, particularly with respect to the impact of the Talbot-Ormond dispute. Read without a watchful eye for expression and use of political principle, it is not difficult to see why the documents ‘with their catalogue of intrigues, extortions and kidnappings, give a picture of an administration...in the ultimate stage of collapse’.¹⁴ Indeed, until recently, students of medieval English Ireland will have been more familiar with Margaret Griffiths’ memorable description of the feud as ‘an illustration of the final stage in the collapse of a government’, ‘wearisome and sordid’ in detail, and ‘devoid of the

¹¹ See Rose, ‘Political Counsel’, pp. 3–6.

¹² Griffith, ‘Talbot-Ormond Struggle’, p. 389. While later historians drew attention away from this polarising debate by highlighting the importance of other features of colonial government and society (particularly issues of identity), there remains a comparative lack of attention to the political principles which underpinned governance within the colony itself.

¹³ Crooks, ‘Representation and Dissent’, p. 25.

¹⁴ Griffith, ‘Talbot-Ormond Struggle’, p. 390.

enlivening interest of the great conflicts of political principle'.¹⁵ More recent research, however, has highlighted the extent to which political principle played a role in the politics of later medieval Ireland. Peter Crooks in particular has offered an alternative view of colonial politics and its 'conceptual basis', suggesting that while factional conflict may have provided the impetus for power struggles in English Ireland (like that of the Ormond-Talbot feud), 'the structure of politics in the colony dictated that these struggles would be canalised through the institutions of central government and that consequently the contenders absorbed metropolitan political values'.¹⁶ 'Parliamentary management' (and, by the same token, acts of resistance which employed 'parliamentary' principles and language) was therefore one of the principal strategies that participants in such disputes could effectively use to achieve their goals—and one inherently, perforce, underpinned with political principle.¹⁷ As we have seen in Chapter 1, the rhetoric of 'community' and 'representation' could be wielded as a powerful tool, even in the hands of those who did not necessarily control the apparatus of colonial government. Invocations of political principle, far from being absent, permeated the politics of later medieval English Ireland.

It may be therefore possible to advance a more positive interpretation of this proverbial 'chaos and retrogression', for the very documents which have been used as proof of both the declining state of the colonial administration during the Talbot-Ormond dispute, and the 'unprincipled' politicking in which its participants engaged, are in fact those in which the richest evidence of 'counsel in practice' can be found.¹⁸ Despite a healthy scepticism in more recent years as to whether things were quite as bad as they were portrayed in such letters of complaint (and recognition that this sort of inflated rhetoric might well have been intended to nudge the king and his administration in England into a more timely or vigorous response), little attention has been paid to such letters as forms of active participation in the political system, rather

¹⁵ Griffith, 'Talbot-Ormond Struggle', p. 376.

¹⁶ Crooks, 'Representation and Dissent', pp. 32–3.

¹⁷ Crooks, 'Representation and Dissent'.

¹⁸ So G.H. Orpen wrote reproachfully to Edmund Curtis in a letter dated 19 March 1423. Although for Orpen it was Curtis' 'Irish Resurgence' that had caused this 'chaos and retrogression', this view of fifteenth-century Ireland has had a long pedigree and a lasting impact, particularly upon historians of an administrative or institutional leaning (Peter Crooks (ed.), *Government, War and Society in Medieval Ireland: Essays by Edmund Curtis, A.J. Otway-Ruthven and James Lydon* (Dublin, 2008), p. 30).

than merely as responses to, or reflections upon, the quality of governance in English Ireland. Some of these documents fall under the bracket of what has been termed the 'literature of complaint'; these include the petitions, letters and reports on the state of the colony, sent across the Irish Sea to England, which had become a characteristic feature of colonial political communication by the fifteenth century.¹⁹ Others include the natural counterpart of these complaints and counter-complaints: testimonials, like that sent by the commons of Limerick in 1422, which balanced criticism from one quarter with praise from another. Still others may include private correspondence between individuals—advice or information given through informal channels (but crucially, still intended to influence the political decision-making process), rather than counsel channelled through formal institutions like representative assemblies—or reports commissioned to provide information or advice on a particular issue. Naturally, we are better endowed with some types of records than others: the low survival rate of private correspondence between individuals means that much evidence of practical counsel is weighted toward that produced in formal settings, or recorded in formal instruments. Spoken counsel of the sort that John Talbot had the opportunity to convey to Henry V in person—the oral transmission of advice or opinion, given privately or 'secretly'—is frequently irrecoverable. Quite aside from the subject matter of such spoken counsel—upon which we may often only speculate—its very occurrence in the first place may be concealed by that fact that the king in conversation with his leading nobles at court 'was a natural, normal, daily occurrence, too mundane to write down'.²⁰

But even taking these limitations into account, the records of fifteenth-century English Ireland are remarkably rich in evidence of counsel. This fortuitous state of affairs is largely a consequence of two interrelated factors: the political structure of the relationship between 'colonial' Ireland and 'imperial' England, and the actual physical, geographical distance between the Dublin and Westminster administrations. Combined, these two factors resulted in a far greater reliance upon written

¹⁹ For a broader treatment of the 'literature of complaint' see W. Scase, *Literature and Complaint in England, 1272–1553* (Oxford, 2007).

²⁰ Rose, 'Political Counsel', p. 10. The extent to which informal counsel of this kind impacted upon the decision-making processes of governance is therefore difficult to ascertain, but its importance is demonstrated both by the high value that the nobility placed upon having access to the king, and (by the same token) through contemporary hostility to those who had a monopoly on access to the king's presence—that is, *too* much influence on this process.

communication in colonial Ireland than might be seen elsewhere. Furthermore, distance from the superior authority of the king in England created a serious barrier of access to the king's court (i.e. his person)—a space which enabled the informal 'everyday' communication of counsel; accordingly, alternate media of communication attained a greater degree of importance such that the 'politics of counsel' in English Ireland played out almost as much on parchment as in person. Thus, in terms of how counsel functioned in a practical sense, the proliferation of such documents provides a unique insight into the actual *functioning* of counsel (rather than how theorists thought counsel should function, or indeed the 'end-product' of counsel—a decision recorded in council minutes, absent the decision-making process which led to it) in medieval Ireland.²¹ Another aspect of the colonial political structure that resulted in an increased reliance upon, or greater use of, this sort of counsel has already been touched upon in Chapter 1; this relates to the lieutenant's insecurity of tenure in office, his vulnerability to the ambitions of rivals (competition for office), and his dependence upon the support (or, rather, his ability to *portray* the support) of the political community to maintain his position.²²

Unsurprisingly then, times of conflict in English Ireland produced a higher volume of such documents than might be seen in the more normal course of affairs. We have already encountered one such crisis point, centred around the events of 1417-19, in the previous chapter; another occurred toward the end of the 1420s, and then another in the early 1440s. Both are of considerable interest for the light they shed upon the functioning of counsel in a colonial context. That is not to say (and the point is worth emphasizing) that 'counsel' of this sort was not used in a similar way by contemporaries who wished to influence decision-making in the course of more regular government. The point is rather that in moments of crises, the stakes were higher, and thus the need to influence the decision-making process became more acute. In English Ireland, the 'stakes' rested in large part upon control of the administration.²³ Of course, intense competition for the lieutenancy in particular—alongside the flurries of appointments

²¹ Even formal counsel, that produced or conveyed in institutions of governance (councils, great councils, or parliament) can be strikingly elusive; 'council minutes', as Rose observed, 'record decisions, not discussions...we know more about the theory of counsel and the institutional structures of councils than about the functioning of counsel in practice' (Rose, 'Political Counsel', p. 10).

²² See above, pp. 39–40.

²³ Griffith, 'Talbot-Ormond Struggle', p. 378.

and reappointments (and, not least, attempts to oust political opponents from office, with varying degrees of success) that accompanied a new appointee to the role—highlights the extent to which noble power in English Ireland depended upon influence or control of the apparatus of the colonial government.²⁴ But in many respects, the real contest between the Ormond and Talbot parties in the first half of the fifteenth century was for control of channels of communication—control over the flow of information that the king (or, for much of this period, his council) in England depended upon to make decisions about office-holding in the colonial government. Counsel, in this sense, provided a mechanism, already underpinned with an established political principle and recognised as a fundamental aspect of the later medieval structure of politics, by which the Ormond and Talbot parties could attempt to assert such control. Viewed through the interpretative lens of ‘counsel’, these communications, rather than simply reflecting or responding to the quality of governance in the polity, should be seen as attempts to influence the executive decision-making process, and therefore as a form of active participation in the governance of English Ireland.

Of course, not all of these attempts were necessarily successful. Ormond’s concerted attempts to undermine Talbot and retain the lieutenantancy in 1422, for example, did not come to fruition; indeed, his efforts may well have been undermined by one particular critical voice in England at precisely that time. After his appointment as lieutenant in 1420, Ormond had wasted no time in removing key Talbot supporters from office, but one man had proved particularly difficult to expel: the Irish chancellor, Sir Laurence Merbury, who, at a parliament in 1417, had refused to attach the great seal of Ireland to a list of articles which criticised the governance of Ireland under Talbot. For reasons which are not entirely clear, Merbury had been summoned to England at the king’s command in early October.²⁵ It seems that the chancellor was reluctant to obey the summons, for Merbury delayed his departure for England until late March 1421—his deputy, Hugh Bavent, was sworn in on 22 March—when he was given license to absent himself from Ireland until 1 August 1421, and to appoint a deputy in his absence.²⁶ As a Talbot supporter, Merbury’s reluctance to leave the colony was well-founded, for only a month after he had left a list of highly critical articles regarding John Talbot’s conduct

²⁴ A. Cosgrove, *Late Medieval Ireland* (Dublin, 1981), p. 42.

²⁵ *CPR, 1416–1422*, p. 300; *CIRCLE*, PR 9 Hen V §27.

²⁶ *CIRCLE*, PR 9 Hen V §27.

as lieutenant (and one which explicitly criticised Merbury himself), drawn up by a parliament which met before Ormond on 28 April 1421, was delivered to the king in England by John Swayne, archbishop of Armagh, and Sir Christopher Preston.²⁷ Merbury had received, on 11 July 1421, a month's license to extend his stay in England, from 1 August to 1 September 1421, and to appoint a deputy to the chancellorship for his further absence.²⁸ Ormond must have been aware that the chancellor's letters patent had been renewed—and, as Matthew has noted, may have taken this as 'an indication that while he was in Ireland his stock of royal "favour and credit" had proved by no means impregnable against Talbot influence'—for he found the pretext for removing Merbury in the chancellor's failure to appoint a deputy (as specified in his renewed appointment) by at least 21 August 1421.²⁹

II

Henry V's death in August 1422 brought about an important structural change which meant that Irish parliamentarians and would-be counsellors had to employ different strategies in their communications with the crown. With the succession of a minor, the English of Ireland had to direct their communications toward the English minority council, rather than an active king. The attitude of the minority government in England toward the Ormond-Talbot dispute may well have been shaped early on in Henry VI's minority; by 1423, the feud had made its way over to the English parliament.³⁰ Evidently, its potential to threaten seriously the governance of the lordship was not lost upon those who gathered at the second parliament of Henry VI's reign, which had been summoned to Westminster on 20 October 1423.³¹ On Thursday 10 November, 'mindful of the domestic considerations that if it is proceeded further concerning the accusations, denunciations and revelations put forward on these crimes, treasons and defaults, many scandals and other inconveniences in our realm of England and in our lordship of Ireland will follow', the council declared the dispute to be concluded.³²

²⁷ *CIRCLE*, PR 9 Hen V §116.

²⁸ *CPR*, 1416–1422, p. 394.

²⁹ *CIRCLE*, PR 9 Hen V §49.

³⁰ *PROME*, Hen. VI: Parliament October 1423, item 9.

³¹ *PROME*, Hen. VI: Parliament October 1423, introduction.

³² *PROME*, Hen. VI: Parliament October 1423, item 9.

Neither this effort (unsurprisingly), nor indeed the council's more practical steps of appointing lieutenants from England, who might stand apart from the feud—such as that of the earl of March, who had been appointed for a term of nine years on 9 May 1423 but died at Trim in 1425, only a few months after his arrival in the colony—put the conflict to rest.³³

In fact, one attempt to dampen the dispute by appointing a relative 'outsider' to the lieutenancy had precisely the opposite effect. The lieutenancy of Sir John Grey instead provided the spark needed to reignite the struggle between the Talbot and Ormond factions. Grey had been appointed on 15 March 1427, apparently having arrived in Ireland during the summer (although it seems he was not sworn in as lieutenant before the council until 1 August); he returned to England shortly before Christmas (between 16 and 22 December) in the same year, leaving Edward Dantsey, bishop of Meath, as his deputy.³⁴ In practical terms, Grey's lieutenancy was something of a damp squib; he arrived with far fewer men than were needed to resist Gaelic Irish incursions in Leinster, and seems to have lacked not only sufficient manpower and finance, but also popular support.³⁵ With regard to the present discussion, however, Grey's successes or failures are beside the point; his short lieutenancy and abrupt departure once again created a vacuum of leadership. Amidst the wave of discontent that Grey left in his wake, new opportunities arose for those who wished to influence the choice for his successor. The flurry of correspondence generated by those who wished to take advantage of such an opportunity is of considerable interest for what the internal characteristics of each document may reveal about the principles and mechanics of counsel in English Ireland, and indeed how the use of counsel intersected with other political tools or processes that could be employed to the same end.

Two undated letters in the register of John Swayne, archbishop of Armagh, which were apparently sent shortly after Grey left Ireland, afford us a significant degree of insight into how counsel in English Ireland functioned in practice. As will become apparent, Swayne's letters differ in one important respect to those which we have encountered thus far; they were *not* sent from representative assemblies, but rather

³³ *CPR, 1422–1429*, p. 96.

³⁴ *CPR, 1422–1429*, pp. 397–8; *CIRCLE*, CR 3 Hen VI §29; *CIRCLE*, CR 6 Hen VI §4.

³⁵ Otway-Ruthven, *Medieval Ireland*, pp. 364–5; *CPR, 1422–1429*, p. 424; *Reg. Swayne*, p. 109–10.

from a private individual (albeit one with a highly public character). Indeed, one of the most obvious differences between these letters, and those which stemmed from formal avenues like parliaments or great councils, is the personal language employed throughout. The private nature of the counsel Swayne offered to Gloucester is underlined by the appearance of such phrases as ‘by my trouth’, ‘in good faithe’ ‘as I suppose’, or ‘as it is told me’, which appear scattered throughout the report.³⁶ Moreover, Swayne also had to project the image of an impartial observer whose primary motivation derived not from private or factional interests, but rather concern for the common good of the lordship and the king’s subjects. Take, for example, the comment that ‘at parliaments & grete conseilles the lieutenantz hath grete subsidies and talagis graunted to them and all this the pouere housbondry berith and paith fore and the were on the odirsayde distroyeth hem’.³⁷ The plight of the lordship’s ‘pouere housbondry’ was also a device that could be employed to prod the English council into action, for Swayne also warned Gloucester that ‘the housbonde pepill for the meschefe and governaunces aforsaide be gone out of the londe within fewe yeris into Englonde and into odir contreys that in good faith as I suppos there is mo gone oute of the londe of the Kyngis lege pepyll than be in’.³⁸ In the absence of the legitimizing principles and tools of communitarian authority, and in political circumstances complicated by the ongoing Ormond-Talbot conflict, Swayne had to work to establish his credibility.

The contrast between Swayne’s ‘private’ instruments of counsel and those which stemmed from representative assemblies therefore offers us a timely reminder that although political counsel in Ireland—especially that directed toward the crown in England—operated on multiple levels simultaneously, certain forms of communication were perceived to be more effective than others. It is striking that Irish parliamentarians relied so strongly upon representative assemblies to channel their communications and advice to the crown, so much so that this phenomenon seems unusually particularistic to the lordship. Yet the very ubiquity of these parliamentary communications, coupled with an older historiographical tendency to focus solely upon political communications which originated from formal (or ‘central’) institutions of governance in Ireland, seems to have obscured a more important question—that is,

³⁶ *Reg. Swayne*, p. 108.

³⁷ *Reg. Swayne*, p. 108.

³⁸ *Reg. Swayne*, p. 108.

why Irish parliamentarians found it so advantageous to channel their communications through representative assemblies. A comparative perspective may allow us a glimpse of the wood as well as the trees.

The documents in question comprise two reports on the state of Ireland.³⁹ The recipients are unnamed, but the form of address used in the salutations ('right high and mighty prince') indicates that these reports were intended for Humphrey, duke of Gloucester—chief councillor on Henry VI's minority council, and protector and defender of the realm.⁴⁰ Gloucester, in the absence of his elder brother, the duke of Bedford, in France, was the only 'prince' of such status resident in England at the time, and we may therefore be quite confident as to the intended recipient.⁴¹ There has, however, been some doubt cast over Swayne's authorship of the letters.⁴² Swayne, however, was well-placed to offer counsel to the duke. He had been promoted to the see of Armagh shortly before 11 January 1418, an appointment which marked the culmination of a career spanning twenty years at the papal court.⁴³ During that period, he had apparently studied at the University of Siena, for in a dispensation dated 20 November 1408 he was described as *doctor utriusque iuris* and rector of the

³⁹ *Reg. Swayne*, p. ix. For a more comprehensive overview of Swayne's register, see A. Gwynn, 'Ireland and the English Nation at the Council of Constance', *Proceedings of the Royal Irish Academy*, 45 (1939/40), pp. 183–233, at pp. 183–5. For Swayne's life and career, see Gwynn, 'Ireland and the English Nation', pp. 185–80; B. Smith, 'Swayne, John (d. 1439x42), archbishop of Armagh', *ODNB* (2004) internet edition at <https://doi.org/10.1093/ref:odnb/50031>.

⁴⁰ *Reg. Swayne*, pp. 107–8.

⁴¹ Bishop Beaufort, incidentally, was absent from England at the time (G.L. Harriss, 'Beaufort, Henry [called the Cardinal of England] (1375?–1447), bishop of Winchester and cardinal', *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/1859>).

⁴² Whilst both are generally assumed to have been written by Archbishop Swayne himself, Matthew noted that it is 'slightly surprising to find the author of the second report describing himself to the duke as 'I youre man & servant', perhaps an unexpected turn of phrase for the archbishop to have chosen, even to so eminent a layman as Gloucester' (Matthew, *Lancastrian Lordship*, p. 222; *Reg. Swayne*, p. 109). She suggested a possible alternative, another figure with reason to support Butler interests: Edward Dantsey, bishop of Meath (Matthew, *Lancastrian Lordship*, pp. 222–3; *Reg. Swayne*, p. ix). This argument is not entirely convincing. Particularly from the vantage point of the English of Ireland—to a certain degree removed from the disputes between Gloucester and members of the minority council—Gloucester was at that point the *de facto* leading figure in the English government to whom those in Ireland might logically direct their communications, particularly with regard to matters concerning the governance of the colony. Certainly, there is no obvious reason to doubt that the first letter was authored by Swayne, and the similarities (particularly in terms of subject-matter and phrasing) between the two letters are so striking that it strains credulity to imagine that they were authored by two different individuals.

⁴³ Gwynn, 'Council of Constance', pp. 186–7.

university.⁴⁴ Additionally, only shortly before his appointment to the archbishopric, he had attended the Council of Constance, where he may well have been involved in negotiations concerning the English nation at the final stages of the council, from February to March 1417.⁴⁵ No doubt the extensive political experience accrued during those years had a lasting impact upon Swayne after he returned to Ireland. By 1428, aside from his status as the foremost spiritual lord in Ireland, Swayne had become a seasoned administrator in the colonial government—and crucially, one who had previous experience in communicating reports on the state of Ireland to England. On one notable occasion the archbishop had been sent to England alongside Christopher Preston in 1421 to deliver a list of articles which criticised Talbot's lieutenantancy (which had been drawn up at a parliament held before James Butler), but Swayne was perhaps unusual in that he had also acted in a similar capacity—as a messenger conveying counsel from Ireland—for the Talbot administration.⁴⁶ On 25 January 1423, when Richard Talbot was acting as justiciar, Swayne had been granted £40 in aid of any costs incurred whilst he was abroad, having been 'elected and appointed by the said justiciar and council to cross to England upon public business'.⁴⁷

As an aside, one episode for which Swayne was present is of considerably interest as an illustration of the way in which both ideas and mechanisms of counsel functioned in Ireland. The archbishop was present in the council chamber on 24 September 1423, when a dispute arose between Richard Talbot and Edward Dantsey, bishop of Meath, over the latter's right to replace Talbot as deputy justiciar for the new lieutenant, Edmund Mortimer, earl of March.⁴⁸ Talbot had continued to act as justiciar even after March's appointment in May, and despite March's letters patent from the king (which explicitly granted him the power to appoint a deputy 'whenever and as often as he wishes'), Talbot resisted his expulsion from the justiciarship, upon the pretext that the letters patent appointing Dantsey were sealed under the earl of March's personal seal, and therefore insufficient.⁴⁹ On that occasion, Archbishop Talbot was unsuccessful in

⁴⁴ Gwynn, 'Council of Constance', pp. 221–5.

⁴⁵ Gwynn, 'Council of Constance', pp. 225–9.

⁴⁶ *CIRCLE*, PR 9 Hen V §116.

⁴⁷ *CIRCLE*, CR 1 Hen VI §47.

⁴⁸ *CIRCLE*, CR 2 Hen VI §1.

⁴⁹ *CIRCLE*, CR 2 Hen VI §1.

retaining the justiciarship; he had been appointed as chancellor ten days previously, and a letter from the king dated 20 June 1423 referred to him as ‘formerly our justiciar’.⁵⁰ Yet the following day, Talbot continued to preside over the council as chancellor, and maintained his refusal to admit Dantsey. The strategy he used to play for time, however, depended almost wholly upon the invocation of ideas of counsel. Talbot ‘made open protest before the council that he was not willing to preside in order to admit the bishop as deputy of the lieutenant, nor obey his mandate until he was better advised concerning this’.⁵¹ The council, together with Talbot, ‘treated diligently and deliberated amongst themselves upon the insufficiency of the letters of the earl made under his own seal’; when asked by Talbot whether they should admit Dantsey, all—including Swayne—‘stated separately that they were in doubt’.⁵² Clearly growing impatient, the king’s messenger—Sir Thomas Stynt, who had conveyed Dantsey’s letters patent, and indeed the letters patent by which Mortimer had been appointed also—pressed Talbot and the council for their decision, to which Talbot responded that ‘he had a colleague who was absent (William Tynbegh, treasurer of Ireland) and that he wished to consult with him upon the premises’, and further that he did not wish to admit Dantsey or obey his mandates ‘in any way until he was advised with more learned deliberation’.⁵³ Talbot’s prevarications were at least somewhat effective, as Dantsey’s credentials do not seem to have been accepted until 3 October 1423.⁵⁴ In this instance, then, ‘counsel’ provided Talbot with a means of buying himself time (presumably to arrange matters to his satisfaction before Dantsey took office) which could be justified to his fellow counsellors, the earl of March, and of course the minority council in England. Dealings with other individuals required less covert political manoeuvrings. Well before the matter had been resolved, Talbot ordered Stynt—that ‘irritating knight’—to dispatch himself to the marches to resist Irish enemies, ‘because he was a soldier of the lord king’.⁵⁵ It is all too possible that Talbot’s order proved fatal for Stynt, for after this there was no more mention of him, but the *Annals of Ulster* record that

⁵⁰ *CIRCLE*, CR 2 Hen VI §1 [emphasis added]; Richardson and Sayles, *Irish Parliament*, pp. 311–12.

⁵¹ *CIRCLE*, CR 2 Hen VI §1).

⁵² *CIRCLE*, CR 2 Hen VI §1.

⁵³ *CIRCLE*, CR 2 Hen VI §1.

⁵⁴ *CIRCLE*, CR 2 Hen VI §1.

⁵⁵ *CIRCLE*, CR 2 Hen VI §1; Richardson and Sayles, *Irish Parliament*, p. 312.

in 1423 the Gaelic Irish ‘slew the knight who was head of fighting for the foreigners then, and many more of the foreigners along with him’.⁵⁶

Although Swayne’s role in this set of political machinations appears to have been minimal, his actions on this occasion—in *support* of Talbot—may have lent him a significant vantage point from which to offer counsel to Gloucester in 1428. His experience in Irish governance had been gained under *both* Butler and Talbot chief governors; he was therefore capable of projecting (at least ostensibly) the image of a counsellor ‘without enmity of bitterness, odium and rancour; steadfast, unmoved by the acceptance of a person or gift; and of considerable reflection, by deliberation upon and foresight of the past, present and future’—in other words, an impartial advisor.⁵⁷ Other characteristics might lend him a further vantage point from which to offer counsel. Wisdom came from experience; Swayne, as we have seen, could not only bring to bear his experience as a colonial administrator, but also his past experience in papal politics. Experience, moreover, came from age; we do not know Swayne’s birth date, yet given that Swayne ‘resigned the primacy on account of the infirmity of old age’ ten years later, in 1439, he surely qualified in this respect (although, as John Watts put it, ‘enthusiasm for the counsel of old men...had as much to do with their support for the good old laws and customs as with their age and experience’).⁵⁸ More importantly, in the context of the dispute between the Ormond and Talbot parties, drawing in as it did the greater part of the nobility in English Ireland, ecclesiastical counsel might well have been preferred by the minority council in England over advice provided by the king’s

⁵⁶ *AU*, pp. 94–5.

⁵⁷ *PROME*, Hen. VI: Parliament April 1425, item 3.

⁵⁸ *Reg. Swayne*, p. x; J. Watts, ‘The Counsels of King Henry VI, c. 1435–1445’, *English Historical Review*, 106:419 (1991), pp. 279–98, p. 280. Watts suggested that the basic consensus upon the need for good counsel (that was derived from as many sources as possible) tended to mask ‘certain assumptions which the predominantly clerical writers of advice literature tended to overlook’, for instance, ‘the identification of good counsel with noble counsel’ and as we have seen, enthusiasm for the counsel of old men. One advice writer (and an experienced counsellor to Charles V himself) explicitly called for the counsel of old men to be preferred on account of their experience—Nicolas Oresme, who wrote the following in his French translation of Aristotle’s *Politics*: *il doit eslire gens de grande prudence et experts, et qui ont a cuer le bien publique et plusieurs. Car si comme dit le Sage: Multitudo sapientum, sanitas est orbis terrarum* [Sap. 6:26]. *La multitude des sages est la sante et le bon estat du monde. Et par ce appert que jaennes hommes ne sont pas a ce convenables; car encor ne sont il pas prudens ne experts. Et pour ce dit l’en: Consilium juvenum Roboam fecit egenum* [III Reg. 12: 14] (A.B. Menut (ed. & trans.), ‘Maistre Nicole Oresme: Le Livre de Politiques d’Aristote (Published from the Text of the Avranches Manuscript 223)’, *Transactions of the American Philosophical Society*, 60:6 (1970), pp. 1–392, at p. 329 §285d).

traditional counsellors (despite that fact that ‘good counsel’ was typically identified with noble counsel).⁵⁹

The clearest indication that Swayne was indeed the author of both reports derives (as Matthew herself noted) from a draft letter ‘to the archbishop of Armagh and other prelates and the community of the king’s liege people of Ireland’, dated 24 March 1428.⁶⁰ According to this document:

‘The king...heard, both by divers letters patent sent to him from Ireland and from the testimony of his liege subjects in Ireland, about the troubles and inconvenience they have recently suffered, and how the land is close to being lost forever. He is sending John Sutton, baron of Dudley, to be his lieutenant, in order that he might relieve such troubles and provide a remedy in restraining the malice of the king’s enemies and grant due redress from the many inconveniences declared to the king by letters from the community in general and by Richard Eustace, their envoy, in particular’.⁶¹

Sutton had been appointed as the colony’s new lieutenant only a day prior, on 23 March, for a term of two years to begin on 30 April 1428, and it is clear that Swayne (amongst others) had been in communication with the English council in the weeks and months leading up to his appointment.⁶²

⁵⁹ Watts, ‘The Counsels of King Henry VI, c. 1435–1445’, *English Historical Review*, 106:419 (1991), pp. 279–298, at p. 280.

⁶⁰ *CTNA*, p. 195 [TNA E 28/50/61, formerly E 404/68/168. The reference provided for this document in Matthew, *Lancastrian Lordship* (TNA/PRO E 28/50/24) is incorrect].

⁶¹ *CTNA*, p. 195. Richard Eustace was certainly a Butler supporter; he had received a slew of appointments and grants while Ormond had held the chief governorship (*CIRCLE*, PR 8 Hen V §35; *CIRCLE*, PR 9 Hen V §21; *CIRCLE*, PR 3 Hen VI §127; *CIRCLE*, CR 5 Hen VI §18; *CIRCLE*, PR 5 Hen VI §41; *CIRCLE*, PR 5 Hen VI §48), and as recently as 28 January 1427, he had been appointed ‘with the advice of James Butler’ as chancellor of Ireland, during Ormond’s justiciarship (*CIRCLE*, CR 5 Hen VI §32).

⁶² *CPR, 1422–1429*, pp. 475–6. We know for certain, then, that Swayne (amongst others) had been in communication with Gloucester and the council during the lead-up to Sutton’s appointment, but one nugget of information revealed in the English council’s draft letter may reveal another layer of intrigue; mention of the ‘envoy’, Richard Eustace. Matthew has suggested that Eustace may well have been the unnamed author of another letter which appears directly prior to the first report in Swayne’s register, one intended for the earl of Ormond (Matthew, *Lancastrian Lordship*, pp. 227–8). By his own account, the author of this letter had been waylaid by John Grey’s men when he had passed through Chester; following him to Heywood when he had left Chester, they took an inn next to that the author and his companions were staying in, but as soon as the author and his fellowship left the town to continue along their way, the men immediately cut short their dinner and followed them

(*Reg. Swayne*, p. 107). They overtook the author's party at the end of the town, hailed them down and suggested that they ride together to Coventry. Before long, though, the author was accused of taking Lord Grey's horses in Ireland, and destroying the king's liege people there, and—because of such high offenses—told that he should come before the Lord Grey and hear what he had to say (*Reg. Swayne*, p. 107). The author replied that he would not go to the Lord Grey but instead to an unnamed bishop at Haywood, where he would answer to all manner of actions that the Lord Grey held against him; because his accusers refused to follow him there, the author apparently proceeded on to the unnamed bishop with his companions alone, having managed to avoid an altercation (*Reg. Swayne*, p. 107). At this point, the entry in Swayne's register breaks off, but clearly Grey had anticipated the possibility of critical messengers travelling to England from the colony after he had left; as Matthew argued, the author of the letter was clearly close to Ormond—the letter opens with a greeting to his 'moste Reverente and moste wordy Lorde and my moste special Sukour', to whom 'I recommend me zour pour servant to zour graciosse Lordschipe'—and Richard Eustace was certainly a Butler supporter (*Reg. Swayne*, p. 107; Matthew, *Lancastrian Lordship*, pp. 227–8). The fact that this letter appears just before Swayne's reports in the archbishop's register speaks to a close relationship between the earl of Ormond and Swayne at the time; as such, Matthew argues, it is entirely possible that Eustace was the anonymous author, as well as the envoy who carried at least one of Swayne's reports. Alternatively, certain articles contained in a missive sent from a parliament held in Dublin on 5 November 1429 before Sir John Sutton (and one at which Ormond was certainly present), however, suggest two other possible candidates for the letter's authorship: either Henry Fortescue, or James Alleyn (*CIRCLE*, CR 7 Hen VI §9). These two men had apparently been chosen as messengers to deliver the letters from 'the community of the king's liege people in Ireland'—referenced in the English council's reply to the Swayne *et al* dated 24 March 1428—although I have not been able to find any reference to a parliament or general council which took place at this time, at which such messengers might have been chosen (*CTNA*, p. 195). Nonetheless, there are certain points in both letters which suggest that either Fortescue or Alleyn were in fact the author of the letter in Swayne's register, or, alternatively, that Grey's men had found more than one group of messengers to target; the first article of relevance complained that 'divers clerkes, merchantz, and othere honeste persones out of your land here, hav travailled yn your land of Eng., there from *Chester to Coventre*, Oxenford, and London, now late ben robbed of thire hors and goodes, and thire bodies taken and put in warde, and some beten; we beseche you, that such mysgov[r]naunce be restrained and chastised. Sithe that we ever have and shall be your trewe liege men, and myche sorrow suffre from day to day, here of yo[r] enemyes for yo[r] sake, thogh we have none there' (*CIRCLE*, CR 7 Hen VI §9; my emphasis). The reference to the journey from Chester to Coventry—the same as that taken by Ormond's correspondant—is curious, but more curious still is the response made to this (otherwise fairly innocuous) request, contained in an anonymous criticism of the November parliament's articles, apparently drawn up in secret by at least some of those present at the assembly. Amongst other points of disagreement, the anonymous critics replied tersely that 'to the fifth, concerning robberies [etc.]: they say that such injuries pertain to the common law, to which those affected may appeal' (*CIRCLE*, CR 7 Hen VI §13). The general tone of these anonymous criticisms was, as Matthew noted, sympathetic to Grey; any reference, veiled or otherwise, to an attack ordered by Grey's men, was therefore likely, it seems, to elicit complaint, or—as in this case—dismissal by the anonymous critics (Matthew, *Lancastrian Lordship*, p. 235). The second, more tellingly, requested of the king that 'ye wolde graciously consider and punyssh the despite that was done to yo[r] messagers Henry Fortescu, your chief justice, and Sir James Alleyn, knyght, send from us, yo[r] liege peple of this land, to your royall magest to c[r]tifi you of the estate and compleyntes of your said land, the which sholde be goyng and comyng, and werev[r] at that tyme undyr yo[r] g[a]lcious proteccion, for yo[r] liege peple here, supposyn that the diservis that is doyn to thaym, goyng in to your reame of Eng., is doyn by boldenes that hit was not punysshed' (*CIRCLE*, CR 7 Hen VI §9). Despite this attack, Fortescue and Alleyn were evidently successful in delivering their message to the king's council, for another article went on to request that 'the g[a]lcious answers that were given by thavyse of yo[r] said consaill thereunto, the said Henry Ffortescu, and James Alleyn, knyght, messagers, for yo[r] said land, might be put in due

Let us turn to the reports themselves. The first report does not survive in full; it has been described as ‘simply a plea for increased English financial assistance for the lordship couched in terms calculated to alarm the English council into action’.⁶³ Financial assistance was surely needed, but those ‘calculating terms’ should perhaps encourage us to view this letter with a more sceptical eye. Given the content, phrasing and structure of the report, it seems almost certain that Swayne was the one who initiated this channel of communication with Gloucester.⁶⁴ If this was indeed the case, Swayne had to perform something of a balancing act. To be taken seriously, he had to demonstrate or assert his personal credibility, and (on a related note) portray his counsel as disinterested advice intended to promote the common good of the king’s lieges in Ireland. Concurrently, he also had to avoid the impression that such advice was intended to ‘stir’ Gloucester and the king’s council unduly, an act which could amount to the crime of accroaching the king’s prerogative. Of necessity, then, the tone of Swayne’s report was moderated, but when we take the above considerations into account, it reads as less a ‘plea’ for aid and more a well-timed—if not outright opportunistic—attempt to use the mechanism of counsel to influence the English council’s choice of lieutenant.

Like the majority of documents found in the colony’s ‘literature of complaint’, the objective of this letter was not simply to air discontent, but to propose, or advise, a solution to the problems raised in the report. By itself, this point is significant, for although certain statements which appear in Swayne’s report are amongst the most oft-quoted in the historiography of later medieval Ireland, they have rarely been given in full, and therefore placed in their appropriate political and rhetorical context. Take, for instance, Swayne’s statement that ‘the Englissch grounde that ys obeying to the Kyngis laue in this londe as I suppose is not so moche of quantite as is on schir in Englonde’. This has been used to demonstrate the dire state of the late medieval colony.

execucion, accordyng to the same answers, for the grete availe of you, oure soveraigne lord, and in conforte of us your liege people here (*CIRCLE*, CR 7 Hen VI §9). Regardless of whether it was Eustace, Fortescue or Alleyn that were subject to an attack by Grey’s men, that the erstwhile lieutenant felt it necessary to take this action against such reports reaching the English council, of course, only serves to underline their efficacy.

⁶³ Matthew, *Lancastrian Lordship*, p. 224.

⁶⁴ Although, as we have seen from the document which appears immediately prior to the first report in Swayne’s register (a copy of a letter to Ormond, possibly sent by Richard Eustace), Swayne or John Prene may well have been in contact with Ormond at the time, and therefore willing to promote his candidacy for the vacant lieutenantancy (*Reg. Swayne*, pp. 106–7).

However, this eminently-quotable statement was directly prefaced with that advice that ‘odire meschef there be in this lond whiche will be gret cause of the discretion thereof *withoute that ye of youre gracious lordschipe ordeyne some remedy*’; read in the context of the report as a whole, it becomes clear that this pessimistic sound-bite was actually part of a larger strategy; it should therefore should be read more as a rhetorical device designed to further the author’s agenda, and less a frank comment upon the retraction of English governance in Ireland.⁶⁵ In a similar vein, when Swayne wrote that ‘by my trouth, as I suppos, the enemyes wyll override and finally conquere this londe or hit be Estere or Whitesontide’, this statement was—again—directly preceded by exhortation for prompt intervention: ‘the wer hath brough this countrey to this plite so ferforth *that but if ye my lorde of your good and gracious lordshepe ordeyne hasti remedy for the meschef above saide*’.⁶⁶ As such, it seems reasonable to consider the possibility that Swayne was exaggerating the extent of the colony’s problems so as to further his main objective—which evidently, as we shall see, went beyond a plea for increased financial aid.⁶⁷ Tellingly, Swayne continued to advise Gloucester to ‘ordeyne a gret pouer hedir to withstonde the malice of the enmyes’ and cautioned that ‘whosoever that schall have the gouernaunces of this londe that he fynde suffisaunt suertee to kepe the londe that it be nozt fynally conquered in his tyme...then

⁶⁵ *Reg. Swayne*, pp. 107–8.

⁶⁶ *Reg. Swayne*, p. 108.

⁶⁷ This is not, of course, to say that simply because such statements had a rhetorical function they should be dismissed out of hand, for there were indeed serious problems within the lordship at that time which have been well-documented. As Brendan Smith observed, for instance, Swayne’s claim that ‘the housbonde pepill for the meschefe and governaunces aforsaide be gone out of the londe within fewe yeris into Englonde and into odir contreys that in good faith as I suppos there is mo gone oute of the londe of the Kyngis lege pepyll than be in’ (*Reg. Swayne*, p. 108), is supported by evidence that tenants were abandoning their holdings from early-fifteenth century Louth (B. Smith, *Crisis and Survival in Late Medieval Ireland: the English of Louth and their Neighbours, 1330–1450* (Oxford, 2013), p. 219). The claim that the English of Ireland were vacating lands is further supported by an article contained in a message sent to the king by a parliament which met at Dublin before John Sutton on 5 November 1429, only a year after Swayne’s communications with Gloucester, in which it was requested that ‘that yo[r] lieuten[a]nt, or depute, for the tyme beyng, may geve benefyces, considering that, whenne thay ben long voide, Irish men occupieth tham for lakke of Engleish men, havng poer for y[r] lawes of this land, beyn at al tymes used, that wod benefice be give to on Irisshe man, that benefice y[s] voide and stant in yo[r] gift for that tyme; and, for as moche, that no man in this land hath power to give benefices y[t] longith to your gift; and also ye benefices her beyn of litill value, yat no man sueth to yor lordship to have hem. The which men occupieth them for the as shold Englishmen, ye which is a great hinderyng to yo[r] said land (*CIRCLE*, CR 7 Hen VI §9). It bears noting, however, that such migration may have been prompted by economic, rather than political, motivations.

