Chapter 12: An Overview of British Constitutional History: the English King and the Medieval Parliament

Chapters 12 and 13 focus on the constitutional history of the United Kingdom. This extended narrative is undertaken for several reasons. English history demonstrates the robustness of governments based on the king and council template, and the emergence of opportunities for constitutional bargaining. England emerged as a nation-state relatively early, which makes its particular institutional developments relatively free from the effects of regional entanglements, although not entirely so. This allows a long and relatively detailed account of its constitutional history to be told without accounting for nation building itself. Although times were often troubled and occasional civil wars occurred, the English king and council template for governance has remained in place for essentially 800 years.[122] The English case is also the one that is likely most familiar to readers although few will have much detailed knowledge of its constitutional developments.

This is partly because England has never had a formal constitution or grounding law and partly because historians tend not to focus much attention on constitutional developments. The written constitution of England consists of dozens of acts of parliament that define and redefine the basic architecture of the government: how the persons who come to hold power are chosen and the constraints under which they may lawfully operate. There is a large literature in the United Kingdom on the subject of constitutional law, although it is little studied outside that country or even acknowledged by scholars from countries with more unified constitutions. English constitutional law

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[122]   England is the medieval name for the kingdom from which the United Kingdom emerged. Its formal name has changed several times to reflect changes in its territory.

The country's name was changed to the (United) Kingdom of Great Britain under the Act of Union of 1707, which ended Scottish independence and added members representing Scotland to the English parliament. (Scotland had previously had its own parliament, but the same men and women had been kings and queens of England and Scotland since 1602.)

The name was changed to the United Kingdom of Great Britain and Ireland after the Act of Union of 1801, which ended (temporarily) Irish independence and added Irish representatives to the British parliament. (Ireland had previously had its own parliament, although England and Ireland had shared the same sovereign since 1542.) Brittannia was the Roman name for England (and Wales) during the four centuries in which England was part of the Roman Empire.

The formal name of the country is presently the United Kingdom of Great Britain and Northern Ireland (since 1927), which reflects the secession of the Republic of Ireland in 1922.

is augmented by an elaborate body of unwritten procedures, norms, and conventions that fills the spaces left by its constitutional legislation.[123]

The core standing procedures through which English (and subsequently British, and United Kingdom) public policies are chosen have been remarkably stable through time, although they are a bit ambiguous at the margin, as is often the case in other countries as well. For example, the sovereign (arguably) continues formally to have the power to call and dismiss parliament, appoint ministers, and veto legislation, but informally the sovereign has deferred to the House of Commons on such matters for more than a century. The last formal veto of an act of parliament occurred in the early eighteenth century, although informal royal vetoes continued into the nineteenth century.

What is unusual about the English constitution is not that it is a blend of formal laws and informal practices, but rather that none of its written documents characterize formal procedures of amendment.[124] The same procedures used to refine narrow relatively unimportant rules and regulations are also used to adopt constitutional reforms. However, the lack of formal distinctions between constitutional and ordinary law has not noticeably sped up the process of reform, because constitutional conservatism is evident throughout English history (as is the use of hyperbole).

England's constitutional core remained extraordinarily stable for long periods of time. Its medieval constitution remained substantially in place for 400 years, except for two decades in the seventeenth century, with only minor reforms and counter reforms. In the nineteenth century this stability ended and parliamentary dominance was cemented into place. Its modern constitution emerged gradually between 1828 and 1928 and has been very stable since then. Table 13.1 at the end of chapter 13 lists four dozen significant reforms of the procedures of British governance spread unevenly in the course of eight centuries.

Episodes of reforms of the written parts of the constitution are concentrated for the most part in five periods: (a) in the mid-fourteenth century, during which parliament took its medieval

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[123] It could be argued that Cromwell's *Instrument of Government* (IG) was a formal written constitution. Cromwell adopted it by 1653, but it never really described the fundamental procedures and constraints of English governance. Cromwell clearly had more power in practice than described by the IG, for example, when he rejected more than a fourth of the first parliament elected under its rules. Moreover, the IG was substantially revised in 1657, and governance under the amended "constitution" disintegrated shortly after Cromwell's death in 1658 (Morgan 2001: 375–77; Field 2002: 122–25).

[124] The terms "English" and "British" are used nearly interchangeably in chapters 12 and 13 because of the continuity of English forms and procedures. (It bears noting, however, that governance in the kingdoms of Scotland and Ireland were also based on the medieval forms of the king and council template.)

bicameral form: a House of Commons representing county and town governments and a House of Lords representing nobles and senior church administrators, each with veto power on taxes and legislation, (b) in the early sixteenth century, when a new national church was established and it and the church courts were brought under the control of the Sovereign via acts of Parliament, (c) between 1688 and 1702, when new parliamentary authority over budgets and taxation was obtained and routine meetings of parliament emerged, (d) between 1825 and 1835, when the medieval electoral practices for selecting members of the House of Commons and local governments were radically reformed, partly at the behest of organized reform groups outside Parliament, (e) from 1910 to 1928, when universal suffrage was adopted and the House of Lords lost its absolute veto power.

The unwritten constitution also underwent substantial reform during the late eighteenth and early nineteenth century as royal deference to Parliament increased, the use of the royal veto declined, the House of Lords increasingly deferred to the House of Commons on money bills and cabinet governance emerged. The suffrage reforms of 1430, 1867, and 1884 were also significant changes in the manner in which governments were formed and disciplined. Recent membership in the European Union and modifications of the House of Lords also affect the core procedures and constraints of contemporary English governance. However, the essential architecture of its government (bicameral parliament with a royal executive), and its main procedures for selecting members of parliament, sovereigns, and public policies have been stable for centuries at a time.[125]

Overall, the evolution of the English constitution provides a nearly perfect illustration of the manner in which new opportunities for constitutional bargaining arise and how reforms can take place without major effects on core procedures or constitutional architecture. Instead of a cumbersome amendment process, the stability of the English constitution is a consequence of the political interests and institutional conservatism of members of parliament, who tend to be well served by the rules that bring them to positions of authority. Informal bargaining equilibria between parliament and the crown and other informal norms of governance are essentially sacrosanct.

For example, after 1911, the written constitution could be modified at any time by a simple majority of the House of Commons, but no significant structural changes were adopted until 1998, when parliaments were reestablished in Scotland, Wales, and Northern Island, and in 1999 when the

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[125] Perhaps the most striking example of this occurs in the seventeenth century, during which the medieval English constitution was stretched to the breaking point and then rebounded to its old medieval form. The great "reforms" of 1660 (the Restoration) and 1689 (the Glorious Revolution) can best be understood as reversions to the long-standing medieval constitution.

hereditary basis of membership the House of Lords was substantially reduced, although not eliminated.[126] Although there is no formal distinction between constitutional reform and ordinary legislation, it is well recognized by members of parliament and voters that some changes in law are more important than others.

A. The Medieval Parliaments of Catholic England: 1200–1500

In the thirteenth century, a number of agreements were negotiated between the barons and the English king; the most famous of which was the Magna Carta signed at Runnymede in 1215. As often the case in English constitutional history, the immediate problem underlying constitutional reform was tax revenue. In exchange for an agreement by the barons to pay more taxes in the present, in 1215 King John negotiated and accepted in writing a variety of terms, including the right of a jury trial by one's peers and the right of a council of barons to reject future increases in taxation. The medieval baronial council characterized in the Magna Carta and its veto power over new taxes established the legal foundation of the medieval parliament.

The agreement was not entirely self-enforcing and the authority of the baronial council had to be reaffirmed several times. These reaffirmations occasionally required civil war between the barons and the king, as in the mid-thirteenth century.

The council of barons became an essentially permanent part of English governance after "the provision" was adopted in Oxford in 1258, which also extended its authority somewhat, by allowing it to appoint a few government officials.[127] During a subsequent military confrontation of the

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[126] The new parliaments are essentially regional assemblies. Scottish, Welsh, and Irish members continue to sit in a single national parliament. The rules for membership in the House of Lords have been revised several times in the past half century. Lifetime memberships in this chamber (nonhereditary peers) were created in 1958. The number of hereditary peers eligible for voting in the House of Lords was reduced to 92 in 1999.

The possibility of eliminating the House of Lords all together has recently been seriously debated, and various alternatives to hereditary membership voted on in Commons (McLean, Spirling, and Russell 2003). Of course, debate about the proper role of the House of Lords has a long history. Indeed this chamber was eliminated for about a decade, along with the Sovereign, during the English civil war (1649−60).

