Are there "Constitutional" Ideas in the Rolls of the English Parliament, c. 1340-1422?

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Christopher Fletcher
IRHiS (UMR 8529)
CNRS / Université de Lille, F-59000 Lille, France

It is worth pointing out to an international audience that many English political historians, and perhaps especially late medieval historians, use the word 'constitution' in a way which corresponds neither to a modern idea of a 'constitution' as a written, foundational document, nor to any late medieval concept. Before the attacks suffered in the late nineteenth and early twentieth century by the English constitutional history epitomised by William Stubbs, historians used the word 'constitution' with reference to medieval society much as their contemporaries did to describe the political institutions of their own day[1]. For the 'Whig' historians of the Victorian and Edwardian eras, the English constitution in the past, like the British constitution in nineteenth and twentieth centuries, was imagined as a set of practices and norms, a rationalised emanation of the shared assumptions and customs of the people, rather than as a written code[2]. This conception of the nature of English political institutions had a long history[3]. Already in the early seventeenth century, Englishmen were accustomed to talk in terms of an 'ancient constitution' and a 'fundamental law' which was, however, 'unwritten'. Although parts of this implicit constitution were occasionally clarified and defined in important charters, laws and other written documents, they were only confirmed and rationalised, not created, by the authority of the king. Written law, although it did apply royal authority through the institution of Parliament, served primarily to perfect the custom which the wisdom of ages had developed. This convenient vision of the 'constitution' as a structure of fundamental assumptions, which existed in practice without ever being wholly enunciated in written theory, had already come under intense criticism at the hands of royalist writers towards the end of the seventeenth century[4]. But these attacks failed to stick. The challenges of the late eighteenth-century French and American revolutions if

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[1] Stubbs' epoque-defining work is W. Stubbs, *The Constitutional History of England In Its Origin and Development*, Oxford, Clarendon, 1874-78. For the attack, see below, next paragraph.

[2] For an introduction to the idea of the 'British constitution' in the politics of the nineteenth and twentieth centuries, see M. Foley, *The Politics of the British Constitution*, Manchester, Manchester University Press, 1999, p. 1-43.

[3] For what follows, see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law : A Study of English Historical Thought in the Seventeenth Century*, Cambridge: Cambridge University Press, 2nd edn. 1987, chs. II and III (from the 1st, 1957 edn) further elaborated in the 1987 edition at p. 261-305; G. Burgess, *The Politics of the Ancient Constitution : An Introduction to English political thought, 1603-1642*, London: MacMillan, 1992. See, also, in the present volume, the contributions of Rachel Foxley and William Pettigrew.

[4] See Pocock, *Ancient Constitution and the Feudal Law*, chs. VI and VII, and more briefly G.O. Sayles, *The King's Parliament of England*, London, Edward Arnold, 1975, p. 8-10.

anything hardened this view of an implicit British constitution whose superiority lay precisely in its 'unwritten' nature[5].

In the historiography of late medieval England, it was only in the late nineteenth and early twentieth century, that this particular vision of the 'constitution' came under sustained attack[6]. The assault when it came, however, was devastating: a sustained critique of the teleology which had conditioned modern historians to find in medieval political structures only more or less developed versions of the institutions of their own day, whilst neglecting those phenomena (noble affinities and networks of influence amongst local landowners, for example) which did not seem to represent the 'wave of the future'. As a result of these attacks, and also of the attraction of new methods of historical inquiry organised around the prosopography of the English political class[7], the term 'constitution', when used of late medieval England, tended to drop out of usage. Historians still used the adjective 'constitutional' when the formal structures of government and the legal basis of royal rule[8]. Nonetheless historians largely avoided, even if they did not abandon, the idea that there was a fundamental 'constitution' lying beneath the flow of events.

It might thus seem surprising that, between the late 1980s and early 2000s, the concept of the 'constitution' was readopted by a number of historians tired of what they saw as a vision of politics dictated by the play of interest. This movement was led by Christine Carpenter and Edward Powell, who argued powerfully for a revival of the concept of the 'constitution' in late medieval English political history[9]. They argued that, once its excessively 'Whiggish' elements

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[5] The English 'Whig' reaction is epitomised by Edmund Burke, *Reflections on the Revolution in France*, ed. J.G.A. Pocock, Indianopolis and Cambridge, Hackett, 1987. For its significance in re-mobilising established themes, see Pocock's introduction, notably p. xi-xlvi.

[6] The assault on Stubbs' work was initially piecemeal, starting with Maitland's introduction to *Records of the Parliament holden at Westminster ... AD 1305*, ed. F.W. Maitland, London, Eyre and Spottiswoode, 1893 and the studies of Ch. Petit-Dutaillis and G. Lefebre, *Studies and Notes Supplementary to Stubbs' Constitutional History,* 3 vols. Manchester, Manchester University Press, 1908-1929. It gathered force with the studies published initially in the 1920s and 1930s by H.G. Richardson and G.O. Sayles, collected in *The English Parliament in the Middle Ages*, London, Hambledon Press, 1981 and in the acerbic critique of K.B. McFarlane, collected in his *The Nobility of Later Medieval England*, Oxford, Clarendon, 1973 and *England in the Fifteenth Century*, London, Hambledon Press, 1981.

[7] For early work in this direction see McFarlane, 'Parliament and "Bastard Feudalism" ', *Transactions of the Royal Historical Society*, 26, 1944, p. 53-79; J.S. Roskell, 'Perspectives in English Parliamentary History', *Bulletin of the John Rylands Library*, 46, 1964, p. 448-475. This later developed into the work published in the successive volumes of *The History of Parliament*, but also in the work on gentry society discussed below.

[8] E.g. S.B. Chrimes, *English Constitutional Ideas in the Fifteenth Century*, Cambridge, Cambridge University Press, 1936; J.E.A. Joliffe, *The Constitutional History of Medieval England from the English settlement to 1485*, London, Black, 1937; B. Wilkinson, *Constitutional History of England in the Fifteenth Century (1399-1485)*, London, Longmans, 1964.

[9] E. Powell, *Kingship, Law and Society: Criminal Justice in the Reign of Henry V*, Oxford, Clarendon, 1989, esp. p. 1-22; C. Carpenter, 'Political and Constitutional History: Before and After McFarlane' in *The McFarlane Legacy: Studies in Late Medieval Politics and Society*, ed. R.H. Britnell and A.J. Pollard, The Fifteenth Century Series no. 1, Stroud, Sutton, 1995, p. 175-206; Powell, 'After "After McFarlane": The Poverty of Patronage and the Case for Constitutional History' in *Trade, Devotion and Governance: Papers in Later Medieval History*, ed. D.J. Clayton, R.G. Davies and P. McNiven, Stroud, Sutton, 1994, p. 1-16.

have been stripped off, the idea of the 'constitution' had certain advantages for those who wished to study late medieval political history. For Carpenter, the idea of the 'constitution' had much of the power of the anthropological concept of 'culture', or the concept of *mentalité* as developed by the Annales school[10]. At the same time, she argued that the concept of the 'constitution' was preferable to the concept of 'political culture'. For Carpenter, the 'constitution' could be seen to be important in political *events* in a way that a certain vision of 'political culture' arguably had not[11]. It is important to note that, for Carpenter, too, the 'constitution' is not a written text, or even a group of written texts, even though particular documents might be important in understanding it. It is a set of assumptions, norms and practices: the 'rules' of the political 'game'[12]. Perhaps even more radically, it is nothing less than 'political and governmental structures, and the beliefs of those who participate in them about how these structures should operate'[13].