I suppose with Godis grace this contre will be relevid and savid unto the Kyngis age'.⁶⁸ The hint that the lordship might not survive Henry VI's minority was certainly, as Matthew noted, a 'shrewd thrust at the English council's duty to the young king'; it was also one which underscored the idea that the advice Swayne offered was directed at the common profit of the king (and hence the lordship), rather than any singular profit, thus allowing Swayne to frame his unsolicited counsel as advice intended for the benefit of the recipient, rather than the giver.⁶⁹ If we view these documents as instruments of counsel, then—that is, communications which had been sent with the express purpose of influencing the political decision-making process—Swayne's pessimistic warnings should be read as statements which laid the groundwork for Swayne to offer his *own* advice as to the 'hasti remedy' so urgently required in Ireland.

Indeed, Swayne's attempt to influence the English council's decision-making process in this instance is impressive on a number of levels. Gloucester and the council (or, in normal circumstances, the king) were reliant upon such reports to accumulate the information they needed to make political decisions—in other words, to govern. By interweaving the strategies and principles we have seen above with such information, Swayne could take advantage of both the intrinsic structure of the report, as well as the English administration's reliance upon such communications, to ensure that his advice was transmitted to relevant parties, thus allowing him—at an individual level, but on a semi-formal basis—a measure of influence upon that process. Swayne's own conclusion to the letter draws attention to the twofold purpose of his report; he ended his report to the 'ryght hey and myghti prince and my richt worchepfull and gracious lorde' with a statement that 'I have let yowe knowe of the governaunce of the saide londe and the meschefe therof beseching you if hit like your gracious lordschip al thes materis by youe tenderly consideride [to order some hastie] remedy therefor'.⁷⁰ The archbishop, at least, does not appear to have seen any inherent incongruity in the melding of advice and intelligence together in the one missive—a detail which may indicate to us that counsel in *practice* (rather than in theory) functioned at such a fundamental level in this type of communication that it was, for contemporaries, quite unremarkable.

⁶⁸ *Reg. Swayne*, p. 108.

⁶⁹ Matthew, *Lancastrian Lordship*, p. 223.

⁷⁰ *Reg. Swayne*, p. 108.

This impression is strengthened by the second document found in this section of Swayne's register, a letter both richer in detail and more formally structured than the first.⁷¹ These differences may be attributed to the fact that this report had been requested explicitly by Gloucester.⁷² We are told that the duke had 'now late wrot to me [i.e. the author] commanding me that I scholde sertifye unto you the trewth of the governaunce of this Irlonde nozt sparing for hatrede love or frendeschepe of any man to obeye'.⁷³ Accordingly, Swayne replied that 'I youre man & servant am redde and woll be at all tymes to obeye your Comaundement and by the feith I owe to Gode and to you I woll Sertiffe you but of the wery trowth of the governaunce of the saide londe'.⁷⁴ It seems likely that Gloucester had been receiving mixed reports on the state of the colony—Ormond was certainly in England at the time, and may well have been promoting his own interests there. In need of a more impartial account, Gloucester appears to have contacted Swayne (as one who had already opened that channel of communication), so as to aid him in making a decision regarding the lieutenancy. As per Gloucester's instructions, the first item in this letter comprises a straightforward report, and is closely focused upon Grey's activities as lieutenant in Ireland.⁷⁵ Although generous in detail, Swayne let it be known on occasion that he was relying, at least in part, upon second hand accounts and information, and admitted when he was not in possession of all the information that he might wish; on the burning of certain towns by the Gaelic Irish he admitted that 'in good feith I can nozt tell the names of hame'.⁷⁶ But insofar as he was able, the archbishop provided a relatively succinct report on Grey's governance of the land from the time of his arrival to his departure, as requested of him.⁷⁷

The following item in the letter is of greater significance. Here Swayne went beyond the duke's original request of certification to offer his own advice upon and proposed solution to the problems the colony faced. This advice (like Swayne's counsel and

⁷¹ *Reg. Swayne*, pp. 109–11.

⁷² *Reg. Swayne*, p. 109.

⁷³ *Reg. Swayne*, p. 109.

⁷⁴ *Reg. Swayne*, p. 109.

⁷⁵ *Reg. Swayne*, pp. 109–10.

⁷⁶ *Reg. Swayne*, p. 109.

⁷⁷ *Reg. Swayne*, pp. 109–10.

requests for ‘hasti remedy’ in the first report) was prefaced with statements designed to impress upon Gloucester the seriousness of the situation in Ireland, and invoke a deeper sense of urgency within the English council; thus, ‘in goode feithe’, the archbishop warned the duke that ‘this Contre was never in so gret a Meschefe as hit ys now’.⁷⁸ Similarly, Swayne once again intimated that his primary concern was for those ‘pore housbondmen’, or the ‘Jentyllmen and Communes’ of Ireland.⁷⁹ As in the first report, his information and advice could therefore be portrayed in the form of a desire to act for the common good of all the king’s subjects, rather than his own or another’s private interests. By way of advice, Swayne suggested that ‘if ther be hasty remedy ordeyned for hiti in goode feyth some tyme within thes 3 yeres a man myzt have keypyne this Contre betyre with 400 bowes than now with 800’.⁸⁰ Tellingly, though, Swayne continued on—once again emphasizing his truthfulness and probity—to advise the duke as to what he saw as the principal cause of unrest within the colony. He wrote that,

‘When my Lord Talbot was in this Contre there was grete wariouns between hym and my Lorde of Ormond and yut they be nozt acordede and some Jentylmen of the Contre ben well wyllde to my Lord of Ormond they hold with hym and lovyen hym and helpyn hym, and be nozt well willed to my lorde Talbot nor to none that love hym, and they that love my Lord Talbot done in the same maner to my Lorde of Ormond [.....] so that all this Lond is severed’.⁸¹

Through the mechanism of counsel, then, Swayne found it possible to go beyond Gloucester’s initial request for impartial information, and convey his own—and, as will become apparent, decidedly partisan—opinion. Having established that ‘this debate bety[wyt] these thwey Lordes is cause of the gret harmes that be do in this Contre’, Swayne’s counsel to Gloucester was to find a solution; he suggested that Gloucester ‘ordeyne a wey that thes twey lords were vereliche accorded and that the acorde might dure and that ye wold send hame both hyddyre or oon of hame with 400 bowes

⁷⁸ *Reg. Swayne*, p. 110.

⁷⁹ *Reg. Swayne*, pp. 110, 111.

⁸⁰ *Reg. Swayne*, pp. 110–11.

⁸¹ *Reg. Swayne*, p. 111.

or Lenten this Contre schold be sawed with Goddes grace for in goode feyth the enmys dredith hame both more than they do in all the world I trow for if any of hame both where in this Lond all the enmyes in Irlond wold be right fayn to have peese'.⁸² In the first letter, when giving unsolicited advice, Swayne's counsel was considerably more circumspect: he advocated only for the swift appointment of a lieutenant after Grey's departure.⁸³ In the second, however, his counsel having been *requested*, the archbishop evidently felt more confident in providing specific advice. More importantly, as Matthew noted, while Swayne intimated to Gloucester that the choice of either Ormond or Talbot as lieutenant would serve the king's subjects in Ireland equally well, this was a more disingenuous comment than meets the eye. Another letter in Swayne's register suggests that the Swayne (or possibly his secretary) was in contact with Ormond at precisely that time.⁸⁴ Ormond was then resident in London, but Talbot—as Swayne was likely aware—was abroad in France; thus Swayne, having highlighted the urgency of his request, may have gambled upon the English council selecting a new lieutenant who was both closer to hand and willing to undertake the commission.⁸⁵

Evidently the archbishop's advice had to be presented and communicated appropriately if he was to maximise this opportunity to influence the choice of a new lieutenant. That political ideas and principles informed the way in which he did so should be clear; the range of principles and language that Swayne could employ, moreover, was dictated by the media and channels of communication available to him. Reports on the state of Ireland which emanated from parliaments and great councils, could—precisely *because* of their representative character—invoke communitarian and representative principles to frame and, crucially, legitimise the information and advice they conveyed. By contrast, Swayne's report conveyed private, individual counsel: absent the innate 'legitimacy' of a representative assembly, he had to both establish his own personal credibility, and also ensure that his advice aligned with the conventional mores or principles which underpinned contemporary conceptions of 'good' counsel. The archbishop, writing an individual capacity, could not claim to speak for the

⁸² *Reg. Swayne*, p. 111.

⁸³ See above, pp. 127–8.

⁸⁴ Matthew, *Lancastrian Lordship*, p. 226.

⁸⁵ Matthew, *Lancastrian Lordship*, pp. 226, 227–8; see above, p. 127.

‘community’, so instead he advocated on their behalf—particularly the king’s ‘poor lieges’, who had been subject to such depredation and hardship. By projecting the image of an impartial observer whose primary motivation derived not from private or factional interests, but rather concern for the common good of the lordship and the king’s subjects, Swayne was ensuring that his attempt to ‘lobby’ Gloucester and the English council would be well-received.

III

It bears noting that ‘counsel’ was not simply a political tool which men like Swayne could employ to try and achieve their own goals and objectives. Counsel of the sort that the archbishop offered had an equally important function for those on the receiving end of such advice. For Gloucester, these communications provided a means of acquiring the knowledge he needed to make political decisions—a need exacerbated, at least in part, by the structural distance between the colony and the royal administration in England. But while Swayne could take advantage of this distance to provide, if he wished, only a partial picture of ‘the trewth of the governaunce of this Irlonde’, Gloucester was surely aware that the intended objectives of a counsellor might not necessarily align with those of a ruler.⁸⁶ Swayne’s reports (and indeed, instruments of counsel more broadly) therefore had to be read carefully; such letters—which we might usefully think of, perhaps, as the ‘technology’ of counsel—were intended by design to render their recipients to look upon the author in as favourable light as possible.⁸⁷ Furthermore, while the unequal power dynamics between an advisor and an advisee fundamentally shaped the way in which contemporaries wrote such letters, they evidently also—and this is a point worth emphasizing—shaped the way in which recipients *read* these communications. As such, however well-crafted an instrument of counsel might have been, this was no guarantee that it would achieve all—or even part—of its intended aim. Other factors—space and setting (physical, institutional, structural or ideological), the broad and immediate political circumstances surrounding a given moment, the specific balance of political forces involved, and the social and political networks or relationships at play—could have an equally (if not more) important bearing upon the extent to which such communications could influence the decision-making process.

⁸⁶ *Reg. Swayne*, p. 109.

⁸⁷ Dodd, ‘Writing Wrongs’, p. 224.

Many of these other factors lay beyond the control of those who wished to use counsel to attempt to influence the decision-making process. Few, for instance, had the capacity to alter the broader political circumstances or the prevailing balance of powers, or the means to realign pre-existing political or social relationships or networks, to their immediate advantage. Counsellors communicating advice in an individual capacity—as Swayne was—were limited in the influence they could exert over such external factors. However, their relative autonomy as ‘private’ individual counsellors could work to their advantage. Unlike that conveyed through formal institutions, bodies or groups, information or advice conveyed by individuals—while it might, as we have seen, *invoke* communitarian principles or rhetoric—was not subject to the official scrutiny and final assent of others during its composition stage. On the flipside, however, advice or information conveyed through formal channels or institutions—crucially, by *groups* of people, rather than individuals—was privileged; ‘the claim that collective groups offered a pool of wisdom superior to that of a single individual, deriving from both Aristotle (‘a multitude is a better judge of many things than any individual’: *Politics*, III.15 (1286a25–40)) and the Bible (‘in the multitude of counsellors there is safety’ (Proverbs 11:14)) was thus both recited in advice literature and witnessed in quotidian practice’.⁸⁸ For instruments of counsel which emanated from parliaments and general councils (in their capacity as ‘advice-giving bodies’), a distinct but related set of political principles could be employed to lend further weight to these ideas of what constituted ‘good counsel’: ideas of ‘representation’ and ‘consent’, as expressed, for example, in the maxim *quod omnes tangit ab omnibus approbetur*.⁸⁹ And in English Ireland at least, communications sent from representative assemblies had a political currency which could not be easily replicated elsewhere, rendering them a valuable tool for those who wished to influence the decision-making process. More importantly, unlike the ‘broader political circumstances’ or ‘social and political relationships and networks’, it *was* possible for powerful individuals or factions (or indeed what we might nowadays call ‘interest

⁸⁸ Rose, ‘Political Counsel’, p. 30.

⁸⁹ Justinian Code, 5:59: 5. It bears noting that while the maxim of ‘what touches all should be approved by all’ has been most commonly (in English historiography) associated with the need to obtain the consent of the English commons to taxation by the crown, its application was not limited to these circumstances; as with other political ideas and principles in medieval political thought, it was a tool which could be invoked and adapted to legitimise communal authority or action in a variety of situations.

groups’) to exert control over the ‘space and setting’—the formal institutions—in which these communications were produced.⁹⁰ As such, those who controlled these formal institutions could not only purport to speak with the voice of the political community—and draw upon its attendant ‘legitimacy’—in support of their intended objectives, but could also exert control over one of the most important channels of communication linking the king to his subjects across the Irish Sea.⁹¹

This is precisely what was at issue over the course of the Ormond-Talbot feud. With respect to the ‘series of contests for the great offices’ long identified as its primary feature, Margaret Griffith noted perceptively that the value of occupying these offices lay in the control it afforded their incumbents over communication with the crown—although, for Griffith, it was the fact that the holders of these offices were members of the king’s council of Ireland which was important, rather than their ability to exert control over representative assemblies and thus invoke ‘communitarian’ principles to legitimize their communications to the king.⁹² Nowhere is the fact that contemporaries

⁹⁰ In the sense of ‘a group of individuals possessing a common identifying interest’ (‘interest, n.’, *OED Online* (2018), at www.oed.com/view/Entry/97735 [Accessed 13 April 2018]).

⁹¹ As we have seen in the events surrounding the arrest of Christopher Preston and the earl of Kildare, those who were not in control of these institutions could also employ the political principals and rhetoric of the colony’s ‘parliamentary culture’ to ‘legitimise’ their actions to considerable effect, but the fact that so much effort was expended in attempts to gain control of the chief governorship over the course of the Ormond-Talbot feud supports the view that the balance of power was, as a rule, tilted in favour of those who controlled the apparatus of governance.

⁹² As Griffith put it, ‘the holders [of the great offices] constituted a majority of the king’s council in Ireland and therefore controlled one of the main channels of communication with the crown’ (Griffith, ‘Struggle for Control’, p. 378 [my emphasis]). There arises, however, something of a question mark over the role of the nature and role of ‘counsel and the king’s council’ in English Ireland, in respect of debate within English historiography regarding the relationship between ‘institutional’ councils and ‘wider counsel’, and the distinction between an ‘administrative’ and an ‘advisory’ body, who populated such a council, and whether it existed on a permanent, institutional basis, or whether the existence of a formal ‘king’s council’ was irregular and intermittent—a response to royal minority, absence or incapacity. Gwilym Dodd suggests that a position on the council was a sign of a lack of political influence, for power came from the informal access to the king which created opportunities to provide advice (G. Dodd, ‘Henry IV’s Council, 1399–1405’, in G. Dodd and D. Biggs (eds), *Henry IV: The Establishment of the Regime* (Woodbridge, 2003), p. 104). Watts has mounted the strongest argument for the irregularity of a royal counsel (Rose, ‘Political Counsel’, p. 8). For Watts, ‘if any kind of council became a normal and everyday part of the king’s government in the later middle ages—and there can be no certainty on this point—it can only be an administrative body made up of the king’s leading clerical and financial officers, afforded by a few other men, often expert in law or diplomacy, often especially trusted by the king...there is no evidence that they were normally regarded as an essential part of the king’s administrative equipment’ (Watts, *Politics of Kingship*, p. 84). Such questions have a clear and immediate relevance to the historiography of the colonial ‘king’s council’ (cf. Otway-Ruthven, *Medieval Ireland*, pp. 148–53, Richardson and Sayles, *Irish Parliament*, pp. 162–73, and M. Griffith, *The Council in Ireland, 1399–1452* (BLitt, University of

themselves appreciated the value of controlling representative assemblies for exactly these reasons expressed more clearly than in the events which transpired between November 1428 and April 1429. As we know, if indeed Swayne had been angling for an Ormond lieutenancy, and had employed the strategies outlined above in an attempt to achieve that end, his carefully crafted attempt to lobby Gloucester failed; the English council appointed neither Talbot nor Ormond, but another relative ‘outsider’, John Sutton, instead.⁹³ After Sutton arrived in Ireland (or possibly even before), Ormond cultivated a close relationship with the new lieutenant.⁹⁴ Whether or not Sutton had been made aware of the extent of the feud, and its impact upon the administration, is unclear; shortly after his arrival, Ormond adherents (Henry Fortescue, John Blaketon and Stephen Roche) were reappointed to their previous positions in the administration, and an order to the exchequer to pay Ormond his outstanding fees for his justiciarship was issued on 18 June 1428.⁹⁵ For Ormond, then, if he was not to occupy the office himself, the advantages of a close relationship with the new lieutenant

Oxford, 1935) for accounts of the role of the king’s council in Ireland), which has been a staple—and largely uncontested—fixture in administrative and institutional histories of English Ireland. More research surely remains to be done on ‘counsel and council’ (which might indeed shed further light upon the subject for councils in England, as well as English Ireland); suffice it to say for now that—particularly in this respect—the assumption that colonial institutions mirrored at their inception and developed along similar lines as their equivalent institutions in England is one that invites serious further inquiry.

⁹³ See above, p. 132. It is possible that this decision was made in part, as Matthew noted, because of Swayne’s emphasis upon the divisiveness of the feud in Ireland, given that the reappointment of one of its leading figures would have been an action unlikely to resolve the conflict (Matthew, *Lancastrian Lordship*, pp. 228–9). Additionally, the détente of another high-profile dispute in England—between Gloucester and Bishop Beaufort in 1425—had only been achieved through the return of Bedford (a source of higher authority, who could quell the dispute) from France; it is, perhaps, possible that the English council hoped a similar strategy might maintain peace in Ireland (*PROME*, Hen VI: Parliament February 1426, ‘Introduction’; items 10, 12, 13). However, it is also possible that those responsible for choosing a new lieutenant had been influenced by another factor; the series of conflicting reports which had emanated from the colony since the inception of the feud. It surely did not escape the notice of those in England that reports criticising Talbot and Ormond, or their adherents, were, at alternate points, almost directly contradictory of one another (Otway-Ruthven, ‘Background to the Arrest’; Crooks, ‘Missing Membrane’; *CIRCLE*, PR 6 Hen V §14; *CIRCLE*, PR 9 Hen V §116; ‘Accusations against Talbot’ [1422], in Griffith, ‘Struggle for Control’, pp. 393–5; *PROME*, Hen VI: Parliament October 1423, item 9). At the same time as parliamentarians in English Ireland were leaning more and more upon the capacity of representative assemblies to ‘legitimise’ communications to the crown, a concurrent distrust of communications which derived from representative assemblies may have started to grow amongst those who received them in England.

⁹⁴ Matthew, *Lancastrian Lordship*, pp. 229–30.

⁹⁵ Matthew, *Lancastrian Lordship*, p. 230; *CIRCLE*, PR 6 Hen VI §5; *CIRCLE*, CR 6 Hen VI §1.

were obvious. But this affiliation appears to have been advantageous—in the short term—for Sutton too: he took the opportunity to devolve responsibility upon Ormond for the defence of lands beyond Leinster, allowing him to focus his own resources and men, brought from England, in that area.⁹⁶ Even in the long-term—after the affiliation had proved to be more problematic—he wrote to Ormond to remind him of their friendship:

‘I hire myche langage made here [...] by men of this contray wenyng fully that the frenship between yow and me shold breke of all at this tyme, I lete yow ful[ly] wite that as to my parte hit shall not breke yn no wise for yn goode faith I willn don as myche to your worship and your eese to my power bothe here and yn England as wille the beste frend that ye haue that ys yn England and truste ye that fully and non other’.⁹⁷

The rumours to which Sutton was referring undoubtedly related to the fallout from a dispute over a message to Henry VI and his council sent from a parliament held at Dublin in November 1428, some six months after Sutton had taken office.⁹⁸ On 5 November, certain ‘articles of instruction agreed by the peers and commons’ (alongside a letter of introduction addressed to the king) were sealed under the great seal and given into the charge of Henry Fortescue and Thomas Strange to be carried to England and delivered to the king and council’.⁹⁹ The first two articles in this document were given over to praising Sutton’s governance since he had arrived at the colony, and to

⁹⁶ Matthew, *Lancastrian Lordship*, pp. 230–2. It seems unlikely that the extension of Ormond’s authority to the communities of the crosslands of Tipperary and Kilkenny, as well as Butler lands, in the seignorial Ordinances at Fethard would have been permitted without sanction from the lieutenant, despite the consent of the communities involved (Matthew, *Lancastrian Lordship*, p. 231; K. Simms and C.A. Empey, ‘The Ordinances of the White Earl and the Problem of Coign in the Later Middle Ages’, *Proceedings of the Royal Irish Academy*, C, 75 (1975), pp. 161–87, pp. 167–8, 185–6). The seignorial ordinances, incidentally, are of considerable interest as a record of a ‘private’ council which nevertheless appears to have utilised, or adopted, representative ideas and features. Such examples are rare in an Irish context, but contrasts and comparisons might fruitfully be made with the acts of the Lords of the Isles in Scotland (see J. Munro and R.W. Munro (eds), *Acts of the Lords of the Isles, 1336–1493* (Edinburgh, 1986)).

⁹⁷ Letter from Ormond to John Sutton, lieutenant of Ireland, written at Trim on 5 November [1429], in Matthew, *Lancastrian Lordship*, Appendix III, ii, pp. 576–7 [BL Cotton MS Titus B, xi, i, 52].

⁹⁸ He was certainly present in the colony before 18 or 20 June 1428 (*CIRCLE*, PR 6 Hen VI §5), but may have arrived as early as May (*CPR, 1422–29*, p. 470).

⁹⁹ *CIRCLE*, CR 7 Hen VI §9.

requesting payment for him. In clear reference to the communications (no longer extant) sent by ‘the community of the king’s liege people of Ireland’ (evidently during the same period in which Swayne had been in communication with Gloucester), the articles opened with a reminder that ‘sayd land the last yere for lakke of goode gov[r]nauce, stood in poynt of lesing...aft[r] that ye and your wirshipfull and wyse counsell ther had notice of, graciously remedied us in sendyng ov[r] un to us be your sayd lieuten[a]nt’.¹⁰⁰ For this gracious remedy, the king’s lieges thanked him ‘with al our hool hartes’, because, ‘sethe his comyng’, Sutton ‘over manly and diligently hath werryd and rebukyd your said enemyes...so thanket be God, we, youre liege people here standith in gode rest from the malice of yo[r] enemies’.¹⁰¹ In order that Sutton might ‘have the moor corage to continue forth his said good and diligent labour’, the king’s lieges ‘beseche you that he be thanket, as he hath right well deservyd’, and ‘besechith...that your sayd lieuten[a]nt may have good and hasty payment of that that he should have of you, our soveraigne lord, for the kepyng of your sayd land, so that he may have where with to continue his said labour’.¹⁰² A further article requested that, because ‘afore this tyme this land hath stoude in greet meschief and lyklynnesse of lesing, by ofte chaungyng and mysgove[r]naucez of your lieuten[a]ntz and her deputees here’, ‘while we stonden wel, such chaunge be not had to us hereafter, for fere of in peril of losing of this land, as hit had been ynne late, wher of God defende’.¹⁰³ This article, taken together with the effusive praise of Sutton, points to an attempt to influence future decision-making over the lieutenancy—in essence, to ensure that Sutton’s term of office might be extended or renewed beyond his two-year term.

Tellingly, Ormond was also praised (and at considerable length) for his actions in defending the colony, both during Sutton’s lieutenancy and while he had held the chief governorship himself:

‘We beseche you that ye best consider the true and notable s[r]vice that James, your erle of Ormond, hath done unto yo[r] g[a]ndsire, fadyr, and un to you at al tymes hereafor, and namely, when this land hath stoude at most myschief and at poynt of lesyng, and that ye luste have hyme recommended

¹⁰⁰ *CIRCLE*, CR 7 Hen VI §9; *CTNA*, p. 195.

¹⁰¹ *CIRCLE*, CR 7 Hen VI §9.

¹⁰² *CIRCLE*, CR 7 Hen VI §9.

¹⁰³ *CIRCLE*, CR 7 Hen VI §9.

and thankyd for the relevyng and savyng ther of and of us,
causyng hym to continue his said true and diligent labo[r]
forth hereafter'.¹⁰⁴

Unsurprisingly, praise of Ormond was coupled with a request for payment, 'that he may paie the peple, consideryng that he hath had here afor, and now sithe yo[r] said lieuten[a]nt came over the see, grete costes and charges a boutte your s[r]vice and his, yn resistyng of your enemyes'.¹⁰⁵ Yet while the earl was no doubt anxious to receive any outstanding money due to him, payment was not the primary objective which lay behind this article. Its aim was rather to portray Ormond as a figure wholly indispensable to the survival of the lordship, hence the efforts to portray the earl's interests as being aligned with those of the king's 'liege people' in Ireland, and his motivations aligned with those of the king's lieutenant (and therefore, of course, the king). Thus the article concluded with a warning that the king 'best consider also how that his last absence and long tarying out of this land, causid your enemys to be the bolder to go to were, and your liege peple myche abasshed and foblied ther by'—interestingly, a sentiment which recalls Archbishop Swayne's comment to Gloucester that 'in goode feyth the enmys dredith hame [Talbot and Ormond] both more than they do in all the world I trow, for in any of hame both where in this Lond all the enemyes in Irlond wold be right fayn to have peese'.¹⁰⁶

Of course, praise of Ormond in particular was unlikely to sit well with the Talbot party, and Sutton's friendship with the earl (set alongside his actions in promoting Butler interests since his arrival in the colony) cannot have endeared him much to their supporters. Indeed, were it not for the events of 1421, we might find it surprising to see the special mention that was made of Archbishop Talbot, in his capacity of chancellor, setting the great seal to 'this our instruccion of oure message'; he had apparently been asked to do so 'at the special request of us' (that is, the 'lordes spirituall and temp[r]ell and co[mm]e[n]s of yo[r] lond of Irland').¹⁰⁷ The message cannot have been to his liking, but Archbishop Talbot may well have recalled the controversy which arose when a previous chancellor—the unfortunate Laurence Merbury, another loyal

¹⁰⁴ *CIRCLE*, CR 7 Hen VI §9.

¹⁰⁵ *CIRCLE*, CR 7 Hen VI §9.

¹⁰⁶ *CIRCLE*, CR 7 Hen VI §9; *Reg. Swayne*, p. 111. We do not know if Swayne was present at this assembly; there is, however, mention of this parliament in his register (*Reg. Swayne*, p. 85).

¹⁰⁷ *CIRCLE*, CR 7 Hen VI §9.

Talbot supporter—refused to set the great seal to a message composed by a representative assembly in 1417.¹⁰⁸ Outnumbered (and, as we shall see, out-planned), Talbot evidently complied. Sutton, Ormond and their supporters at the parliament, however, appear to have foreseen the possibility that Talbot (amongst others) might not be content to let the matter lie. Their ‘solution’ to this potential problem is highly illuminating for what it reveals about political communication and the institutional nexus through which it could be channelled and, crucially, controlled. The relevant article is therefore worth reproducing in full:

‘Item—for as myche that div[r]s men of this land, of malice and il will, have maad unto you our sov[r]laygne lord, and to your wise counsell there, div[r]se feyned suggestyons of your lieuten[a]nts, justices, and otheres estates of your sayd land, whiche suggestions have nether come to you, nethir to your said counscill, by auctorite of your parlements, ne counscills here, ne under autentikes seales, or seales of the estates of this land, when parlements or counscilles have not be, for the grete myschiefe that this land hath stouden ynne, but by bylles and naked language. We beseche you that such simple suggeston hereafter be not levyd, but that such suggestion makers finde sufficient suerte to stand by thire suggestions, and thenne thire said suggestions be send hither to your counscill here, they duly mo to be examyned in the next parlement, or greit counseill here, and, aft[r] that examynacion, ye and your said counseill ther of the trouthe, under your grete seall here, to be c[r]tified, and there opon to procede as reson requeryth; consideryng that light levyng of such bylles and suggestions often tymes have causyd greet hyndryng and hevynesse to your said land here’.¹⁰⁹

Earlier on in this chapter, the point was made that practical successes in the governance of the colony meant little if they could not be effectively communicated back to the king in England. In light of the preceding article, however, we might consider a further point; that practical *failures* in the colony’s governance (real or otherwise) also meant little if knowledge of them could be *prevented* from reaching the king and council in England.¹¹⁰ The animus displayed in this attempt to staunch

¹⁰⁸ Cf. above, p. 51.

¹⁰⁹ *CIRCLE*, CR 7 Hen VI §9.

¹¹⁰ See above, p. 108.

dissenting voices demonstrates how important it was to maintain control not just over channels of communication, but over the information itself which was transmitted to the king—in other words, over the ‘narrative’ by which the king and his council in England understood the lordship and its governance. Like the accusation made by the commons of Limerick in March 1422—of ‘malicious obstructions caused by the clamour of treacherous men’, such that the ‘spoken testimony of truth’ could not stand fast and therefore had to be ‘supplemented in writing’—this article was designed to undermine the legitimacy of criticisms against ‘lieuten[a]nts, justices, and otheres estates of your sayd land’ on a number of levels.¹¹¹ Most striking is the claim that suggestions communicated without the ‘auctorite of your parlements, ne counscils here, ne under autentikes seales, or seales of the estates of this land’ (and, more damningly still, ‘when parlements or counscilles have not be, for the grete myschiefe that this land hath stouden ynne’) were not to be trusted; the implication is that only information transmitted through institutions with a representative, communitarian character was aimed at the common profit, rather than private gain.¹¹² Even the phrase used to describe those whom the article was intended to silence—‘suggestion-makers’—evokes the idea that such ‘suggestions’ were intended to ‘stir’ or ‘move’ the king and his counsel, rather than providing disinterested, impartial advice.¹¹³ It was not, then, solely the intent of individual critics that was at issue, but rather the media, manner and structure through which they conveyed their ‘feyned suggestions’. The spoken word, moreover, if not supplemented by a written document which derived from a formal institution, was not to be trusted: in the Limerick testimonial, ‘malicious obstructions’ and treachery were linked to ‘clamour’, an oral speech act associated more with ‘shouting of the mob’ than with formal complaint; here, suggestions made through ‘bylles and naked language’ were linked to ‘malice and ill will’.¹¹⁴ ‘Suggestions’ which did not derive from representative assemblies, it was implied, should not be

¹¹¹ Griffith, ‘Talbot-Ormond Struggle’, p. 392; *CIRCLE*, CR 7 Hen VI §9.

¹¹² *CIRCLE*, CR 7 Hen VI §9.

¹¹³ *CIRCLE*, CR 7 Hen VI §9.

¹¹⁴ Griffith, ‘Talbot-Ormond Struggle’, p. 392; *CIRCLE*, CR 7 Hen VI §9; J. Dumolyn and J. Haemers, ‘A Bad Chicken was Brooding’: Subversive Speech in Late Medieval Flanders’, *Past and Present*, 214: 1 (2012), pp. 45–86, p. 83. For ‘clamour’, see W.M. Ormond, ‘Murmur, Clamour and Noise: Voicing Complaint and Remedy in Petitions to the English Crown, c.1300–c.1460’, in W.M. Ormrod, G. Dodd and A. Musson (eds), *Medieval Petitions: Grace and Grievance* (Woodbridge, 2009), pp. 135–55.

heeded.¹¹⁵ A further level of control was to be exerted through the request that ‘suggestion makers’ find ‘sufficient suerte to stand by thire suggestions’ and direct them to the council, but, significantly, that the council would bring them to ‘the next parlement or greit counseill’ to be vetted by the community.¹¹⁶ Only then would the king and his council in England be certified of the ‘trouthe, under your grete seal here’, and thus be able ‘to procede as reson requeryth’.¹¹⁷

As a strategy employed to maintain control over channels of communication with the king and his council (so as to more effectively influence the decision-making process over future appointments to the lieutenancy) it was not without risk, for it depended upon Sutton (and Ormond) maintaining control over the English administration in Ireland, and therefore its representative assemblies. Tellingly, a message sent to the king from a great council held at Dublin on 30 September 1430, over which Richard Talbot presided (having been elected as justiciar in April that year, after Sutton’s term as lieutenant had expired), did not go quite so far in its attempt to control dissenting voices, although the king did receive a warning with similar undertones:

‘Gif none affiance to any certificate or other message contrarie to the sende, other to be sende oute of this londe to oure said souveraigne Lorde, other to you, but oonly to this. For if it happe any suche to for to come, it comes for parcialte and for singular affiaunce and not for the comune profite of all the popull of the londe’.¹¹⁸

For the Talbot party in November 1428, in any case, the threat that communications to the king would be subject to such restrictions was too serious to be ignored. Their response was to draw up a list of anonymous articles, which were displayed before the council by John Sutton on 1 April 1429, ‘declaring that he had been informed that these articles were sent by certain persons in Ireland to the king and council in England in

¹¹⁵ This recalls a caution provided by Archbishop Fleming in 1411, that Henry IV should reject all messengers who has not been elected by the council or lieges or Ireland, for they cared only for their own singular profit and not the common profit of the realm’ (*Reg. Fleming*, 185 [L: *si placet rejectis aliis non per consilium nee ligeos terre vestre Hibernie electis sed commodum singulare sectantibus et de republica et commodo communi non curantibus*]).

¹¹⁶ *CIRCLE*, CR 7 Hen VI §9.

¹¹⁷ *CIRCLE*, CR 7 Hen VI §9.

¹¹⁸ *CIRCLE*, CR 9 Hen VI §8.

hindrance of articles sent by parliament to the same'.¹¹⁹ The anonymous articles themselves—which seem to have been drawn up shortly after the parliament of 5 November 1428, and were possibly carried to England by the then treasurer, Nicholas Plunket, who received leave to go the England on 22 November 1428—amounted to a terse refutation of those ostensibly sent by the lords and commons of Ireland at Sutton's parliament.¹²⁰

The anonymous articles denied 'that evil administration of the late lieutenant [John Grey] was the reason for the evils of the preceding year, but [rather] the incitements and exhortations of certain of the peers and gentlemen of Ireland, who stir up the Irish enemies and English rebels to arson and other outrages'.¹²¹ As to the article which sought 'that the lieutenant should not be changed during good governance: they say that, first, that it would be against law to circumscribe royal power in that way; and, second, that the government has never been so ill as it now is'.¹²² This critique of Sutton's governance, moreover, was accompanied by a pointed comment that, 'as to the speedy payment of the wages of the lieutenant, so earnestly requested: [they say that] the payment need not be so speedy, considering the many public subsidies...he received and the large sums he took privately'.¹²³ Neither did Ormond escape censure; 'insofar as he acted well', the anonymous critics claimed, 'he assuredly deserved commendation; but insofar as he acted to the contrary, he did not; and [...] his actions at present tend rather to the ruin and destruction than to the comfort of the land'.¹²⁴ Most importantly in terms of the present discussion, the anonymous articles took issues with the claim that 'allegations against governors [etc.] should be verified in Ireland by information of the parliament or great council of Ireland: they say, first, that the jurisdiction for such defaults pertains to the king alone; and, second, that the truth would not be ascertained, since those who are sent to parliaments and councils are chosen not for the comfort of the king and his lieges, but rather by the will of the peers

¹¹⁹ *CIRCLE*, CR 7 Hen VI §13.

¹²⁰ *CIRCLE*, CR 7 Hen VI §21; *CIRCLE*, CR 7 Hen VI §24; *CPR*, 1422–29, p. 528; Matthew, Lancastrian Lordship, p. 237.

¹²¹ *CIRCLE*, CR 7 Hen VI §13.

¹²² *CIRCLE*, CR 7 Hen VI §13.

¹²³ *CIRCLE*, CR 7 Hen VI §13.

¹²⁴ *CIRCLE*, CR 7 Hen VI §13.

and magnates'.¹²⁵ In 1442 the claim that parliaments and great councils were 'packed' by those who 'wold no3t in no wyse assent to no gode rule, nor to nothing þat scholde profyt and avayle to you Soverayn Lorde' would resurface; it should, perhaps, be of little surprise that this was once again an accusation made by Richard Talbot (amongst others) against the earl of Ormond.¹²⁶

The fact that such articles remained anonymous should speak volumes. By some route or another, knowledge of this document had made its way back to Sutton by 1 April 1429.¹²⁷ Thus in Drogheda, before the council, the lieutenant read out the offending articles, and asked 'one by one' whether any of the council 'knew of, or had any part in' their 'making or transmitting'.¹²⁸ Amongst those present were Richard Talbot, archbishop of Dublin, Christopher Bernevale, serjeant-at-arms, James Alleyn, chief justice of the common bench, Thomas Strange, knight and one of the king's councillors, Henry Fortescue, chief justice of the chief place, James Butler, earl of Ormond, Thomas Barry, bishop of Ossory, and John Swayne, archbishop of Armagh.¹²⁹ To a man, all denied any knowledge of the anonymous articles, 'whereupon, by advice of the said council, the lieutenant ordered that all the premises should be recorded in an act and enrolled in chancery, and that all the premises should be exemplified and sent to the king and council in England, in declaration that the Irish council had no part, nor did it wish to have any, in so great a deception of the king and his people of Ireland'.¹³⁰ The veracity of the issues and objections of this 'great deception' are, in a sense, besides the point. Common to both sets of articles was a recourse to political language and principle—which speaks to its centrality in the structure of politics of English Ireland—but while criticisms or praise could safely be channelled through representative assemblies, those transmitted outwith such formal channels were subject to an unsafe degree of risk. Criticism, dissent—and, not least, outright rejection—of 'legitimate' authority therefore had to be approached with care; too easily could it backfire upon those who wished to effect political change.

¹²⁵ *CIRCLE*, CR 7 Hen VI §13.

¹²⁶ *CIRCLE*, PR 20 Hen VI §9.

¹²⁷ *CIRCLE*, CR 7 Hen VI §13.

¹²⁸ *CIRCLE*, CR 7 Hen VI §13.

¹²⁹ *CIRCLE*, CR 7 Hen VI §13.

¹³⁰ *CIRCLE*, CR 7 Hen VI §13.

Scottish Infrapolitics: Strategies of Subversion and Defiance

SHORTLY AFTER MIDNIGHT on 21 February 1437, a disaffected group of James I's subjects gained entry to his chambers in the Dominican friary at Perth—the traditional residence of visiting monarchs in the burgh, where the king had been staying with Queen Joan and members of their household. Having discovered the king hiding in a drain, they stabbed him to death before making their escape into the night.¹ The man responsible for the visceral deed was named as Sir Robert Graham in *The Dethe of the Kynge of Scotis*, an account of the king's murder translated from an unidentified Latin source by the English author and scribe, John Shirley (d. 1456).² According to the same account, when later standing trial before his judges and other members of the political community, Graham justified his actions by claiming that 'for þe grete goode þat I have done to yow and to all this reaume of Scotteland...I have þus slayne and deliuerde yow of so crewell a tyrant, þe grettist enemye þat Scottes or Scotland might haue'.³ If any of the dead king's subjects sympathised with such a sentiment, they kept their opinions quiet. Graham and his co-conspirators (notably Walter, earl of Atholl, whom Michael Brown has convincingly argued provided the real impetus for the murder) were executed as traitors, and, with the coronation of the seven-year-old James II at Edinburgh on 25 March 1437, the kingdom moved into a new phase of minority governance.⁴ Only a few months prior, at a general council at Edinburgh in October 1436, Graham had apparently been engaged in a very different form of resistance to his monarch—one in which ideas of communal authority and oversight were brought

¹ *Dethe*, pp. 46–69; M. Brown, *James I* (Edinburgh, 1994), p. 186.

