

The background of the cover is a detailed medieval manuscript illustration. At the top center, a figure with a halo and outstretched arms, likely Christ, is depicted. Below this, a group of figures in medieval attire are shown, some holding crosses. At the bottom, two figures are engaged in a conversation, one holding a book. The entire scene is rendered in a dark teal color with white line work. Latin phrases "Ex supple ora" and "Ex protege" are visible in the upper corners of the illustration.

THE  
MEDIIEVAL  
CONSTITUTION  
OF  
LIBERTY

Political Foundations  
of Liberalism in the West

Alexander William Salter  
and Andrew T. Young

*The Medieval Constitution of Liberty*



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*Political Foundations of Liberalism in the West*



ALEXANDER WILLIAM SALTER  
AND ANDREW T. YOUNG

University of Michigan Press  
*Ann Arbor*

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Cover illustration: The three estates of the realm. Woodcut by Jacob Meydenbach, from *Prognosticatio* by Johann von Lichtenberg (1488).  
Courtesy Wikimedia Commons.

For Henry, who always loves talking history and never loses at Age of Empires.

—*Alex*

For Thomas Young and Christine Young. You raised me to love learning.

Mom, I wish you were here for me to hand you a copy of this book.

—*Andy*



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## CHAPTER 1

# Introduction



In 1776, Adam Smith published *An Inquiry into the Nature and Causes of the Wealth of Nations*. Scholars have been preoccupied by his inquiry ever since. Why are some countries rich and others poor? In 2017 the average individual in the United States had an income of about \$60,000; in the Democratic Republic of the Congo, the average individual had \$458. That is a staggering difference and it conveys a sense of the Smithian project's tremendous importance.

Historically, the most remarkable development in the comparative wealth of nations has been the separation of the West from the rest of the world. For almost all recorded human history, living standards across the globe changed little. From time to time, standards in certain regions would ebb while others flowed; but the typical individual remained as poorly off from one century to the next. Using estimates from the Maddison Project Database, between 1 AD and 1600 AD per capita incomes *everywhere* stayed within the range of (in today's equivalent) \$537 and \$1,989. Even if we were to consider \$537 as the 1 AD starting point and \$1,989 as the end point in 1600 AD—which is not the actual case—this would imply an annual average growth rate of only 0.13 percent.<sup>1</sup> But then, starting between the eighteenth and nineteenth centuries, living standards in the West increased by a factor of between 30 and 45. The

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1. Bolt et al. (2018); <https://www.rug.nl/ggdc/historicaldevelopment/maddison/releases/maddison-project-database-2018>



rest fell behind; to this day, much of it remains there. This phenomenon has been variously referred to as the “European Miracle,” the “Great Divergence,” and the “Great Enrichment.”<sup>2</sup>

We are partial to the latter term, coined by the economic historian Deirdre McCloskey, because it conveys that sustained economic growth and development has truly enriched the lives of individuals in ways that were for millennia unimaginable. The Great Enrichment has led not only to higher incomes per capita; life expectancies and other indicators of well-being have followed. But whatever one calls it, there is no doubt that the disparity between the West and the rest is the salient social fact of modernity, an explanation for which has been a Holy Grail for social scientists.

We approach the study of historical Western exceptionalism with a key assumption: its explanation involves traditions of political and economic liberty that developed and endured throughout the centuries following the fall of the Western Roman Empire. Representative assemblies, self-governing chartered cities, and codifications of rights, like the Magna Carta, were distinctly European innovations, as were political philosophies founded on the concepts of constitutionalism, the rule of law, and liberty. We seek to account for these traditions because, to our minds, they provided the foundations for the Great Enrichment of the West. Whether one pinpoints the proximate causes in increases in state capacity, the development of new technologies, or the emergence of new ideas about society and individuals’ roles within it, a necessary condition for those causal factors to manifest was an environment of increasing political and economic liberty.

We use the above as an interpretive window for our book. We do not set out to definitively establish the empirical link between traditions of liberty and the Great Enrichment. The existence of such a link does not seem particularly controversial, yet scholars rigorously debate the details. Did political liberties lead to economic liberties, or vice versa? Which of the two has had a stronger direct link to the wealth of nations? These are secondary to the important fact that every rich country on the globe today is a liberal democracy and/or a market-oriented society under the rule of law. Indeed, most rich countries are both. We believe that most scholars would accept the broad claim that there are causal relationships underlying these liberty-wealth correlations. We take the European tra-

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2. These terms are respectively associated with Eric Jones (1981), Kenneth Pomeranz (2000), and Deirdre McCloskey (2006, 2010, 2016).

ditions of liberty and the Great Enrichment to be historical facts and assume that political and economic liberties have been conducive to the creation of wealth over time.

In this book we set ourselves three complementary tasks. First, we seek to understand the historical development of Western Europe's medieval constitution, most closely identified with conditions in the High Middle Ages, the eleventh through thirteenth centuries. Second, we identify the features of that constitution that promoted innovations conducive to good governance and wealth creation. Third, we illustrate how political and economic liberties were part and parcel of those governance innovations.

Given the tasks we have set ourselves, this book is roughly equal parts theory and history. Regarding the latter, neither of us are trained historians. This has put us at obvious disadvantages, two of which are particularly glaring. First, we have been largely limited to secondary sources and historians' translations of primary sources. The evidence accessible to us has necessarily passed through those historians' filters and been subjected to their interpretations. Second, historians are specialists who have their own jargon and an understanding of the scholarly contexts and debates within their field. Significant barriers inevitably stand in the way of outsiders trying to look in. All of this has made the history component of this book a challenging endeavor.

That being said, medieval Europe's history is fascinating! We think this is particularly true of its constitutional history. The political landscape was fractured and multilayered. Kings, warrior noblemen, and the Church's agents vied among each other for power. Authority could be claimed on the basis of homage, fealty, wealth, military might, or the will of God—often, rather, by some combination of these. Yet the medieval world was not anarchic. Competing claims to authority were balanced against one another and therefore they checked one another; the result was a political order based on authority distributed within a hierarchy of overlapping and competing jurisdictions. Occasionally, there were exchanges of authority within that hierarchy that changed the political order. A well-known example is King John's capitulations to the English baronage, agreed to at Runnymede in the Magna Carta of 1215.

Over time, these sorts of constitutional exchanges ultimately resulted in the enduring Western traditions of political and economic liberty. This leaves us with a critical question. Why did the constitutional exchanges of medieval Western Europe tend toward liberty?

When it comes to constitutional exchange, all roads do not lead to

Rome. Medieval Europe could have evolved politically toward something very different, akin constitutionally to imperial Rome (or the Soviet Union, imperial China, etc.). The core of this book, then, is a theory of how governance evolves within different constitutional settings, one that can be applied to the medieval constitution. According to our theory, the evolution of governance will critically depend on three things: (1) the structure of political property rights, (2) the extent to which holders of those rights have residual claimancy, and (3) the extent to which they are sovereign holders of those rights.

We elaborate on a constitutional ideal type in which the structure of political property rights is hierarchical and all holders of such rights have both sovereignty and residual claimancy. We have coined the term *polycentric sovereignty* as a shorthand characterization of this ideal type. Our theory predicts that polycentric sovereignty will be associated with the evolution of good governance. More familiar constitutional ideal types include autocracy and democracy; from a comparative perspective, we will elaborate on why these types are not expected to be as conducive to the evolution of good governance.

Much of what follows in this book will depend on our conceptual tools. First, we cannot argue that the medieval constitution promoted good governance without clearly stating what good governance is. Second, if we conceive of good governance too broadly—e.g., that which does not lead to the breakdown of civilization—then our argument will be trivial. Third, by good governance we must mean something that resonates with our readers. Unless our concept of good governance actually *seems* good to most readers, then what is the point?

By “good” we mean governance that is protective and productive but not predatory (Buchanan 1975). Breaking this down, we first mean governance that defines and enforces individuals’ property rights under the rule of law: any individual has an expectation of what is his versus what is somebody else’s; and that expectation is unlikely to be frustrated by the passing of time and political whims. Second, political extraction of wealth only occurs to provide common-interest public goods. For example, a subsidy to farmers specifically would not be good governance; the construction of an interstate highway system that is used by the general citizenry might be. The former case would be predatory governance, the latter would be productive.

Good governance, as conceived of above, is consistent with a generality norm (Buchanan and Congleton 2003 [1998]). Such governance usually works to the benefit of—or at least not to the detriment of—all

individuals, rather than just particular groups of them. Likewise, governance innovations only occur when they benefit individuals generally, rather than particular groups only. Good governance is that which furthers general rather than special interests. A generality norm for governance facilitates individuals interacting in ways that are positive-sum. What is being summed are net benefits involved in the interactions, as perceived by the interacting individuals themselves. In the sense that an economist would use the term, the increase in those net benefits constitutes the creation of wealth.

We also believe that, empirically, governance that is consistent with a generality norm will correspond to wealth creation in the more colloquial sense, such that we would expect it to show up in GDP numbers. This expectation reflects our view that material well-being tends to rank highly in individuals' preferences.

When we claim that good governance will correspond to wealth creation, we are not claiming any short-run, contemporaneous correlation between the two. Our thesis involves improvements in political institutions that accumulated over centuries, and unevenly at that. The economic rewards of those improvements were reaped over time and with long lags. For example, while we argue that major elements of the medieval constitution began to take shape during the Carolingian Empire in the eighth and ninth centuries (see chapter 3), there were other factors that constrained economic growth in the short-run, e.g., trade networks that had atrophied following the disintegration of Roman rule. While economic growth did accelerate during the High Middle Ages, it stalled, particularly in southern regions, with the Black Death, circa 1350 (Jedwab et al. 2022). Furthermore, with early modernity came the rise of strong, centralized nation states that suppressed elements of the medieval constitution. Notwithstanding, the medieval constitution, overall and in the long-run, allowed Western Europe to become the vanguard of the Great Enrichment. This is particularly true of parts of Northern Europe—notably England and the Low Countries—where emergent nation states developed meaningful checks on executive power.

Given the expectation that good governance goes hand-in-hand with wealth creation in the long-run, we conceive of our study of the medieval constitution as part of the Smithian inquiry into the nature and causes of the wealth of nations and, in particular, the liberal governance that corresponded to the Great Enrichment of the West.

It is no surprise, then, that the title of this book is an homage to the economist and philosopher, Friedrich Hayek. A prescient critic of social-

ism and central planning, and a staunch defender of classical liberalism, in the introduction to his 1960 volume, *The Constitution of Liberty*, Hayek lamented: “It has been a long time since that ideal of freedom which inspired modern Western civilization and whose partial realization made possible the achievements of that civilization was effectively restated” (1). Embracing the arguments of Hayek and similar-minded scholars, we here seek to understand why that ideal of liberty evolved first in the West.

Our overall goal is similar to that which Daron Acemoglu and James Robinson set themselves to in their recent book, *The Narrow Corridor: States, Societies, and the Fate of Liberty* (2019). They argue that a “strong state is needed to control violence, enforce laws, and provide public services that are critical for a life in which people are empowered to make and pursue their choices” (xv). However, a strong state is precisely the sort that can become predatory or, to use Acemoglu and Robinson’s terminology, despotic:

Squeezed between the fear and repression wrought by despotic states and the violence and lawlessness that emerge in their absence is a narrow corridor to liberty. It is this corridor that the state and society balance each other out. (xvi)

Like Acemoglu and Robinson, we are interested in how a society can arrive at, and then navigate over time, this narrow corridor. Acemoglu and Robinson’s answer focuses on the development of “a strong, mobilized [civil] society” (xv). Alternatively, with an eye toward the medieval constitution of Western Europe, we emphasize the balances of power between—and bargaining patterns among—those wielding authority in the polycentric political landscape.

This book is divided into four parts. There is a logical progression from each part to the next, though each part is also designed to be accessible on its own to readers. The first part consists of three chapters that are heavy on historical narrative; their purpose is to set the medieval Western European stage for the reader. Chapter 2 elaborates on the political ramifications of the fall of the Western Roman Empire. From the first through the fifth centuries AD, imperial society was oriented toward the center. Emperors ruled largely as autocrats, their authority founded on the force and loyalty of the imperial military. The most effective non-military check on their authority came from the Senate, an assembly of high-ranking elites based in Rome. In this world, power and privilege emanated from the center. By the end of the fifth century the

Western Empire was no more, corroded from within by usurpers, civil war, and bureaucratic inefficiencies; strained from without by barbarian migrations from the north and the east. When the dust settled, Western Europe was politically fragmented: violent services were decentralized across a landed and militarized barbarian elite; a large part of the Roman nobility was absorbed into the loose hierarchy of the Catholic Church.

Chapter 3 deals with the relatively brief, but also impressive, rise of the Carolingians. In the eighth century, Charles Martel and his son, Pippin III, usurped royal power from the Merovingians in the Frankish realms (northern Gaul). Then in the ninth century, Pippin's son came close to consolidating power across the territories of the former Western Empire. (The son's name was Charles; we know him as Charlemagne—"Charles the Great.") Carolingian empire-building included many facets that brought form to the medieval Western European political landscape. The Carolingians distributed confiscated and/or conquered lands to their loyal vassals; they also cultivated mutually beneficial bonds with the Church in Rome. Finally, the Carolingians regularized assemblies of the leading men of their realms, both lay and ecclesiastical. These assemblies were important predecessors to the estates and parliaments of the later Middle Ages.

In chapter 4 we turn to how the remnants of Carolingian governance structures were consolidated, reshaped, and built upon as Western Europe entered the High Middle Ages. These processes were facilitated by the eleventh century Peace of God movement. Beginning in Aquitaine (southwestern France), bishops called councils to address concerns over the so-called "feudal anarchy." This term is used by historians today to describe a political landscape where the legitimacy of claims to authority was often unclear, as were the jurisdictional boundaries between those claims. To individuals inhabiting this landscape, violence—or at least the threat of it—was a fact of life. Peace councils worked to negotiate the structure and integrity of governance hierarchies, the bishops enlisting the cooperation of territorial lords toward that end. Sometimes those lords joined the negotiations willingly; at other times they needed a bit more persuasion. Later in the eleventh century, however, it would be territorial lords and even monarchs who organized and convoked the councils. The Peace of God movement was integral to curbing violence, and hence the polycentric political order that would characterize Western Europe in the High Middle Ages.

After providing the historical backdrop in chapters 2, 3, and 4, we devote the second section of the book to theory of constitutional frame-

works and the implications for governance outcomes. Specifically, we elaborate on the constitutional ideal type of *polycentric sovereignty*. We argue that constitutional frameworks approximating polycentric sovereignty will tend to promote good governance outcomes—namely, political and economic liberties—that lead to wealth creation. Though chapters 5, 6, and 7 are primarily devoted to theory, they are still steeped in history. In the overall context of this book, the polycentric sovereignty ideal type is important in large part precisely because medieval Western European constitutional arrangements approximated it. To convince the reader that this characterization is accurate, interweaving the discussion with the historical realities is key.

The theoretical discussion is systematically built throughout the three chapters. In chapter 5 we introduce political property rights as a fundamental building block of any constitutional theory. Importantly, we discuss how the holder of a political property right can be a residual claimant to their governance. When this is true, it helps to establish a strong alignment between the interests of the governance provider and the governed. The structure of political property rights—assuming that the structure is stable—defines a society’s constitution. And given the incentives and information constraints faced by political property rights holders, there will be potential exchanges of political property rights that are mutually beneficial among the holders and, also, helpful toward improving governance. These potential exchanges, since they change the structure of political property rights, are constitutional bargains. Then we define three constitutional ideal types: autocracy, democracy, and shareholder states. The first two ideal types will resonate with most readers, and we highlight the deficiencies of not only the former but also the latter—democracy is not a governance panacea. The third ideal type will be less familiar to readers, but will be one that implies better governance outcomes than either autocracy or democracy.

In chapter 6 we address the implicit assumption from chapter 5 regarding the integrity (stability) of the political property rights structure. Any claimant to a political property right has an incentive to resist encroachment upon that right. However, the strength of that incentive, relative to the means available to resist encroachment, will differ from case to case. But when political property rights holders have such means—when they are, in our terminology, sovereign—then constitutional arrangements will be stable unless there are opportunities for mutually beneficial exchanges of political property rights. Those constitutional exchanges will also be beneficial for the governed generally if, as

we discuss in chapter 5, the political property rights holders are residual claimants to their governance choices.

We bring the discussion of chapters 5 and 6 together in the introduction of a constitutional ideal type termed polycentric sovereignty in chapter 7. In that sort of constitutional arrangement, political property rights are well-defined; holders of those rights are sovereign and arranged hierarchically such that higher-level governance providers can provide common interest public goods, while lower-level providers can better exploit local knowledge. This is similar to what scholars have argued in regard to the potentially “market-preserving” qualities of federalist systems. In chapter 7 we emphasize the historical realities of medieval Western Europe that approximated the polycentric sovereignty ideal type.

Lastly, because we are concerned with how and why traditions of liberty first emerged in Western Europe, most of this book focuses on that region of the world. However, Western Europeans have never had a monopoly on the inherent desire for freedom. Therefore, a comparative perspective is too important to neglect. Given the theory developed in chapters 5, 6, and 7, we must consider some important questions. Were the historical realities in other parts of the world poor approximations of polycentric sovereignty? If so, why? We address these questions in chapter 8, discussing our theory and Western European realities *vis-à-vis* other theories of comparative development and the historical realities in other parts of the world. We argue that the medieval constitution of Western Europe was uniquely conducive to enduring traditions of political and economic liberty.

How was Western Europe different? We emphasize that it had nothing to do with Western Europeans *per se*. Rather, it had everything to do with historical and institutional factors that fed into Western Europe’s unique constitutional arrangements. What mattered was the playing field and the rules of the game, not the individual players. This very limited idea of “Western exceptionalism” matters because it promoted traditions of liberty that still matter for the wealth of nations today. To make this point, in chapter 8 we employ some widely used measures of economic and political liberty to demonstrate that, in the modern era, richer nations have and continue to be the freest.

In the third section of the book, we delve more deeply into the Medieval Constitution of Liberty. We elaborate on and emphasize two governance innovations that were critical developments within that general constitutional framework: representative assemblies (chapter 9) and self-governing cities (chapter 10).



Medieval assemblies were centerpieces to the eventual development of representative government. Indeed, they were the seeds from which modern-day parliaments and congresses grew. But those assemblies did not begin as institutions designed to channel the “will of the people” as a check on rulers. Rather, it was monarchs who sought to convoke assemblies, and it was the strongest among them that were most effectively able to do so. So why would strong monarchs want to convoke assemblies of leading men from their realms? As we will see, an assembly could serve as coordination and credible-commitment devices that furthered a monarch’s ends. However, they also provided forums for collective bargaining that, over time, could be turned on their masters.

Self-governing cities were a testament to the increases in liberty that could be fostered by polycentric sovereignty. They were important sources of wealth as well as administrative (human) capital. Because of this, they could play political elites off one another (noble against king; bishop against noble; etc.). In doing so, they gained valuable rights, immunities, privileges, and freedoms. They became laboratories of (again relative) economic freedom in a way that generally did not occur in other regions of the world. They also earned themselves representation in monarchs’ assemblies as the third estate. This was a first and critical step to political liberties being extended to non-noble and non-ecclesiastical elements of society: self-governing cities were working to open access to governance decisions beyond the elites of society.

The fourth and final section of the book wrestles with the most significant challenge to our thesis. We argue that we cannot understand the Great Enrichment without reference to the governance tradition of the High Middle Ages. This is a story of continuity, evolution, and inheritance. But there is a significant scholarly literature arguing the Great Enrichment was due to a break with the medieval past. In particular, the state capacity literature in economic history and political science argues that the bounty of modernity required building consolidated and hierarchical nation-states. These states swept away the decentralized, overlapping, and often messy governance institutions of the High Middle Ages.

We confront the state capacity literature head-on in chapters 11 and 12. In chapter 11 we introduce the state capacity literature, focusing on the subset dealing with the “tragedy of the anticommons” in medieval governance institutions. In chapter 12 we present our counterargument: state capacity, while an incredibly useful concept in historical political economy, cannot explain the Great Enrichment. After all, strong states can govern protectively and productively. But they can also govern pred-

atorily, as they have throughout most of human history. If state capacity was suddenly wielded according to the public welfare, something must have forced it to do so. That something was the set of background constraints bequeathed by the constitutional heritage of medieval Europe.

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PART 1

The Historical Backdrop



## CHAPTER 2

# The Fall of Rome and the Rise of the Barbarian West



In 476 AD, the last legitimate emperor of the Western Roman Empire, Romulus Augustus, was deposed by a band of mercenaries led by Odoacer, an erstwhile Roman officer of barbarian stock. This date is commonly taken to divide the Roman West from the Dark Ages.

We pause briefly to note that we use the term “barbarian” in the specific sense that historians such as Peter Heather (2009) use it: people of “the non-Roman, non-imperial world of the east and north” (xiv). This is consistent with classical Greek and Roman use of the term, but for them it also carried a negative connotation. For a Roman, barbarian meant not only “other” but also the antithesis of “civilized” society (Heather 2009, xiv; Wickham 2009, 45–46). We attach no negative connotation to the term. The barbarians we refer to were often “Germanic,” meaning that they spoke a language belonging to the Germanic branch of the Indo-European family. However, important exceptions include groups that migrated into Europe from the Asian Steppe, as well as Celtic groups to the north but west of the Rhine. Furthermore, some of the barbarian groups that threatened the late empire were multiethnic and multilingual, e.g., the Hunnic Empire. While we use the names of specific groups whenever possible (e.g., Goths), the term barbarian remains both conventional and effective for scholarly investigations of this era.

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Portions of this chapter are adapted from Young (2015, 2016, and 2018).

Returning to the divide between Late Antiquity and the Dark Ages, 476 does not represent a bright line in the history of the West. During the fifth century, migrations from without had already resulted in the emergence of new kingdoms within the imperial frontiers, most notably by the Visigoths in southern Gaul and the Vandals in northern Africa. Conversely, even after the deposition of Romulus, barbarian successors continued to look to imperial authority. In sixth-century Italy, for example, Theoderic the Great fashioned himself *Gothorum Romanorumque Rex* (“King of the Goths and Romans”) but he never claimed the imperial title, preferring at least to feign deference to the emperor in the East.

The Belgian historian Henri Pirenne (2001 [1937]) pushed the line of divide between Late Antiquity and the medieval era even later, arguing for the eighth century, corresponding to the establishment of Islamic dominance in the Mediterranean. Another line of demarcation might occur even later, when Charlemagne was crowned emperor of the Romans by Pope Leo III on Christmas day 800. Arguably, Charlemagne brought most of the erstwhile Western Roman Emperor under his rule, and his influence on political structures was enduringly important (as we discuss in chapter 3). However, any demarcation between Late Antiquity and the Dark Ages in the West comes with difficulties, and this is true in relation to constitutional developments.

Undoubtedly, imperial legacies were part of the West’s medieval constitutional foundations, and the fall of the Western Empire—whatever the date—was a watershed. In the fifth and sixth centuries, large-scale Burgundian, Visigothic, Ostrogothic, and Frankish kingdoms emerged in Gaul and Italy. Though most of these eventually disintegrated, they left their marks on legal, political, and social institutions. The melding of their own institutions with those of the Romans laid foundations for enduring traditions of political and economic liberty centuries later.

In the second part of this book, we emphasize key characteristics of the medieval constitution: polycentricity, residual claimancy, and sovereignty. Medieval Western Europe was characterized, more so than many other regions of the world, by political fragmentation and a rough balance of power among different governance providers, each of whom claimed some form of ownership of the realms they governed. To understand why, we begin with the disintegration of the Western Roman Empire.

We emphasize three fundamentals. First, we examine the political institutions of the Germanic barbarian groups that settled within the borders of the Western Empire. Particularly important were governance by

assembly and the role of the armed retinue. Second, we explore the institutions involved in those settlements and the subsequent establishment of successor kingdoms. In the next chapter, we then elaborate upon the first post-imperial, Western European-wide state building effort by the Carolingians, a Frankish dynasty centered in the heart of what is modern France and Germany.

### 2.1. *Political Structures Among the “Others”*

Romans—at least the nobility, upon whom we rely for narratives—often held negative views toward the Germanic peoples to the east of the Rhine and north of the Danube. The term barbarian is derived from ancient Greek and signified *other*, i.e., anyone who did not speak Greek. Barbarians were literally people who babbled (*bar, bar, bar*) in unfamiliar languages. Romans would have employed the term in reference to any non-Romans, e.g., the Persians in Western Asia.

Consider a description offered by Tacitus in his *Germania*:

[T]heir physical characteristics, in so far as one can generalize about such a large population, are always the same: fierce-looking blue eyes, reddish hair, and big frames—which, however, can exert their strength only by means of violent effort (ch. 4, p. 104). [. . .] [They] have no taste for peace; renown is more easily won among perils, and a large body of retainers cannot be kept together except by means of violence and war. [. . .] A German is not so easily prevailed upon to plough the land and wait patiently for harvest as to challenge a foe and earn wounds for his reward. He thinks it tame and spiritless to accumulate slowly by the sweat of his brow what can be got quickly by the loss of a little blood. (ch. 14, 113–14)

Roman characterizations of barbarians were often from secondhand reports that were exaggerated and, at least in part, disingenuous. From the modern reader’s perspective, the characterizations seem paradoxical: e.g., Tacitus portrays the Germani as simultaneously lazy and courageous. Recall from above, though, that Romans perceived barbarians as a mirror-image of themselves. A mirror provides both an opposite (*I am civilized; you are not*) and a true reflection (*Your virtue puts my decadence into stark relief*).

As such, Romans had a love-hate relationship with barbarians. On the



one hand, they viewed them as uncivilized, violent, and repugnant. For example, the fifth-century Gallo-Roman senator, Sidonius Apollinaris, famously lamented: “I am among long-haired hordes, having to endure German speech, praising oft with wry face the song of the gluttonous Burgundian who spreads rancid butter on his hair” (1937, 213). On the other hand, Roman ethnographers “employed a dichotomy between civilized and uncivilized, urban civilization and barbarians, as a basic tool in their analyses” (Burns 2003, 3). This dichotomy could serve as a mirror by which Romans could examine their own morality, and Romans like Tacitus put it to good use: he felt free to portray barbarians as lazy, rude, drunkards while also highlighting their “customs [that] may inspire Romans to return to their own earlier austerity and rigor [. . .]” (Fitzsimons 1976, 478).

In short, we cannot take Roman narratives regarding “others” at face value. This is unfortunate because the peoples to the north and east of the empire did modern social scientists the disservice of being illiterate. Roman narratives provide the only written accounts of their political institutions. Therefore, while they must be considered critically, we cannot afford to dismiss them out of hand.

Two such narratives—Julius Caesar’s *Commentarii de Bello Gallico* (*Gallic War*) and Tacitus’ *Germania*—provide invaluable observations of Germanic institutions. Their accounts are bookends for a critical time period. Caesar’s *Gallic War* was published following his military campaigns from 58 BC to 50 BC that established the Rhine and the Danube rivers as the approximate imperial frontiers. Beyond these rivers lay Germania, a vast area that encompassed modern Germany, Denmark, Poland, Slovakia, the Czech Republic, half of Hungary, and a part of Austria. Caesar recorded numerous observations of Germanic society. Alternatively, Gaius Cornelius Tacitus published his *Germania* around 98 AD.<sup>1</sup> It is likely that he relied heavily on the Elder Pliny’s lost *Bella Germaniae*, written between 50 AD and 54 AD (Gudeman 1900). Tacitus’ account describes Germanic political institutions that had changed in important ways relative to what Caesar observed. In Caesar’s time, kings and military commanders were both necessarily members of the nobility. By 50 AD, nobility had taken a backseat to military prowess and organizational skill in the choice of who commanded armed retinues. Those retinues had also become standing organizations rather than temporary expedients in response to emergency or opportu-

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1. References to the *Germania* text will generally be from the 1970 Penguin edition; we have used the 1869 Macmillan and Co. edition to confirm the original Latin for key words.

nity. Germanic groups also held public assemblies more frequently and also more regularly, i.e., they occurred according to defined time intervals. The Germanic armed retinue and public assembly were fundamental institutions for Rome's successors.

Those institutional changes that occurred from the time of Caesar to those recorded by Tacitus become intelligible when we consider changes in economic conditions that accompanied Caesar's conquest of Gaul and the encroachment of Rome upon Germania (Young 2015). Rome, in this sense, inadvertently contributed to shaping the Germanic institutions that would ultimately help fill the vacuum left by its decline and fall.

To begin with, the Gauls to the west of the Rhine were generally wealthier than their German neighbors, so there had always been tempting raiding opportunities. However, those opportunities increased significantly after Caesar's conquest. Maintaining the Roman military presence on the frontier was big business. Food, supplies, and money became present in hitherto unknown quantities. Heather (2009) relates the illustrative example of Vannius, a king of the Germanic Marcomanni confederation in the first century. Vannius became a frontier client of the Roman Empire, recognizing "the wealth-generating potential of making Germanic traders bring their goods to Roman merchants on his soil, so that he could charge tolls" (139). (In turn, his own wealth was pillaged by another group of barbarians in 50 AD [141].)

Rome was also encroaching upon areas that had served as pressure valves for Germania's growing population. Much of Germania was covered by dense forest that was costly to clear. Facing scarcity of land suitable for pastoralism, people often chose to migrate. Germania stretched about 500 miles from the Rhine through what is modern-day Poland; its eastern limit roughly corresponded to the end of the North European Plain, a vast expanse of fertile lowlands. Migrating east would have brought Germani into less suitable lands as well as various non-Germanic tribes. In particular, the periodic migration of new nomadic groups from the Asiatic steppes over the Black Sea was characteristic of the region. These migrations included the Alans in the first century BC and then, notoriously, the Huns in the fourth century (Todd 1987, 37–38). Therefore, migration to the west was preferable.

When Caesar's campaigns established the Roman frontier along the Rhine, this raised the costs of western migration. Rome sought to regulate the settlement of migrants from without and stood ready to protect existing settlements within. This served to temporarily arrest the transition of Germanic societies from pastoralism to sedentary agriculture.

Consider the Germania that Caesar observed when he came into conflict with the Suebi, the “largest and most warlike nation among the Germans,” around 58 BC. The Suebi were not a specific tribe but rather a confederacy of tribes united under a king to pursue land grabs west of the Rhine:

Ariovistus, king of the Germans, has settled within [the Sequani’s—a Gallic group] borders and seized a third of the part of their territory, the best in all Gaul; and now he orders them to evacuate another third, because a few months since 24,000 of the Harudes [a Germanic tribe] joined him, for whom he had to provide settlement and a home. (book I, 49)

Caesar attributes to the Suebi “a hundred cantons from which they draw one thousand armed men yearly” and the settlement of 120,000 Germani across the Rhine in Gaul (Caesar book IV, 181; book I, 47). In comparison, Germania’s total population was only between 1 and 2 million (Todd 1987, 5). The large size and multi-tribe composition of the Suebi suggests that Caesar’s observations generalize across Germanic groups.