What then was the late medieval 'constitution'? Carpenter and Powell built on the explosion of research into the late medieval English nobility and gentry since the Second World War, inspired by K.B. McFarlane's rehabilitation of 'bastard feudalism' as a social system in itself, rather than as a corrupt or disfigured form somewhere between earlier and later forms of political life[14]. Thanks to this research, it was clear that late medieval landowners were in an apparently paradoxical situation which nonetheless led them to have strong expectations with regards to correct functioning of royal justice[15]. Since power for both the nobility and the gentry lay in land, they were obliged to make use of every tool at their disposal to protect and expand their control of it. This included the legitimate and illegitimate use of legal mechanisms and, if necessary, violence. At the same time, the nobility and gentry were just as keen to protect themselves against neighbours and peers who were trying to do the same thing. In late medieval England, the king's law structured the competitiveness of neighbouring landowners in a way which they both valued and resented. They valued the law because it permitted them to protect the lands they possessed, but they resented it because it could be used against them, and because it could be distorted by the use of influence by prominent men on a local or national level. Of course, the very same men who complained against the excessive use of influence when it was used against them, did not

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[10] C. Carpenter, 'Introduction: Political Culture, Politics and Cultural History' in *The Fifteenth Century IV : Political Culture in Late Medieval Britain*, ed. L. Clark and C. Carpenter, Woodbridge, Boydell, 2004, p. 1-19.

[11] Carpenter, 'Political Culture, Politics and Cultural History', p. 5: referring to the concept of 'politeness' in eighteenth-century political culture.

[12] *Ibid.*, p. 1, citing Dale Hoak, 'Introduction' in *Tudor Political Culture*, ed. Hoak, Cambridge, Cambridge University Press, 1995, p. 1. Cf. Foley, *Politics of the British Constitution*, p. 2, for the view of the modern 'British constitution' as the implicit 'rules of the game'.

[13] Carpenter 'Before and After McFarlane', p. 176.

[14] McFarlane, 'Bastard Feudalism' repr. in *England in the Fifteenth Century*, p. 23-43.

[15] For what follows, see Powell, *Kingship, Law and Society*, p. 1-20, 23-44, 86-114; Carpenter, 'Law, Justice and Landowners in Late Medieval England', *Law and History Review*, 1, 1993, p. 205-237; Carpenter, *The Wars of the Roses: Politics and the Constitution in England, c. 1437-1509*, Cambridge, Cambridge University Press, 1997, p. 27-66.

hesitate to bring to bear the same kind of influence in their own favour[16]. That was the delicate balance which late medieval landowners had to negotiate.

This analysis of the basis of landed power makes it possible to pinpoint certain key expectations of royal government, above all the king's role as the ultimate arbiter of the system of land law. In practice the formal structures of royal law, which seemed to put all free men on an equal footing, were overlain on a series of informal social structures based around lordship and affinity. In some areas of the country, one particular noble was sufficiently dominant and engaged that local land and power was in practice exclusively negotiated by him. John of Gaunt, duke of Lancaster, for example, had such a pre-eminent role in the north-west of England in the later fourteenth century[17]. On the other hand, perhaps a more usual situation was that a particular area would meet at the interface of a number of nationally powerful nobles, and that the local gentry would have to negotiate their way through this situation of divided influence. One might consider East Anglia, or Derbyshire and Staffordshire, in the first half of the fifteenth century, for example[18]. At times, one can see influence passing from one noble family to another, for example in Devon in the course of the fifteenth century[19], or a long-running struggle for predominance, as in the North in the 1450s[20]. In some regions, or at particular moments, there was no locally dominant noble. In this case, the gentry were obliged to sort things out amongst themselves, as in Gloucestershire in the fourteenth century and Northamptonshire under the Lancastrians[21]. In any locality or in any particular time where there was a division of power between multiple groups of influence the king's intervention was vital to maintain order. At moments when different groupings came into conflict, it was only the king himself who could serve as an impartial arbiter and prevent the situation from degrading into local violence and private warfare. Even in regions where a single noble was dominant, the king played an essential role of mediator between those who were 'in' and those who were 'out', ideally ensuring that the latter group did not feel so disenfranchised as to rebel.

Carpenter and Powell built on this work to stake out what they saw as the implicit 'rules of the game' in late medieval English politics. The 'constitution' was essentially the group of

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[16] For the contradictory position of gentry representatives in Parliament, see N. Saul, 'The Commons and the Abolition of Badges', *Parliamentary History*, 9, 1990, p. 302-15; Carpenter, 'Law, Justice and Landowners', p. 225-231.

[17] S. Walker, *The Lancastrian Affinity, 1361-99*, Oxford, Clarendon, 1990, p. 141-181.

[18] Walker, *Lancastrian Affinity*, p. 182-234; H. Castor, *The King, the Crown, and the Duchy of Lancaster: Public Authority and Private Power, 1399-1461*, Oxford, Oxford University Press, 2000, p. 51-189, 191-305.

[19] M. Cherry, 'The Courtenay earls of Devon: the formation and disintegration of a late medieval affinity', *Southern History*, 1, 1979, p. 71-97; Cherry, 'The struggle for power in mid-fifteenth century Devonshire' in R.A. Griffiths, ed., *Patronage, the Crown and the Provinces in later Medieval England*, Gloucester, Sutton, 1981, p. 123-44.

[20] R. Griffiths, 'Local rivalries and national politics: The Percies, the Nevilles and the duke of Exeter, 1452-1455', *Speculum*, 43, 1968, p. 589-632; A.J. Pollard, *North-Eastern England during the Wars of the Roses: Lay Society, War and Politics, 1450-1500*, Oxford, Clarendon, 1990.

[21] N. Saul, *Knights and Esquires: The Gloucestershire Gentry in the Fourteenth Century*, Oxford, Clarendon, 1981; S. Payling, *Political Society in Lancastrian England: The Greater Gentry of Nottinghamshire*, Oxford, Clarendon, 1991.

expectations that the landowning class held with regard to the correct intervention of the king within that large part of the justice system which dealt with landholding, and as a result with local order and the balance of power in every English county. The next step was taken in the early work of Carpenter's students, Helen Castor and John Watts, who worked through the implications of this model to explain the course of national politics. Castor develops perhaps the purest expression of this particular conception of the correct operation of the English polity, in which the king must stand above the disputes of his landowning subjects in order to fulfil his mediating role, and hence guarantee the stability of the kingdom[22]. For Castor, the position of Henry IV (1399-1413), after his usurpation at the expense of Richard II (1377-99), was not reinforced, as some historians had imagined, but further destabilised by his position as duke of Lancaster. Far from contributing the extra resources which would enable the king to 'live of his own', the fact of being at once king and the most powerful noble in the kingdom made Henry IV dangerously partial in a number of localities in a way which worsened the instability provoked by his usurpation. Rather than behaving as an impartial arbiter Henry IV reflexively supported his own men in a way which provoked revolt and instability. Although peace in these regions was briefly restored under Henry V (1413-1422), who behaved more even-handedly, it declined once again under Henry VI (1422-1461). As it became clear that the latter was unsuited to rule, the duke of Suffolk attempted to create a substitute power which was, however, always undermined by his private role as a regional magnate. John Watts, on the other hand, presented a magisterial analysis of the operation of kingship and its malfunction during the reign of Henry VI (1422-61)[23]. Watts related the analysis of the operation of landed society proposed by Carpenter and Powell to the particular mind-set revealed in fifteenth-century 'mirrors for princes' and moral poetry. The whole conception of 'taking counsel', for example, far from being an empty commonplace, was a codification of the ideal behaviour of a king[24]. A king knew how to take broad counsel from all parties, and then express his decision in a way that it could not be ascribed to any one of them. By having his own mind, the king could rise above the multiple local oppositions which structured English politics. This, sadly, was precisely what Henry VI failed to do, leading various groups amongst the English nobility to increasingly desperate measures in order to simulate the function of the king: first under various forms of council whilst the king was a child, then under the duke of Suffolk, and finally under various factions surrounding the duke of York, on the one hand, and the court-based heirs to Suffolk, on the other[25]. All these attempts to provide a substitute for the king were ultimately doomed to failure because no magnate or faction could perform the independent mediating role of the king, since they all had their own interests and their own men to support on a local level. These analyses were brought together in Christine Carpenter's *The Wars of the Roses: Politics and the Constitution in England, c. 1437-1509*, in which she offered a synthetic account of 'how governance was supposed to work in fifteenth-century England and of how and why governance and politics went wrong in this