² *Dethe*, p. 47; J. Griffiths, 'Shirley, John (c. 1366–1456), author, translator, and scribe', *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/25428>.

³ *Dethe*, p. 66.

⁴ For an account of Atholl's involvement see M. Brown, 'That Old Serpent and Ancient of Evil Days': Walter, Earl of Atholl and the Death of James I', *Scottish Historical Review*, 71:191/192 (1992), pp. 23–45.

to the fore.⁵ This dramatic moment, vividly imagined by Shirley in the *The Dethe*, is worth quoting in full:

‘Pis same Sir Robert Grame...aros upp wiþ a grett corrage, and wiþ a violent and irows chere and countenaunce, sette hands upon þe king his souerayne lorde, saying þese words: ‘I arest you, sir, in þe name of þe three astattes here nowe assembled in þe present perlement, for right as your liege peple ben bounden and sworne to obeye your mageste roialle, in þe same wyesse bee ye sworne and enseured your peple kepe and gouerne your lawe, soo þat ye doo hem noo wronge but in alright maytiene and defende hemm’.⁶

As Jenny Wormald wrote, this is indeed ‘great stuff’.⁷ Even setting poetic licence aside, the bare bones of the situation are striking enough: Graham had been selected as a spokesman for the ‘three astattes’ assembled in the October 1436 general council; confident of their support, he then proceeded to confront publicly the king over his financial policies and unjust rule by invoking communal authority and political principle. But the plan backfired. According to Piero del Monte (the papal collector for England, with jurisdiction over Wales, Scotland, and Ireland, who recounted this intrigue in a letter to Pope Eugenius IV only a week after James I’s death), when his dramatic speech had ended, Graham’s fellow ‘parliamentarians’ cast their eyes to the ground and remained silent.⁸ By contrast, the king, furious and indignant, called two hundred of his own knights into the council chamber to intimidate the men assembled

⁵ *RPS*, 1436/10/1.

⁶ *Dethe*, p. 52.

⁷ ‘More of this, and we could really turn Scotland into a place of highly sophisticated political rhetoric’, continued the same historian of that ‘exceptionally tense moment’. Having hinted at this exciting prospect, we are disappointed to read that ‘unfortunately not’. In comments somewhat reminiscent of M.C. Griffith’s statements about the lack of constitutional principle in the Talbot-Ormond fued, Wormald argued that ‘constitutional preoccupations were not part of late medieval Scottish political culture...Precisely because the Scots were less constitutionally and legally minded than the English, they did not indulge in the rhetoric which surrounded late medieval depositions and usurpations’ (J. Wormald, ‘National Pride, Decentralised Nation: The Political Culture of Fifteenth-Century Scotland’, in L. Clark and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 181–194, at pp. 190, 187, 189; cf. Griffith, ‘Struggle for Control’).

⁸ *Dethe*, pp. 52–3; R. Weiss, ‘The Earliest Account of the Murder of James I of Scotland’, *English Historical Review*, 52:207 (1937), pp. 479–491, at p. 488 [L: *Cum ille dicendi finem fecisset, omnes qui in concilio aderant, demissis in terram vultibus aliquandiu silentium tenuerunt*].

there.⁹ Graham was arrested and subsequently exiled, his lands and property forfeit to the crown. ‘Forþewiþe he rennouns his liegeaunce’ to James I, ‘by worde and writyng dyffyeth him’, and thus the plot to assassinate the king was set in motion.¹⁰ The political background to James I’s murder was significantly more complex than *The Dethe* and del Monte’s letter allow for, but it is hard to deny the extreme nature of these events.¹¹ Yet just under a decade later, this image—of a wrathful king cowing a principled opponent before his assembled subjects in general council—was almost entirely inverted when James II, then aged fifteen and probably beginning the transition into majority rule, took the following oath before his subjects at a parliament held in Edinburgh on 14 June 1445:¹²

‘I sall be lele and trew to God and halykirk, and to the thre estatis of my realm, and ilk estate kepe, defende and governe in thar awne fredome and privilege, at my gudly power, eftir the lawis and custumis of the realm; the law, custume and statutis of the realm neyther to eik nor to myniss without the consent of the thre estatis, and na thing to wirk na use tuiching the commoun proffit of the realm bot consent of the thre estatis; the law and statutis maid be my forbearis keip and use in all punctis, at all my power, till all my leigis in all things, sa that thai repung nocht agane the faith. Sa help me God and this halydome.’¹³

The young king’s obligations to his subjects were thus set out in very clear terms, and certainly suggest that James II’s personal rule was envisioned to be very different than that of his father.¹⁴ Less attention has been paid to the three reciprocal oaths to

⁹ Weiss, ‘Earliest Account’, p. 488 [L: *Rex vero turbatus animo, furore repletus, facie quoque indignationem ostendes e solio surrexit, iubens ne quis inde, quoad ipse redirect, discederet. Tum cubiculum ingressus, arma illico afferri iussit, quibus indutus, ducentos milites ad tutelam corporis sui designatos eque armari precepit*].

¹⁰ *Dethe*, p. 53.

¹¹ Brown, ‘That Old Serpent’, pp. 23–45.

¹² Roland Tanner rightly noted that this was the first parliament (as opposed to general council) which had met since the assembly at which James II had been crowned in 1437 (Tanner, *Scottish Parliament*, p. 112). Taken alongside the oath-taking of the king and his subjects, the decision to summon a parliament instead of a general council—like those which had been held in the years since 1437—may suggest that the assembly was intended to demonstrate publicly that James II’s minority was coming to a close.

¹³ *RPS*, 1445/3.

¹⁴ The significance of the king’s oath is discussed in detail by Roland Tanner (Tanner, *Scottish Parliament*, pp. 115). Tanner saw the oaths as providing ‘the clearest possible evidence in the

be taken by the king's subjects—namely the oaths of the prelates and barons, and a third general oath of fealty—which are recorded alongside the king's oath to his three estates.¹⁵ These are, however, of considerable interest, not simply because of their existence (which arguably seems to formalize a 'contractual' relationship between the king and his subjects—an interesting prospect, given the resonances between the language of the oaths and that of *The Dethe's* 'arest' speech) but because of the prominent place they accord to ideas of 'counsel'. Thus the prelates promised:

'I sall be lele and trew to you, my liege lord, Schir James king of Scottis, and sall nocht heir your scaith, or se it, but I sall lat it at all my power, and warn you therof; *your consell heil that ye schaw me; the best consale I can gif to you, quhen ye charge me in verbo Dei*'.¹⁶

Individual magnates were to promise that they should:

'becumis your man as my king, in land, lif, licht and lym, and worldis honour, fewtie and lawtie, aganis all that leif and dee may; *your consale celand that ye schaw to me; the best consale gevand, geif you charge me; your scaith nor dishonour to heir, nor se, bot I sall lat it at all my gudlie power and warn yow therof*'.¹⁷

fifteenth century of the developing 'political theory' behind the king's relationship with the Estates, and a fascinating insight into the perceived powers of Parliament and the Estates over the Crown' (While we may agree that the king's oath 'indicates the perceived right of the Estates to oversee a broad range of the king's activities', in that their consent and assent was required for the modification of legislation and that which concerned the 'common profit of the realm' (taxation and defence), it is not quite so clear that 'the king did not have the right to tamper with decisions and legislation made by the Estates' authority' [Tanner, *Scottish Parliament*, p. 113]). Christine McGladdery commented, in a similar vein, that 'the king's oath...provides the most compelling insight into what may be characterised, very loosely, as an articulation of contemporary political theory' (McGladdery, *James II* (East Linton, 1990), p. 53). In one sense, they are quite correct, but by what measure this articulation of Scottish political thought is supposed to be characterised as either 'developing' or 'loose' is not entirely clear.

¹⁵ As Tanner notes, the burgesses were not mentioned in the oaths (Tanner, *Scottish Parliament*, p.113). However, the manuscripts in which these oaths appear (BL, MS Harley 4700, f. 143v–144r; NLS, Adv MS 25.5.6, f. 203v–205r; Fort Augustus MS, f. 186r–187r) also contain three further oaths, which pertain to bailies, burgesses and town councillors. According to *RPS*, 'there is no conclusive evidence that these were made at the 1445 parliament', although the phraseology used in the oaths is similar. They were clearly intended for use in the burghs, rather than being oaths made at this parliament (*RPS*, 1447/7, n. 1).

¹⁶ *RPS*, 1445/4 [emphasis added].

¹⁷ *RPS*, 1445/5 [emphasis added].

Finally, those who took the general oath of fealty promised:

‘to be lele and trew to yow, my liege lord, Schir James king of Scotland; I sall nother heir your scaith nor se it bot I sall lat it at my power, and warn you therof; *your consell schewin to me I sall conseille; the best consall I can I sall gif youw, quhen ye charge me therwith*’.¹⁸

Here, we can see the principle—‘conventional to the point of banality’—that the king’s subjects had a right and duty to offer him counsel being strongly emphasised at a time when James II may have been increasingly keen to begin his personal rule.¹⁹ Relative to the conventional promises of loyalty and protection, a considerable degree of emphasis was placed on the role of the king’s subjects in counselling him. This is highly significant, for as much as the oaths stipulated that counsel would be given when and if *requested* by the king, counsel (as we have seen) provided one of the most fundamental mechanisms by which contemporaries could not only passively engage in dialogue with the crown, but also, through this exchange, actively modify royal policy.

Given the prevalence of conflict during James II’s minority—up to and beyond 1445—it seems rather more likely that those who set the agenda for this parliament were looking to the future rather than reflecting their present when these oaths were composed. Let us not forget that the framers of these oaths might well have had a vested interest in ensuring that they could retain private access to the king’s person once he had reached his perfect majority.²⁰ The emphasis on private counsel—which in theory, as Jaqueline Rose rightly points out, was seen as a way of ensuring that counsel could be given freely and honestly, without slipping into flattery—could also be used to ensure that James II’s minority counsellors would retain private access and influence over the king, especially after he had reached his perfect majority.²¹ For, while the king’s oath strongly emphasized the need for representative consent from his subjects

¹⁸ *RPS*, 1445/6 [emphasis added].

¹⁹ The phrase belongs to Mason (*Kingship and the Commonweal*, p. 16) but is here referred to in the sense suggested by Jaqueline Rose, that ‘although counsel was “so fundamental” that it would be “perilous in the extreme to neglect it”, it was “jejune”, “conventional to the point of banality”’ (Rose, ‘Political Counsel’, p. 2); Nicholson, *Later Middle Ages*, p. 340; Tanner, *Scottish Parliament*, p. 115.

²⁰ An acute sense of this importance may have been heightened by the conflicts over possession of the king throughout his minority.

²¹ Rose, ‘Political Counsel’, p. 18.

to enact royal policy which concerned issues of legislation, finance and defence, this was not a guarantee of future political influence. That the consent of the three estates should be delivered via representative assemblies is implicit in the king's oath, but (as we have seen in the case of English Ireland) reliance upon representative assemblies to ensure political influence could be something of a double-edged sword.²² Communitarian ideas and institutional settings could enhance legitimacy, but utilising them effectively might and often did depend on an ability to access (even dominate) these institutions in the first place—a difficult feat even at the best of times, as all parties during James II's minority were surely aware. Nevertheless—the projection of reciprocity and dialogue in the 1445 parliament at which these oaths were taken seems very far removed from our accounts of that stormy general council meeting in October 1436, much less the assassination of James I a few months later.

I

Two themes emerge from the preceding discussion: resistance and counsel. Both characterize efforts made by members of Scotland's political community to negotiate authority and influence the governance they experienced in the first half of the fifteenth century. The setting in which these ideas were used and expressed was almost always a representative assembly—a parliament or general council—and thus, either implicitly or explicitly, these ideas of counsel and resistance were linked with communitarian institutions, rhetoric and principles.²³ As in English Ireland, representative institutions and political principles were powerful tools which could be appropriated to pursue political ends. It bears reiterating some of the reasons for this: besides the shared body of political thought both drew upon, Scotland was similar to Ireland in the sense that it was relatively decentralized, regionalised and depended to a considerable degree upon governance being devolved to powerful and wealthy landowners; additionally, the two polities were more similar to one another in geographic and demographic terms than either were to England, with a correspondingly smaller

²² See above, p. 112.

²³ As Brown said, 'the natural place for such issues [the exercise and limits of kingly power, the obligations on the community and individual subjects to their royal lord, and of the legitimacy of resistance to unjust rulers] to be voiced was in meetings of parliament or general council' (M. Brown, 'Public Authority and Factional Conflict: Crown, Parliament and Polity', in K. Brown and R. Tanner (eds), *The History of the Scottish Parliament Volume 1: Parliament and Politics in Scotland, 1235–1560* (Edinburgh, 2004), pp. 123–144, at p. 125).

section of their populations actively involved in parliamentary politics and culture.²⁴ In the absence of the king, strikingly similar methods were used in both polities to legitimise and maintain quasi-royal authority and communal authority, hence the continued importance and adaptability of communitarian ideas and institutions. But with James's return, a crucial difference arose in Scotland's structure of politics: Scotland had an active ruling monarch, and that changed the way in which members of Scotland's political community conceptualised and negotiated their governance.

No doubt the return of the king in 1424 involved something of a mental shift in attitudes and expectations toward governance, but it also entailed a significant structural difference which affected how these institutions and ideas functioned in Scotland. For members of the political community in English Ireland who wished to influence—and by the same token, resist—royal policy, a considerable degree of leeway was created by the physical and epistemic distance between the administration in Ireland and that in England. Communications which resisted, subverted or inverted political principle could therefore be used to considerable effect, and representative assemblies—invoking a strong sense of communitarian authority, as well as a communal voice—often provided an effective form of protection against the possible repercussions of resisting, subverting, or criticising 'executive' authority outwith the colony. By comparison, the *lack* of such distance in Scotland—between 'executive' power and the political community (encompassing individuals as well as corporate groups)—meant that the consequences of acts (or even the rhetoric) of 'resistance' to executive authority were potentially more severe. We should not necessarily expect strategies which proved effective in an Irish context to have been used in Scotland, nor should we be surprised if similar strategies *were* employed, but engendered very different results. In Scotland, control over a 'community-endorsed narrative' was harder to achieve, for it could be more easily examined and contested; certain strategies which might employ similar language, mechanisms, sentiment or intent as those used in Ireland entailed, in comparative terms, a much higher degree of risk for those involved in Scotland. Parliaments and general councils were, after all, institutions predicated upon royal authority, headed by the king. When he was present there, those who wished to use representative assemblies to participate in governance could not pass the buck on to proxies, or rely on distance to mute criticisms, or wait it

²⁴ See M. Brown, 'Realms, Regions and Lords: Ireland and Scotland in the Later Middle Ages', *Anales de la Universidad de Alicante*, 19 (2015–16), pp. 153–174.

out until they could send their own version of events across the Irish Sea; after 1424, Scottish parliamentarians were face to face with the king himself.

These are issues worth bearing in mind, because, at least in a theoretical sense, the acts of ‘resistance’ we have seen above (the parliamentary confrontation with and assassination of James I) are ‘archetypical’, in that they were acts of overt defiance: framed, intended, actively carried out and recognised as such by their actors, targets and observers.²⁵ The murder of the James Stewart in 1437, as others have observed, stands out as one of the most violent and exceptional acts of resistance to a legitimate reigning monarch in the history of late medieval Europe.²⁶ Yet were it not for Graham’s actions on 21 February, when the principled speaker described in the *Dethe of the Kynge of Scotis* turned regicide, the reported ‘arest’ of the king might well be remembered as the most striking instance of resistance to the king during the period of James I’s personal rule. As it is, the event has been somewhat overshadowed by the dramatic conclusion to the reign, and by James’s divided legacy.²⁷ It is hard to get a sense of what most Scots thought about the manner of James I’s death. As both Roger Mason and Michael Brown have argued, it is likely that many Scots—particularly those who had studied at the University of Paris (a group which included Robert Graham) alongside those involved in the conciliar debate—would have been familiar with the political thought of Jean Gerson, chancellor of the University of Paris, and perhaps also by extension, Jean Petit, given that Gerson’s writings on tyranny were in part developed as a response to Petit’s defence of the murder of the duke of Orléans.²⁸ But even assuming a certain degree of knowledge about such theories and contemporary debates, widespread political reactions are difficult to assess. In the two sources which

²⁵ For a useful sociological overview and conceptual discussion of typologies of ‘resistance’ and their application, see J.A. Hollander and R.L. Einwohner, ‘Conceptualizing Resistance’, *Sociological Forum*, 19:4 (2004), pp. 533–554.

²⁶ M. Brown, ‘I Have Thus Slain a Tyrant’: *The Dethe of the Kynge of Scotis* and the Right to Resist in Early Fifteenth-Century Scotland, *Innes Review*, 47:1 (1996), pp. 24–44, at pp. 25–6.

²⁷ A notable exception is the treatment of this incident provided by Tanner in ‘I Arest You, Sir, in the Name of the Three Astatates in Perlement’: The Scottish Parliament and Resistance to the Crown in the Fifteenth Century’, in T. Thornton (ed.), *Social Attitudes and Political Structures in the Fifteenth Century* (Stroud, 2000), pp. 101–117, and Roland Tanner, *The Late Medieval Scottish Parliament: Politics and the Three Estates, 1427–1488* (East Linton, 2001), pp. 66–71.

²⁸ Mason, ‘Kingship, Tyranny and the Right to Resist’, p. 130; Brown, ‘I Have Thus Slain a Tyrant’, p. 29. It was claimed in the *Dethe* that Graham was a lawyer trained in canon and civil law (*Dethe*, pp. 52, 66). This claim is corroborated by evidence that a son of Patrick Graham (Robert’s father) was a student at Paris in the 1390s (*ER*, iii, 347).

provide detailed accounts of the acts of ‘resistance’ described above—admittedly produced by foreign writers, but now accepted as reliable—James was cast as a tyrant, whose subjects experienced oppressive rule and financial depredation under an acquisitive and greedy monarch.²⁹ By contrast, in Walter Bower’s *Scotichronicon* James I was portrayed as an able, assertive and ‘law-giving’ king.³⁰ For Bower, the murder of such a man was therefore an unjustifiable act perpetrated by a few ‘pernicious traitors’ led by the aforementioned earl of Atholl (who, according to the same chronicler, was ‘said to have had secret ambitions of attaining supreme office in the kingdom’).³¹

These two very different contemporary interpretations of the same event should remind us that the same body of political thought which advocated and defended unitary kingship as the ideal form of government in the Middle Ages also provided the principles and language of unjust rule by which ‘tyranny’—the perversion of kingship—could be condemned and resisted. From this ideological toolbox, then, medieval writers could select, interpret and utilise different concepts to provide *ex post facto* justifications or condemnations of political actions as circumstances required. Take, for example, the comment in *The Dethe* that Graham renounced his fealty to this king ‘by worde and writyng’.³² Its inclusion was clearly meant to indicate some measure of justification for his killing of James I later in the narrative and, to a certain degree, perhaps negate the seriousness of Graham’s actions. More importantly, this was not a novel idea, but a question at the centre of ‘resistance theory’ in medieval political thought. John of Salisbury considered it ‘just for public tyrants to be killed’, but advocated caution, ‘lest anyone cause the death of a tyrant who is bound to him by the obligation of fealty or a sacred oath’, because—as he continued—‘not that I do not

²⁹ Weiss, ‘Earliest Account’, *passim*; *Dethe*, especially at pp. 51–2, 53, 66. For analysis of John Shirley’s *Dethe of the Kynge of Scotis*, and Piero del Monte’s letter to Pope Eugenius IV (‘Earliest Account’), see M. Brown, ‘I Have Thus Slain a Tyrant’; M. Brown ‘Vile Times’: Walter Bower’s Last Book and the Minority of James II’, *Scottish Historical Review*, 74 (2000), pp. 165–188; Tanner, *Scottish Parliament*, pp. 68–71. For comment on the *Dethe*’s ‘dubious authenticity’ cf. Mason, ‘Kingship, Tyranny and the Right to Resist’, p. 143.

³⁰ *Chron. Bower*, p. 217.

³¹ *Chron. Bower*, p. 301. According to Bower, Atholl ordered the king’s assassination ‘so that by this means he might imperceptibly take over the government of the kingdom by managing the affairs of the son’ (*Chron. Bower*, pp. 301–3).

³² *Dethe*, p. 53.

believe that tyrants are to be removed from the community, but...they are to be removed without loss to religion and honour'.³³ Aquinas, conversely, allowed that:

'Where it belongs by right to a community to provide a ruler for itself, that community can without injustice depose or restrain a king whom it has appointed, if he should abuse royal power tyrannically. Nor should such a community be thought disloyal if it acts to depose a tyrant even if the community has already pledged itself to him in perpetuity; for the tyrant who has failed to govern the community faithfully, as the office of king requires, has deserved to be treated in this way'.³⁴

However, Aquinas also specified 'steps are to be taken against the scourge of tyranny not by the private presumption of any persons, but through public authority'—hence the emphasis upon 'community' in his justification.³⁵ In this, we can perhaps see another facet of medieval political thought concerning the right way to resist tyranny winding its way into *The Dethe's* narrative, for it is possible to detect a distinctive change in tone regarding Graham and James after the narrative turns from parliamentary resistance to the plot to kill the king. Graham's initial act of resistance was depicted against a king, who 'ordeinned grette tallages and oþer imposiciouns upon his peple, gretter and more chargeant þan euyr were acustumed afore þat tyme, soo þat þe communes of his lande secretly clepyd hym a tyrant, what for þe owterageouse cruelte of þe deþe of his greete lordes'; Sir Robert was described as 'a grete jenti jentilman and an erelles sunne, a man of grete elloquentes and subtille witte'.³⁶ But when Graham proclaimed that he 'wolde utterly take upon hym for-to slee þe king' and aligned himself with 'þ'erelle of Athalles [who] was of þat traysoun and counseile', the writer's sympathies shifted.³⁷ James I became 'hugely vexed in his spirrittes wiþe þe traytourowes and malliciowse rebelloun of þe saide Sir Robart

³³ *Policraticus*, viii, 20. For discussion of John of Salisbury on tyranny, see C.J. Nederman, 'A Duty to Kill: John of Salisbury's Theory of Tyrannicide', *Review of Politics*, 50:3 (1988), pp. 356–389.

³⁴ Aquinas, *De Regimine Principum*, vii, p. 20. As Aristotle wrote, 'kings cease to be kings when their subjects cease to be willing subjects, though tyrants can continue to be tyrants whether their subjects are willing or no' (Aristotle, *Politics*, v, ii, 1312^b38).

³⁵ Aquinas, *De Regimine Principum*, vii, pp. 19–20.

³⁶ *Dethe*, pp. 51–2.

³⁷ *Dethe*, p. 54.

Grame', who was 'sterud of fulle cruelle vengeaunge ageins þe king'.³⁸ Graham became 'þat traitterous knyght', 'þat odious and fals trattour'.³⁹ It is difficult to avoid the impression that the writer of *The Dethe* was deeply conflicted in certain respects: little effort was really made to rehabilitate James I from his subjects' accusations of tyranny (although the point was made that 'aftur þe wysdam of summe philosophires þe comeune langage of þ peple ofte spekiþe wiþoute raison'), and Graham, when standing trial, was described as 'a man of grete hert and manhode'.⁴⁰ One thing, though, seems clear. Once *The Dethe*'s Graham moved away from political principle and began to operate outside of the 'accepted' forum for dissent—parliament—the writer could no longer countenance his actions; the killing of the king was framed as nothing less than an 'abominable and horrible homycyde and murdur'.⁴¹ Only when Graham was acting in terms of 'public authority'—speaking on behalf of the 'lords and...astates of þat land ...[who] droughe hem hem to counseille hou þat þey might wiþstonde and resyste þair kings tirannye', at 'a perlement of þe thre astates'—was his resistance to James depicted as acceptable, even praiseworthy.⁴²

Aside from any worries that they might incur condemnation from later commentators—concern for reputation and slander was an important political constraint, but quite possibly the last thing with which a prospective regicide was concerned—political actors had very good reason to be wary of enacting or communicating resistance outside the bounds of communitarian authority and institutional space.⁴³ Discussions of resistance to tyrannous kingship (and the circumstances in which it was appropriate) appeared in the works of many medieval thinkers not just because of the questionable morality of deposing or killing a reigning king, but because the consequences of such extreme acts could be so severe. Thus Aquinas cautioned—with an air of very Aristotelian Realpolitik—that 'if, however, the tyranny is not excessive, it is more advantageous to tolerate a degree of tyranny...than

³⁸ *Dethe*, pp. 53–4.

³⁹ *Dethe*, pp. 58, 61–2.

⁴⁰ *Dethe*, pp. 52, 66.

⁴¹ *Dethe*, p. 62.

⁴² *Dethe*, p. 52.

⁴³ See C. Hawes, *Community and Public Authority in Later Fifteenth-Century Scotland* (Ph.D. thesis, University of St Andrews, 2015).

to take action against the tyrant and so incur many perils more grievous than the tyranny itself'.⁴⁴ His reasoning could have been tailor-made for this period in Scottish history: 'for it may happen that those who take such action prove unable to prevail against the tyrant, and succeed only in provoking the tyrant to even greater savagery'.⁴⁵ As Robert Graham saw in 1436, overt criticism of the king—even (or perhaps especially) in general council, without the support of his peers—could have severe consequences.⁴⁶ There were other quite practical reasons for avoiding resistance to tyranny. Aquinas was concerned that:

'When those who take action against a tyrant are able to overthrow him, this fact may in itself give rise to many very grave dissensions in the populace, either during the rebellion against the tyrant or because, after the tyrant has been removed, the community is divided into factions over the question of what the new ruling order should be'.⁴⁷

Sure enough, in 1437, the brisk condemnation and execution of the conspirators suggests that whatever the various sections of Scotland's political community thought about James I's death, many had little appetite to dwell upon it. More pressing concerns regarding the sudden vacuum of power in the kingdom quickly took centre stage, and ushered in a period of conciliar governance which has been defined by factional conflict and intense competition for control of the government apparatus. But the point stands: communitarian resistance was more effective than individual resistance not just because of the legitimising connotations it evoked, but because it had a very practical role to play in how the consequences played out for those who engaged in it. In this respect, political ideas and principles might be seen as having a rather more practical influence than simply being utilised in *ex post facto* justifications

⁴⁴ Aquinas, *De Regimine Principium*, vii, p. 18.

⁴⁵ Aquinas, *De Regimine Principium*, vii, p. 18.

⁴⁶ Cf. The 'Good Parliament' in England of April 1376, where Peter de la Mare couched criticisms of the king in terms of 'evil counsellors'. Crucial to the 'success' of his critical speech was the fact that he had a broad base of support within that assembly. Even then, despite this element of protection and the success of the Good Parliament in the short term, de la Mare still faced backlash to his participation further down the line. He was summoned before the council a few months later and imprisoned in Nottingham castle, only to be released after the death of Edward III in June 1377 (*PROME*, Edward III, Parliament April 1376, Text and Translation; G. Holmes 'Mare, Sir Peter de la (fl. c. 1365–1387), speaker of the House of Commons', *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/7432>).

⁴⁷ Aquinas, *De Regimine Principium*, vii, p. 18.

for political action. Representative assemblies and communitarian political principles therefore provided a practical, as well as legitimising, forum for resistance, as well as for dialogue—for counsel. Yet there remains a tension between the two—counsel and resistance—which is perhaps even more apparent in the historiography of later medieval Scottish parliaments and kingship than it is in the historical record.

II

‘It is no simple matter’, as political scientist James C. Scott wrote, ‘to determine just where compliance ends and resistance begins’.⁴⁸ Quite so. ‘Counsel’ is not, of course, the same thing as ‘compliance’, but the emphasis upon dialogue, discussion and consensus in studies of counsel can be misleading, and tend toward an inherently ‘co-operative’ or ‘consensual’ view of political activity. Discussion of counsel should be intimately concerned with analytical questions of resistance—especially in the context of representative assemblies—precisely because counsel provided the most direct way for medieval political actors to engage actively in the governance that they experienced: governance predicated upon royal authority and vested in the person of the king, wielding that ‘enormous panoply of royal power’ that has always fascinated historians so.⁴⁹ Of course, we must not slide too far in the opposite direction. In the case of parliament in particular, as Clare Hawes has rightly pointed out, placing ‘resistance’ at the centre of the analysis posits a ‘highly oppositional model in which a “strong” parliament [is] synonymous with the ability to modify royal policy’, and as such, mischaracterises the nature of the institution, in that this was ‘not its purpose, nor, necessarily, its aim’.⁵⁰ But then, we also cannot sidestep the important questions that resistance raises about the location of power and its distribution within medieval Scottish society. The problem seems to be more that historians who have discussed the concept and the existence of ‘resistance’ in fifteenth century Scotland (mainly with a view to determining the character of political society and structure) have been working at cross-purposes: some have aimed to identify (or disabuse the notion of) a culture or theory of resistance to royal authority; others have sought identify the practical powers and structural features that allowed (or did not allow) groups and individuals to resist

⁴⁸ J.C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (London, 1985), p. 289.

⁴⁹ Ormrod, ‘Review: Royal Minorities’, p. 986.

⁵⁰ Haws, *Community and Public Authority*, p. 121.

royal policy.⁵¹ But resistance was a tricky subject for political writers and actors in late medieval Scotland (and indeed further afield), and it therefore should come as no surprise that the topic has generated a number of problems for those engaged in contemporary historical analysis. A key issue is that, like 'community', there existed a medieval concept of resistance, which was primarily articulated through the language of unjust rule, while, concurrently, 'resistance' also exists as an analytical category used by modern scholars to study a particular type of phenomenon.⁵² Scholars of medieval resistance might therefore choose, on the one hand, whether to follow the path offered by medieval writers, and focus on what was clearly viewed as resistance in contemporary terms and discussed in contemporary political theory and literature; on the other, they may seek to identify modes and examples of action, behaviour, or discourse (and so on) which might be characterised as resistance in an analytical sense. There is no reason, however, that these two subjects of analysis should be regarded as mutually exclusive; indeed, provided that a clear distinction is made between the two subjects of analysis, by treating the two together we may be able to better understand what was going on when everyday political 'resistance' shaded into something more serious.

⁵¹ This has come about, in part, as a consequence of three different strands of historiography, all of which continue to provide important interpretative frameworks for understanding Scotland's political structure in this period and are therefore of relevance to the present discussion. In the first strand, running parallel to and sometimes intersecting with the second and third, particular attention has been paid to the history of ideas and literary history; it considers the nature and role of political resistance with a view to determining the 'political culture' of medieval Scottish society. It is within this strand that explicit attention has been paid to the issue of unjust rule—of tyranny—and the extent to which this aspect of medieval political thought was reflected in theory and practice in Scottish politics. The second strand concerns an oppositional model which relates to the king and his most powerful subjects, with Scottish magnates seen (depending on which way the historiographical pendulum has swung [McGladdery, *James II*, p. xii]) as either in conflict or co-operation with the crown. The focus in this strand is weighted toward structures, particularly the question of how lordship interacted with royal control, and what kind of political society—stable, unstable, co-operative or conflict-laden—social structures produced. Generally speaking, this model tends to promote a 'co-operative' picture of later medieval Scotland (although important qualifications have been made which point to the continued existence of conflict, competition and violence as perpetrated by both kings and magnates). The third strand concerns another oppositional model, this time between the crown and the 'Three Estates'. This model highlights conflict over consensus; it is one in which the 'Three Estates' either are viewed as dominated by, in collusion with, or resisting the crown, or are framed a counterbalance to the crown in a political system of checks and balances.

⁵² P. Crooks and T.H. Parsons, 'Empires, Bureaucracies and the Paradox of Power', in P. Crooks and T.H. Parsons (eds), *Empires and Bureaucracy in World History: From Late Antiquity to the Twentieth Century* (Cambridge, 2016), p. 4.

In discussing the seeming lack of compatibility between counsel and resistance, it may be useful to adapt the approach and bring into the arena of Scottish parliamentary politics some lessons derived from the writings of James C. Scott. Scott's objective was to reveal the 'hidden transcripts' of resistance used by subaltern groups (specifically peasant societies)—that is, the portion of their 'full transcript' that subordinates were forced to conceal in encounters with the powerful—by contrast with the eminently more visible 'public transcript' of superordinate authorities.⁵³ 'Allowing always for the exceptional moments of uncontrolled anger or desperation', according to Scott, 'the normal tendency will be for the dependant individual to reveal only that part of his or her full transcript in encounters with the powerful that it is both safe and appropriate to reveal'.⁵⁴ This comment seems particularly apposite for fifteenth-century Scottish representative assemblies, given that—as we have seen—deviations from what was considered acceptable political discourse and behaviour could have dire consequences. Moreover, the official record only rarely reveals evidence of the processes by which policy decisions were arrived at, and, more importantly, was designed to conceal, rather than reveal, dissent: what we are dealing with, in other words, is the 'public transcript' of authority. Another point of particular relevance for a discussion of resistance (and counsel) in Scottish parliamentary politics lies in Scott's arguments regarding the existing concepts of resistance and the way that it is treated analytically. According to Scott, 'the problem with existing concepts of resistance...lies in what is a misleading, sterile and sociologically naïve insistence upon distinguishing "self-indulgent", individual acts, on the one hand, from presumably "principled", selfless, collective actions, on the other, and excluding the former from the category of *real* resistance'.⁵⁵ Of course, in the same way that we do not need to assume that individuals personally believed in or were motivated by political principles in order to use them, we do not need to exclude action that seemed to be *unintentionally* using political principle, or using it in a subversive fashion, by assuming that political principle ideas and principle had no role to play in informing the shape and character of that resistance.⁵⁶ The language in which political actors framed their 'resistance' was

⁵³ Scott, *Weapons of the Weak*, ch. 7, *passim*; see also J.C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, 1990).

⁵⁴ Scott, *Weapons of the Weak*, p. 286.

⁵⁵ Scott, *Weapons of the Weak*, p. 295.

⁵⁶ Crooks, 'Representation and Dissent', p. 26.

overwhelmingly, in the words of Simon Walker, couched in the ‘idiom of consent to legitimate authority’ (as much to shield actors from the potential consequences of communicating resistance, as to legitimize the actual issue being communicated).⁵⁷ But as Quentin Skinner has argued, even where ‘choices of vocabulary’ appear only to have an *ex post facto* application (as indeed we have seen above), the actions of contemporaries were necessarily circumscribed by the language available to them; in other words, if Scottish parliamentarians sought to use the language of political principle to justify their actions and communications, they had to act in a way that made the invocation of such language credible and acceptable.⁵⁸

As such, political principles were not simply a ‘tool’ that political actors could pick and choose haphazardly or at will; political ideas and principles acted as one of the ‘determinants of their behaviour’.⁵⁹ This chimes rather well with Scott’s observation that although the ‘public transcript’ of superordinates is more likely to match up with their ‘full transcript’, those in positions of authority ‘are also somewhat constrained both by a due regard for their reputation...and by the desire to uphold the “theatre” of power’.⁶⁰ Brown wrote that ‘James I summoned parliaments on an almost annual basis, not to satisfy constitutional precedent nor because he had to, but because he regarded meetings of the estates as a means to augment his power materially and ideologically’.⁶¹ The king certainly saw parliament as a means of pursuing his own policies, and the truculence he displayed when he did not receive wholehearted support suggests that he began his rule with greater expectation of compliance from his subjects.⁶² Tanner, for instance, suggests that in 1428 the king faced ‘open opposition from a section of the Estates to a central element of his policy’, based on a congratulatory letter from James Haldenstone, prior of St Andrews, to James I, in which it is revealed that the king, having been ‘persuaded, and this by much argument’ in a general council held at Perth not to confront Alexander, lord of the Isles, proceeded

⁵⁷ S. Walker, ‘Rumour, Sedition and Popular Protest in the Reign of Henry IV’, *Past & Present* 166:1 (2000), pp. 31–65, at p. 34.

⁵⁸ Skinner, *Visions of Politics I*, pp. 172–3.

⁵⁹ Skinner, *Visions of Politics I*, p. 173.

⁶⁰ Scott, *Weapons of the Weak*, p. 288.

⁶¹ Brown, ‘Public Authority and Factional Conflict’, p. 130.

⁶² Tanner, *Scottish Parliament*, p. 12.

to go ahead and do just that.⁶³ According to Haldenstone, James had repeatedly told those gathered there, 'I will go, I say, and not return so long as they default. I shall bind them, and they will be unable to stand, and they will fall beneath my feet'.⁶⁴ It is unlikely, as Tanner put it, that Haldenstone would 'fabricate opposition which both he and the king knew not to have happened'.⁶⁵ The king did not, however, face unified opposition; there was a sizeable northern contingent present at the assembly which could benefit from supporting the king's plan, and it may have been the case that Haldenstone was exaggerating the number of dissenting voices at the assembly.⁶⁶ On this occasion, in any case, James went ahead with his plans despite the reported opposition. But he was not always able to pursue successfully his policies, as Tanner's research attests. That James I experienced *both* success and failure in pursuing royal policies in a variety of issues over the course of his reign should clearly demonstrate the importance of representative assemblies as a space in which the dynamic practice of governance was carried out.⁶⁷ Equally, this should underscore the point that James I could not (whatever his personal style of kingship) unilaterally impose royal policy upon his subjects, nor profess to be acting in the common good, with the support of the 'Three Estates' in parliament and general council, unless he *also* took actions which in some way made these claims credible. From the king's perspective, representative assemblies were not therefore simply a legitimising tool to be utilised at moments of convenience, but a practical necessity for the exercise of royal power.

This point is borne out by examination of the records of parliament, in terms of the language and political principles which were explicitly drawn upon and emphasized in

⁶³ Tanner, *Scottish Parliament*, pp. 39–41; *RPS*, 1428/7/1; *Copiale*, no. 26 [L: *In ultimo enim consilio vestro tento apud Perth persuasum fuit vobis, et hoc per multa argumenta, ne descenderetis versus partes illas, sed semper respondistis; 'Descendam, et videbo utrum clamorem ipsorum opere compleverint; descendam, inquam, nec revertar donec deficient. Constringam illos, nec poterunt stare et cadent subtus pedes meos'*]. After an extended section praising James for his execution of justice in the Highlands, Haldenstone moved on to the rather more practical matter of requesting that said justice swiftly be applied to one William of Cupar, a light-fingered canon of St Andrews, who had lately earned the Prior's ire by making off with books and money from the priory in the middle of the night (*Copiale*, no. 26). For detail on the conflict with the Lord of the Isles, see Brown, *James I*, pp. 93–105.

⁶⁴ Tanner, *Scottish Parliament*, p. 40.

⁶⁵ Tanner, *Scottish Parliament*, p. 40.

⁶⁶ Tanner, *Scottish Parliament*, p. 41.

⁶⁷ Tanner, *Scottish Parliament*, pp. 7–65.

James I's parliaments, particularly during his early active rule from 1424–8. What will be very apparent to those who look at the Scottish parliamentary record, particularly by comparison to the records of Irish representative assemblies, is that the language of complaint, or criticism (evidence of Scottish 'infrapolitics'—'the type of discussions and complaints that fall "somewhere between whole-hearted consent and open rebellion"') is muted.⁶⁸ By contrast, though, the language of counsel or consent is much more visible. Especially for a king whose reign has been characterised in the historiography by conflict and resistance, the records of James I's parliaments and general councils between 1424 and 1436 stand out for the prominence and frequency of invocations of communitarian principles (in references to the 'three estates') linked with consent. The extant manuscript records of the first parliament of James I's reign held at Perth on 26 May 1424 all contain variants of the same preamble which refers to the 'three estates of the realm having been called together and assembled in the same place': one refers to the 'artikillis put be the king and his consale to the determinacion of certane personis chosin therto be the thre estatis of the realme'; another to 'oure parlyament at Perth dyuerse tymis halding of the consell and the expresse consent of the thre estatis of oure kynryk, throu the autoryte of oure kyngdome'.⁶⁹ Likewise in the parliament which began at Perth on 12 March 1425, 'to the thre estatis of the realme thar gadderit [war] proponit sundry articlis for the quyete and gud governance of the realme', and explicit reference was made in many of the acts to their being variously 'decretit and throu the halle perlyament consentit', 'ordanyt be the kyng and the parliament', or 'ordanit throu playn parliament'.⁷⁰ We need not read anything particularly significant into the variations in how the language of assent and counsel of the 'three estates' was invoked in each of these examples; more important is the point that these acts were framed in

⁶⁸ Dumolyn and Haemers, 'Subversive Speech', p. 47.