Tacitus also speaks of the Suebi in his *Germania*. Nearly a century later, the Suebi were apparently still a large confederacy drawn from numerous Germanic tribes: “They occupy more than half of Germany, and are divided into a number of separate tribes under different names[.]” (ch. 38, 133). The fact that the Suebi factor into the accounts of both Caesar and Tacitus suggests that differences in observed institutions reflect actual institutional change, rather than simply two Romans having observed distinct tribes.

Returning to Caesar’s account, he makes it clear that Ariovistus was not a king for life. Rather, he was a noble (leading man; chief) who was elected to a military command. During war he had “power of life or death” while in “time of peace there [was] no general officer of state” (Caesar book VI, 349). A leader such as Ariovistus, having put forth his cause at a public assembly, was elected by acclamation of the free population. Such elections only occurred during times of war or to organize wealth-extracting raids on foreigners. And only in the case of war did elected leaders have “power over life or death.” They otherwise relied on the oaths of their followers.

The sort of “public assembly” described above is the only mention by Caesar of a general gathering of freemen. They do not appear to have been regular events but, instead, met whenever times of emergency or opportunity arose. Alternatively, Caesar does describe a more exclusive

council of the leading men from various tribes. Regarding this council, Caesar (book VI, 347) suggests that it met regularly, though only once a year. At this meeting, the “magistrates and chiefs [*magistratus ac principes*] assign to tribes and clans [*gentibus congnationibusque hominum*] [. . .] as much land and in such place as seems good to them [. . .].” Other than this one meeting, this council appears only to have met when there was a military threat.<sup>2</sup>

Overall, Caesar paints a picture of a Germanic society with rudimentary political institutions that, beyond the individual tribe, only facilitated broad-based collective action in response to emergencies. There was no government in the modern sense of the word. Nearly a century later, those political institutions had developed substantially. Following Caesar’s conquest of Gaul, the Germani were exposed to new sources of wealth but also faced increased scarcity of land. This created incentives to reallocate resources out of pastoralism and into, on the one hand, sedentary agriculture and, on the other, raids across the imperial frontier. Their institutions developed in ways that make sense given these reallocations.

Now we turn to the depiction of political organization that we find in Tacitus’ *Germania*. Whereas Caesar encountered a society where military commanders were elected temporarily from the nobility, Tacitus describes standing retinues under the leadership of full-time entrepreneurial commanders. There were also more frequent and regular meetings of a public assembly, and within that assembly the nobility had gained agenda control. Alternatively, the nobility appears to have relinquished the control over annual land allocations that Caesar describes.

Though the Germani still lacked government, their political institutions had developed in a way that is broadly consistent with what Congleton (2001, 2011a) has referred to as the “king-and-council template” of divided government:

[N]either an unrestricted executive (leviathan or dictator) nor an unrestrained parliament (legislature, council, committee, or diet). [. . .] It divides up policy-making responsibility between a branch of government headed by one person, and another branch in the form of a committee composed of several members having more or less equal authority. (2001, 193)

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2. “In peacetime, no council higher than the councils of the *pagi* [individual tribes or villages] can be said with certainty to have existed” (Thompson 1965, 13).

In Tacitus' account we find two types of kings: one based on noble birth (*rex*) and the other elected based on merit (*dux*). Furthermore, the Germani had both general assemblies of all freemen and more exclusive executive councils. Using the felicitous language of Thompson (1965), we will refer to these as the Assembly of Warriors and the Council of Leading Men.

The Assembly of Warriors was the most popular of the Germanic political institutions. All freemen, including nobles (leading men), were included.<sup>3</sup> It met on an approximately monthly basis: "on certain particular days either shortly after the new moon or shortly before the new moon" (Tacitus ch. 11, 110). The Assembly debated major affairs. These almost certainly included declarations of peace or war. The Assembly was also "competent to hear criminal charges, especially those involving the risk of capital punishment" and could "elect, among other officials, the magistrates who administer justice in the districts and villages" (Tacitus ch. 12, 111–12). Criminal charges could result in fines, part of which went toward restitution for victims, and another part of which was allocated to the nobility.

Meetings of the Assembly appear to have been raucous occasions. Decisions were made by acclamation: "If a proposal displeases them, the people shout their dissent; if they approve, they clash their spears" (Tacitus ch. 11, 111). An entire community of warriors shouting and clashing their weapons in support of war is an impressive image. More notable from a political economy perspective, the decision-making rule for "major affairs" was, in principle, unanimity. Achieving unanimity is difficult within any sizeable group of people. (Try getting even a dozen people to unanimously agree on a restaurant for lunch!) However, coming to a decision on major affairs imposes large costs on the individuals who ultimately disagree with the decision. It is precisely in those cases, then, that it may be desirable to require unanimous agreement on a course of action.

While the Assembly of Warriors handled major affairs, a smaller and more exclusive Council of Leading Men dealt with "matters of minor importance" (Tacitus ch. 11, 110). Furthermore, "even where the com-

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3. Germanic society also included slaves and freedmen. Thompson argues that they were a small part of the population. First, Tacitus (ch. 15, 114) notes the absence of household slavery, "the care of the house, home, and fields being left to women, old men, and weaklings of the family." Second, preventing slaves from escaping would have been difficult in sparsely populated and densely forested Germany. Third, most slaves were prisoners of war, destined for sale beyond the frontier.

mons have the decision, the subject is considered in advance by the chiefs [*principes*]" (Tacitus ch. 11, 110). This meant that the Council of Leading Men exercised agenda control in the Assembly of Warriors. The Assembly was a large, unwieldy group of (let us not forget, armed) men. Having a smaller group that set the range of matters to be considered was probably necessary to getting anything done at all. Unlike in Caesar's time, however, this Council of Leading Men had no control over land allocations and, at the end of the day, the Germani made decisions on important matters in the Assembly with broad-based consent of the free population.

Along with governance through regularly meeting assemblies, Tacitus describes a society where executive leadership had become focused on standing armed retinues. Indeed, Tacitus makes a clear distinction between tribal kings and military commanders: "They choose their kings [*reges*] for their noble birth, their commanders [*duces*] for their valour" (ch. 7, 107). The former were leading men of their tribes who were, along with the priests, associated with the sacral. Alternatively, Tacitus never associates commanders with the sacral or even necessarily nobility: "commanders rely on example rather than on the authority of their rank—on admiration they win by showing conspicuous energy and courage and by pressing forward in front of their own troops" (ch. 7, 107).

A commander was essentially an individual who organized warriors into a profit-seeking group—someone Congleton (2011b) refers to as a "formateur"—and subsequently provided it with entrepreneurial leadership. Profits came from "war and plunder" (Tacitus ch. 14, 113). An armed retinue functioned as a roving bandit, seeking to violently extract the wealth of others; alternatively, it could also offer defense services to other barbarians who faced threats. (These threats could be Roman but just as often they could be from other barbarian retinues.)

The relationship between the warriors of a retinue and their commander was an oath-bound one. This distinguished it from the kin-based relationship between a king and his clan. A Germanic *rex* had a measure of authority based on his noble birth and an association with the sacral. For Romans like Tacitus, the word *rex* "implied a moral content: a king should be able to rule himself as well as others" (Wallace-Hadrill 1971, 3). Alternatively, a warrior swore obedience to a commander only because he stood to gain by doing so. Tacitus describes something like a competitive labor market where the supply of warriors interacted with the demand for their services:

[A] large body of retainers cannot be kept together except by means of violence and war. They are always making demands on the generosity of their chief, [. . .]. Their meals [. . .] count in lieu of pay. The wherewithal for this openhandedness comes from war and plunder.

If a particular *dux* failed to provide sufficient “openhandedness,” there were competing *duces* to which his warriors could turn.

Relative to noble and sacral kings, commanders of armed retinues would gain in importance during the centuries following Tacitus. According to Heather (1996, 66), “the rise of groups of specialist armed retainers was a social development of the greatest importance. [. . .] In the bulk of so-called Free Germany [. . .] weapon burials became common from at least the first century AD.” These burials as well as literary sources suggest that retinues of 200 or so men were the norm (Heather 1998, 66–68). When opportunities or threats arose, however, these retinues could confederate into much larger groups. They were segmentary in the sense of Durkheim (1933): each retinue was self-contained and self-sufficient; yet they could at times combine to pursue common ends. When Germani faced external threats, their retinues could aggregate to cope with them. Likewise, retinues could combine opportunistically to undertake a large-scale raid and then devolve once the opportunity had passed.

The experience of the Gothic peoples in the late fourth and early fifth centuries provides excellent examples of how impactful the confederation of barbarian retinues was in Late Antiquity Europe. The Goths were primarily a collection of eastern Germanic tribes. During the fourth century, we hear of Gothic raids into the Roman provinces of Thrace and Moesia around the lower Danube (an area that included parts of Bulgaria, Greece, Macedonia, Serbia, and Turkey). The imperial response to the raids indicates that they were most often the work of individual armed retinues, along the lines of the 200 or so men that Heather mentions. In response to Gothic raids during the early part of Constantine’s rule, Anonymous Valesianus (1939, ch. 5, 523) refers simply to the emperor’s “check of their attack.” Similarly, the brother emperors, Valentinian and Valens, did not offer any strong responses to sporadic raids in the second half of the fourth century.

However, Gothic retinues did periodically confederate into formidable threats that required more systematic Roman responses. For example, in 323 a larger army of Goths attacked a group of Sarmatians (an Iranian barbarian group) with federate status. (Federates were granted

annual imperial subsidies—clothing, grain, money—in exchange for their aid in defending the frontier.) In response, Constantine carried out campaigns that resulted in “almost a hundred thousand of the Goths [. . .] destroyed by hunger and cold” (Anonymous Valesianus 1939, ch. 6, 528). Even if 100,000 is an exaggeration, this was a Gothic confederation large enough to keep the Sarmatian federates and Constantine’s hands full. Similarly in 365–366, 3,000 Goths joined in support of the usurper Procopius, and Valens responded with three years of campaigning across the Danube. This campaigning “reduced the barbarians to such want that they sent a number of delegations to beg for pardon and peace” (Ammianus 1986, Book 27, 337). A three-year campaign makes sense only if there was a large, coherent confederacy to punish for its recalcitrance. The reference to delegations also supports this view.

Notably, a confederacy of Gothic retinues formed in 376 and handed the Roman Empire its most stunning defeat at the hands of northern barbarians to that date. Earlier that year, as many as one million Goths appeared on the northern bank of the Danube, fleeing a Hunnic invasion from over the Black Sea and requesting permission to cross. Preoccupied with conflicts on the Persian frontier and in no position to actually stop them, Valens graciously “permitted” their entry. In what turned out to be a costly misstep, two corrupt Roman generals, Lupicinius and Maximus, mismanaged the Goths’ settlement: they denied them promised food subsidies and instead “collected all the dogs that their insatiable greed could find and exchanged each of them for a [Gothic] slave, and among these slaves were some sons of the leading men” (Ammianus 1986, Book 31, 418). The Goths appealed to imperial authorities in Marcianople, only to have a number of their leading men murdered or taken hostage. A commander named Fritigern escaped and organized a Gothic confederacy that routed Lupicinius’ troops. The Gothic War of 376–382 followed, ending with the massacre of two thirds of Valens’ army and the emperor’s death.

Confederacies of segmentary organizations tend to be short-lived: “While segments can aggregate at a high level, they are prone to immediate fissioning [sic] once the cause of their union (such as an external threat) disappears” (Fukuyama 2011, 58). However, a confederacy that came to be known as the Visigoths formed at the end of the fourth century and proved to be enduring. In 395, the emperor Theodosius I died, leaving his young sons—Honorius (8 years old) and Arcadius (12 years old) in the East—as co-emperors. A large group of Goths took advantage



of this disruption of Roman authority to confederate under the leadership of a commander named Alaric. The Visigoths invaded Italy in 401 and then again in 410, that time sacking the Eternal City itself. Alaric died shortly thereafter and was succeeded in command by his brother-in-law, Athaulf. The latter eventually led the Visigoths into Gaul where they settled and established a kingdom that would endure for more than a century, outlasting the declining Western Empire.

## 2.2. *Settlements and Successor Kingdoms*

The Visigoths established the first successor kingdom to the Western Roman Empire. Others were soon to follow. In several cases, these settlements appear to have been “regulated operations, presupposing the cooperation of barbarian leaders with the Roman authorities, conducted according to law” (Goffart 1980, 36). Even when those authorities did not play a role (e.g., as in the case of the Franks in northern Gaul), Roman legal and tax institutions were co-opted as frameworks for the settlement operations. Historians came to refer to these operations under the penumbra of *hospitalitas*, based on sources referencing “hospitality,” “hosts,” and “guests” in relation to the barbarian settlers. Settlement generally involved providing barbarians with share-based allotments of Roman lands or tax revenues from those lands.

The barbarian settlements laid groundwork for the landed and militarized nobility of medieval Western Europe. The nobles came to be governance providers embedded in the hierarchy of reciprocal obligations that constituted the medieval feudal system. As we shall see in later chapters, they were a fundamental basis for what have been termed “shareholder states” (Herb 2009; Salter and Hall 2015; Salter 2015). Nobles were residual claimants in the realms they governed. Their claims to the returns from that governance worked to align their incentives with those of the governed (Salter 2015). Nobles were also the primary providers of military services to medieval monarchs and, as such, provided a powerful check on their agendas.

How did *hospitalitas* work? The historians Ernst Theodor Guapp (1844) and Ferdinand Lot (1928) originally argued that it was based on Roman law for quartering soldiers; in particular the law issued by the Eastern emperor Arcadius in 398 and compiled in the Theodosian Code (book 7, 8, 5):

In every town where we ourselves may be or where those sojourn who fight for us, to remove all unfairness both on the part of the quartermasters as well as the guests [*hospitum*], the owner shall without fear or anxiety, keep possession of two parts of his own house, the third part [*tertia*] being assigned to his ‘guest’ [*hospiti*].<sup>4</sup>

If Arcadius’ law provided the framework for settlement, then each barbarian “guest” was granted a fixed share of a Roman “host’s” land.

The evidence for this theory came from fifth and sixth century law codes promulgated in the Visigothic and Burgundian kingdoms; also from royal correspondence of the Ostrogothic kingdom in Italy. For example, consider text from titles 54 and 55 of the Burgundian Code:

[W]hoever had received land together with slaves either by gift of our predecessors or of ourselves, should not require a third of the slaves nor two parts of the land from that place in which hospitality had been assigned him; . . . (Drew 1976, 62)

As often the cases arise between two Romans concerning the boundaries of fields which are possessed by barbarians through the law of hospitality. (63–64)

Similar references can be found in title 10 of the Visigothic Law: “about the division of lands made between a Goth and a Roman[:] two parts of the Goth [from the] third of the Roman”; and also in title 277 of the Visigothic Code of Euric: “Gothic allotments (*sortes*) and the third (*tertia*) of the Romans” (Goffart 1980, 118–19).

We also have the testimony of Cassiodorus Senator, who was a Roman noble and a high-ranking official in the Ostrogothic administration of Theoderic the Great (r. 475–526). A large number of Cassiodorus’ state papers have come down to us. Among them is a panegyric to a patrician, Liberius, who was tasked with administering Gothic *sortes*: “We especially like to remember how in the assignment of the thirds [*in Tertiarum deputazione*] he joined both the possessions and the hearts of the Goths and Romans alike” (Cassiodorus, book 1, ch. 16, loc. 3632).<sup>5</sup> Here we see an

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4. Translation from Palgrave (1832, 425); Latin is from Mommsen and Meyer edition of the Theodosian Code: <http://droitomain.upmf-grenoble.fr/Constitutiones/codtheod.html>

5. We use the 1886 Hodgkin translation. References to the original Latin are from the 1894 Mommsen edition (<http://freespace.virgin.net/angus.graham/Cassiodorus.htm>).

ostensible reference to each Goth receiving an allotment of one-third of a particular Roman's land.<sup>6</sup> (There is also a reference to *joining the hearts of Goths and Romans*. We will return to this point below.)

The *hospitalitas* interpretation offered by Gaupp and Lot was carefully constructed from the available sources. However, the link to Arcadius' law has been called into question. The quartering of soldiers was a temporary expedient during military campaigns; its correspondence to perpetual occupations is tenuous (Sivan 1987). Furthermore, Arcadius' law specifies how a host's *house* (not land) is to be divided; and the *one-third* of that law is consistent with only the Ostrogothic (rather than Burgundian and Visigothic) evidence (Goffart 1980).<sup>7</sup> Still, the references to *hospitus*, *sortes*, *tertia* across the fifth and sixth century sources are difficult to ignore.

Addressing the problems with the Gaupp-Lot interpretation of *hospitalitas*, Walter Goffart (1980, 2006, 2008, 2010) argues that barbarians were allotted units of tax assessment on Roman land, rather than the land itself. To do so, he draws heavily on the Ostrogothic evidence. For example, a certain Faustius complained on behalf of his district about the irregular timing of tax collections. Theoderic (through Cassiodorus) responded:

We have no objection to grant the petition of the inhabitants of Cathalia, that their [*tertia*] shall be collected at the same time as the ordinary tribute. What does it matter under what name the [*possessor*] pays his contribution, so long as he pays it without deduction? (Cassiodorus, book 2, ch. 14, loc. 3252)

This implies that a barbarian's *tertia* had to be collected from the land's *possessor*. Faustius appears to have been complaining that the barbarians' *tertia* and "ordinary tribute" were being collected irregularly, creating inconveniences for the Romans.

Goffart also emphasizes terminology that Theoderic (again through Cassiodorus) uses to refer to the barbarian *sortes*. The conventional trans-

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6. Cassiodorus obviously had an incentive to portray Theoderic as upholding Roman values. That being said, Cassiodorus was not afraid to point out when the Ostrogoths abused their authority (Wickham 2009, 90–102).

7. This limitation of *hospitalitas* to a host's house is consistent with a different title (38) of the Burgundian Code, "Of the Refusal of Hospitality Toward Legates of Foreign Tribes and Travelers": "Whoever refuses his roof or hearth to a guest on arrival, let him be fined three solidi for the neglect" (Drew 1976, 47).

lation of the relevant text had been: “Order all the captains of *thousands* of Picenum and Samnium to come to our court, that we may bestow the wonted largesse on our Goths” (book 5, 27, loc. 4983; emphasis added). The “thousands” is a translation of the Latin *millenarios*. Goffart (1980, 80–87) argues that, in this context, *millenarios* is best translated as “holders of *millenae*.” *Millena* was a unit of Roman tax assessment dating back to Diocletian’s reforms. According to Goffart, Theoderic’s Goths were holders of these tax assessment units. A Goth receiving a *sorte*, therefore, had become a tax farmer for his own account. He had “bought” that privilege through military service in Theoderic’s confederacy.

Goffart (1980) also marshals evidence concerning the southern Gallic settlements. For example, historians generally agree that Visigoths were not taxed within their own kingdom.<sup>8</sup> As such, if the Goths had received actual land allotments they “would [. . .] have been decidedly overadvantaged: they would have pocketed both the private and public revenues of [two-thirds] whereas the barbarian king was limited to collecting only the tax revenues of [one-third]” (Goffart 1980, 117). Goffart (2006, 2010) strengthens the Visigothic case, pointing to reference in the Code of Euric to *tertias Romanorum* and *sortes Gothorum*. The later Visigothic Code (seventh century) makes it clear that *tertia* was land on which taxes were paid to the royal fisc: “It says that a Goth was forbidden to have *tertia Romanorum* unless the king had given it to him. This royal gift could consist not of ownership, which Romans retained [hence still ‘*Romanorum*’], but of property assessment yielding revenue” (Goffart 2010, 71).

Goffart (2008) also extends his argument to the case of the Frankish kingdoms. This extension is particularly interesting given the important role played by those kingdoms in the formative period of the feudal system. Northern Gaul is also an interesting case because the Roman military had largely withdrawn from the region by the fifth century. As such, direct imperial involvement in the Frankish settlements was probably minimal. If settlements in northern Gaul were regulated operations according to law, then, this indicates that it behooved the barbarian leaderships to cooperate with the region’s Roman landowners.

Like the Goths, all free Franks had military obligations to their monarchs. Goffart (2008) points to a number of examples from early medieval Frankish annals and capitularies indicating that: “The assets on

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8. E.g., Thompson (1969, 72–77); King (1972, 130–31); Sivan (1987, 759); Heather (1998, 195).

whose account military service was owed appear to have originated from the inherited Roman tax system. [. . .] [This] exchange of taxes for obligatory, unpaid military service is the system whose traces are still discernable under Charlemagne and his successors” (167). In addition to being consistent with the documentary evidence, this interpretation accounts for the hereditary nature of military service. If Frankish war leaders simply granted their warriors lands after the fact of conquest, then it is unclear why obligations would persist. Alternatively, tax obligations on land would have persisted across generations; with the exchanges of those obligations for military services, “[p]aid soldiers turned into a privileged but not leisured landed class” (Goffart 2008, 185).

The tax allotment interpretation of *hospitalitas* is appealing given the lack of evidence of Roman outrage and resistance in response to the settlements. Roman nobles were by no means warriors, but they commanded considerable wealth and could afford to buy military services, including those of competing barbarian groups. Indeed, it was common in the later empire for prominent Romans to maintain armed retinues known as *buccellarii* that served as bodyguards (Ganshof 1964, 4). If their lands were being expropriated and they perceived no offsetting benefits in return, Roman nobles would have been able to mount resistance that, if not ultimately successful, would have been costly to the barbarian settlers.

In addition to passive silence regarding Roman outrage and resistance, Ostrogothic sources actively suggest that many Romans were, if not pleased, relatively unperturbed by the barbarian settlements. We have already seen Cassiodorus’ claim in his panegyric to Liberius that *hospitalitas* “joined both the possessions and the hearts of the Goths and Romans alike.” The same collection also includes a letter written by the Roman senator Ennodius to Liberius:

You have enriched the countless hordes of Goths with generous grants of land, and yet the Romans have hardly felt it. The victors desire nothing more, and the conquered have felt no loss. (*Epistolae*, 9, 23; translation from Jones [1986, 251])

While Ennodius clearly aims to flatter, Jones (1986, 251) notes that he “would have hardly introduced the topic at all if it had been a painful one.” Goffart (1980, 77–79) also points to Theoderic’s instructions to the city of Tridentum regarding a particular *sors* (77–79):

We do not wish to be generous at the expense of others, and we therefore declare that the [*sors*] which in our generosity we have bestowed on Butilianus the Presbyter, is not to be reckoned in to the tax calculations; but as many *solidi* as are comprehended in that gift, so many are you to be relieved from, in the contribution of [*tertia*]. (Cassiodorus, book 2, 17, loc. 3635)

The above characterization of a *sors* is more consistent with a tax assessment share than a land grant. Roman payment of the *tertia* is offset by the deduction of the *sortes* from their (regular) tax calculations. Also, if Goths had actually dispossessed Romans of one-third of their land, then it is difficult to see how Theoderic's "generosity" could have come at no "expense to others."<sup>9</sup>

From a constitutional political economy perspective, the remarkable thing about barbarian settlements within the *hospitalitas* framework is that it aligned incentives between, on the one hand, the Roman landowners and barbarian settlers and, on the other hand, barbarian settlers and their leadership. This contributed to the durability of barbarian successor kingdoms. Furthermore, characteristic of these kingdoms were landed nobles who exercised political authority over assets to which they were residual claimants. In elaborating on these points, we will generally assume Goffart's tax allotment interpretation of *hospitalitas*. In doing so, however, we are not claiming that actual allotments of land to barbarian settlers never occurred. Indeed, much of what follows is consistent with each barbarian settler receiving some pre-determined fraction (one-third or two-thirds) of a Roman noble's land.

The barbarian settlements involved the allotment of claims to the returns on productive assets. In a broad-based operation across a region, each barbarian settler was allotted a share of the tax assessment on a particular Roman's land that was pre-determined and uniform across the land-owning population. This linked the interests of a particular settler with those of a particular Roman landowner, both being based on the same productive assets.

The allotments also worked to realign the incentives of barbarian warriors and their leadership at a time when their relations may have been strained by the settlement process. First, recall that the barbarian confed-

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9. Goffart's theory is not uncontroversial; for example, see Wickham (1984, 20, n. 21), Barnish (1986, 173), Ward-Perkins (2005, 9–10). See Young (2018) for a discussion of their critiques.

eracies large enough to affect permanent settlements within the imperial frontiers were typically organizations that operated toward specific ends under exceptional circumstances (e.g., war) and then disbanded into their constituent retinues following the achievement of those ends. In such a confederacy, most of the barbarian warriors had to obey an unfamiliar commander to whom they had not sworn allegiance. That may have been fine and good as a temporary expedient, but a very different matter when it came to accepting that commander as a monarch. Second, as a confederacy transitioned from a roving bandit organization to a successor kingdom, warriors would have been expected to refrain from plundering and devote their violent services toward increasing the tax base (e.g., by providing law and order). This change in lifestyle may not have been appealing to many barbarian warriors.<sup>10</sup>

The allotments established a link between a leadership's interests in a growing tax base and warriors' interests in the productive yields of the land. Notably, actual allotments of land would have been effective in establishing this link. However, to the extent that the allotments were tax assessment shares, they were even better suited to align warrior and leadership incentives. Barbarian warriors were not farmers. (Imagine telling Conan to stop crushing his enemies and plant a turnip.) They may not have been able to—nor perhaps *wanted* to—work to realize returns on land holdings comparable to those of their Roman neighbors. Alternatively, tax assessment shares “yielded immediate and reliable returns” to the barbarian warriors (Goffart 1980, 54).

Tax assessment shares also mitigated antagonism of the Roman elite. Romans maintained ownership of their lands. The annoyances faced by Roman landowners were confined to the inconveniences of unfamiliar methods of tax collection. (As in the above discussion of Faustius' complaint in Ostrogothic Italy.) The actual level of taxes did not change for Roman landowners; only the number of tax collectors and their methods.

### 2.3. *Foundations of the Medieval Constitution*

The foundations of the Western European medieval constitution have long fascinated scholars. They have particularly emphasized the roles

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10. Thompson (1982, 38–52) argues that the “dominating feature of Visigothic history between the time of Athanaric and that of Wallia [king, 415–419] is the growing conflict between the interests of [ . . . ] the optimates and those of the rank and file.” Convincing roving warriors to become stationary agents of the kingdom could have factored into this.

played by the landed and militarized nobility. The noble class was characteristic of the feudal system. Monarchs granted benefices in the form of lands to the principal magnates of their realms. In doing so they established reciprocal relationships involving an exchange of their protection and the maintenance provided by the benefice for the loyalty and service of these magnates. In turn, the latter granted portions of their holdings to lesser nobles in return for their homage, i.e., so-called subinfeudation.<sup>11</sup>

Among the factors contributing to this landed and militarized nobility, historians have emphasized the large-scale distribution of benefices by the Carolingians in the middle- to late-eighth century; as well as subsequent subinfeudation (Cronne 1939, 356–57; Ganshof 1939, 157–59; Stephenson 1941; Ganshof 1964, chs. 1 and 2; see chapter 3 below). Yet those reciprocal relationships also have precedents in the institutions of loyalty within Germanic war bands (e.g., Stephenson 1941; Wickham 1984, 25; Riché 1993 [1983], 37–39; Bisson 1995, 746–47).<sup>12</sup> *Hospitalitas* settlements of barbarian confederacies provided those precedents. Broad-based and equitable distributions of Roman lands and/or claims to the taxes on those lands were provided to barbarian warriors. These distributions provided barbarian warriors with de facto political powers that were bundled with economic property rights to returns on those lands.

The military resources of the Western Empire's successor states were decentralized in the process of the barbarian settlements. This decentralization contributed to an important change in how armies were organized and funded: "Beginning in the fifth century, there was a steady trend away from supporting armies by public taxation and towards supporting them by rents derived from private landowning" (Wickham 2009, 102). The settled barbarians became shareholders in their realm with de facto political power by virtue of their landed wealth being the source of military power for the successor states.

The landed and militarized nobility was a fundamental component

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11. Classic works on the feudal system are Bloch (1968a [1939]; 1968b [1940]) and Ganshof (1964). Western European feudal relationships, which were both impersonal and contractual, differed significantly from the situations in medieval China and the Islamic world. In China, lordship was tied to a kinship group (Fukuyama 2011, 106–7). In the Islamic world, Sultans inherited more intact bureaucracies from their conquered Byzantine and Sassanid lands; they staffed those bureaucracies with slaves (*Mamluks*) that swore allegiance to the Sultans (Blaydes and Chaney 2013, 17).

12. For a discussion of how the term *fidelis* in the *Lex Visigothorum* (seventh century) is linked to bonds between kings and their subjects and later feudal relationships see Lear (1951, 16–18).



of medieval governance hierarchies. (Part 2 of this book will have much more to say on this.) Throughout the feudal hierarchy, lords were obligated to provide governance that yielded security and justice to their vassals. Furthermore, a monarch relied on the principal lords of his realm for the means (feudal levies and taxes) to pursue his military campaigns. Monarchs could either bargain for these means or expropriate them; doing the latter was costly. What a monarch sought from the nobility were precisely the means by which they provided an important check on the powers of medieval monarchs.

As such, monarchs in medieval Western Europe were eventually compelled to the bargaining table (e.g., Downing 1989; Ertman 1997, 83–88; van Zanden et al. 2012; Whaley 2012, 25). The assembly traditions of the Germanic barbarians provided a basis for this. Medieval monarchs needed nobles to provide them with military manpower and financial resources. To do so, they had to bargain and, in doing so, make credible commitments. Working within realms where assembly traditions were already rooted, they took the initiative to convoke representative assemblies of the leading men (e.g., Russell 1982; North and Weingast 1989; van Zanden et al. 2012; more to come on this in chapter 9). By ceding some veto authority to the nobles in an assembly, a monarch could solve the credible commitment problem. However, as we will see in chapter 9, in the earlier medieval era strong monarchs convoked assemblies without the intent to cede anything to their subjects; rather, they simply wanted to coordinate them toward their own predetermined agendas.

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## CHAPTER 3

# The Carolingian Project

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In 817, Louis the Pious made the decision to break with the Frankish tradition of dividing his kingdom among his legitimate sons. Louis' father, Charlemagne, had come close to consolidating the former territories of the Western Roman Empire. (The Iberian Peninsula, still largely Islamic, remained beyond his grasp.) Though only 39 years of age, Louis had become preoccupied with the preservation of that empire. This preoccupation may have been attributable to his recent brush with death: a portico in his Aachen palace had collapsed, barely missing Louis and killing a number of others nearby. Whatever the reasons, Louis issued the *Ordinatio Imperii* (or "Disposition for the Empire") that stipulated his son Lothar become co-emperor while his other sons, Pippin and Louis, were to become sub-kings of Aquitaine and Bavaria, respectively. Along with the King Bernard of Italy (Louis' nephew and Charlemagne's grandson, installed by the latter in 810), they were to be subordinate to Lothar.