[127] The council of barons included senior church officials and nobles with very large land holdings. Even before the Magna Carta, the Constitutions of Clarendon had accorded baronial status to the Catholic Church's archbishop and bishops in 1164.

Essentially, the Constitutions of Clarendon described procedures for establishing jurisdiction on

baronial council and the king, representatives of counties and towns were invited to participate in baronial meetings and the name "parliament" came into use.

Simon de Monfort (the Earl of Leicester) invited four knights from each county to join the barons in a parliament in 1264. Two representatives from the major towns (boroughs) were invited to the second Montfort parliament in 1265, which became the basis for the House of Commons. King Henry III eventually won the civil war against the Montfort and his barons, although the king was held as Montfort's prisoner for a short period. Broad support for Montfort's broader assembly, however, caused it to become standard English practice after 1295 (Field 2002: 48, Ransome 1883: 64-71).

As a consequence of a series of bargains between the crown and the barons, the authority of baronial councils on tax matters continued, and Parliaments continued to be called by Henry III's son Edward I.[128] Inviting prominent commoners to meetings of the baronial councils, "knights of the shire and burgesses," also became routine. These parliaments voted on new tax proposals, heard petitions from the public, petitioned the king to address various grievances, and occasionally impeached senior government officials (Lyon 1980: ch. 34). Although town and county leaders (burgesses and knights) were not always called to meetings of the nobles, after 1295 they were routinely called to the meetings that considered tax increases. Edward I called 46 parliaments in 35 years.

The familiar bicameral architecture of the English parliament emerged in the fourteenth century. After 1341, nobles and church leaders began meeting separately from the town and county representatives. The barons of the upper chamber normally met with the king directly and consequently had the power to initiate legislation of various kinds as well as to negotiate with the king on his requests for new taxes (subsidies). The lower chamber was the inferior body at this point and was not routinely consulted about new legislation, although it was routinely consulted on tax matters (Field 2002: 50–54, Lyon 1980: 52–53).

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legal matters and for appeal. According to Clarendon, the top appeal from both the ecclesiastical and the king's courts (which both considered criminal matters, murder, and the like) were to end with the king, rather than with the pope in Rome. (Appeals to Rome, however, were restored in relatively short order, although revised again four centuries later under Henry VIII.)

[128] Richardson (1928) provides convincing evidence that the term "parliament" and some of parliament's duties were imported from France. The precursors to the English parliament are, however, far older than the use of this term. Previous national assembles include the Witan and Witenagemot, imported from Germany after the Romans left, and the Grand Council (Magnum Concilium) from the twelve century (Ransome 1883: 6-9, 52-54).

The authority of the baronial council and parliament over taxation was essentially self-enforcing, because taxes assessments were fairly general and so affected essentially all nobles. The barons had common interests and these, together with their combined military force in the middle ages, made it difficult for the king to reduce the baronial council's veto over taxation. On other policy issues and less important constitutional issues, however, the alignment of baronial interests was less complete and their powers were more limited. For example, members of parliament never had complete freedom of speech within parliament during the medieval period, although it was often asked for and temporarily granted by the crown. The right of free speech inside parliament was not absolute during this period, and kings (and queens) often punished outspoken "radical" members of the House of Commons. They often did so with the support of other factions in the Commons.

During the early fifteenth century, the House of Commons petitioned the king for a more uniform (and less corrupt) method of choosing local representatives. Three long-standing election statutes were subsequently adopted in 1413, 1429, and 1445 (Stephanson and Marham 1938: 276–77). The 1413 law required that all county and borough representatives be residents of the communities that they represent. The 1429 law characterized suffrage rules for electing county representatives to the House of Commons. County suffrage was based on "a freeholding to the value of 40 shillings by the year at least above all charges." This enfranchised about 5 percent of the male population of the time, which tended to increase slowly through time with inflation and economic growth.[129] The 1445 law required that town representatives have a similar status (sufficient wealth to be a knight), and specified that two representatives should be selected from each borough. Representation was not uniform throughout the kingdom, however, because no effort was made to construct boroughs of equal size.

These laws, which established procedures and qualifications for the House of Commons, are of particular interest, because they remained essentially unchanged for 400 years. They are also noteworthy, because national suffrage and representation was relatively broad by the standards of the fifteenth century. However, there was no effort to make the electoral districts equal in size or to

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[129] The very gradual doubling of male suffrage in the next 400 years is a testimony to the power of Malthus' model of population dynamic before the Industrial Revolution.

In century before the Great Reform, the county electorates, under the 40 shilling rule for parliamentary elections, still entitled just 5 percent of the population (Fields 2002: 62, 141, and 167). This suggests that the distribution of wealth remained as concentrated at the start of Industrial Revolution as it had been 400 years earlier, although it had shifted somewhat among elite families.

use otherwise similar election rules. Members were elected from electorates of very different sizes, often with quite different nomination procedures and election rules (Stephanson and Marham 1938: 276-77; Lyon 1980: 542-43; Field 2002: 62). Members of parliament, were normally wealthy individuals or in the employ of such persons, because they were not paid a salary for serving in parliament until 1911.

For the most part, the late medieval English parliament was a consultative body on matters other than taxation, a broad sounding board for royal policies and a source of information about regional problems. Parliaments met when called by the king and were dismissed when the king thought they had met long enough or when the king accepted the parliamentary petitions for redress (whichever came first). Parliamentary sessions were normally relatively short meetings lasting two or three weeks. The longest session in the fourteenth century was the Good Parliament of 1376, which lasted for 10 weeks. English kings had the power to overrule parliament on essentially all matters of law except new taxes.

The House of Lords continued to be the most influential chamber until well into the eighteenth century, although Henry V granted the House of Commons veto power on legislation as well as taxation in 1414, at a time when war with France was pending and obtaining new taxes was of great importance (Lyon 1980: 605; Field 2002: 65; Morgan 2001: 228).

The influence of the early parliaments varied considerably. During times of peace, it was more difficult to persuade parliament to provide new "subsidies" for the king's enterprises, because other sources of royal income were usually sufficient to fund central government services and the executive branch (king's court, etc.). Consequently, fewer parliaments were called and fewer parliamentary petitions were submitted during times of peace than during times of war. Indeed, parliaments were often completely ignored between wars.

Kings and queens also had their own advisory and executive councils (great councils and privy councils) that were chosen from the nobility, church, and elite commoners. During times of peace, they could use the standing royal income sources to avoid unpleasant discussions with the parliament over parliamentary status and authority. During times of war, however, the kings needed additional "subsidies" and would routinely call parliaments to request additional tax revenues. These temporary taxes were not freely given even in times of crisis.

Parliament could often influence policies on trade, religion, and economic policy in exchange for temporary increases in royal tax revenues. At occasional peaks of power, parliaments might also be delegated significant oversight responsibility. There were also cases in which parliaments were

instrumental in replacing an errant king and/or in confirming a successor when the sovereign died without legitimate children. At such times, kings would often accept parliamentary conditions for accession. For example, in 1310 the Parliament appointed a committee of 20 bishops and lords to oversee the kingdom's finances. In 1399 the English Parliament sentenced former King Richard II to lifetime imprisonment in the Tower of London, in large part for violating the medieval constitution. The throne was declared vacant and Henry IV installed in his place.[130]

The extent to which the sovereign accepted parliamentary privileges and petitions depended on the immediacy of the king or queen's need for baronial contributions and community taxes. Such peaks of parliamentary authority were rare and usually short lived. The House of Lords remained the most influential chamber well into the eighteenth century, although Henry V granted the House of Commons veto power on legislation as well as taxation in 1414, at a time when war with France was pending and obtaining new taxes was of great importance (Lyon 1980: 605; Field 2002: 65; Morgan 2001: 228).

During the Catholic period, the kings (and their executive cabinets) were the primary center of policymaking authority within the governments of England.[131] Medieval parliaments were normally of tertiary importance. They were not self-calling. Neither the House of Lords nor the House of Commons had its own permanent meeting place until 1512 and 1549 respectively. Before that time, space for meetings was made available by the king, usually in his palace at Westminster (the site of the present Parliament).[132] Indeed the term "House of Lords" was not used to describe the noble chamber until 1544 (Field 2002: 69). The second most powerful organization in England in this period was usually the Catholic Church, rather than parliament.