⁶⁹ *RPS*, 1424/1. This first parliament also contains an interesting reference to counsel, which does not appear in the context of the king being counselled, but rather doing some 'counselling' himself, alongside a rare indication of parliamentary 'counsel' upon a particular topic. A case was brought to parliament by one Nicholas of Cumnock against Ingeram Lindsay, who had purchased a benefice from Rome to Cumnock's detriment. We are told that the 'parliament thinkis that sic purchessing of pencious [and] dismembring of benefice ar again the course of commoun lawe and rycht inconvenient to be tholit in the kyneryk'. Henry Wardlaw, bishop of St Andrews, was ordered to suspend his judgement in this ongoing case, 'quhill the king may counsale the pape in this mater' (*RPS*, 1424/34).

⁷⁰ *RPS*, 1425/3/1; *RPS*, 1425/3/10; *RPS*, 1425/3/11; *RPS*, 1425/3/13; *RPS*, 1425/3/23.

a manner designed to promote an image of unity and dialogue between the king and his subjects.

To whom, though, was this image being presented? Granted, these phrases were stock formulae of a sort that were commonly utilised in Scottish, English and Irish assemblies. But in the context of the colonial parliaments of English Ireland, at least, increased emphasis upon communitarian language and strategic use of political principle generally appeared when parliamentarians were in communication with the crown, in efforts to control the received narrative of the king in England.⁷¹ For obvious reasons, there was no need for such usage in Scotland. Instead, we might rather assume that this type of language was being used by James I to control the received narrative of his *subjects*: to present an image of kingship that aligned with contemporary expectations and values. And if there was indeed ‘dissent’ at this parliament, as it has been claimed, this was presumably an image directed at his subjects who were *not* present; in the same way that it is unlikely that James Haldenstone would claim to James I that he had encountered opposition at the 1428 parliament if no such thing had happened, it seems unlikely that a description of parliamentary unity would have been directed at those who might know better.⁷² Indeed, a hint of why such strategies may have been necessary is even revealed in the parliamentary legislation. In an article against ‘liars and the tellers of them’, it was ‘ordanyt be the kyng and the parliament that all tayltellaris and lesingmakaris and tellaris of thaim the quhilk may engennyr dyscorcord be tuix the kyng and his pepill, quhar evir thai may be gottin, sall be challangit be thaim that poware hass and tyne lyff and gudis to the kyng’.⁷³ No more specific details are given, and Tanner suggests that the 1424 taxation was probably the cause of ‘murmuring’ outside parliament, but clearly the king was conscious of a certain degree of opprobrium amongst his subjects which no doubt gave rise to this rare evidence of Scottish ‘infrapolitics’.⁷⁴

⁷¹ See above, pp. 108, 135.

⁷² *Copiale*, no. 26.

⁷³ *RPS*, 1425/3/23.

⁷⁴ Tanner, *Scottish Parliament*, p. 16. Even more interestingly, a similar act was made against ‘conspirators and authors of rumours’ made more than a hundred years previously, in a parliament at Scone under Robert I. There, ‘the lord king decreed and forbade that anyone should be a conspirator or an inventor of tales or rumours by which a source of discord shall be able to arise between the lord king and his people. And if anyone such shall be found and attainted he should be immediately arrested and sent to the king’s prison and be kept there securely until the lord king shall

With regard to goings-on within the parliament of 1425, we know that the real picture was not so rosy as the communitarian language used would seem to portray. Brown and Tanner have both detailed the terse political background in the parliament that saw the arrests of Murdoch, duke of Albany, his son and his adherents, on the ninth day of the assembly, and both have made the argument that this parliament saw instances of resistance and dissent to royal policy.⁷⁵ Taxation provided the main stumbling block at the first sitting—intractably so—but there is also revealing evidence of the political decision-making process at work in this assembly. This relates to what Tanner describes as a ‘rare surviving piece of parliamentary advice’, which dealt with remissions offered to ‘highlandemen’.⁷⁶ Here, we learn that ‘the perliament thinkis it speidful that, quhare the king gewis a remissioun til ony man with conditioun till assith the party scathit, at consideratioun be had of hieland men’.⁷⁷ Tanner suggests that this act as ‘clearly introduced by the Estates to amend and criticise official policy, and the implication remains of dissatisfaction with the favour shown to Highlanders by a king who knew no better’.⁷⁸ This may well have been the case, but in terms of the present discussion, there is another significant aspect to this article. In this ‘advice’—this counsel—we can see a practical illustration of the point that ‘resistance’ was rarely cast as such in practical politics; instead, counsel—the theory *and* the practice—provided the means by which resistance could be presented and authority negotiated. In 1425, in the one assembly, we have evidence of James I’s use of communitarian language and principle (to project an image of authority, unity and consent), used alongside legislative acts which could be used to exert royal control (as, for example, with the article ‘that na man vilfully sall resset, manteyne na do fawor till oppin and manifest rebellouris agayne the kingis majeste and the colmoun law’), and evidence of

command his will concerning him’ (RPS, 1318/23 [L: *Item dominus rex statuit et defendit quod nullus sit conspirator nec inventor narrationum seu rumorum per quos materia discordie oriri poterit inter dominum regem et populum suum. Et si quis talis inventus fuerit et attayntus statim capiatur et mittatur ad prisonam regis et ibi salvo custodiatur quousque dominus rex mandaverit de ipso voluntatem suam*]). There are a remarkable number of similarities between the acts of the early parliaments of Robert I and James I, and further comparative research into why this might be the case would surely be useful for the light it could shed on the character of Scottish parliamentary culture from the standpoints of the early fourteenth century and the early fifteenth.

⁷⁵ Brown, *James I*, pp. 60–1; Tanner, *Scottish Parliament*, pp. 13–17.

⁷⁶ Tanner, *Scottish Parliament*, p. 16.

⁷⁷ RPS, 1425/3/26.

⁷⁸ Tanner, *Scottish Parliament*, p. 16.

members of the political community using ‘counsel’ to influence (or at least attempt to influence) executive decision-making.⁷⁹ For the Scots, then, the value of such political principles and language lay in their mutability, particularly when used in the ideological and institutional space of representative assemblies.

Looking over the parliamentary record for the reign of James I, it is difficult to agree with Michael Brown’s view that ‘it is hard to identify any sustained legacy arising from the experiences of the late fourteenth century...Instead the ways in which ideas of counsel were deployed in the early fifteenth century appear as entirely rooted in the needs of specific conditions and regimes’.⁸⁰ The same might be said for any given use of political principles. The invocation of political principles did not exist in isolation, nor in stasis; rather, their continued use in official political language—in the ‘public transcript’—was given continued relevance precisely because they were adaptable to the needs of specific situations and circumstances, in a variety of contexts. Moreover, the sheer amount of those invocations—in nearly every single meeting of a representative assembly during James I’s reign—of the language of counsel (even, or perhaps especially, when they appear in situations where acts of resistance were involved) seem at odds with Brown’s assessment that ‘during this transformative period in Scotland there are very few direct references to the council as a body or to the issue of giving counsel to this active and assertive ruler’.⁸¹ That is not to say that we should read the frequent usage and framing of parliamentary legislation and communications in the language of counsel as evidence that (to pilfer a memorable phrase from Jenny Wormald) Scottish parliamentarians and their king ‘went around in some sort of happy collective constitutional haze’.⁸² Indeed, we might even suggest

⁷⁹ *RPS*, 1425/3/16.

⁸⁰ Brown, ‘Lele Consail’, p. 60. Brown located ideas of counsel within the institutional councils that arose in times of royal minority, absence, or incompetence; but this was just another iteration of ideas of counsel manifesting themselves in different ways. Even then, it might be argued that during the active reign of James I, ideas of counsel resulted in actual ‘conciliar’ groups to which royal authority was devolved. Ideas of counsel, in James I’s reign, actually seem to have been used in rather novel ways in a Scottish context. But also we should remember that if ideas of counsel manifested themselves in conciliar bodies in the fourteenth century, then this was also a use of principle that was contingent to circumstance and specific needs.

⁸¹ Brown, ‘Lele Consail’, p. 60. There are too many to list, but see, for example: *RPS*, 1426/1; *RPS*, 1426/33; *RPS*, 1426/6; *RPS*, 1427/7/5; *RPS*, 1427/7/9; *RPS*, 1428/3/2; *RPS*, 1428/7/1; *RPS*, 1429/4/4; *RPS*, 1430/54; *RPS*, 1430/30; *RPS*, 1431/10/5; *RPS*, 1432/3/1; *RPS*, 1435/3; *RPS*, 1436/10/2.

⁸² Wormald, ‘National Pride, Decentralised Nation’, p. 183.

that James I relied over-heavily on communitarian language and principles—a case, perhaps, of the king who doth protest too much—and thus it was at the point when the king’s actions failed to match up to his rhetoric that the earl of Atholl, Robert Graham and their associates turned from resistance to rebellion. Rather, the point is that there is plenty of evidence to show that the idea of ‘counsel’ was frequently used in the early fifteenth century, both by the king (to project an image of kingship which conformed to the sort of contemporary expectations that were detailed in chronicles and advice-literature) and by his subjects, who, partly out of necessity and partly out of convention, used the mechanism and language of counsel to negotiate, and resist, royal policy.

III

One possible consequence of James I’s assertive style of kingship was that it demonstrated to his subjects—much more clearly than comparable experiences under the rule of Robert, duke of Albany, or Robert II and Robert III—precisely the sort of power that could be wielded by those who possessed legitimate royal authority, and controlled the apparatus of government with a body of able administrators. This may, at least in part, explain why the conflicts of James II’s minority revolved (as with the Ormond-Talbot feud in Ireland) around competition for office, and a struggle to control the apparatus of governance. Of course, where there are similarities, there are also differences. The beginnings of the Ormond-Talbot feud, as Peter Crooks has shown, lay in factional politics concerning the earldom of Desmond: controlling the administration and representative assemblies provided an effective means by which the feud could be prosecuted.⁸³ The conflicts that played out during James II’s minority did not have such entrenched and personal roots; their beginnings may be directly linked to the vacuum of power which arose with the death of James I. The rise to prominence and conflicts between the Livingston, Crichton, and Douglas factions are indicative of a shift in the political landscape that was brought about by this structural change. This period was not characterised by resistance to royal policy, and certainly not by resistance to royal authority. Indeed, it is worth highlighting that the preceding discussion of resistance centred upon the crown not because the king (as an institution), or the exercise of royal authority, *inherently* invited resistance (as in a zero-sum game), but rather because the crown provided the foundation of legitimate authority in Scotland’s structure of politics (as discussed above in Part I), upon which

⁸³ Crooks, ‘James the Usurper’.

other sources of authority depended. On the contrary, because royal authority was no longer centred in the hands of a trenchant and very active monarch, but rather in those of a small boy, it was, so to speak, up for grabs. Yet despite the traditional view of James II's minority as a period of chaos and violence—an assessment that owes much to Walter Bower—there is plenty of evidence to suggest that political principles played an important role in how Scotland's governance was conceived and conducted after James I's death.⁸⁴ As with the preceding discussion of James I's reign, this is not to deny the existence of conflict, but to identify how political ideas and principles informed the way that political activity was carried out. Ideas of counsel linked to communitarian principles and authority continued to be used, if in a markedly different manner, in the minority of James II.

Between the death of James I and the appointment of the lieutenant, a period which has traditionally been characterised as a one of violence and disorder, there evidently occurred much debate as to what the shape of Scotland's governance would look like during the minority. James II was only seven years old, and therefore the minority was set to be an extended one. In the immediate aftermath of the murder, of course, very practical matters took precedence. There are strong indications that James I's queen, Joan Beaufort, immediately made efforts to ensure her place as regent—as well she might have expected to, given that James I had (on not one, but two occasions) decreed 'from the deliberation and consent of the whole council' that his prelates, earls, barons and all freeholders were to make oaths to the queen, and give her their letters of retinue and fealty.⁸⁵ Her swift arrival in Edinburgh, on 27 February 1437, where James had been left in the custody of one John Spens (a longstanding adherent of the earl of Atholl), speaks volumes. Michael Brown has convincingly argued that Spens was likely involved in the earl of Atholl's attempted *coup d'état*.⁸⁶ Spens' role would have been crucial had the plot to kill James I (and likely the queen herself) been successfully

⁸⁴ *Chron. Bower* pp. 324–5.

⁸⁵ *RPS*, 1428/7/2 [L: *Quo die dominus noster rex ex deliberatione et consensu totius consilii statuit quod omnes et singuli successores prelatorum regni quorumcunque, necnon omnes et singuli heredes futuri comitum, baronum et omnium libere tenentium domini regis teneantur facere consimile juramentum domine nostre regine, nec ullus prelatus de cetero admittatur ad suam temporalitatem aut heres cuiusvis tenentis domini regis ad suas tenandrias nisi prius prestat regine illud juramentum*]; *RPS*, 1435/4 [L: *Item eodem die xvto mensis et anni supradictorum omnes domini de parlamento, tam ecclesiastici quam seculares, ac etiam commissarii burgorum promiserunt dare litteras suas retinentie et fidelitatis domine nostre regine etc*].

⁸⁶ Brown, 'That Old Serpent', pp. 40–2.

carried out. If Atholl had indeed instigated James I's assassination so that he might, as Bower claimed, 'imperceptibly take over the government of the kingdom by managing the affairs of the son of the king', then possession of the heir apparent was a *sine qua non*.⁸⁷ Of course, this situation may not have been fully apparent straight away; but the queen's hasty departure for Edinburgh—although she was probably still wary of attack in the obviously unsafe environment of Perth—indicates that she knew well the power that came with custody of the king's person. As it happened, the young James had already been removed from the custody of Spens, probably by another member of his household, John Balfour.⁸⁸ Even if Spens had not been actively involved in the plot, his contemporaries seem to have been assured of his guilt: Spens disappears from our records, while, by contrast, Balfour was named as the 'servant of the duke of Rothesay', appointed as keeper of the young king, and, perhaps most tellingly of all, was subsequently granted the majority of Spens's lands.⁸⁹

Joan was undoubtedly aware that possession of the king was a powerful form of legitimation for those who wished to wield royal authority on his behalf. Indeed, Tanner goes so far as to suggest that 'possession of the king provided the main authority needed to form a government—meetings of the Estates merely provided a façade of legitimacy'.⁹⁰ Façades, though, can gain a power all of their own. This is a point which the queen herself may well have appreciated, for although her departure to secure James II was swift, it was not her first act after the death of her husband. Before his burial (reportedly the next day) James I's body was displayed publicly at the Carthusian priory outside Perth.⁹¹ There, according to the *Liber Pluscardensis*:

'the pope's legate, who within eight days before had absolved [James I] from guilt and punishment, uttered a great cry with tearful sighs, and kissed his pitiful wounds; and he said before all the bystanders that he would stake his soul on [James]

⁸⁷ *Chron. Bower*, viii, pp. 300–2 [L: *ut vel ipse quasi imperceptibiliter regni gubernaculum conquiret et de filio regis tunc septennia ad libitum quamvis non ad licitum tractaret ut ad minus cum futuro rege ipse consors esse putaretur*].

⁸⁸ Brown, 'That Old Serpent', p. 42.

⁸⁹ *ER*, v, p. 35; Brown, 'That Old Serpent', p. 42; Brown, *James I*, p. 196.

⁹⁰ Tanner, *Scottish Parliament*, p. 77.

⁹¹ Brown, *James I*, p. 194; *Chron. Bower*, viii, p. 305; *Chron. Monstrelet*, viii, ch. i, p. 3.

having died in a state of grace, like a martyr, for his defence of the common weal and his administration of justice'.⁹²

Given James I's reputation we might well be sceptical of this account. But the papal legate Bishop Antonio Altani of Urbino, was indeed still in Scotland at the time, and he wrote to James Haldenstone shortly afterward in a letter lamenting the king's death and the detriment it had done to the public good.⁹³ If these were 'crocodile tears', they came at a remarkably fortuitous moment for the queen. Brown suggests that showing James I's body to Bishop Altani was a calculated political move on the queen's part; if so, then it seems that James I's equally calculated concern with projecting an image of good kingship had been passed on to his queen. If this was an act of spin-doctoring, it demonstrates shrewd appreciation of the value in controlling the narrative that that Scots would, sooner or later, receive about the manner of their king's death. Similar concerns regarding the importance of establishing a firm—and uncontested—dynastic succession were to become apparent at the scene of James II's first parliament, where with Queen Joan in possession of James II, it became possible to move forward with plans for how the governance of the kingdom was to be carried out during the king's minority. The first priority (alongside the practical issue of capturing those responsible for the king's death) was James II's coronation—a matter of some urgency, given that James I's assassins remained at large in the immediate aftermath of his death. This does much to explain why the first parliament of James II's reign, which saw both the king's coronation (on 25 March) and the execution of the earl of Atholl (a day later, on 26 March), was held only thirty-three days after James I's death. The weeks in between, and no doubt the parliament itself, allowed for questions regarding the governance of the realm to be considered.

In one sense, at least initially, the response to the problem of the king's minority was conceived along traditional lines, with the appointment of a lieutenant who could exercise royal authority on behalf of the king until he came of age.⁹⁴ Discounting

⁹² *Chron. Pluscarden*, ii, p. 290.

⁹³ *Copiale*, no. 80.

⁹⁴ The term 'lieutenant-general' has been used to describe Douglas in the historiography, but as there seems to be only one record which uses this terminology, the remainder using the more familiar 'lieutenant', the present analysis will use the latter. Incidentally, the choice of the term 'lieutenant' (or even 'lieutenant-general') should underline even further the novelty of the term 'governor' for Robert, duke of Albany, during James I's captivity. In one sense, it is entirely understandable that *gubernator* was not used for Douglas, given that the king was both present and crowned, if a minor, but on the other, it may say something about the way in which his lieutenancy was conceived; if

Walter, earl of Atholl (who would have been the choice for such a role had he not been implicated, rather inconveniently, in James I's murder), Archibald, fifth earl of Douglas, was a natural choice in respect of his bloodline, kinship to James and status. Although equally, given that only a handful of the higher nobility either remained in Scotland or were of an age to occupy the office, Douglas was perhaps the only practical choice. Unfortunately, we have no record of the process or terms by which he was appointed—even the timing of his appointment remains an issue. It was previously thought that Douglas may not have assumed office until June or even July of 1437; Tanner has argued that his appointment dates to the parliament which began on 25 March 1437—James II's coronation parliament—because the earl must have been made lieutenant at some point before James Douglas of Balvenie was made earl of Avondale (before 10 May 1437).⁹⁵ But this is by no means certain. James II's first parliament was taken up with his coronation, where 'the three estates of the realm compearing at Edinburgh, all the earls, nobles and barons, and the freeholders, of the said kingdom coming to Edinburgh castle...lead forward our aforementioned lord king with great applause and pomp for the praise of God and gladness of all the people'.⁹⁶ The presence of 'all the earls, nobles and barons, etc.' was certainly an exaggeration. Because the formal requirement of a forty days' notice for a summons to parliament had not been observed, the assembly was very poorly attended. Yet the need for such an expedited assembly was based on nothing less than the clear re-establishment of royal authority and the continuity of the dynasty; the appointment of a lieutenant at the same gathering would arguably detract from, rather than enhance, this image. Furthermore, the trial and beheading of Atholl no doubt sent out a strong message that there was to be no doubt of James II's position as king. Instead, there are good reasons to believe that the lieutenant's appointment may instead date to a general council

'lieutenant-general' was indeed the agreed-upon title, it implies that there was some element of debate over what powers the new lieutenant should hold. And indeed it has been argued the Douglas's lieutenancy was of a different sort than previous ones; less the lieutenant acting as the *gubernator*, but more the *locum-tenens* acting in dual authority with the 'three estates'.

⁹⁵ Tanner, *Scottish Parliament*, pp. 81, 84.

⁹⁶ *RPS*, 1437/3/2 [L: *Quo die comparentibus tribus statibus dicti regni apud Edinburgh', omnes comites, nobiles et barones ac liberetenentes dicti regni venientes ad castrum de Edinburgh, prefatum dominum nostrum regem cum maximo applausu et apparatu ad laudem Dei et leticiam totius populi ad monasterium Sancte Crucis de Edinburgh' pro corona regni Scotie ibidem suscipienda solempniter produxerunt*].

which met at Stirling on 6 May 1437.⁹⁷ As Christine McGladdery points out, ‘this was arguably a more representative body than the hastily assembled March parliament, and the arrest of Robert Graham would have created a far stronger sense of security and stability’.⁹⁸ Regrettably, there is no extant legislation which can definitively be dated to this assembly, and, as with the March parliament, there is no direct mention of a lieutenant. However, the balance of evidence suggests that an act concerning revocations of alienations since the death of James I was made at this assembly.⁹⁹ This act is of considerable interest for what it reveals about the structure of governance at this point, and is certainly worth quoting in full:

Item the generale consale, that is to say the clergy, barounis ande commissaris of burowis beande in this generale consale, *be ane assent, nane discrepant, and weill avysit*, has deliveryt and revokyt all alienatiounis, alsueill of landis and possessiounis as of movabill gudis, that war in his fadiris possessiounis, quham Gode assoilye, the tyme of his decese, *gewyn and maide without the awyse and consent of the thre estatis*, and has ordanyt that ane inventare be maide of all gudis in to depoise belangand to the king be thame that best knawys the sammyn gudis. Ande at this inventare be kept to the kingis age. *And it is ordanyt be maide a statute that na landis nor possessiounis pertenying to the king be gewyn or grantyt till ony man without the avyse and consent of the thre estatis of the realme* on to the tyme of his aige of xxj yere. And gif it happynnis ony sik alienatiounis to be maide in hindering of the croune, that salbe of nane awaill, forse nor effek, etc.¹⁰⁰

⁹⁷ Tanner, *Scottish Parliament*, p. 280.

⁹⁸ McGladdery, *James II*, p. 16.

⁹⁹ *RPS*, JamII/1, n. 1. The dating of the act has been a matter of some disagreement. Tanner places it at the general council meeting which began on 20 March 1438; the editors of *RPS*, however, have placed it in 1437, and suggest that it was on balance, probably from the 6 May general council in that year. As Tanner himself states, ‘it seems unlikely that the ruling faction would have voluntarily placed such stringent restrictions upon itself. Therefore some genuine consensus among the Three Estates probably best explains the act’s creation’. If we are to accept this assessment, the general council of 6 May provides a better home for the act; there was still a need to promote (and therefore protect) James II’s future rule, and if Douglas did indeed receive his appointment as lieutenant at this assembly, from the representatives of the three estates gathered there, he would not have been in a strong position to oppose this act (if indeed he wished to) (McGladdery, *James II*, p. 32, n. 18; cf. Tanner, *Scottish Parliament*, pp. 86–7).

¹⁰⁰ *RPS*, JamII/1; *RPS*, 1437/5/1 [emphasis added].

The act itself represents a clear and uncompromising attempt to protect the rights and possessions of the crown until James II reached his majority; in the context of the efforts made since James II's death to solidify the continuation of the dynasty, and because James II's minority was going to be a protracted affair, this effort is entirely unsurprising. What is striking, though, is the extent to which ideas of counsel and communitarian authority were articulated—repeatedly—throughout the document. After the uncertainty and discord in the immediate aftermath of James I's death, the framers of this article were at pains to underscore the unanimity ('ane assent, nane discrepant') of the new king's subjects, as well as the representativeness of the 'general council' that ordained it. In terms of counsel, we have two very interesting references: the first mention of advice emphasises not simply that the 'clergy, barons and burgh commissioners being in this general council' had taken counsel, but that they were 'weill avysit' in the making of their decision; the second stands at a direct contrast to the first, for it directly states that James I, 'quham Gode assoilye', made alienations 'without the awyse and consent of the thre estatis'. In part, this accusation may have been intended to provide an extra layer of justification for the act, but the effect is one of criticism of the old king's governance, with the added implication that it was the 'three estates' who knew what was best for the kingdom. This strong invocation of counsel and consent was accompanied by an equally strong assertion of parliamentary rights and communal authority. It was by the authority of 'the generale consale', that these alienations were 'deliveryt and revokyt', and 'ordanyt' the inventory to be made 'be thame that best knawys', and, more strikingly still, future restrictions subject to communal authority were placed upon those who were to exercise royal authority on behalf of the king (i.e. the lieutenant) in future, with the order that 'na landis nor possessiounis pertenyng to the king be gewyn or grantyt till ony man without the avyse and consent of the thre estatis of the realme'.¹⁰¹ That conciliar ideas and principles were not solely used in the context of representative assemblies—to give a 'façade of legitimacy' or to rubber-stamp decisions—is suggested by the apparent existence of an institutional minority council (populated largely with the men who, under James II, continued to occupy the administrative positions they had served in during the reign of James I), which is referred to alongside the lieutenant in the few extant documents from his lieutenancy. On 24 December 1438, for instance, an act against 'open and public reif or spolitation' was 'concordyt and ordanyt, delyverit and decreyttit be the

¹⁰¹ *RPS*, JamII/1.

lyeutenand and the consall haldin at Edinburgh'.¹⁰² It seems unlikely that this was a novel development—there are similar references to governor and council during the governorship of the duke of Albany. Nonetheless, here a very different style of governance for James II's minority was being strongly emphasized (and on occasion, explicitly contrasted with that of James I) through both the language of and the institutions of counsel.

The political situation changed entirely with the death of the earl of Douglas on 26 June 1439, and, shortly afterwards, the formal removal of James II from Joan Beaufort's charge. Douglas's death once again opened up the question of who was to direct Scotland's governance. No new lieutenant was appointed for the remainder of James II's minority—a fact that probably had much more to do with the fast pace of events after Douglas's death, and the consequences which stemmed from those events, than anything else. In a move which recalls the events of 1437, Joan moved to secure possession of her son (who appears to have been in Edinburgh around the time of the lieutenant's death) and returned him to Stirling.¹⁰³ Such moves may have been viewed as ominous, especially by the chancellor, William Crichton, and James 'the Gross', earl of Avondale. But the event which sparked the backlash against Joan's efforts to consolidate power was her marriage to James Stewart, the 'Black Knight' of Lorne, in August 1439.¹⁰⁴ The only source which describes the event is the fragmentary and anonymous Auchinleck chronicle, nonetheless the fullest contemporary chronicle for the reign of James II. From the one curt extract which provides some detail for the incident, we learn that:

'That samyn yere the third day of august The lord calendar Sir alexander levingstoun that tyeme beand in the castell of sterling with the qwene / Tuke the qwene and put hire in ane chalmere and kepit hir stratlye thairin / til scho was lowsit be the thre estatis at the counsall halden at striuling that samyn yere the last day of august and that saem tyme he tuke Sir Iames steward the brother of lornis brother & William stewart & put tham in pittis & bollit thaim / at that samyn counsall Sir Iames was borowit be the lord gourdon Sir alex Setoune lord

¹⁰² *RPS*, A1438/12/1.

¹⁰³ McGladdery, *James II*, pp. 22–23.

¹⁰⁴ McGladdery, *James II*, p. 23.

of the ylis Sir William fo crechtoun that tyme chancellor vnder
the pance of thre thousand.¹⁰⁵

We are surely missing a great deal of crucial information regarding the events that transpired between Joan's marriage and the Stirling general council, which began on 4 September 1439, at which James II was removed from the tutelage of his mother and placed in the keepership of the Livingstons.¹⁰⁶ Joan and her captors were supposedly reconciled by an 'appoyntment' made at this assembly, but the agreement was clearly forced upon the queen. The general assembly was a thoroughly partisan affair, packed full of Livingston supporters and the queen's opponents; its purpose was surely, as Brown says, 'to legitimise the settlement imposed on the captive queen'.¹⁰⁷ The language used in the agreement, and the way in which it was framed certainly supports this assessment; it was concluded, unsurprisingly, 'with the avyse and the consent of the thre estatis beand thare in the generale counsele there haldin and gaderit'.¹⁰⁸ The agreement drew upon a number of different ideas to legitimise the actions of the Livingstons—a strategy which, although it was surely not intended to, also reveals some of their key concerns. The first item, for instance, was not just concerned with promoting the image of a cordial relationship between the Queen and the Livingstons (lest she become, one assumes, a figure around which dissenters to the new regime could rally). Alexander Livingston and his adherents also demonstrate a concern for their 'fame and worschip'.¹⁰⁹ They were therefore keen to promote the fiction that 'quhat thing the saidis personis did in that matter touching hir thai dide it of gude zele and motife and of grete truth and leaute that was in tham, bath to our soveryne lord the king and his sawfte, and to the said princess in her worschip'.¹¹⁰ In other words, their actions were being presented within the ideological framework of a subject's duties and obligations to the crown, 'doand that thing as trew liegis aw to do for thair

¹⁰⁵ *Chron. Auchinleck*, p. 261 (f. 109r).

¹⁰⁶ *RPS*, 1439/9/1.

¹⁰⁷ Brown, 'Public Authority and Factional Conflict', p. 131.

¹⁰⁸ *RPS*, 1439/9/1.

¹⁰⁹ *RPS*, 1439/9/1.

¹¹⁰ *RPS*, 1439/9/1.

soveryne lord'.¹¹¹ Unsurprisingly, it was recorded that the queen fully accepted these justifications—after having 'with hir counsele has ripely examinitt and discussitt the caussis and the motyvis'.¹¹² Good counsel, then, was also used to legitimize further the queen's response. Even the article which concerned 'the declaracione of the fame and worschip of the said princess' provided an opportunity for the Livingstons to cast their actions as being not only 'for the safety of our sovereign lord, [and] the worship of her person', but also 'the common gude of the reame'.¹¹³ Such niceties having been concluded, the appointment moved on to the important matter at hand: possession of the king. Joan, 'be the avyse of the saidis thre estatis committit to the said Sir Alexanderis keping our saidis soveryne lord the king hir derrast son unto the time of his age'.¹¹⁴ That the most important article in the agreement drew upon the communitarian language of the 'three estates' is unsurprising; moreover, a long list of signatures, divided into the representatives of the prelates, barons and burgh commissioners, was designed to lend weight to this assertion of communal authority.¹¹⁵

Of course, it is precisely this list of signatures that tells us that this assembly was being appropriated for partisan ends.¹¹⁶ The 'appoyntment' of 1439 provides a good standpoint from which to view meetings of representative assemblies over the course of James II's minority (and indeed more broadly). The 'appointment' amply demonstrates that the language of counsel and the idea of community could be used, as in Ireland, to promote an image of unity and consensus that was designed to disguise the existence of conflict and resistance. There is little value in trying to ascertain whether the 'Three Estates' were at various times 'strong', 'weak', 'dominated' or 'assertive'—to do so seriously risks ascribing to the diverse, varied and oft-changing body of men who attended parliaments and general councils a non-existent institutional uniformity, homogeneity and, above all, stasis. Rather, representative assemblies provided a means by which kings (or those wielding royal power) could

¹¹¹ *RPS*, 1439/9/1.

¹¹² *RPS*, 1439/9/1.

¹¹³ *RPS*, 1439/9/1.

¹¹⁴ *RPS*, 1439/9/1.

¹¹⁵ *RPS*, 1439/9/1.

¹¹⁶ Tanner, *Scottish Parliament*, p. 92.

negotiate the exercise of that power and authority: a process which, whether it was characterised by resistance or compliance, and so on, was conducted within the framework of a political thought at which ideas of counsel and community lay at the centre.

PART III

REPRESENTATION

Constructing Political Solidarities

The ship on which Theseus sailed...was preserved by the Athenians down to the time of Demetrius Phalereus. They took away the old timbers from time to time, and put new and sound ones in their places, so that the vessel became a standing illustration for the philosophers in the mooted question of growth, some declaring that it remained the same, others that it was not the same vessel.

Plutarch, *Vita Thesei*, 22:23¹

WITH THE FIFTEENTH-CENTURY translation of Plutarch's *Lives* into Latin (and indeed the subsequent popularity of these translations), it is quite possible that not only medieval scholars, but also elements of a broader readership pondered the thought-experiment of Theseus's ship.² Its inclusion here, though, is intended to suggest to the present reader a particular question—or, rather, consideration—to keep in mind over the course of the following two chapters. Much of what follows is concerned with tracing modalities and changes in political language, and relating these changes to the 'phenomenon' of community and communal authority which has been addressed thus far. By comparison to treatment in Chapters 1–4, discussion in the final two chapters of this thesis ranges more broadly in analysing how the idea of 'community' and communal authority was expressed and used in medieval Scotland and Ireland. The conundrum posed by the ship of Theseus serves as a reminder that we must continue to approach carefully the analytical category of 'political community'—especially one with a parliamentary focus. One congenit question to ask might be whether such a 'political community' can be said to have an enduring character when not only the personnel, but also the language and even ideas through which the concept of community was expressed, changed significantly over time.

¹ Plutarch, 'Vita Thesei', in *Plutarch's Lives*, Vol. I, ed and trans. B. Perrin (London, 1914; repr. 1967), pp. 48–9.

² M. Pade, 'The Reception of Plutarch from Antiquity to the Italian Renaissance', in M. Beck (ed.), *A Companion to Plutarch* (Chichester, 2014), pp. 531–544, pp. 538–42.

Certain developments in the historiography of the English parliament may serve as a useful illustration of this problem.³ Historians of the English parliament have long been concerned with the question of who, or what groups, might have constituted the ‘political community’ suggested in the ‘community of the realm’ formula, as well as the related question of how the ‘make-up’ of such a community changed over time. Recent scholarship on political life in later medieval England has highlighted the extent to which the later medieval English polity can be conceptualised in terms of the model of the Habermasian ‘public sphere’.⁴ Application of this early-modern model to England in the later Middle Ages has allowed historians to confront an old issue in a new way: namely, the extent to which particular social groupings within this ‘political community’ had a voice, and were capable of using it to engage in dialogue (or political exchange) with the ruling elite.⁵ Historians who wish to answer these questions will find themselves engaged in a debate with a long intellectual heritage. In particular, the difference (or equivalence) between the commons of the English parliament and a wider ‘political community’ has attracted sustained interest; this has been reflected in debates as to why and how the language of community developed from its initial use in the thirteenth century to later (more classist) applications in the early-modern period.⁶

Parliamentary historians of medieval England recognise that where the word ‘community’ arose in thirteenth-century political discourse, it referred not to the knights and burgesses of the later parliamentary ‘commons’, but was instead associated chiefly with the nobility. It has been suggested by some that the idea of ‘community’ gained traction in England through its use by members of the baronial

³ The overview which follows sketches in crude strokes a much more nuanced historiography, but some of the issues regarding the political language of fifteenth-century English parliaments raised in the following paragraphs will be addressed in the course of Chapter 5.

⁴ See J. Watts, ‘The Pressure of the Public on Later Medieval Politics’, in L. Clarke and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 159–180; D. Grummit, ‘Parliament, War and the Public Sphere in Late Medieval England’, in M. Damen, J. Haemers and A.J. Mann (eds), *Political Representation: Communities, Ideas and institutions in Europe, c. 1200–c.1690* (Leiden, 2018), pp. 267–84;

⁵ Grummit, ‘Parliament, War and the Public Sphere’, p. 265.

⁶ See especially Ormrod, ‘Political Language’; and J. Watts, ‘Public or Plebs: The Changing Meaning of ‘The Commons’, 1381–1549’, in H. Pryce and J. Watts (eds), *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007), pp. 242–260.

opposition to Henry III, which culminated in the Provisions of Oxford of 1258.⁷ Recalling the wording in the Provisions, Michael Prestwich argued that the magnates who opposed Henry III and Edward I successfully identified themselves with the ‘community of England’, and that the Provisions of Oxford demonstrate the extent to which the magnates were able to speak on behalf of the ‘community’ as a whole.⁸ But over the course of the following fifty years, Prestwich argued, the language of ‘community’ was co-opted by the crown, such that by the 1320s ‘it was the king, more than the magnates, who used it.’⁹ It was from this point in the late-thirteenth century, the formula ‘community of the realm’ [L: *communitas regni*] began to appear with considerable frequency in the records of the medieval English parliament.

What exactly we are supposed to understand by the phrase ‘community of the realm’ has been much debated.¹⁰ One approach taken to answer this question involves identifying the social groups who were actually present within English parliaments. According to this reading, the ‘community of the realm’ was understood to have encompassed the earls and barons, and probably the primary prelates of the land at the beginning of the fourteenth century in England.¹¹ According to the editors of the *Parliament Rolls of Medieval England*, the ‘community’ during the reign of Edward II ‘was to all intents and purposes the magnates...speaking for themselves but also beginning to take into account the interests and grievances of a wider political community’.¹² But what was this ‘wider “political community”’? Did this refer to the knights and burgesses, who were frequently in attendance at parliaments in this period, or are we to understand it in the sense of a ‘totality’ of people who might have had a stake in the governance of the kingdom? If the same approach is to be

⁷ W.M. Ormrod, *Political Life in Medieval England, 1300–1450* (Basingstoke, 1995), p. 32; Prestwich, ‘Parliament and Community’, p. 6.

⁸ *Documents of the Baronial Movement of Reform and Rebellion, 1258–1267*, ed. R.F. Treharne & I.J. Sanders (Oxford, 1973), pp. 100–1; Prestwich, ‘Parliament and Community’, p. 5.

⁹ Prestwich, ‘Parliament and Community’, p. 7.

¹⁰ For instance, in an early iteration of this debate, G.O. Sayles wrote that ‘the ‘community of the realm’ is present in parliament in the persons of those whom the king has thought fit to summon for consultation. The phrase covers knights and burgesses if they are present, but their absence...did not remove, any more than the absence of the lower clergy, the ‘community of the realm’ from [the] assembly’ (G.O. Sayles, *The King’s Parliament of England* (London, 1975), pp. 105–6).

¹¹ C. Given-Wilson, ‘General Introduction’, *PROME*.

¹² C. Given-Wilson, ‘General Introduction’, *PROME*.

maintained, then at which point could the magnates no longer profess to be the ‘mouthpiece of the community’? Older interpretations tended to search for specific junctures at which significant political events were assumed to have triggered such a change. George Sayles, for example, identified such a juncture in 1311.¹³ The Ordinances of 1311—a series of restrictive measures imposed by members of the nobility and upper clergy upon Edward II in the wake of his military failures in Scotland and inept governance in England—allowed the baronage to judge petitions from the ‘community’ in parliament.¹⁴ The problem, according to Sayles, was that the baronage ‘could no longer be regarded as the mouthpiece of the community, presenting petitions in its name, for they now heard such petitions in their new role as judges.’¹⁵ In Sayles’s analysis, the scope of the ‘community of the realm’ therefore expanded, and came to include—in a sense—the knights and burgesses who might bring such petitions for judgement in parliament.¹⁶ We are assured by Sayles that this was no more than an ‘accidental consequence’ of the political upheaval in 1310–1311, and that in the main, the ‘community of the realm’ was a concept still chiefly associated with the nobility.

The ‘accidental nature’ of this development notwithstanding, it seems to have had far-reaching consequences. Edward II repudiated the Ordinances of 1311 with the Statute of York in 1322, which established that:

‘the things which are to be established for the estate of our lord the king and of his heirs and of the estate of the realm shall be agreed, treated and established in parliaments by our lord the king and by the assent of the prelates, earls and barons and the commonalty of the realm as has been accustomed formerly’.¹⁷

Claims that the Statute consciously anticipated the ‘commons’ under Edward III have been shown to be anachronistic; as Phillips put it, ‘Edward II was trying to turn the clock back to before 1310–11’, not engage in some sort of constitutional project to

¹³ G. O. Sayles, *The Functions of the Medieval Parliament of England* (London, 1988), p. 43.