Following the issue of the *Ordinatio*, Louis the Pious played the role of itinerate king, travelling far and wide across the empire; convoking assemblies of the leading men, both lay and ecclesiastical, soliciting them to swear oaths of fidelity and respect for the partitioning of territory and power. The Emperor of the Romans and heir of Charlemagne thus traversed his realms, seeking the counsel of leading men while respecting their jurisdictions of authority, but also insisting that they respect

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Portions of this chapter are adapted from Young (2019 and 2021).

his own separate, simultaneously overlapping and overarching, authority. This is an important political fact characteristic of many medieval governance arrangements. Between Charlemagne, Louis, and the other Carolingians, the foundations of what we will call *polycentric sovereignty* were established throughout Western Europe.

The Carolingian Empire would ultimately disintegrate as quickly as it was built. But the legacy of the Carolingians' empire-building efforts is a critical part of the story.

### 3.1. *Setting the Stage for the Carolingians*

From the mid-eighth century into the early ninth, an ambitious Frankish family rose to power in the region that is today France, Belgium, and the western part of Germany. This family eventually supplanted the Merovingian dynasty that had ruled since King Clovis I consolidated power in the early sixth century. With nearly two and a half centuries under their royal belts, the Merovingians were perceived as the legitimate rulers of the Franks. The usurpation and subsequent empire-building by the upstart Carolingians—named after Charlemagne's grandfather, Charles Martel ("The Hammer")—was remarkable. The Carolingian accomplishment involved the widespread distributions of lands conquered or expropriated from the Church to new and preexisting vassals. It also included political bargains with the Church in Rome, made toward the Carolingian aim of legitimizing the new dynasty. The distributions of land were investments in state capacity. The benefited vassals (*vassi casati*) became administrators and governance providers; their loyalty and military services had been purchased with landed wealth. Secularizations of Church lands were a significant part of making those purchases possible; in exchange, the Carolingians helped to secure the Church in Rome from Muslim and Lombard threats.

Part of the story behind the Carolingian ascendancy was without doubt the exceptional ambition, charisma, and military prowess of Charles Martel and his progeny. At least equally important were Islam's rise as a dominant power in the Mediterranean and the growing Lombard threat from northern Italy to the papacy in Rome. Without characterizing these changes as strictly exogenous to Rome and the Frankish Realms, they undoubtedly changed the economic and political environment of Western Europe in ways that were fortuitous to the Carolingians assuming power and forging an empire.

The consequences of the early medieval Muslim conquests for the fate of Europe have long fascinated historians. The early twentieth century Belgian historian Henri Pirenne is famous for what has become known simply and eponymously as the *Pirenne Thesis*. According to Pirenne, the true divide between the Roman and medieval eras corresponded to the seventh-century westward expansion of Islamic peoples and their establishment of dominance in the Mediterranean by the eighth. This view is put forth most fully in Pirenne's posthumous book *Mohammed and Charlemagne* (2001 [1937]) where he argued that the western Mediterranean "was [then] no longer the thoroughfare of commerce and thought which it had always been" (284). According to this view, the Carolingians came to power precisely when Western Europe found itself in a brave new world: divorced from the eastern remainder of the Roman Empire and cut off from commerce by invaders from an upstart and hostile religion in the south. Economically and intellectually isolated, Western Europe entered its Dark Ages.

Most historians now doubt the Pirenne Thesis in its purest form. Archeological evidence—not available to Pirenne—has painted a more accurate picture of the timing and pattern of the decline in Latin Mediterranean activity. The decline in trade appears to have begun before the Islamic expansion and the two phenomena likely reinforced one another, each being both cause and effect (Hodges and Whitehouse 1993, 169–70; McCormick 2001). Yet there remains a kernel of truth in Pirenne's views. As McCormick (2002, 27) writes: "On one important point consensus reigns: the early eighth century marked the nadir of trade and shipping on the Mediterranean Sea, especially the western Mediterranean."

While this decline in Mediterranean trade and travel occurred, the Merovingian dynasty lorded over the Frankish realms.<sup>1</sup> The term "Merovingian" derives from a shadowy mid-fifth-century figure named Merovech. The seventh-century chronicler known as Fredegar tells us that Merovech was conceived by his mother during an encounter with a sea monster; other than that, we know little about him. Still, a dynasty bearing his name endured. Within that dynasty, there were most often two or more kings at any given time, consistent with the precedent set by King Clovis I (r. 509–511). Clovis had originally consolidated the Frankish realms in the early sixth century. Clovis spent the final years of life eliminating internal rivals only to leave his kingdom partitioned among four sons who ruled, respectively, from Orléans, Paris, Rheims, and Soissons.

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1. Wood (1994) is an excellent source of information on the Merovingians.

Clovis' decision to divide his kingdom following his death likely reflected an attempt to manage the problematic coincidence of three teenage sons with his wife of nearly twenty years, Chlothild, and an older son from a previous liaison who was a distinguished military commander (Wood 1994, 50). The latter son, Theuderic I, was a formidable contender for the throne and slighting him would have certainly provoked civil war. Even a division or power-sharing arrangement with one of Chlothild's sons might not have kept Theuderic at bay. Installing all three of his half-brothers (Chlodomer, Childebert I, and Chlothar I) as political counterweights increased the likelihood that Theuderic would remain content with his one-fourth of Clovis' kingdom.

Although Francia would periodically be unified under a single Merovingian king—the last time being under Chlothar II (613–629) and his son Dagobert I (r. 629–634)—by the early seventh century it consisted of three more or less distinct territorial blocks: Austrasia to the east, Burgundy to the south and central, and Neustria to the west; the latter two being effectively one political unit from 622 on (Wood 1994, 145–46; see also Wickham 2009, 116–17). It was this politically fractured landscape that Charles Martel consolidated under his rule during the mid-eighth century.

Charles was a member—albeit an illegitimate one—of a wealthy and politically powerful Austrasian family. Beginning with Pippin I (of Landen; c. 580–640), numerous members of this family served as *maiores domus* for Merovingian kings. “Leaders of the household” (or “mayors of the palace” as frequently translated in English sources) were essentially governors who acted on behalf of Merovingian monarchs and, increasingly from the mid-seventh century on, in their stead (Wickham 2016, 36–37). *Maiores* were drawn from leading members of the Frankish nobility. A distinctive feature of Francia was the wealth of its leading nobles, the richest of them possessing greater lands than their counterparts elsewhere in Western Europe (Wickham 2016, 36). In the seventh century, land was becoming an increasingly important source of wealth in Western Europe. In turn, the political powers of leading nobles and, in particular, the *maiores* were growing. During the late seventh and early eighth centuries, nearly all *maiores* were from the Pippinid family (Wickham 2009, 117).

While the Carolingians were establishing their political predominance in the Merovingian courts, the Islamic expansion into the Mediterranean had disrupted trade and travel routes that connected Western Europe to the Eastern Roman (Byzantine) Empire. Furthermore, the



Iberian Peninsula and Northern Africa were then under Islamic rule. Economically, the Roman world had always been fundamentally oriented toward the Mediterranean. North Africa was one of the wealthiest regions of the Western Empire and had supplied the largest part of the Eternal City's food. And the wealth of the Western Empire had always been concentrated in regions along the Mediterranean. (Present-day Northern France, Germany, and England had essentially been backwaters.) Alternatively, "the North Sea trading economy sprang to life in the second half of the seventh century, and gained vigorously over the next 150 years or so" (McCormick 2002, 22). This was the coastal region closest to Austrasia, the center of Carolingian power.

With the disruption of Mediterranean-based trade came the disruption of long-distance trade across all of Europe. As such, the relative importance of landed wealth increased. Economic life reverted toward the produce of the land and self-sufficiency within a given region. Regarding Frankish monarchs, their treasuries relied in large part on the collection of tolls levied on merchants. To fund their administrators, distributions from the royal fisc (or from lands conquered or otherwise expropriated) became a relatively cheaper means.

As the economic importance of the Mediterranean regions decreased—especially, from the perspective of Latin Christendom, that of the newly-Islamic Iberian Peninsula—and the North Sea trade became more vibrant, the economic and political center of Western Europe shifted toward Austrasia. The Visigothic Kingdom was essentially destroyed by the Islamic conquest; the wealthy coastal regions of Gaul and western Italy were deprived of trade and exposed to the threat of Muslim pirates/raiders. The Church in Rome found itself facing the encroachments of a hostile religion. Furthermore, this threat was coincidental to increased threats from Lombards in the north, Germanic peoples who had filled the vacuum left by the Ostrogoths following their defeat by the Eastern Empire in the sixth century Gothic War.

Deterioration of east-west travel routes also created a wedge between Latin Christendom and the Eastern Roman Empire. Islamic expansion imposed costs on Rome but it also created the potential for the Western Church to achieve greater autonomy and establish itself as the sole, overarching spiritual authority in the West. Alternatively, the fiction of a unified Roman Empire still occupied the imaginations of Eastern Emperors and, likewise, Eastern Church leaders. Famously in 729, Pope Gregory II gave warning to the Byzantine Empire:

[T]he whole West has its eyes on us . . . and on St. Peter . . . whom all the kingdoms of the West honour. We are going to the most distant parts of the West to seek those who desire baptism . . . [but] their princes wish to receive from ourselves alone. (Krautheimer 2000 [1980], 106)

Regardless of wishful thinking on the part of Byzantines, a chasm between East and West had opened wide and, along with it, so had opportunities for the Church in Rome.

To summarize the political and economic changes that characterized Western Europe at the beginning of the eighth century: land became a more important source of wealth relative to trade; the relative importance of trade shifted from the Mediterranean to the North Sea; the economic and political center of Western Europe shifted north; regions bordering the Mediterranean (including Rome) faced increased threats from Muslim raiders; the *de facto* divide between the Western and Eastern Churches widened.

Given the shift of trade importance toward the north, compounded by Muslim threats from the south, Rome, specifically, also suffered from Lombard threats from northern Italy. This is the political and economic landscape within which the Carolingians rose to power. Their center of power in the Frankish realms had become the center of politics and commerce in Western Europe. The time was ripe for their ascendancy, and the landscape dictated how that ascendancy would play out.

### 3.2. *Building State Capacity*

By 731 or so, Charles Martel had consolidated power within the Frankish realms. His sobriquet is associated with the Battle of Poitiers (732) where he “hammered” an army of the Umayyad Caliphate, halting any northward ambitions the Caliphate may have had and expanding Charles’ own power in southern Gaul. In the modern era, Charles’ victory came to be recognized as a decisive moment in Latin Christendom’s struggle against Islam and the beginnings of the *Reconquista*. While Charles was the effective ruler of Francia, he was never king. He was powerful enough that when the ineffectual Merovingian, Theuderic IV, died in 737, no new king was elected for the remaining four years of Charles’ life. Still, he never dared to assume the crown.

What Charles did do was pursue large-scale distributions of lands in the form of benefices to leading men of his realms. In doing so, he created vassals who were hopefully loyal and accepted the use of the lands in exchange for their military and administrative service. As discussed above, with the decline in trade the relative importance of land as a form of wealth was on the up and up. This practice was continued by Charles' sons, Carloman and Pippin III ("The Short"; Mayor of the Palace 741–751; crowned King of the Franks in 751) (Stephenson, 1941). Some of the lands involved were conquered or had previously belonged to the Carolingians; others were the result of secularizations of Church lands.

The term *benefice* needs to be handled with care. Pinning down what the concept meant in early medieval times is rarely straightforward. Furthermore, its meaning varied over space and evolved over time. Roughly, a benefice was a grant of usufruct associated with a quantity of land. A benefice was exchanged for obligations of service over time. An individual accepting a benefice became a *vassal* of the individual to whom services were due; the latter individual thus became the vassal's *lord*.<sup>2</sup> In principle, a benefice could be granted for a specific term or in perpetuity. However, during the Carolingian period the standard term was for the life of the vassal. (The expectation that benefices were hereditary was a later development and one that Carolingian kings and emperors decidedly sought to prevent.)<sup>3</sup>

As mentioned above, the Church was an important source of landed wealth that Charles Martel and subsequent Carolingians could tap into to provide benefices and create vassals. In the later fifth century, as barbarian groups settled within the Western Roman Empire's frontiers, significant parts of the Roman nobility sought Church offices (Mathisen 1993, 93–94). Holding imperial office was a hallmark of the senatorial class. The Church hierarchy was modeled after imperial government and offered nobles opportunities that were no longer available from Rome. The fifth-century senator and prolific letter writer, Sidonius Apollinaris, was one of many who took that opportunity, being elected to the bish-

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2. The Carolingian *beneficium* and the High Middle Ages *fief* can be treated analogously for our purposes. However, there were differences: e.g., starting in the twelfth century, allod-holders sometimes maintained usufruct while surrendering ultimate ownership to a lord, hence creating a fief. See Reynolds (1994, ch. 3) and (West 2013, 200–206).

3. Charlemagne disapproved: "We have heard that counts and other persons who hold benefices from us treat these as if they were their own allodial possessions" (Ganshof 1964, 37). Heritability of benefices was increasingly a de facto convention. Lords faced a tradeoff between helping ensure continuity of the governance hierarchy and decreasing their effective rights over the lands (Ganshof 1964, 37–38 and 46–49).

opric of Clermont. With a bit of characteristic hyperbole, he summed up his and his fellow senators' plights as such: "our nobility has decided [. . .] to give up either its homeland or its hair."<sup>4</sup>

With those nobles came their wealth and patronage networks. As a result, "the cathedral church by 500 was often the largest local landowner (and therefore patron), and, unlike in the case of private family wealth, its stability could be guaranteed—bishops were not allowed to alienate church property" (Wickham 2009, 59). All in all, ecclesiastical lands likely accounted for one third of the total in Western Europe (Wickham 2016, 14). But while bishops could not alienate their lands, Charles and subsequent Carolingians could expropriate them.

All else equal, secularizations of ecclesiastical lands would obviously not have been pleasing to either the clergy throughout Francia or the Church in Rome. As we shall argue below, however, those secularizations were an integral part of constitutional bargains between the Carolingians, the Church, and the nobility. The bargains resulted in, among other things, the legitimization of Carolingian rule and the state capacity with which they hoped to build and maintain an empire.

Given our argument regarding constitutional bargains, it is important to note that the extent to which Charles Martel and the other early Carolingians relied on secularizations has been a topic of controversy among historians. The German historian Heinrich Brunner (1887) originally argued for their importance and novelty, associating them with the development of European feudalism.<sup>5</sup> Brunner and his defenders highlight references to secularizations in contemporary and ninth-century sources. For example, the eighth century *Vita Eucherii* (Life of Eucherius) states that its namesake, the bishop of Orléans, was exiled by Charles so that he could expropriate the lands of Eucherius' church.<sup>6</sup> Also, a ninth century letter by the archbishop of Rheims, Hincmar, claimed that "of all the kings and princes of the Franks [Charles Martel] was the first to take property away from the church and divide it up." Hincmar refer-

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4. Quoted in Mathisen (1993, 89).

5. See also Stephenson (1941) and White (1962). For criticisms of the Brunner thesis see Bullough (1970) and Fouracre (2000, ch. 5). Wood (1994, 1995) provides an even-handed review of the textual evidence.

6. The other eighth-century source is a letter of Saint Boniface to King Æthelbald of Mercia (in England), and a passage in the continuation of Fredegar. The relevant part of Boniface's letter was likely inserted by another author but still dates to the eighth century (Wood 1994, 280). The ninth-century sources are the *Gesta abbatum Fontanellensium* (Annals of Fontenelle), the *Chronicle of Ado*, and a letter from Hincmar, archbishop of Rheims, to the Carolingian kings, Louis the German and Charles the Bald.

enced Eucherius and added an alleged account of him having a vision of Charles tormented in hell, having been dragged by a dragon from his tomb for his sins against the Church (Fouracre 2000, 123–24).

Alternatively, critics of Brunner note that contemporary sources refer to particular episodes (e.g., the case of Orléans) rather than general policies; furthermore, that Charles was by no means the first Frankish ruler to expropriate Church lands in particular cases (Fouracre 2000, 125–26).

Weighing the arguments of Brunner’s supporters and his critics, Wood (1995, 35) seems to sum up the controversy accurately: “The problem with the evidence for the appropriation of church land in the time of Charles Martel is not whether it happened, but what its scale was[.]” Even if their actions were not novel by the standards of Frankish rulers, Charles Martel and his progeny united what were the largely distinct kingdoms of Austrasia, Neustria, and Burgundy (comprising most of Gaul and the west-central part of modern-day Germany); they would also extend the *Regnum Francorum* to the remainder of Gaul, Frisia and Saxony, the northeast of the Iberian Peninsula, and parts of the Middle Danube region (Ganshof 1971, 86). In early medieval Europe: “it was necessary for anyone who hoped to rule a large area to secure loyalty of the magnates of the region and to obtain military support of their personal armed fellows” (Bachrach 1974, 12). Even if secularizations were not novel to the Carolingians, theirs had to have been unprecedented in absolute terms.<sup>7</sup>

In any case, there was a “very strong conviction in the later ninth century that [Charles Martel] had indeed robbed the Church” (Fouracre 2005, 13). Furthermore, ninth century Carolingian policy seems to acknowledge that, even if secularizations were not novel per se, they had been undertaken on a scale grand enough to have singularly provoked the ire of ecclesiastics. In a capitulary of 768, the first Carolingian king, Pippin III (the Short), admonished: “all laymen and seculars who hold ecclesiastical property should take it as a *precarium*” (Constable 1960, 226). *Precaria* were types of benefices; the implication of Pippin’s capitulary being that nobles holding secularized lands should understand that they remained ultimately the property of the Church. It also became Carolingian policy that, in addition to the standard tithe due to the Church, nobles holding ecclesiastical *precaria* owed an additional pay-

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7. Even Reynolds (1994, 113), in her famous critique of the feudalism concept, acknowledges that “it is certainly possible to connect the rise of the Carolingians with new bonds of loyalty [and] unprecedented success in marshalling their subjects to fight for them and run their government.”

ment—a *nona*, as in both a *nona et decima*—to compensate for the lands having been secularized (Constable 1960; West 2013, 44). Even given that secularizations occurred under Merovingian kings, there is no evidence that they felt the need to acknowledge them as extraordinary and needing compensation as did the Carolingians.

One thing that was a novelty, at least in degree, under the early Carolingians was establishment of vassalage tied to land. As stated above, anyone with aspirations to rule over a large geographical area needed to secure the loyalty of leading men across that region. The nobility, and many prelates as well, identified as part of a warrior class; to have the loyalty of these leading men meant being able to rely on their military support. That loyalty could be had in exchange for a variety of things: not only land but also moveable wealth, the latter in the form of direct payment or a share in the plunder from military exploits. Under the early Carolingians, however, vassalage became tied to the landed benefice. They presided over an unprecedented proliferation of vassals, each of whose interests was tied to the fortunes of a particular portion of the Frankish realms.

As we show in part 2, the tying of vassalage to benefices (land) created agents of governance with residual claimancy to the returns from governing.

### 3.3. *Legitimizing State Capacity*

The large-scale distributions of lands in the form of benefices were Carolingian investments in state capacity. To hold that state capacity together and tie it to the will of a Carolingian sovereign, however, would involve relying heavily on the loyalty inherent in the reciprocal bonds of vassalage and lordship. Loyalty was critical because the vassals were the warrior class that ultimately constituted the military might of their Carolingian lords. Without the reciprocal bonds being somehow self-enforcing, the need for lords to enforce their vassals' obligations by force would involve a problematic circularity.

Whether or not Carolingians' vassals were loyal would depend importantly on the extent to which their lords were perceived as legitimate. And legitimacy was in short supply for the upstart Carolingians. The Merovingians had ruled uninterrupted for nearly two and a half centuries; for many Franks it was inconceivable that someone without Merovingian blood could be monarch. Though he never assumed the crown,

Charles Martel played a precarious game all the same when he chose not to replace Theuderic IV in 737. When his son, Pippin III, found himself the lone effective ruler of the Frankish realms in 747, continuing rule without an actual monarch was probably not an option. Furthermore, Pippin had nary a drop of Merovingian blood to justify his ascendance to the throne. Indeed, Pippin and Carloman had in 743 identified a young man in a St. Bertin monastery who was believed to carry Merovingian blood and installed him as Childeric III, a puppet Merovingian.

The Church in Rome represented the overarching spiritual authority of Latin Christendom; its proclamations were backed by promises of salvation and threats of damnation, both of which were taken very seriously by medieval Christians (Asbridge 2004, 5–11). The Church in Rome also carried the imperial legacy of a more glorious past. For both these reasons, the pope could go a long way toward providing the Carolingians with the legitimacy they sought. The problem, of course, was convincing Rome that it was worth the Church's while to do so. Moreover, secularizations of Church properties were an important component of Charles' and Pippin's investments in state capacity. In and of itself, this was unlikely to make the Church want to befriend the Carolingians. But the Church in Rome was facing threats from the Lombards in the north and Muslim raiders from the Mediterranean to the west. These threats provided the Carolingians with a bargaining chip.

That bargaining chip would be cashed in. Political and economic changes can lead to the emergence of mutually beneficial opportunities for constitutional exchange (Congleton, 2011, 9). Based on the changes summarized in chapter 2 (sec. 2.1), that is precisely what happened in eighth century Western Europe. Of course, there was no literal bargaining table where the Carolingians, the Church, and the leading men of the Frankish realms sat down to hammer out changes in the division of powers and associated *quid pro quos*. However, all three groups benefited from the *quids* and the *quos* that ended up being offered in the process. Ultimately, the constitutional exchanges that occurred included the Church's legitimization of the Carolingian dynasty and the latter's aid in establishing foundations of the Papal States.

Pope Gregory III had entreated Charles Martel to aid Rome against the Lombard menace. Charles had indicated support but was noncommittal. Gregory died in 741 but, in 750, Pippin dispatched envoys to Rome with instructions to inquire of his successor, Zacharias, "concerning the kings in Francia, whether it was good or not that they then had no royal power." Zacharias, recognizing the softball lobbed his way, replied: "it

is better to call him a king who had royal power rather than him who did not” (Riché 1993 [1983], 67). When the envoys returned with Zacharias’ response, Pippin duly called Francia’s leading men to an assembly. In November of 751, the representatives of that assembly elected Pippin king. (Childeric III was tonsured and sent back to the monastery in St. Bertin. By then he had a son, Theuderic, who was duly sent off to a different monastery.)

Within months of Pippin III’s election, Zacharius was dead. However, his successor, Stephen II (pope 752–757), understood entirely the papal *quid* and was eager for the Carolingians to make good on their *quo*. He made his way to Paris to remind Pippin of his obligations in person and to plead for his assistance in Italy. Pippin traveled to Rome in 754 where Stephen consecrated him as king. Over the next couple of years, Pippin attacked the Lombards and secured the territory between Rome and Ravenna for the papacy. The former capital of the Western Roman Empire and then the Ostrogothic Kingdom, Ravenna had been under Byzantine control since 540 until the Lombards had put the exarch of Ravenna to death in 751. Pippin not only secured a substantial buffer zone between Rome and the Lombard Kingdom, he also allegedly “donated” the Ravenna exarchate to the papacy in 756. In doing so, he strengthened the Western Church’s position in Italy, made the pope a secular ruler, and ensured that the Lombard displacement of the Eastern Church was not reversed. As Pirenne (2001 [1937], 227) notes: “[T]he Pope felt that he was protected from his enemies, and that the orthodox faith was safe, but also that he was obliged to rely absolutely on Pippin’s protection.”

Pippin III died in 768 and the Frankish kingdom was left to his sons, Charles and Carloman. The latter died in 771 and that left Charles (“The Great”; Charlemagne) as sole king. Charlemagne expanded his kingdom; he secured Aquitaine Gaul, made inroads into Bavaria and Saxony, and conquered the Lombards in northern Italy. In 774 he visited Rome to celebrate Easter and insisted that he and Pope Hadrian I (r. 772–795) both swear oaths of protection and mutual fidelity before he entered the city walls. While the legitimacy of the “Donation of Pippin” was, and remains, dubious, Charlemagne still read and affirmed it before the pope; he additionally granted Corsica and the duchies of Spoleto and Benevento to the papacy.

On the part of Charlemagne, this was not just a simple affirmation of Pippin’s donation. The papacy could not defend its frontiers as defined by Pippin III in 756. Furthermore, those frontiers were a source of ten-



sion with the Lombards, at that time ruled by the formidable King Desiderius (r. 756–774). Charlemagne had married Desiderius’ daughter, Desiderata, in 768. Given the hostile intentions of Desiderius and other Lombard princes toward Rome, Charlemagne found himself in a difficult position. Ultimately, Charlemagne chose to send Desiderata back to her father, affirm himself as “patrician of the Romans and the guardian of the papacy” (Riché 1993 [1983], 97), and march his army across the Alps in 773. His Easter visit to Rome coincided with the nineteen-month siege of Pavia, the Lombard capital. When the siege ended Charlemagne had himself crowned King of the Lombards, insisting on all princes and magnates doing him homage.

Six years later, the Church would again, as in the case of his father, legitimize Charlemagne’s (now much broader) authority in Europe. On Christmas day 800, Pope Leo III (r. 795–816) crowned Charlemagne emperor of the Romans. The Carolingian dynasty was legitimized. Indeed, within a half century that dynasty could likely claim more legitimacy than the Merovingians had been able to establish in two hundred plus years. Not only was there no doubt that Charlemagne was the legitimate ruler of the Franks, he could also lay claim to legitimate rule of the entire West, as could his heirs. The Carolingians were legitimate; the Church in Rome was secure and stood as the ultimate and lone spiritual authority in Latin Christendom; and the Frankish nobility found themselves flush with new lands and, associated with them, wealth and de facto political power.

After the Carolingians, bargains between monarchs and the Church would continue to loom large in Western Europe’s constitutional developments. Regarding the later Middle Ages and Early Modern period, Johnson and Koyama (2019) provide an excellent study. Monarchs tried to—often successfully—leverage religious authority to buttress their rules. Those efforts were crucial in the eventual development of nation states that were viewed as legitimate. Johnson and Koyama emphasize the tradeoffs that monarchs often faced between persecuting religious minorities (e.g., Jews), which would increase their spiritual legitimacy, and toleration. Regarding the latter, toleration could be strategically used to increase revenues. For example, by offering monopoly rights to Jews to lend at interest—which was generally prohibited by usury laws—a monarch could insist on extracting a certain portion of the rents, provided they protected the Jews from persecution. An important development in the Early Modern era was when, in a preponderance of cases,

this tradeoff would become moot: “As states built their own apparatus for tax collection and the enforcement of laws, they were forced to abandon identity rules and to employ more general rules of behavior” (Johnson and Koyama 2019, 4). To wit, there came a point where rule of law dominated the exploitation of religious minorities for either justification or for revenues via group-specific rents.

“To put it bluntly”—so say Johnson and Koyama (2019, xi)—“to understand the rise of liberalism, one has to study the history of religious freedom. And to understand religious freedom, one needs to study the historical relationship between religion and the state.” We embrace this specific statement as well as the more general one implied. Liberalism is founded on rule of law and an “open access society” (North et al. 2009; see below). It insists that individuals are treated qua individuals—as opposed to as members of specific religious, cultural, and/or socio-economic groups. Consistent with this, individuals are governed by rule of law; they are also provided open access to influencing the governance. These are themes that will occur below, both in this chapter and throughout the book.

### 3.4. *Harnessing State Capacity*

The Carolingians had established a vast network of vassals that represented imperial state capacity. With the aid of the Church in Rome, they had legitimized their dynasty and, in so doing, worked to mitigate agency problems and make that state capacity operative. That is not to say that agency problems were completely solved. To the contrary, by the time Charlemagne was crowned emperor in 800 he claimed authority over nearly 430,000 square miles of territory, divided into 600 or so counties (McKitterick 1983, 87). Each of these was administered by a count, a leading noble of that region who was also a Carolingian vassal. As emphasized above, these vassals were warriors and sources of imperial military levies. Far-flung across Western Europe, counts could face incentives that did not always align well with those of their Carolingian lords. Additionally, when a count acted contrary to his lord’s interests, getting him to fall back in line could be difficult and costly.

In reference to the Carolingian Empire, mid-twentieth century German historians, following the lead of Gerd Tellenbach, referred to a state aristocracy (*reichsaristokratie*):

The nobles who had first helped to establish Carolingian power stemmed from a limited group of perhaps 30 families. These rich and ambitious landowners had also been office holders. [. . .] Charlemagne established this suite of nobles across all of Carolingian Europe. (Riché 1993 [1983], 137)

An empire founded on a state aristocracy is a very different creature than the modern nation-state, the latter being identified with a meritocratic bureaucracy and centralized monopoly of force (Weber 1965 [1919] and 1978 [1922]). Outside of the royal court, Carolingian governance providers were landed magnates with territorial interests. Military resources were decentralized and spread among these magnates. The task of centralizing and consolidating the control of violence was a daunting one.

In the end, the Carolingian project failed; Charlemagne's empire would not survive the ninth century. From its ashes emerged hierarchies of governance providers within which the control of violence remained largely decentralized. The feudalism of the High Middle Ages was a legacy of the Carolingian project. In the second part of this book, we will focus on how it set the stage for the development of enduring Western traditions of political and economic liberty.

For the moment, we wish to elaborate on Carolingian efforts to harness the imperial state capacity. Although they were ultimately unsuccessful, those efforts were quite innovative. Those efforts represented steps toward—granted, in large part unintentionally—what Douglass North, John Wallis, and Barry Weingast (2009) have termed an *open access order*. In their book, *Violence and Social Orders*, North et al. emphasize the ability of societies to structure the interactions of individuals in ways such that violence is controlled: that its occurrence is decreased and that the residual is employed in predictable and relatively protective, rather than predatory, ways. In an open access order, violence is monopolized by a state, the influence over which is determined by broad-based political competition.

According to North et al., there are about two dozen developed countries today that can be characterized as open access orders. For most of the last 10,000 years of human history, they argue, the predominant societal arrangement toward controlling violence has remained what they call a *limited access order*. In a limited access order, violence is controlled by allocating claims to economic rents to political elites (i.e., those who are de facto powerful via their command over violent services). The allocation is such that elites have an incentive to refrain from using violence

in ways that destroy those rents. To wit: accept that you are in a world of thugs but make it worth their while to be a bit less thuggish.

The relationships between the elites in a limited access order are personal, as in, for example, those between a lord and a vassal. They are based on the exchanges of privileges between particular individuals with access to violence. However, those personal relationships between elites can sometimes develop into impersonal ones, transforming privileges into rights. When relationships between elites are impersonal and conceived of in terms of rights, opportunities can arise to extend those arrangements to other individuals. A society within which relationships between elites have become impersonal is on the “doorstep” of a transition to open access (North et al. 2009, ch. 5).