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[22] The following summarises the argument of Castor, *The King, the Crown and the Duchy of Lancaster*.

[23] J.L. Watts, *Henry VI and the Politics of Kingship*, Cambridge, Cambridge University Press, 1996.

[24] *Ibid.*, p. 25-30.

[25] *Ibid.*, p. 123-362.

century'[26]. The breakdown of the English polity in the mid fifteenth century could be understood through the way in which how kings did or did not succeed in governing according to the requirements of the implicit 'constitution' of the kingdom. Essentially, the nature of high politics was to be comprehended through a particular conception of the king's role as mediator of a social, political and legal system whose primary function was to manage competition between landowners[27].

The work of this group of historians has done an enormous amount to renew late medieval political history. Many of their particular findings and interpretations are, as one would expect, still vigorously debated by historians. Whether the king's direct intervention as the foremost lord of a particular locality was necessarily disruptive, for example, or whether it was the nature of this intervention which made it so (to break or undermine a politically suspect noble, for example), are matters which will continue to be argued. Whether the 'nobility' was ever such a uniform body as to enable the king to decide to ally with it or take arms against it is another problem. There were times when the nobility was united and times when it was divided, and although the king could help to promote unity or division, he was not the only factor at issue. One might also ask, to take a slightly different line, whether a 'good king' was simply the efficient caretaker of the system, or whether, for himself or for contemporaries, he was supposed to do something beyond the maintenance of peace amongst landowners, in ways which could contradict this function, but which were nonetheless essential parts of his wider 'job' as king. Perhaps most importantly, this model takes political economy for granted. It is assumed that there was always enough money in the system to finance the king's government and his wars, and that as a result the population would always support these projects provided the king and the landowning classes were united. All that was required was the political will to act[28]. This seems different to reconcile with recent work on the expanding range of political society in the later middle ages, not just as an off-shoot of those aspects of royal justice which touched landowners, but also of the far wider group of his subjects who paid taxes[29]. It seems unduly easy to imagine that all that was needed to manage the complex political, economic and social balance which led the king's taxes to be paid was for the king and the nobility to agree on a project worth funding.

That said, it is impossible to deny that the enemy identified by Powell and Carpenter in 1995 – those historians who thought of 'patronage' and personal interest as the only motors of late medieval politics – has, in essence, fled before them. In publishing a volume entitled *Political Culture in Late Medieval Britain* in 2004, Carpenter seems disconcerted to discover that Michael Hicks, whom she takes as an archetypal example of an excessively materialist vision of politics,

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[26] Carpenter, *Wars of the Roses*, citation at p. 1.

[27] *Ibid.*, esp. p. 33-66. Note, that for Carpenter, '[a]lthough townsmen had some influence when it came to granting taxes', political society, defined as the 'subjects who mattered in medieval England', 'consisted essentially of the landowners alone'. *Ibid.*, p. 34-5.

[28] *Ibid.*, p. 29-31.

[29] See further below, at notes 32-36.

has not only recanted of his error, but has even published a book with a remarkably similar title: *English Political Culture in the Fifteenth Century*[30]. The terms of debate have moved on to embrace a view of late medieval political life which has space both for social structures and for contemporary ideas about the nature of right rule. What matters now is to discuss what these were, and whether they can be reduced to a single vision of what one should do in particular political circumstances.

The new stress that this school of historians has brought to the need to understanding the underlying dynamics of political life, and in particular the need to understand the unconscious assumptions and implicit ideals of political actors, is now almost universally accepted. Nonetheless, this movement has perhaps been less influential in its specific aim to revive the 'constitution' as a useful concept. There are good reasons for this reticence, I think, even aside from the troubled history of this concept in English historiography. Certainly, it does seem appropriate to consider certain aspects of late medieval English culture as comparable to a later, early modern 'politics of the constitution'. There is the attraction to the 'good old law' which ought to be respected, for example, and especially the return to specific written laws, notably, although not exclusively, Magna Carta. Nonetheless, it is important to recognise that this is not the same thing as appeal to an implicit, unwritten set of ideas about what 'everybody knows' ought to be done, a strategy which is infinitely more malleable[31]. The danger of using the 'constitution' as an alternative to 'political culture' is that we risk imagining that even though the 'constitution' was not a written text, that the historian can nonetheless reconstruct such a virtual document, and that contemporaries, unless they were fools, would immediately recognise it as the single essential truth of their political system. I would suggest that no such implicit text can be reconstructed, even if there were written texts which were important to the conduct of politics, because late medieval political culture was multiform and internally contradictory, and because it represented in different ways opposing and sometimes irreconcilable views of the right operation of government.

These remarks may well amount to pushing on an open door. Historians who earlier talked in terms of the 'constitution' now seem more comfortable with a more plural vision of the structures which made up political culture. Work on rebellion and social unrest has for a number of years stressed the widespread awareness and involvement of a far broader range of people than the nobility and gentry in both governance and in high politics[32]. This has recently

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[30] Carpenter, 'Political Culture, Politics and Cultural History', p. 15-16; M. Hicks, *English Political Culture in the Fifteenth-Century*, London and New York, Routledge, 2002.

[31] For a salutary reminder of the greater flexibility inherent in the unwritten 'good old law', which changes even as those who invoke it insist on its immutability, see M.T. Clanchy, 'Remembering the Past and the Good Old Law', *History*, 55, 1970, p. 165-76.

[32] C. Dyer, 'The Social and Economic Background to the Rural Revolt of 1381' in R.H. Hilton and T.H. Aston (eds.), *The English Rising of 1381*, Cambridge, Cambridge University Press, 1984, p. 1-41; N.P. Brooks, 'The Organization and Achievements of the Peasants in Kent and Essex in 1381', in H. Mayr-Harting and R.I. Moore, (eds.), *Studies in*

broadened out to consider how the organisation of rural communities itself implied a certain set of ideas about how government ought to operate[33]. Research into petitioning and the culture of 'bill casting' has further broadened out historians' conception of the political community, by stressing how widespread was the practice of appealing up the social hierarchy, frequently bypassing those with immediate power over the petitioner[34]. Urban historians stress the involvement not only of London but of English provincial towns in politics at the level of the kingdom.[35] Earlier 'new constitutional historians' have not been deaf to these developments. John Watts, in particular, has insisted in a number of articles on the need to develop a far broader conception of the 'public'[36]. His recent volume on the 'Making of Polities' across late medieval Europe suggests a much wider variety of ways in which princely government impinged on the lives of its subjects than the mediation of disputes within the landowning classes[37]. Carpenter, too, has noted how political culture has now expanded beyond the nobility and gentry to include peasants and townsman[38]. If the door is open, then so much the better. Nonetheless, given this new diversity in the conception of late medieval political culture, it is worth considering whether the at once all-englobing and closely defined idea of the 'constitution' first developed by Carpenter and Powell can still serve effectively.