¹⁴ *English Historical Documents, 1189–1327*, ed H. Rothwell (London, 1975), pp. 527–39.

¹⁵ Sayles, *Functions*, pp. 43–4.

¹⁶ Sayles, *Functions*, p. 44.

¹⁷ *English Historical Documents, 1189–1327*, pp. 543–4.

enhance the communal authority of parliament.’¹⁸ Even if the ‘assent of the community of the realm’ did not specifically mean the assent of the knights of the shire and burgesses, however, that does not necessarily mean that the Statute then merely described the ‘normal functioning of government at any time in the preceding twenty years’, and still less that it was ‘a redundant expression, which could be inserted or left out at the pleasure of a clerk.’¹⁹ The use to which the phrase ‘community of the realm’ was put *had* changed since the beginning of the century: the movement of the nobility in parliament toward distancing themselves from speaking ‘as’ or ‘on behalf of’ the ‘community’ is illustrative of this change. Prestwich noted this movement from as early as the 1290s (he cites one example where the magnates granted to the king an aid for the marriage of his daughter ‘for themselves and on behalf of the community of the whole realm, insofar as it is within their power’); it was well-established by the time of the Statute of York.²⁰ By the time of Edward III, the idea of ‘community’ was being expressed in a markedly different way in parliamentary discourse. In part, this is reflected in the emergence of the common petition during the reign of Edward III. Petitions from either private individuals, or (significantly) urban or county communities were amalgamated into ‘common’ petitions which presented discrete issues comprehensively, although Prestwich advises that ‘a common petition might not necessarily be put forward by a whole body of representatives in parliament acting in a corporate sense as the community of the realm’.²¹ Evidently the language of ‘community’ had undergone another shift in emphasis; it was now more closely associated with quite a different section of society.

Did this broadening understanding of community come to be most closely associated with the knights and burgesses, independent of the magnates, in the latter half of the fourteenth century?²² For some historians, the answer to this question lay in the issue of taxation, and the extent to which ‘representatives’ could exercise the

¹⁸ J.R.S. Phillips, *PROME*, Introduction, May 1322.

¹⁹ J.R. Strayer, ‘The Statute of York and the Community of the Realm’, *American Historical Review*, 47:1 (1941), pp. 1–22, pp. 4, 21.

²⁰ Prestwich, ‘Parliament and Community’, p. 7; *PROME*, Edward I: Parliament, item 20.

²¹ Prestwich, ‘Parliament and Community’, p. 14. This has been discussed in more detail by Gwilym Dodd (Dodd, *Justice and Grace*, pp. 260–5).

²² J. Watts, ‘The Pressure of the Public on Later Medieval Politics’, in L. Clarke and C. Carpenter (eds), *Political Culture in Late Medieval Britain* (Woodbridge, 2004), pp. 159–180, p. 162.

right to consent to taxation on behalf of their ‘communities’. In England, the requirement for the consent of the ‘community’ to necessary taxation was well-established by the fourteenth century—although how far ‘consent’ might have extended to ‘refusal’ has been debated.²³ Crucially, while ‘who’ might have constituted the ‘community’ changed over the course of a half-century or more, the requirement for consent to extraordinary taxation remained—indeed, medieval political theorists became increasingly concerned with issues of consent over the course of the thirteenth century.²⁴ Yet just as this notion of ‘community’ was undergoing such a transition during the reign of Edward II, war with Scotland was once again beginning to place financial pressure upon the crown.²⁵ By 1327 the body known as the ‘Commons’ had become institutionalised within parliament. Surviving petitions clearly indicate the separation between the ‘earls, barons and prelates’ on one hand, and the ‘community’ on the other. The reign of Edward III saw the beginning of the Hundred Years War, where costly conflicts with both France and Scotland placed even more financial strain upon the kingdom; it is generally agreed that the reign of Edward III defined the period in which the English ‘Commons’ emerged as a body of real political significance.

The question would *seem* to be whether or not the phrase ‘community of the realm’ was used to indicate the same collectivity as the term ‘commons’ from the mid-fourteenth century, but at this very juncture the phrase ‘community of the realm’ began to fall out of use in parliamentary discourse (although certainly it did not disappear entirely, by comparison with the word ‘community’ in Scottish representative assemblies after 1424). This formula was, in the main, supplanted by the term ‘community’. However, even a cursory glance at the parliaments rolls for the late-fourteenth and fifteenth century indicate that the ‘community’ being referred to was ‘represented’ in parliament by the ‘Commons’. But who was included in the community now being represented? Did ‘community’ imply—in the words of John Watts—the ‘political whole’ or the ‘lower-class mass’?²⁶ How do we identify the group or groups

²³ See G.L. Harris, *King, Parliament, and Public Finance in Medieval England to 1369* (Oxford, 1975), pp. 27–48; Clarke, *Representation and Consent*, pp. 256–9.

²⁴ Clarke, *Representation and Consent*, pp. 256–76.

²⁵ Harris, *Public Finance*, pp. 86–7.

²⁶ Watts, ‘Pressure of the Public’, p. 162.

which made up the ‘community’ represented by the commons in parliament? And what significance can we then accord to this ‘community’?

Part of the difficulty in answering these questions lies in the fact that—in England, at least—‘a significant reorientation of political language was taking place’ in the long fifteenth century.²⁷ John Watts has written extensively about this phenomenon, and has emphasised in his work the extent to which changes in language could impact upon the participation (or not) of people in structures of governance. The crux of his argument is as follows: in the fourteenth century communitarian language did not initially possess any ‘lower class’ connotations—or indeed, *any* class connotations—and was frequently used as a ‘term of political legitimacy, not a description of social status’. By the end of the fifteenth century, however, the term ‘commons’ was becoming much more closely associated with the ‘lower orders’ outside of the specific circumstances of parliament.²⁸ Watts has explored this change through examination of popular insurrections in which the participants justified their actions using the language of community; most notably, the Peasants’ Revolt of 1381, and Jack Cade’s rebellion of 1450. The events of 1381—described by Mark Ormrod as ‘arguably the most serious threat ever posed to the stability of the English government in the course of the Middle Ages’—are significant. It is at this point that Watts suggests the lower orders of English society ‘pushed their way into the political community and stayed there’.²⁹ Both Watts and Ormrod emphasised the identification of the participants of the rebellion as the ‘commons’ or ‘community’, and the significance of debates about the ‘common profit/good’ which took place around the rebellion.³⁰ Watts argues that the rebels’ decision to identify as the ‘commons’ was crucial, because the legitimizing qualities of ‘common’ language was something that contemporaries could understand. Their identification as the commons ‘made them part of the *communitas regni*, whose interests were recognised to be the purpose of all government, and whose capacity to speak for itself was such a cherished feature of English political arrangements’.³¹ The

²⁷ Watts, ‘Public or Plebs’, p. 253.

²⁸ Watts, ‘Public or Plebs’, pp. 244, 246, 253–4.

²⁹ W.M. Ormrod, ‘The Peasants’ Revolt and the Government of England’, *Journal of British Studies*, 29:1 (1990), pp. 1–30, p. 1; Watts, ‘Public or Plebs’, p. 254.

³⁰ Watts, ‘Public or Plebs’, p. 249–50; Ormrod, ‘Common Profit’, p. 241.

³¹ Watts, ‘Public or Plebs’, p. 250.

fact that the ‘lower orders’ were actively self-identifying as the ‘commons’ (in the sense of the ‘community of the realm’) and, moreover, had actively employed this idea in order to achieve their political ends, was significant. It meant that when Jack Cade’s rebellion of 1450 took place, the claim of the rebels to represent the community—the ‘commons’—was relatively uncontroversial.³² The problem for the ‘lower orders’ was that just as they were coming to be identified with the ‘community’ (in the sense of a broader ‘public’, *à la* the Habermasian public sphere), concurrently, the terminology of the ‘commons’ was becoming *less* associated with communitarian ideas about governance and legitimacy. This is articulated in a movement away from the ‘commons’ terminology in the latter part of the fifteenth century, with ‘subjects’, ‘lieges’, ‘of whatever degree and condition’, increasingly used in the official records to indicate the lower sections of society.³³ Watts argues that this effectively excluded these groups from a meaningful role in the political discourse (and even the political community) only a relatively short while after their inclusion.³⁴

While implicit in much of the preceding discussion, the concept around which Part III of this thesis is organised—representation—has not yet been addressed explicitly. Medieval notions of ‘representation’, as the preceding discussion shows, were very different from modern ideas of parliamentary representation. To state this is merely to reiterate a point emphasized by Susan Reynolds.³⁵ The *legitimacy* of communal authority derived from the ability of a select—but, crucially, as we shall see, mutable—body of people to speak for, or act on behalf of, a larger whole, who were conceptualised in terms of a cohesive ‘community’, or *universitas*. For English parliaments, at least, this particular dynamic of representation was expressed with unusual clarity in a record which described the speech made in January 1427 by Henry Chichele, archbishop of Canterbury, to the Commons.³⁶ At the close of the account, it was recorded that ‘the community of the realm, *or rather those men who represented the community of the realm*, stayed on and discussed the matter declared to them’.³⁷ It is

³² Watts, ‘Public or Plebs’, p. 250.

³³ Watts, ‘Public or Plebs’, p. 256.

³⁴ Watts, ‘Public or Plebs’, p. 254.

³⁵ Reynolds, *Kingdoms and Communities*, p. 250.

³⁶ *PROME*, Henry VI: Appendix 1427.

³⁷ *PROME*, Henry VI: Appendix 1427 [emphasis added].

hard to know what to make of this little qualification, with respect to why it was included, but it certainly has the value of illustrating how the concept of representation could operate in practice. It also demonstrates that the *communitas regni* formula continued to have purchase in English assemblies long after it had been replaced in Scotland. Germanely, it bears noting that one important development within the late medieval English parliament has not yet received the attention it deserves. This concerns the emergence of a new strand of political language through which the idea of communal authority was invoked: that of ‘estates’. The increasing association of familiar, established communitarian formulae—like the terms ‘community of the realm/kingdom’—with a lower-class mass may have stimulated English parliamentarians to adopt new language by which a distinct (and, in a sense, more restrictive) political solidarity could be articulated. More detailed exposition of these developments, however, is better located within discussion of Irish parliaments and political culture in the mid-fifteenth century; its significance is better appreciated in comparative context with contemporary developments in Irish and Scottish representative assemblies.

The concept of representation as an analytical category also deserves comment. Much of the following discussion has been informed by the work of political scientist Michael Saward.³⁸ Saward suggests a very different way of approaching the phenomenon of political representation than historians, particularly of medieval representative assemblies, have tended to adopt.³⁹ Saward’s views will be discussed in particular detail in Chapter 6, but, in brief, he suggests that instead of viewing ‘representation’ as a ‘fact’, it is more helpful to consider ‘representation’ as a type of ‘claim’, which could therefore be asserted and, crucially, contested.⁴⁰ Saward’s approach is particularly appropriate for the focus of the final two chapters of this thesis, which are concerned with ‘political solidarities’. ‘Solidarities’ is a term borrowed from Susan Reynolds, who used the phrase ‘regnal solidarities’ to link together discussion of the ‘nature of representation’

³⁸ Saward, M., ‘The Representative Claim’, *Contemporary Political Theory*, 5 (2006), pp. 297–318.

³⁹ A notable exception may be seen in Tim Neu’s recent survey, in which Neu explicitly adopts Saward’s framework. See Tim Neu, ‘Speaking in the Name of: Collective Actions, Claim-Making, and the Development of Pre-modern Representative Institutions’, in M. Damen, J. Haemers and A.J. Mann (eds), *Political Representation: Communities, Ideas and Institutions in Europe, c. 1200–c. 1690* (Leiden, 2018), pp. 106–121.

⁴⁰ Saward, ‘Representative Claim’, p. 297.

and the ‘objectives of consultative procedures’ in her study of the ‘community of the realm’.⁴¹ The formula is slightly adapted here—‘political solidarities’ is preferred over ‘regal solidarities’, so as to better open up this analytical category for use in English Ireland, as well as Scotland and England—and the way in which ‘political solidarities’ are conceived here will also diverge somewhat from Reynolds’ (admittedly rather undefined) usage. The utility of the term ‘solidarity’ is that it allows certain important distinctions to be made in a study which is explicitly focused on analysing *communitarian* terminology and language. Both terms can imply (in an analytical sense) a collective political unit, or a sense of unity grounded in mutual association, or even a feeling of belonging. But, perhaps arguably, ‘solidarity’ implies *action* in a way that ‘community’ does not. Furthermore, ‘communities’ are often implicitly treated as either pre-formed or enduring, the product of shared identities, beliefs or other characteristics that tend to be relatively static. There is less of a sense of permanence in the idea of political solidarity: ‘solidarities’ can be created as well as expressed, formed and then re-formed, invoked and then disbanded. As such, analysis remains focused upon the *dynamics* of political life—that is, less concerned with the question of who, or what groups, might be considered as part of the ‘political community’ and more with how the ideas and rhetoric of community and communal authority could be used as political tools. The organising theme of ‘constructing political solidarities’ therefore informs the following discussion on how fifteenth-century parliamentarians—as well as ruling elites—in Ireland and Scotland used a *range* of political ideas and concepts to advance particular ideas of solidarity, and latterly, how these actors then employed such ideas in pursuit of specific

⁴¹ Reynolds, *Kingdoms and Communities*, p. 250.

Corporate Ideology and the Body Politic in Ireland

IN THE AUTUMN of 1459, Richard, duke of York, set foot in Ireland for the second—and last—time in his political career.¹ The circumstances surrounding his return to the island were very different from those of his first stay, nearly a decade previously. On that occasion, York had landed at Howth on 6 July 1449 to ‘grete glory and pomp’, having been appointed as lieutenant on 30 July 1447 for a term of ten years.² Although he spent barely a year actively heading the Dublin administration, the duke had managed to build up a broad base of support in the colony. He was no doubt assisted, at least in part, by his high noble rank, his status as a powerful landowner in Ireland (through the Mortimer inheritance) as well as England, and probably also by his distance from the Talbot-Ormond conflict (which had only recently been reconciled by the marriage between the earl of Ormond’s daughter, Elizabeth, and John Talbot’s heir *circa* 1444).³ But there is much to suggest that York’s support in Ireland also grew as a consequence of his proactive style of governance: namely, his efforts in building a large network of patronage amongst the English of Ireland, and his practical military successes in gaining the submissions of a number of Gaelic Irish chiefs from 1449–1450.⁴ By contrast, in 1459, having chosen to flee rather than engage with the Lancastrian forces assembled under the king’s banners at Ludlow Bridge on 12 October, York arrived in Ireland a political refugee, accompanied by only a fraction of

¹ For a political biography see P.A. Johnson, *Duke Richard of York, 1411–1460* (Oxford, 1988). For York in Ireland see V. Gorman, ‘Richard, Duke of York, and the Development of an Irish Faction’, *Proceedings of the Royal Irish Academy*, 85: C (1985), pp. 169–179; E. Curtis, ‘Richard, Duke of York, as Viceroy of Ireland, 1447–1460: with Unpublished Materials for his Relations with the Native Chiefs’, in P. Crooks (ed.), *Government, War and Society in Medieval Ireland* (Dublin, 2008), pp. 232–259. For Yorkist Ireland more broadly see Otway-Ruthven, *Medieval Ireland*, pp. 377–408; S.G. Ellis, ‘Parliament and Community in Yorkist and Tudor Ireland’, in A. Cosgrove and J.I. McGuire (eds), *Parliament and Community* (Dublin, 1981), pp. 43–68; A. Cosgrove, ‘Anglo-Ireland and the Yorkist Cause, 1447–60’, in A. Cosgrove (ed.) *A New History of Ireland, Vol. II: Medieval Ireland, 1169–1534* (Oxford, 1993); P. Crooks, ‘The Ascent and Descent of Desmond under Lancaster and York’, in P. Crooks and S. Duffy (eds), *The Geraldines and Medieval Ireland: The Making of a Myth* (Dublin, 2016), pp. 233–263.

² Gilbert, *Viceroy*, pp. 353, 582; PPC, vi, pp. 89–90.

³ Crooks, ‘James the Usurper’, p. 178; Gorman, ‘Irish Faction’, p. 169.

⁴ Gorman, ‘Irish Faction’, *passim*; Otway-Ruthven, *Medieval Ireland*, pp. 379–382.

his supporters and none of the higher-ranking nobles who were associated with the burgeoning Yorkist cause in England.⁵ But this was not how the duke was greeted upon his arrival by many of the English of Ireland (and, according to some sources, elements of the Gaelic Irish too).⁶ York himself, moreover, seems to have been sure that he would find both safety and support in Ireland. He was not wrong. Little over a month after his flight from England, York was once again actively governing as lieutenant.⁷ He would continue to do so even after the technical nullification of his lieutenancy (through the act of attainder made against him by the Coventry parliament of 20 November 1459), and the arrival of writs for his arrest in the colony.⁸ Thus, with York's arrival, the growing conflict centred upon Henry VI's inadequate kingship in England—which up to that point had had relatively little impact within the colony—spread across the Irish Sea.⁹ In Ireland, the Yorkist-Lancastrian conflict provided the catalyst for one of the most striking statements to appear in the fifteenth-century Irish parliamentary record, where it was written that:

‘The land of Ireland is and has at all times been corporate of itself, by the ancient laws and customs used in the same, freed of the burden of any special law of the realm of England, save only such laws as by the lords spiritual and temporal, and the commons of the said land, had been in great council or parliament there held, admitted, accepted, affirmed and proclaimed, according to sundry ancient statutes thereof’.¹⁰

This oft-quoted statement, which appeared in the body of legislation produced at the parliament that met at Drogheda before York on 8 February 1460, is well-known in the historiography of later medieval Ireland as the ‘Declaration of 1460’.¹¹ The ‘claim’ made in Article VI—that Ireland was ‘corporate of itself’—has been the subject

⁵ C. Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c. 1437–1509* (Cambridge, 1997), p. 145; Otway-Ruthven, *Medieval Ireland*, p. 386.

⁶ *Registrum abbatiae Johannis Whethamstede*, ed T.H. Riley (London, 1872), p. 367.

⁷ *CIRCLE*, PR 38 Hen. VI §1.

⁸ *PROME*, Hen. VI: Parliament November 1459, item 7; *Statutes, Henry VI*, ii, pp. 660–61.

⁹ See Carpenter, *Wars of the Roses*; Watts, *Politics of Kingship*.

¹⁰ *Statutes, Henry VI*, ii, pp. 644–5.

¹¹ *Statutes, Henry VI*, ii, pp. 638–9.

of a wide-ranging debate amongst historians of medieval Ireland, one which has touched upon not only the nature of English rule in Ireland (and its legal or 'constitutional' status in relation to England and the English crown) but also on questions of identity and community within the colony itself.¹² These questions proved to be divisive, for there has been a great deal of confusion over precisely what York and the men who had assembled at Drogheda in February 1460 wished to convey in this statement. For Edmund Curtis, the Declaration asserted the 'legislative and legal independence of Ireland' and demonstrated 'a complete separateness from England apart from the personal link of the crown'.¹³ Conversely, for H.G. Richardson and G.O. Sayles, the Declaration was 'a mere measure of protection devised by the lieutenant', with 'no basis in history'.¹⁴ Likewise, Jocelyn Otway-Ruthven considered it to be 'an aberration, not corresponding to any constitutional fact...with no validity in law or custom'.¹⁵ James Lydon, however, argued that there was 'some historical justification for the 1460 declaration', and that, regardless of the political agenda behind the claim, it 'had the effect of urging forward separation', and might therefore be regarded as the 'supreme example of Anglo-Irish separatism'.¹⁶

In many respects, though, following Art Cosgrove's essay on the Declaration of 1460 (which remains the fullest dedicated analysis of the subject), historians have not deviated much from the argument, roughly stated, that the declaration of 1460 asserted the 'legislative independence of the Irish parliament', and reflected a sense of 'separatism' (or particularism) in the identity of the English of Ireland.¹⁷ There is much to recommend this description, yet—if we are to take it as a guide to understanding either the structural or 'constitutional' status of the colony, or as a statement of the political identity of the English of Ireland—it paints only a partial picture. To understand what the invocation of corporate status for the land of Ireland really meant

¹² *Statutes, Henry VI*, ii, pp. 644–5.

¹³ Curtis, 'Richard, Duke of York', pp. 255, 256.

¹⁴ Richardson and Sayles, *Irish Parliament*, pp. 260, 263.

¹⁵ Otway-Ruthven, *Medieval Ireland*, p. 190.

¹⁶ J. Lydon, *The Lordship of Ireland in the Middle Ages* (Dublin, 1972), p. 206.

¹⁷ A. Cosgrove, 'Parliament and the Anglo-Irish Community: the Declaration of 1460', in A. Cosgrove and J.I. McGuire, *Parliament and Community: Historical Studies XVI* (Belfast, 1983), pp. 43–68, at pp. 26–27, *passim*.

to contemporaries in 1460—what this formula was being used to imply, how such a concept was understood to fit into the colonial structure of governance, and why it was necessary to invoke this particular political idea at that precise moment in time—we must delve deeper into the matrix of political ideas which had currency in Ireland (and, to a lesser extent, England) at that time. Moreover, we must locate these ideas and their application firmly in the context of events in the earlier and mid-fifteenth century. A central problem for historians is that packed into the ‘Declaration of 1460’ was not one ‘claim’, but rather *multiple* claims (which themselves speak to a variety of issues in the historiography of medieval Ireland), all woven together in a rich tapestry of ideas and concepts that was crafted with the solution of a particular problem—one rooted in the unusual political circumstances of York’s lieutenancy—in mind.¹⁸ Some of these claims were expressed in familiar language and ideas: others, however, involve the use of terminology and ideas that were not strictly ‘communitarian’ (in the sense that we have seen the term used thus far), but which nevertheless were—it shall be argued—designed to invoke certain notions of a distinct political ‘solidarity’. It is also highly important to note that, if we look at the Declaration of 1460 in the context of the legislation of the parliament of 1460 as a *whole* (rather than simply the clause in which the Declaration was contained), a matrix of ideas and principles were deployed and adapted to serve a range of political interests and objectives, rather than exclusively to pursue a single and unitary goal.

To fully appreciate the significance of these developments, it is worth highlighting some important historiographical themes and arguments which pertain to the Declaration of 1460. That varied interpretations of the historical subject matter at hand became explicitly linked with differing historical perspectives on the writing of medieval Irish history in the twentieth century only served to compound the problem of interpretation. Debate which centred upon the ‘nationalist’/‘revisionist’ writing of Irish history inflected the narrative frameworks and historical contexts in which historians chose to locate their analysis of the Declaration of 1460; so too did the percolation into Irish historiography of developments within the historiography of medieval England (in particular, the backlash against ‘whig’ constitutional history, and

¹⁸ Because it is so firmly established in the historiography, and thus for the sake of clarity, I have continued to use the phrase ‘Declaration of 1460’ to describe the clause quoted at the beginning of this chapter (generally in reference to the words ‘corporate of itself’), but it is worth noting that the descriptive phrase (not, after all, in contemporary usage) is somewhat misleading in this respect.

the movement toward social history inspired by K.B. McFarlane). Thus in 1986, S.G. Ellis chided Irish historians for their ‘preoccupation’ with moments of political crisis, which he viewed as obscuring ‘the essential harmony of crown-community relations’ (Ellis nevertheless saw in the episode of 1460 a way in which Richard of York could manipulate a ‘sense of regional identity’ to his own ends).¹⁹ No doubt as a consequence of these developments, later historians tended to approach the Declaration—both in historical and historiographical terms—more cautiously. Robin Frame, for instance, suggested that ‘more than almost any other’, the topic of whether English statutes were regarded as having force in Ireland—a central question in the debate over the 1460 Declaration, but one which arguably has been overstated in terms of its importance—‘tempts us to read history backwards’.²⁰ Seán Duffy warned that viewing ‘the 1460 declaration as part of a serious political movement reflecting ‘nationalist’ sentiment on the part of the Anglo-Irish would be to give it a status it does not deserve’; Duffy also argued—convincingly—that the ‘confusion’ over the ‘precise constitutional position of Ireland...allowed stances to be adopted when circumstances suited, stances which were not necessarily part of an established policy but rather spasmodic reactions against perceived misrule’.²¹ More recent comments (influenced by the ‘new constitutional history’) on the Declaration of 1460, however, suggest a very different framework for interpretation, one which takes into account wider trends and developments and contextualises the Declaration in terms of contemporary medieval ideas and political thought. Thus Ted Powell saw in the Declaration an ‘intriguing parallel usage’ of the term ‘corporate’ in the 1461 Act of Incorporation which annexed the duchy of Lancaster permanently to the crown; Powell suggested that the Irish parliament was ‘asserting that Ireland was a body politic in its own right and not merely a member or limb of the body politic of England’.²² Also drawing attention to the way in which

¹⁹ S.G. Ellis, ‘Nationalist Historiography and the English and Gaelic Worlds in the Late Middle Ages’, *Irish Historical Studies*, 25:97 (1986), pp. 1–18, at pp. 12, 16.

²⁰ R. Frame, ‘Les Engleys Nées en Irlande’: The English Political Identity in Medieval Ireland’, *Transactions of the Royal Historical Society*, 3 (1993), pp. 83–103, p. 99.

²¹ S. Duffy, *Ireland in the Middle Ages* (London, 1997), pp. 173–4. Duffy also observed that contemporary confusion over the ‘precise constitutional status of Ireland’ is ‘reflected in the different views which historians of the subject hold to this day’—a statement no less true today than in 1997.

²² T. Powell, ‘Body Politic and Body Corporate in the Fifteenth Century: The Case of the Duchy of Lancaster’, in B. Thompson and J. Watts (eds), *Political Society in Later Medieval England: A Festschrift for Christine Carpenter* (Woodbridge, 2015), pp. 166–183, at p. 176.

Ireland was conceptualised as a ‘body politic’, Peter Crooks recently argued that ‘the claim that Ireland was “corporate of itself” represents the apotheosis of one strand in Ireland’s development as a “regnal” polity’; he rightly drew attention to the clause asserting the ‘near-equivalence of a “realm” and a “land”’ which qualified the 1460 claim.²³ These more recent comments do provide an inroad into the present discussion, but to shed light on what was ‘going on’ in 1460, we must begin by unpicking some of the ideas invoked in this legislation. Only then can we begin to understand what ‘claims’ of representation were being made in Ireland around the time of the mid-fifteenth century.

I

Let us begin with the word ‘corporate’ [F: *corporate*] itself. This was very new addition to the political lexicon of fifteenth-century Ireland; I have not been able to locate the actual term ‘corporate’ as used in this sense in the extant parliamentary record prior to 1460.²⁴ The word ‘corporate’ was also employed in 1460 in a particularly unusual context: that of colonial Ireland’s unique structure of politics, comprising the relationship of the ‘land’ of Ireland to the ‘realm’ of England (incidentally a comparison—or perhaps, an equation—that was explicitly made in the parliamentary legislation of 1460) and the English crown.²⁵ The description of Ireland as ‘corporate of itself’ is striking, for in it we find not only a contemporary comment upon the relationship between crown and colony, but also a set of ideas about ‘lands’ and ‘kingdoms’—political units best described together using the broader term of ‘polities’—not often expressed by medieval writers, especially outside of a theoretical or literary context.²⁶ This is not to say, of course, that medieval people did not reflect

²³ P. Crooks, ‘The Structure of Politics in Theory and Practice, 1210–1541’, in B. Smith (ed.), *The Cambridge History of Ireland, Vol. I, 600–1550* (Cambridge, 2018), pp. 441–468, at p. 442–8.

²⁴ I have searched for the term in the medieval Irish parliamentary record (in addition to supplementary parliamentary material, chancery records and records of the Irish exchequer) in which the language of incorporation might be found, but have not yet been able to locate any further references to the term—certainly in the sense that it is seen here—prior to 1460.

²⁵ *Statutes, Henry VI*, ii, pp. 644–5.

²⁶ Watts, *Making of Polities*, pp. 379–80. Watts’ justification for using the term ‘polities’ instead of ‘states’ is threefold; firstly, that ‘polity’ emphasises political dialogue (i.e. between government and governed) more than the term ‘state’; secondly, that it has connotations of interdependency and ‘mutual action’; and finally, that it is free of the ‘emotional baggage associated with the rise of the

upon the shape of the societies and governments they lived within. But medieval theorists, as Anthony Black has suggested, tended to do so most explicitly at the moments when specific political circumstances coincided with issues which were raised in traditional texts, and even then, their focus was generally geared toward outlining 'ideals', as opposed to depicting the 'status quo'.²⁷ In this respect, then, the 'declaration' made on Ireland's 'status' in the 1460 legislation was doubly unusual; it appeared in a practical rather than theoretical context, and it was less an argument for an idealised 'status' than an attempt to delineate (however controversially) a political reality.

That said, it is worth digressing, at least briefly, in order to mention a case which, as has been noted before, in certain respects anticipated the assertion of corporate status made in the parliament at Drogheda in 1460. It was called before the Exchequer chamber in England in 1441, and touched directly upon the issue of Ireland's status in relation to the English crown. Notably, one of the justices presiding over the case was John Fortescue, whom we shall encounter later in this chapter. This case is principally of interest here, not so much because of the questions it raises about the nature of the 'constitutional' relationship between the colony and the crown, but because it prompted Irish parliamentarians to offer a confident (and highly indignant) defence of the authority and legitimacy of their representative assemblies in the colony, and, as such, may be said to anticipate some of the following themes which will arise below. Thus, at an assembly which met at Naas in 1447, it was recorded that:

'John Pilkington, imagining to annul all manner of parliaments and great council held in the said land, and all acts and statutes made in the same parliament or great council, contrary to the liberties, privileges and usages of the said land, has lodged a bill in a parliament now lately held at Westminster in England, reciting in the said bill that the said Justiciar of Ireland had not the power to summon or hold a parliament in the said land, or to make statutes or acts in the said land, but that the said parliament so held before the said justiciar of Ireland is only a great convocation called a

nation state'. For Watts, 'regnal' connotes a 'realm, in the sense of a sizeable territory under one government', with 'regnal polities' thus becoming the term that Watts uses to describe the territorial and political organisation of Europe after 1450, as opposed to the more loaded term of 'nation-state', with the associated and potentially problematic (for a pan-European narrative) concepts of nationalism, identity and ethnicity.

²⁷ Black, *Political Thought*, p. 3.

parliament, made amongst the men in Ireland to oust the power of our lord the King, and to annihilate in substance all letters patents made to men born in England, of any office in the said land of Ireland, with several other slanderous words and matters touching the parliament of the said land and the members of the same, of which matters some sound as treason to the said Justiciar, lords and commons of the said land'.²⁸

Pilkington's 'crime' inspired a vigorous defence:

'It is ordained and agreed by authority of the present parliament, the premises considered, that this act be part of the message to be sent to our lord the King in England, considering the sinister conceits of the said John Pilkington, and his crafty accusation of the same Justiciar and all the liege people of Ireland, contrary to fealty, in especial hurt to the privileges, liberties and usages of the said land, had and used without interruption from the conquest of the said land made by the most noble King Henry fitz Empress until the present.'²⁹

Here we see a highly confident assertion of the authority of Irish parliaments (which stands at marked contrast, incidentally, with the more oft-quoted arguments made by the legal minds who were considering this case in England's Exchequer court). Certainly by the mid-fifteenth century (but also, as we have seen in the preceding chapters, in the earlier fifteenth century too), Irish parliamentarians were highly conscious of the communal authority that was vested in colonial representative assemblies. In 1460, the claim to incorporation suggests a similar degree of confidence, and, more importantly, identification of the political community with the representative institutions of the English colony. Yet historians of the Declaration have long disputed, for instance, the validity of the claim that 'Ireland *is and has always been* corporate of itself...according to *sundry ancient statutes* thereof'.³⁰ To search for these reported precedents, however, is rather to miss the point. This appeal to ancient memory was a pre-emptive legitimizing strategy—an attempt to justify the 'constitutional' status of Ireland which was being outlined in the 1460 legislation, and

²⁸ *Statutes, Hen. VI*, ii, pp. 86–7.

²⁹ *Statutes, Hen. VI*, ii, pp. 86–7.

³⁰ *Statutes, Hen. VI*, ii, pp. 644–5.

to disguise the novelty of the language of incorporation used within it. Evidently, the framers of the 1460 legislation anticipated the possibility—even probability—that the claims made in the Drogheda parliament could be seriously challenged. And, given the unique structure of politics in Ireland coupled with the land's ambiguous relationship with the English crown, we should not find this surprising. As Susan Reynolds wrote, medieval theorists had long taken for granted the idea of kingdoms as 'collective' and 'independent' political units; this is why they tended not to argue about such intrinsic features of these polities.³¹ But 'non-kingdoms', Reynolds continued, needed justification—'not because they were collective, but because the structure of authority within them was not what was traditionally accepted'.³²

This comment seems very apposite for medieval English Ireland, where—despite it displaying many features commonly associated with 'regnal' polities—the terms 'land of Ireland' or 'lordship of Ireland' were generally used to describe the polity.³³ But then, by 1460, nearly three hundred years had elapsed since the beginnings of English rule in Ireland. If the Declaration of 1460 provided a resolution to the 'problem' of Ireland's 'constitutional status', it was one which came remarkably late in the day.³⁴ We can certainly dismiss any notion that the English of Ireland found themselves locked permanently in a state of constitutional angst. And while spasmodic references to Ireland as a 'kingdom' may reflect 'rumblings of regality' (which seem to have created more anxiety amongst the king's subjects in England than in Ireland), they probably also reflect the concurrent *absence* of a distinct concept in medieval political thought in which English Ireland's unique structure of politics could be comfortably located, and *presence* of structural features commonly associated with kingdoms as traditionally conceived.³⁵ Constitutional 'ambiguity' did not necessarily present the problems we might imagine: absent one distinct concept, the English of Ireland could draw upon a number of ideas to solve political problems as and when circumstances required. Indeed, viewed from this perspective, we might be inclined to ask whether

³¹ S. Reynolds, *Ideas and Solidarities of the Medieval Laity: England and Western Europe* (Aldershot, 1995), pp. 440–1.

³² Reynolds, *Ideas and Solidarities*, p. 441.

³³ Crooks, 'Structure of Politics', p. 445.

³⁴ Cosgrove, 'Declaration of 1460', p. 37.

³⁵ Crooks, 'Structure of Politics', pp. 445–6.

this ‘problem’ was really regarded in the main (by the English of Ireland, at least) as such a great problem at all. Contemporary justifications of the status of this ‘non-kingdom’, for instance, were sometimes more concerned with the beginnings of English rule in Ireland, and the legitimacy thereof: witness, for instance, the re-workings of Gerald of Wales’ *Expugnatio Hibernica* in the late-thirteenth and fifteenth centuries, where the narrative of ‘right by conquest’ was replaced with a narrative of right through ‘time immemorial’.³⁶ Furthermore, as we have already seen in Chapter 1, with the election of James Butler as justiciar in 1404 in the wake of Stephen Scrope’s unorthodox departure, the ambiguities inherent in English Ireland’s structure of politics meant that when ‘constitutional’ problems arose, a degree of ideological flexibility could be employed to keep the wheels of government turning. When constitutional ambiguity *did* become a problem, it tended to arise in moments of crisis where unusual circumstances forced contemporaries to articulate and interrogate ideas or assumptions they normally did not have to voice. The circumstances of 1460 were especially unusual, and therefore presented a particular challenge to the English of Ireland. Not only were the Drogheda parliamentarians forced to articulate ideas which could normally go unvoiced, they also had to find a way of framing these ideas to suit a particular political purpose. It is not so surprising, in these circumstances, to find—in the word ‘corporate’—the appearance of a new term. Whether this term was being used (or whether it was even intended) to convey new *ideas*, however, or to describe a new phenomenon, is another matter entirely.

All of this underscores the importance of analysing the Declaration not as a statement in isolation, but rather in the context of the parliamentary legislation of 1460 as a whole, and against the background of ideas in political thought contemporary to the fifteenth century more generally. It is worth noting that the record of the Drogheda parliament opened not with the declaration that Ireland was ‘corporate of itself’, but rather an article confirming ‘by authority of the said parliament’ the letters patent by which York had been appointed as lieutenant.³⁷ Given that York had been so recently attainted of treason in England, it should come as no surprise to us that the first order of business at the Drogheda parliament concerned the ‘quasi-legal’ confirmation of his

³⁶ Crooks, ‘Structure of Politics’, p. 447.

³⁷ *Statutes, Henry VI*, ii, pp. 638–641.

lieutenancy.³⁸ Directly succeeding the parliament's confirmation of York's letters patent, moreover, was an article which established that 'if any person imagine, compass, excite or provoke the destruction or death of the said lieutenant and governor...the said person be and stand as attainted of high treason committed against the high person of our sovereign lord'.³⁹ The introduction of such a measure—one which was designed to suppress opposition to York originating from *within* the colony—should perhaps indicate that York and his supporters perceived their position in Ireland to be slightly more precarious than historians have hitherto acknowledged.⁴⁰ Despite the broad base of support York received in Ireland—and indeed, the striking comment by one English chronicler that York was welcomed by the 'Irish' [L: *hibernicis*] 'as if another messiah had descended to them and was going to live among them'—those who gathered at Drogheda did not comprise a fully representative cross-section of political interests within the colony.⁴¹ The appointment on 4 December 1459 of the absentee earl of Ormond, James V Butler, (the White Earl had died in 1452) to replace York as lieutenant, for instance, might well have been a decision calculated to ensure that York could not depend upon the Butler affinity in Ireland.⁴² As it happened, the new earl of Ormond and Wiltshire never arrived in Ireland, nor was his appointment apparently recognised there; tellingly though, Ormond's appointed deputy—Thomas Bathe, an experienced administrator in the colony—faced a long series of accusations in the Drogheda parliament.⁴³ Another Butler associate, Richard Bermingham, was targeted in the same parliament. He was accused of going

³⁸ *PROME*, Hen VI: Parliament November 1459, items 7–22.

³⁹ *Statutes, Henry VI*, ii, pp. 640–5.

⁴⁰ Cf. Otway-Ruthven, *Medieval Ireland*, p. 388; Richardson and Sayles, *Irish Parliament*, p. 204; Curtis, *Medieval Ireland*, pp. 319–20; Cosgrove, *Late Medieval Ireland*, p. 52.

⁴¹ *Registrum abbatiae Johannis Whethamstede*, ed T.H. Riley (London, 1872), p. 367 [L: *nam Dominus Dux Eboracensis, se subtrahens versus partes Hiberniae, ibidemque applicans, cum tanta reverentia, benevolentia et favore, ab ipsis Hibemicis receptus fuerat, et admissus, acsi ad ipsos descendisset mationis. alter Messias, de novoque conversaturus fuisset apud eos*]; Cosgrove, *Late Medieval Ireland*, p. 52.

⁴² *CCR, 1445–61*, p. 426.