Just because a society is on the doorstep, does not mean that it will necessarily—or even likely—walk through the door. As North et al. (2009, 150) observe: “Historically in the West, societies in Athenian Greece, Republican Rome, and the Renaissance city-states of Northern Italy appear to have been on the doorstep of the transition, although all three failed to produce open access societies.” Like Greece, Rome, and the Italian city-states, the Carolingians adopted a number of governance innovations that moved their empire toward the doorstep (Young 2021). The Carolingians were certainly not aiming for a more open-access society in the sense of North et al. Rather, they were attempting to rein in their vassals, bending them to royal will and curbing their acquisition of independent power (McKitterick 1983, 93).

Among these governance innovations, the *missi dominici* (envoys of the lord) were notable. *Missi* were agents tasked with asserting the royal will. They provided both monitoring of imperial vassals and a check on their actions. They were responsible for oversight of the royal fisc and for organizing political support of Carolingian policies (Innes 2000, 194). *Missi* also had the authority to adjudicate disputes in court and mete out punishments (McKitterick 1983, 93; Innes 2000, 94; Frassetto 2003, 269–70). This provided a direct check on the courts of regional magnates. Furthermore, because adjudicators generally profited via a portion of fines (McKitterick 1983, 86), *missi* provided competition that incentivized counts to provide higher-quality adjudication services.

*Missi* had existed under Merovingian kings but were employed intermittently. Charlemagne regularized the office and gave it a fundamental role in projecting Carolingian authority. He drew his *missi* from the realms’ most powerful magnates. There were jurisdictions, called *missatica*, to each of which was appointed two *missi*: one cleric and one layman

(Ganshof 1957, 179; Ganshof 1971, 57; McKitterick 1983, 93–94). Like the counts who were appointed to a particular territory in which they were beneficed, *missi* were magnates within their own *missatica*. However, whereas there were hundreds of counties, there were only, depending on the time period, three to eleven *missatica* (McKitterick 1983, map 5; Rouche 1989, 430). Thus *missi* exercised jurisdiction over territories that were considerably distant from their own lands; their power and associated prestige emanating directly from the royal authority (McKitterick 1983, 93; Innes 2000, 193).

The Carolingian *missi* represented an adroit attempt at balancing the benefits of local governance by residual claimants and the costs of the associated agency problems. Matthew Innes (2000, 193) provides an insightful summary:

The system of *missi* was no attempt to parachute in outsiders as royal agents: the role of this tier of government was to link centre and locality. [. . .] Through careful choices in the appointment of *missi*, kings were able to maintain a regional balance of power between local factions and families.

On the one hand, the *missi* were “local” to the extent that they were beneficed vassals and/or leading ecclesiastical men within their own *missatica*; each had his fortunes linked, in part, to the governance that he provided within his particular *missaticum*. In this sense, their incentives were very much aligned with those of to whom they were providing governance. On the other hand, a *missus* could have jurisdiction over one hundred counties or more; in regard to those in which he did not hold lands, his elevation above his peers was entirely by virtue of royal favor. And, of course, being dependent on royal favor helped to tie the incentives of *missi* to the royal will.

The Carolingians also created a tier of permanent and professional assessors for the county courts. Under the Merovingians, as well as Charles Martel and Pippin III, the county court—or *mallus*—was presided over by the count or his representative. The count was assisted by assessors who were tasked with determining correct judgments according to customary law. However, those assessors were temporary, ad hoc appointments whose knowledge of customary law could be questionable and who were likely more beholden to the count’s will in any case. Charlemagne’s *scabini* were an attempt to, consistent with the royal will, impose what we would today call the rule of law (Ganshof 1965, 51).

That each individual would have his rights recognized and protected in the *mallus* was a chief concern of Charlemagne's (Ganshof 1965, 52). Granted, those rights could be dependent on the social status of the individual, most importantly whether they were of free or non-free. That being said, Charlemagne aimed to ensure that an individual of particular social status—even the lowest—had his disputes adjudicated impersonally: "Arbitrary actions liable to affect people's lives or their possessions were prohibited" (Ganshof 1965, 52). *Scabini* were chosen for their knowledge of the law and, just as in the case of *missi*, were beholden to the royal will. Their function, then, was to both monitor the counts and to provide greater legal expertise than had previously been applied within the *mallus*.

Both *missi* and *scabini*, along with other Carolingian governance innovations, made relationships between the kings and the elites of their realms more impersonal, at least in principle.<sup>8</sup> Of course, evidence of the de facto effectiveness of these innovations is hard to come by. We know relatively much about what the Carolingians *said* from their capitularies and other sources; relatively little about how their innovations *worked in practice*. For example, after 802 it was prescribed for each pair of *missi* that they tour their jurisdiction "one month each, four times a year." McKitterick (1983, 94) "suspects that all these journeys would rarely have taken place." Her suspicion notwithstanding, we just do not know how effective these innovations were in regard to their intents.

We do know that they ultimately were for naught, seeing as the Carolingian Empire crumbled and did not endure beyond the ninth century. Why was this the case? That is a matter of debate and one that is well beyond our abilities to adjudicate. In passing, the Viking threats of the ninth and tenth century have been pointed to, as have the personal failing of certain Carolingian kings. But for our purposes, it remains true that Western Europe of the tenth century, heading into the High Middle Ages, retained some important legacies of Carolingian governance. However, the disintegration of the Carolingian Empire also left a great deal of political disorder and constitutional uncertainty in its wake. Without overarching Carolingian rule, an even more decentralized constitutional order would have to develop.

In the meantime, however, a rash of individuals with access to violent services began to assert themselves in the power vacuum. For many, this

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8. On the *missi*, *scanbini*, and other innovations—including those associated with public assemblies, the use of the written word, and oath-taking—see Young (2021).

made the landscape of Western Europe appear increasingly chaotic and dangerous. In the late tenth century, a movement emerged in reaction. Initially organized by bishops, and characterized by a surprising level of popular participation, this movement aimed to give peace a chance.

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## CHAPTER 4

# The Peace of God



In 989, at the abbey of Charroux, in the north of Aquitaine, France, a council was convened by Archbishop Gumbald of Bordeaux. Along with Gumbald, the bishops of Angoulême, Limoges, Périgueux, Poitiers, and Saintes were in attendance. The council's stated aim was that "the criminal actions that, because of our long delay in calling a council, have been sprouting through evil habit in our diocese will be rooted up and more constructive behavior implanted."<sup>1</sup>

The Council of Charroux was attended not only by the clergy, but also by "a great concourse of people of both sexes seeking divine assistance for eradication of the noxious and pestiferous customs prevailing thereabouts and for the substitution of useful ones."<sup>2</sup> The abbey contained a relic of the True Cross and the "monks brought the relics of their patron saints to the gathering, a practice that would become standard at later Peace councils" (Head 1999, 669). The later Council of Clermont (1095), at which Pope Urban II famously called for the First Crusade, is recognized for remarkable popular participation and religious fervor. However, what is less widely-known is the fact that the Council of Charroux—and subsequent late-tenth and early-eleventh century

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Portions of this chapter are adapted from Young (2022).

1. Quoted in Head (1999, 656). The council was perceived to be of great importance; his is implicit in the fact that it was the first episcopal council that had been called in Aquitaine in over 50 years (Head 1999, 667).

2. Quoted in MacKinney (1930, 184).

ecclesiastical councils—had similar, and unprecedented, participation and fervor. Indeed, they began a movement that is now referred to as the Peace of God.

The Peace of God was in large part a response to the uncertain political landscape that the disintegration of the Carolingian Empire left behind. The last Carolingian emperor (Charles III “The Fat”) died in exile in 888. He had failed to defend his realms against Viking raids and, as a result, faced rebellion by his leading men. Without overarching Carolingian rule, what remained was a mix of Carolingian vassals and what historians refer to as “banal” lords. These latter individuals could claim some sort of political authority based simply on their command of violent services. In contrast, the former have been referred to as “landed” or “noble” lords (Bouchard 2004, 145).

Without the backing of Carolingian overlords, the erstwhile nobility found themselves in competition for power with armed upstarts. The proliferation of non-noble individuals claiming some sort of political authority was an “explosive phenomenon” (Bisson 1995, 749). It was accompanied by the encastellation of the Western European landscape: “By the year 1100, any lordship with any pretension to importance needed to control more than one [castle]” (West 2013, 191). And the proliferation was not limited to secular claimants: “Bishops, cathedral chapters, and monasteries were also establishing more coherent lordships” (Koziol 2018, 3). In the post-Carolingian power vacuum, any individual who could employ the threat of physical force, spiritual sanctions, or some combination of the two, was stepping up to stake his claim. And the more time that passed, the more the lines between noble and banal lordship blurred.

This politically fractured environment created pervasive uncertainties for the inhabitants of Western Europe. They increasingly lacked clarity regarding who was making claims to authority, whether those claims were in any sense legitimate, and where the jurisdictional boundaries between them lay. The jurisdictional uncertainty would have been particularly disconcerting. Early medieval governance was polycentric to begin with; for an individual to be subject to multiple lords who were armed and dangerous was somewhat old hat. However, people now not only found themselves facing new and unfamiliar lords, the demands of these lords were also often redundant and in conflict with one another. As the historian Geoffrey Koziol (2018, 130) observes:

Castles were everywhere, as were lordships. And the lordships were not territorially distinct and coherent. Lordship was not yet a terri-

tory; it was a power, the exercise of certain kinds of rights (military, judicial, and fiscal), with different rights asserted over the same lands and people by different lords (and different kinds of lords, from counts of viscounts to castellans and advocates to bishops, cathedral chapters, and monasteries).

The unarmed were obviously in a poor position to arbitrate conflicting demands by multiple lords, and deciding which of those claims to respect was very much a *damned if you do and damned if you don't* scenario.

The proliferation of banal lordships, the encastellation of Western Europe, and the associated insecurity bring to mind a Hobbesian “war of all against all”: those with access to violence used it freely, while the unarmed were left to lives that were “nasty, brutish, and short.” Consistent with this, Thomas Bisson (1994, 18) describes the “violence of castellans and knights” as “personal, affective, but inhumane; militant, aggressive, but unconstructive” and “based on the capricious manipulation of powerless people.”

Of course, one might ponder whether the new banal lords were any more “capricious” than their Carolingian predecessors. Since when has nobility been an assurance against unpredictable, unreasonable behavior? However, nobility and its link to over two hundred years of Carolingian rule probably fostered the semblance of legitimacy. In contrast, banal lords likely lacked such a semblance and this, along with their multiplicity and unfamiliarity, led them to be perceived as capricious. Such perceptions are what is most important for understanding the Peace of God movement.

Historians refer to this period in Western Europe as the “feudal anarchy” that separated the early medieval era from the High Middle Ages.<sup>3</sup> While historians such as Bisson believe that the feudal anarchy was characterized by an elevated level of violence, others are not convinced. However, there is consensus among historians that the inhabitants of Western Europe perceived themselves to be living in a more chaotic and violent world. Even if there was no great increase in actual violence, lordships were multiplied and more densely concentrated; this made local political frictions a more obvious part of everyday life for individuals (Koziol 2018, 2–3).

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3. The historian Georges Duby famously linked together weakened Carolingian public authority, an increase in private wars, and the emergence of the feudal order. Duby (1977) is the most relevant contribution in English, though it is in large part translations from his 1953 *La Société aux XIe et XIIe Siècles dans la Région Mâconnaise*.

Writing in the early twentieth century, the sociologist Max Weber (1946 [1919]) defined government in terms of its ability to claim a legitimate monopoly on violence. Speaking of government in the modern sense while discussing the early medieval era is anachronistic. However, the violence of the post-Carolingian era—both actual and the potential for it—increasingly lacked the semblance of legitimacy. Lordship was becoming perceived more as thuggery than governance.

An important role that Peace councils came to play was in moving perceptions of thuggery back toward those of governance. A major goal of the councils was to define and make stable jurisdictional boundaries and, by doing so under the auspices of the Church, legitimize them. Two major tools employed by the councils were the extraction of oaths and the use of spiritual sanctions. The latter could be excommunication—excluding an individual from the sacraments, including receiving the Eucharist; or it could take the form of anathema where an individual was entirely excluded from the Christian community.<sup>4</sup> As we have noted, Medieval Christians took these sanctions very seriously. This was true in general and specifically for those who claimed or aspired to be lords. Legitimate lordship and nobility were defined by access to violence and yet, somewhat paradoxically, that violence was inherently sinful unless constrained in particular ways dictated by the Church.

Then there was the extraction of oaths. An important role of Peace councils was to assemble the armed men of a region and have them swear against the use of violence in certain ways. Most particularly, they swore to not use violence against Church properties; more generally, they swore off violence against the unarmed (both clergy and commoners). The specifics here are important. The Peace movement decidedly did not decry all applications of violence; its canons did not include prohibitions against lords' extractions and their provision of governance generally. Rather, the Peace movement sought to prohibit "evil customs" and "bad lordship" (Koziol 2018, 1; Bisson 1995, 752). In medieval times, "customs" was a broad term referring to "all the powers and obligations of men in the customary law of their communities" (Harding 1980, 428). Seeking to prohibit "evil customs" and "bad lordships" amounted to an attempt to legitimize political property rights and jurisdictional boundaries.

The Council of Charroux was the beginning of the Peace of God movement. Over the next fifty years, there were twenty-three additional Peace

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4. For example, see Pavlac (1991, 22).

councils in France and three in Catalonia, as the movement reached into the Iberian Peninsula.<sup>5</sup> During the latter part of this period—first at the Council of Elne (or Toulouges) in 1027—bishops sometimes additionally proclaimed a Truce of God (*Treuga Dei*). Whereas the Peace sought to put specific limitations on violence at all times, the Truce generally prohibited violence during specific times of religious significance (Head and Landes 1992, 7–9). In addition to France and the northern part of Iberia, the Peace and Truce was the basis for the German *Landfriede* (“Peace of the Land”) and between 1103 and 1135 there were at least 18 imperial Peace statutes as well as at least 8 regional statutes in Alsace, Bavaria, Brixen, Hennegau, Saxony, and Swabia (Berman 1983, 494).

Even with the Truce of God, there was an important exception to the general prohibition of violence: “often the police forces of the prince were specifically exempted from the proscription on combat” (Head and Landes 1992, 8). This exemption served to emphasize the fact that the Peace movement was not about prohibiting coercion across the board. Instead, it was about delineating and stabilizing the jurisdictional boundaries within which governance was provided. This was evident at Peace councils where the arbitration of secular claims to political authority was at the fore. Bishops and other clergy played the role of both arbiters and third-party enforcers to competing claims. As Goetz (1992, 272) states: “when secular jurisdiction and, above all, private legal agreement failed [. . .] ecclesiastical powers could add the threat of spiritual sanctions.”

With the proliferation of banal lordships, Peace councils provided a forum for their jurisdictional contestations, both among each other and with members of the older Carolingian nobility. Bishops negotiated settlements and extracted oaths to respect them. If a lord was subsequently tempted to break his oath, he did so under threat of excommunication or anathema, risking damage to or complete severance of his relationship with God.

Bishops were very concerned about the competing claims to political authority that they were helping to negotiate. This was in large part because bishops figured prominently among the claimants. They were holders of political property rights, the returns to which were threatened by the post-Carolingian uncertainty. This is not to deny that bishops often also had sincere interests in protecting the poor and unarmed per se. Notwithstanding, their organization of Peace councils was at least

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5. For the councils in France, see Goetz (1999, table 1); for Catalonia see Kosto (2003, 146).

“partly self-interested, for attacks upon the peasants as upon the other protected classes were bad for the ecclesiastical income that came from them both in cash and by way of services” (Cowdrey 1970, 48).<sup>6</sup>

The Peace council of Le Puy in 994 provides an illustrative example (Koziol 2018). Bishop Wido of Le Puy brought together at least eight other bishops and several “princes and nobles.” The bishops represented “vast regions that had been left ‘princeless’ by the demise of the old Auvergnat dukes of Aquitaine and the growing powerlessness of the margraves [Carolingian-appointed military governors] of Gothia at Toulouse” (58). In their absence, numerous banal lordships emerged. The result was not so much overwhelming violence but rather “the absence of any structured forum within which political decisions could be made” (58). The Peace council provided a forum within which “the powerful could come together to make agreements that would regulate their actions during conflicts and would be binding because they had agreed to and swore to them” (58–59).

The council benefited the bishops because the proliferation of banal lordships threatened their claims to authority. It also threatened the claims of the higher nobility. The latter were able to manage the lesser lords “only by setting some against others and constantly campaigning and negotiating[;] [t]heir sponsorship of the Peace of God was another weapon in their arsenal” (Koziol 2018, 59). For both bishops and lay lords, “Peace” amounted to, first and foremost, jurisdictional clarity and integrity.

We can also get a sense from the Peace canons of how councils were focused on the definition and enforcement of jurisdictional boundaries. The canons of the Saint-Paulien (993 or 994) Peace of God have come down to us more or less complete. They explicitly include prohibitions against “hold[ing] a serf (*villanum*, *villanam*) for ransom,” and “exact[ing] any ‘evil custom’ (*mala consuetudine*) from lands of churches, bishops, chapters, and monasteries” (Koziol 2018, 51). In interpreting the first of these prohibitions, it is important to note that a serf was legally tied to his lord. While a serf was not a slave, his lord could apply quite a bit of coercion and this was considered perfectly legitimate. As such, the Peace’s prohibition against holding serfs was clearly aimed against *others* (i.e., not their own lords): it was about delineating jurisdictional boundaries. Furthermore, while the prohibition on evil cus-

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6. This perspective is related to Ekelund et al.’s (1989, 2011) analysis of the medieval Church as an organization seeking to profit through vertical integration, monopoly, and rent-seeking.

toms is straightforward, the emphasis on religious estates is notable. The bishops were clearly concerned with jurisdictional boundaries that were directly relevant to themselves.

Further evidencing the emphasis on jurisdictional delineation, Peace canons did not seek to prohibit violence between lords in general; indeed, they recognized the “legitimate, publicly declared and acknowledged state of conflict between two lords” (Koziol 2018, 67; 66–67 generally). Such a legitimate, public state of conflict was known as a feud or *werra* and “although personal hatreds and vengeance for personal affronts were part of it, it was also fought for control of territory and public jurisdiction over territory and subjects” (67). During a *werra*, participating lords were fair game, as were their lands and other property. Furthermore, the unarmed residing within a lord’s jurisdiction were, in the context of a *werra*, considered to be akin to his property, and therefore legitimate targets for seizure.

Peace councils did not seek to change any of this in principle. However, they recognized that violence against the unarmed could be excessive and, importantly, the legitimacy of such violence was often called into question due to the uncertainty of jurisdictional claims and boundaries. As such: “What the Peace of God did was set limits to actions during legitimate wars and disputes. Its intention was not to end *werrae* but to restrict the range of persons and places subject to their harm” (69). Limiting *werrae* also circumscribed governance rights. For example, Moore (1992, 312) notes that, regarding the early council at Saint-Paulien (993–994), “the two first and most important [canons] forbade the exercise of certain powers of taxation and coercion except by those—counts and bishops—to whom they properly pertained.”

The Peace of God movement began with councils organized by bishops who had interests in reviving constitutional stability in Aquitaine and the surrounding regions. Their interests were rooted in their own prominent positions in the structure of political property rights. However, the lay magnates had similar interests, and those interests were similarly threatened by the political instability of the feudal anarchy. It is no surprise, then, that over time they climbed aboard the Peace of God bandwagon, and increasingly found a way into the driver’s seat.

To be clear, lay magnates were involved in the Peace of God movement from the get-go. Bishops sought to arbitrate the amorphous and conflicting claims to authority by lay lords, and having the magnates be part of that process was essential. However, the lay magnates were initially not the primary organizers of, nor driving forces behind, councils.

Furthermore, kings were largely removed from the early Peace Movement: rather, “the Peace and Truce developed as the product of consensual agreements between the ecclesiastical and secular elites” (Kozioł 2018, 23). However, magnates and kings eventually appropriated the practices (Wickham 2016; Head and Landes 1992). Over time, the greatest of the lay lords (counts and especially dukes) increasingly took the lead in organizing Peace councils.

In Aquitaine, Duke William V (r. 990–1029) “was a zealous sponsor of the Peace councils, and it was his intention by their means to win for the ducal authority some of the prestige that the peace activities were winning for [bishops]” (Cowdrey 1970, 59). Also, it was Norman dukes who took the lead in organizing the Peace councils that subsequently spread in the north. The kings of France—in terms of lay lords, the greatest among equals—were not slow to recognize the value of Peace councils in delineating and stabilizing jurisdictional boundaries: “Kings Louis VI [r. 1108–1137] and Louis VII [r. 1137–1180] followed more resolutely the path of the dukes of Normandy” (Cowdrey 1970, 63).

The eventual involvement of kings (and also the emperors in Germany) meant that the Peace movement came to incorporate multiple levels of the amorphous, polycentric governance hierarchy, including participants from both the first and second estates (i.e., the lay lords and ranking clergy, respectively). The turn of the eleventh century was the nadir of Carolingian governance structures, in terms of both *de facto* relevance and perceived legitimacy. The Peace movement was key to redefining and stabilizing a polycentric structure of governance in Western Europe that would come to characterize the High Middle Ages. As Cowdrey (1970, 58–59) states: “political structures began to be renewed when growth points of authority and jurisdiction gradually appeared in the lesser and greater fiefs[. . .] The kings in due course followed suit and so moved towards the balanced feudal polity of the thirteenth century.” The renewal of political structures was evidenced by their legitimization over time.

Whereas the tenth century witnessed a disconcerting devolution of Carolingian lordship into a proliferation of banal castellans and their bad customs, during the course of the twelfth century: “Lords possessed of powers to command, judge, and tax were deemed noble *ipso facto*”:

It became harder to dominate simply by possessing and rewarding while bad lordship incurred the contempt of an ever more influential church. Lord-kings were best placed to benefit from the “assimila-



tion” of nobility to lordship. [This] thinking was itself a cause of the progress of dynastic monarchy at the expense of lesser lordships in the twelfth and thirteenth centuries. (Bisson 1995, 754)

By providing a forum via which jurisdictional boundaries were delineated—and transgressions of those boundaries were sanctioned—the Peace movement helped to enshrine the structure of political property rights within the conventions and norms of the time.

As mentioned above, Weber (1946 [1919]) conceived of government as a monopoly on legitimate violence. This view of government is now commonplace among social scientists. While Weber was obviously not even a twinkle in a medieval eye, the Peace movement may have been critical for creating political conditions in Western Europe that could have informed his thought. The historians Thomas Head and Richard Landes (1992, 8) note the Peace and Truce were co-opted over time by the secular authorities and, particularly in the case of the latter, “truce days became the first moments at which, at least in theory and in legal definition, public authority held a monopoly on the legitimate use of violence.”

Governance in medieval Western Europe was polycentric: authority was decentralized, dispersed throughout multiple levels, and claimed by both secular and ecclesiastical lords. However, the Peace and the Truce produced overarching claims regarding when and in what jurisdictional contexts coercion could be legitimately applied. While the provision of governance was decentralized, the Peace movement proclaimed “from above” what constituted the legitimate application of violence in governance.

Before we conclude this chapter, we must address the fact that some historians have discounted the substantive impact of the Peace movement. There is no doubt that the Peace movement was a prominent development in the eleventh and twelfth centuries. But did it have a significant and enduring impact on the political landscape? We argue that it did. The historians who disagree approach the Peace movement from a very different perspective. Collins (2013, 177) is typical in acknowledging the rapid proliferation of the Peace movement while questioning its long-run constitutional impact: “the real threat to the movement came when the aristocracy institutionalized it [which] simply limited warfare to specific days and seasons.” Historians such as Collins primarily view the Peace of God as a religious and popular movement; its “institutionalization” by lay magnates and kings was, by definition, indicative of its

failure. As Koziol (2018, 89) puts it, the reason that the Peace of God is sometimes deemed a failure is that “not only did it not bring peace, in some ways it codified the right to violence.”

Here, of course, we have been concerned with the Peace movement’s role in facilitating the definition and stabilization of political property rights.<sup>7</sup> A “codifi[cation of] the right to violence” is precisely what defining and stabilizing political property rights means. Its institutionalization was likely, if anything, an important step toward formalizing these rights. We have already quoted Head and Landes (1992, 5) above: “[O]ver the course of the twelfth century, the Truce of God was inexorably co-opted by secular authorities and became part of the merging constitutional order of governance and peacekeeping.” And Koziol (2018, 3) reaches a similar conclusion: “The Peace of God was one of the first and most fruitful means by which lords created the territorialization of local power that became a hallmark of the Middle Ages.”

We are unaware of historians who take serious issue with the above, at least regarding France and the northern Iberian Peninsula.<sup>8</sup> However, there are some historians who discount the Peace movement’s impact outside of those regions. For example, Cowdrey (1970, 63–64) holds that, though the movement spread quickly into Burgundy and Italy, it had “no appreciable consequences there for the structure of temporal authority”; he makes a similar claim regarding the German realms. Cowdrey’s point regarding Italy is not seriously contested. However, his claims regarding Germany are based on the Holy Roman Emperor effectively co-opting the movement. The Peace movement was all the more important to imperial authority given that its introduction closely corresponded to an interregnum that created a perceived need by “the inhabitants of many localities to protect or assert their own rights” (MacKinney 1930, 199).<sup>9</sup>

Ultimately, there seems to be broad agreement that the Peace movement had important and enduring effects on medieval political structures. Paxton (1992, 40) concludes: “The Peace of God did not create

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7. From a different political economy perspective, Bouckaert (2007) explores the role of the Peace movement in the development of civil society in Europe.

8. See Bisson (1977) for a discussion of the Peace of God in Catalonia.

9. The Peace and Truce appeared in Germany under Emperor Henry III (r. 1039–1056) but he never wanted them to be meaningful: “Had Henry been able to hand on his scepter and imperial program to a mature heir, without the disintegrating effects of an interregnum, the Peace and Truce of God might never had been introduced into Germany” (MacKinney 1930, 198–99). In the event, though, a 6-year old Henry IV ascended to the throne.

the circumstances that led to the monumental changes of the eleventh century, but it acted as a focus for all the forces—social, economic, political, religious, popular, ideological—that did.” And Moore (1992, 326) summarizes more succinctly: “the Peace of God was, for better or for worse, the harbinger of a new age.” More recently, Koziol (2018, 132) concludes his book on the Peace of God by stating: “It was Europe’s first true legislation and its first law of war.” The Peace movement was a critical late chapter in the historical progression from the Roman Empire, through the early barbarian successor kingdoms and then the dominant Carolingian Empire, and into the High Middle Ages. This transition entailed significant constitutional developments. In the next chapter and the second part of this book, we turn to analyzing the constitutional structure of the High Middle Ages.

Before we make that turn, we conclude this first section of the book by noting that there is solid empirical evidence that the developments outlined in the last two chapters—the Carolingian innovations to the feudal system; the Peace movement’s subsequent delineation, stabilization, and legitimization of jurisdictional boundaries within that system—together set Western European politics on a decidedly different trajectory. Political scientist Lisa Blaydes and economist Eric Chaney (2013) examine data on the rulers’ tenures in Western Europe (Christian kings) versus the Islamic world (Muslim sultans).<sup>10</sup> They document a divergence in average tenure, favoring Christian kings, that manifests around the time of Charlemagne and is statistically significant by 1000. Blaydes and Chaney attribute this to “forms of executive constraint that emerged under feudal institutions in Western Europe” (16).

Our interpretation is broadly consistent with Blaydes and Chaney’s. (They emphasize Carolingian developments more; but the Peace of God developments are complementary.) In the decentralized feudal system of medieval Western Europe, monarchs had to respect and bargain with other holders of political power. While this was a constraint on the authority of Christian kings, it also forced an alignment of their interests with those of other lords, both lay and ecclesiastical. Furthermore, the Church’s spiritual authority legitimized monarchs’ authorities within those constraints. The Carolingian and Peace of God developments contributed to Western Europe’s rulers having authority that was more limited but also more secure and stable over time.<sup>11</sup>

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10. The underlying data comes from Bosworth (1996) and Morby (1989).

11. This point is also emphasized by Scheidel (2019), who links the relative weakness of medieval Western European rulers to the institutionalization and stabilization of the power that they did yield.

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PART 2

The Medieval Constitution

*Theory and History*



## CHAPTER 5

# Political Property Rights and Constitutional Bargaining

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In 1126, Louis VI, King of the Franks, raised an army and marched against the count of Auvergne. It seems that the count had been harassing the bishop of Clermont. Known alternatively as “the Fighter” and “the Fat”—a middle-aged warrior-king who was packing on the pounds—Louis planned on putting a stop to it. However, Duke William X of Aquitaine demanded that Louis cease and desist. The count was a vassal of William; to that extent, it does not seem at all peculiar that William would come to the defense of his count. But in addition to the fact that a duke was facing down a king, it must be emphasized that that William was Louis’ vassal.

Why would a vassal display such insubordination toward his royal lord? The phrase “cease and desist”—though it would not have been used in medieval times—is apt. William argued that Louis, according to feudal law, had no right to directly encroach upon the actions of the count. The count of Auvergne was William’s vassal and, as such, his actions fell within William’s jurisdiction, regardless of the fact that William’s actions fell within Louis’ jurisdiction. William demanded that the count be summoned to the royal court where he could be charged with William present as his advocate. Despite being king, Louis conceded to his vassal’s demand.<sup>1</sup>

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Parts of this chapter are adapted from Salter (2015a).

1. See Ganshof (1964, 161) and Dunbabin (2000, 365).



During the High Middle Ages, Western European kings did not rule absolutely and the modern nation-state, with its centralization and consolidation of violence and governance, did not exist. Rather, feudal hierarchies emanated from kings down to greater nobles, then to lesser nobles, and ultimately to peasant freemen and serfs. The provision of defense, justice, and other forms of governance was decentralized and diffused throughout these hierarchies, with royal and noble lords having their own jurisdictions. These jurisdictions often overlapped and placed governance providers in competition with one another. However, to the extent that they were distinct, governance providers mutually constrained one another. (Around the time of the above vignette, Hildebert, Archbishop of Tours, implored Fulk V, count of Anjou: “rule yourself by laws and your subjects by love.”)<sup>2</sup> Within the mix, as well, was the Catholic Church with its own hierarchies—pope down to archbishops; down to bishops; down to priests; etc.—and overarching spiritual authority.

In the previous two chapters we explored historical antecedents of these governance hierarchies. In this chapter and the following two, we provide theoretical analyses of the workings of those hierarchies and how they promoted the evolution of unique and enduring traditions of political and economic liberty in Western Europe. To begin, we emphasize some fundamental characteristics of governance providers situated within the Medieval Constitution of Liberty: their possession of *political property rights* in relation to which they were *residual claimants* to the returns on governance that they provided. We will also show that political property rights can be used to do comparative constitutional analysis. We analyze three hypothetical constitutions: pure autocracy, pure democracy, and an intermediate kind that we call the *shareholders state*, in terms of their implicit political property rights structures. This will develop an important part of the conceptual toolkit we will bring to bear on the Medieval Constitution of Liberty.