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Medieval History Presented to R.H.C. Davis, London, Hambledon Press, 1985, p. 247-70; S. Justice, *Writing and rebellion: England in 1381*, Berkeley, Univ. of California Press, 1994; S. Walker, 'Rumour, sedition and popular protest in the reign of Henry IV', *Past and Present*, 166, 2000, p. 31-65; I.M.W. Harvey, 'Was there popular politics in fifteenth-century England?' in *The McFarlane Legacy*, ed. Britnell and Pollard, p. 155-174; M. Müller, 'The aims and organisation of a peasant revolt in early fourteenth-century Wiltshire', *Rural History*, 14, 2003, p. 1-20.

[33] C. Dyer, 'The political life of the fifteenth-century English village' in *Political culture in late medieval Britain*, ed. Clark and Carpenter, p. 135-58; Dyer, 'Taxation and communities in late medieval England' in R. Britnell and J. Hatcher (eds.), *Progress and problems in medieval England*, Cambridge, Cambridge University Press, 1996, p. 168-90; M. Müller, 'Social control and the hue and cry in two fourteenth-century villages', *Journal of Medieval History*, 31, 2005, p. 29-53. One could also consider in this light the movements in the nature of local government pinpointed by M.K. McIntosh, *Controlling Misbehavior in England, 1370-1600*, Cambridge, Cambridge University Press, 1998.

[34] W. Scase, *Literature and complaint in England, 1272-1553*, Oxford, Oxford University Press, 2007; C.D. Liddy, 'Bill casting and political communication: A public sphere in late medieval towns?' in J.A. Solorzano Telechea and B.A. Bolumburu, (eds.), *La Gobernanza de la Ciudad Europea en la Edad Media*, Logroño, Instituto de Estudios Riojanos, 2011, p. 447-461.

[35] C.D. Liddy, *War, Politics and Finance in Late Medieval English Towns: Bristol, York and the Crown, 1350-1400*, Woodbridge, Boydell, 2005; L.C. Attreed, *The King's towns: identity and survival in late medieval English boroughs*, New York, Lang, 2001.

[36] J.L. Watts, 'The Pressure of the Public on later medieval politics' in *Political culture in late medieval Britain*, ed. Clark and Carpenter, p. 159-80; Watts, 'Popular Voices in England's Wars of the Roses, c. 1445-c. 1485' in J. Dumolyn, J. Haemers, H.R. Oliva Herrer and V. Challet, (eds.), *The Voices of the People in Late Medieval Europe: Communication and Popular Politics*, Turnhout, Brepols, 2014, p. 107-122.

[37] J.L. Watts, *The Making of Polities: Europe, 1300-1500*, Cambridge, Cambridge University Press, 2009, p. 205-286.

[38] Carpenter, 'Political Culture, Politics and Cultural History', p. 12-15.

What I would like to do in the remainder of this paper is to examine, in particular, the rolls of the English Parliament, between the opening of the Hundred Years War and the death of Henry V, to consider some of the strengths and weaknesses of thinking in terms of a single 'constitution' in late medieval England. This approach, based on one very specific documentary corpus, cannot presume to define the entirety of those factors which made up late medieval political culture. Indeed, the excessive focus on this kind of document was one of the reasons for the opprobrium into which constitutional history had fallen by the mid-twentieth century[39]. Many of the concerns of politically active agents, be that the nobility, the gentry, the clergy, the inhabitants of towns or of rural communities, came nowhere near this formal record of that most formal occasion: the meetings of the king's highest court and the ultimate public space of the kingdom, the Parliament of England[40]. Nonetheless, they do provide a test bed, however partial, and an extraordinary run of documents over a long period, which can enable us to detect some deep continuities, and to see how far this works within the kind of analytical frameworks we have just discussed[41].

It was at the beginning of the reign of Edward III (1327-77) that the rolls of Parliament stabilised in the broad form they would retain, with considerable variation in particular cases, until the beginning of the sixteenth century. These rolls were compiled by a chancery official, the clerk of Parliament appointed at each session[42]. Their form was a compromise between the interests of the royal government, which compiled them, and the expectations of royal subjects. As a result, the form of the rolls of Parliament already tells us something about the norms and assumptions of late medieval English political life. As Mark Ormrod has noted, the particular practices of parliamentary clerks, what they rejected and what they retained, has much to tell us about the significance they attached to the rolls[43]. The norms and assumptions they reveal provide a set of powerful insights into the political culture of late medieval England.

Broadly speaking, each roll begins with a narrative describing the assembly of parliament, normally saying that parliament assembled on a certain day, the date on which it was summoned, but that for various reasons the opening of business was delayed to a slightly later date, say within a few days. The narrative then resumes on that day with a declaration of the cause of the summons of parliament, which was often but not always declared by the Chancellor. The

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[39] Carpenter, 'Before and After', p. 177-9.

[40] On parliament as the ultimate public space, see C. Fletcher, 'Political Representation' in Fletcher, J.-Ph. Genet and J.L. Watts (eds.), *Government and Political Life in England and France, 1300-1500*, Cambridge, Cambridge University Press, 2015.

[41] Carpenter, 'Law, Justice and Landowners', p. 225-231 surveys precisely this source, from the early fourteenth to the later fifteenth century. However, this article, which precedes Carpenter and Powell's theorisation of their idea of the 'constitution', is overtly and exclusively focused on the view that gentry representatives in parliament had of the correct operation of the king's intervention in disputes amongst landowners. It therefore does not consider all the other business dealt with in the 'common petitions', discussed below.

[42] A.F. Pollard, 'The Clerical Organization of Parliament', *English Historical Review*, 57, 1942, p. 43-5.

[43] W.M. Ormrod, 'On – and Off – the Record: The Rolls of Parliament, 1337-1377', *Parliamentary History*, 23, 2004, p. 39-56.

summons was normally justified by one of three reasons, sometimes more than one at a time. First, there were the needs of war or diplomacy, which required the advice of parliament, and the financial support of the Commons. Second, there was the maintenance of the peace and of justice in the kingdom. Finally, there was the need to defend the liberties of Holy Church. The speech almost always ended with a general declaration that, as the king was concerned that justice should be done in his kingdom, he had appointed clerks to receive petitions in parliament on particular days, and there follow a list of 'triers' of petitions, mainly important lay and ecclesiastical magnates, and the 'receivers' of petitions, clerks of the chancery. The job of these 'receivers' was to sort the petitions, to divide those which could be settled by different parts of the royal administration – the common law courts or the Exchequer, in particular – from those that could only be settled in parliament[44]. A further important division was also made between 'singular' petitions, which dealt with the interests only of particular individuals or corporate bodies (towns, abbeys, even counties, for example), and those which, although they may have been presented by individuals or particular interest groups, nonetheless concerned the common profit of the king and people[45].