The Church controlled very large land holdings, had its own court system, and was directly represented at court and within the parliament. The "lords spiritual" (bishops, abbots and priors)

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[130] This was not a peaceful change of office, but was engineered by a group of barons lead by Henry while Richard II was away in Ireland. Nonetheless, the calling of a parliament to accept Richard's resignation, sentence him to life imprisonment, and to approve the accession of Henry IV revealed that parliament had become a source of legitimacy and approval by English elites (Morgan 2001: 220-22, Ransome 1883: 85-86).

[131] Executive councils analogous to cabinets had long been used by kings for advice and for administrative and judicial purposes under such names as the Curia Regis and the privy council.

[132] It was also not until the sixteenth century that the respective chambers began keeping careful records of their meetings. Parliamentary records begin in 1510 for the House of Lords and 1542 for the Commons, respectively (Fields 2002: 69).

often formed a majority of the House of Lords during this period, and senior church officials were often among the king's most important ministers.[133] The church hierarchy could use the power of the pulpit to mobilize public opinion throughout England and could also negotiate for new privileges and discreetly protect those that it had behind closed doors at court. For hundreds of years, the Catholic Church was the only large organization within England that was substantially beyond the control of the king(s) of England, although that was soon to change.

Although parliaments had nontrivial influence of taxes and legislation in this period, the sovereign could usually influence how votes would be cast in both chambers. English sovereigns controlled appointments to a several hundred relatively well-paid positions of authority throughout the kingdom that could be used to increase parliamentary support in various ways. Kings could also influence elections to the House of Commons by appealing to national interests and by rewarding local elites who controlled seats in Commons. Kings could determine the membership and rank in the House of Lords through elevation. During the fifteenth and sixteenth centuries, about a fourth of noble families were replaced each generation. Between patronage and occasional threats, an ambitious king could usually "manufacture" a compliant parliament.[134]

B. Parliament and the Protestant Reformation: 1500–1625

The next two centuries were turbulent times, intellectually, socially, and politically, as the Catholic universe underwent major revisions. With the discovery of the New World, the physical world that Europeans had "known" for centuries had to be revised substantially. The new

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[133] By the end of the fourteenth century, the House of Lords had become largely hereditary and consisted of the "Lords Temporal," composed of the top five ranks of the nobility (Duke, Marquess, Earl, Viscount, and Baron) and the "Lords Spiritual" from the top three ranks of the church (Bishop, Abbot, and Prior). See the "History of the House of Lords," http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldbrief/ldhist.htm.

[134] In most cases, replacement was necessary because a family lacked legitimate heirs; in others, replacement was a consequences of punishments that stripped families of privilege. Clearly both, but especially the latter, gave a king considerable power over the House of Lords. The total number of nobles was fairly stable during this period, ranging between 55 and 57 (Field 2002: 67).

Kings would also occasionally threaten and/or pack the House of Commons. For example, in 1398, Richard II once surrounded the meeting place of parliament with archers, with bows drawn and ready to shoot. The power to incorporate new towns and counties was used by Henry VI to add 53 persons (of the 277) to the 1447 House of Commons.

continents of North and South America, as well as the new southern sea routes to the East, became new domains of European economic and political conflict for the next three or four centuries.[135] Revolutions of the spiritual and intellectual worlds also occurred at about the same time. The movable type printing press developed by Gutenburg in the previous century brought the thoughts of Aristotle, Luther (1507), and Calvin (1534) to all who could read, and their interpreters brought their ideas to all who would listen.[136] No longer were intellectuals focused narrowly on refining infallible church doctrine.[137]

The Protestant Reformation produced intense theological debates, new church organizations, and new political alignments throughout Europe, eventually separating northern Europe from southern Europe. By middle of the sixteenth century, there was no longer a single unified church in Europe, and no longer were European political and economic interests concentrated within the northwestern corner of the great Euro-Asian land mass. All this led to a good deal of military conflict, which was often good for parliaments throughout Europe, although it was not good for Europe itself. Conflict is expensive, and the winner-take-all nature of warfare tends to induce escalation in the resources committed to individual battles and to wars as a whole.

The kings and queens of Europe were increasingly in need of additional tax revenue, because their traditional sources of income were rarely sufficient to fund wars. This induced English kings to call parliaments more frequently to vote on tax proposals and to lend their support to new laws.

Parliaments also continued to play an important role in affirming the outcomes of controversial royal successions. In exchange for new subsidies, support for royal enterprises, and ratifying accessions, parliaments often asked for and received various "privileges" (freedom from arrest

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[135] At first, the new discoveries were simply interpreted within the existing frame of reference. Columbus (1492) insisted that he had found a new Western route to the far East. However, his discoveries were reinterpreted by other explorers in the years following his famous voyages. And his new route to the far East became the new Western continents. Perhaps the most famous of these revisionists was the Medici bank representative Vespucci, who declared the western lands to be a "new world" (*mudus novus*) after several voyages. In honor of his controversial conclusion, and perhaps because of his control of the substantial Medici financial assets, his first name, Americus, began showing up on maps of the New World shortly thereafter.

[136] Criticism of Catholic doctrines and church behavior had, of course, long existed in Europe, both within educated elites and among illiterate peasant churchgoers. However, the grumbling of a few intellectuals and nonconformists on doctrine and various critical assessments of the behavior of church leaders did not produce a powerful mass movement until shortly after 1500.

[137] By the century's end, the work of Copernicus (1473–1543), Galileo (1564–1642), and Kepler (1571–1630) had also begun to produce literally a new universe and, perhaps more important in the long run, a new scientific method that would subsequently produce the technology for a new civilization (Margolis 2002).

during parliament sessions). Parliament also obtained its own permanent meeting places in the sixteenth century.[138]

The reluctance of parliaments to tax themselves to provide royal subsidies without receiving something in exchange induced kings and queens to seek new revenues that were beyond veto authority of parliament. Sovereigns could generally collect customs fees and tariffs. They could also rent or sell royal properties, appointments, and monopoly privileges. An entrepreneurial Sovereign might also sponsor business ventures (crown companies), colonization, and engage in piracy at sea. They were also more inclined to occasionally confiscate the wealth of nobles and others in the kingdom.

Economic growth and globalization increased royal income from tariffs and royal properties. In times of peace, these traditional sources of income sources normally allowed the Sovereign to rule without calling parliament.[139]

Constitutional Exchange in Medieval England

During times of war, Parliament normally requested specific public policy changes in exchange for temporary new taxes. They also occasionally received new authority to intervene on a subset of public policy matters in exchange for temporary tax revenues.

The sovereign also normally accepted recommendations of parliament in policy areas in which royal and parliamentary interests were closely aligned. In such cases, acts of parliament helped legitimize royal policies that might otherwise be controversial, and also created precedents for broader parliamentary authority. For example, during the English reformation, Henry VIII used several acts of parliament to secure control over the Catholic church and the Church's resources in England. These acts indirectly expanded the English parliament's authority over religious matters and the sovereign.

The first recorded majority vote in the House of Lords occurred in its consideration of the 1532 Act in Conditional Restraint of Annates, which ended payments to Rome by clergy appointed to

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[138] The Houses of Lords and Commons received permanent space in Westminster Palace in 1512 and 1550 respectively, albeit after a fire induced the Sovereign to move to other quarters (Field 2002: 69).

[139] Indeed, in two countries, these revenue sources were sufficient to allow the sovereign to dispense with parliaments, as in Denmark and France.

public offices (benefices). Parliament's Act of Appeal (1533) made the Sovereign the highest court in the land, ending appeals to Rome by ecclesiastical courts.[140] *The Act of Supremacy* (1534) made the Sovereign the "supreme head in earth of the Church of England called Anglicana Ecclesia." The *Bill for Dissolution of the Lower Houses* (1536) closed the smallest monasteries and confiscated their assets for the king. In 1539 a similar bill closed the larger monasteries and allowed Henry to confiscate their assets as well. The *Statue of Six Articles* (1539) codified Henry's theological dicta for the new Anglican church. Insofar as Henry VIII "deferred" to these acts, he had implicitly recognized a substantial expansion of parliamentary authority.

Henry VIII's interest in church reform was partly personal, a desire for divorce that could not easily be approved by the Catholic Church, and partly economic, his government needed resources to fight wars and reward supporters. The Church had enormous assets within England—perhaps more than Henry's. Taking over the Church also advanced his constitutional interests by providing him with more complete control of English governance. The church, its judicial system, properties, doctrines, courts, and pulpits had been largely beyond his control. Its lands could be used for revenue and as a manner of extending his control over parliament.