⁴³ *Statutes, Henry VI*, ii, pp. 652–9. Not least amongst the litany of accusations made against him was the claim that Bathe, 'in malicious, inhuman and diabolical obstinacy to the church', ordered his servants to abduct one Master John Stackbole from the church of the Blessed Lady in Navan. Bathe's servants apparently threw their unfortunate victim in prison, and proceeded to cut out his eyes and tongue. Fortunately for Stackbole, 'he was carried again to the said church and cast there before our

‘into England, [with] the intent to labour, to excite and instigate an army of men of war to come into the land of our sovereign lord the King, of Ireland, not to make war upon his Irish enemies, but upon the most noble and puissant prince, the Duke of York, lieutenant of our said sovereign’.⁴⁴

Neither should the article concerning treason be viewed as a mere contingency plan. York had already faced elements of opposition from within Ireland. According to the same article, charges of treason could be extended to those who might ‘listen to the said imagining, compassing, excitement, provocation and confederacy, and assent to them’—a precautionary measure, perhaps, but one which indicates that there was felt a need to silence critical voices within the colony.⁴⁵ Other indications of opposition were more explicit. One William Overey was attainted for treason at the Drogheda parliament; he was, apparently, the unfortunate messenger who had been ordered to carry the writs ordering York’s arrest into Ireland.⁴⁶

The purpose in highlighting the existence of such opposition is not to deny that York received a generally broad base of support within the colony—and that was certainly the impression in England at the time—but rather to make the point that York could not afford to take this support for granted. York, just like his predecessors, had to articulate his exercise of authority in a manner that was acceptable to the English of Ireland. It is therefore worth reminding ourselves from the very outset that the basis upon which York could *legitimately* exercise power as lieutenant of Ireland (if we put aside, for the moment, the question of his removal from office in England) remained predicated upon the idea that he was representing the king, and wielding the royal authority that remained vested in Henry VI. In fact, this idea—that York’s authority to legitimately exercise power was seen as deriving from his status as the king’s

said Blessed Lady’, whereupon his eyes and tongue were restored. Stackbole’s miraculous recovery did not prevent Thomas Bathe being summoned to appear before York to answer for these charges.

⁴⁴ *Statutes, Henry VI*, ii, pp. 658–61.

⁴⁵ *Statutes, Henry VI*, ii, pp. 640–5.

⁴⁶ *Statutes, Henry VI*, ii, pp. 676–9. That the writs Overey was attainted for carrying were indeed those for York’s arrest is not explicitly stated in the parliamentary record, but may be inferred from the reference to York’s letters patent and conformation as lieutenant in 1457 in the same article. Curtis stated that Overey was a squire of the earl of Ormond and Wiltshire, whom the earl had engaged to carry the writs into Ireland after the parliament at Coventry, but I have not been able to find any corroborating evidence for this statement (Curtis, ‘Richard, duke of York’, p. 181).

representative in Ireland—was emphasized repeatedly in the language and phrasing employed throughout the parliamentary legislation of 1460. At the beginning of parliament, as well as in Article IV confirming the letters patent by which York was appointed, he was described unambiguously as ‘Richard, duke of York, lieutenant of the lord the King himself of his land of Ireland’.⁴⁷ The point may seem banal, but, considering the circumstances, the issue of York’s status must have been of the utmost importance to the men who assembled at Drogheda in support of the duke. To avoid being labelled as ‘English rebels’—traditionally found, after all, in the company of ‘Irish enemies’ in the language of the Dublin administration—they needed to emphasize York’s position as the king’s legitimate representative in Ireland. Supporting York in any other capacity (and particularly in a parliamentary setting, which was given its very definition as such by the implied presence of the king as the ‘head, the beginning and the end of parliament’) would have been tantamount to rejecting the royal authority of the king.⁴⁸ No doubt the Drogheda parliamentarians were keen to avoid such a charge. What this meant in practice, however, was that York—if indeed he wished to use the Drogheda parliament to promote his own political agenda, for whatever reasons—was circumscribed in the range of actions that he could take by the colonial structure of politics and the political outlook of the English of Ireland.

The way in which additional references to York in the parliamentary legislation of 1460 were framed seems to support this line of argument, but this does not preclude the possibility that York and his supporters at Drogheda were exploring other ways in which their actions could be legitimised. In Article V, which concerned York’s protection, two phrases seem to indicate that the parliamentarians assembled at Drogheda found it necessary to draw upon a number of related political ideas and principles to justify their support of the duke. The first phrase not only reiterated that ‘the king our sovereign lord has constituted and appointed his well-beloved cousin, Richard duke of York, lieutenant and governor of his land of Ireland’, but provided a clear justification of the lieutenant’s status: ‘*wherein he represents in the absence of our sovereign lord out of the same land his right noble person and estate*’.⁴⁹ The idea

⁴⁷ *Statutes, Henry VI*, ii, pp. 368–9, 640–1.

⁴⁸ A description found in Article VII of the *Modus Tenendi Parliamentum*; see Pronay and Taylor, *Parliamentary Texts*, pp. 130, 141).

⁴⁹ *Statutes, Henry VI*, ii, pp. 640–1 [emphasis added].

which underpinned this framing—that opposition to the lieutenant was to be treated not simply as an offence against the person of the lieutenant, but as an offence against the king, ‘against the high person of our said sovereign’—was not unusual. Rather, it was one facet of the basic principle which underpinned the structure of governance in English Ireland and the ‘legitimacy’ of governance by an absent monarch. As we have already seen in Chapter I, according to commissions of lieutenandry, both the king’s representative and king’s subjects in Ireland were expected to act as if the king was there in his ‘proper person’.

II

It is, however, unusual to see a reference in the Irish statute rolls to not just to the ‘person’ of the king, but also to his ‘estate’—another term in the parliamentary legislation of 1460 that requires some unpicking.⁵⁰ Indeed, the appearance of this term at precisely this moment is all the more curious given that—even in comparison with contemporary England, and certainly by contrast to Scotland, as we shall see—the term ‘estate’ [L: *status*, F: *estat*] itself appeared only very rarely in the records of medieval English Ireland, particularly prior to the mid-fifteenth century. It is not entirely clear why the language of estates did not form part of the colonial political discourse, especially given the ubiquity and multivalence of the term ‘estate’ in late medieval political discourse more generally.⁵¹ Of course, the sheer variety of contexts in which the term appeared in the Middle Ages—and the variety of functions it performed—can make it difficult to pin down what contemporaries understood by the term ‘estate’ even in a general sense. We are familiar with certain (generally straightforward) contexts in which the term ‘estate’ appeared. It could be used, for instance, to indicate a particular ‘societal classification’ (i.e. clergy, nobility, or non-nobility, which inflected its use as a term to describe the tripartite social groupings of medieval representative assemblies); or to refer to ‘something belonging to an individual’ (land, property, office, in addition to—importantly—the rights or privileges which accompanied material possession, in the sense of ‘to maintain his/her estate’); or to refer to a person’s social condition (similar to the sense of one modern derivative, ‘status’—one could refer to the ‘estate

⁵⁰ *Statutes, Henry VI*, ii, pp. 640–1.

⁵¹ H. Kaminsky, ‘Estate, Nobility, and the Exhibition of Estate in the Later Middle Ages’, *Speculum*, 68:3 (1993), pp. 684–709, p. 685.

of merchant', or 'of widowhood', or even of the 'estate of groom attending to husbandry' in this sense of the word).⁵² Incidentally, it is worth bearing in mind that, in one way or another, all of these most general senses presupposed or implied membership at any one time—whether structural, functional or transitory—of a larger social structure. In other words, these uses of the term 'estate' implied 'a sense of the part as constitutive of an objectively ordered whole'.⁵³ This is a point to which we shall return, but for now, suffice it to say that when we do encounter (however infrequently) the term 'estate' in the records of medieval English Ireland, it tended—unsurprisingly—to be used in one of these more general senses.

One significant exception requires comment, before we return to the matter of the 'estate of the king' mentioned in the 1460 legislation. This exception was any sustained—or even, for that matter, intermittent—use of the term 'estates' to refer to groupings within Irish representative assemblies collectively as the 'three estates', or to the 'estates of the realm' (in the way, for instance, that the 'community of the land of Ireland' was occasionally employed). Curiously, this absence marks a real divergence from developments in contemporary political discourse in England—the significance of which, moreover, may only be fully appreciated when we recognise that comparatively little sustained attention has yet been paid to the language of estates in the historiography of medieval English parliaments, particularly with regard to the fifteenth century.⁵⁴ Of course, the term 'estates' continues to provide a convenient 'catch-all' for historians of the English parliament to juxtapose the development of representative assemblies in other European polities (chiefly the Estates General of France) with the development of bicameral English parliaments, but the assumption that ideas, if not models, of 'estates' had little significance for the representative assemblies of medieval England does not really pass muster. In fourteenth-century England, as Matthew Giancarlo has suggested, there existed 'implicit and competing notions of estates'—even if in practice these ideas were expressed in different structural ways than in other polities.⁵⁵ By way of example, the *Modus Tenendi Parliamentum*

⁵² Kaminsky, 'Exhibition of Estate', p. 688.

⁵³ Kaminsky, 'Exhibition of Estate', p. 688.

⁵⁴ For an early treatment see S.B. Chrimes treatment of 'estates' in S.B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1936), pp. 66–142. More recently, see M. Giancarlo, *Parliament and Literature in Late Medieval England* (Cambridge, 2007), pp. 23–34.

⁵⁵ Giancarlo, *Parliament and Literature*, p. 32.

portrays a parliament conceived not along the lines of ‘three estates’ headed by the king, but rather of six ‘grades’ [L: *gradibus*] of parliament: the king; the archbishops, bishops, abbots, and priors; clerical proctors; the earls, barons, other magnates and nobility; the knights of the shires; and finally the citizens and burgesses.⁵⁶ This particular conception of multiple ‘estates’—in terms of ‘representation’, simultaneously more expansive than the traditional tripartite model, and more restrictive by reason of its very specificity—was occasionally reflected in English parliamentary legislation, where the number of ‘estates’, or ‘grades’, referenced could vary in number depending upon political exigency or circumstance.⁵⁷

But perhaps the main reason for such a historiographical dearth of attention is that the language of estates in English parliamentary discourse (as distinct from the more generalised senses, discussed above, in which the term ‘estate’ was used) was primarily—although not exclusively—a fifteenth-century phenomenon.⁵⁸ Or—more precisely—it was only after the first two decades of the fifteenth century that we begin to see references to the ‘three estates’ in an English parliamentary context; in 1421, the authority of the ‘three estates of the realm’ was invoked to ratify and confirm the Treaty of Troyes, with the ‘three estates’ being explicitly identified as the ‘prelates and clergy, the nobles and magnates, and also the commons [L: *communitates*] of the realm’.⁵⁹ While it is, of course, significant that this reference to the ‘three estates’ *first* appeared in the context of Anglo-French negotiations (where, after all, the term ‘three estates’ had been in regular usage from approximately 1357—but notably not before), it is even more significant that this formulation *continued* to be used on a fairly regular basis in English parliamentary legislation throughout the remainder of the fifteenth century. It is beyond the scope of this thesis to investigate more fully this development in fifteenth-century political discourse in England—although such a study would no doubt raise interesting questions for historians of England’s ‘new constitutional

⁵⁶ Pronay and Taylor, *Parliamentary Texts*, pp. 78–9, 91.

⁵⁷ Giancarlo, *Parliament and Literature*, p. 31.

⁵⁸ Giancarlo, *Parliament and Literature*, p. 31.

⁵⁹ *PROME*, Hen. V, Parliament May 1421, item 18.

history’—but the emergence of such usage in England serves to highlight just how unusual its relative absence was in an Irish context.⁶⁰

Let us return, though, to the matter of the ‘estate of the king’ referenced in the 1460 legislation. It now seems more curious still that *also* strikingly absent from the records of English Ireland were instances where the term ‘estate’ appeared as a compound word signifying a particular idea, or concept. Amongst the most familiar and recognisable—and, because they were frequently used ambiguously or even sometimes interchangeably by medieval writers, amongst the most problematic to interpret—of such terms, alongside *status regis* (F: *lestat du roi*), were the terms *status regni* (F: *lestat du roialme*), or *status coronae* (F: *lestat de la couronne*). Naturally we must be wary of drawing together a set of ideas or concepts simply upon the basis of a shared etymology (i.e. ‘estate’ in the sense of social ‘rank’, or ‘estate’ as a social condition, or as political concept), especially if they were used to describe very different social or political phenomena. To do so purely on a semantic basis would be to risk drawing inferences or connections that did not necessarily exist, or indeed to risk excluding other terms which were not semantically related but performed similar functions. Yet in the case of ‘estate’, although we might quite naturally seek to treat the variant forms in which the term appeared as concepts that were intellectually distinct from one another, it also seems helpful to view them as elements in a broader ‘language of estates’. This is because, beyond their shared etymology, the concepts which these terms signified were predicated upon a shared set of ideas, theories and assumptions. For one thing, as we have already seen, they all implied a sense of the part as constitutive of a larger whole—or a way of thinking about things—that is not immediately apparent when we treat these terms as unrelated, or distant, concepts. The difference between interpreting the ‘estate of the king’ to refer to the king’s ‘material estate’, and ‘estate of the king’ to imply his political status *in the context of*

⁶⁰ To wit, one of the earliest references to the ‘three estates’ which emanated from English Ireland dates to 1474—over fifty years after we see this formula come into use in England, and more than a century after the term came into use in French or Scottish contexts. The reference to the ‘three estates’ appeared in ‘enstruccions youen and opened by the iii astates of our soverayn liege lord the Kynges high court of parlement in Irland and his counsell of the same to the kynges dyscrete servauntes Gilbert Debenham knyght, James Norres, David Ketyng and Sir Robert Bold knyght, to be presented and shewed for the hasty socour and relief of the said land to the kynges highnes in England’ (TNA, C 47/10/29). The formula of ‘three estates and council’ was used repeatedly throughout the ‘instructions’, which also contained one reference to the slightly more obscure formula ‘astates of counsell’. A transcription of the relevant record is given in D. Bryan, *Gerald Fitzgerald: The Great Earl of Kildare, 1456–1513* (Dublin, 1933), pp. 18–22).

the larger body politic to which he belonged, for instance, is very significant indeed. It is within the latter context that I suggest we locate the references to the ‘estate of the king’, *lestat du roi*, which appeared in the 1460 legislation: that is, as a term which might encompass but did not solely refer to the material or private ‘estate’ of the king (i.e. the royal household, the inalienable possessions of the crown, or the fisc), and which in this broader sense functioned as political concept more closely analogous to that of the ‘crown’.⁶¹ In other words, it provided a way of distinguishing the king’s ‘person’ (i.e. the individual) from the office he occupied, by signifying a concept which could encompass his power, dignity, majesty and crown, as well as the “perpetual rights, powers, land titles, and wealth” associated with it.⁶²

Whether we focus on the term ‘crown’ or ‘estate’, the distinction between the king’s ‘two bodies’ (as Kantorowicz outlined) was not normally one which chief governors in Ireland found necessary to make explicit (references to ‘the king, his crown and dignity’, for instance, tended to arise in primarily legal contexts, although, perhaps significantly, a reference *ad dicti regis et dicti corone* appeared in the copy of the king’s oaths found upon Sir Christopher Preston alongside a copy of the *Modus Tenendi Parliamentum* in 1419).⁶³ In 1460—given the circumstances—the distinction made in medieval political thought between the king’s two bodies may have been one which York and the men present at the Drogheda parliament found it useful to emphasize. That the reference to the king’s ‘estate’ may have been something more than a throwaway remark is supported by the second phrase of interest contained within Article V of the 1460 legislation. Continuing directly on from the first, it was stated that ‘to the said lieutenant and governor in the said absence, such reverence, obedience and fear ought to be given in the same land as to our sovereign lord, whose estate is thereby honoured, feared and obeyed’.⁶⁴ Note that, according to this formulation, it

⁶¹ Although it might *encompass* the household, and certainly inalienable possessions and the fisc.

⁶² My thinking on this subject has largely been guided by scholarship on legal and political theory. See especially E.H. Kantorowicz, *The King’s Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957; repr 1981); G. Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100–1322* (Princeton, 1964), esp. pp. 333–414.

⁶³ See, for instance, *Statutes, Henry VI*, ii, pp. 302–3, 358–9, 452–3, 578–9; Pronay and Taylor, *Parliamentary Texts*, pp. 137, 146.

⁶⁴ *Statutes, Henry VI*, ii, pp. 640–1.

was the king's 'estate', rather than simply his 'person', which was to be upheld through obedience to York as lieutenant.

Significant though this reference to the king's 'estate' may be, we must bear in mind one crucial qualification; if indeed the distinction between king's person and his estate was one which the Drogheda parliamentarians wished to highlight, it was certainly not one they used at any point in the 1460 parliament to claim loyalty to the office, or 'institution', of the king (the crown) as distinct from the incumbent king, Henry VI. In Article XVII, for instance, which dealt with the charges against William Overey, York's status as a representative of the *person* [F: *personne*] of the king was reiterated: it was asserted that Overey (alongside another yeoman, Robert Taillour) 'for a long time within the same parliament have imagined, compassed and incited rebellion and disobedience to the said lieutenant, in whose *person* in this land the *person* of our sovereign lord is represented'.⁶⁵ Rather, the repeated emphasis placed upon lieutenant's status as a representative of the king (and crown) in the 1460 parliamentary legislation served another purpose. Given the circumstances in which York had fled to Ireland (not to mention his dubious credentials as lieutenant), we might well imagine that the English of Ireland may have found it prudent to stress their continued loyalty and obedience to Henry VI—lest they too be accused of rebellion against the king. The problem for the men assembled at Drogheda was how to square their obedience to York with their continued loyalty to the English monarch. Arguably, in these circumstances, the only 'legitimate' way in which such an objective could be achieved was through portraying York himself as a loyal subject of the king, who was exercising the royal authority granted to him in the letters patent by which he had been appointed as lieutenant. Of course, York's predecessors-in-office had found in the invocation of royal authority—language which emphasized their status as the king's representative—a useful political tool. But it was a tool which was normally employed or directed towards an audience *within* the colony—to legitimise the exercise of royal power there, and to command obedience from the king's subjects in Ireland (unlike communitarian ideas and language, which were more commonly employed to legitimise or defend political action when in communication with the crown). What differed in the peculiar circumstances of 1460 was that, through framing York's governance in the language of royal authority and through highlighting the

⁶⁵ *Statutes, Henry VI*, ii, pp. 678–9 [emphasis added].

representative character of his office, the Drogheda parliamentarians were able—by extension—to reassert their *own* loyalty to the king, and, concurrently, legitimise their obedience to the duke.

Yet while this may explain the emphasis placed upon the language of royal authority and the stress laid upon the lieutenant's representative character, it does not wholly explain the relatively unusual appearance of references to the king's 'estate' in the parliamentary record of 1460. For instance, another reference to the king's 'estate' was made in Article VII, in which Thomas Talbot, prior of the Hospital of St John of Jerusalem in Dublin, was censured for his absence at the Drogheda parliament.⁶⁶ Talbot had been summoned to attend parliament, 'to which of his duty and obedience to our said sovereign lord he ought to have come', unless he could declare a suitable excuse to 'the most high and puissant prince the Duke of York, lieutenant of our said sovereign lord of the said land, *representing in the same his most noble person and estate*'.⁶⁷ Apparently Talbot had offered no such excuse; he was alleged to have continued:

'In outrageous and improper obstinacy, contrary to the said duty of obedience, compassing, studying and inciting incessantly, of his insatiate malice, all the methods which by his might and labour can contribute to the destruction of the said most high and puissant prince, and *to the disobedience of the estate which he represents in the said land by the authority of our said sovereign lord*, in manner of rebellion'.⁶⁸

As in Article V, then, obedience (and therefore disobedience) to the lieutenant was explicitly linked to the king's 'estate'—in other words, to his institutional, eternal and inalienable 'body'. But the crucial part of this formulation was not the reference to the king's 'estate' by itself (or, for that matter, the king's estate as distinguished from the king's person). Rather more striking was the implication that it was not just the *person* of the monarch in Ireland to whom the king's subjects owed their obedience, but his 'estate' *in Ireland*. In other words, in this formulation a particular claim was being made—circumspectly here, but buttressed by more explicit claims elsewhere—about

⁶⁶ *Statutes, Henry VI*, ii, pp. 648–653.

⁶⁷ *Statutes, Henry VI*, ii, pp. 650–1.

⁶⁸ *Statutes, Henry VI*, ii, pp. 650–1.

the structure of governance in the land of Ireland, and the king and the community of people who resided there.

III

To fully appreciate the significance of this claim in the context of the parliament of 1460, it may be helpful to reiterate a point made earlier in this chapter regarding the ‘estate of the king’; the *status regis* was a concept that implied the king’s position *in the context of the larger body politic to which he belonged*. It implied a political whole—a *universitas*—just as much as it referred to the king himself. As such, the references made to the ‘estate of the king’ in the parliament of 1460 seem to take on a greater significance. Set alongside claim to Ireland’s corporate identity, it is hardly likely that the ‘estate’ being referred to comprised the body politic of the king and his subjects in England. More importantly, these unusual references to the *status regis* in Ireland were made in the same parliament that witnessed another, much more explicit claim to the effect that Ireland was a ‘body politic’. Implicit in the Declaration’s invocation of corporate status, as Peter Crooks and Ted Powell have observed, was the attempt to conceptualise Ireland as a ‘body politic’, and, moreover, a body politic ‘in its own right’, as distinct from the body politic of England.⁶⁹ As we have seen in Part I, the body politic was an idea chiefly associated in medieval political theory with *kingdoms*, and indeed with unitary kingship.⁷⁰ Recall how John Fortescue used this precise analogy to explain how the ‘kingdom issues from the people, and exists as a body mystical, governed by one man as head’.⁷¹ It may therefore be worth pondering the general utility of this concept with respect to its application in the lordship of Ireland. While the concept of the body politic was a classic *topos* of medieval political theory, its *de facto* applicability to the colonial structure of politics should not necessarily be accepted without question. After all, the body politic was a heuristic device typically used to explain how the structure of politics of unitary *kingdoms* operated. It is not surprising that Fortescue—when writing his political treatise on the laws and governance of England a number of years later—found the metaphor highly serviceable

⁶⁹ Crooks, ‘Structure of Politics’, p. 459; T. Powell, ‘Body Politic and Body Corporate in the Fifteenth Century: The Case of the Duchy of Lancaster’, in B. Thompson and J. Watts (eds), *Political Society in Later Medieval England: A Festschrift for Christine Carpenter* (Woodbridge, 2015).

⁷⁰ See above, Part I: The Absent King.

⁷¹ *De Laudibus*, pp. 30–1. See above, Part I: The Absent King.

when he adapted it to his particular formulation quoted above; later medieval England was a unitary kingdom, and one in which there was a large degree of internal social cohesion and demographic uniformity. Yet the utility of this anatomical metaphor—and indeed, the language of incorporation—was that it could be broadly applied and adapted. While it is abundantly clear that the legal aspects of the idea of incorporation were of probably the greatest *immediate* significance to the Drogheda parliamentarians in 1460—that is, allowing York to circumvent the act of attainder made against him at the Coventry parliament in England—it is no less significant that the claim to incorporation also depended implicitly upon the invocation of a *communitas* coming together in one body with the king.

For our purposes, then, the greatest significance of the Declaration of 1460 was that it posited a very novel way indeed of invoking an idea of *community*—or, more specifically, the idea of an English community in Ireland that was explicitly *not* conceived of as being a ‘limb’, per se, of the body politic of the kingdom of England. Naturally, we must approach strongly articulated invocations of community with caution—especially in circumstances like those of 1460, where there is no doubt that this assembly, and thus the claim of Ireland’s corporate status, served as a means by which York could ensure his continued governance and safety in Ireland. As we have seen, in both Irish and Scottish representative assemblies, confident assertions of communitarian ideas and communal authority could disguise far more complex realities. Equally, though, the question of to what extent the claim made in the Declaration of 1460 regarding the nature of the ‘political community’ in Ireland actually reflected contemporary political thought in the colony is one that cannot and should not be avoided. What will have been obvious in the historiographical survey made earlier is that, whatever else that varied band of historians thought about Declaration of 1460, most were hard pressed to avoid discussing the idea of ‘political community’ in some form or another. The key issue that we must now bear in mind is that, for this particular claim to have actually gained traction—for it to be accepted as a *legitimate* claim by the English of Ireland (who, as we have seen, were evidently concerned that their support of York should not be taken to imply an act of resistance to the English crown, or indeed the *status regis* in Ireland)—it needed to align with contemporary expectations and values. This point has been reiterated in various forms throughout the thesis, but it bears repeating once more: for claims to be accepted as valid they had to be seen as compelling by their intended audience. Yet, while this

particular conception of the land of Ireland might have proved controversial from the vantage point of *England* (and certainly this is how it was later regarded, upon the repeal of the 1460 act with Poyning's Law in 1495), it is difficult to avoid the impression that there was any kind of similar response within Ireland. As we have already seen, Irish parliamentarians had mounted a vigorous defence of the legitimacy and authority of English representative assemblies in Ireland thirteen years prior to the Declaration of 1460. In this sense, then, the *idea* of a 'corporate identity' for the medieval colony had a longer intellectual heritage in English Ireland than might otherwise be suggested by its particular and unique form of execution in the mid-fifteenth century.

Discourses of Community and Estates in Late Medieval Scotland

IN THE MIDST of a summer night in June 1452, a letter was nailed to the ‘parliament house door’ in Edinburgh.¹ The personal seals of James, ninth earl of Douglas, Hugh, earl of Ormond, and James, lord Hamilton, were affixed to the document, displayed for all who would arrive at parliament the following morning to see. In this letter, or so we are told by the anonymous Auchinleck chronicler, these men ‘declyndand fra the king Sayand that thai held nocht of him nor wald nocht hald with him’, and ‘with mony uther sclanderous wordis calland tham tratouris that war his secret counsall’.²

Thus, with the fastening of their *diffidatio* to the door of the Edinburgh tolbooth, Douglas and his companions renounced their allegiance to James II. Auchinleck’s pithy account of this covert act of defiance might be criticised for lacking in detail (regrettably, the text of the letter has not survived) but his short summary actually has a surprising amount to reveal about the way in which ideas of representation and attempts to create political solidarities were used (and in this case, repudiated) in mid-fifteenth-century Scotland. Moreover, this particular incident marked only one highly public paroxysm in an ongoing conflict. Douglas’s extra-parliamentary protest of June had been precipitated by the killing of his elder brother and predecessor, William, eighth earl of Douglas, at the hands of King James II on 22 February 1452, just a few months beforehand.³ But the seeds of open discord between the king and the Black Douglasses had been planted earlier, in 1450. Not until 1455, with the forfeiture and fall of the Douglasses, would their dispute come to a close.⁴ All told, this amounts to a period of only five years, yet—between its dramatic beginnings and frankly luckless end—James II’s conflict with the Douglasses has dominated modern accounts of his reign.⁵ The

¹ *Chron. Auchinleck*, p. 266.

² *Chron. Auchinleck*, p. 266.

³ *Chron. Auchinleck*, p. 265.

⁴ *RPS*, 1455/8/2; *RPS*, 1455/8/15.

⁵ *Chron. Auchinleck*, p. 272. For the reign of James II see McGladdery, *James II*; McGladdery, ‘James II, 1437–60’, in M. Brown and R. Tanner (eds), *Scottish Kingship: Essays in Honour of Norman Macdougall* (Edinburgh, 2008), pp. 179–208; M. Brown, *The Black Douglasses: War and*

death of the eighth earl in particular stands out as a defining moment in the conflict, and one writ large in our sole contemporary account of the deed.⁶ In an uncharacteristically detailed entry, the Auchinleck chronicler described the manner in which ‘Erll willam of douglas wes slane in the castell of striuling be king Iames the secund that had the fyre mark in his face’.⁷ Given that the strongest reactions against the king seem to have been provoked less by the fact and more by the *manner* of Douglas’s death, Auchinleck’s account of the incident is worth reproducing here in full:

‘The foresaid king Iames send owt of striuling with willam lawder of haltoun a speciale assoueras and respit wnder his preve sele and subscriuit with his awne hand⁸ and all the lordis that war with the king that tyme gaf bodely aithis to kepe that respit and assouerance and subscrivit ilk man with thair awn hand and all the lordis that war with the king that tyme war oblisit suppos the king wald brek the band forsaid / that thai suld let It at thair powere

This beand done the forsaid willam of lawder of haltoun passit to the forsaid erll willam of Douglas and brocht him to striuling to the king on the monunday befor fastrennisevyn that was the xxj day of februarye and this samyn monunday he passit to the castell and spak with the king that tuke richt wele with him be apperans and callit him on the morne to the dynere and to the supper / and he come & dynit and sowpit and thai said thair was a band betuix the said erll of dowglas and the erll of ross & the erll of craufurd and efter supper at seveyne houris the king than beand in the Inner chalmer & the said erll he chargit him to breke the forsaid band he said he mycht nocht / nor wald nocht /

Lordship in Late Medieval Scotland, 1300–1455 (East Linton, 1999); N. Macdougall, *James III* (Edinburgh, 2009), pp. 1–39; Nicholson, *Later Medieval Scotland*, pp. 353–96.

⁶ *Chron. Auchinleck*, p. 265.

⁷ *Chron. Auchinleck*, p. 265. For analysis of the Auchinleck chronicle in general see McGladdery, *James II*, pp. 210–21, and for her analysis of the extract quoted here see especially pp. 114–9.

⁸ The remark that James II signed the safe conduct with his own hand is interesting in the context that the earliest extant record of the king’s signature on documents passing the great or privy seal dates to 22 August 1449—an indication of when the king was taking an active role in his administration—after which it began to appear with increasing regularity (A. Borthwick, ‘James II (1430–1460)’, *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/14588>) but probably should be interpreted here (given that the men who surrounded the king were also described as signing the letter) as an attempt by the Auchinleck chronicler to criticise the manner of Douglas’s death.

Than the king said / fals tratour sen thow will nocht I sall /
and stert sodanly till him with ane knyf and straik him in at
the colere and down in the body and thai said that patrik gray
straik him nixt the king with an poll ax on the hed and strak
our his barnes and syne the gentillis that war with the king gaf
thaim Ilkane a straik or twa with knyffis and thir ar the names
that war with the king that strake him for he had xxvj wounds
In the first Sir alex^r boyd the lord dernlie Sir androw stewart
Sir willam of gremston Sir symond of glendonane and the lord
gray'.⁹

Auchinleck's account has inspired a good deal of scholarly debate—particularly in respect of whether the act of killing simply amounted to an angry loss of control on the king's part (and could, therefore, be legally explained as act of *chaudmella* rather than premeditated murder), or whether James and his counsellors conspired to lure the earl to Stirling and provoke him into an intransigence to which the king could justifiably respond with violence.¹⁰ This is not the place to engage with such debates: the point is more that Douglas evidently perceived himself to be at risk of harm prior to meeting with James on that fateful evening. The eighth earl had requested a letter of safe conduct from the king to assure his safety at Stirling castle; no doubt he had grown ever more wary of the king's intentions during the two years which followed James II's initial attack on the Douglas patrimony in 1450, while Earl William been on pilgrimage to the papal jubilee in Rome.¹¹ At that time, Douglas probably felt himself immune to events like the fall of the Livingstons in 1449—an episode that occurred very shortly in the wake of James II's marriage to Mary of Gueldres, after which point the king may be seen to exercise his powers as an active, adult monarch in more assertive fashion—and there is little to suggest any serious rancour in the relationship between James II and

⁹ *Chron. Auchinleck*, p. 265, 114. The text quoted in this chapter is drawn from the edition of the Auchinleck chronicle provided in McGladdery, *James II*, pp. 261–267. However, the following sentence [*all the lordis that war with the king that tyme gaf bodely aithis to kepe that respit and assouerance and subscrivit Ilk man with thair awn hand*] is drawn from McGladdery's quotation in Chapter 5 as it was not included in the text provided in her edition of the chronicle.

¹⁰ Whether the act legally constituted murder has been a matter of some debate, given that it did not, technically, meet the medieval legal definition of murder as an act carried out in secrecy. For a recent discussion see A. Grant, 'Murder Will Out: Kingship, Kinship and Killing in Medieval Scotland', in S. Boardman and J. Goodare (eds), *Kings, Lords and Men in Scotland and Britain, 1300–1625: Essays in Honour of Jenny Wormald* (Edinburgh, 2014), pp. 193–22.

¹¹ *Chron. Auchinleck*, p.2 64; McGladdery, *James II*, pp. 99; Brown, *Black Douglasses*, pp. 287–8.

Douglas prior to the king's attack.¹² Equally, the earl was no doubt confident in the security that his position as the most powerful magnate in Scotland afforded him to leave the kingdom upon a mission to enhance the international profile of Douglas lordship on the continent.¹³ The events of 1450 reversed that sense of security dramatically and, as it turned out, irretrievably. A settlement made between the king and Douglas in the parliament which met at Edinburgh on 28 June 1451 (where Douglas formally submitted himself to the king, and James—in what Tanner described as an act of 'capitulation'—restored a sizeable portion of the lands which he had confiscated from the earl) was, according to the Auchinleck chronicler, welcomed with relief and 'all gud scottismen war rycht blyth of that accordance'.¹⁴ However, this settlement had brought about not a resolution but rather a brief *détente* which left both king and earl in a state of heightened (and entirely mutual) distrust. Against this background of tension lay a number of unresolved issues—the contentious matter of the earldom of Wigtown, around which the dispute between the king and Douglas had grown, and the bond between Douglas, the earl of Crawford, and the earl of Ross—which sustained the conflict up until it culminated in the killing of Douglas at Stirling castle on 22 February 1452.

These issues, while of vital importance to understanding why it was that the conflict between Douglas and the king developed, have already been subject to detailed historical analysis, and there is no real need to revisit them here. Our interest lies in what happened *afterward*: what the responses to Douglas's death and subsequent events connected to the fall of the Douglasses can tell us about broader ideas and

¹² McGladdery, *James II*, pp. 99; Brown, *Black Douglasses*, p. 286. Historians have at times struggled to agree upon precisely when James II's relatively long minority ended and he transitioned to active rule, or, for some scholars, rule independent of the men who counselled him during his minority. Tanner, for instance, proposed an end-date for James II's minority as late as 1455 (Tanner, *Scottish Parliament*, p. 148), on the basis that this was when James II was no longer reliant on the counsellors who had directed the governance of the realm during his minority. As McGladdery rightly notes, however, the retention of counsellors during the transition from minority to majority rule does not necessarily imply manipulation (McGladdery, 'James II', p. 185). And, importantly, as we have seen, even for an active, adult monarch counsel provided a mechanism by which individuals and groups could attempt to translate their particular (and/or partisan) interests into royal policy, with greater or lesser degrees of success.

¹³ Brown, 'Rejoice to Hear of Douglas', p. 164. For the Black Douglasses' rise to political and landed predominance in later medieval Scotland (especially during and after the reign of James I), see Brown, *Black Douglasses*, *passim* but especially pp. 227–282.

¹⁴ *Chron. Auchinleck*, p. 265; *RPS*, 1452/6/1; Tanner, *Scottish Parliament*, p. 130.

developments in Scotland's structure of politics before James II's death in 1460. Of course, the nailing of the letter to the parliament house door in June 1452 was not the first response made by the ninth earl of Douglas to the killing of his elder brother. Less than a month after Douglas's death, on 17 March 1452 (and only shortly after the king himself had left for Perth; Queen Mary, who was then pregnant with the future James III, also left Stirling for the relative safety of St Andrews, where she was placed under the care of Bishop Kennedy at his episcopal castle), an altogether more violent episode had occurred.¹⁵ According to the Auchinleck chronicler,

‘Sir Iames of douglas erll Iames secund son for the foule slauchter of his brother erll willam of douglas Come on sanct patrikis day in lentryn to striuling & blew out xxiiij hornis attains apon the king and apon all the lordis that war with him that tyme for the foule slauchter of his brother And schewe all thair seles at the corss on ane letter with thair handis subscriuit and tuke the letter and band it on ane burd and cuplit It till ane hors tale and gart draw It throu the towne spekand richt sclanderfully of the king and all that war with him that tyme & spulyeit all the tovne and brint It’.¹⁶

In one sense, by describing the killing of Earl William as a ‘foule slauchter’, the chronicler was nailing his own colours to the mast. Regardless of the legal distinction between ‘murder’ and ‘slaughter’, the king's transgression of the basic social rules governing hospitality was probably cause enough for Auchinleck's implicit condemnation of James II. But the actions of Douglas and his companions demonstrate that they, at least, viewed the king's act as one which fell firmly outside the law. There may even have been a touch of irony in Douglas and his companions' decision to use horning as a way of publicly accusing the king of criminal action; as recently as 1450, in an act made at the parliament which was probably designed to signal James II's full emergence into majority rule, the practice of horning had been specifically associated with ‘rebels’ who could not—or would not—be compelled to justice.¹⁷ And one can hardly imagine a more open expression of contempt for the king's word (and that of his counsellors) than that conjured by the spectacle of

¹⁵ *Chron. Auchinleck*, p. 266; *RPS*, 1479/10/12.

¹⁶ *Chron. Auchinleck*, p. 265.

¹⁷ *RPS*, 1450/1/9.

Douglas's safe conduct being nailed to a board, tied to a horse's tail, and dragged through the town.¹⁸ The looting and burning of Stirling was an act probably intended to highlight James II's absence and consequently his inability to protect the town and his subjects there.¹⁹ Certainly such a violent act does not suggest any particular concern to court public opinion, far less generate any sort of sympathy which might be translated into a broader movement of resistance to the king. Instead, at this point, Douglas and his companions may have had other objectives in mind. Arguably, by drawing attention to James II's inability to exercise justice (by dint of his own criminality), his infidelity (that his word could not be trusted), and his inability to protect his lands and subjects, Douglas and his companions may have been consciously directing their criticism of James toward the exercise of his *lordship*, rather than kingship—at least at this stage. In a sense, of course, good kingship included good lordship—this was what allowed advice writers to direct their counsel at a broader audience that just kings and princes, for example—but the language and ideas by which *kingship* was traditionally criticised (as with the accusations of tyranny so memorably expressed by Robert Graham) are conspicuous by their absence in Auchinleck's account.

By contrast, the manner in which Douglas and his companions framed their resistance to the king a few months later, at the Edinburgh parliament of June 1452, suggests that the dispute between Douglas and James II had taken on a different character; and, at the very least, the incident concerning the parliament house door raises questions of more direct relevance to the role of representation and the creation of political solidarities in Scotland at this time. By fastening their *diffidatio* to the parliament house door—especially under cover of darkness—Douglas and his companions had made a political statement which went far beyond the formal withdrawal of allegiance from James II entailed in such a document. The act of posting such a subversive letter on the door of the Edinburgh tollbooth—a rare Scottish example of bill-casting, the fixing of documents to doors, gates or crosses, typically in urban spaces—was as symbolic a rejection of James II's authority as it was public.²⁰

¹⁸ *Chron. Auchinleck*, p. 265.

¹⁹ *Chron. Auchinleck*, p. 265.

²⁰ K.M. Brown *et al.* (eds), 'Housing the Estates: Parliamentary Locations and Buildings', *RPS*, online at www.rps.ac.uk/static/mapstext.html. For bill-casting see W. Scase, "Strange and

Certainly on one level, as Claire Hawes has recently argued, its prominent display provided a means for Douglas and his companions to present their side of an ongoing conflict with the king, and circulate knowledge of their case within what Hawes conceptualises as the ‘public domain’.²¹ The parliament which had been summoned to meet on 12 June 1452 was far too hostile and dangerous an assembly for Douglas and his companions to attend, let alone make so bold a gesture as to renounce their allegiance to the king; hence the clandestine posting of the *diffidatio* during the night.²² As we have seen in Chapter 3, those who could control or dominate particular meetings of representative assemblies—like James II and his supporters did in the case of the June 1452 parliament, as we shall see—had a huge advantage in creating, controlling, and promulgating the information they wished to disseminate throughout political society, in Scotland as well as Ireland. This act of bill-casting was therefore an important counter-measure which Douglas and his adherents could employ to shore up their own reputations while at the same time criticising those of the king and his counsellors.²³

There was, however, another layer of symbolism attached to this particular act of bill-casting, and it is one which seems to have stuck in the Auchinleck chronicler’s mind: the fact, as the chronicler carefully noted, that the letter was posted to the ‘parliament hous dure’.²⁴ Recall how in Ireland, when Richard Talbot was making his case to justify the arrest of the earl of Kildare and Sir Christopher Preston in 1417, much was made of the symbolism attached to the doors of parliament. Talbot had found it possible to use the open doors of parliament as both an illustration of his deputy’s adherence to due legal process and to signal the legitimacy of the representative assembly he had summoned; moreover, he was able to contrast this symbolic portrayal with the reported actions of his political opponents, whom he accused of meeting in secret and accroaching royal power—an accusation which he illustrated once again by claiming that they had sealed the parliament house doors shut

Wonderful Bills”: Bill-Casting and Political Discourse in Late Medieval England’, in R. Copeland, D. Lawton and W. Scase (eds), *New Medieval Literatures II* (Oxford, 1998).