First, though, at least in the written order of the roll, came the king's business: the record of such negotiations as had occurred with regards to the reason for the summons of parliament as specified by the king[46]. In the vast majority of cases, this concerned negotiations over taxation. But it could also concern a whole array of 'any other business' which could be successfully presented as touching the whole kingdom, and only being resolvable in parliament. This could involve what we might call 'high political' matters: issues where the great men of the kingdom put their affairs before the whole kingdom or, on the other hand, when great men or royal officials were tried for their misdeeds. So, for example, in the record of the first parliament of the then ten-year-old Richard II, his uncle, John of Gaunt, duke of Lancaster, used parliament to publicly deny that he had any designs on the throne[47]. Or, in 1381, in the first parliament which followed the Peasants' Revolt, the first major business to be considered after the declaration of the need to deal with the consequences of the revolt itself was a dispute between John of Gaunt and the earl of Northumberland, Henry Percy, who had refused to admit Gaunt into one of his castles in the

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[44] A.F. Pollard, 'Receivers of petitions and clerks of parliament', *English Historical Review,* 57, 1942, p. 202-4.

[45] D. Rayner, 'The Forms and Machinery of the "Commune Petition" in the Fourteenth Century', *English Historical Review*, 56, 1941, p. 549-70 ; Ormrod, 'On – and Off – the Record'; G. Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages*, Oxford, Oxford University Press, 2007, p. 126-55.

[46] For a review of the business of parliament which brings in the testimony of tracts such as the *Modus Tenendi Parliamentum* as well as the rolls themselves, see G.L. Harriss, 'The Formation of Parliament' in R.G. Davies and J.H. Denton (eds.), *The English Parliament in the Middle Ages*, Manchester, Manchester University Press, 1981, p. 40-52.

[47] *The Parliament Rolls of Medieval England* [hereafter *PROME*], ed. C. Given-Wilson et al., Woodbridge, Boydell, 2005, vol. VI, p. 6-7 (Oct. 1377, item 2). Note that *PROME* can be conveniently consulted in electronic form, by parliament and item number, using the CD-Rom or online version: Leicester: Scholarly Digital Editions, 2005.

course of the revolt[48]. Such matters could proceed to a full scale trial, especially in politically volatile circumstances, creating a section of the roll which looks like a trial record[49]. This often happened during the politically disturbed 1370s, 1380s and 1390s.

One step down from these matters of importance at the scale of the kingdom, and next in the roll, came those petitions which came from prominent individuals or corporate bodies who had managed to have their cases considered before parliament, on the grounds that they could not be resolved anywhere else. Nevertheless, once the cause of summons, the appointment of the triers and receivers of petitions, the grant of taxation (if there was one), the business of the great and a certain number of private petitions had been dealt with, the bulk of the roll in this period was made up of the next element: the 'common petition'.

Each 'common petition' is in fact a composite document, compiled from all the petitions which had been deemed to concern the common profit of the king and the people, and which were presented as such in the name of the representatives of the Commons in parliament[50]. These petitions, if they were accepted, could form the basis of a royal statute or simply an order for specific action on the part of royal officials. Nonetheless, even when petitions received a prevaricating answer or were rejected outright, they were still included in the roll, including the arguments which the king's officials had just rejected[51]. As a result, the petitions included in the common petition give an particular kind of insight into what the knights of the shire and the borough representatives who made up the Commons in parliament thought was important in the relationship between the king and his subjects. Over the eighty-year period considered here, between the 1340s and the 1420s, they are marked by recurring themes, by concerns that come and go, and by matters which are clearly linked to the particular circumstances of a given year.

An analysis of their concerns gives us one kind of insight into the kind of assumptions and concerns which have been defined as making up the 'constitution' in late medieval England. For this paper, I read through the parliament rolls for the period 1340 to 1422, and selected for particular attention nine parliaments, one in each decade, which were, as far as possible, not

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[48] *PROME*, vol. VI, p. 212 (Nov. 1381, item 1). On this dispute see S.L. Walker, 'Letters to the Dukes of Lancaster in 1381 and 1399', *English Historical Review*, 106, 1991, p. 68-79; K. Towson, ' "Hearts warped by passion": The Percy-Gaunt dispute of 1381' in *Fourteenth Century England,* 3, 2004, p. 143-153.

[49] On the development of impeachment see G. Lambrick, 'The impeachment of the abbot of Abingdon in 1368', *English Historical Review*, 82, 1967, p. 250-76; T.F.T. Plucknett, 'The impeachment of 1376', *Transactions of the Royal Historical Society*, 5th ser., 1, 1951, p. 153-64; J.G. Bellamy, 'Appeal and impeachment in the Good Parliament', *Bulletin of the Institute of Historical Research*, 39, 1966, p. 35-46.

[50] For what follows, see the Rayner, 'Forms and Machinery'; Ormrod, 'On and Off the Record', Dodd, *Justice and Grace*, p. 126-55.

[51] A point underlined by Ormrod, 'On and Off the Record'.

excessively marked by exceptional political events[52]. The two major exceptions, from 1381 and 1402, come from periods in which almost every parliament of the decade was marked by political upheaval, and so it would have been unrepresentative to have chosen a rare calm parliament. In fact, these parliaments also addressed matters which also arose in less disturbed times. My intention was to focus on the recurring concerns of the knights of the shire, the burgesses and those they represented in more or less 'normal' times, rather than to single out what was exceptional or unusual. The aim was to identify what, for these petitioners and in these particular parliaments, seemed to be the most important 'political and governmental structures' and as far as possible 'the beliefs of those who participate in them about how these structures should operate'[53].

First, there are continuities in these documents which are not just formal but reflect deep running concerns. For our present purposes, it is interesting to note that the 'common petitions' demonstrate a recurrent 'constitutional' attachment to Magna Carta in the strong sense of attachment to a written, foundational document. The Great Charter was confirmed explicitly in 34 out of 66 parliaments held between 1341 and 1421 for which we have a surviving roll (51%), usually as the first of the 'common petitions' enrolled[54]. There was no standard form for this confirmation, however. The parliament of 1351, for example, begins with a petition for the confirmation of Magna Carta[55]; that of 1373, for the confirmation of Magna Carta and the Forest Charter[56]; that of 1381 for the confirmation of the liberties of the church, Magna Carta, the Forest Charter and all good statutes[57]. The common petition of 1365 even begins with a petition for the confirmation of Magna Carta, the Forest Charter, and a statute of 1362 which attempted

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[52] The nine parliaments chosen for close analysis are those of Sept. 1346, Feb. 1351, Jan. 1365, Nov. 1373, Nov. 1381, Jan. 1394, Sept. 1402, Jan. 1410, May 1421. As a result, it is from them that most examples are drawn for each topic considered below, although further examples could be found in intervening parliaments.

[53] The working definition of 'the constitution' proposed in Carpenter 'Before and After McFarlane', p. 176.