The Parliament's interests were less than perfectly aligned with those of the Sovereign in this case, because the Catholic bishops and senior abbots had long been members of the House of Lords. However, most "temporal" members of parliament (the nobles without senior church positions) had an interest in expanding the domain of parliamentary authority, in finding tax sources other than their own property and income, and many also sought to reform the Church, itself. The latter is not to say that a majority in the Houses of Commons or Lords were Protestants in the modern sense of the word, but rather that the problems of corruption and doctrinal inconsistencies within the Church were widely acknowledged, if not widely discussed (because of fear of being punished for heresy). Moreover, many of the temporal members of parliament would have anticipated their subsequent acquisition of monastic lands from the king and their relatively advantaged position in subsequent parliaments. Most of the members of the House of Commons and the temporal lords, thus, had economic and political interests in "clerical reform" that paralleled

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[140] This jurisdictional dispute was a long-standing bone of contention for the Sovereign regarding the Church. For example, similar authority had been sought long before in the Constitutions of Clarendon adopted in 1164. The Church negotiated with King Henry II on this matter for many years, eventually inducing the king to reverse his position over the course of a decade (Morgan 2001: 144–45; see also the *Catholic Encyclopedia*). The rapid spread of the Protestant revolution throughout Europe prevented the Church from obtaining similar results in the sixteenth century.

those of Henry VIII. Two-thirds of the monastic lands acquired had been sold, rented, or given away by 1547 and three-quarters by 1558. Much of the Sovereign's newly found wealth was devoted to military ventures. Much of the remainder was dispensed as patronage to Henry's supporters (Morgan 2001: 285; Field 2002: 68).[141]

In addition, parliament obtained advantages in the long run that Henry VIII did not fully anticipate. By asking the Parliament to ratify the laws reforming the Church, Henry not only had expanded the scope of parliamentary authority, but implicitly had elevated parliament's statute law above all others. The English Church was reformed by formal acts of parliament, rather than divine revelation, or royal fiat.

Those acts changed the fundamental relationship between church and state in England and also changed the perceived importance of parliament and its rulings in the courts and throughout the country. The members of parliament expected to play a significant role in religious controversies from that point on, and did so. For example, Edward VI induced parliament to pass the first (1548) and second uniformity (1552) acts, which made English, rather than Latin, the language of the Anglican church, and also required church attendance. Queen Mary subsequently induced the Parliament to reinstate the links to the Papacy, reinstate laws against heresy, and repeal much of Reformation law, which parliament did, albeit with the proviso that monastic lands not be restored. (The latter suggests that parliament was not at this point entirely motivated by religious interests.)

Mary's heresy laws were rigorously enforced and at least 287 persons were burned at the stake (Morgan 2001: 298–99). Elizabeth I subsequently reestablished royal supremacy and full Protestant worship through acts of parliament in 1559.

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[141] In a few cases, nonetheless, Henry found it necessary to threaten pivotal members of parliament to bring them into line on important votes (Morgon 2001: 283). For example, in a private meeting with a prominent member of the House of Commons, Edward Montague, King Henry reportedly took Montague by the ear and said "Get my bill passed by tomorrow, or else tomorrow this head of yours will be off."

The royal threat was not entirely credible, in that the courts might have decided otherwise, but it was not an idle threat. The king often induced Parliament to pass bills of attainder against unpopular political opponents and reluctant public servants, who forfeited their life and property to the Sovereign as penalty for treason (i.e., disloyalty to the Sovereign). The bill was passed the next day (Field 2002: 70).

The balance of interests represented in the House of Lords was also affected by the reformation. After 1539, there were fewer lords spiritual, because only the bishops and archbishops of the new Anglican church were members of the House of Lords. The "Lords Temporal" formed a secure majority in the House of Lords *for the first time*.[142]

In other respects, the post-Reformation parliament was similar to what it had been in Catholic times. The domain of parliament's authority had expanded somewhat, but the parliament's main area of authority remained taxes. Its basis for membership was not fundamentally altered, and its authority over public policy remained grounded in medieval documents, precedents, and informal customs and norms. The King continued to determine when parliaments would be called and when they would end. As a consequence, the timing of sessions of parliament tended to reflect the state of government finances.

The English government was largely "self-funding" during times of peace, relying on income from royal lands (which had expanded because of lands taken from the Catholic church during the Reformation) and tariffs. Additional revenue beyond the control of parliament could be obtained by selling monopoly privileges in what would otherwise have been competitive markets. Towns, guilds, and entrepreneurs sought and received privileges to be exclusive producers of goods and services, and often paid for their privileges. Oxford and Cambridge, for example, had long held monopolies for higher education. Such monopoly privilege and tariffs, naturally, made the many goods and services more expensive than they otherwise would have been. Monopolies in Elizabeth's time included such products as: iron, transport of leather, salt, ashes, vinegar pots, lead, whale oil, currants, and brushes. Royal appointments were also often for sale. Parliament-approved tax receipts accounted for less then 10 percent of royal income during this period.

Parliament's authority was extended slightly, partly in response to Queen Elizabeth's new market-wide monopolies, some of which were especially costly and unpopular. Public demonstration opposing the Elizabethan monopolies occurred, and "antitrust" petitions were submitted to Elizabeth by parliament to revoke the monopolies. The queen was evidently convinced that she had gone too far, and eliminated several of her most burdensome monopoly "grants" (Field 2002: 89, Ransome 1883: 118-20).

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[142] With the closing of the monasteries, the abbots and priors ceased being members of the House of Lords. Prior to 1539, the lords spiritual had often been a majority in the House of Lords at meetings of parliament.
http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldbrief/ldhist.htm

This economic reform demonstrates that by the early 17th century, parliaments were beginning to believe that they could circumscribe traditional sources of royal revenues, as well as taxes, and also that public demonstrations could affect public policies. Elizabeth's revoking of monopoly privileges reduced and implicitly limited Elizabeth's traditional revenues.

Ongoing Fiscal Bargaining Between King and Parliament

Rabb's (1998) biography of Edwin Sandys provides a useful window into England's fiscal politics at this time. Sandys can be regarded as a liberal member of parliament. Sandys was involved in the repeal of Queen Elizabeth's monopolies and subsequently in the management of the Virginia Company that established England's first colony in North America. Rabb's biography discusses several instances of fiscal bargaining between the king and House of Commons during Sandys' time in office. For example, chapter 6, provides a fairly detailed analysis of single-round fiscal-policy bargaining that took place in 1610, as king James I requested new taxes to pay for the suppression of a rebellion in Ireland.

> [In 1610 the] members of **parliament had been recalled, so far as the government was concerned, for one reason and one reason alone: money** …

> … in the end the members of parliament accepted the king's assurances and decided to "proceed notwithstanding." They now wanted confirmation of the adequacy of their offer, and also a more concrete set of proposals **outlining what the king might surrender in return** (Rabb 1998: 140, 149).

Other less detailed accounts can be found in most histories of England.

The Late Medieval Constitution of England

In addition to fiscal problems, there were also ongoing theological disputes and tensions during the sixteenth century and early seventeenth century. Many of these doctrinal disputes were politically important, because of the lack of separation between church and state in England. There were, for example, many debates in Parliament over what types of church services should be permitted within England. The English church was relatively tolerant during most of this period and allowed a broad range of services to be held, including those by nonconforming Protestants and Catholics.[143]

The late sixteenth and early seventeenth centuries were also times of relative prosperity. The age of the shopkeeper emerged, as village stores augmented the ancient marketplaces as places of local

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[143] The Church of England was relatively tolerant during this time, as indicated by its official name, "the Catholic and Reformed Church of England" (Morgan 2001: 352).

commerce. A small "middle class" of merchants, professionals, and successful farmers began to emerge below the nobility. A small leisure industry emerged, which allowed playwrights such as Shakespeare to take up the theater as a full-time occupation. The largest "manufacturing industry" was engaged in the decentralized production of homes, barns, and sheds. Population grew more rapidly than economic output, however, with the result that real wages fell for low and moderately skilled labor. Food prices increased about twice as fast as wage rates (Morgan 2001: 329).

However, neither religious disputes, tax revolts, international affairs, nor economic growth produced significant trends in the reforms of the medieval English constitution. The royal family remained by far the wealthiest and most powerful in the kingdom, which together with its power to appoint persons to government positions and its control of the largest military force in England, meant that the king or queen had a dominant influence over most policy decisions. The Sovereign continued to govern, for the most part, through its own hand-picked great and privy councils. (The Sovereign controlled about a thousand senior appointments in the national and regional governments.)