²¹ Hawes, *Community and Public Authority*, pp. 143–4.

²² *RPS*, 1452/6/1.

²³ Hawes, *Community and Public Authority*, p. 144.

²⁴ *Chron. Auchinleck*, p. 266.

behind them.²⁵ We know, of course, that Talbot's rhetorical exploitation of the symbolic and spatial ideas associated with parliaments in English Ireland was largely a stalking horse for his underlying agenda. But this does not mean that these symbolic associations were unimportant: if anything, that Talbot considered it both expedient and profitable to draw upon such ideas speaks more to their potency and force in contemporary political thought.

Can we take it, then, that Douglas and his supporter's decision to post their *diffidatio* to the doors of the parliament house in Edinburgh was intended to convey a similarly symbolic message? Evidence of bill-casting in Scotland is limited; it might fairly be assumed that that in normal circumstances the doors of the tolbooth in Edinburgh provided a venue for such activity (given its central locus and role in the burgh's administration), although the practice was more commonly associated with crosses, church and cathedral doors, as well as town and city gates.²⁶ Equally though, it is probably worth remembering that during the reign of James II there was as yet no fixed 'seat' of parliament in Scotland. The tollbooth in Edinburgh was certainly *becoming* a customary location for assemblies of parliament and general council (and indeed, under James III—bar one exception—and James IV, all parliamentary assemblies met there, as Edinburgh became the centre of royal administration and Scottish governance).²⁷ But in Scotland before 1460 the holding of a representative assembly in any given building had the effect of transforming it, albeit briefly, into one with an enhanced ideological significance, the greater part of which arguably derived from parliament's communitarian—more so than royal—character.²⁸ It is hard to imagine that this symbolic role was lost on Douglas and his companions (or, for that matter, on the king and his assembled subjects) when they were nailing this offending

²⁵ Otway-Ruthven, 'Background to the Arrest', p. 92; *CIRCLE*, PR 6 Hen. V §14.

²⁶ Hawes, *Community and Public Authority*, p. 144.

²⁷ *RPS*, 'Housing the Estates: Parliamentary Locations and Buildings'.

²⁸ It has also been suggested, in a point which may further underline the representative or communitarian character of Scottish parliament, that 'a conscious decision had been made since James I's death to hold future assemblies in secular or civic buildings', as demonstrated by the holding of parliaments in 1439 and 1445 in the tolbooths of Stirling and Perth, rather than the erstwhile traditional venues of Stirling Castle and Blackfriars (*RPS*, 'Housing the Estates: Parliamentary Locations and Buildings'). See also *RPS*, 1425/3/1; *RPS*, 1438/11/1; *RPS*, A1439/3/1; *RPS*, 1440/8/1; *RPS*, 1441/6/1; *RPS*, 1444/3; *RPS*, 1445/1; *RPS*, 1449/1; *RPS*, 1450/1/1; *RPS*, 1450/5/1; *RPS*, 1451/6/1.

letter to the parliament house door. And if so, it seems reasonable enough to assume that, in the politically-charged circumstances of 1452, Douglas and his adherents had not just publicly rejected James II's royal authority, but also, tacitly, the communal authority of the three estates assembled in the king's parliament too.

I

It was almost certainly the case that this act of bill-casting—and the attendant rejection of the parliament's authority—came as a response to the official declaration of the king's innocence made in the same parliament, on the basis that the assembly had failed to serve justice posthumously to Earl William and, therefore, also to his companions. That said, because the Auchinleck chronicler's account of the incident is not dated, there is possibly a case to be made that the posting of the *diffidatio* could have preceded the parliamentary declaration of 12 June. Douglas and his supporters were already conspicuously absent at parliament; if they had feared to attend the assembly in the first place, it seems unlikely that they would have expected to receive justice and/or exoneration of their actions at the same gathering. Equally, the declaration made in parliament stated that it had come to the king's notice 'that some of his enemies and rebels outwith and within his realm denigrate his good reputation and rashly dare to slander him'; this accusation could have been prompted more immediately by the *diffidatio*, but it seems more likely—based on the text of the declaration, which recalls more clearly the Auchinleck chronicler's comment that Douglas and his supporters passed through Stirling 'spekand richt sclanderfully of the king'—to refer to the events of 17 March.²⁹ Of course, whether Douglas and his companions rejected the royal and communal authority of a partisan assembly before or after the declaration was issued may be beside the point; regardless, the declaration of the 'three estates' stands in direct contrast to Douglas's extra-parliamentary protest, particularly with respect to the way in which royal and communal authority was articulated, and as a means of creating—or representing—political solidarities.

In essence, the document—which was publicly addressed to 'all men and Christ's faithful to whose notice the present letters shall come'—describes the process by which the king submitted himself to the judgement of the three estates, their subsequent inquest into the death of Douglas, and their declaration proclaiming the king's

²⁹ *Chron. Auchinleck*, p. 265; *RPS*, 1452/6/1.

innocence.³⁰ To summarize the main points: the ‘prelates, dukes, earls, magnates, nobles, barons, city and burgh commissioners of the three estates of the kingdom of Scotland represented in the parliament held and begun at the burgh of Edinburgh on 12 June 1452’ had been summoned—we are told—because it had ‘come to [James II’s] notice that some of his enemies and rebels outwith and within his realm denigrate his good reputation and rashly dare to slander him, unjustly attempting to assert that our supreme lord the king slaughtered the late earl of Douglas while he was under special respite’.³¹ The troubled king therefore ‘urgently requested that, in order to declare his innocence, [the three estates] inquire concerning the truth of the foregoing’.³² Obliging, the three estates departed and proceeded to their inquest ‘with thought and great maturity’.³³ The result of their deliberations is scarcely surprising. It was concluded that if Earl William ‘had any respites or other sureties from the said most excellent king on the day preceding his death, those respites and sureties were expressly renounced before a multitude of barons, magnates, knights and nobles’.³⁴ They drew attention to ‘the bonds and conspiracies made and initiated by the said earl with certain great magnates of the realm, in oppression and offence of the most serene royal majesty’, to ‘the public rebellions frequently perpetrated by him, his brothers and accomplices’, and finally to the ‘shameless obstinance...displayed to the serene lord the king and other wicked acts’.³⁵ All told, the three estates then ‘expressly declared that the most serene lord king did not break or violate any respite or other surety in the death of the said late Earl William’.³⁶ Rather, ‘from the aforementioned conspiracies, bonds, rebellions and evil deeds, in contempt and offence of the most serene royal majesty, wickedly committed and perpetrated by the same Earl William and his accomplices’, the three estates concluded that the eighth earl had—most conveniently—‘procured and produced the occasion of his own death’.³⁷

³⁰ *RPS*, 1452/6/1.

³¹ *RPS*, 1452/6/1.

³² *RPS*, 1452/6/1.

³³ *RPS*, 1452/6/1.

³⁴ *RPS*, 1452/6/1.

³⁵ *RPS*, 1452/6/1.

³⁶ *RPS*, 1452/6/1.

³⁷ *RPS*, 1452/6/1.

There is plenty here of interest to us; it is certainly significant that the king, even ostensibly, submitted himself to the judgement of his three estates in parliament, and we shall return to this point later.³⁸ For now, I would like to focus on what the language used in this document can tell us about broader ideas and developments in Scotland's structure of politics, and specifically *how* parliament was used on this occasion to legitimise James II's killing of Douglas. A key point to take away is that, for all that the parliament summoned to meet on 12 June 1452 was said to have represented the 'prelates, dukes, earls, magnates, nobles, barons, city and burgh commissioners of the three estates of the kingdom of Scotland', this did not include Douglas and his companions. It may be significant that this occasion marked what seems to be the first instance in the Scottish parliamentary record where the claim—that the aforementioned groups 'were *represented* in parliament' [L: *representantes in parlamento*—was actually explicitly stated (although such an idea had been asserted implicitly many times in the past).³⁹ Incidentally, in using the term 'claim' to describe the declaration concerning representation that was made at the parliament of 1452, both here and in much of what follows, I have drawn upon the work of political scientist Michael Saward concerning what he termed 'the representative claim'; that is, 'seeing representation in terms of *claims* to be representative by a variety of political actors, rather than...seeing it as an achieved, or potentially achievable state of affairs'.⁴⁰ At present, the distinction between 'representation-as-fact' and 'representation-as-claim' is a useful one; it draws our attention to the *dynamic* role that such assertions of 'representativeness' performed in situations where we might otherwise read them as a

³⁸ Brown, 'Public Authority and Factional Conflict', pp. 123–4. Also cf. *RPS*, 1402/5/1.

³⁹ *RPS*, 1452/6/1 [emphasis added].

⁴⁰ M. Saward, 'The Representative Claim', *Contemporary Political Theory*, 5 (2006), pp. 297–318, p. 298 [emphasis added]. Saward explicitly sought to move away from political philosopher Hannah Pitkin's highly-influential theoretical model of analysing 'representation' through its forms and typologies, and toward a framework which explores 'what is going on *in* representation'—its dynamics, in other words (Saward, 'The Representative Claim', pp. 298, 299. Cf. H. Pitkin, *The Concept of Representation* (London, 1967)). In Saward's view, 'representation' is best described as a 'precarious and curious sort of claim about a dynamic relationship' (i.e. between 'representatives' and those they claim to represent), rather than a factual product (of, say, elections); it is something 'generated by the making, the performing, of claims to be representative', rather than something 'external to its performance' (Saward, 'The Representative Claim', pp. 298, 302). And—most importantly for the present discussion—Saward suggests that, because claims are 'contestable and contested...there is no claim to be representative of a certain group that does not leave space for its contestation or rejection by the would-be audience...or by other political actors' (Saward, 'The Representative Claim', pp. 302).

bald statement of fact. Read in this light, then, Douglas's public rejection of the authority of the king's parliament had been matched by an equally explicit—and equally public—declaration of the assembly's legitimacy and communal authority, justified in no small part by its claim to represent not just a section, but the entirety of the 'three estates of the kingdom of Scotland'.⁴¹ The value in juxtaposing these two very different 'declarations' is that the former gives the lie to the latter; despite the sort of rhetoric which had been employed in James II's parliament, the assembly in this instance could not have been said to represent Douglas and his companions, or even provide a forum in which these men could enter into conversation with the crown.

The way in which the language of the 'three estates of the kingdom of Scotland' was used in this assembly, moreover, might be said to have a clear parallel in another well-known political concept in Scottish medieval history: that of the 'community of the realm of Scotland' (or, more properly, 'community of the kingdom' [L: *communitas regni*]) in the late-thirteenth and early-fourteenth century, but more specifically in the parliaments of Robert I. This parallel probably deserves attention for the value that it holds in assessing two related issues. While it returns our attention to the core concepts of 'community' and 'representation' in Scottish parliaments and general councils, it also allows us to take a broader perspective upon how the ideas which underpinned these institutions fitted into Scotland's structure of politics; it therefore seems helpful to approach the concept (and phenomenon) of communal authority diachronically, whilst at the same time taking a synchronic approach to the particular phrases and rhetoric by which communal authority was expressed and used in moments of crisis like that of 1452. On a related note, this parallel encourages us to consider whether such representative claims are more indicative of dynamic political processes and strategies—which could change or mutate over time, depending upon the language and ideas employed, and the extent to which such claims chimed with contemporaries—than of the relative 'power' of a notionally static entity (like parliament or the 'community' or the 'three estates', as the three are frequently conflated) at any one time (that is, a body whose power waxed and waned relative to the power or assertiveness of individual kings in Scotland, or, in another reading, the Scottish crown more generally).

⁴¹ *RPS*, 1452/6/1.

II

So, to draw out this parallel more fully—in contrast to Barrow’s model of a cohesive political community acting in tandem with the king to protect the Scottish kingdom from English claims to overlordship—it is now widely accepted that, as Roland Tanner put it, to advance such an interpretation is ‘to be guilty of accepting unquestioningly a rhetoric of community’ in Scotland that would be treated more sceptically elsewhere, and that, instead, the records produced during Bruce’s reign demonstrate ‘a clear royal agenda to adopt the rhetoric of “community of the realm” to justify actions that were purely the king’s own’.⁴² There is probably a case to be made that this interpretation risks throwing the baby out with the bathwater—Robert I was undoubtedly employing communitarian rhetoric to further his royal policies and invoke a broad base of support for his actions, but such an argument begs the qualification that political ‘claim-making’ like this was also only effective insofar as these claims were seen as compelling by their intended audiences. Yet Tanner’s argument is persuasive in that it shows how effectively communitarian ideas and language could be used during Bruce’s reign to disguise more complex realities, especially when this sort of communitarian rhetoric was being directed toward an *external* audience, rather than the king’s opponents within Scottish political society. Harder to accept is the proposition that A) the concept of a ‘community’ vested with a *de jure* authority (which owed much the rule of Scotland’s ‘guardians’ after the death of Alexander III) effectively disappeared in Scotland during the reign of Robert I, B) it was replaced by a *de facto* authority of parliament for much of the fourteenth century, and C) only returned to a similar *de jure* notion of communal authority vested in the ‘three estates’ during the reign of James I and II.⁴³

⁴² Tanner, ‘Cowing the Community?’, pp. 51, 72. By contrast, Barrow argued that the community of the realm meant not only ‘the totality of the king’s free subjects’, but also ‘the political entity in which they and the king were comprehended. It was in fact the nearest approach to the later concept of a nation or a national state that was possible’ in the fourteenth century. Barrow argued that because the Scottish parliament did not mirror developments in the English parliament in that no ‘house of commons’ came into existence, the ‘meaning of the expression *communitas regni* underwent no such rapid or radical change’, as in England, where it became closely associated with the non-aristocratic element in parliament in the fourteenth century, falling out of use by the fifteenth (G.W.S. Barrow, *Robert Bruce and the Community of the Realm of Scotland* (Edinburgh, 1965, repr. 2005), pp. xx–xxi).

⁴³ Tanner, ‘Cowing the Community?’, pp. 72–3.

Both periods in which Tanner proposes a *de jure* notion of communal authority correspond to periods in which communitarian ideas and principles were expressed through concepts—or formulae—which were highly effective in projecting the image of a unified whole, a *universitas*, that could be represented within parliaments and general councils: the ‘community of the kingdom’, and, later, the ‘three estates of the kingdom’. It is worth bearing in mind that, at present, the extent to which political actors who claimed to represent the *universitas* of the king’s subjects in parliament were actually directly representational—what Pitkin would call ‘descriptive representation’, or the extent to which a representative (of, say, a given social grouping) *resembles* those whom they purport to represent (like a burgess representing the ‘third estate’, to take the obvious example)—is not of primary importance.⁴⁴ In England, as discussed above, the social demographics of representative assemblies changed over time, but the absence of burgesses from early parliaments and councils did not preclude those assemblies from claiming to ‘represent’ a *universitas*, nor for those claims to be accepted as *legitimate* claims in political society. Similarly, it was not controversial for the ‘bishops and magnates’ who elected the Scottish Guardians in 1286, for instance, to claim that they were acting on behalf of—that they were representing—the ‘community’ of Scotland as a unified whole.⁴⁵ Of more importance is the fact that this particular formulation of the concept of community—*communitas regni*—fell out of use during the reign of David II.

The question of why this development occurred deserves fuller investigation than this thesis allows, but it may be possible to outline one speculative line of inquiry. Earlier it was pointed out that Robert I’s reliance on the concept of *communitas regni* probably depended upon such an idea having actual currency in contemporary political practice; this may account for Bruce’s early adoption of the concept and its centrality as a legitimising device during his reign. However, if in the *longer* term this particular iteration of the concept of communal authority no longer resonated with the audience to whom it was directed (i.e. because it had *not* been reflected in practice) this could explain, in part, why reliance upon the *communitas regni* formula diminished in the

⁴⁴ Pitkin, *Concept of Representation*, pp. 60–94.

⁴⁵ *Chron. Lanercost*, p. 117. See also, for instance, *RPS*, 1344/3 (where a ‘full parliament’ was composed of ‘the prelates and nobles of the kingdom’ [L: *coram prelatibus et proceribus regni in pleno parlamento tento ibidem*]).

aftermath of Robert I's reign.⁴⁶ This does not necessarily mean that the idea of a *de jure* notion of communal authority was replaced by a *de facto* notion of communal authority expressed only through practical application. Instead, this period bore witness to an important change—the significance of which has not been fully appreciated—in the language by which communal authority was articulated and expressed. To fully appreciate the significance of the 'three estates' terminology in the fifteenth century (and return to our earlier discussion), it may be helpful to at least briefly explore this change.

Even a cursory glance at three important formulae through which ideas of communal authority were expressed in the Scottish parliamentary record suggests that a notable reorientation of political language occurred over the course of the fourteenth century in Scotland, and—to a lesser extent—again in the fifteenth (principally during the reign of James I and James II).⁴⁷ Because of lacunae in the record, it is difficult to suggest any precise dates: argument could be made for as broad a range as c.1330–c.1424, or a closer range of c.1357–c.1404. The table below [**Fig. 1**] does not, of course, comprise a definitive record given the patchy nature of the parliamentary record, and is merely intended to serve as a rough guide to the linguistic changes which occurred during this period.

⁴⁶ See references to the 'community of the kingdom' in the extant parliamentary record in 1302, 1315, 1318, 1320 (the Declaration of Arbroath), 1326, 1328, 1357, 1367, 1368, 1398 and 1401 (*RPS* A1302/1; *RPS* 1315/1; *RPS* 1318/30; *RPS* 1328/1; *RPS* 1357/1/1; *RPS* 1367/9/9; *RPS* 1368/6/9; *RPS* 1398/2; *RPS* 1401/1). After 1401 I can find no extant references to the *communitas regni*. After 1424, Scots almost exclusively replaced Latin and French in the parliamentary record, but it is significant that the even the word 'community' tends to disappear from the record at this point (except in an urban context).

⁴⁷ See Fig. 1.

DISCOURSES OF COMMUNITY AND ESTATES IN LATE MEDIEVAL SCOTLAND

Years	Communitas Regni	Three Communities	Three Estates	Indicative records (RPS)
1290	X			<i>RPS</i> , 1290/3/2; <i>RPS</i> , 1290/3/3; <i>RPS</i> , 1290/7/1.
1296	X			<i>RPS</i> , A1296/8/1; <i>RPS</i> , A1296/2/1.
1298	X			<i>RPS</i> , A1298/1.
1299	X			<i>RPS</i> , A1299/1.
1302	X			<i>RPS</i> , A1302/1.
1314	X			<i>RPS</i> , 1314/1.
1315	X			<i>RPS</i> , 1315/1.
1318	X			<i>RPS</i> , 1318/1; <i>RPS</i> , 1318/2; <i>RPS</i> , 1318/30.
1320	X			<i>RPS</i> , 1320/4/1 (Declaration of Arbroath).
1326	X			<i>RPS</i> , 1328/1.
1328	X			<i>RPS</i> , A1328/3.
1357	X	X		<i>RPS</i> , 1357/1/1; <i>RPS</i> , 1357/9/1; <i>RPS</i> , A1357/9/2; <i>RPS</i> , 1357/11/1; <i>RPS</i> , 1357/11/7; <i>RPS</i> , 1357/11/9.
1364		X		<i>RPS</i> , 1364/1.
1365	X			<i>RPS</i> , 1365/1/18 ; <i>RPS</i> , 1365/7/2.
1366		X		<i>RPS</i> , 1366/7/6; <i>RPS</i> , 1366/7/7; <i>RPS</i> , 1366/7/9; <i>RPS</i> , 1366/7/10.
1367	X	X		<i>RPS</i> , 1367/9/1; <i>RPS</i> , 1367/9/2; <i>RPS</i> , 1367/9/8; <i>RPS</i> , 1367/9/9; <i>RPS</i> , 1367/9/10; <i>RPS</i> , 1367/9/11; <i>RPS</i> , A1367/9/1.
1368	X	X		<i>RPS</i> , 1368/6/9; <i>RPS</i> , 1368/6/11; <i>RPS</i> , 1368/6/12; <i>RPS</i> , 1368/6/16; <i>RPS</i> , 1368/6/18.
1369		X		<i>RPS</i> , 1369/3/1; <i>RPS</i> , 1369/3/5; <i>RPS</i> , 1369/3/11.
1370	X	X		<i>RPS</i> , 1370/2/2; <i>RPS</i> , 1370/2/5; <i>RPS</i> , 1370/2/7; <i>RPS</i> , 1370/2/10; <i>RPS</i> , 1370/2/7 ('each community', 'community of the country', 'communities of the country'); <i>RPS</i> , 1370/2/12; <i>RPS</i> , 1370/2/14; <i>RPS</i> , 1370/2/26; <i>RPS</i> , 1370/2/29; <i>RPS</i> , 1370/2/35; <i>RPS</i> , 1370/10/2.
1372	X	X		<i>RPS</i> , 1372/3/1; <i>RPS</i> , 1372/3/6; <i>RPS</i> , 1372/3/12.
1373		*X		<i>RPS</i> , 1373/3 ('three communities or estates').
1384		X		<i>RPS</i> , 1384/11/2; <i>RPS</i> , 1384/11/5.
1385	X			<i>RPS</i> , 1385/4/2; <i>RPS</i> , 1385/4/3.
1388		X		<i>RPS</i> , 1388/12/1.
1389		X	X	<i>RPS</i> , 1389/3/2; <i>RPS</i> , 1389/3/12; <i>RPS</i> , 1389/3/14; <i>RPS</i> , 1389/3/1.
1390			X	<i>RPS</i> , 1390/1.
1391			X	<i>RPS</i> , 1391/6.
1392			X	<i>RPS</i> , 1392/3/1.
1397		X		<i>RPS</i> , 1397/1.
1398		X	X	<i>RPS</i> , 1398/2 (communities of the kingdom'); <i>RPS</i> , 1398/1.
1399		X	X	<i>RPS</i> , 1399/1/2 [S: <i>commouns</i>]; <i>RPS</i> , 1399/1/17; <i>RPS</i> , 1399/1/18; <i>RPS</i> , 1399/1/2; <i>RPS</i> , 1399/1/17.
1401	X		X	<i>RPS</i> , 1401/2/2.
1404?		X		<i>RPS</i> , RobIII/4.
1416			X	<i>RPS</i> , 1416/1.
1423			X	<i>RPS</i> , 1423/8/1.
1424– 'Three Estates'				
1428		X		<i>RPS</i> , 1428/7/3 ('kingdom and communities therein').

So, as well we know, during the late-thirteenth and early-fourteenth century, the formula *communitas regni* appeared with relative frequency (especially when we consider that there are far fewer extant records for this period). Observe references to the ‘community of the kingdom’ in the extant parliamentary record in 1302, 1315, 1318, 1320 (the Declaration of Arbroath), 1326, 1328, 1357, 1367, 1368, 1398 and 1401.⁴⁸ Bar one exception in 1428, after 1401 I can find no extant references to the *communitas regni* in the parliamentary record.⁴⁹ Significantly, even the term ‘community’ tends to disappear from the record at this point (except, of course, in an urban context). In the mid-fourteenth century, however, references to the ‘three communities’ [F: *tres communitates*] of the kingdom begin to appear: this formula appears, for instance, in 1357, 1364, 1367, 1368, 1369, 1370, 1372, 1384, 1382, 1389, 1397 and 1399.⁵⁰ It bears noting that, whereas 1357 is popularly regarded as a highly significant point in which the first reference to the ‘three estates’ of the kingdom was made, this is not entirely accurate.⁵¹ The year 1357 marks the first appearance of the ‘three communities’ formula in our extant records, to be sure, but—as discussed in Chapter 5—it is worth distinguishing between the language of ‘estates’ and of ‘community’. And if our objective is to investigate changes in the ways that ideas of communal authority were articulated and used, it seems wiser, in this instance, to err on the side of caution.

More properly, then, the first instance in which the term ‘three estates’ appears in the extant parliamentary record should be dated to 1373. However, it is worth noting that while the formula ‘three estates’ does not appear in the Scottish parliamentary record prior to 1373, the term ‘estate’ [F: *estat*] does appear in other contexts which

⁴⁸ RPS A1302/1; RPS 1315/1; RPS 1318/30; RPS 1328/1; RPS 1357/1/1; RPS 1367/9/9; RPS 1368/6/9; RPS 1398/2; RPS 1401/1.

⁴⁹ RPS, 1428/7/3.

⁵⁰ RPS 1357/11/1; RPS 1357/1/7; RPS 1364/1; RPS 1367/9/1; RPS 1368/6/9; RPS 1369/3/1; RPS 1370/2/2; RPS 1372/3/1; RPS 1384/11/2; RPS 1389/3/12; RPS 1397/1 [S: *statutit and ordanyt with assent of the thre communatez thar beande*]; RPS 1399/1/2 [S: *giffen to deliberacioun of the thre commouns of the kynryke thare gaderyt*. This appearance of ‘commouns’ may be notable; the translation is given in RPS as ‘community’ but it seems unhelpful to assume a lack of precision on the part of medieval parliamentarians, or at least to dismiss such oddities outright. Cf. RPS, 1426/36; RPS 1399/1/17 [S: *thre communatez has grauntit contibucioun* – the formula ‘thre estatit’ also appears in this document].

⁵¹ J. Goodare, ‘The Estates in the Scottish Parliament, 1286–1707’, *Parliamentary History*, 15 (1996), pp. 11–17.

may be relevant to the present discussion; that is, where the term ‘estate’ was *not* used in a legal context relating to land, property or ownership thereof, or in the sense of broad references to social class and status (i.e. ‘estate or condition’) as outlined in Chapter 5. In 1290, for instance, two references to the ‘estate of the kingdom of Scotland’ were made in letters relating to efforts by the Guardians appointed during the short ‘reign’ of the Maid of Norway, to ‘attain...the great good and profit’ of the kingdom.⁵² While it is tempting to read into this formula an early example of the language of estates being used in such a way as to designate a ‘community’ or indicate the idea of a political solidarity located within a regnal polity, we must remain cautious. Although it may seem striking that the term appears in our records—and was used in a highly politicised sense to refer to the ‘kingdom’ as a whole—at a time when Scotland’s governance was in a relatively precarious state, the term ‘estate’ here was being used to refer to the ‘condition’ of the kingdom, rather than in the more abstract sense of referring *to* the kingdom, or the body politic within it. Curiously, one of the very few occasions in which the idea of the ‘estate of the king’ [F: *notre estat et notre roialme Descoce*] was articulated was in 1334, in a parliament held at Edinburgh before Edward Balliol; again, the sense in which the term ‘estate’ was being used here is not entirely clear. These examples, however, serve to underline clearly the point that when the term appeared once again in 1373—in the formula of the ‘three estates’—it was being used in a markedly different sense, to express a distinct—but, as we shall see, not precisely ‘new’—concept.

The article in which this first reference to the ‘three estates’ was made is highly revealing in itself, for in it (not once but twice) the formula of ‘the three estates’ was explicitly equated that of ‘three communities’:

‘From the deliberation of council and with the consent and assent of the prelates, earl and barons, and the rest of the leading men and nobles, and all the others of the three estates

⁵² RPS, 1290/3/2 [F : *et si ele seit a purchacer nus pur les g[r]ant biens e profit que purrunt de coe avenir al un a le autre reaume mettrom volenters conseil ensemblement ovesque vus coment ele seit purchase, e pur ceste chose a autres ke tuchent lestat du reaume de Escoce, sur queux nous aurom mester de aver seurte de vus*]; RPS, 1290/3/3 [F : *sire si vus plect ke nous vous saums le plus tenu a tout jurs ke si il avenoyt ke vous ceste chose ne feisset il nus covendroit en ceste chose prendre le meillour conseil ke deus nus dorra pur le estat du reaume et la bone gent de la terre*]. There is a minor discrepancy between the source text and translation given for the latter reference in RPS, in that *lestat du reaume* is given as ‘estate of the kingdom of Scotland’.

or communities of the whole kingdom assembled in the same place'.⁵³

As we have seen in Chapter 2, in the later stages of the fourteenth century (and especially in the 1380s and 1390s), the idea of communal authority vested in Scotland's 'three communities' had been used extensively to confer legitimacy upon the appointment of 'guardians' and lieutenants in the absence of active kingship under Robert II and Robert III. It is surely significant that, in practice, for much of the 1390s, the terms 'three communities' and 'three estates' were used interchangeably; and furthermore, that this interchangeability reflected the way in which the terms 'community of the kingdom' and 'three communities' were *also* used (that is, in similar ways, for similar purposes and in similar contexts) from the late 1350s to the 1380s [see **Fig. 1**]. It could be argued that implicit in the terminological separation of 'all others of the three estates or communities of the kingdom' was the idea that whereas 'estates or communities of the whole kingdom' refers to three social groupings represented in parliament, this was also the manner in which the entire 'community of the kingdom' was generally referred—that is, after mention of the prelates, earls, barons, and so on. However, if we view the way in which these terms were used in terms of 'claims of representation'—rather than solely as rhetorical mechanisms by which legitimacy could be asserted and/or bolstered through the concept of communal, or communitarian, authority—the picture becomes slightly more complex.

The article in which the 'three communities' were equated with the 'three estates' comprises a piece of legislation by which Robert II's eldest son, John Stewart, earl of Carrick, was named as the king's successor on 4 April 1373.⁵⁴ We should not be surprised to find that in 1373 the 'deliberation of council and...the consent and assent of the prelates, earls and barons, and the rest of the leading men and nobles and all others of the three estates or communities of the kingdom assembled in the same place' was required in order to sanction this action.⁵⁵ Robert II evidently found it useful to invoke communal authority as a legitimizing device to present unified support for this legislation; indeed, the repeated emphasis upon communitarian language in 1373 (and, of course, in prior and subsequent decades also) suggests that ideas of communal

⁵³ *RPS* 1373/3 [emphasis added].

⁵⁴ *RPS*, 1373/3.

⁵⁵ *RPS*, 1373/3.

authority were deeply rooted in contemporary political thought as well as in '*de facto*' practice. But let us concentrate more closely on the *distinction* that was made between the 'prelates, earls and barons', together with the 'leading men and nobles', and '*all others* of the three estates or communities of the kingdom'.⁵⁶ The broad scope of the latter clause—'all others'—suggests that the king and his counsellors had sought a phrase which could encompass as comprehensive a body of the king's subjects as possible in one formulation (possibly to invoke the idea that the communal authority being utilised here was rooted in a genuinely representative cross-section of Scottish political society).⁵⁷

At the same time, though, the distinction which was made between the 'prelates, earls barons...and leading men' and 'all others of the three estates or communities' may imply that the theoretical 'representation' of Scotland's entire body politic was not yet being articulated within a single, unitary, and ideologically coherent concept; indeed, it may even suggest that two (possibly competing) notions of who—or rather, what groups—could then *legitimately* claim to 'represent' Scotland's entire 'political community' (and thereby exercise communal authority on behalf of the *universitas*—existed concurrently. On a related note, it may be helpful at present to highlight one important qualification related to the question of representation. The suggestion that representatives of the burghs did not participate in representative assemblies until the reign of David II has long—and correctly—been dismissed.⁵⁸ However, in the late-thirteenth and early-fourteenth century, the *absence* of burgesses from meetings of parliament and general council in no way meant that these meetings were not genuinely 'representative' assemblies; rather, it was sufficient and legitimate for the leading clergy and nobility to 'claim' (in Saward's sense of the concept) that they 'represented' the entire 'community' of the kingdom. In other words, a highly restrictive and limited body of elites could then—in Scotland as elsewhere—do the 'heavy lifting' of representation in parliaments and general councils on behalf of a larger whole, and therefore legitimately exercise the communal authority that was theoretically vested in the entire body politic. As such, we might speculate whether,

⁵⁶ *RPS*, 1373/3.

⁵⁷ *RPS*, 1373/3.

⁵⁸ A.A.M. Duncan, 'The Early Parliaments of Scotland,' *Scottish Historical Review*, 45:139 (1966), pp. 36–58, at pp. 52–3.

during the fourteenth century, changes in the language by which communal authority was invoked might actually have reflected changes in not only the regular composition of Scottish representative assemblies (especially during the reign of David II, when the burden of paying the king's ransom was largely placed upon the burghs) but also changes to the way in which the concept of representation was understood in contemporary Scottish political thought. The introduction of new political terms designed to reflect this change in Scotland's structure of politics in the fourteenth century might well imply that contemporaries were in fact highly conscious of notions of communal authority, to the extent that they were engaged in efforts to reorient their political language in a way that better aligned changing practice with pre-existing theoretical paradigms.

By contrast, it is apparent that in the fifteenth century—the second period in which Tanner proposed a *de jure*, rather than merely *de facto*, notion of communal authority—the concept of the ‘three estates’ did not require similar qualifications or explanations; it was understood to include implicitly the former groups—the leading nobility and clergy—as well as urban representatives, and was therefore highly effective in presenting the image of a *universitas* in which communal authority was located. Arguably, the formula by which the ‘political community’ was characterised in the fifteenth century—as the ‘three estates’—was in many respects a product of a gradual changes in terminology over the course of the thirteenth and fourteenth centuries. This suggests that while we can identify a *linguistic* shift in the rhetoric by which communal authority was expressed, the underlying *concept* of communal authority—the base idea that a certain degree of legitimate authority could derive from a community—itself did not undergo a significant change, nor did the political *phenomenon* of various individuals or groups using the ideas and language of communal authority to pursue and legitimise their political objectives.

In light of the preceding discussion, then, we might fairly assume that the formula by which the ‘political community’ was characterised in the fifteenth century—the ‘three estates’—was simply the product of a gradual changes in terminology over the course of the thirteenth and fourteenth centuries, which better reflected the changing structure of politics and political representation in late medieval Scotland. Yet the near-total disappearance of the actual *term* ‘community’ (and its etymological variants) from the parliamentary record for practically all of the fifteenth century—and its wholesale replacement with the rhetoric of the ‘three estates’—merits further

comment.⁵⁹ Although the paucity of extant sources for the governorships of the dukes of Albany (especially for their general councils) presents interpretative difficulties for the period of James I's minority, certainly after 1424 there were virtually no deviations from the 'three estates' formula. Such consistency in usage seems at variance with older practice, and may indicate that a conscious decision was made at some point—either during James I's minority or upon his return to Scotland—to standardise parliamentary language in this respect. Indeed, James I demonstrated his willingness to experiment with political language early on in his reign: recall the highly peculiar references to Scotland's 'commons' in 1426 and 1427, alongside the equally unusual reference to a 'common speaker of parliament' in 1428.⁶⁰ Of course, it is hardly surprising to find that the king's attempts to 'anglicise' the language—and, presumably, the structure—of his representative assemblies in Scotland were unsuccessful, given the considerable length of time in which the idea of communal authority and parliamentary representation conceptualised along the lines of 'three estates' had been cultivated. Nevertheless, these attempts suggest that James I was conscious of how effectively communitarian concepts could be used to legitimise and augment royal authority—certainly, as we have seen in Chapter 4, James I found it useful to use the rhetoric of the 'three estates' to promote an image of authority, unity and consent. For James I, the concept of the 'three estates' may therefore have been just as useful a political tool as was the 'community of the realm' for Robert Bruce just over a century earlier—just as in 1452, James II was evidently using the idea of the 'three estates of the kingdom represented in parliament' to a similar end in his conflict with the Douglasses.

III

Let us return to the conflict between James II and the Douglasses between 1452–1455. It seems perfectly clear that James II was using the parliament he summoned to meet at Edinburgh on 12 June 1452 to legitimise his killing of the eighth earl of Douglas, and equally to justify the characterisation of the ninth earl of Douglas as a rebel and traitor. At this stage, it is hardly surprising to find that the king resorted to such tried and tested strategies, and the parliamentary declaration of the king's innocence made in June 1452 is comparable to similar instances in Ireland wherein representative

⁵⁹ See Fig. 1.

⁶⁰ *RPS*, 1426/36; *RPS*, 1427/7/5; *RPS*, 1428/3/3 ('common speaker of parliament').

assemblies and communitarian language were used to portray universal support for controversial actions. In Scotland, as we have seen, parliaments and general councils provided fora in which kings (or their counsellors, or those representing the crown) could augment royal power with communal authority to considerable effect. Michael Brown, for instance, argued that between 1424–1455 (years which were characterised by episodes of crown-magnate conflict like that between James II and the Douglasses), ‘parliament represented the principal source of justification and legitimation for the actions of the royal government’.⁶¹ In many respects we might fully agree with this statement, but a more in-depth exploration of *why* this was the case may prove illuminating.

Scottish parliaments were especially useful for kings (especially active, adult rulers) principally because the privileged access and control these political elites could exert over representative assemblies—institutions in which communitarian ideas had most resonance, but which were equally gatherings of what was first and foremost a royal institution, headed by the king—allowed them to transform these ideas into powerful political tools in a way that was difficult to replicate elsewhere. *Within* these assemblies, monarchs and agents of the crown were able to draw upon a deeply entrenched set of political ideas and language that posited communal authority as a fundamental source of political legitimacy to justify their actions: hence the utility of formulae like the ‘community of the realm’ and the ‘three estates of the kingdom’, as well as the language of counsel and consent. Equally though, and due in no small part to the vicissitudes of fortune which had brought about so many periods of absentee kingship (in one form or another) to the polity, ideas and principles of communal authority had long been grounded in practice in Scotland; and we can clearly recognise, as Tanner has demonstrated, the ability of the ‘three estates’ (or rather, representatives of the three estates who had gathered at specific assemblies) to ‘resist the crown’ on numerous occasions between 1424–1488.⁶² Consequently, this political heritage may have presented something of a risk for kings like James I and James II in relying upon the communitarian ideas and principles to augment their royal authority in representative assemblies. This was because monarchs could not—although they might attempt to—claim a monopoly on the communitarian ideas and language they relied

⁶¹ Brown, ‘Public Authority and Factional Conflict’, p.

⁶² Tanner, *Scottish Parliament*, *passim*.

upon to legitimize their actions. Instead, as we have seen, the ideas which underpinned communal authority, or communitarian language and rhetoric, could be co-opted by others (either individuals like Robert Graham, or groups or political factions acting collectively) to pursue their own political agendas, sometimes in direct opposition to those of the crown.

A second—and, at least before 1460, arguably less distinct—linguistic change in the records of parliament may indicate attempts by the king and his counsellors to circumvent this problem by employing a different set of political ideas and principles. Crucially, this entailed the use of language and rhetoric which *could* be used to invoke the idea of a political solidarity—indeed, a regnal solidarity—and to justify and legitimise royal policy, but which could *not* be adopted by those who exercised communal authority on the basis that they could claim to represent the three estates or common good of the kingdom. What the parliamentary records of James II's reign display, as will become apparent, is an increased (but not new) adoption of the language of royal 'majesty'. The term *maiestas*, as Black has written, implied sovereignty in a way that terms like *dominium* and *jurisdictio* did not; as a term derived from Roman law (whereas initially, according to Cicero, *maiestas*—or sovereignty—had belonged to the entirety of the Roman people, the concept came to be associated almost exclusively with the emperors themselves), it was increasingly adopted by medieval monarchs as a way of signifying their ability to 'act without reference to others, either inside or outside the realm'.⁶³ It was also a concept linked with related ideas which together underpinned the contemporary conceptions of the *status regis*: principally, the crown, the royal dignity, and the *fisc*.⁶⁴ Indeed, the link between *maiestas* and the *fisc* may be of special relevance to the way in which imperial ideas of kingship were used in Scotland during the reign of James II: note that one English chronicler writing in the eleventh century, as Post observed, 'associated injury to the *fiscalia* (*iura*) with the *laesa maiestas principis*...in other words, if the *fiscus* should remain *illaesus*, all the more should the royal *maiestas* and the *iura regis* be

⁶³ Black, *Political Thought*, p. 113; N. Saul, 'Richard II and the Vocabulary of Kingship', *English Historical Review*, 110:438 (1995), pp. 854–877, at p. 864. See especially E.H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1965; repr. 1997), p. 297–9.