[54] Magna Carta is confirmed in the common petitions for April 1341, April 1343, Feb. 1351, April 1354, Nov. 1355, Oct. 1362, Oct. 1363, Jan. 1365, May 1368, Feb. 1371, Nov. 1372, Nov. 1373, April 1376, Jan. 1377, Oct. 1377, Oct. 1378, April 1379, Jan. 1380, Nov. 1380, Nov. 1381, Oct. 1382, Feb. 1383, Oct. 1383, April 1383, Nov. 1384, Oct. 1386, Oct. 1399, Jan. 1401, Sept. 1402, March 1406, Oct. 1407, Nov. 1411, April 1414, Oct. 1416 (*PROME*, vol. IV, p. 310, 339; *Ibid.*, vol. V, p. 13, 105, 181, 280, 122, 142, 160, 181-2, 210, 238, 260, 280, 316, 401; *Ibid.*, vol. VI, 32, 89, 122-3, 165, 198, 250, 290, 313, 341, 378, 420; *Ibid.*, vol. VII, 47-8, vol. VIII, p. 48, 125, 177, 380, 429, 540, vol. IX, p. 44, 196) but not in June 1344, Sept. 1346, Jan. 1348, March 1348, Jan. 1352, Sept. 1353, June 1369 (although the Forest Charter is confirmed along with 'all good statutes', vol. V, p. 224), Oct. 1385, Feb. 1388, Jan. 1390, Nov. 1390, Nov. 1391, Jan. 1393, Jan. 1394, Jan. 1395, Jan. 1397, Sept. 1397, Jan. 1404, Oct. 1404, Jan. 1410, May 1413, Nov. 1414, Nov. 1415, March 1416, Nov. 1417, Oct. 1419, Dec. 1420, May 1421 or Dec. 1421. There are no surviving rolls for the parliaments of April 1357, Feb. 1358, May 1360 or Jan. 1361 (See *PROME*, vol. V, p. 130-4). The roll of the parliament of May 1366 and May 1382 have no common petitions (*PROME*, vol. V, p. 189-201, 267-76). That of Sept. 1397 was dominated by the trial of the king's perceived enemies and had no time for the commons' petitions to be considered (vol. VII, p. 392-8).

[55] *PROME*, vol. V, p. 13 (Feb. 1351, item 11).

[56] *PROME*, vol. V, p. 280 (Nov. 1373, item 13).

[57] *PROME*, vol. VI, p. 250 (Nov. 1381, item 73).

to control purveyors, that is royal or lordly officials who compulsorily bought up goods on credit, but failed to pay in full, if at all[58]. In one parliament, that of September 1353, although the first petition amongst the 'common petitions' does not ask for confirmation of Magna Carta, it does invoke a chapter of the Charter (although it is not clear which one) forbidding cases (apparently disputes between clerics) to be removed from the king's courts to those outside the realm[59]. Four of the twenty-nine parliaments in which Magna Carta is not confirmed in the 'common petitions' nonetheless confirmed 'all good statutes'[60], and seven confirmed, together with the liberties and franchises of Holy Church, those of all lords secular and temporal, and all cities and boroughs[61].

It is important to note that this attachment to Magna Carta is not simply abstract. Individual petitions invoke the authority of the Great Charter in what can be called a 'constitutional' form of argument in the strong sense of supporting a case by reference to a specific, written, binding text. This form of argument is very different from the reference to a set of implicit but unwritten 'rules of the game', which all parties are taken to be aware of, but which are never defined explicitly[62]. Thus, in November 1381, for example, one petition complaining against the excessive price charged by royal clerks for writing out writs, appealed, unsuccessfully, to the article of Magna Carta which forbade the selling of justice[63]. Another, from 1373, asked for the franchises of towns and boroughs to be confirmed, also thought it might help its case to include a reference to the confirmation of the franchises of London and the Cinque Ports (actually: all enfranchised towns) contained in Magna Carta[64].

The 'common petitions' across this period also show a continuous concern for the administration of the royal government in general and land law in particular, something which the work of Carpenter and Powell would lead one to expect. The 'common petitions' sometimes restate general principles, such as that no man shall be obliged to answer for a free tenement except by the law of the land.[65] They complain about specific abuses, such as jurors who receive gifts from the parties to their case[66], or of recurrent difficulties, such as the protection enjoyed by those on

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[58] *PROME*, vol. V, p. 181 (Jan. 1365, item 10).

[59] *PROME*, vol. V, p. 83 (Sept. 1353, item 33).

[60] *PROME*, vol. V, p. 224 (June 1369), vol. VII, p. 205 (Nov. 1391), 267 (Jan. 1394), vol. IX, p. 148 (Mar. 1416).

[61] *PROME*, vol. IX, p. 99 (Nov. 1414), 148 (Mar. 1416), 222-3 (Nov. 1417), 240 (Oct. 1419), 254 (Dec. 1420), 302 (May 1421), 321 (Dec. 1421).

[62] Compare Michael Clanchy's remarks about the malleability of law defined by reference to custom *without* recourse to written texts, and of the transformative effects of the introduction of writing, in Clanchy, 'Remembering the Past and the Good Old Law'.

[63] *PROME*, vol. VI, p. 254 (Nov. 1381, item 88). Referring to Magna Carta (1215), cap. 40, ed. and trans. in J.C. Holt, *Magna Carta,* 2nd edn. Cambridge University Press, Cambridge, 1992, p. 460-1, and Magna Carta (1225), cap. 29 (Holt, *Magna Carta*, p. 508-9).

[64] *PROME*, vol. V, p. 281 (Nov. 1373, item 16).

[65] *PROME*, vol. V, p. 15 (Feb. 1351, item 16).

[66] *PROME*, vol. V, p. 187 (Jan. 1365, item 29).

the king's wars, which could delay or even halt litigation[67]. There is a recurrent concern with false accusations, especially when these involve summoning individuals some distance from home[68]; and with the expansion of exceptional jurisdictions, such as that of the Constable of Dover Castle[69], or the admiralty[70], to cover matters outside their initial purview. There is also the recurring concern with the cost of royal justice which, as we have seen, petitioners overtly linked to Magna Carta[71].

Indeed, when we bear in mind that matters were only to be dealt with in Parliament which could not be dealt with through existing law and institutions[72], we see that even this prominent place in the 'common petitions' underestimates the importance of these issues for political society, especially those members of it whose power and income came through land. The common law and land law in particular were central in late medieval political culture, and also had a clear impact on high politics, since it was through the distribution of lands that the power of individual nobles was determined, and through the king's management of the legal system that the kingdom remained, more or less, at peace. Details of land law and its administration occupied a large proportion of the business of parliament between the 1340s and the 1420s, just as they had occupied Magna Carta and the agenda of the baronial opponents to Henry III in the mid-thirteenth century. On the other hand, whereas it is also surely correct to stress the importance of criminal justice, the operation of the criminal law seems to have posed less of a problem and so figures less often in the 'common petitions'[73].

One could argue that the 'common petitions' do reveal a set of 'constitutional' concerns, in that petitioners seemed to regard them as fundamental to the operation of the polity, and repeatedly related them back to fundamental law. Nonetheless, this group of concerns differ in a number of important respects from a modern 'constitution', or even a seventeenth-century conception of the 'ancient constitution'. For one thing, many of these issues reflect recurrent complaints which are never satisfactorily dealt with, or which indeed cannot be dealt with in the nature of the system. It is difficult to imagine, for example, how the royal judicial system could have operated in the absence of the fees paid to royal clerks for doing their job, despite the righteous appeals to

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[67] *PROME*, vol. V, p. 281-2 (Nov. 1373, item 19), vol. IX, p. 305-6 (May 1421, item 32)

[68] *PROME*, vol. V, p. 287 (Nov. 1373, item [34]), vol. VII, p. 278 (Jan. 1394, item 52), vol. IX, p. 304-5 (May 1421, item 30).

[69] *PROME*, vol. VIII, p. 204-5 (Sept. 1402, item 75).

[70] *PROME*, vol. VII, p. 276-7 (Jan. 1394, item 49), vol. VIII, p. 187, 196-7 (Sept. 1402, items 47, 63), p. 498-9 (Jan. 1410, item 61).