The members of the House of Lords were the first born male children of privileged families and senior members of the Church of England (who were often from noble families). The medieval procedures for selecting members of the House of Commons enfranchised about the 5-10 percent of the wealthiest men in the kingdom. Many of the Sovereign's advisors were distinguished members of Parliament, but the presence of such persons in the executive indicated that their interests were aligned with those of the Sovereign, rather than parliamentary authority. Other members of parliament whose interests were less important or less well aligned with the sovereign's were largely ignored. Short meetings of parliament were called, as necessary to request new taxation, and occasionally to pass desired legislation or to affirm the accession of new kings and queens.

There were neither a standing army nor an organized police force outside major cities. Local militia, small forces maintained by noblemen, and the king existed, rather than national ones. Volunteers marshaled by local leaders, rather than salaried civil servants, provided many local public services. The local county gentry largely determined local services and implemented parliamentary tax and regulatory policy. Day-to-day governance remained largely a local matter until the twentieth century.

Overall, the fundamental routines of English medieval governance and economic life were remarkably stable, although they would soon be challenged by constitutional conflicts that arose in England during the seventeenth century.

C. Collapse of the Medieval English Constitution and its Restoration: 1625–60

In the early seventeenth century, the medieval constitution of England was stretched to the breaking point by the Stuart kings. The proximate cause of constitutional distress was tax revenue, but this time negotiation with parliament failed to find a mutually agreeable solution. To circumvent parliament's veto over new taxes, James I and his successor Charles I greatly expanded the practice of selling public offices (benefices) and monopoly privileges, and also increased customs duties and tariffs.[144] In addition, the Stuarts made extensive use of "forced loans" and "ship's money" as sources of royal income.[145] Many of the new revenue sources appeared to be taxes in disguise, and others violated long-standing constitutional law and precedent. The latter were regarded as unconstitutional new taxes by many in parliament (and by the courts), but these objections were largely ignored by the sovereign.

When Charles I came to office in 1625, he wanted to finance a war with Spain and France. This required expanding government revenues and creating a national army, which induced him to call parliament three times during his first five years. In exchange for more tax revenues, the Parliament demanded a return to the medieval constitution. Parliament wanted the fiscal and judicial practices of James I reversed, and refused to provide subsidies of the magnitude that Charles I requested. In 1628 the Parliament submitted the *Petition of Right*, which formally listed grievances against the king and sought to have Charles I affirm constitutional practices that Parliament argued had been in place since the *Magna Carta*.

The Duke of Buckingham, acting on Charles I's behalf, attempted to pack the House of Lords by selling peerages to his supporters in order to obtain a favorable decision on government revenues.[146] The numbers of peers more than doubled from 55 in 1603 to 126 in 1628. James I and Charles I also applied harsh and somewhat arbitrary punishment to those who violated their mandates, using royal courts in a manner that violated long-standing procedures and norms of the English court system. Charles refused to accept parliamentary petitions of grievances, and after 1629

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[144] In 1623, James I accepted parliament's *Statute of Monopolies* which greatly reduced but did not eliminate the ability of the crown to sell monopolies. For example, monopolies for "technical improvements" and restrictive corporate charters could still be sold (Price 1913: 35-42).

[145] Ships money was a demand for money from port cities, that would evidently be collected from ships as increased fees for port services. For parliament and its supporters, the constitutional issue was whether this was a tax or not. If it was a tax, then parliamentary approval would have been necessary. (Cross, 1914: 466, Morgan 2001: 313).

[146] Buckingham was impeached in 1627, but Charles dismissed parliament to end the proceedings (Field 2002: 99). Buckingham was subsequently murdered in 1628 (Morgan 2001: 349).

did not call another parliament for more than a decade. Instead, he raised money from other sources and was able to balance the budget without parliamentary subsidies after the war with France and Spain was over. Nonetheless, questions on the constitutionality of some of the royal income sources, as well as the burden of the royal revenues, continued to undermine Charles' support within Parliament.

Charles I's religious policies also reduced his support among Protestants, especially Puritans, inside and outside parliament. At his request, archbishop Laud tightened control of Church practices and doctrine and forbade some of the practices used by nonconforming Puritan churches. Puritan suspicions of papist conspiracies were reinforced by Charles' marriage with Henrietta Maria of France (a Catholic) and also by his alliances with Irish and Scottish Catholics to suppress the rebellious Presbyterian Scots. Together, his violations of the medieval constitution and his fiscal and religious policies caused political, economic, and religious opposition to intensify in many of the groups and regions represented in Parliament.

When Parliament was finally called again in 1640 to help finance and ratify the settlement with the Scots, not only was Parliament's bargaining position unusually strong, but its opposition to royal policies was also unusually strong. The Stuart neglect of the long-standing English constitution had created a major political crisis.

The 1640 Parliament met in mid-April. A majority of parliament was willing to finance the war in Scotland, but insisted on a return to the medieval constitution, as had the previous parliament more than a decade earlier. The House of Commons complained about religious innovations, the sale of monopolies, ships duties, the expansion of royal forests, military charges, and the violation of the liberties and normal procedures of parliament.[147]

The House of Commons petitioned the House of Lords for a joint meeting (joint conference), which was agreed to by the House of Lords. Constitutional grievances were again voiced, but no actions taken. The king argued that all his policies were necessary for the safety of the nation and dismissed the "short" Parliament on May 5, 1640. The two "all or nothing" offers made by parliament were tabled, rather than resolved through negotiation and constitutional exchange.

In November of 1640, Parliament was again summoned, partly at the insistence of the Scots, who refused to accept a peace settlement unless it was ratified by Parliament. This time, Parliament was able to press for and obtain formal agreements with Charles I that affirmed the power of

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[147] *Journal of the Commons, II, 10f.* Excerpts from the proceedings of the Short Parliament can be found at http://www.constitution.org/sech/sech_095.htm.

Parliament. Much of the new legislation simply formalized long-standing medieval practices, but some was substantially new. For example, the new legislation included the Triennial Act (no. 27: 144), which required Parliament to be called at least once every three years and allowed Parliament to be self-calling, if no royal writs were forthcoming after three years. A subsequent act (no. 30: 158) prevented the king from unilaterally dissolving Parliament.

These two acts made sessions of Parliament autonomous of the Sovereign for the first time in English history, and the latter was the constitutional basis under which Parliament continued to meet throughout the English civil war. (The "long" Parliament did not formally dissolve itself until 1660.) In exchange, Parliament passed and the king accepted the Tonnage and Poundage Act (no. 31: 159), which legitimated retroactively many of the "ship money" charges used to finance governance by James and Charles and extended them into the future, *but only for two months*. This freed James from various legal challenges to his revenue sources, but also made future royal solvency more dependent on parliamentary good will (Gardiner 1906: vol. iii).

The King's authority to intervene directly on legal matters in the secular and religious courts was eliminated by acts that eliminated the Star Chamber and High Commission (no. 34 and 35). The consequent reduction in prosecutions for treasonous matters unleashed a torrent of popular pamphlets (Field 2002: 106). The use of ships money that had been used to finance the expansion of the Navy, was repealed (no. 36: 189), which increased parliament's future authority over public policy by reducing royal revenues.

D. Constitutional Bargaining Fails and the English Civil War Begins

To this point, it can be argued that the constitutional legislation of 1640-41 simply reclaimed and formalized authority that Parliament had had or at least claimed to have at its various peaks of power during the previous 300 years. It formalized the long-standing practice of summoning parliaments every few years, reestablished a more independent court system, and affirmed parliament's veto over new taxes. After the civil war had run its course and the crown was "restored" to Charles' son, Charles II, this is also approximately where English governance found itself in 1660. Similar rules were adopted again in 1689 at the accession of William and Mary. In this sense, one could argue that there were three restorations of the England's medieval constitution during the seventeenth century.

The robustness of the medieval constitution, however, was not obvious in 1640. Tensions between Parliament and king escalated, rather than diminished. England did not simply return to the

long-term balance of its medieval constitution. The "long Parliament" and Charles I continued to maneuver for control of public policy and subsequently for control of the army. Supermajorities in parliament favored the reforms of 1640-41.