⁶⁴ G. Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100–1322* (Princeton, 1964), p. 412.

kept *illaesa*'.⁶⁵ We have already encountered one reference to the king's 'majesty' in this chapter, in the parliamentary declaration of the king's innocence made on 12 June 1452, where it was twice stated that the crimes of the eighth earl of Douglas were committed 'in contempt and offence of the most serene royal majesty'.⁶⁶ Of course, in its immediate context—James II's exoneration for the killing of Douglas—the claim that Earl William engineered his own death through committing the crime of *lese majesty* may simply have been seen as a plausible explanation and justification for the king's actions. But other references to the king's 'majesty', alongside related concepts concerning kingship and the exercise of royal authority, may suggest that such ideas were being adopted, or were gaining currency, in a more thoroughgoing sense in mid-fifteenth century Scotland.

A possible reason as to why this development—as located in the earlier fifteenth century—has not yet been fully appreciated may stem from the tendency in Scottish historiography to structure analysis of historical developments within or around the reigns of individual kings. In part, this is reflective of the importance placed upon the character of—and especially the level of agency attributed to—Scottish kings more generally. Given the vast degree of power which individual kings could wield, shaping the lives and fortunes of their subjects, this predilection is understandable; it does, however, mean that we must be on the alert for longer-term continuities or changes which may not become fully apparent within the reign of an individual monarch. In the case of James II, it bears noting, this is a problem which arises not from the contrasts but rather from the comparisons—the similarities and continuities—which have been drawn between his reign and principally that of his predecessor, James I. In particular, James II's attitudes toward kingship and governance have been likened to those of his father, particularly with respect to his royal 'acquisitiveness' and treatment of the nobility.⁶⁷ So, to take one example, in structural terms, historians have tended to

⁶⁵ Post, *Medieval Legal Thought*, p. 418.

⁶⁶ *RPS*, 1452/6/1.

⁶⁷ As Christine McGladdery put it, James II's personal concept of kingship 'owed much to his father's robust and elevated attitudes' (McGladdery, *James II*, p. xiii). Likewise according to Roland Tanner, James II 'stamped his personality firmly' upon royal policy in the years after 1455, but this entailed, 'like his father', attempts to augment his power and finances at the expense of others (Tanner, *Scottish Parliament*, p. 148). And for Michael Brown, James I's attempt to extend the rights and authority of the Scottish crown 'set the model for later kings'; the 'aggressive acquisitiveness' of both James I and James II, he argued, resulted in a near-wholesale shift in the

concur with regard to the problems that drove James I and James II to such 'acquisitiveness' at the expense of their most powerful subjects: particular emphasis has been placed—rightly—upon the relative poverty of the Scottish crown, which existed largely as a consequence of successive alienations from crown lands in the latter half of the fourteenth century, coupled with increasing financial pressures in the fifteenth; thus James I, James II and their successors' attempts to build up the Scottish royal demesne—which in theory formed part of the inalienable *fisc*—are understood to play a pivotal role in conflicts which arose in the fifteenth century and the negotiation of political power which surrounded them. I emphasize this point not because it fails to explain why James I and James II pursued the royal policies that they did—quite the contrary—but because such an interpretation may have the effect of obscuring certain important developments in how these policies were being presented, negotiated and legitimized to Scottish political society during the reign of James II.

From the perspective of 1460, this historiographical problem is equally apparent: the beginning of James III's reign marks, at least in the historiography (but not necessarily in our extant sources) a distinct shift in tone regarding kingship and governance in Scotland which stands out in marked contrast to the general treatment of Scottish kingship in the first half of the fifteenth century. This shift—or, more accurately, change in emphasis—is one which has been most clearly expressed by Roger Mason through the idea of a 'renaissance' Scottish monarchy: kingship with a self-consciously imperialistic flavour, as exemplified by the claim made in a parliament held at Edinburgh in November 1469 that 'oure soverane lord', James III, 'has ful jurisdictione and fre impire within his realme'.⁶⁸ Mason suggested Renaissance humanism may have generated a royalist tradition in which 'the medieval Scottish regnum was reconceptualised, not as a classical *respublica*, but as an *imperium* whose ruler possessed the full jurisdictional and territorial authority signified in the symbolism of the closed imperial crown'.⁶⁹ Of course, whether later medieval Scottish

composition of Scotland's nobility, with the crown coming out on top in a series of conflicts with powerful magnate houses as the ultimate winner in terms of material and political gains (Brown,).

⁶⁸ *RPS*, 1469/20.

⁶⁹ R. Mason, 'This Realm of Scotland is an Empire? Imperial Ideas and Iconography in Early Renaissance Scotland', in B.E. Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland: Essays Presented to Donald Watt* (Edinburgh, 1999), pp. 73–92, at p. 74.

monarchs actually saw themselves as possessing—in practice—anything much less than full jurisdictional and territorial authority in Scotland is a suggestion which could be challenged, especially if this ‘reconceptualisation’ is understood to date to the reign of James III. But historians have found compelling the proposition that James III—or rather, his counsellors—self-consciously adopted ideas of imperial kingship in 1469, and that the appearance of a rash of imperial iconography in royal artwork and architecture reflected this belief in the ‘imperial nature’ of royal authority.⁷⁰ Tanner has mounted the strongest arguments in favour of this thesis; he claimed that the *rex in regno* idea was ‘radically new’ at the beginning of James III’s active rule, and that the invocation of this maxim therefore marked a ‘radical departure for the Scottish crown’.⁷¹ The crux of Tanner’s argument is that the 1469 adoption of imperial ideas should be viewed as a ‘deliberate counter-strike’ by the king’s counsellors (and not an innovation of the king himself), or, in other words, a reaction against the ‘*de jure*’ authority that parliaments and great councils had ‘acquired by the later years of the reign of James II’. The parliamentary oaths of 1445 and the act of annexation (which we shall encounter below), Tanner suggests, were prime examples of how ‘the three estates viewed their right to act as a check on royal power as established in law’.⁷² However—at the risk of rehashing the ‘exaggerated’ levels of cultural and intellectual health in late medieval Scotland that stemmed from ‘the late twentieth century desire to counter the persistent view of late medieval and early modern Scotland as a cultural and intellectual backwater’—there remains a case to be made that these ideas were not *quite* so radical as they may have seemed in 1469. By suggesting a longer gestation period for imperial ideas influencing the exercise of royal authority (and, by the same token, the exercise and role of *communal* authority) in Scotland, it may be possible to re-situate these developments in Scottish political thought within earlier decades.

Certainly there is evidence to suggest that nascent ideas related to imperial kingship were circulating in Scotland prior to 1469, during James II’s reign and—arguably—during the reign of his father. At the later end of the scale, one Scottish prose writer’s invocation of imperial ideas may be of more direct significance to events in Scotland than has previously been recognised. Gilbert Hay was the author of three prose works—

⁷⁰ Tanner, *James III*, p. 213.

⁷¹ Tanner, *James III*, p. 214.

⁷² Tanner, *James III*, pp. 213, 215.

the *Buke of the Law of Armys*, the *Buke of the Order of Knychthede*, and the *Buke of the Governauce of Princis* (a version of the *Secreta Secretorum*)—which he had translated (with considerable re-workings and additions of his own) into Scots from their French originals.⁷³ His translations had been completed at Roslin castle in 1456, at the behest of William Sinclair, earl of Orkney and Caithness.⁷⁴ Of Hay's background we are surprisingly well-informed: he appears to have received his BA and MA from the University of St Andrews in 1418–19, but then left for France in or around 1420–21.⁷⁵ There he was to enter royal service, and Hay described himself as 'Chaumerlayn umquhyle to the maist worthy king Charles of Fraunce'; a later scribe stated that Hay had spent twenty-four years in France, which would place his return to Scotland sometime in or after 1445 (a year which coincided, probably significantly, with the death of Margaret of Scotland—James I's eldest daughter, who had married the French dauphin, Louis, in 1436).⁷⁶ It may be possible to corroborate 1445 as the year of Hay's return to Scotland elsewhere; a Gilbert Hay, knight, of the diocese of St Andrews, claimed that he was owed money by the dean of Dunkeld in 1445–5, and we know that the dean had died by 14 July 1445.⁷⁷ If we can accept this date for Hay's return to Scotland, it seems rather surprising that more has not been made of these sources for the light that they may shed on this writer's attitudes and opinions toward contemporary Scottish politics, especially because his additions and re-workings of the original French texts were so extensive. Indeed, given his patron's involvement in contemporary politics, there is probably a case to be made for analysing Hay's interpolations into the French texts which he copied in terms of their value as a contemporary commentary upon James II's reign.

⁷³ The best edition of these texts may be found in *The Prose Works of Sir Gilbert Hay*, 3 vols, ed J.A. Glenn (Scottish Text Socety, 1993). For analysis of Hay's prose works see S. Mapstone, *The Advice to Princes Tradition in Scottish Literature, 1450–1500* (Ph.D. thesis, University of Oxford, 1986), pp. 45–142; C. Edington, 'Hay, Sir Gilbert (b. c. 1397, d. after 1465), soldier and poet', *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/12722>.

⁷⁴ Hay, *Knychthede*, p. 2.

⁷⁵ Hay, *Knychthede*, p. 2; *Early Records of the University of St Andrews*, ed J.M. Anderson (Edinburgh, 1926), pp. 5–6; Mapstone, *Advice to Princes*, pp. 48–9; Edington, 'Hay, Sir Gilbert (b. c. 1397, d. after 1465), soldier and poet'.

⁷⁶ Hay, *Knychthede*, p. 2. Mapstone, *Advice to Princes*, p. 50.

⁷⁷ Mapstone, *Advice to Princes*, p. 51; Edington, 'Hay, Sir Gilbert (b. c. 1397, d. after 1465), soldier and poet'.

While such an investigation lies well beyond the scope of this thesis, it may be instructive to highlight, at least briefly, the presence of imperial ideas of kingship and the exercise of royal authority in Hay's works, which may have been in circulation in Scotland at that time. What should be clearly stated at the outset, however, is that Hay did not include the Scottish monarchs amongst those kings who were 'privilegit or prescribit in thaire power imperiale' in any form of interpolation or addition to the texts he was copying.⁷⁸ Hay reproduced in his list of 'sindry othir realmes that obeyis nocht to the Emperoure' only 'France, Spaigne3e and Ingland, the quhilkis has be writt thair jurisdiccioun imperiale' (although, interestingly, 'Scotland and Ireland' were added to this list in a much later marginal annotation to the manuscript).⁷⁹ But take, for example, the following passages, which are principally of interest to us as a contemporary comment, or reflection, upon ideas about kingship, the exercise of royal authority, and the obligations of the king's subjects to him. In his translation of Honoré Bonet's [d. 1409] *L'arbre des batailles*, Hay drew attention to the question of whether a lord's men should help him in a conflict with the king, writing,

'For quhen ever a baroun risis to mak were on his king, or rebell him in ony thing to cum agaynis him, he fallis in the crime of lese mageste, and in the payne of it; for we mon graunt that the king is prince of all his realme, and lord of all men and lordis. Quharfore the folk of his realme misdois mekle to rys agaynis him. For quhen he risis agaynis his king he is manesuorne. And tharfore his men suld nocht hald with him in his syn to manetene him, na sustene him in his manesuering. For the law in the decreis sais it is nocht gude help quhen ane helpis ane othir to do syn.'⁸⁰

Interestingly, the question raised here seems to chime with the experience of Hay's patron, William Sinclair, earl of Orkney and Caithness; Sinclair had married Elizabeth Douglas (sister to the fifth earl of Douglas) sometime before 1432, and he had been active in the royal administration, working alongside the Douglasses, during James II's minority.⁸¹ After his wife's death circa 1451, though, Sinclair evidently cut ties with the

⁷⁸ Hay, *Knychthede*, p. 21.

⁷⁹ Hay, *Law of Armys*, p. 107.

⁸⁰ Hay, *Law of Armys*, p. 125.

⁸¹ B.E. Crawford, 'Sinclair family (per. 1280–c. 1500), nobility', *ODNB* (2009), online edn at <https://doi.org/10.1093/ref:odnb/54321>.

Douglasses, choosing to closely align himself with James II instead.⁸² The events of 1452—and Sinclair's ties with James II—may have opened the earl up to criticism; Hay's inclusion of the former passage could have served as a justification for his patron's continued service to the king from 1450–1455.⁸³ More importantly, though, the reasoning which lay behind this theoretical justification was predicated upon a comparison, or equation, made between kings and emperors:

‘And quhen it is argewit that the barounis vassallis sueris to help his lord agayne all men, than is he manesuome, to that may it be ansuerd that certaynly he is nocht manesuorne. For the ath is understandin—gif be resoun it may be that he help him; for thare may nane ath bynd a persone to do thing that is feloun, na agaynis the lawe, as beris witnes the decreis. *And all this that we say of the king we say of othir princis that ar princis in their awin contreis, hafand nane atour thame in soverayntee*, as is the Erie of Fois, the quhilk is Prince of Bearn, in the quhilk he has privilegis of Emperour; for men sais he haldis of na man, bot of God, and of the suerd. And forthy, gif he wald mak were agaynis his barounis, the barounis men suld nocht be haldyn to help thame agaynis the Erie of Fois, for he is thair soverane lord and prince.’⁸⁴

⁸² Crawford, ‘Sinclair family (per. 1280–c. 1500), nobility’.

⁸³ If James II had happened upon Hay's translations, however, certain passages—as Mapstone has noted—might have made uncomfortable reading for the king. See, for instance, the passage included in Hay's *Governance of Princis*, that ‘grete princis and kingis, thouch they have grete office and charge, 3it ar thai bot men, and mankynde mon endure, and how thai suld be of grete drede to scayle and sched mannys blude oure reklesly’ (Hay, *Governance*, pp. 101–2). Although this could be interpreted as evidence of a compassionate concern for the king's subjects, it is also worth remembering that this passage was written only a few years after James II's killing of Douglas. It is easy to see, in this context, how the following passage could be read as a subtle criticism of James II's actions in 1452: ‘for suppose thou be a king and ryall Emperour, 3it art thou bot a man, and man kynde mon folowe. And schape the nocht to tak the office of God the makare, to wrangwisely undo the mankynde that he has made till his awin propre semblaunce, for we rede of ane rycht noble philosophour callit Hermogenes, quhilk sais in his bukis notable that quhasa slais ane othir creature of his awin kynde and nature slais him self, for he slais the verray semblaunce of God that he is maid eftir. And than cryis all the angelis and vertues of hevyn vengeaunce of that crueltee, sayand, Syr, Syr, thy servand schapis to be falowe to the that but resoun will sla thy semblaunce that thou has maid. And than ansueris the hevynis on Goddis behalf, Suffer 3ou till the tyme, for traistis wele, he that slais salbe slayn; for quhy, the vengeaunce is in my hand, the quhilk I sail tak, that all the vertues of the hevyn, the misdedis of the wikkit, quhill he have tane vengeaunce of thai mysdoaris of quhilkis thair punycioun is ordant in endles perpetuale payne (Hay, *Governance*, pp. 103–4)’

⁸⁴ Hay, *Law of Armys*, pp. 125–6 [emphasis added].

Whether or not Hay was using his additions in these didactic works to comment directly upon aspects of Scottish governance—upon James II’s kingship—is not really at issue here: the point is more that his translations of these works into Scots, and the imperial ideas which were transmitted within them, suggest that these ideas were circulating in Scotland during the reign of James II, and that the influence of continental (especially French) conceptions of imperial kingship may have been felt in Scotland well before the 1469 claim was articulated in James III’s parliament at Edinburgh. Hay’s translation into Scots of these passages—in which the idea of the *rex-imperator* is clearly evident—thus introduced to a Scottish audience a question which had occupied French theorists for some time. In theory, the idea of imperial superiority laid out in the *Corpus juris civilis* suggests that the crime of *lese majesty* could not be committed against a king, but only the Holy Roman Emperor.⁸⁵ Justification for an *affirmative* answer to the question of whether a baron (and his vassals) would be guilty of the crime of *lese majesty* should he rise up against his king depended upon the king being placed on level footing with the emperor. The statement in Hay’s translation that ‘the king is prince of all his realme’ was another way of invoking the maxim *rex in regno suo imperator est* in support of this argument. Moreover, in the second passage quoted above—where it was written that ‘all this that we say of the king we say of othir princis that ar princis in their awin contreis, hafand nane atour thame in soverayntee, as is the Erie of Foies, the quhilk is Prince of Bearn, in the quhilk he has privilegis of Emperour’—the idea of *rex in regno* was combined with another formula, *rex superiorem non recognoscens*. Taken together, this fusion of ideas amounts to a powerful statement in which the king was conceived as *majestas*.⁸⁶

Another source of ideas which related to imperial kingship and the exercise of royal authority may have had much more direct influence upon the formulation of royal policy and the language and ideas with which it was articulated during the reign of James II; these sources have already been explored by Tanner and, in considerable depth, by Isla Woodman.⁸⁷ Ideas of royal majesty and imperial authority—and the opportunities this type of language could grant a king who wished to exercise his

⁸⁵ W. Ullmann, ‘The Development of the Medieval Idea of Sovereignty’, *English Historical Review*, 64:250 (1949), pp. 1–33, at p. 3.

⁸⁶ Hay, *Law of Armys*, pp. 125–6.

⁸⁷ Tanner, *James III*, pp. 215–9; Isla Woodman, *Education and Episcopacy: The Universities of Scotland in the Fifteenth Century* (Ph.D. thesis, University of St Andrews, 2019).

powers without depending wholly upon communitarian principles of counsel, representation and consent—were closely related to a set of debates concerning the teaching of nominalism—the *via moderna*—and realism—the *via antiqua*—in Scotland’s academic community during the mid-fifteenth century. In general, nominalist thought was associated with the teachings of Duns Scotus and William Ockham, whereas realist thought tended to emphasise the teachings of Thomas Aquinas and—increasingly, from the beginning of the fifteenth century—Albertus Magnus. These academic debates were of particular relevance to the intellectual and political positions both learned churchmen and temporal rulers took in the debates of the papal schisms of the fifteenth century, especially regarding the extent to which absolute papal monarchy was subject to the oversight and authority of ecclesiastical general councils.

There is no need to recount the nuances of these debates and intellectual traditions here: the salient point to remember is that, as Woodman has suggested, realists were inclined to support the ‘ordered, hierarchical and authoritarian views of papal monarchists’, while nominalists, generally speaking, leaned toward the conciliarist position in these debates.⁸⁸ Tanner, in particular, has suggested that the claims made in James III’s parliament of 1469 of ‘fre empire’, and the imperial ideology which lay behind such a claim, may have stemmed from a ‘cohesive group of theologically and politically like-minded men’, who appear to have been linked by their subscription to Albertist doctrine.⁸⁹ While Woodman has questioned some of Tanner’s conclusions (to wit, whether certain men Tanner identified wholly subscribed to a pro-papal position), the argument that such academic debates may have provided a set of ideas and rhetorical that could be used to considerable effect in the political arena is compelling. Of course, as Woodman warned, we must be cautious of making ‘overly rigid connections between philosophy and politics’; but then, as we have seen, political actors did not have to personally subscribe to, or believe in, ideas and principles in order to use them.⁹⁰ In Scotland (as elsewhere), Albertist ideas and concepts—political theology that buttressed an imperial understanding of papal authority, and, by the

⁸⁸ Woodman, *Education and Episcopacy*, p. 39.

⁸⁹ Tanner, *James III*, p. 215.

⁹⁰ Woodman, *Education and Episcopacy*, pp. 71–2. The men Tanner identified were all graduates of the University of Cologne, but as Woodman argues, the ‘official position of Cologne on Basle’ was ‘firmly conciliarist’ (Woodman, *Education and Episcopacy*, p. 72).

same token, *royal* authority—may have simply provided a source of vocabulary which rulers and their counsellors could usefully draw upon as circumstances allowed, much in the same manner as they did with communitarian language and ideas.

Woodman's research has demonstrated, however, that these debates were especially lively in the earlier fifteenth century (especially at St Andrews): as such, it seems reasonable enough to consider whether the vocabulary and ideology of Albertist thought had been utilised by those involved in royal administration in the years before 1460. Woodman identified a number of clergymen who advocated the teaching of Albertist philosophy in Scotland, many of whom also served as counsellors to James I and James II. For instance, we have already encountered one advocate of realist thought: James Haldenstone, prior of St Andrews (who, as we have already seen in Chapter 4, seems to have been very well-informed about events in the reign of James I); Haldenstone's intellectual leanings, however, did not prevent him from exercising a certain degree of opportunism in terms of practical politics.⁹¹ There are also some small indications that Henry Wardlaw, bishop of St Andrews and founder of the university, supported the teaching of Albertist doctrine (which seems to have brought him into conflict with Laurence Lindores) at St Andrews. In 1430, Wardlaw granted a tenement to St John's College at St Andrews, placing it under the jurisdiction of the newly-elected dean, William Turnbull (and not Lindores, who gone to considerable lengths to prevent the teaching of Albertist thought at St Andrews).⁹² Shortly afterward, Turnbull apparently proposed that a single pedagogy be created: Woodman suggests that this might demonstrate a scheme by Wardlaw and Turnbull 'to re-structure arts tuition at St Andrews with a view to re-habilitating Albertist realism within the curriculum'.⁹³ Whilst we might retain some doubts as to Wardlaw's influence in promoting (or utilising) Albertist realism in Scottish politics, William Turnbull—later bishop of Glasgow, and founder of the University of Glasgow—might be regarded as a very likely candidate for such activity, perhaps alongside Wardlaw's successor as bishop of St Andrews, James Kennedy. Turnbull and Kennedy had

⁹¹ For Haldenstone's career and education, see D. Ditchburn, 'Haldenston [Haldenstoun], James (d. 1443), prior of St Andrews', *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/11898>.

⁹² *Acta Facultatis Artium Universitatis Sanctiandree 1413–1588*, vol. i, ed A.I. Dunlop (Edinburgh, 1964), p. 29.

⁹³ Woodman, *Education and Episcopacy*, pp. 54–5.

received their MAs at the University of St Andrews, but both men later studied at the University of Louvain, a centre of realist philosophy; Mason suggests that when they returned, both men deliberately sought to ‘embed the more conservative and pro-papal teaching they had imbibed at Louvain at new institutions in their respective diocese’.⁹⁴ Of the two, however, Turnbull was most actively involved in royal administration, particularly during the reign of James II, when he acted as one of the king’s most important counsellors.⁹⁵ Given both Turnbull’s pro-monarchical leanings, and his founding of the University of Glasgow as an Albertist school of learning in Scotland, it would not be surprising to find that ‘imperial’ notions or articulations of royal authority derived from this source during the reign of James II, prior to the bishop’s death on 3 September 1454.⁹⁶

Regardless, though, of which particular source imperial ideology stemmed from, the language used in Scottish parliaments in the years between 1450–1455 suggests that imperial ideas and imagery offered a new vocabulary and set of theoretical justifications by which traditional issues of power and authority could be legitimated. In this context, the spate of imperial iconography which Mason highlighted—and indeed James III’s claim to ‘fre impire’—might be seen as a case of existing ideas and phenomena being presented more forcefully, or explicitly, in both political language and material culture. If we take a less restrictive view of what constituted such ideology—that is, explicit use of terms like ‘empire’, ‘emperor’, or variations on the *rex in regno* maxim—and take note of related terms and ideas—like ‘majesty’—it may be possible to detect an articulation of such ideas in Scottish politic prior to 1469. Indeed, Tanner detected a similar change in language in the 1460s—specifically, a change in the way that the concept, or rhetoric, of *lese majesty* was used to describe crimes of treason against the crown. Tanner argued that while the crime of *lese majesty* entailed only harm to the crown, phrases used in the later 1460s (such as ‘treasonable

⁹⁴ R. Mason, ‘University, City and Society’ in M. Brown and K. Stevenson (eds), *Medieval St Andrews: Church, Cult, City* (Woodbridge, 2017), pp. 268–297, at p. 278.

⁹⁵ See, for example, *RPS*, A1445/10; *RPS*, 1449/1; *RPS*, 1450/1/32; *RPS*, 1450/1/33; *RPS*, 1450/1/34; *RPS*, 1450/1/35; *RPS*, A1450/1/1; *RPS*, 1450/5/5; *RPS*, 1451/6/4; *RPS*, 1451/6/5; *RPS*, 1451/10/20; *RPS*, 1452/6/3; *RPS*, A1454/4.

⁹⁶ J. Durkan, ‘Turnbull, William (c. 1400–1454), bishop of Glasgow’, *ODNB* (2004), online edn at <https://doi.org/10.1093/ref:odnb/27838>.

disparagement and degradation of our royal authority and majesty') implied the accroachment of royal authority.⁹⁷ The way in which the treason and forfeiture of the Douglasses was prosecuted in the 1450s, however, suggests that similar ideology was being 'weaponized' at an earlier date.

We have already seen that in 1452, James II's exoneration of Earl William's death was justified by the eight earl's supposed 'contempt and offence of the royal majesty'.⁹⁸ In 1455, when the conflict between James II and the Douglasses came to its apogee, similar language was employed. For instance, in the proceeding of forfeiture against the Black Douglasses made at the parliament summoned to meet at Edinburgh on 9 June 1455—where, it was recorded—'the said James of Douglas [was] often called to compear personally in the presence of our supreme lord the king and his estates of the realm'—the same earl was accused of 'treasonous bonds and confederations' made with the English, 'to the harm of the royal crown'.⁹⁹ Beatrix Sinclair (the wife of the seventh earl of Douglas, and mother of the eighth and ninth earls of Douglas, as well as the earl of Moray and lord Balvenie), was found to have 'committed treasonable treachery for the said crimes, evil acts and transgressions perpetrated by Beatrice, as said, against royal majesty [and] common law'.¹⁰⁰ Likewise, in another act made at the same parliament, 'James formerly earl of Douglas, John formerly lord of Balvenie, his brother, and Beatrix, James' and John's mother, [having] perpetrated [acts] against the king and kingdom' were accused of attaching 'themselves to Englishmen to the open and notorious harm and cost of royal majesty to as great an extent as they could'.¹⁰¹ The final clause implies accroachment of royal majesty, just as much as harm, but more interesting is the way in which 'notorious harm and cost of royal majesty' seemed to be characterised as treasonable acts made 'against the king *and* kingdom', and not simply against the king's person. If so, what is deeply significant about the way in which ideas of royal *majestas* were being used at this point—and especially in the context of the conflict between James II and the Douglasses—is the way in which the interests of the kingdom as a *whole*, the entire body politic, were aligned with those of

⁹⁷ Tanner, 'James III'.

⁹⁸ *RPS*, 1452/6/1.

⁹⁹ *RPS*, 1455/6/6.

¹⁰⁰ *RPS*, 1455/6/6.

¹⁰¹ *RPS*, 1455/8/15.

the king. This may suggest a conception of the king's *majestas* that was rather closer to the idea of the king's 'estate', the *status regis*, and which may also be indicated by the reference to 'harm to the royal crown' made in the same parliament.¹⁰²

As we have seen in Chapter 5, the *status regis* signified a concept that could encompass not only the king's power, dignity, majesty and crown, but also the 'perpetual rights, powers, land titles and wealth' associated with that office. It is worth pointing out that—like the term *body politic*—the formula of *status regis*, the 'estate of the king' is not readily identifiable in Scotland's parliamentary record. However, given the ubiquity of the formula 'three estates' in Scottish political discourse at this point, one can imagine why this terminology was not readily adopted by Scottish monarchs. This does not mean, however, that use of the *concept* was therefore denied to Scottish monarchs: instead, it may explain why there are so many resonances between the idea of the *status regis* and the way in which the idea of the king's *majestas* was used in the later parliaments of James II's reign. One final example must suffice to demonstrate how James II and his counsellors may have adapted this concept in the final stage of the Douglas conflict to the crown's advantage: the Act of Annexation made in 1455. This act has been cited as an example of the way in which the 'three estates', or parliament, could check the power of the crown, forcing the king to ensure that he could 'live off his own'. For convenience, it may be helpful to reproduce the relevant sections of this article below:

'Forsamekill as the poverté of the crowne is oftymis the cause of the poverté of the realme and that mony wthir inconvenientis the quhilk war lang to expreyme, be the awyse and full consale of the parliament it is statuyt and ordanyt that in ilk part of the realme for the kingis residence, quhar it sall happyn him to be, thar be certane lordschippis and castellys annext to the crowne perpetually to remane, the quhilk may nocht be giffyn away nothir in fee nor in frangtenement till ony persone of quhat estate or degre that evir he be but avyse delivirance and decret of the thre estatis and of the hail parliament, ande for gret seande and resonable cause of the realme.

And albeyt happyn our soverane lorde that now is or ony of his successouris, kingis of Scotlande, till analy or dispone apoun the lordschippis and castellys annext to the crowne as is

¹⁰² *RPS*, 1455/6/6.

beforsaide, that alienation and dispositione salbe of na walour, sa that it salbe lefull to the king beyng for the tyme to ressaif thai landis quhen evir him likis till his awn wse but ony process of law.

Ande the takaris sall refunde all profettis that thai haif takin up of thame agane to the king for all the tyme that thai hade thame. Ande that our soverane lorde that now is be suorne and in lik maner all his successouris kingis of Scotlande in to thar coronatione to the keping of this statute and all the poyntis tharof.¹⁰³

While it is highly significant that the lands and properties which were to be annexed to the crown ‘may not be given away in fee or franktenement to any person regardless of their estate or degree, without the advice and decreet of the three estates and the whole parliament, and from great investigation and reasonable cause of the realm’, it is just slightly possible that, on this occasion, the interests of the crown were rather more aligned with those of the ‘three estates’ than historians have hitherto appreciated. Certainly, from the perspective of the king’s subjects—particularly those who might recall James I’s ‘aggressive acquisitiveness’—the existence of ‘clearly-defined group of royal lands which could support the expenses of the royal family’ should have been an attractive prospect. No doubt the king was not best pleased that redistribution of patronage was to be subject to the approval of the three estates, but given the extent to which James II had been able to dominate and control the assembly which censured Douglas in 1452, this may not have been regarded as such an obstacle, especially after the elimination of the Douglasses as a political force in the realm. Concurrently, though, the ‘acquisitiveness’ of both James I and James II suggests that this attempt to build up the royal demesne was part of a longer-term strategy, but a distinction should be made between the ways in which this strategy was pursued and legitimised in the reign of James I and his son. The way in which James I framed his attempts to acquire land and wealth for the crown drew the ire of his subjects and opened up the king to accusations of tyranny—governance for his private gain, rather than the common profit of the realm. In the Act of Annexation made in 1455, however, James II’s acquisition of the Douglas estates was presented in a different manner; it was claimed that these

¹⁰³ *RPS*, 1455/8/2.

lands were ‘annexed to the *crown*’.¹⁰⁴ In effect, the acquisition of these lands by James II was presented as an addition to the royal fisc, the theory behind which was derived from Roman law. In juristic thought, the fisc (indeed, the imperial fisc) was linked to the king’s office—to the crown, the *status regis*: in other words, to his enduring, ‘mystical’ body—rather than to the individual who occupied it; the fisc therefore belonged, in a sense, to the entire body politic, although the king was responsible for administering it for the common profit. By framing his acquisition of Douglas lands in these terms—as an acquisition for the crown, to the fisc—James II could claim to be acting in the interests of the *entire* body of his subjects. From this perspective, as Tanner noted, this act was one from which *both* the king and his subjects could benefit; as suggested by the opening clause in this artic—‘the povertie of the crowne is oftymis the cause of the povertie of the realme’—their interests were aligned. But, in a subtle but distinct difference, if we also understand this to be an invocation of the idea of the *status regis*—wherein the king was understood to *represent* the realm, and the entirety of his subjects within it—the interests of the king and his subjects were not being presented as aligned, but rather one and the same.

¹⁰⁴ *RPS*, 1455/8/2.

CONCLUSION

Communities: Ideas and Structures

THE FIRST HALF OF THE FIFTEENTH-CENTURY is described sometimes as a period of transformation, and indeed several significant changes in the way that English parliamentarians in Ireland and their Scottish counterparts both conceptualised and engaged in political activity have been explored in the preceding chapters. Broadly speaking, the present study has been concerned to explore comparatively how ideas and appeals to principle translated into political action in the parliaments of the Lordship of Ireland and the Kingdom of the Scots, roughly between the years 1399 and 1460. There are, of course, sound reasons for locating our study of parliament and community in precisely this period. Questions of authority and legitimacy, negotiation of counsel and resistance, and shifting conceptions of political solidarities—these were issues which underpinned much of the factional, national and indeed international politics of the later-medieval insular world, albeit in sometimes markedly different fashion in ‘imperial’ England, ‘colonial’ Ireland, and ‘sovereign’ Scotland. To offer, in light of the preceding chapters, any conclusion which seeks to reconcile such difference and variation—or to reduce the complexities of insular politics to any one, simple schematic of ‘community’—would serve less to illuminate and more to obfuscate the developments explored above. Some insights, however, may usefully be expanded upon here by way of concluding remarks. In first place, a basic conclusion which emerges reinforced from this study is the vibrancy and sophistication of political life, as expressed through representative assemblies, in late-medieval Ireland and Scotland. Analysis of the language and ideas concerning legitimacy, counsel and representation invoked within the ‘everyday’ parliamentary politics of Ireland and Scotland has demonstrated that appeals to principle both enabled and constrained political action in English Ireland and Scotland—and not just in theory, but very much in practice too. More importantly, the thesis has demonstrated that the dynamics of political activity in English Ireland and Scotland were not so much restricted by the intellectual confines of a broader ‘European’ political theory, but rather shaped by the ability of enterprising rulers and parliamentarians to adapt ideas and language derived from this shared body of political thought to suit their own political circumstances and structures of politics.

From all this, perhaps the most important reappraisal to emerge from this study concerns the significance of representative institutions within the insular world *outside*

the kingdom of England, whose parliament has dominated the historiography for well over a century. In Part I of this thesis, I observed that representative assemblies in Ireland arguably had more ‘immediacy’ or relevance in the governance of the land than the equivalent institution in England, and the point could usefully be extended to embrace Scotland. In Scotland, between 1399 and 1460, representative assemblies—including both parliaments and general councils—met on 64 occasions. In Ireland, extant records indicate that there were approximately 54 meetings of representative assemblies.¹ By comparison, English assemblies, in the same period, met on 42 occasions. Although this is a crude measure, the numerical frequency of meetings in both Ireland and Scotland illustrates a point I wish to underline regarding the ‘importance’ of parliamentary institutions in these settings. Naturally we must be cautious in interpreting these figures. On their own, the number of meetings tells us little about the *relative* significance of either ‘imperial’ (English), ‘colonial’ (Irish) or ‘sovereign’ (Scottish) assemblies within their own political structures. To return to a caution outlined earlier in this thesis, we must not fall into the trap of ‘ideal’ types. Each of these representative assemblies—English, Scottish and Irish—had its distinctive characteristics and concerns, which deserve to be analysed on their own merits. What the figures *do* provide, however, is opening into the value of comparison. The frequency of such gatherings in Ireland and Scotland does seem to suggest that representative assemblies occupied a similar space within the structure of political life in Ireland and Scotland respectively.

In drawing out the comparisons made in this thesis, two overarching conclusions arise. While these have already been anticipated in the course of individual chapters, they are worth reformulating here in broad terms, so as to better draw out their value in comparative context. The first concerns the language of community. Rather than seeking to address directly those *questions mal posées* which have overshadowed much of the existing scholarship—*what* was a community? *who* was the community—this thesis has explored *how* ideas of community and communal authority were expressed and employed in a wide variety of forms, across a broad range of different circumstances, in later medieval English Ireland and Scotland. If any one thing seems abundantly clear, it is that, in a parliamentary context, while the language used to

¹ Indeed, the number of Irish meetings could and probably should be significantly revised upwards, because I have not included here the frequent prorogues of the Irish parliament into a series of discontinuous sessions, which meant that that individual ‘meetings’ of a single parliament were in reality highly involved and protracted affairs.

indicate a given medieval *communitas* changed over time, the concept—and, I think, the ‘phenomenon’—of community continued to exert a strong degree of purchase on the manner in which political activity was organised and conducted. These developments are most apparent in the later medieval Scottish polity. Over the course of the long-fourteenth century, the formula of *communitas regni* was replaced by that of the ‘three communities’, which was in turn superseded by the term ‘three estates of the kingdom’. These formulae, or ideas, were employed more-or-less consistently as a tool by which political solidarity could be invoked. In the Lordship of Ireland, communitarian terminology was expressed through the formula ‘community of the land of Ireland’ or, exceptionally, the land of Ireland described as a corporate entity—a body politic, with the king of England as its head, but a community distinct from that of England as its body. These ideas were given particular force when articulated in representative assemblies. It was in these spaces that the concept of community was given practical expression through the exercise of communal authority. The idea of a ‘community with a parliamentary focus’ was a particularly useful one for political actors who wished to ‘cash in’ on the political capital of legitimate communal authority. The presence of representatives in parliament (that is, a particular group or groups whose ‘claim to represent’ a wider *universitas* was recognised and accepted) grounded what would otherwise have operated as a chiefly abstract concept in a defined institutional space. Communitarian ideas formed, in this respect, a central component in the exercise of political power. Those who could dominate or control particular meetings of parliament or general council, either briefly or in a more thoroughgoing sense, could legitimise their actions on the basis of communal authority in a way that was very difficult to replicate elsewhere.

As to the second conclusion, what also seems clear is that structural factors—both those distinct to one polity or shared—dictated the range of ideas that parliamentarians could employ to a much greater extent than has hitherto been appreciated. Scholars of the new constitutional history will be accepting of the argument that the range of actions medieval parliamentarians could employ was subject to the ideological constraints of their political vocabulary. But we must remember that this vocabulary was inflected to no small degree by political structures. Some of these structures were large and relatively static: the structure of polities, like the kingdom of the Scots and the lordship of Ireland, could dictate what set of ideas and language were available to contemporaries. The concept of incorporation, as used in 1460, was useful in an Irish context precisely because the basic and fundamental concept of a ‘kingdom’ was not.

Likewise, while Scottish kings could appropriate convincingly imperial ideology and language to enhance their prestige and authority, such options were quite obviously unavailable to English chief governors in Ireland. Other structures that might dictate political vocabulary were circumstantial and relatively fluid. In Ireland, the absence of the king was an intrinsic structural feature of the polity: in Scotland, the absence of the king was only an intermittent feature of the kingdom's structure of politics. This meant that there was considerable opportunity, when the king was absent in one form or another, to use new and innovative ideas and language in pursuit of political ends. Recall the formulation of the duke of Albany's title as *gubernator*, rather *custos* or *locum tenens* (incidentally, recall also that, in an English context, this was a title which had been denied to the duke of Gloucester in 1422). A key point to remember, then, is that particular political ideas and concepts which could gain purchase in one polity might not do so in another, as a consequence of the political structures within which contemporaries had to operate.

What, in essence, I have sought to offer is a mode of thinking about large structuring political concepts such as political legitimacy, counsel, representation and community. It means that when we say particular ideas did not 'exist' in certain polities or societies, it might be well worth looking for the structural conditions that might have precluded their application. Once we do not set out from a fixed notion of what a 'political community' *was*, or what groups it contained, comparative analysis can be useful in drawing out either common or divergent themes which will be equally germane to national histories as to transcultural studies. This is an important insight and a useful point on which to conclude, as it serves to underline the value of the comparison adopted in this thesis, but also to highlight the considerable potential of such a comparative approach for other periods of parliamentary and institutional history in the insular world.

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