[71] *PROME*, vol. V, p. 18, 20 (Feb 1351, items 25, 35), p. 284 (Nov. 1373, item 25); vol. VI, p. 254 (Nov. 1381). Cf. complaints against procedures which result in the defendant being fined for non-appearance, e.g. *PROME*, vol. VIII, 207-8 (Sept. 1402, items 78-80), p. 215-6 (Sept. 1402, item 110), or a variety of circumstances in which the kings judicial officers imposed fines to often or at too high a rate, e.g. *PROME* vol. V, p. 19, 20 (Feb. 1351, items 29, 34) , vol. V, p. 183, 185-6 (Jan. 1365, items 13, 23).

[72] See Fletcher, 'Political Representation'.

[73] *PROME*, vol. IX, p. 302 (May 1421, item 24).

Magna Carta. Similarly, such issues as malicious prosecution were insoluble, since any attempt to penalise individuals for having recourse to law also penalised those who might have a legitimate complaints, including the very same individuals who thought they were being maliciously prosecuted. Sometimes, this becomes clear, for example in the repeated request that sheriffs, escheators and other county officials should only serve for a year, and should hold lands locally. Finally in 1421 it was accepted that this was impossible, with the excuse that in the years since this had been enacted by statute in 1340, the population had been reduced by war and pestilence, and so sufficient numbers of men could not be found in each county[74]. This set of concerns and recurrent complaints about the operation of government is very different from a written constitution, or even an implicit unwritten constitution which, even if no contemporary ever wrote it down, the historian as anthropologist might reconstruct. These issues could not be enunciated as single principles. On the contrary, they are points of tension, areas of debate, whose continual return in the 'common petitions' demonstrates how unresolvable they were.

Moreover, the recurrent concerns reflected in the common petition went far beyond the administration of royal justice, as important as this was. It is not surprising, for example, to discover a recurring concern with taxation and, more particularly, the recourse to prises and purveyance. Purveyance meant purchasing goods, nominally for the provision of the king's household, by compulsory purchase of goods on credit. Forcible purchase on credit, by the king or other lords, was already forbidden by Magna Carta[75], and these complaints were repeated during the baronial reform movement of the mid-thirteenth century[76]. It was during the wars against France and Scotland in the late thirteenth and early fourteenth centuries, however, that these criticisms gathered force, as prises and purveyance were increasingly used for the provision of the king's armies[77]. Unwilling sellers of their goods in preparation for a campaign would be paid back slowly, at a discount, or not at all. In 1331, this practice even gave rise to a full-blown political treatise by the Yorkshire priest, William of Pagula[78]. As we have seen, purveyance still raised such indignation under Edward III that a statute limiting it, introduced in 1362, figured beside Magna Carta and the Forest Charter as one of the most important laws of the kingdom, singled out for confirmation in the first petition of the 1365 parliament[79]. Yet, even the 1362 statute was never fully respected, and the issue continues to arise throughout the late fourteenth and early fifteenth century[80].

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[74] *PROME*, vol. IX, p. 308-9 (May 1421, item 36), however, calls for the trials of felons to be speeded up.

[75] Magna Carta (1215), cap. 28, ed. and trans. in Holt, *Magna Carta*, p. 458-9 ; Magna Carta (1225), cap. 19, ed. in *Idem*, p. 506.

[76] *Documents of the Baronial Movement of Reform and Rebellion, 1258-67*, ed. R.F. Treharne and I.J. Sanders, Oxford, Clarendon, 1973, p. 84-7 (the 'Petitio baronum', items 22 and 23).

[77] M. Prestwich, *War, Politics and Finance under Edward I*, London, Faber, 1972, p. 128-32, 255, 260, 265-6, 274.

[78] William of Pagula, *Speculum regis Edwardi III*, ed. J. Moisant, Paris: Picard, 1891.

[79] *PROME*, vol. V, p. 181 (Jan. 1365, item 10). Earlier complaints about purveyance occur in, for example, *Ibid.*, vol. IV, p. 396 (Sept. 1346); vol. V, p. 13-14, 17, 30 (Feb. 1351, items 11, 24, 30).

[80] *PROME*, vol. V, p. 283 (Nov. 1373, item 23); vol. VI, p. 250 (Nov. 1381, item 76); vol. VIII, p. 216 (Sept. 1402, item 111). For complaints about purveyance between the mid-fourteenth and the early fifteenth century, see C.

What is perhaps most surprising for a reader coming from the purely political historiography is the extent to which economic matters arise in the 'common petitions' as things which the king's government ought to set right. It is widely known and often remarked that weights and measures, and keeping the Thames and the Medway free of obstructions, figure in Magna Carta alongside the king's agreement not to sell or deny justice, or not to imprison a man except by trial by his peers and the law of the land[81]. What is less often stressed is the extent that these issues were important recurrent concerns of the political community. Consider, for example, cloth. In parliament after parliament in the late fourteenth and early fifteenth centuries, the commons requested that the customary dimensions of particular types of cloth be respected[82]; they petitioned that certain types of cloth of lesser value be excluded from the normal regulations[83]; or they complained, on the other hand, that particular cloths were occasionally stitched together to fool the royal official concerned with guaranteeing their dimensions[84]. The concern with such matters ought to come as no surprise, since cloth was in this period coming to be increasingly important to English commerce, as cloth exports increased to compete with those of wool[85]. Commerce, too, is at the heart of the recurrent concern with the removal of obstructions from rivers, or at least, in the case of the Avon, the modification of weirs so that boats could pass without damage[86]. Another common concern is that of the supply of money, the provision of smaller dominations such as halfpennies and farthings for example[87], concern about the import of inferior Scottish and other currencies[88], but also a recurring worry about the export of gold and silver from the country[89]. These issues were as important as land law for the wealth and hence power of the king's subjects, and they touched the nobility, gentry, churchmen and more modest rural communities just as much as the representatives of the cities and boroughs in parliament.

Given-Wilson, *The Royal Household and the King's Affinity: Service, Politics and Finance in England, 1360-1413*, New Haven and London, Yale, 1986, p. 111-112, 259-60.

[81] Magna Carta (1215), cap. 33 in Holt, *Magna Carta*, p. 458-61 and Magna Carta (1225), cap. 23 in *Ibid.*, p. 507.

[82] *PROME*, vol. V, p. 21 (Feb. 1351, items 38, 40), 185 (Jan. 1365, item 184), 280 (Nov. 1373, item 15), vol. VIII, p. 488-9 (Jan 1410, item 48).

[83] *PROME*, vol. VIII, p. 186-7, (Sept. 1402, item 45). (low value cloth not to be sealed and thus taxed).

[84] *PROME*, vol. VIII, p. 504-6 (Jan. 1410, item 69).

[85] On the evolution of the relative importance of wool and cloth for the king's revenues, see W.M. Ormrod, 'Finance and trade under Richard II' in A. Goodman and J. Gillespie (eds.), *Richard II: The Art of Kingship*, Oxford, Clarendon, 1999, p. 155-186.

[86] PROME, vol. VIII, p. 189-90 (Sept. 1402, item 51), 496-7 (Jan. 1410, item 58). See also PROME, vol. IX, p. 15 (May 1413, item 21).

[87] PROME, vol. VIII, p. 187 (Sept. 1402, item 46). Cf. vol. VIII, p. 504 (Jan. 1410, item 68), which complains of untrustworthy 'galley halfpennies'.