As Parliament attempted to reduce the Sovereign's authority below its traditional medieval levels, however, support, especially in the House of Lords, dwindled and the Parliament split into "royalist" and "parliamentary" camps. The royalist minority withdrew (and was subsequently excluded) from the parliamentary sessions in Westminster, as the military phase of the civil war began.[148]

Their mutual suspicions escalated to open civil war in 1642. Parliament won the war, which produced 20 years of radical constitutional experimentation by the Parliament. Eight years later, several years after winning the war, the trial of Charles I for treason was still underway. The majority of the anti-royalist members, who made up the post civil war parliament, found for treason and favored execution, but a minority thought that execution would overturn the constitution and favored a less radical solution. To advance revolutionary aims, the majority decided to exclude their opponents from Parliament. This "rump" of the original long Parliament sentenced Charles to death in 1649, eliminated the House of Lords, and declared England a commonwealth.[149]

The execution of Charles I must have appeared to be an irreversible "reform" to the republican majority of the much reduced Parliament. The execution of Charles I made it impossible for the excluded members of parliament (the previously excluded royalists plus the recently excluded moderates) to surrender to the king and restore the monarchy.

The details of the civil war, and much of the parliamentary politics during the war are largely beyond the scope of this book, in that they clearly violated long-standing constitutional practices and failed to have lasting institutional effects on English governance. The failure of the king and

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[148]   Departure of the royalist members, chiefly from the House of Lords, had reduced the Parliament by about half its original numbers. Many of these joined the king's Parliament that met in Oxford in 1644. The king's "mongrel parliament" met only once (Field 2002: 110). Constitutional negotiations between Charles and the Westminster Parliament continued throughout the civil war, but could agree to little.

[149]   In December 1648, Colonel Pride reduced parliament by excluding 110 members (arresting 40 and barring 70 others). The resulting rump Parliament was essentially purged of moderates. The new rump Parliament included only about a sixth of the original 1640 parliament. A majority of this radical "rump" voted for the king's execution. The rump majority included less than a tenth of the original 1640 parliament (Morgan 2001: 370, 372). In 1649, Charles was beheaded for constitution crimes (treason). The excluded group is likely to have included many who were originally in the "anti–Charles I" majority of the 1640 parliament, given the reduced attendance at parliamentary sessions.

parliament to find a compromise serves as a useful illustration of how divided governments can produce civil war when uncompromising factions emerge that are willing to violate standing procedures and norms. (It was partly this failure to come to terms that led Thomas Hobbes (1651), writing in the safety of France, to insist that nations should have only a single sovereign authority.) The failure of parliament's constitutional experiments to produce a stable government also provides a useful illustration of the difficulty of engineering major reforms of governance. The period 1642–60 was truly a revolutionary period.

The Agreement of the People of 1649, a Liberal Constitutional Proposal

After Charles I's execution, the "rump" Parliament subsequently attempted to draft a republican constitution. Their negotiations were influenced by new theories of governance that had emerged in the years before and during the civil war. The most influential of which was the "Agreement of the Free People of England," a surprisingly modern social contract (1649) supported by one of the first English constitutional interest groups, the Levelers. The "agreement" was written, widely disseminated within England, and actively supported two years before Hobbes finished his famous work on the social contract in 1651, and more than four decades before Locke finished his treatises on government in 1689.

The "Agreement of the People" was written by four men while imprisoned in the Tower of London. It was evidently based partly on earlier proposals. It proposes a series of radical liberal reforms to English governance, essentially a new constitution. Article I states that "the supreme authority of England shall reside" in a new 400 member unicameral parliament, with paid members, and representation "proportionate to the respective parts of the nation. Article II states that the "major voices" of parliament will be supreme ("shall be concluding to this nation") and that more than half the members to parliament will be elected. The elected members will chose the speaker of the parliament. Article III requires that all governmental officials be accountable to law and parliament.

Article VIII specifies annual elections for elected members of parliament. Article IX lists the duties of government: (i) foreign policy (peace and commerce) (ii) maintenance of "our lives limbs, liberties, properties, and estates," (iii) raising money, extending freedom, redress of grievances, and promoting prosperity. Article XI specifies that "all privileges or exemptions of any persons from the laws, or from the ordinary course of legal proceedings, by virtue of any Tenure, Grant, Charter, Patent, Degree, or Birth, or of any place of residence, or refuge, or privilege of Parliament, shall be

henceforth void and null; and the like not to be made nor revived again." Articles XVIII and XIX call for reducing regulation of international trade. Article XXI calls for limits on the death penalty and the payment of damages to victims.[150]

The supporters of the agreement became known as the Levelers, because most argued for the end of social privileges. (A few also argued for a major redistribution of wealth through land reform.)

The leveler proposals and other controversies during the period of the republic are important for subsequent English constitutional developments. This is not because they succeeded, which they did not, but because they focused on issues that continued to play central roles in constitutional debates in England and much of Europe for the next two centuries. Most of their constitutional proposals were adopted in the following two and a half centuries, although very few of their proposals were adopted in the seventeenth century.[151]

The Failure of the "Rump" Parliament and Cromwell's Republic

Instead of placing procedural and policy constraints on itself, as recommended by the Levelers, the rump Parliament gradually transferred all remaining political authority to a new executive council of state through a series of acts adopted in the next four years. Oliver Cromwell, the Lord General of the Parliament's army evidently decided that this process of constitutional reform was too slow and corrupt—or perhaps, not sufficiently responsive to his advice—and dismissed the rump Parliament (by force) in April 1653.

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[150] A complete copy of this surprisingly modern proposal for a social contract can be found at: http://www.constitution.org/lev/eng_lev_07.htm.

[151] The proposed social contract was widely circulated within England and must have been known to Thomas Hobbes, who sat out the civil war in France, where he wrote his famous book, *Leviathan*, published in 1651, in which he articulated a new social contract theory of governance.

The tone of the Hobbes' governance chapters defending an all-powerful sovereign suggests that Hobbes believed that England would have been better off with the French form of monarchy, which was in a relatively autocratic phase, although he hedges a bit by allowing the possibility of an all-powerful parliament. Hobbes' proposed covenant (ch. 17) states that citizens accept an oath like the following: "I authorize and give up my right of governing my self *to this man, or to this assembly of men*, on this condition, that thou give up thy right to him and authorize all of his actions in like manner."

(Note that Hobbes allows for the possibility of a republican government with a supreme parliament, "this assembly of men.")

Cromwell proposed a new Parliament composed of a 140 worthy persons to be selected by local Protestant church congregations (Field 2002: 122). Eight months later, in December 1953, Cromwell announced that he would rule via a new written *Instrument of Government* (IG: no. 97: 405).

Cromwell's new constitution did not break entirely with the long-standing architecture of the English medieval parliaments, but it did change many of its core procedures. The government of the new commonwealth was to be composed of three major branches: (1) the Lord Protector (a lifetime position analogous to a king to be held by Cromwell), (2) an advisory privy council (effectively a royal cabinet), and (3) a unicameral Parliament. A 400-man Parliament was to be elected and meet every three years. It would remain in session for at least five months. Suffrage (for men) required wealth greater than 200 pounds (which limited suffrage to the landed gentry). Parliament would initiate all legislation (subject to Cromwell's veto) and would be called on in times of emergency to vote new taxes. When Parliament was not in session, the council and Lord Protector would rule. During times of peace, taxes would be sufficient to maintain a 30,000-man army and a naval fleet, and also provide 200,000 pounds per year for administrative purposes.[152] There was to be freedom of worship for Protestants.

Members of the privy council would hold their seats for life. As vacancies arose on the privy council, the Parliament would send the protector a list of six names from which the Lord Protector would choose a replacement. The constitution also included a supreme court. All acts of government could be challenged in court to determine whether they violated the Instrument of Government. The disposition of troops would be jointly controlled by the Lord Protector and the Parliament, if Parliament was in session, or by the Lord Protector and council if not. Evidently, the constitution could be amended by ordinary acts of legislation (no amendment process was mentioned).

Of course, the problem with such a constitution is that if the Lord Protector is sufficiently powerful to impose it unilaterally, he cannot be bound by its rules. This was evident even before the procedures of the new instrument of governance could be implemented. In 1654, following the very first election for Parliament under the new suffrage rules, Cromwell excluded 120 elected members who he considered hostile to his regime (Gardiner 1906: part V; Field 2002: 123).