### 5.1. *Political Property Rights and Residual Claimancy*

We begin by introducing the concept of political property rights. A political property right has three important features. First, it details who is entitled to wield political power. Second, it specifies the costs and benefits that arise from exercising that power. Third, it determines if those

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2. See Bisson (2009, 13).

costs and benefits are primarily borne by those who make political decisions, or if those consequences are passed on to others (in economics jargon, whether the costs and benefits are primarily “internalized” or “externalized”). One way of understanding the assignment of rights and duties between governance providers and the governed—and hence the durable decision-making properties of a polity—is by specifying the polity’s structure of political property rights. As we will show, the political property rights structures of modern nation-states differ greatly from those of medieval Europe. The unique structures associated with the latter will be crucial in identifying features of the medieval constitution that were conducive to the evolution of the rule of law and representative political institutions.

Political property rights create feedback loops between the exercise of political power and the value of resources within the jurisdiction of power wielders. To the extent that a holder of political property rights internalizes the costs and benefits arising from their exercise, that holder has residual claimancy. Residual claimancy implies that a governance provider shares in any costs or benefits that his governance imposes on or creates for the governed. Costs and benefits arise because political property rights specify the economic resources that the holder can govern and types of governance that are permissible.

The primary thesis that we advance in this book is that the structure of political property rights in medieval Western Europe was conducive to the evolution of good governance,<sup>3</sup> including political and economic liberties that are part and parcel of it. It may strike the reader as odd to conceive of good governance as emanating from the personal authority of political property rights holders, rather than an impersonal government (at least in the sense that we would today conceive of a government). After all, feudal lords were essentially private individuals who wielded *de facto* political power by virtue of their capacities for violence. However, many studies have focused on societies that relied on the private provision of law and governance: e.g., medieval Iceland (Friedman 1979), the nineteenth-century American West (Anderson and Hill 2004), terrorist organizations (Berman 2009; Berman and Laitin 2008), seafaring piratical communities (Leeson 2007, 2009), medieval maritime networks (Greif 1993; Fink 2011), and even financial markets (Stringham 2002,

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3. As discussed in chapter 1, by “good governance” we have in mind Buchanan’s (1975) distinction between the protective and productive state versus the predatory state. See also Wicksell (1958) and Buchanan and Congleton (2003). We discuss good governance at greater length in chapter 6.

2003).<sup>4</sup> The subtitle of a recent book by Peter Leeson (2014), in which he summarizes much of his own research, captures an important theme of these studies: that non-government governance often “works better than you think.” We invite the reader to entertain this possibility as we explore the Medieval Constitution of Liberty.

## 5.2. *The Structure of Political Property Rights as a Constitution*

To see the relevance of political property rights, we must define a constitution and how it relates to those rights. For our purposes, a “constitution” is the set of rules that constrain those with political authority in terms of how they wield that authority. This is an admittedly narrow conception of a constitution. To our minds, however, it is the notion that is most relevant to medieval political economy. Furthermore, it is consistent with broader uses of the term.

When most people hear the word “constitution,” they think of a formal document that lists the prerogatives and modes of government operations, and frequently the rights retained by the citizens as well. Many liberal democracies have these kinds of constitutions, that of the United States likely being the most familiar to readers. However, we are using constitution differently.

We begin with an idea of a constitution going all the way back to Aristotle, if not even further: a constitution is the set of decision-making rules of the governing apparatus. In specifying how political decisions *can* be made, a constitution also specifies how they *cannot* be made. It simultaneously enables and circumscribes political authority. On this definition, it does not matter whether a constitution is formally specified in a single document, or even a group of documents. De jure (formal) constitutions may be the hallmark of modern nation-states but they are foreign to the experience of Europe during the Middle Ages, except as represented in the various charters of rights and immunities not infrequently secured by the estates of the realm. (We will discuss this at length in the chapters on representative assemblies and free cities.) Nevertheless, the various polities in medieval Europe—and even the pan-European governance structure that inspired this book’s title—had constitutions. All

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4. Demsetz’s (1967) work on the emergence of property rights in different Native American populations was pioneering. Also see Benson (2011 [1990]). Stringham (2015) provides a discussion of examples of emergent private governance along with citations of many related studies.

polities do. The trick is specifying them when many of the governance relationships are informal, decentralized, or both.

Thus, despite lacking a formal constitution, medieval Western Europe did have a framework of rules within which political elites operated. Those rules were not perfectly enforced—nor are they in any society—but they existed and were defined by the structure of political property rights and the balances of power between the individuals who wielded them. In this narrower sense, there was a *de facto* medieval constitution. We gain a great deal of insight when we conceive of the medieval constitution as a bundle of the realm's political property rights, as we will show.

### 5.3. *Constitutional Bargaining*

Just as a *de jure* constitution can be formally amended (as has occurred twenty-seven times in the United States), the *de facto* constitution of a society can change over time. This can occur when political authority is simply seized by one party from another. Importantly, though, changes can also occur when holders of political property rights formally or informally strike bargains with one another. Through the exchange of political property rights, the overall structure of those rights can change and, with it, the society's constitution.

Constitutional bargaining among holders of political property rights is a key component underlying our thesis. In general, just as individuals within markets can bargain over goods and services to secure mutually beneficial exchanges, political agents can do the same over political outcomes. For example, in representative democracies the phenomena of “logrolling” (i.e., vote-trading) has been recognized and studied extensively by political scientists and economists. Within legislatures, there are votes on a multitude of pieces of legislation that affect a multitude of constituencies, each of which is represented by particular legislators. Two or more legislators can trade promises to vote on specific pieces of legislation as a means toward increasing the net benefits to their constituencies. For example, a senator from Texas might promise a senator from West Virginia that she will vote for a coal subsidy; in return, she asks only that the West Virginia senator vote for a cotton subsidy.<sup>5</sup>

As opposed to the logrolling example, where promises of support for different policies are exchanged, there are sometimes opportuni-

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5. For a discussion of logrolling see Tullock et al. (2002, ch. 3).

ties for holders of political property rights to exchange decision-making rights themselves. When that occurs, political bargaining becomes constitutional bargaining. Any exchanges that occur alter the society's structure of political property rights. Since the structure of political property rights defines the constitution, changes in that structure represent constitutional change.

The historian Charles West (2013) has argued that the Feudal Revolution of the eleventh and twelfth centuries was, at a fundamental level, characterized by the bundling of property and political power into formalized units that were amendable to exchange. The Feudal Revolution also ushered in what A. R. Myers (1975) has called the "Age of Estates," during which recognized orders of the politically powerful—notably, the clergy ("first estate"), the nobility ("second estate"), and the well-to-do urban elites ("third estate")—came to act as what we would today call special interest groups. Monarchs convoked assemblies (parliaments) where the estates could corporately express their interests, bargaining over political property rights with the monarch and also among themselves. Given changes in the economic, social, and political landscape over time, new opportunities for constitutional exchange emerged; as they were exploited, the medieval constitution evolved.

Roger Congleton (2007, 2011) provides a stylized example of constitutional exchange that captures important aspects of how medieval monarchs sought to obtain resources to pursue their policies. The example takes place within what Congleton refers to as the king-and-council template and involves a monarch's cession of political authority to a council (or assembly) of individuals representing his subjects' interests. The "king and council" template aligns closely with medieval political reality. In the twelfth and thirteenth centuries, monarchs responded to their needs for financial and military resources by assembling the leading men of their realms.<sup>6</sup> These leading men were members of the politically powerful estates referred to above; in a development of political theory and philosophy unique to Western Europe, they claimed to represent the interests of individuals to whom they provided governance (see chapter 9).

Consider the following scenario. A king wishes to collect taxes to finance his policies. Suppose all decision-making authority is initially

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6. See Marongiu (1968), Myers (1975), Russell (1982), and van Zanden et al. (2012, 844–77).

concentrated in this king. Such an arrangement seems agreeable to the monarch. Who would not want absolute power? But on closer inspection, the king may not be satisfied with this arrangement. He relies on his subjects producing wealth to be taxed. However, if taxation does not occur at a predictably modest rate, subjects have little incentive to produce wealth. If they anticipate a high rate of taxation, they may simply choose to not bother with productive activities; they may also choose to allocate resources toward concealing wealth or actively resisting its extraction. From his subjects' perspective, the king's arbitrary decision-making authority implies taxation at unpredictable and not-at-all-necessarily modest rates over time.

The king may therefore wish to commit to taxation at a predictably modest rate. However, the commitments of an absolute monarch are unlikely to be perceived as credible. The king has an incentive to say he will exercise restraint but his subjects will recognize his incentive to renege. Without a solution to this credible commitment problem, the king and his subjects are stuck in an undesirable equilibrium. The king is better off renegeing when his commitments do not incentivize high production; his subjects are better off being unproductive when they expect him to renege. This is no good for anyone.

Here is where the "council" part of "king-and-council" comes into play. The king's subjects need some assurance that he will make good on his commitments. A solution to this credible commitment problem involves the king voluntarily ceding veto power over new taxes to an assembly of individuals that represent the subjects' interests. The king can go to this assembly and propose an agenda in the form of a schedule of taxes. Moving forward, any taxation that deviates from that schedule would amount to a new tax and be potentially subject to the assembly's veto. The proposed agenda can be a commitment to a modest rate of taxation; the cession of veto authority to the assembly makes the commitment credible. Note that the king can still petition the assembly for extraordinary revenues (e.g., if an external threat arises from a hostile kingdom) and the assembly may choose not to veto them. But now the ultimate authority to levy taxes is not solely the king's; policymaking authority is now divided between the king (agenda control) and his council (veto power). A step toward secure private property rights and the rule of law has been achieved through a separation of powers and checks and balances, albeit in rudimentary form. This was achieved through an exchange of political prop-

erty rights between the king and a representative assembly, and hence a constitutional rearrangement.

Relating this stylized constitutional exchange back to the historical reality, medieval European assemblies drew their representation from the leading men of the politically powerful estates. Peasant free-men and serfs did not have a “seat at the table,” nor did they choose their representatives. Members of the estates were summoned to these assemblies by virtue of their wealth, capacity for violence, and/or spiritual authority. These elites had a seat at the table because they wielded *de facto* political power.

Notwithstanding, constitutional exchanges in favor of medieval assemblies served the interests of commoner subjects. And we would expect this to have been the case to the extent that assembly members represented the interests of those commoners. As mentioned above, a unique development to Western Europe was the idea that leading men, both lay and ecclesiastical, were legitimate representatives of those to whom they provided governance. This was not the result of cheap talk, of which political economists are rightly suspicious. Instead, members of the estates were holders of political property rights as well as residual claimants to the exercise of those rights. Their political property rights were bundled with economic property rights in a way that aligned their incentives as governance providers to those of the governed. This argument regarding residual claimancy is fundamental to our thesis and is elaborated on in the section below.

Before moving on, though, we pause to acknowledge that all this talk of political bargaining among elites and constitutional exchanges is likely to be jarring to readers born, bred, and educated in modern liberal democracies. Logrolling will seem distasteful enough to them—something that happens only behind the closed doors of smoke-filled backrooms of Congress or Parliament, tantamount to corruption by the spirit if not the letter of the law. Political authority being openly bought and sold will undoubtedly appear scandalous! However, political power is always fragmented and tradable. Changes to the economic, social, and political landscape can create possibilities for the current division to be modified in ways that benefit all political agents, or at least benefit some and leave all others unharmed. These are what political economists refer to as *Pareto modifications*. In what follows we argue that under certain conditions—including those that characterized the medieval constitution—Pareto modifications among governance providers will also be Pareto modifications among the governed.

#### 5.4. *Residual Claimancy*

This claim linking the welfare of governors to the welfare of the governed requires elaboration. We know that voluntary exchange of resources can, by reallocating those resources to higher-valued uses, improve the welfare of all parties to an exchange. This is the Pareto criterion familiar to all economists. But this claim is restricted to exchanges within markets. In other words, it takes the fundamental institutions governing markets (private property, freedom of contract, sound money, etc.) for granted, and focuses on exchanges within that framework that do not impinge on the operation of the framework. Can we really generalize this point to exchanges that alter governance institutions themselves?

The answer is yes, although we must specify the mechanisms that make this work, as well as the conditions under which those mechanisms function. Recalling our threefold statement of goals from chapter 1, our argument in support of this thesis proceeds in several stages. First, we need to establish that constitutional bargains among medieval agents are welfare-enhancing among those party to such bargains. Second, we need to address the possibility of coercion, which looms large in medieval constitutional exchange. We need to be sure constitutional exchanges at least tend toward a state of affairs that disincentivizes predation. Third, we need to show that these constitutional exchanges also benefited those who were not parties to the exchanges—those for whom constitutional bargains are exogenous, rather than endogenous. Each of these will be the subject of a chapter. The remainder of this one focuses on the first claim: the wealth-and-welfare consequences of constitutional bargains.

We start with the economic theory of property rights (Alchian 1965; Demsetz 1964, 1966, 2002; Alchian and Demsetz 1973). We know from this literature that the incentive-aligning and information-generating functions of property rights depend on how those rights are specified. This is equally true of political property rights. Provided political property rights are specified and allocated the “right” way, they contribute to governance that is broadly beneficial, rather than beneficial to some at the expense of others.

An important feature of political property rights is their residual claimancy structure. In markets, firms are residual claimants to the revenues derived from their activity. If the firm earns profits (revenues in excess of costs), the firm’s owners have a property right to those profits. Thus a firm’s owners have an incentive both to increase revenues and decrease costs. This is beneficial not just to the firm and its customers,



but society at large. Higher revenues mean more valuable goods and services produced for society. Lower costs mean the value of the resources used up to produce those goods and services has fallen. Firms only make profits in a market economy if they have given society more “bang for its buck”: that is, transformed scarce resources in ways that are generally welfare-enhancing. We have in mind a similar mechanism for the political agents acting within the medieval constitution—kings, nobles, clergymen, and burghers—depending on their specific institutional context.

We contend that the residual claimancy structure faced by medieval agents will most closely resemble the standard residual claimancy structure for a firm when agents’ economic and political property rights are bundled in such a way that they retain political control of the economic rents generated within their jurisdiction (Salter 2015a). Due to the fractured and overlapping nature of political authority, medieval agents were not perfect residual claimants. No agent owned 100% of any jurisdiction. Nonetheless, residual claimancy was sufficiently tight that political property rights holders internalized a large share of governance innovations, both those that were wealth-creating and wealth-destroying. Again, the analogy to firm ownership is helpful. A corporation’s large shareholders do not typically own the entire concern. If they own, say, 10%, then they only internalize a dime’s worth of changes in corporate policy that generate an additional dollar of revenue. Nonetheless, the degree of residual claimancy afforded by ownership in this sense still performs a powerful incentive-generating and information-aligning role. The logic applies equally to ownership of the realm in medieval times. Under these circumstances medieval agents confronted the capitalized value of governance innovations within their territories.

To be clear, the returns to governance innovations need not be pecuniary for the theory to apply. Medieval communities were often autarkic and widespread production for exchange was only just reviving in the twelfth and thirteenth centuries. Notwithstanding, medieval agents confronted a stream of costs and benefits from their exercise of political property rights. They had an incentive to promote governance innovations when the marginal benefits exceeded the marginal costs.

Bundling economic and political property rights gives medieval agents the information to know how governance affects their realm values, as well as the incentive to support those changes that increase realm values. Since political property rights holders are “owners of the realm,” in the sense that they have meaningful claims to the economic rents, they can look to the effects of governance decisions on the value of their

assets as a feedback mechanism for assessing the quality of governance. Ex ante, political property rights holders will only agree to a new set of political bargains if all parties expect to gain, or at least not lose. This entails the expectation of appreciating asset values in their realms. Ex post, political property rights holders can inspect the *actual* changes in the value of their assets, as a means of correcting errors that arise from mistaken expectations. This means that political property rights holders, in a situation where political and economic property rights are bundled, have access to information that tells them whether a given governance change is likely to be productive versus predatory.<sup>7</sup> And because they are concerned with stewarding the value of their realms, they also confront the incentives to support productive changes, but not predatory changes.

### 5.5. *Political Property Rights and Comparative Constitutions*

The ways in which political property rights can be defined are infinite, as are the ways in which they can be structured across individuals in a society. The same can be said for economic property rights. The combinations of use, transfer, and/or alienation across thousands, millions, or billions of resources and people are endless. However, it is sometimes useful to draw upon constitutional ideal types: structures of political property rights that do not exist in reality but provide benchmarks for comparing and contrasting with real-world constitutions. Ideal types are easier to characterize and understand the implications of than are the messy empirical realities.

Two ideal types that are widely appealed to in the study of constitutions are “autocracy” and “democracy.” In many ways, these two ideal types represent polar opposites of one another.

Readers will also have an immediate familiarity with them and likely will turn to them as characterizations of certain real-world societies. Using what we have learned about political property rights, we will discuss both autocracy and democracy in terms of their implications for

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7. Underlying the above features are the familiar Tiebout (1956) mechanism: mobile labor and capital will seek more friendly governance environments. Poor governance will result in jurisdictions “losing market share” to better-governed jurisdictions. This process generates information and aligns incentives (e.g., bad governance has lowered tax returns; therefore governance should be better). Jones (2003 [1981]) emphasizes that the political fragmentation promoted Tiebout forms of competition in medieval Europe.

governance outcomes, and will show that neither type of constitution is particularly likely to promote good governance. To many readers, this will not be a revelation regarding autocracies; however, we hope to convince you that democracy has serious flaws as well.

After discussing autocracy and democracy, we will then introduce another ideal type that we term a “shareholders state.” Similar to what can be said of all ideal types, there is not, nor do we expect that there will ever be, a pure shareholders state. However, we aim to make two points. First, a shareholders state has properties that render it more conducive to wealth creation than either autocracies or democracies. Second, medieval Western Europe resembled a shareholders state more than any modern nation state (e.g., either North Korea or the United States).

### 5.6. *Autocracy*

An autocracy is characterized by a comprehensive set of political property rights that are all held by a single individual, the autocrat. As such, the autocrat can wield arbitrary coercive power over all individuals and in all matters. He may choose not to wield that power in particular circumstances, but it remains within his prerogative to do so. How an autocrat makes use of his political property rights depends on the returns that are captured or borne by the autocrat. For example, the autocrat can order a citizen operating a delicatessen to make him a pastrami sandwich. Based on that exercise of his political authority, the autocrat may benefit from enjoying a tasty sandwich; alternatively, he may suffer costs, finding himself sick because the pastrami had gone bad.

What can we say about autocracy in relation to governance quality? The immediate response is: it will be poor. However, although we are no fans of autocracy, such a response fails to carefully consider both the pros and cons of this constitutional ideal type; and there are indeed some pros. First, consider the comment by a villager from southern Italy, recounted by the political scientist Edward Banfield (1958): “Monarchy is the best kind of government because the King is then owner of the country. Like the owner of a house, when the wiring is wrong, he fixes it” (26). To be clear, neither the Italian nor any other actually existing monarchy is actually an autocracy. In the real world, political power is always divided. That being said, a monarchy—particularly a strong one—resembles an autocracy more than other constitutional ideal types. The villager’s observation is an insightful one.

The villager characterizes a monarch as “owner of the country.” Since an autocrat has arbitrary coercive power over all individuals in all matters (and, by implication, over all resources in the society) he is indeed the effective owner of his realms. This makes him a residual claimant to the governance returns across all of society. Assuming that the autocrat wants to have more wealth to extract, he does indeed have an incentive to promote wealth creation in his realms. The villager alludes to wiring in a house. It is a truism that owners take better care of their dwellings than renters do. It is a reasonable claim because an owner has residual claimancy on the net benefits of maintenance and improvements (e.g., fixing the wiring) to a much greater extent than does a renter. While the latter will only enjoy the use value of repaired wiring during the term of his lease, the former will also enjoy the long-run returns capitalized into a higher market value for the dwelling.

Second, an autocrat has the advantage of acting decisively at low cost. The founding fathers of constitutional political economy, James Buchanan and Gordon Tullock (1962) framed collective action in terms of a tradeoff between two types of costs: “external costs” and “decision-making costs.” External costs are those associated with individuals who would prefer that a particular collective action had not been pursued. It is the nature of collective decision-making that, unless there is unanimous agreement within the group, some individuals will be frustrated by the decision that is reached. For example, voters in the United States go to the polls every four years to collectively choose who will be president. The choice is ultimately not made by the unanimous consent of the electorate but, rather, according to whoever garners the most Electoral College votes. Thus many voters were frustrated in 2016 when Donald Trump was elected, despite losing the popular vote. Given the collective decision-making process, the election of a US president inevitably imposes external costs on many citizens.

However, coming to decisions regarding collective action is itself costly. In general, the decision-making costs for a group are smaller when the share of individuals required to consent to a particular action is smaller. Go back to the case of a US presidential election where a majority of electoral votes (generally a function of popular votes in each US state) is the decision-making rule. Orchestrating such an election based on majority decision rules runs into the billions of dollars. Now consider if unanimous consent by the electorate to one candidate was required to install a president. It is difficult to fathom what would be the costs involved in any series of campaigns, elections, further campaigns, runoff elections, etc., that would actually get a president into office. Indeed,

unanimous consent is almost certainly a prohibitively costly requirement for deciding a president.

Alternatively, when there is only a single decision-maker, choosing a particular course of collective action is very low cost. Granted, there are reasons to think that in many cases an autocrat's governance decisions will not be "good" ones. We will elaborate on those below. Still, it must be acknowledged that a constitutional arrangement within which governance decisions can be made cheaply is, all else equal, a positive.

Now, despite residual claimancy and low decision-making costs, there are serious problems with an autocracy that usually result in poor governance outcomes. First, Mancur Olson (1993) has pointed out a serious flaw in the Italian villager's argument regarding a monarch. It is true that a monarch, as a residual claimant to returns from governance, has some incentive to act in the interests of his subjects. The monarch wants to see wealth created within his realms, as do his subjects. What is good for the royal goose will also be good for the governed gander. However, Olson noted that there would be a systematic divergence between an autocrat's incentives and those over whom he exercised authority.

A king, approximating an autocrat, will provide protective and productive governance as long as the marginal private (i.e., *his own*) benefit of doing so exceeds the marginal cost. However, the autocrat does not have a direct incentive to care about any divergence between marginal *social* (i.e., those of the governed generally) benefits and marginal social costs. An autocrat is a private rent-maximizer and will treat his country as an asset that yields income into his own coffers (Tullock 2005). In reality, of course, a strong monarch or dictator may take things other than income into consideration: e.g., the enjoyment of power for its own sake. However, recall our working assumption that material wealth factor highly into the preference scales of both the governed and their governance providers. Making this specific assumption will allow us to demonstrate the Olsonian critique more generally.

Among other things, the private income stream to the autocrat depends on the rate at which he extracts wealth (call it the tax rate). The autocrat will choose the tax rate that maximizes his income. In doing so, he faces a tradeoff between taxing a higher share of wealth (which is good for the autocrat) and the fact that a higher tax rate discourages wealth creation (which is bad). Given this tradeoff, the autocrat will want to increase the tax rate up until the point where the marginal revenue of additional increases is zero. However, this is not necessarily the best outcome for the autocrat's subjects. In fact, the tax rate that maximizes

the autocrat's private income stream is almost certainly higher than that which would maximize the wealth of society generally.

The autocrat's residual claimancy works toward aligning his incentives with those of his subjects. However, it falls short of the mark and ultimately leaves a divergence between private and social returns. That divergence is almost certainly very large. Leeson (2007) points to this divergence to show that the incentive-aligning features of residual claimancy, while important, are insufficient to prevent a territorial governance monopolist from engaging in privately beneficial but socially costly acts. Leeson's emphasis of an autocrat's territorial monopoly is an important one. A true monopoly is the only game in governance town; there are no substitutes available to the governed.

There are also serious difficulties with autocracy in terms of acquiring and using information. Being the only game in governance town, autocratic governance is exceedingly centralized and top-down. As such, the autocrat faces daunting information problems. In his famous 1945 article, "The Use of Knowledge in Society," Friedrich Hayek observes:

The peculiar character of the problem of a rational economic order is determined precisely by the fact that the knowledge of the circumstances of which we must make use never exists in concentrated or integrated form but solely as the dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess. [. . .] [I]t is a problem of the utilization of knowledge which is not given to anyone in its totality. (519–20)

In a society of any significant size, the autocrat will lack easy access to "the knowledge of particular circumstances of time and place" (521) that is necessary to act consistently with his incentives to maximize his private returns.

### 5.7. *Democracy*

Olson's (1993) recognition of the divergence between private and social returns under autocracy is the basis for his support for democracy. If political property rights are maximally concentrated under autocracy, then they are maximally diffused under democracy. For our purposes, democracy is defined as (a) a society within which a comprehensive set of political property rights are shared equally by all its members and

(b) subject to a majority decision-making rule. In other words, political property rights will be exercised in the particular ways that half or more of the society's members consent to (vote in favor of). As with autocracy above, this characterization of democracy is an ideal type that does not exist in the real world. Furthermore, we do not imply that Olson would have found democracy in this ideal form to be desirable. However, the ideal type does highlight the democratic characteristics that Olson found desirable *vis-à-vis* those of autocracy.

Olson argued that since voters earn income from both the market and from public revenue disbursements, they internalize any wealth destruction created by taxation. They would choose policies such that the marginal unit of public revenue equals the marginal loss in market income due to the tax scheme needed to raise public revenue. More generally, voters will choose policies that generate positive social returns. However, this argument has several problems.

First, Olson assumes the interests of voters are adequately aligned with social wealth maximization, but beyond a very small proportion of the polity's population, this is almost certainly not true. Even when an electorate numbers in the thousands—never mind millions or hundreds of millions—a given voter knows that his vote has an exceedingly small chance of affecting the election's outcome. (Contrast this with an autocrat whose "vote" on any given policy is decisive with probability of one.) Therefore, there is little cost to him abstaining or, for that matter, voting for policies that are contrary to his own interests (Caplan 2007; Somin 2013; Brennan 2016). As an example of the latter, the voter might know that requiring employers to provide health insurance to their employees will impose costs on his small business that will lead it to close. However, he votes for that policy because he does not expect to be decisive and wishes to signal to others that he is altruistic. This is known as "expressive voting": someone does not aim to actually influence policy (which is known as "instrumental voting") but, rather, to express something about themselves to others.

Of course, expressive voting of the type described above would not make much sense if everyone actually knew what the good policies were. However, this leads to a second problem with Olson's argument. Since voters do not expect to be decisive in the ballot box, they have little incentive to acquire information regarding the efficacy of policies. Information is costly to acquire. The costs of becoming informed have to be set against the expected benefits from doing so. A voter who correctly

expects to have no effect on the election outcome will perceive those benefits to be small, discouraging him from becoming informed.

Though we have been focusing on ideal type rather than real-world forms of democracy, it is important to note that the latter are generally characterized by indirectly determining policies through the election of representatives. Since politicians recognize that voters will be rationally ignorant about policies and their likely effects, in turn they will rationally respond by favoring “concentrated benefits, dispersed costs” policies that garner them the support of well-organized and well-informed special interest groups.<sup>8</sup> These policies will be privately beneficial to politicians and special interests but socially costly.

Thus, we see that both autocracy and democracy are characterized by significant defects as a result of the rational choice calculus of those who possess political property rights. Of course, when it comes to the real-world analogs of these two ideal types, it is an empirical question as to which entails larger losses in social wealth. Casual empiricism strongly suggests that autocracies are much poorer. Both in highly democratic and highly authoritarian polities, there are elements of the other governance form embedded in the polity’s constitution, whether formal or informal. Nations that are portrayed as practicing “direct democracy,” such as Switzerland, also frequently have a federal system with representative government at both the local and national levels. Direct democracy in these cases is usually embodied in the public’s option to force referenda on ordinary legislation and constitutional amendments. Strongmen in a dictatorial position, such as exist in several sub-Saharan African countries, frequently make use of an advisory council of confidants, and must take cognizance of the informal power structure upon which their rule is based. “The dictator continuously lives under the Sword of Damocles and equally continuously worries about the thickness of the thread” (Tullock 2005, 292).

### 5.8. *Shareholders State*

An alternative constitutional ideal type, one that has received much less attention than those of autocracy and democracy, is a shareholders state. In a shareholders state the arrangement of political property rights

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8. This is something emphasized by Olson (1960, 1982) in other writings.



resembles a peculiar type of corporation (Salter and Hall 2015; Salter 2016). As in a joint-stock corporation, the state has shareholders who are residual claimants to the returns of governance. Also as in a joint-stock corporation, these shareholders possess decision-making rights to governance. However, a critical distinction between a familiar joint-stock corporation and a shareholders state is that the link between control of governance and its returns is much tighter in the latter. A large business corporation may have millions of shareholders. In contrast, the number of individuals wielding political power (possessing political property rights) in a shareholders state is typically small. As in an autocracy, political authority in a shareholders state is privatized; as in a democracy, that power is fragmented and dispersed.

We can more clearly describe what is distinctive about a shareholders state by contrasting it with a democracy. In a democracy, all citizens experience the consequences (costs and benefits) of public policy (governance outputs), but the links between those consequences and their own decision-making claims are very weak. This is because of the diffused nature of residual claimancy in democracies. In this sense, democracy bears some resemblance to large, publicly traded corporations in that they are characterized by a “separation of ownership and control” (Berle and Means 1932; Jensen and Meckling 1976; Fama and Jensen 1983). If I own one share of Acme Corporation, and there are a million shares outstanding, then any changes in corporate policy that increase earnings only accrue to me in the amount of one-one millionth on the dollar. A similar logic holds for democracy, where the relevant statistic is the size of the electorate, or perhaps the probability one’s vote is decisive. Democratic control thus resembles economic control over Acme, with the added peculiar stipulation that no Acme shareholder may own more than one share.

With respect to exercising power, ownership is not completely separated from control in a democracy; citizens, like shareholders in a corporation, can exercise their “votes” toward affecting governance decisions. However, they face large information and incentive problems in doing so. As described above, voters have little incentive to be informed about policy issues because their probability of being decisive in elections is essentially nil. The costs and benefits of voting for certain policies bear essentially no likeness to the actual costs and benefits of those policies. (This includes both the costs and benefits that voters can expect to internalize if the policies are enacted and those that will be imposed/enjoyed by other citizens.)

A shareholders state differs from democracy in several important ways. First, the assignment of political property rights is not shared equally by all members of the society. Some are entitled by their political property rights to wield authority; others without these rights are not. Second, holders of political property rights exercise them in a specific jurisdiction wherein their control over governance is bound to economic property rights. As a relevant historical example, a medieval noble held political property rights—collectively known as the *bannum*—within a specific territory that was made up of his own estates and those of vassals and peasants who owed him a share of their services and production. This bundling of political and economic property rights meant that his provision of governance was tightly connected to the returns that it yielded. If, for example, the effective provision of law and order led to increased agricultural yields, the noble lord benefited in proportion to that increase. Cost and choice were thus closely linked (cf. Buchanan 1969) through residual claimancy, which mitigates incentive and information problems.