[88] PROME, vol. IV, p. 394-5 (Sept. 1346, items 15-17), p. 398 (item 29); vol. V, p. 20 (Feb. 1351, item 36), 281 (Nov. 1373, item 18).

[89] PROME, vol. V, p. 184 (Jan. 1365); vol. VI, p. 261-4 (Nov. 1381, item 107); vol. VIII, p. 213-5 (Sept. 1402, items 103, 104-5, 107).

Nor was this body of concerns unchanging throughout the period in question. After the Black Death, for example, a new concern with the regulation of the labour came up to join existing concerns[90]. Again, as historians have long demonstrated, this legislation was largely ineffective, as the 'common petitions' demonstrate in their repeated call for its effective enforcement[91]. But once Edward III had moved to involve the king in the regulation of the price of labour it also became, in a sense, 'constitutional', in that it joined the set of expectations which royal subjects had with regards to the operation of royal government, and which the Commons in parliament repeatedly returned to. It was a new matter of the common interest to the king, the nobility and the gentry and urban elites who represented the Commons in Parliament.

Alongside commerce and labour, the resources of the English church, the provision of benefices, the cure of souls, and the use of these resources by foreigners are recurring issues in the 'common petitions'. The petitions accepted for inclusion as touching the common good usually steer well clear of anything which might be associated with heresy, such as the petition lodged during the parliament of January 1410 in favour of the disendowment of the English church[92]. But the 'common petitions' do give evidence of a long-running orthodox and traditional concern with the misuse of the resources of the English church. This came out with particular vigour, for example, in the parliament of September 1346, just after the battle of Crécy, which aside from asking for the expulsion of foreign clergy, and for the cure of souls to be entrusted to 'gentz Engleys', put forward a raft of measures to prevent the export of church revenues for the benefit of foreigners, and not only enemy foreigners[93]. The demand for measures to limit papal provisions was an ancient one[94], as was the concern about foreign and especially French appointees to English benefices[95]. Methods of evading legislation against mortmain[96], the application of tithes to wood[97], the legal status of clerics, the use of ecclesiastical courts and the

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[90] W.M. Ormrod, 'The English government and the Black Death of 1348-1349' in Ormrod, ed., *England in the Fourteenth Century: Proceedings of the 1985 Harlaxton Symposium*, Woodbridge, Boydell, 1986, p. 175-88; L.R. Poos, 'The Social Context of Statute of Labourers' Enforcement', *Law and History Review*, 1, 1983, p. 27-52; J. Hatcher, 'England in the aftermath of the Black Death', *Past and Present*, 144, 1994, p. 3-35; C. Given-Wilson, 'The problem of labour in the context of English government, c. 1350-1450' in *The Problem of Labour in fourteenth-century England*, York: York Medieval Press, 2000, p. 85-100.

[91] PROME, vol. V, p. 14, 15 (Feb. 1351, items 12, 18); V, p. 284 (Nov. 1373, item 26); vol. VIII, p. 189, 194-5, 195 (Sept. 1402, items 50, 59, 60); vol. VIII, 501-2 (Jan. 1410, item 65); vol. IX, p. 303 (May 1421, item 26).

[92] *PROME*, vol. VIII, p. 509; *Selections from English Wycliffite Writings*, ed. A. Hudson (Cambridge, 1978), p. 135-7. Note that this petition was not included amongst the rolls of parliament.

[93] *PROME*, vol. V, p. 14, 15 (Feb. 1351, items 12, 18), 284 (Nov. 1373, item 26); vol. VIII, p. 194-5 (Sept. 1402, items 59, 60); vol. IX, p. 303 (May 1421, item 26).

[94] *PROME*, vol. V, p. 285-6; vol. VI, p. 255 (Nov. 1381, item 90). See M.T. Clanchy, *England and its Rulers, 1066-1272*, London, Fontana, 1989, p. 217, 244-7.

[95] *PROME*, vol. V, p. 286 (Nov. 1373, item 33); vol. VI, p. 255-6 (Nov. 1381, item 91); vol. VIII, p. 188; vol. VIII, p. 503-4 (Jan. 1410, item 67).

[96] *PROME*, vol. VI, p. 256 (Nov. 1381, item 92)

[97] *PROME*, vol. V, p. 282 (Nov. 1373, item 21); vol. VI, p. 254 (Nov. 1381, item 87); vol. VII, p. 268 (Jan. 1394, item 30).

related issue of sanctuary[98], chaplains who took excessive wages[99], people who entered the mendicant orders under the age of 21[100], royal presentment to benefices without necessarily having the right to do so[101], the need for sufficiently qualified curates to ensure the cure of souls[102]: all these matters, which one might have expected to be dealt with in the simultaneous sessions of the Convocation of Clergy, were instead raised in petitions adopted by the lay Commons as touching the common good. Here again, as with land law or commerce, quite apart from the specifics of the case of the Holy Church, these were matters which determined the distribution of power and influence within England. This was one reason why they so readily and recurrently figure amongst the 'common petitions'.

Land law, purveyance, commerce and money supply, Holy Church and the regulation of labour, all of these matters were touched by the king's government, and could be handled well or badly, more in the interests of some groups than in others. If these issues found there way into one of the 'common petitions' it was because some group with enough influence to promote its agenda in Parliament believed that they were not being dealt with adequately, or that established mechanisms were malfunctioning, and there was a need for a conscious intervention to set things right. Recent historians have built a model of the late medieval English polity which concentrates on the first of these issues, and in doing so have created a powerful explanatory framework for the operation of high politics, and especially of the collapse of that polity in the mid-fifteenth century. Yet these were not the only issues which seemed important to the king's subjects, nor indeed to the king. They are perhaps less easy to weave into a linear narrative, but that is not a reason to neglect them.

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In taking a long approach to the concerns voiced in the 'common petition', what emerges most powerfully are the risks of too narrow or static a portrayal of the 'constitution', in the specific sense advocated by a number of recent historians of late medieval English politics. There were issues which divided the different groups of the king's subjects, and issues which united them, which were raised with different emphases in different political circumstances. But even the recurring concerns to be found in the 'common petitions' do not cover the totality of those norms and assumptions which were important in political life in late medieval England. Even in a textual tradition with the relative uniformity of the rolls of Parliament, it is clear how varied these concerns were, and how contested, both within the roll and from outside. Even these concerns are just part of a more complex picture than anything we could reduce to a reconstructed text, a

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[98] *PROME*, vol. V, p. 283 (Nov. 1373, item 23); vol. VII, p. 274 (Jan. 1394, item 44); vol. VII, p. 275 (Jan. 1394, item 46); vol. VIII, p. 199-200 (Sept. 1402, item 69); p. 200-201 (Sept. 1402, item 72).
[99] *PROME*, vol. VIII, p. 194 (Sept. 1402, items 57, 58)
[100] *PROME*, vol. VIII, p. 196 (Sept. 1402, item 62).
[101] *PROME*, vol. VIII, p. 209 (Sept. 1402, item 82).
[102] *PROME*, vol. VII, p. 274 (Jan. 1394, item 43); vol. VIII, p. 190-1, 203-4 (Sept. 1402, items 52, 74).

generalised set of guidelines on how the king of England should act, with fixed recommendations for all circumstances. It would be better, I think, to accept the intellectually unsatisfying amorphousness of these varied, overlapping and sometimes contradictory sets of ideas than to try and sublimate from them a single, idealised 'constitution'.