Those allowed to take their seats petitioned Cromwell for additional constitutional reforms. Their proposals attempted to make the new government resemble that of England's medieval

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[152] Cromwell's proposed 30,000-man army was about 10 times that normally supported in times of peace. Charles II kept a standing army of just 3,000 (Morgan 2001: 378)

constitution. In 1657, parliament proposed reinstating the office of king (to be held by Cromwell), which Cromwell refused. They also proposed that the Lord Protector be able to appoint his successor, which Cromwell accepted, and also recommended the creation of a second chamber of Parliament (of lifetime peers) to be appointed by the Lord Protector. Cromwell accepted that proposal as well. Cromwell named his son, Richard, to be his successor and began filling the new elite chamber with loyal Puritan supporters. (Subsequent peers would have to be approved by the existing members of the new house of peers, which would have limited somewhat the opportunities of future kings to assemble a loyal house of peers.)

The process of replacing members of the privy council was also changed to give the Lord Protector, rather than Parliament, control over the initial proposal, with veto power in the council and Parliament. The elected chamber also gained the right to accept or reject its own members.

The End of the English Republic and the Restoration of Charles II

Overall, it is clear that the 1657 amendments enhanced Cromwell's already considerable authority under the original *Instrument of Government*. It is also clear that the *Instrument of Government*, both before and after amendment, was never a constitution—a document that describes durable procedures for making rules. Its procedures were never fully implemented and did not survive Cromwell's death in 1658.

Although Cromwell's son did temporarily inherit the position of lord protector, and did call for a new Parliament; the new parliament met in 1659 for just three months before being (unconstitutionally) dismissed. The authority of the commonwealth subsequently disintegrated in the face of a widespread tax revolt. The new commonwealth had lasted just six years.

As an alternative to the disfunctional government, the old rump Parliament was reassembled, but then dismissed by the army. In a quest for legitimacy, the surviving members of the more inclusive long Parliament were summoned. The old parliament met, lawfully dissolved themselves, and called for new elections under the rules adopted in 1641, ignoring nearly two decades of constitutional reform. The newly elected parliament called for the restoration of the monarchy in the person of Charles II, and the restoration of the principle of hereditary succession.

Negotiations with Charles II were undertaken and the result of that bargaining is evident in the 1660 *Declaration of Breda*, which is Charles II's statement of the conditions under which he would "return" to the throne. It includes a clear statement of the divine right of kings:

"we can never give over the hope, in good time, to obtain the possession of that right which *God and nature hath made our due.*"

It also promises to exempt most persons from royal retribution. There was to be a restoration of rights and a free and general pardon (with exceptions to be determined by parliament):

"the restoration of *King, Peers and people to their just, ancient and fundamental rights*, we do, by these presents, declare, that we do grant a free and general pardon, which we are ready, upon demand, to pass under our Great Seal of England."

Only those who signed his father's death warrant were punished (Morgan 2001: 178). Principles of religious tolerance were to be supported (through an act of parliament), and a royal commitment was made to pay the army its (overdue) past wages (which partly accounts for the military's interest in the restoration).

"And because the passion and uncharitableness of the times have produced several opinions in religion, by which men are engaged in parties and animosities against each other (which, when they shall hereafter unite in a **freedom of conversation**, will be composed or better understood), we do declare a liberty to tender consciences, and that **no man shall be disquieted or called in question for differences of opinion in matter of religion,** which do not disturb the peace of the kingdom; and that we shall be **ready to consent to such an Act of Parliament**, as, upon mature deliberation, shall be offered to us, for the full granting that indulgence. ...

We do further declare, that we will be ready to consent to any Act or Acts of Parliament to the purposes aforesaid, and for the full satisfaction of **all arrears due to the officers** and soldiers of the army under the command of General Monk."

By the end of 1660, English governance had returned to its medieval constitution and England's short period of radical constitutional experimentation was over.[153]

After two decades of constitutional experimentation the medieval English constitution was restored. The civil war demonstrates the difficulty of major constitutional reforms and also the robustness of England's medieval parliamentary institutions. These, as well as the losses of the civil war, provided empirical foundations for the constitutional conservatism of many future English voters and political theorists. The return to constitutional monarchy was negotiated by a new Parliament reconstituted under its old rules.

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[153] Breda also dates the beginning of the reign of Charles II from the death of his father 12 years before. "Given under our Sign Manual and Privy Signet, at our Court at Breda, this 4/14 day of April, 1660, in the *twelfth year of our reign.*" The full text is available at http://www.constitution.org/eng/conpur105.htm.

E. From Restoration to Glorious Revolution 1660–89.

As part of the negotiations with Parliament, all parliamentary acts between August 1641 and the Restoration were annulled, which implied that all the royal properties sold off during the civil war would be returned to Charles II and his supporters. This together with the sovereign's traditional access to customs duties, which were affirmed by the 1661 Parliament, meant that Charles II could rule without summoning Parliament to raise taxes during times of peace. Charles II proclaimed and subsequently promoted a modest extension of freedom of religion, although he also accepted Parliament's Test Act (1673), which restricted government offices to Anglican Protestants.

Legislation adopted prior to August 1641, however, had limited some royal revenue sources and eliminated the royal high courts (Star Chamber and High Commission), which meant that Charles was somewhat less autonomous than his father had been or at least claimed to be. In this respect too, it could be claimed that a restoration had taken place. Charles II's powers of taxation and legislation were not substantially different from those of kings and queens before 1600. He could still call and dismiss Parliament at his convenience, subject to the new three-year constraint and could still rule by fiat in policy areas other than taxation and those determined by common law.[154]

After his accession, Charles II pursued the usual political interests of kings. Although he followed the letter of the law with respect to the triennial act, elections were avoided altogether for most of Charles' regime by keeping the very royalist 1661 Parliament (the Cavalier Parliament) in session for 18 years without calling for new elections (Morgan 2001: 381). Patronage was used at all levels of government and across all groups to elicit support (Morgan 2001: 379). The long-standing election laws of 1430 were undermined by transforming many borough charters into corporations, which allowed borough members of Parliament s to be appointed by a handful of town officials, often replacing broader election processes. Less loyal but malleable members of Parliament were bribed (Field 2002: 128). The search for new revenues beyond the control of Parliament continued unabated.[155]

Toward the end of Charles II's reign, it became clear that Charles' brother James, a Catholic, would be the next in line to the throne, because Charles did not have any legitimate children. That

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[154] At the time of the restoration, the Triennial Act was revised to eliminate the "self-calling" of parliament, but the Sovereign remained legally obligated to call Parliament at least once every three years (Gardiner 1906, vol. III).

[155] In return for French subsidies, Charles promised in the secret Treaty of Dover to abolish Parliament and provide King Louis XIV the English Sovereign after his death (Field 2002: 127). Evidently, King Louis was unfamiliar with recent English history.

prospect produced what many historians regard to be the first nationwide political campaign in England. The Earl of Shaftesbury, a proponent of parliamentary supremacy, formed a political alliance that attempted to pass legislation to block the accession of James to the crown.[156] When Shaftesbury proposed the Exclusion Act in the House of Commons, Charles II simply dissolved the parliament (on three separate occasions). There was also opposition to excluding James in the House of Lords, because it would have broken the long-standing English practice of hereditary succession by adding new religious requirements for the accession to the throne (Morgan 2001: 383).

   Shaftesbury's efforts demonstrated that an organized group of members of Parliament could affect national elections, a lesson that was not forgotten. Their campaign also produced durable party labels. The proponents of exclusion came to be called Whigs. The Whigs generally opposed Charles II, supported religious toleration for Protestants only, and sought to increase the power of Parliament relative to the Sovereign.[157] The opponents of exclusion came to be called Tories. The Tories supported Charles II, the rule of law, established religion, and the hereditary rules of succession.[158]After it was clear that Shaftesbury had lost, he fled to the Netherlands in 1681, followed soon after by his middle-aged protégé John Locke in 1683.

   James II inherited the crown after Charles II's death in 1685. Like his brother, James received customs duties for life by an act of Parliament. But unlike his brother, James II proceeded to rule without Parliament, violating the modified Triennial Act (Field 2002: 128). He also exacerbated religious tensions by promoting centralization and a more tolerant, but anti-Anglican policy agenda. For example, he called in town charters and rewrote them to advance the cause of Protestant nonconformists and Catholics. Three-quarters of the local justices of the peace were sacked and replaced with Protestant dissenters beholden to the king (Morgan 2001: 385). A large standing army was organized in which Catholic officers were prominent. Full religious liberty was declared (for

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[156]   The length of Charles' first Parliament was unprecedented, had inadvertently allowed more stable political coalitions and leadership to emerge in Parliament.