The combination of fractured ownership and residual claimancy suggests greater wealth-creating potential in this ideal type, as compared to the ideal types of pure democracy and pure autocracy. Because of fractured ownership, political property rights holders cannot implement the revenue-maximizing tax rate of a stationary bandit. Because of residual claimancy, there is a tighter link between information, incentives, and decision-making for collective action. The key to understanding shareholders states is that it retains and applies the insights of each of the ideal types to which it is opposed. Like autocracy, it recognizes the importance of private returns for public outcomes. And like democracy, it appreciates the importance of fragmenting power.

### 5.9. *Constitutional Bargaining in a Shareholders State*

At the beginning of this chapter we discussed constitutional bargaining among holders of political property rights. What makes those bargains constitutional is that political authority itself is exchanged. If I trade my right to tax merchants in my territory for your right to the surplus value of mineral wealth in yours, then we have reason to suspect this rearrangement of political property rights is welfare-enhancing for both of us. When we constructed our ideal types, for the moment we took off the table the possibility of such constitutional exchanges. This was help-

ful for establishing the endpoints of our ideal types spectrum, which we needed to introduce the concept of shareholders states and show what is distinctive about them. There are two issues we have left to discuss before we can apply this model to the medieval constitution.

First, we talked a lot about the welfare of political property rights holders, but not very much about those subject to their authority. Obviously, consensual exchanges of political property rights will be welfare-enhancing for the parties to those exchanges. Since we want to argue that medieval Europe reached a constitutional equilibrium that promoted governance innovations that were beneficial, we need to show that constitutional exchange can, in the right circumstances, create broadly shared benefits. The ideal type of the shareholders state is an essential component of this argument. In a shareholders state, constitutional bargaining is likely to allocate political property rights in ways that are welfare-enhancing for both governors and governed. This claim is key to the thesis of this book and requires elaboration, which will have to wait until chapter 6.

We have a more immediate problem: it is not certain that all constitutional exchanges are beneficial to elites themselves. This is because, in reality, constitutional exchange is not always voluntary. Medieval elites often engaged in predation using their political property rights to seize other rights, rather than bargain for them. Once we consider the problem of coerced exchanges, we have an entirely new dimension to address. In addition to welfare considerations, there is the basic problem of stability. If elites have an incentive to prey on each other, seizing each other's political property rights, then we have not reached a constitutional equilibrium. If this happens in shareholders states, then it may be the case that shareholders states are not a constitutional equilibrium, and so the applicability of the ideal type is quite limited.

Fortunately, there is a way we can address these concerns, continuing to use familiar tools from economics and political economy: methodological individualism, exchange behavior, and invisible-hand process analysis. We analyze coercive constitutional exchange in the next chapter.

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## CHAPTER 6

# Sovereignty and Self-Enforcing Political Property Rights



Those who hold political property rights have an incentive to resist attempted encroachments. Political property rights holders claim the stream of returns generated from economic resources within their jurisdiction. They would perceive themselves to be worse off were those rights stripped from them. Trading them voluntarily is one thing; coercively redistributing them is another thing entirely.

But do they have the means to resist predation? This is a serious concern. After all, we are talking about political property rights. Coercion is going to feature somewhere in the system. Politically, there is always the risk of dispossession by someone more powerful. In a medieval setting, if a lord can use violence to protect the value of his patrimony, we must be concerned that he could use violence to seize another's patrimony as well. When a neighboring count approaches your fief asking to parley, his peaceful entreaty sends one kind of message. But the army he brought with him sends another.

The ability to protect one's political property rights from encroachment is a crucial aspect of the system. Unlike today, there may be no monopoly nation-state adhering (more or less) to a nondiscriminatory rule of law to which rights-disputants can turn for adjudication and enforcement. A

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Portions of this chapter are adapted from Salter (2015b).

distribution of political property rights will not be stable if the agent possessing a given right does not also have the means to resist encroachment, by force if necessary. Since the fall of Rome and up until the High Middle Ages, such disputes over political property rights were settled coercively. Even during the High Middle Ages, which was much more civilized in comparison, recourse to violence among “owners of the realm” was not uncommon. Any theory of political property rights in the High Middle Ages, and by extension any theory of the medieval constitution, must be able to explain how violence supports or undermines the system.

While violence is always a possibility, what is interesting about the High Middle Ages is that political property rights were distributed in such a way that the estates of the realm had the ability to resist encroachment by credibly committing to defending their rights with violence. Consider the relationship between a king and a noble who was his vassal, like that between King Louis VI and Duke William X, mentioned at the beginning of chapter 5. The vassal was a member of a landed warrior class; his wealth and resources (horses, his own vassals who were potential soldiers, weapon-making artisans, etc.) made it costly for the king to encroach upon the noble’s authority. Although the noble was lower in the feudal hierarchy than the king, he nonetheless could use his political power to marshal economic resources to defend his territory. Kings could not unilaterally impose their will on their vassals. This helps us understand why Louis would accede to William’s demands, although the latter was lower in the feudal hierarchy than the former.

Thus, holders of political property rights were *sovereign* during the High Middle Ages. Sovereignty here refers to an agent’s ability to defend his own political property rights (Salter 2015a, 2015b). To put it another way, a medieval agent was sovereign over his political property rights if his claim did not rest upon third party enforcement. Because of the way political and economic rights were bundled, medieval agents had both the incentive and the ability to resist predation. This is another beneficial feature of residual claimancy on the incentive side: when political agents are residual claimants in their respective jurisdictions, they can use their resources to fight back. Not only do they internalize the losses from being conquered, but they also incur losses due to conflict using up and otherwise destroying wealth. This implies that when possessors of political property rights are also sovereigns, they internalize some of the social costs associated with predation.

In this chapter we present a positive theory of sovereignty to explain the conditions underlying a self-enforcing political property rights struc-



ture. Because a polity's political property rights structure is synonymous with its constitution, a stable distribution of political property rights represents a "constitutional equilibrium." This renders predation incentive-incompatible by would-be predators. If we can plausibly describe a constitutional equilibrium in terms of the sovereignty of its political property rights holders, we can be confident that the domain of constitutional exchanges will be restricted to voluntary (and hence mutually beneficial *ex ante*) constitutional exchanges.

Again, this is true in an ideal-typical sense. Even when the medieval constitution had fully developed, political elites engaged in plenty of predation. But "might makes right" was not the law of the land. To describe the features of the medieval constitution that were durable and effective in limiting predation, we first need to explain what makes for a constitutional equilibrium: what determines when political elites will try to plunder vs. bargain over political property rights.

### 6.1. *Sovereignty: Positive, Not Normative*

The theory of sovereignty we develop is positive, not normative. We are describing who actually has power, not who we think should have power. We analyze sovereignty using the economic way of thinking. We do not claim that normative conceptions of sovereignty, as found in political philosophy, are wrong. There are elements from these theories that are useful and will play a part in our own. We simply want to anchor the reader's expectations in terms of the concepts we want to develop, and the kind of work they can perform.

Our point can be better demonstrated by example. Consider the evolution in ideas of sovereignty from the Middle Ages through early modernity. Especially important are views on kingship during these eras. During the High Middle Ages, kings were viewed as *primus inter pares* among the lords of the realm. Kings served as adjudicators of disputes among their vassals and could enforce settlements if necessary. But they too were subject to the law, and they had no legislative authority (de Jouvenel 1993 [1945], III.12). As in early modernity, it was believed that kings ruled by divine right. But unlike their early modern counterparts, kings' authority was circumscribed by divine right, not expanded by it. Kings wielded their authority as part of a compact with God, the only True Sovereign, and their rule was contingent upon upholding the realm's customary law, as well as Divine Law.

But as social, political, and economic changes put pressure on governance institutions to centralize, interpretations of divine right also changed. It took on an absolutist sense, rather than a limiting sense. Writers such as Sir Robert Filmer (1991 [1680]) understood divine right as placing the king above the law (*rex legibus solutus*), if not in a moral sense, then in a practical political sense. The monarch, as a sovereign, could not be limited or checked by any other political authority. After all, if another authority could restrain the monarch, then this other power, and not the monarch, would be the real sovereign. Still later, by the time of the Enlightenment, many thinkers retained an absolutist or quasi-absolutist sense of sovereignty, by changing its office or location. Post-Enlightenment conceptions frequently vest sovereignty in a Rousseauvian “General Will,” or more saliently “the People,” as expressed in the preamble to the United States Constitution.

The problem with the above is that it most closely reflects various perspectives on who ought to exercise power. It does little to help us understand who does wield power. It is all well and good to insist that medieval kings should not be legislators. In practice, they sometimes handed down judgments or issued proclamations that were de facto legal innovations. At the other extreme, it may be conducive to social stability, especially if the specter of civil war looms large, to vest supreme authority in the king. But even Henry VIII or Louis XIV had practical limitations on their authority. And as for theories that relocate sovereignty from the king to the people, we know that in any polity above some trivial size, ordinary citizens possess much less power than political insiders who come to wield the means of governance. The “iron law of oligarchy” holds true even in democracies (Michels 1915 [1911]; Olson 1982). The difficulty is that the traditional theories too often blend sovereignty with legitimacy. If we are to put sovereignty to work, we need to solve this “signal-extraction problem.”

Again, this does not mean theories of sovereignty from political philosophy cannot help us. On the contrary, each of the above draws our attention to a useful fact of political life that a positive theory of sovereignty must recognize. The medieval conception teaches us that even those at the apex of a governance hierarchy act within constraints. The Early Modern conception teaches us that, even given those constraints, there is still something meaningful about sitting at the apex of a governance hierarchy, rather than somewhere lower down the pyramid. And the post-Enlightenment conception reminds us that such hierarchies can be destabilized from below just as easily as from above.

We argue a positive theory of sovereignty entails the following. First, sovereignty is best understood as the result of self-enforcing political exchanges, both within and across polities. Second, sovereignty refers to a specific set of political property rights. As such, there is no necessary connection between sovereignty and monopoly authority within a specific geographical territory, i.e., the nation-state. Third, sovereignty is an emergent phenomenon. The final structure of self-enforcing political property rights in constitutional equilibrium will not be the intention or plan of any party.

### 6.2. *Sovereignty and Self-Enforcing Constitutions*

In the last chapter we distinguished between de jure and de facto constitutions. De jure constitutions are formal and written down. De facto constitutions are informal and reflect a balance of political power that has its roots in tradition, custom, and precedent. It is important to understand de facto constitutions because, even in polities with de jure constitutions, it is the de facto constitution that matters for governance outcomes. To paraphrase Lysander Spooner, if the de facto constitution does not match the de jure constitution, the latter is irrelevant; if the de facto constitution does match the de jure constitution, the latter is redundant. De jure constitutions can often be useful as a social coordination mechanism (Hardin 1982, 1989; Ordeshook 1992), but coordination is a very different thing than enforcement. Written constitutions cannot escape the first axiom of constitutional theory: any constitution, to be durable and effective, must be self-enforcing (e.g., Lara et al. 2008; Lee-son 2011; Mittal and Weingast 2011). The great question underlying all constitutional arrangements—*Quis custodiet ipsos custodes?* (Who watches the watchers?)—was as relevant in the thirteenth century as it is today.

We thus focus on de facto constitutions to locate sovereignty. In any polity, even those that have a written constitution that dictates highly centralized arrangements of political power, actual authority will be fragmented. This is not necessarily the result of coercion, or the threat of coercion. Remember the king-and-council model: it often makes perfect sense from a rational choice perspective for an absolute ruler to cede parts of his power. Even an autocrat who prefers power above all else, not as means to an end but an end in itself, cannot rule without constraints and contestation. Problems of local knowledge will mean that the autocrat does not have the information to implement his will on all segments

of society. And, reintroducing the possibility of within-polity competition for power, such heavy concentrations of power make the autocrat's position precarious with respect to the ambitions of his subordinates. As Gordon Tullock noted, even a *de jure* autocrat "continuously lives under the Sword of Damocles and equally continuously worries about the thickness of the thread" (Tullock 2005b, 292; see also 2005a).

The first step, then, is to identify the *de facto* constitution. Who performs what political functions under which circumstances is the starting question for students of constitutional political economy. Because political power is always fragmented to some degree, sovereignty is necessarily attached to a specific set of political property rights. A sovereign is not the owner of anything and everything within his territory or jurisdiction. Instead, a sovereign claims, and can enforce his claims to, a subset of the political property rights he could feasibly acquire. Sovereignty is local, particular, and relational: who is sovereign over what depends on which other rights-claimants one interacts with, and whether they can marshal sufficient force to undermine others' claims. For example, a duke may claim the value of all natural resources within his demesne. But part of his land is forested, and the king claims the right to all the deer within the forests. The duke respects the king's claim. Or again, an earl claims the final right of judgment over disputes that occur in his territory. One day a dispute arises, but one of the disputants is a clergyman. The local bishop claims the right to adjudicate all such cases. The earl does not dispute the bishop's right. In both cases, the latter party is sovereign over the right in question. This demonstrates the importance of specifying the rights over which sovereigns exercise their sovereignty. It also demonstrates that, because political property rights can cut across territories and jurisdictions, sovereignty can as well. As we have defined sovereignty, there is no relationship between it and territorial monopoly. The latter was largely foreign to the High Middle Ages.

### 6.3. *The Strategic Setting of Sovereignty*

Sovereignty emerges out of strategic decisions among holders of political property rights. Whether we are discussing bargains within or across polities, the fundamental choice faced by political property rights holders is: do I respect another agent's claims to his own political property rights, or do I attempt to encroach on them by force? The former involves only consensual exchange of political property rights or, in the event a con-

stitutional equilibrium has already been reached, no further exchange at the constitutional level—a kind of constitutional steady-state, where exchange takes place at the level of outcomes rather than rules for generating those outcomes.

Coerced exchanges include threats of violence even if violence is never used. If a strong political property rights holder attempts to infringe on a weak one, the weaker party, recognizing that violence is incentive-compatible for the stronger party, may choose to yield without a fight. Of course, the truly worrisome scenarios are when both parties perceive themselves to be strong. In such situations, threatened violence erupts into actual violence. Actual conflict can be seen as the political process that sorts out which parties rightly perceived themselves to be sovereigns (capable of enforcing their claimed political property rights), and which, to their misfortune, overestimated their capabilities.

Perhaps the most useful tool for exploring these kinds of political bargains is the iterated “prisoner’s dilemma.”<sup>1</sup> In this scenario, two agents—say the Papacy and the Holy Roman Empire, during the tense era of throne-altar relations of the late twelfth century—are considering whether they will engage in *cooperation* or *conflict*, specifically over whether the authority to invest new bishops rests with the lords temporal or the lords spiritual. Historically, the secular power initially claimed and defended this right, so this distribution of rights constitutes the starting payoffs. Cooperation can be thought of as any positive-sum strategy. In this context, the most salient interpretation is that the Papacy will respect the Empire’s claims, and the Empire will in turn not seek to usurp any of the Papacy’s claims. Conflict means that the Papacy will not respect the Empire’s claims, and will try to gain territory, legal prerogatives, or other valuable rights at the Empire’s expense, and vice versa. The diagram showing the payoffs to this game in each period is shown in figure 1, with Papacy as the row player, and Empire as the column player. By assumption,  $C > A > 0 > B$ , and  $2A > B + C$ .

The dominant strategy in a one-period version of the prisoner’s dilemma is well known: each party chooses conflict, resulting in payoffs for both parties of 0. This is inefficient; total surplus would be higher at the mutual cooperate equilibrium. But this cannot be sustained, because each player receives a private payoff from defection. In a repeated prisoner’s dilemma, however, the situation is quite different. If players are

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1. The discussion of the prisoner’s dilemma, and later on the discussion of the ultimatum game, will proceed rather informally since these games are used merely for illustrative purposes.

	Cooperate	Conflict
Cooperate	A, A	B, C
Conflict	C, B	0, 0

Fig. 1. The Prisoner's Dilemma

Source: authors' creation.

using “grim trigger” strategies—i.e., if one party engages in conflict, the other party punishes the first party by playing conflict forever after—then the mutual cooperate equilibrium can be maintained, provided the discounted future payoffs from playing cooperate exceed the immediate payoff of conflict.<sup>2</sup>

In other words, if the Papacy and Empire are sufficiently patient (do not discount future payoffs too highly) a mutually beneficial and self-enforcing cooperate equilibrium can be maintained. This cooperative equilibrium represents “live and let live” approaches to constitutional relations. In this case, the Papacy and Empire—each with their separate commands over specific political rights—agree to respect each other's rights. The mutual cooperate equilibrium implies the Papacy will not interfere in Imperial affairs, and the Empire will not interfere with the affairs of the Holy See. Each unit's claims are enforced by that unit themselves, and are maintained between units by agreement, tacit or otherwise.

Of course, the mutual cooperate equilibrium will not always prevail. As soon as the parameters of the game change, the profitable strategy may be subject to change as well. Consider the events that resulted in the Investiture Controversy during the late 12th century. Historically, secular lords claimed the authority to invest new bishops within their territory, and the Holy Roman Emperor claimed the right to invest new popes. Clergy “were valuable assets for such rulers. They could serve

2. Assume each player discounts future payoffs at rate  $\beta \in (0, 1)$  and that the per period payoffs are  $A$ . Then the future discounted payoffs are  $\sum_{t=0}^{\infty} \beta^t A < C$ . Applying the rule for the sum of an infinite geometric series and simplifying algebraically shows that cooperation can be maintained if  $(A - C)/C > \beta$ .

as literate and educated administrators, they could provide for efficient agricultural production, and (theoretically) their lands resorted back to the lord after they died because they had no heirs" (Spruyt 1994, 48, citations omitted). But this is a right which the Church too coveted.<sup>3</sup> It was initially not in the interests of the Church to press the issue, because conflict is costly. However, exogenous variables which determine the rationality of conflict can and did change.

Henry IV became Holy Roman Emperor in 1056 but was only six years old when he ascended the throne. Child monarchs are rarely able to wield power as effectively as adult monarchs with military experience. The Church saw its chance and took it. Early in Henry's reign, a Church council in Rome proclaimed the Church's authority to appoint new popes, removing that right from the secular authority. In the papal election of 1061, Alexander II was made pope by the cardinal-bishops of the College; importantly, they did not seek the assent of Henry IV. The balance of power had shifted in favor of the Holy See, but Henry IV was unwilling to fully surrender his authority, so the contest over sovereignty continued.

The monk Hildebrand was elected as Pope Gregory VII by popular acclimation in 1073; in 1075, Gregory not only denied the emperor's authority to invest popes, but claimed the pope had the right to dethrone emperors. The issue came to a head when Pope Gregory appointed one candidate to be bishop of Milan, and Emperor Henry another. Pope Gregory excommunicated Henry in 1076, seriously challenging the foundations of the secular ruler's authority and instigating the more violent periods of the Investiture Controversy. In 1077 Henry was forced to travel to northern Italy to apologize to Gregory and perform public penance. The conflict had not yet fully resolved—various hostilities would continue until the first major throne-altar conflict ended with the Concordat of Worms in 1122—but the sovereign right of episcopal vestment had notably shifted (Spruyt 1994, 49). Because Gregory and his successors were able to persuade the lesser lords temporal to oppose the Holy Roman Emperor, the Church eventually secured control over investiture rights, although it was never able to proceed completely free of imperial approval.

The Investiture Controversy is a salient example of how contests over sovereignty can evolve as the relative payoffs to asserting specific politi-

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3. This was especially true for the papacy, which saw defense of its universalist claims as a means of asserting control over local clergy, who "often had quite different interests than the bishop of Rome" (Spruyt 1994, 48).

cal property rights, and recognizing rival authorities' political property rights, changes. The Church initially took advantage of the exogenous shock to conflict payoffs when Henry IV assumed the throne by creating the College of Cardinals and claiming the right of the college to select popes. Eventually, when Hildebrand became Pope Gregory VII, the conflict came to a head when there was a mutual asymmetry in expectations over which party, the Holy See or the Emperor, had which rights, as well as who could marshal sufficient military power to enforce those rights.

The Investiture controversy ultimately had profound implications for the constitutional future of Europe. Its revolutionary impact was twofold. "First, in separating the two realms [of spiritual and temporal power], it necessitated secular rule to justify itself by other than spiritual means. Second, in distinguishing between and separating these two realms, which both had claims to universality, the two became rivals. As a result, both camps had to seek political allies, search for new sources of legitimation, and rationalize their administrative and legal machineries. The Investiture Conflict in a sense necessitated rulers to invent 'secular' rule" (Spruyt 1994, 50). Without the contesting power sources of Empire and Papacy, a crucial element in the pan-European balance of power would have been absent. In addition to weakening the ability of power to check power in existing constitutional arrangements, this absence may have had repercussions for the development of constitutionalism itself, which arose in part out of medieval political theorists' attempt to make sense of the increasingly separate spheres of temporal and spiritual authority (Gordon 1999, 116–18).

Most contests occur at the margins of political authority, rather than over sovereignty itself. These conflicts over rights rarely extend over the entirety of the political property rights hierarchy. The winner in a conflict generally does not completely subjugate the loser. The Church did not come to exercise suzerainty over the Empire because of the Investiture Controversy. Even at its strongest, the Holy See was unable to practice caesaropapism. The conflicts in these cases are over specific political rights. In all but the unusual case where a polity is fighting for its right to remain sovereign, what is in conflict is not sovereignty per se, but a marginal set of rights accompanying sovereignty. This "jockeying at the margin" between hierarchies determines how each party's claim to sovereignty, as manifested in the termination of a command hierarchy over a specific set of political and economic rights, changes as circumstances alter to favor cooperative versus conflict strategies.

The above example assumed parity in martial might between sover-



eigns. This is reflected in the symmetry of payoffs between the row and the column players. However, this can easily be modified by changing the payoffs of either the row or the column player. So long as the ordinal ranking of the payoffs remains the same, the prisoner's dilemma logic still holds. For example, the column player's payoffs could be modified from  $C > A > 0 > B$ , to  $c > a > 0 > b$ , where  $C > c$ ,  $A > a$ , and  $B > b$ . This could represent repeated interaction between sovereigns of differing strength. The weaker sovereign will receive lower payoffs from cooperating, and experience greater losses from conflict than the stronger. But since the rank ordering of payoffs is unchanged, the cooperative multi-period strategy can still be preferred by both players. Intuitively, even when a powerful lord could plunder a relatively undefended town, the opportunity costs associated with conflict can be sufficiently high that it is still in the lord's interests not to loot the town. Thus mutual recognition of rights can still exist between agents of differing, and even vastly differing, strengths.

A final scenario requires changing the prisoner's dilemma to another setup. In some cases with vast strength differences between polities, it is in the stronger polity's interest to prey on the weaker. Provided both the strong and weak polity accurately perceive the costs and benefits of conflict, the ensuing relationship will be one of proprietor and client. The weaker is a suzerainty of the stronger. This can be represented in several game-theoretic scenarios, but perhaps the simplest is the "ultimatum game." In this game, two players choose how to divide a fixed resource. The first player proposes a split of the resource, and the second player has the option to accept or reject. If the second player accepts, both receive the agreed-upon payoff; if the second player rejects, both receive nothing. In this case, the stronger party takes the role of the ultimatum-giver, and the weaker is in the passive role of accepting or rejecting the bargain. Modify this game slightly to change the state of affairs that prevails when the weaker rejects the split. In this case, the players proceed to a new subgame of *hawk* and *dove*, sometimes called the "chicken game." This game is characterized by large payoffs for the hawk player when the other plays dove, a zero payoff for the dove player when the other plays hawk, a moderate payoff for both players when each plays dove, and negative payoffs for both when each plays hawk. This game is shown in figure 2 below.

The game is defined by  $B > C > 0 > A$  and  $b > c > 0 > a$ . Assume also that lower-case payoffs, the payoffs of the column player, are lower than those of the row player, while still satisfying the above ordinal inequality

	Hawk	Dove
Hawk	A, a	B, 0
Dove	0, b	C, c

Fig. 2. The Hawk-Dove Subgame

Source: authors' creation.

relationship. There is no pure strategy equilibrium to this game; each player wants to play hawk while the other plays dove, and vice versa; but conditional upon playing a hawk, each player wants to play dove. In this case, each player can avoid being exploited by randomizing—playing hawk with probability  $p$ , and dove with probability  $1 - p$ , where  $p$  is chosen to maximize expected payoff. Considering the entire game, the stronger party, in the role of ultimatum-giver, would want to propose a split that maximizes his payoff, while presumably avoiding triggering the hawk-dove subgame.

To make the analogy even more concrete, even a more powerful lord cannot afford to completely abuse his vassals; eventually such abuse becomes so intolerable that the costs associated with fighting for independence are outweighed by the expected gains. In this case, the vassal is not sovereign—its political rights are subject to enforcement or abrogation by a higher power—but the powerful lord is. Again, this holds only within the command hierarchy with respect to a given set of political rights, subject to the above constraints. *De jure* sovereignty never means *de facto* unlimited power.

The resulting distribution of political power from the partially coerced political exchange is characterized, ideally, by no violent conflict. This is because political property rights are well-defined, and each party recognizes violence is not in its self-interest. However, once we introduce ambiguity—perhaps the vassal has access to local knowledge that suggests armed resistance now maximizes its payoff—conflict becomes a possibility. Where conflict exists, the rights attaching to sov-

ereign command are being contested. Political property rights are now poorly defined. The conflict will end when a new and clearer demarcation of political property rights, and hence a new and clearer demarcation of sovereignty, is reached.

#### 6.4. *Sovereignty, Exchange, and Emergence*

We are now in a good position to list the properties of sovereignty. A sovereign is an agent whose claims to political property rights, and any downstream rights such as economic rights, are self-enforced. The agent may be an individual or group of individuals; it may be ad hoc or a durable corporate entity. What matters is that it can be reasonably described as having an objective function and strategies—that it is a purposive (goal-seeking) entity. Since the sovereign's rights are self-enforced, any duties or burdens that are inherent in these rights are also borne by the sovereign. Sovereignty ultimately makes sense in the context of a given governance hierarchy.

It was necessary to frame the choices underlying sovereignty in game theoretic terms in order to show their strategic character. But it would be dangerous to infer from this that the overall stable pattern of sovereignty was the result of intention or design. In fact, the opposite is true. While the boundaries of sovereignty between any subset of political property rights holders owes something to conscious choice, the overall distribution of political property rights is an emergent order.

The closest analog is the relationship between firms and markets in standard microeconomics. Any one firm's market share is partly the result of choices it makes vis-à-vis its competitors. But the choice scenario of the firm had to take many pieces of data as "given." These data are themselves the results of millions of producers and consumers making their own productive and consumptive allocation choices. That conscious strategy can affect market share *at the margin* does not mean that a firm's market share is itself an object of choice. Markets remain the ultimate example of a spontaneous order—to paraphrase Adam Ferguson, the product of human action, but not of human design.

Likewise, the political property rights claimed by any governance hierarchy are partly the results of choices it makes, but mostly the result of an innumerable number of choices made by other governance hierarchies, and those subordinates with whom the other hierarchies interact. Continuing the Investiture Controversy example, the choices made by

popes and emperors certainly were the proximate determinants of what rights each party held in terms of throne-altar relations. But the pan-European medieval constitution was the emergent result of many, many strategic interactions such as this. The important effects of the Investiture Controversy on the medieval constitution, especially the rise of the Roman Church as an international power capable of checking secular authorities and thus providing another balancing point in the constitutional order, were emergent as well.

To paraphrase James Buchanan (2002 [1982]), sovereignty is defined in the process of its emergence. It cannot be divorced from the bargaining process that yields it. And while individual bargains are appropriately choice-theoretic, the bargaining process and the overall constitutional equilibrium it creates exist at a higher order of complexity.

Both aspects of sovereignty, choice at the level of constitutional bargains and emergence at the level of constitutional equilibrium, matter for interpreting the medieval constitution. The primary driver of constitutional structure in the years leading up to the High Middle Ages was political property rights holders trying to establish sovereignty. Their goal, whether they acted peacefully or violently, was to maximize their own wealth, power, and prestige, as well as the perpetuity of their reign. But even though the medieval constitution was the result of self-interested agents engaging in constitutional exchange, the constitution embodies procedures that contributed to “good governance.” This was not the intent of the sovereigns and subordinates who comprised the medieval constitution. As we acknowledged, they were not “social welfare maximizers.” Nonetheless, the constitutional equilibrium they eventually reached featured both representation and concurrence among the various interest groups (royalty, nobility, clergy, and burghers). Just as the goal of market theory is in explaining how self-interested and informationally limited consumers and producers can, so long as their interactions are governed in a certain way, bargain such that their plans are reconciled, our goal is to explain how self-interested and informationally limited agents can bargain politically such that the result is a generally welfare-enhancing reconciliation of political property rights claims.

We now have one important part of the puzzle. In constitutional equilibrium, some political property rights holders will be sovereigns. Those who are not will come to hold only an attenuated set of political property rights. Sovereigns have the means and the incentive to check encroachments on their rights. This *de facto* power to resist predation resulted

in the institutionalization of several rights and prerogatives that were self-claimed and self-enforced by a subset of medieval political actors. Notable among these are representative assemblies and self-governing cities. Both institutions are sufficiently important that we will devote a chapter to each.

And yet the puzzle has not been fully pieced together. Since constitutional equilibrium is characterized by multiple sovereign agents, it makes sense that bargains among these agents will be voluntary and thus *ex ante* welfare-enhancing for the parties involved. But what about the parties that are not involved, who are nonetheless affected? Medieval Europe had many individuals and groups who, to the extent they had any political property rights at all, only held these rights because of delegation or implicit permission. The lower nobility, for example, could not always resist the higher nobility or royalty if the latter decided they wished to seize the rights of the former. And what about those without any political property rights, such as serfs? We still have not developed an explanation for why the medieval constitution was beneficial to those who were low in the feudal hierarchy. If we want to assert that the medieval constitution was a constitution of liberty (cf. Hayek 1960), the burden falls on us to point to the features of this constitution that protected the lowly as well. Our next chapter addresses this question.

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## Polycentric Sovereignty



Why did traditions of good governance and wealth creation arise in Western Europe? We began this book by elaborating on the political landscape that arose following the decline of the Western Roman Empire and during the early medieval era. Given that historical backdrop, we set ourselves the task of developing a theory that addresses the above question. Toward this end, we then introduced and discussed some fundamental “building blocks” of such a theory. In this chapter, we now bring these building blocks together in a way that makes intelligible the enduring traditions of political and economic liberty that were unique to Western Europe. The theory centers on a constitutional ideal type that we call polycentric sovereignty.

To recap the theoretical building blocks, we emphasize structures of political property rights where holders of those rights are residual claimants—they internalize both the benefits and the costs of exercising those rights. Residual claimancy aligns the incentives of governance providers (political property rights holders) and the governed. Furthermore, when holders of political property rights are secure in their rights, then exchanges of those rights among those holders will be in the interests of all parties, including the governed. In other words, constitutional bargains will change the structure of political property rights in ways that are expected to be welfare-enhancing.

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Portions of this chapter are adapted from Salter and Young (2019).

When will holders of political property rights be secure in their rights? As regards the overall structure of political property rights in a society—i.e., the society’s constitution—there is no third-party enforcer. We therefore emphasize the extent to which political property rights holders are sovereign. Security in their rights, then, is rooted in their ability to resist the encroachments of others upon those rights.

In medieval Western Europe, holders of political property rights tended to have high degrees of both sovereignty and residual claimancy. This was a stable case of what we have referred to (in chapter 4) as a shareholders state. In such an environment, *ex ante*, holders of political property rights have incentives to provide good governance, in the sense that it is expected to promote wealth-creation. *Ex post*, increases or decreases in wealth provide informational feedback that helps to evaluate that expectation. In other words, as residual claimants to the assets within their jurisdictions, changes in wealth signal to the holder of political property rights whether or not they have actually provided good governance.

Our overall concept of polycentric sovereignty, as the name would suggest, incorporates an additional element: polycentricity. Polycentricity, in and of itself, works to mitigate both the incentive and information problems that block the path to good governance. We will here begin by introducing and elaborating on the concept of polycentricity; then we will tie the whole framework together and discuss how polycentricity, residual claimancy, and sovereignty characterized medieval Western Europe and its constitution.

### 7.1. *Polycentricity*

As described in chapter 5, incentive and information problems are both mitigated within a shareholders state. Incentive and information problems can be mitigated further by a polycentric order of political property rights holders. Polycentricity implies that political authority is dispersed and jurisdictions are concurrent and often overlapping (E. Ostrom 2010; V. Ostrom 1997).

When authority is dispersed throughout a society, holders of political property rights have greater access to local knowledge that can be integrated into their governance decisions. Moreover, when authority is geographically fragmented into different jurisdictions, the governed have greater opportunities for exercising exit options; holders of politi-



cal property rights are then under greater pressure to compete for them (Tiebout 1956). Individuals can “vote with their feet,” sorting themselves across jurisdictions according to their governance preferences; at the same time, holders of political property rights compete for individuals (who are a source of wealth) by their governance offerings.

Admittedly, there were legal constraints on the mobility of the governed, especially serfs. However, those legal constraints were often unlikely to be binding *de facto*. Embodied in the maxim *stadluft macht frei*, if a serf could make it to a chartered city and reside there for a year and a day, then he was free of the ties to his former lord (Young 2017; see also Jordan 2012, 10). While the English translation of this maxim—“city air makes you free”—is recognizable to the modern reader, there was also a similar, possibly less familiar medieval maxim: *rodung macht frei* or “clearing makes you free” (Jordan 2012, 9–11). Europe was sparsely populated and heavily forested. New and remote settlements represented both great risks and great opportunities. Farmers that devoted their time and effort to clearing lands could look forward to improved standards of living. Furthermore, “the act of clearing the habitat and colonizing the settlement brought something more immediate; it conferred liberty on the colonizers [. . .]” (Jordan 2012, 10).

When the Black Death in the mid-1300s decreased the land-to-labor ratio significantly, it increased these opportunities for serfs, along with their bargaining power (North and Thomas 1971, 1973). Hatcher and Bailey (116) note that, by this time, “greater and lesser landlords displayed a notable lack of class solidarity” when it came to mobile labor: “they competed with each other for tenants as well as laborers in taking in migrants and varying the rent packages which they offered. [. . .] little external assistance was made available to lords to assist them in the recapture of runaways.” Ultimately, though not always legal *per se*, mobility “was common, and, since attempts to keep peasants on land by force proved futile, lords had to reach accommodations with their tenants” (Karayalcin 2008, 988).<sup>1</sup>

Good governance ultimately arises when holders of political property rights have incentives to act in the interests of the governed and also the information necessary to act in ways consistent with those incentives.

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1. Also see Raftis (1964) and Hatcher and Bailey (2001, 100–101). See Rösener (1992) for general discussion of peasants and serfs in Europe, including their opportunities for mobility. The political fragmentation of Western Europe also increased mobility among wealthier individuals. Karayalcin (2008, 986) briefly reviews cases of merchants and artisans exploiting their mobility.

They must both want to govern well and know how to do so. Because of Tiebout competition, polycentricity mitigates incentive incompatibilities between governance providers and the governed. Political fragmentation also mitigates information problems by bringing governance providers into closer contact to local knowledge.

There is an additional way in which polycentricity mitigates information problems. While Tiebout competition incentivizes a governance provider to offer better policies than those offered in neighboring jurisdictions, he can learn from observing the policy outcomes in those neighboring jurisdictions. This means that a governance provider can take advantage of not only the information generated by his own policy experiments, but also that generated by the policy experiments of others. This creates what economists have termed *yardstick competition* (Besley and Case 1995), whereby holders of political property rights emulate or distinguish themselves from their neighbors based on what they learn from the governance offered by one another.

### 7.2. *Hierarchical Polycentricity*

Governance in medieval Western Europe was polycentric. Political authority was dispersed among monarchs, members of the nobility, and leading men of the Church; increasingly in the High Middle Ages, the leading burghers of cities also claimed their share of political property rights. Jurisdictions of these various political agents often overlapped, as was the case, for instance, with royal, ecclesiastical, and merchant courts in England (Stringham and Zywicki 2011). Engaged in Tiebout competition with one another, these courts “competed to provide the most unbiased, accurate, reasonable, and prompt resolution of disputes” (507); the returns to successful competition were increased revenues from fees charged to the litigants.

Medieval governance was not only polycentric, it was also hierarchical. In many ways, the medieval Western European constitution resembled what is today known as a federalist system of governance. A federalist system is characterized by a hierarchy of political authorities within which different types of governance are provided at different levels of the hierarchy. Furthermore, the jurisdictions of different levels of the hierarchy are overlapping. For example, the United States has a federalist system of local, state, and federal governments: each state government’s jurisdiction overlaps with those of all the local governments of

that state; the federal government's jurisdiction overlaps with those of all the state governments.

A number of scholars—most notably the political scientists William Riker and Barry Weingast—have emphasized that federalist systems can strike an effective balance between lower-level governance that utilizes local knowledge and upper-level governance that orchestrates collective action toward common-interest collective goods.<sup>2</sup> Above we have emphasized how political fragmentation and the dispersion of authority gives governance providers greater access to local knowledge and, hence, mitigates information problems; and this is certainly true. However, some common-interest goods may not be effectively provided by decentralized political agents. National defense is most commonly offered as archetypical; but there is a spectrum along which—for example, regarding the United States—one might think the federal government most suitable to provide interstate highways, state governments to oversee public universities, and local governments to make decisions regarding the repair of potholes in residential roads.

Within the medieval feudal hierarchy the structure of political property rights emanated down from monarchs in a cascade of overlapping and competing jurisdictions: monarchs down to magnates; magnates down to their own noble vassals; those vassals down to their own; down to free peasants and serfs. Furthermore, the Catholic Church was an overarching spiritual authority for Latin Christendom with its own hierarchy populated by members of the clergy, the higher-ranking members of which were holders of political property rights. The Church hierarchy was, itself, intermeshed with the feudal hierarchy: bishops and archbishops did homage to monarchs and sometimes lay magnates; their own vassals did homage to them. Medieval governance provision, then, was very much characterized by hierarchical polycentricity.

One critique of federalist systems (and, by implication, the type of hierarchical polycentricity characteristic of medieval Western European governance) is that they can be unstable, with tendencies for the assignment of political property rights to either centralize at upper-levels or fragment toward lower-levels (Riker 1964; Bednar 1996; Ordeshook and Shvetsova 1997; Bednar et al. 2001). For a hierarchical structure of political property rights to be stable, lower-level governance providers

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2. E.g., see Riker (1964), Weingast (1993, 1995), Qian and Weingast (1997), and de Figueiredo and Weingast (2005).

must be able to check predatory behavior on the part of upper-level providers; likewise, upper-level governance providers must be able to facilitate collective action among lower-level providers, checking their temptations to shirk and to partake in other non-cooperative behavior. (Such non-cooperative behavior can take the form of lower-level governance providers pressuring an upper-level provider to soften their budget constraints via transfers from other lower-level units.) If these conditions hold true, then the structure of political property rights will be self-enforcing.

However, it is not at all clear that those conditions will hold. An upper-level governance provider that is strong enough to discipline and orchestrate collective action on the part of lower-level providers is also strong enough to potentially prey upon them. Likewise, if lower-level governance providers can exploit an upper-level provider toward transfers and bailouts, then the market-preserving and promoting discipline of jurisdictional competition will not bite. These “state predation” and “soft budget constraint” problems are inherent to federalist systems (North 1990; Kornai 1986). Unfortunately, they often exacerbate one another.<sup>3</sup>

In chapter 5, we emphasized that if political property rights holders are sovereign, then a constitutional order will be self-enforcing. (As we discuss in chapter 5, sovereignty of political property rights holders provides a substitute for third party enforcement.) While sovereignty of political property rights holders cannot be said to necessarily characterize modern federalist systems, we argue that it did to a great extent characterize the medieval Western European constitution. Sovereignty throughout the structure of political property rights mitigates both the state predation and soft budget constraint problems.

### 7.3. *Polycentric Sovereignty*

We have now introduced and discussed all of the elements—residual claimancy, sovereignty, and a hierarchical form of polycentricity—that we argue were characteristic of medieval Western Europe. The combination of these three elements in a constitutional order is what we term

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3. On potential solutions to these problems see Riker (1964), Qian and Weingast (1997), and de Figueiredo and Weingast (2005). On the exacerbation of state predation problems by solutions to soft budget constraint problems, and vice versa, see de Figueiredo and Weingast (2005), Weingast (1995), and Williamson (1985, 1995).

polycentric sovereignty. We argue that Western European polycentric sovereignty promoted enduring traditions of economic and political liberty. We believe that those traditions were associated with the evolution of good governance and the creation of wealth. The enduring nature of those traditions is notable. Also, they have proved exceedingly difficult—though fortunately not impossible in some cases—for countries in other regions of the world to adopt.

In seeking the foundations of these traditions, we are certainly not the first to have pointed to elements of polycentric sovereignty. Importantly, numerous scholars have emphasized the rough balance of power between monarchs and the politically powerful estates (or orders) that characterized medieval Western Europe (e.g., Weber 1968 [1922]; Hintze 1975 [1931]; Baechler 1975; Berman 1983; Downing 1988, 1989, 1992; Anderson 1991; Raico 1994; Finer 1997; Stark 2011, chs. 14–16). The first and second estates were, respectively, the Catholic Church clergy and the landed nobility. These estates were politically formidable groups with distinct interests. Importantly, they were each characterized by a hierarchical structure populated by holders of political property rights; each also had collective interests to pursue.

Political property rights within the medieval constitution were well-aligned: that is, they were bundled with economic property rights to the realms being governed. As such, the holders of those rights were residual claimants to returns from the assets within their jurisdictions; they stood to gain when their governance facilitated wealth-creation. This worked to align the incentives of the governance providers with the governed. When they observed those returns, political property rights holders received informational feedback to help evaluate the quality of their governance.

A constitution characterized by a structure of well-aligned political property rights, where the holders of those rights are sovereign, is expected to promote a generality norm (Buchanan and Congleton 2003 [1998]; Congleton 2004). A generality norm dictates that collective action systematically tends to benefit all parties to the collective action, rather than benefiting some parties at the expense of others. Under a generality norm, significant changes in governance and/or constitutional bargains will occur only when they are broadly perceived to be desirable. This is true regarding the behavior of political agents both in relation to the governed (due to residual claimancy) and in relation to one another (due to sovereignty).

7.4. *The Medieval Estates System*

Many scholars seeking to identify the foundations of Western European traditions of economic and political liberty have emphasized the rough balance of power between medieval monarchs and the politically powerful medieval estates. These scholars include such luminaries as the sociologist and political economist Max Weber, the historian Otto Hintze, and the legal scholar Harold Berman. For example, Hintze (1975 [1931], 305) opines: “The representative system of government that today gives the political life of the whole civilized world its distinctive character traces its origins to the system of Estates of the Middle Ages.” What were these estates and why might they have been so critical to the exceptionalism of Western civilization? We argue here that the importance of the estates system lay in its contribution to an environment of polycentric sovereignty in medieval Western Europe.<sup>4</sup>

The estates were broad classes or orders that characterized medieval society. Members of a particular estate recognized themselves as such. They perceived themselves as having estate-specific interests, often contrary to those of monarchs and other estates. Dating back to at least the eleventh century, literary references to a tripartite system of estates can be found:

Triple then is the house of God which is thought to be one: on Earth, some pray, others fight, still others work; which three are joined together and may not be torn asunder; so that on the function of each the works of the others rest, each in turn assisting all.

The above was written circa 1020–1030 by Adalbero, bishop of Laon. These were the three estates of the West: *those who pray*; *those who fight*; *those who labor*. A member of the clergy was self-conscious of his being part of the first estate. Likewise, a noble was self-consciously part of the second estate. Commoners undoubtedly recognized that they were part

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4. Our characterization of medieval Europe as an environment of polycentric sovereignty is related to Volckart’s (2000, 2) description of its “Open Constitution”: “several individuals or organizations within one geographical region were supplying the same goods which today have been monopolized by the state, among these goods being military security.” Volckart is interested in arguing how rent-seeking among these competing individuals/organizations led to the rise of modern states. Alternatively, our focus here is on how polycentricity was stable for long-enough to provide the foundations of political and economic liberty.

of a separate class, but it would not be until the twelfth century, with the rise of commercial cities that were significant producers of wealth, that urban burghers began to represent a political powerful third estate.<sup>5</sup>

Monarchs and members of the first and second estates were situated within a hierarchy of authority, the levels of which were defined in terms of the feudal system of lordship and vassalage along with the hierarchy of the Catholic Church. And the feudal system and Church hierarchy were themselves intermeshed. Monarchs were situated in the middle, so to speak, of the overall hierarchy, with Church hierarchy reaching above them and the feudal hierarchy extending downward from them. The third estate would eventually arise as the inhabitants of medieval cities became corporations that were able to play monarchs and the other two estates off one another, bargaining for rights of self-governance.

Why did the estates system develop in Western Europe? In chapters 2 and 3 we elaborated on some of the historical circumstances leading to its development. Of course, the full set of historical circumstances are complex, and thoroughly exploring them is well beyond the scope of this book. All that we attempt to provide here is a brief overview, recapping and building upon the material introduced in chapters 2 and 3. This will hopefully give a sense of how the three estates became established in the medieval consciousness and political economy; importantly, we will also try to provide some understanding of how the existence of those estates contributed to an environment of polycentric sovereignty.

### 7.5. *The Second Estate*

In the vacuum created by the fall of the Western Roman Empire, reliance on reciprocal ties of protection and service between individuals became fundamental to medieval society. No longer was violent force concentrated in a professional imperial military that was, at least in principle, centrally controlled and directed. Instead, Western Europe became a Wild West inhabited by erstwhile imperial soldiers and barbarians. The historian Pierre Riché (1993 [1983], 37) provides an apt characterization of an individual's plight in this post-imperial world: "[T]he lone, unaided individual was virtually condemned. There was no choice but to enter the service of a magnate and thereby gain his protection."

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5. See Duby (1980 [1978]) on the tripartite conception of medieval orders. The quote from Adalbero appears on p. 5.

At the individual level, reciprocal ties of protection and service became an increasingly critical basis for establishing security and order in medieval society. The only effective efforts at reversing this trend and reestablishing a more centralized order occurred during the eighth and ninth centuries when the Carolingians made some successful steps toward reuniting Western Europe as a single empire. However, unlike their imperial predecessors the Carolingians attempted to build state capacity by proliferating the reciprocal ties of protection and service that were to become a characteristic feature of feudal Europe. In any case, the Carolingian experiment did not long outlast Charlemagne and by the High Middle Ages vassalage (i.e., the pledging of service in return for protection by a lord) was the basis for individuals' security in society.<sup>6</sup>

Vassals and their lords agreed to arrangements of reciprocal obligations. These arrangements were often standardized. For example, the eighth century *Formulary of Tours* codified the outlines of such protection/service arrangements:

To the magnificent lord so-and-so, I, so-and-so: As it is evident to all that I have no means to food and clothe myself, I have appealed to your piety and you have willingly agreed that I should deliver or commend myself to your protection. This I do under the following conditions: You must help and support me with food and clothing, according to the degree that I serve and merit from you. And for as long as I live, I must provide you service and honor according to my free rank[. . . .] It has also been agreed concerning this undertaking that two charters identical in wording shall be drafted and confirmed by the parties. This they have done.<sup>7</sup>

The *Formulary of Marculf*, compiled even earlier in the latter part of the seventh and earlier part of the eighth centuries, provided a template for homage to Merovingian kings:

It is right that royal power should accord its protection to those whose need is proven. Therefore, Your Greatness and Favor should know that we have publicly received, at his request [and] on account of unlawful acts of aggression by evil men, into the promise of our protection Bishop so-and-so, or the worthy so-and-so, or so-and-so of such

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6. See Bisson (2009, 22–83) on the post-Carolingian proliferation of lordships.

7. Reproduced in Riché (1993 [1983], 37).



monastery established in honor of Saint so-and-so, with all his goods, vassals, retainers, friends, and lawful dependents wherever they may be, in order that he may abide in peace [. . .].<sup>8</sup>

Apparently, in medieval Europe, one could expect to be a lord, a vassal, or both. The reciprocal arrangements involved in homage were also standardized in terms of ceremony: the prospective vassal (often kneeling) put his hands between those of the prospective lord, then the deal was sealed with a kiss on the lips.<sup>9</sup>

In practice these arrangements often involved the vassal promising payments and services to the lord in exchange for a grant of land (a “fief” or “benefice”) and the lord’s protection. A lord’s collection of vassals and fiefs constituted his fiefdom. Payments took the form of part of the husbandry surplus from the fief; services were typically military support consisting of the vassal’s own service, a levy of the vassal’s own vassals, or scutage (i.e., a buyout from the military obligations). As Marongiu (1968, 22) puts it: “In practice, the vassals needed the support and favor of the sovereign [monarch], while the sovereign was equally dependent—in peace as well as in war—on the devotion and collaboration of those he regarded as personifying the ‘people’ or the ‘kingdom.’”

The medieval nobility was landed and militarized; it was essentially a warrior class. Indeed, being a noble essentially meant having land that you did not have to yourself work; hence, you were free to fight and/or command others to do so. This is not to say that birth did not count importantly toward one’s status in medieval Europe. However, having vassals itself created status; being a lord provided a gateway to the nobility. We have previously discussed the distinction between noble and banal lords and the proliferation of the latter in the tenth and eleventh centuries, following the decline of the Carolingians. Bisson (2009, 68) notes that, by the beginning of the twelfth century, “such men could no longer be mistaken for poor (or unfree) knights and household retainers; mailed and mounted, they must often have been hard to tell from lords of noble birth.” And this fact, no doubt, would have very much pleased these aspiring nobles.

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8. Reproduced in Riché (1993 [1983], 38). Interestingly the “[. . .]” corresponds to: “under the oversight and protection of the illustrious so-and-so, mayor of our palace, with all the goods of the aforesaid church, or monastery.” At this time Pippinid and Arnulfing families were increasingly gaining de facto political power at the expense of the Merovingians. The alliance of these two families would give rise to the Carolingian dynasty.

9. Bloch (1968a [1939], 145–46).

Common free men and villeins (serfs) did homage to nobles, becoming their vassals in exchange for protection. Relative to free men, villeins had fewer rights and faced a greater number of legal restrictions; they were also, unlike free men, obligated to provide labor services on their lords' private lands (or demesne) as well as working their own land grants (Wickham 2016, 15). Vassals required protection from threats both from without (e.g., expropriations by a neighboring lord or monarch) and within (e.g., disputes with neighboring fellow vassals). Each lord, then, was a provider of governance: defense of his realm and justice within it.<sup>10</sup> Reciprocal ties of protection and service also existed between members of the nobility. Lesser lords did homage to greater lords who, in turn, were the vassals of lords even further up in the feudal hierarchy; culminating in monarchs to whom principal magnates did homage.

Interestingly, while homage was essentially a contractual and purely secular arrangement, from the eleventh century on it was increasingly accompanied by an oath of fealty. Homage and fealty became so intertwined starting in the Carolingian era that today they are often thought of as synonymous. Unlike homage, the rite of fealty was essentially religious; it involved a subordinate swearing to be faithful to a master. Whereas homage was reciprocal, implying obligations on both vassal and lord, "the fealty of the vassal was a unilateral undertaking to which there was seldom a corresponding oath on the part of the lord" (Bloch 1968a [1939], 147).

With the proliferation of banal lordships in the tenth and eleventh centuries, principal magnates and monarchs began to insist increasingly upon oaths of fealty. In addition to homage and fealty, there were also the bonds of knighthood. The term "knight" often suggests, in the medieval context, a lesser or banal lord; and this was indeed the early meaning of the term:

It seems to have begun as a social act, perhaps convivial or even boisterous according to one's readings of the minds behind the rough ceremonies. [. . .] knighthood as the rite of entry into the ranks of the mounted warrior. (Southern 1992 [1953], 111)

However, in the High Middle Ages the Church and the higher (i.e., of noble birth) aristocracy co-opted the idea of knightly culture. Orders of knighthood were established military fraternities with religious over-

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10. For examples, see Southern (1992 [1953], 145–46).

tones. Unlike homage, which established vassals and lords, knighthood established equals: “The man who had many lords by his homage was on an equality with the king by his knighthood” (Southern 1992 [1953], 111).<sup>11</sup>

From the least of lords up through the greatest of them and their monarchs, at all levels of the feudal hierarchy militarized (and, hence, *de facto* politically powerful) individuals provided governance to their fiefdoms and demesnes. Note that every lord was *a* (rather than *the*) governance provider for his fiefdom and demesne. This was true because jurisdictions within the feudal system overlapped. Every greater lord provided governance for his fiefdom, and his fiefdom encompassed the fiefdoms for which governance was provided by that greater lord’s own noble vassals. Overlapping jurisdictions meant that multiple lords were responsible for providing governance to any particular territory.

Consider a hypothetical case involving two nobles (A & B) who had both done homage to a greater lord. Assume that A decided to raid the fiefdom of B. The latter was then obligated to defend his vassals from this external threat. However, the greater lord was also responsible for adjudicating the dispute between A and B, both of whom were his vassals. In the High Middle Ages, for example, Holy Roman Emperors, as well as imperial dukes, would proclaim a Public Peace (*Landfriede*) during which they would attempt to peacefully resolve disputes between their vassals (see du Boulay 1978, 347–48).

Multiple parties could also be appealed to for justice within any particular territory, placing governance providers in competition with one another. Assume that instead of raiding B’s fiefdom, A decided to expropriate resources from his vassals beyond their feudal obligations. Those vassals could have appealed to the overarching authority of the greater lord to adjudicate their dispute with A. As the medieval historian R. W. Southern (1992 [1953], 110) observes:

The nobleman was bound by several codes of law—as a Christian, a baron, a knight, a subject of the king; and he could suffer all manner of penalties for a breach of any of these codes of law[;] [i]nto all of these obligations he had entered by an individual contract in the ceremonies of baptism, homage, knighthood and fealty.

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11. See Bisson (2009, 50–53) on the increasing insistence on oaths of fealty; (64–65) on the co-opting of knightly culture by the higher nobility and Church. See Bloch (1968a [1939], 146–47) on homage versus fealty. See Southern (1992 [1953], 111–15) on knighthood as military fraternities.

Note that these overlapping legal jurisdictions included those ecclesiastical as well as lay. The role of Church authorities in the governance hierarchy is an important subject to which we shall return below.

Importantly, governance providers at all levels of the feudal hierarchy had residual claimancy in their jurisdictions. Lords were effectively shareholders in their fiefdoms who stood to capture returns associated with their governance provision. To illustrate this point, it is helpful to consider a visual depiction of a medieval manor (fig. 3). A manor was (at least a self-contained part of) a lord's fiefdom; it consisted of grants of land to non-nobles, as well as commons and the lord's demesne. Land grants on a manor were often made in the form of longish tracts, simply because they were easier to plow and cultivate for agriculture. As a result, the medieval manor—aside from the commons for pasturing livestock—was typically stratified in terms of land allocations, both fiefs and the lord's demesne; with the effect that the manor was composed of fiefs and demesne intermixed. Note that the lord also relied on villeins to work his demesne. As such, when a lord's governance facilitated wealth-creating activity within the manor, both he and his vassals stood to gain. (Conversely, governance that discouraged the creation of wealth harmed the lord as well as his vassals.) A medieval lord's residual claimancy in his fiefdom and demesne worked to align his incentives with those whom he governed.

Above the level of a manor, the feudal hierarchy was one of reciprocal arrangements of protection in exchange for military services. Lesser lords were providers of military services to their greater lords; principle magnates did homage and pledged their swords to their monarchs. Importantly, noble vassals maintained sovereignty relative to their greater lords. While the former relied on the latter to provide justice and order in the realm, the means by which greater lords did so was in large part from the very vassals whom they governed. Noble vassals could check the actions of their greater lords when it ran contrary to their interests, especially so if they were moved to act collectively. Of course, this cut both ways: if a vassal chose to act against his lord in a way that was purely self-serving (rather than being in the interests of his lord's other vassals) then the lord would have been able to call upon levies and check that self-serving action.

The militarization of nobles at all levels of the feudal hierarchy was clearly evident in the widespread phenomenon of dispute resolution via so-called private wars. For example, in southern France:



These wars—which might be better termed seigneurial than private—took place between small, provincial powers such as lords, towns, or prelates. They were usually fought over the possession of lordship and its attendant rights, and generally involved a few hundred men, whose hostile actions took the form of short sieges and raids against an enemy’s property and peasants. (Firnhaber-Baker 2010, 37–38)

Of course, the extent to which dispute settlement among nobles was pursued via armed conflict was unfortunate. There is no denying that the medieval world was often a nasty and violent place! However, it does indicate the extent to which sovereignty—the potential to defend one’s own political property rights—characterized agents at all levels of the governance hierarchy.<sup>12</sup>

While the militarization of lords was first and foremost a source of sovereignty, it is also important to note that medieval society was one where the ties of homage and fealty encouraged a preoccupation with one’s honor that also helped make the reciprocal feudal ties self-enforcing. This preoccupation with honor is exemplified by the case of King Henry II (r. 1154–1189) of England calling off his plans for a siege of Toulouse. In the twelfth century the English monarchs were also great continental lords and Henry was lord over nearly half of modern France. However, while Henry was a monarch in England he was a vassal of the French King Louis VII (r. 1137–1180) in regards to his continental holdings. Henry’s 1159 expedition to Toulouse in southern France was an attempt to expand his continental holdings; something that did not sit well with Louis. Fearing his militarily superior vassal, Louis hastened with a small retinue and was within the fortifications of Toulouse by the time Henry arrived with his large army. For his part, Henry faced a conundrum: “If he attacked his lord whom he had sworn to defend, what value were his barons’ own oaths to him?” He turned and walked away: “Henry, one of the two most powerful monarchs in western Europe, could not risk being an oath-breaker, and preferred to lose prestige—a lot of prestige—as a failed strategist instead” (Wickham 2016, 9–10).

The relative balance of power between greater and lesser lords—in particular, monarchs and the principle magnates of their realms—varied over place and time in medieval Western Europe. English monarchs in the twelfth and thirteenth centuries were powerful relative to their coun-

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12. On private wars see du Boulay (1978, 345–46), Kaminsky (2002), Bisson (2009), Firnhaber-Baker (2010).

terparts in France and Spain; in the latter cases, the monarchs of the late Middle Ages had greater authority over their vassals than their High Middle Ages predecessors. The extent of subinfeudation also differed from region to region and over time. The hierarchical arrangements of jurisdictions and their overlaps were not uniform across space or time. While acknowledging this, the general characterization of Western European monarchical-noble hierarchies in terms of polycentric sovereignty is apt.

### 7.6. *The First Estate*

The feudal hierarchy was one that emanated down from monarchs in a cascade of overlapping and competing jurisdictions within which members of the second estate—the nobility of medieval Western Europe—provided governance. Alternatively, the Catholic Church was an overarching spiritual authority for Latin Christendom with its own hierarchy populated by members of the first estate or clergy. The Church hierarchy intermeshed with the feudal hierarchy: bishops and archbishops did homage to monarchs and great lords; their own vassals did homage to them.

We have discussed how individuals in post-imperial Western Europe came to rely increasingly on reciprocal ties of protection and service, and that these ties came to constitute the framework of the feudal hierarchy. Living in the power vacuum left by the defunct Western Roman Empire was obviously tough all around. One group whose members found their new situation particularly disconcerting was the Roman senatorial class. Rather than being part of an established order where they were recognized as elite, senators now inhabited a world of barbarians: Franks, Vandals, Burgundians, and Goths. They had been the landowners of the empire, yet the barbarians had claimed substantial shares of their lands or the revenues associated with them.

While some senators simply settled into coexistence with their barbarian neighbors/tax farmers, we have seen that others pursued alternative strategies. One of these strategies was to seek Church office. The seeking of Church offices had become increasingly popular for Roman senators since Constantine the Great's (r. 306–337) conversion and legalization of Christianity; likewise, "high ranking ecclesiastics had been appropriating the perquisites of aristocratic status throughout the empire" (Mathisen 1993, 90). This trend accelerated during the fifth century. Most of the barbarian groups settled within the imperial frontiers were

fully or in large part Christianized.<sup>13</sup> With the exception of the Vandals, who ultimately ended up in North Africa, the barbarian groups that settled within the imperial frontiers tended to show respect and exercise restraint with clergy (Mathisen 1993, 103).

Along with their noble birth and wealth, senators traditionally associated their status with imperial office holding. When the empire fell, they increasingly sought office in the familiar Church hierarchy. As Heather (2006, 126) notes: “The Christian Church hierarchy [. . .] came to mirror the Empire’s administrative and social structures. [. . .] From 370s onward, bishops were increasingly drawn from the landowning classes, and controlled episcopal successions by discussion among themselves.” As officials of the Roman state religion, bishops controlled the flow of patronage, and often exercised near autocratic authority in their cities (Mathisen 1993, 93–94). The decline of the Empire made the Church an increasingly desirable substitute for imperial office holding.

With the influx of senators came wealth and patronage networks that augmented the Church’s existing administrative and social infrastructure. As we noted in chapter 3, by the beginning of the sixth century the cathedral church was often the largest landowner in its region. Since bishops were not allowed to alienate Church property, once land came into Church hands it stayed there. The growth and stability of Church land holdings was enhanced by the increasingly *de facto* (though officially impermissible) heritability of ecclesiastical offices. An episcopal dynasty could consolidate a substantial amount of patronage and power.<sup>14</sup>

In addition to offering senators the types of offices no longer available in secular government, church offices suited nobles’ “literary inclinations”: “Cultural and literary achievements which no longer received many, or any, rewards from the state could now lead to advancement in the church” (Mathisen 1993, 93). As a result, the Church also amassed human capital. Alternatively, the new barbarian elites were generally illiterate and lacked experience and skills in administration and jurisprudence. Moving forward, then, the clergy possessed human capital that fledgling governments required and yet could not easily expropriate.