[157]   The "party" labels for the pro- and anti-exclusion voting blocks were coined as insults by their respective opponents. The term Whig was slang for a group of crazy Scottish Presbyterian rebels, and Tory was slang for the papist outlaws of Ireland. (Field 2002: 128). A few Whigs were, in fact, Presbyterians, although they could not yet be Scottish. The union with Scotland did not take place for half a century (1707). Tory MPs were, of course, Anglican Englishmen, rather than Catholics. MPs could not be Irish until the union in 1801, and could not be Catholic until the Test Acts were repealed and the Act of Catholic Emancipation was adopted in 1829.

[158]   The exclusion act would have undermined the "divine right of kings" doctrine. If passed, sovereignty would have depended on criteria adopted by parliament, as well as birth, which would have increased the power of Parliament. These constitutional arguments also partly determined the language rationalizing William and Mary's accession to the Sovereign in 1689.

Catholics and Protestants), and Anglican clergy were instructed to read his declaration at their services.

Whether James' policies were benevolent efforts to increase religious tolerance, a campaign on behalf of James' fellow believers, or a Papist conspiracy; they were clearly policies that made the local elites and dominant religious communities worried about worse to come.[159] The local gentry and nobles were well organized, as were mainstream Protestants. And although neither group had an army at their disposal on this occasion, they did have contacts with someone who could potentially raise an army and who had an indirect claim to the throne, namely, William III, *stadhouder* of the Netherlands.

In 1687 William III had published a letter disapproving of James II's religious policies, but promising not to intervene in England unless he were invited to do so by leading Englishmen. The letter was published and evidently was well received within Protestant circles in England. As the Protestant daughter of the present king, James II, during his first marriage, William's wife, Mary, was next in the line of succession to the crown after James II.[160] In 1688 seven prominent Protestant leaders (including five members of the House of Lords, both Whigs and Tories) invited William to drive James II from office in order to protect Protestantism and Mary's claim to the throne. (Parliament, per se, could not do so because it had not been called to session since James II had acceded to the throne.)

F. William III, the Dutch States General, and the English Parliament 1688-89

William III was not, however, a king with sovereign power, nor did he literally have his own army. William was a middle aged man, a member of the most distinguished family in the Netherlands, and *stadhouder,* rather than king, of the Netherlands. (His name in the Dutch counting is Willem III.) William/Willem had considerable authority over the Dutch army, but he had little

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[159] Both Charles II and James II were sons of Charles I. Their mother, Henrietta Maria, had been a princess of France. Upon his brothers accession to the crown, James became Duke of York and Duke of Albany (in Scotland). There is evidence that James had raised money from the French King to supplement his revenues in the absence of parliamentary revenues.

[160] Mary was the daughter of James II and his first wife, Anne. William III also had family ties to the English Sovereign, as the grandson of Charles I. He and Mary were cousins. The soon to be deposed James II was his uncle (Morgan 2001, table of descendants, appendix).

Perhaps more important for the future of English constitutional developments, however, was the fact that William III was the middle-aged patriarch of the distinguished Dutch Orange-Nassau family, a family that had long been influential in the Netherlands because of the family's implicit claim to the office of Stadhouder. (William III is Willem III in Dutch histories.)

authority over the navy, which would be needed to transport the Dutch army to England, and no budgetary authority to finance the invasion.[161]

To invade England, William had to persuade the Dutch States General that such an invasion would advance Dutch interests. William noted that England had taken the French side in the previous war during the reign of Charles II, which had nearly ended Dutch independence. Another war with France was thought likely in the near future, which would again threaten the survival of the Dutch republic. William/Willem argued that if he could secure the English throne, English resources would support the Dutch, rather than the French in the next war. This would greatly improve prospects for the Netherlands. The States General were persuaded and agreed to fund William's English strategy.

A Dutch armada carrying 20,000 troops arrived in England on November 5 (Claydon 2002: 28). A much larger, if much less experienced, British army marched to meet the Dutch invasion. The 40,000-man British army folded in disarray after several high level defections led James II to reconsider his plans, retreat, and subsequently to flee to France. William and the Dutch army marched, essentially without further opposition to London, arriving on December 18. William ordered the remaining members of the English army to leave London, and they did, which placed the city completely in the hands of William and the Dutch army.

The London members of the House of Lords met on Christmas day 1688 and asked William to take charge of government (Field 2002: 130). They also authorized him to call a "convention" Parliament (Claydon 2002: 63). A convention Parliament, composed in the usual medieval manner, met in early January 1689. On January 27, the Parliament resolved that James II had broken the contract between king and people and had vacated his office (Field 2002: 130). After more internal negotiation and evidently a threat by William to return to the Netherlands with the Dutch army if not offered the crown (Claydon 2002: 63), Parliament offered the crown to both William and Mary on February 13, 1689 in an act of Parliament that has come to be known as the English Bill of Rights.

Both the offer of the crown and the conditions under which the crown would be accepted were clearly negotiated within Parliament as well as between Parliament and William and Mary. The reign of William and Mary is the *only time* in which England had *two sovereigns.*

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[161] For more constitutional details of governance in the United Provinces of the Netherlands, see chapter 15 below.

The Bill of Rights addresses several issues simultaneously. The first part of the Bill of Rights describes why James II was no longer king, even though he was alive and well in France. In short, he had violated the constitution, and, moreover, had "abdicated the government and the throne [is] thereby vacant." The second part lists powers that the previous kings had "pretended" to have, including the power to impose taxes without parliamentary assent and to create their own courts. These, it was stated, had no basis in long-standing constitutional law. (Many of these grievances had been claimed about previous kings as well, as noted above.) The second part lists various rights—the right of free speech in Parliament, the right to bear arms for self-defense, the right to a fair and speedy trial by jury—and suggests that "for redress of all grievances, and for amending, strengthening and preserving the laws, Parliament ought to be held frequently." (Most of these rights had been claimed by Parliaments since the fourteenth century. It could, thus, be said that section two tries to reset the constitutional clock back to August 1641, once again—this time, by nullifying the innovations of Charles II and James II.)

The third part offers the crown (of England, France, and Ireland) jointly to William and Mary and provides for the order of succession. Although this was the only time in history that England has had two sovereigns, a rationale for this exceptional provision is not provided by the text.

The fourth part reaffirms the Test Act and essentially extends the Test Act to the Sovereign for the first time. From hence forward, Catholics and those married to Catholics were excluded from the throne, and moreover could not sit in the Parliament. This ruled out the lawful return of James II to the throne (which parliamentary Whigs had previously tried to block with their Exclusion Act) and also reduced Protestant fears about Catholic conspiracies.[162]

Overall, the Bill of Rights reasserts Parliament's long-standing rights and only very moderately extends them. Indeed, the striking thing about the Bill of Rights is how few new powers or restrictions are listed. Apart from ruling out future Catholic kings and providing for a dual monarchy, very little new is adopted. This is acknowledged in the document, which states that Parliament

> "do pray that it may be declared and enacted that **all and singular the rights and liberties asserted and claimed in said declaration are the true ancient and indubitable rights** and liberties of the people of this kingdom."

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[162] A complete copy of the English Bill of Rights can be found at:
http://www.constitution.org/eng/eng_bor.txt.

The conservative nature of the Bill of Rights was evidently necessary to secure broad support within the Houses of Commons and Lords for the act as a whole. Parliamentary records indicate that many members continued to support James II's claim to the Sovereign, and many others wanted long-standing constitutional practices be continued. They clearly remembered the failures of Cromwell's Commonwealth, three decades earlier. Only a minority of the recorded debates seemed interested in a "glorious revolution." Most members or parliament favored continuation of as much of the medieval constitution as possible under the circumstances. Consequently, the provisions in the Bill of Rights cover familiar ground. It simply codified fundamental laws that had been accepted by parliaments and kings for much of the previous four centuries.

To obtain the protection of the Dutch army, the crown was offered to both William and Mary, not to Mary or William alone. To obtain the crown, William and Mary agreed to rule in accordance with the laws of the land, including those enacted by Parliament and accepted by the sovereign—as had been promised many times before in English history at times of accession.

Although the medieval English constitution remained in place, the parties in power and their circumstances were substantially different than they had been in the past. This, more than the English Bill of Rights, affected the course of public policy and constitutional reform for several decades by creating new opportunities for constitutional exchange.