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13. This included the Visigoths and Burgundians in Gaul and the Ostrogoths in Italy (Thompson 2008, ch. 4); Clovis the Frank converted after praying to the Christian God during a particularly dicey moment in the Battle of Tolbiac against another barbarian group, the Thuringians (496 or 506; see Gregory of Tours 1974, book 2, ch. 30; Edwards 1988, ch. 4).

14. On the *de facto* heritability of Church office and episcopal dynasties see Mathisen (1993, 91–92).



Wealth, extensive patron-client networks, and a sophisticated administrative hierarchy left the Church poised to become a major political player. As noted again by Wickham (2009, 59): “The fact that this institutional structure did not depend on the empire, and was above all separately funded, meant that it could survive the political fragmentation of the fifth century, and the church was indeed the Roman institution that continued with least change into the early Middle Ages.”

Aside from during the short-lived Carolingian Empire—ending with the death of Charlemagne’s son, Louis the Pious (d. 840), and its division among his squabbling sons with the Treaty of Verdun—the monarchical landscape of medieval Europe was a highly fragmented one. Yet the Church’s spiritual authority was overarching: the pope and other bishops wielded the threat of damnation—or the promise of salvation—and monarchs across Latin Christendom (as well as their vassals and most people in general) took those threats and promises very seriously. This fact is famously reflected in the image of the Holy Roman Emperor Henry IV (r. 1056–1105), having been excommunicated by Pope Gregory VII in 1076, kneeling for three days and nights outside of Canossa Castle in northern Italy, in a blizzard, barefoot and wearing a penitential hair shirt, seeking Gregory’s forgiveness. Monarchs also derived legitimacy from being anointed by an archbishop. The first estate could threaten a monarch’s authority by withholding anointment, not to mention his very soul via excommunication (Hall 1997; Tellenbach 1959).

Of course, Henry was not so cut-up by the experience that he did not soon violate the conditions that Gregory had set in exchange for lifting the excommunication. Furthermore, when Henry was excommunicated a second time, many German nobles began to view Gregory’s move as transparently political and, as such, discounted its spiritual import. The Church’s spiritual authority, then, was by no means absolute, but neither was it something to be dismissed lightly. For example, when Pope Urban II first preached crusade at the Council of Clermont (1095), nobles across Europe responded in large part because they themselves were a violent lot, the fate of whose souls was precarious. (Crusading allowed them to be violent in way that was penitential.) Furthermore, monarchs derived their authority in part from their anointment by an archbishop (or, in the case of the Holy Roman Emperor, the pope himself) as a representative of the Church and God.<sup>15</sup>

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15. On the response to Urban II’s call and the motivations of that response see Asbridge (2004, 31–39).

In addition to being an overarching spiritual authority, the medieval Church was a governance hierarchy, one that was intermeshed with the feudal hierarchy. The pope presided over all of Latin Christendom, bishops their dioceses, and priests their parishes. Additionally, many medieval towns were episcopal towns where the resident bishop provided governance, including the adjudication of disputes. Furthermore, bishops and other high-ranking clergy were often also great lords with the ability to raise armies. Not only, then, was the Church as a corporate entity able to resist encroachments upon its authority; greater individual members of the clergy were also governance providers with a degree of sovereignty within their jurisdictions.

One can question the extent to which the Church could be characterized as a coherent governance hierarchy—itsself integrated into the overall medieval governance hierarchy—during the early medieval era. The Roman papacy was in competition with the patriarchy of Constantinople to consolidate spiritual authority; also, secular monarchs and princes often directly appointed bishops to their sees (making the latter *de facto* accountable to the former). However, the Great Schism between Western and Eastern Churches occurred in 1054, leaving the pope unchallenged in terms of at least titular authority. Furthermore, the Investiture Controversy (exemplified by the conflict between Pope Gregory VII and the Holy Roman Emperor Henry IV; see above and also chapter 5) consolidated papal authority over the ecclesiastical hierarchy and clarified the spheres of ecclesiastical versus secular authority. During the High Middle Ages, then, the Church provided an important component to Western European polycentric sovereignty.

### 7.7. *The Third Estate*

Early medieval Western Europe gave rise to commercially focused cities whose wealthy residents would come to represent a politically powerful third estate of the realm in the High Middle Ages. The foundations for these cities were merchant caravans that settled outside of fortified burgs and episcopal towns in the tenth and eleventh centuries (Pirenne 2014 [1925]). These associations of merchants eventually came to rival and then surpass the wealth of their adjacent burgs or towns.

The well-to-do of the cities—the burghers—found themselves in a position to bargain for self-governance. They were important sources of wealth and human capital to both monarchs and the nobility. As such,

they “were able to negotiate crucial freedoms from external authority by playing off noble and king[;] [f]ixed sums of money [. . .], artisanal weaponry, and administrative specialists were exchanged for clearly stipulated rights, freedoms, and immunities” (Downing 1989, 217; see also Rörig 1967, ch. 3).

We discuss these developments more fully in chapter 8. When burghers obtained self-rule for their cities, they approached it as individuals who had successfully achieved legally recognized liberties and rights that were previously unimaginable to those not pre-ordained to pray or fight. It is not surprising, then, that burghers insisted that their liberties and rights be extended to newcomers to their cities. As we will see in chapter 8, we can thank medieval burghers for the fact that city air makes us free.

### 7.8. *The Medieval Constitution of Liberty*

The political economist and philosopher, Friedrich Hayek, wrote an essay entitled “Why I am not a Conservative.” This essay was subsequently included as a postscript to the 2011 edition of his book, *The Constitution of Liberty*. It is clear that Hayek was dismayed by how the terms “conservative” and “liberal”—both of which, at one point in history, connoted an endorsement of liberty—had been coopted by politicians who clearly sought to deprive individuals of liberty. Hayek therefore refused to embrace the political parties of his time that claimed those terms. He rather stated: “What I should want is a word which describes the party of life, the party that favors free growth and spontaneous evolution” (408). Hayek sought the party of freedom.

The title of Hayek’s book reflects his preoccupation with a constitutional framework that would protect individual liberties from the encroachments of politics. Hayek was first and foremost an economist, a co-recipient of the Nobel prize in economics in 1974. He and his scholarly interlocutors believed that understanding the wealth of nations was their greatest task. For this reason, he emphasized a constitutional framework that would safeguard liberty. Hayek believed individuals flourished when they had economic and political liberties. Such circumstances would promote the creation of wealth. A constitution that entrenched these liberties was the means toward that end.

As we argued in the introduction, our prior is that liberties, both economic and political, are the recipe for economic growth and development. Good governance, then, is that which provides and safeguards

such liberties. A constitutional framework that encourages good governance is one that leads to the evolution and entrenchment of such liberties. Throughout this chapter and the two preceding, we have elaborated on a constitutional ideal type—polycentric sovereignty—that we believe encourages good governance. It then follows that we believe polycentric sovereignty leads to the evolution and entrenchment of political and economic liberties.

Since we have also argued that medieval Western Europe was constitutionally characterized by polycentric sovereignty, it should come as no surprise that *The Medieval Constitution of Liberty* is the title of this book. It is both descriptive of our arguments and also a homage to Friedrich Hayek. In the third part of this book, we illustrate ways in which the medieval constitution lead to enduring traditions of political and economic liberty.

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## Why Western Europe? Why Not Elsewhere?



This book is about why enduring traditions of political and economic liberty emerged from Western Europe rather than from other regions of the world. We have argued that Western Europe’s polycentric sovereignty facilitated those traditions as part and parcel of promoting good governance. However, the discussion has thus far lacked an explicitly comparative perspective: we have focused on historical conditions in Western Europe, but did they differ meaningfully from other regions of the globe?

This is an important concern. First, we want to distinguish and distance our work from a strand of scholarship that claims the exceptionalism of Western Europeans per se. Nasty variants of this view—many fallaciously claiming to find support in the Tacitus’ *Germania* of the first century—fueled the rise of nationalism, fascism, and, particularly, Nazism in twentieth century Europe (Krebs 2011). Of course, no belief is necessarily false because horrible people hold it to be true, nor because it leads to horrible outcomes. Nevertheless, a view of Western Europeans as exceptional per se distracts from fruitful lines of inquiry. It is an “explanation” that does not explain.

In a classic 1977 paper the economists (and, later, Nobel Laureates) George Stigler and Gary Becker argued that economic analysis should be confined to the “search for differences in prices or incomes to explain any difference or changes in [individuals’] behavior” (76). Alternatively, individuals’ tastes (or preferences) should be “the unchallengeable axi-



oms of a man's behavior"—the "*data*" of any economic analysis (76). Stigler and Becker were not so naive as to believe that no one's preferences—their desired ends—are forever fixed. Rather, changes in an individual's tastes—along with differences in tastes across individuals—end up being "a convenient crutch to lean on when the analysis has bogged down" (89). In other words, falling back on changes/differences in preferences removes all discipline from an analysis: tastes cannot be directly observed and, by making an appropriate assumption about them, you can get whatever result you want. Translating this insight to our project, if you assume that Western Europeans are exceptional, you will inevitably predict Western European exceptionalism.

Complementing Stigler and Becker's argument, William Baumol (1990) focuses on society-wide tendencies of individuals to pursue wealth-creating activities as opposed to rent-seeking (i.e., attempts to gain through the expropriation of others' wealth). In particular, Baumol emphasizes a subset of individuals in a society he calls entrepreneurs. The term entrepreneur implies to most of us someone associated with wealth creation, innovation, and a willingness to take on the risks associated with productive business ventures. However, Baumol warns that entrepreneurs will not necessarily contribute to wealth creation; instead, they may channel their entrepreneurial spirit toward "a parasitical existence that is actually damaging to the economy" (894). For example, an entrepreneur may profit by inventing a better mousetrap; alternatively, that same entrepreneur may decide to lobby for regulations that make it costly for other mousetrap makers to enter the market.

Whether entrepreneurs channel their efforts toward wealth-creating innovation or rent-seeking will depend on the institutions—the rules of the game—within which they operate. An implication of Baumol's argument is that searching for differences in "entrepreneurial tendencies" across societies is a dead end on the road to understanding the wealth of nations. For the most part, people are people. Across societies, what matters are the incentives and constraints—the institutions, or rules of the game—that they face.

Granted, we are primarily concerned with traditions of liberty rather than economic outcomes. However, liberty is critically important for the wealth of nations and the insights of Stigler, Becker, and Baumol still apply. Western Europe did not lead the world in liberty because Western Europeans had an innate and exceptional love of liberty. Rather, we have to look at the environment within which their institutions took shape.

### 8.1. *Why Was Western Europe Different?*

Enduring traditions of political and economic liberty began in Western Europe, emerging in the Middle Ages and evolving from there. But why? As argued in previous chapters, we believe that this was primarily rooted in the fragmented character of the Western European political landscape. In large part, chapters 2, 3, and 4 were aimed toward accounting for the emergence of Western Europe's politically fractured landscape and, more particularly, its polycentric constitutional arrangements, following the disintegration of the Western Roman Empire.

We are by no means the first scholars to point to political fragmentation as being key to Western Europe having unique outcomes. But what led to that political fragmentation in the first place? The historians Eric Jones (1981), Ralph Raico (1994), and Walter Scheidel (2019) all point to geographic factors in Western Europe that differed notably from those in other regions of the world, particularly China. In Western Europe, core fertile areas were separated by mountain ranges, dense forests, and other natural barriers. In China, alternatively, population growth and economic development focused around the major valleys of the Yangtze and Yellow rivers (Pounds and Ball 1964).<sup>1</sup> Comparative geography contributed to Western Europe's political fragmentation and, based on this, Jones, Raico, and Scheidel all emphasize the governance competition that it fostered, as does Landes (1998, 2006) too. Making a comparison to China specifically, Landes states: "Where fragmentation and national rivalries compelled European rulers to pay heed to their subjects, to recognize their rights and cultivate the sources of wealth, the [medieval and Early Modern] rulers of China had a free hand" (2006, 8).

Regarding the relationships between geography and political fragmentation, Scheidel's (2019) recent work provides one of the most full and compelling accounts. He first emphasizes that Western Europe historically had only one enduring large-scale (Roman) empire. (The Carolingian Empire was fleeting relative to the over four centuries of Roman rule.) Scheidel argues that, on the one hand, a number of factors were, together, more than necessary for Roman ascendancy following the turn

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1. Hoffman (2015) correctly notes that China is actually more mountainous than Western Europe. As Koyama (2021) notes, "the important factor was not simply the presence of mountain ranges or rugged terrain, but the degree to which these boundaries intersected with productive land[;] [i]n China, the Central Plain formed a large enough area of productive farmland to be the nexus for early state formation."

of the millennium. These factors included unique institutions that gave Rome an advantage in military mobilization (e.g., its relative generosity in offering citizenship); its base location on a peninsula, combined with the military weakness of nearby polities at the time; and climatic conditions that were historically favorable to agricultural productivity around the Mediterranean (and therefore incentivized Roman expansion).

On the other hand, once the Western Roman Empire fell, institutional and geographic factors made it highly unlikely that a large-scale successor empire could take root. Notably, Scheidel emphasizes the *interaction* of geographic factors with institutional factors, many of which are emphasized in our own work here. On the institutional side, he points to “state deformation”—or the decrease in fiscal capacity in the wake of Roman decline—and, relatedly, the need for Western Europe’s new rulers to bargain with a military aristocracy for resources. As both Scheidel and we emphasize, these institutional developments contributed to rulers having authority that was both more limited but also more stable over time. But Scheidel also emphasizes Western Europe’s rugged terrain along with the distance between it and the Eurasian steppe (which was large relative to that separating the steppe from China). These geographic factors worked to protect polycentric governance from consolidating efforts, both from within and from without.

There are other scholars who emphasize political fragmentation, but for its promotion of liberty or good governance domestically. Alternatively, Headrick (1981, 2012) and Hoffman (2015) point to political fragmentation as indirectly leading to an economic edge via colonialism. According to these scholars, political fragmentation was associated with incessant war. Incessant fighting incentivized more investment and innovation in weaponry and military strategy. This gave Western Europeans a competitive advantage against the peoples on other continents whom they ultimately conquered. While we do not dismiss this argument as implausible, we are first and foremost interested in the development of traditions in *liberty*; thus, an account of greater capabilities for *violence* is not our primary goal in this book. Furthermore, even though our arguments to some extent complement those of Jones, Raico, Scheidel, and Landes, we offer more than the standard tales of Tiebout and yardstick competition. We have gone to lengths to argue that the polycentric sovereignty of Western Europe was conducive toward good governance. Good governance is—as we have conceived of it—that which is protective and productive, rather than predatory (Buchanan 1975); and good governance is characterized by the provision and maintenance of liberties.

The political fragmentation of Western Europe during the medieval era was in part rooted in the geographic factors discussed by Jones, Raico, and Scheidel; but we have also described how, in the wake of Rome's fall, the barbarian migrations contributed to political fragmentation. Moreover—and certainly complementary to the arguments of Jones, Raico, and Scheidel—we have, in chapters 3 and 4, elaborated on how historical developments led to the political fragmentation resulting in a constitutional environment characterized by polycentric sovereignty. And our discussion of polycentric sovereignty went beyond the implications of jurisdictional competition: we laid out how the combination of the structure of political property rights—their hierarchical and overlapping arrangements—and their integrity based on the sovereignty of holders of those rights, promoted governance innovations consistent with liberty.

In the subsequent two chapters we will delve more specifically into how political fragmentation/polycentric sovereignty tended to promote traditions of political and economic liberty. First, in chapter 9 we will discuss how kings found themselves compelled to convoke assemblies of other political elites from their realms, both lay and ecclesiastical. (We will also discuss how, especially in the earlier Middle Ages, those political elites were compelled to attend.) Over time, these assemblies became forums for collective bargaining among the monarchs and other elites. While many assemblies began as *ad hoc* expedients, they often became institutionalized over time: their structures (e.g., the number of chambers and their respective memberships) and procedures became formalized; political theory to legitimize them developed. Eventually, they came to embody and protect political rights (granted, generally just for the elites throughout most of medieval time and space). Assemblies and the political rights that they embodied provided the foundations for modern liberal democracies.

Then in chapter 10 we turn to a development that did as much for the evolution of economic liberty as assemblies did for political liberty: the rise of self-governing medieval cities. These can be traced back to merchant caravans that settled outside fortified towns in the eleventh and twelfth centuries. These “outside burgs”—from which we today have the term suburb—came over time to rival the wealth of their adjacent towns, leading to tensions with the town authorities (often headed by a bishop or noble lord). The merchant settlements found themselves in a position to bargain for self-governance. Being a source of wealth and also administrative capital to monarchs and other political elites, they were

able to negotiate for their rights, freedoms, and immunities. These were eventually codified into charters. Self-governing medieval cities became laboratories of economic liberty.

Granted, they were imperfect laboratories: for example, they were associated with the development of craft and merchant guilds: on the one hand, these have been praised for collectively providing security for their members and mitigating information asymmetries; but, on the other hand, guilds also suppressed wages, hiked prices to consumers, and hindered competition.<sup>2</sup> We thus make no claim that medieval Western Europe was a haven of liberty. Indeed, in the introduction to this book we are careful to disavow any such claim. Rather, polycentric sovereignty promoted traditions of political and economic liberty over time—in the long run, warts and all—relative to the rest of the world.

### 8.2. *Do Differences in Liberty Matter?*

We have claimed that polycentric sovereignty is conducive to good governance and that good governance is characterized by providing and enforcing political and economic liberties. But it is important to elaborate on that argument. There is a tendency among many scholars today to discount liberty or, more generally, push political economy into the background. This is particularly true of many scholars who focus their efforts on trying to account for the Great Divergence, or, more generally, income disparities across regions of the world today.

For example, in his influential book, *Guns, Germs, and Steel*, the geographer and historian Jared Diamond (1997) highlights three fundamental biogeographic determinants of how economic development proceeded across the globe: (1) plants suitable for cultivation that allow for self-sufficient agriculture, (2) large animals amenable to domestication for use in agriculture, food, and transportation, and (3) the orientation of continents relative to Earth's North-South and East-West axes.<sup>3</sup> Also, the historian Kenneth Pomeranz—in a book that popularized the

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2. On the view of craft guilds as promoting efficiency, see Hickson and Thompson (1991), Gustafsson (1987), and Persson (1988); on merchant guilds see Greif et al. (1994). On the inefficiencies see Ogilvie (2007, 2019, 2020).

3. While (1) and (2) are straightforward, the potential relevance of (3) may be less obvious. Intuitively, technologies may have spread more quickly East-West than North-South due to greater variation in both climate and pathogens North-South. Relatedly, some innovations—e.g., selectively bred seeds or animals—were themselves less likely to survive North-South movements.

term *The Great Divergence* (2000)—takes a long (though not quite so long as Diamond’s) view of comparative economic development.<sup>4</sup> He argues that Western Europe, and most particularly England, got lucky in the confluence of external access to the New World and internal access to abundant coal. This confluence provided dramatic relief from ecological constraints and Malthusian bottlenecks. The anthropologist Jack Goody (1996) takes an even more extreme view in emphasizing historical accident and luck: “Societies that are in the vanguard (modernising [*sic*]) at one point give way to others at another; the pendulum swings” (41).

Scholarship emphasizing deep (and assumedly exogenous) historical factors has found empirical support from economists. For example, consistent with Jared Diamond’s arguments, Olsson and Hibbs (2005) and Ashraf and Galor (2011, 2013) report that prehistoric biogeographical conditions were important determinants of the pace at which agriculture and domestication spread in different regions of the globe. Also, generally consistent with the idea that deep historical factors matter for comparative development today, Comin et al. (2010) assemble data on ancient and early-modern technology adoption levels and find that they are highly persistent over time and positively correlate with historical urbanization rates and income levels today. Even more consistent with a specific argument put forth by Diamond, Bologna Pavlik and Young (2019) analyze the Comin et al. data and find that spatial persistence is stronger East-West than North-South. It is also worth noting the studies by Bockstette et al. (2002) and Borcan et al. (2018) that show state history (i.e., when a discernable central monopolization of power appeared) going back to the fourth millennium BC is significantly correlated with incomes today.<sup>5</sup> All of these studies support the idea that very deep historical factors are important in explaining income levels across the globe today.

The reader may notice that Young of Bologna Pavlik and Young (2019) is one of the present authors; so at least one of us is clearly not dismissive of the relevance of deep, exogenous factors for comparative development. However, we both reject the idea that such deep, exogenous factors can be the whole story; in particular, they cannot account for the Great Divergence or Great Enrichment. While a tendency to discount traditions of political and economic liberty may have developed as an appropriate response to the excesses of “Whig history” (Butterfield

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4. The term “Great Divergence” was actually coined by Huntington (1996).

5. These studies of long state history draw their basic concept of “a state” from Max Weber’s (1965 [1919] and 1978 [1922]) idea of a centralized monopoly of force.

1965 [1931]), we believe that it has amounted to throwing out the baby with the bathwater. Traditions of political and economic liberty matter—big time.

Here are some basic data to make the point. They come from three sources, the first of which is the economic historian Angus Maddison's (2010) estimates of GDP. Maddison provides estimates going back into the medieval era. Admittedly, we share many scholar's concerns about all GDP estimates going back before 1800. Fortunately for us, post-1880 data will suffice to make our desired point. And that point is as follows: in the period since the Great Divergence began, sustained, successful economic development tends to go hand in hand with liberal democracy and economic freedom.

In table 1 we report the countries with the 15 highest per capita GDPs (in 1990 US \$s) for select years during 1820–2008. Along with per capita GDPs, we report Polity IV democracy scores and Fraser Institute Economic Freedom of the World (EFW) scores for each country.<sup>6</sup> The Polity IV scores provide a measure of the extent of institutionalized democracy in a country. This measure takes into account procedures and institutions through which citizens can express their policy preferences, guarantees of civil liberties, and constraints placed on the exercise of power by the executive (president, prime minister, monarch, etc.). Alternatively, EFW scores are based on five equally weighted areas: (1) government size, (2) legal system and property rights, (3) access to sound money, (4) freedom to trade internationally, and (5) regulation. EFW scores are designed to capture how supportive a country's policies and institutions are of economic freedom. (Both Polity IV and EFW scores are made on a scale of 0 to 10, with 10 being the most democratic or economically free.)

There is a predominance of Western European countries in each year reported. Western European offshoots (Australia, Canada, and the United States) also appear regularly. Alternatively, East Asia is represented only by Japan in 2000 and Hong Kong in 2000 and 2008. Importantly, note that there is a group of five countries that appear for every year reported: Belgium, Denmark, the Netherlands, Switzerland, and the United States. Since 1950, all of these countries have been fully consolidated, durable democracies based on their Polity IV scores. Also since 1950 (the first year for which EFW scores are available) economic freedom in each of these countries was, in all but two cases, a full point more

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6. Polity IV democracy scores are from Marshall et al. (2019) and EFW scores are from Gwartney et al. (2019).

above the global average. (The exceptions are the Netherlands in 1950 and Belgium in 2008; even those cases represent almost a point above the average.) One point on the EFW scale is approximately a standard deviation based on the (large) sample of countries that the Fraser Institute scores.<sup>7</sup>

So we do not miss the forest for the trees, let us summarize what we mean to convey via table 1. Since the Great Divergence between the West and the remainder of the globe in terms of productivity and income growth, the persistence of that gap correlates strongly with the extent of economic and political liberty. Sustained, successful economic development has, for the last two centuries and then some, gone hand in hand with what is often referred to as classical liberal societies.

### *8.3. Historically, Western Europe was the Rule Rather Than the Exception*

We have set ourselves the task in this book of explaining why enduring traditions of liberty arose in Western Europe rather than elsewhere. Liberty is, to our minds, something of inherent value; as such, we think that accounting for its evolution in Western European governance traditions is an important endeavor per se. While we hope that many readers will agree with us on this point, we have also made the case that liberty has been critical for the wealth of nations and the Great Enrichment, first in the West and its offshoots, then spreading throughout the globe. Whether one values liberty intrinsically (e.g., fundamental human dignity) or instrumentally (e.g., creating material abundance), there is great value in understanding the Medieval Constitution of Liberty.

That being said, it is important to maintain a longer historical perspective. Western Europe was *not* exceptional for most of recorded history. Indeed, it was arguably a global backwater up until the High Middle Ages, and perhaps continued to be a developmental mediocrity through the onset of the Industrial Revolution. Some have argued that by 1500 Western Europe had achieved a “First Divergence” in terms of material well-being vis-à-vis the rest of the world, including being one-third better off than most parts of Asia (Voigtländer and Voth 2013). But even if we accept this view—and it is a controversial one—it should not distract

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<sup>7</sup>. The EFW average scores for 1950, 2000, and 2008 are, respectively, 4.96, 6.66, and 6.76.



**Table 1. Top 15 Countries in Terms of GDP per Capita, Select Years, 1820–2008**

(WITH DEMOCRACY AND ECONOMIC FREEDOM SCORES)

1820				1850			
Country	GDP per cap.	Democ.	EFW	Country	GDP per cap.	Democ.	EFW
Netherlands	\$1,838	1	—	Netherlands	\$2,371	3	—
UK	\$1,706	4	—	UK	\$2,330	6	—
Belgium	\$1,319	—	—	Australia	\$1,975	—	—
Denmark	\$1,274	0	—	Belgium	\$1,847	2	—
US	\$1,257	9	—	US	\$1,806	9	—
Austria	\$1,218	0	—	Denmark	\$1,767	5	—
France	\$1,135	1	—	Austria	\$1,650	1	—
Italy	\$1,117	—	—	France	\$1,597	6	—
Switzerland	\$1,090	—	—	Switzerland	\$1,488	10	—
Germany	\$1,077	—	—	Germany	\$1,428	—	—
Spain	\$1,008	1	—	Canada	\$1,330	—	—
Portugal	\$923	0	—	New Zealand	\$1,144	—	—
Canada	\$904	—	—	Czechoslovakia	\$1,079	—	—
Ireland	\$877	—	—	Spain	\$1,079	2	—
Czechoslovakia	\$849	—	—	Sweden	\$1,019	0	—

  

1900				1950			
Country	GDP per cap.	Democ.	EFW	Country	GDP per cap.	Democ.	EFW
UK	\$4,492	7	—	Qatar	\$30,387	—	—
New Zealand	\$4,298	10	—	Kuwait	\$28,878	—	—
US	\$4,091	10	—	UAE	\$15,798	—	—
Australia	\$4,013	10	—	US	\$9,561	10	7.59
Switzerland	\$3,833	10	—	Switzerland	\$9,064	10	7.41
Belgium	\$3,731	7	—	New Zealand	\$8,456	10	6.36
Netherlands	\$3,424	4	—	Venezuela	\$7,462	1	6.30
Denmark	\$3,017	1	—	Australia	\$7,412	10	6.47
Germany	\$2,985	4	—	Canada	\$7,291	10	6.68
Canada	\$2,911	9	—	Denmark	\$6,943	10	6.17
Austria	\$2,882	1	—	UK	\$6,939	10	5.76
France	\$2,876	8	—	Sweden	\$6,769	10	6.84
Argentina	\$2,756	3	—	Netherlands	\$5,996	10	5.87
Uruguay	\$2,219	1	—	Belgium	\$5,462	10	6.02
Sweden	\$2,209	2	—	Norway	\$5,430	10	6.76

2000				2008			
Country	GDP per cap.	Democ.	EFW	Country	GDP per cap.	Democ.	EFW
US	\$28,467	10	8.69	Hong Kong	\$31,704	—	9.11
Norway	\$25,102	10	7.49	US	\$31,178	10	8.23
Hong Kong	\$23,328	—	8.85	Norway	\$28,500	10	7.68
Denmark	\$22,975	10	8.16	Singapore	\$28,107	2	8.76
Singapore	\$22,518	2	8.53	Ireland	\$27,898	10	7.92
Canada	\$22,488	10	8.34	Australia	\$25,301	10	8.18
Switzerland	\$22,475	10	8.79	Canada	\$25,267	10	8.13
Netherlands	\$22,161	10	8.10	Switzerland	\$25,104	10	8.35
Australia	\$21,732	10	8.30	Netherlands	\$24,695	10	7.74
Ireland	\$21,551	10	8.16	Denmark	\$24,621	10	7.98
Japan	\$20,738	10	8.06	Sweden	\$24,409	10	7.59
Sweden	\$20,710	10	7.85	Finland	\$24,344	10	7.90
Austria	\$20,691	10	8.10	Austria	\$24,131	10	7.82
Belgium	\$20,656	10	7.90	UK	\$23,742	10	8.02
France	\$20,422	9	7.63	Belgium	\$23,655	8	7.50

*Note:* GDP per capita numbers (1990 \$) are from Angus Madison's (2010) "Statistics on World Population, GDP and Per Capita GDP, 1–2008 AD"; "Democ." is from the "Polity IV Annual Time-Series, 1800–2017"; "EFW" is the summary economic freedom measure from Gwartney et al. (2019); Australia's first recorded "Democ." score is actually for 1901, which is what is used for 1900 in the table.

from the fact that Western Europe was not developmentally impressive prior to the Middle Ages: not in terms of incomes per capita, nor other indicators of well-being such as life expectancy; and definitely not in terms of liberty, economic or political.

But what of the legacy of the ancient Greek city-state democracies? Those democracies were small-scale, fleeting on the long-run historical stage, and, importantly, they had no serious direct effect on any Western European political institutions or thinking prior to the High Middle Ages, when ancient Greek and Roman sources were rediscovered. Undoubtedly they played an influential role. In the medieval era, then, Western European political institutions and thought were inventive due to the environment of polycentric sovereignty, and complementarily innovative based on the rediscovered legacy of the ancient Greeks and Romans.

Regardless, before the High Middle Ages, things were middling at best in Western Europe, in terms of the material, the intellectual-philosophical, and the political. But then things began to change. We have argued that the change was rooted in constitutional arrangements arising from medieval era developments outlined in chapters 2, 3, and 4; we have also acknowledged in this chapter that deeper (more exogenous,

e.g., biogeographical) factors likely played some role in gifting Western Europe a fragmented political landscape. But the key fact remains: that landscape set the stage for the evolution of political and economic liberties. Determined by both deep historical factors as well as medieval historical developments, a Medieval Constitution of Liberty came into play.

Given the above, we share certain perspectives with some world history scholars. For example, contrast our views with those of David Landes (1998). While Landes puts the most emphasis on “the Middle Ages as a bridge between an ancient world set in the Mediterranean [. . .] and a modern Europe north of the Alps and Pyrenees” when “a new society was born, very different than what had gone before,” he still alludes to older foundations in, e.g., “the opposition between Greek democracy and oriental despotism” (31; 31–32 more generally). For Landes, Western European exceptionalism is first and foremost based in culture, the roots of which run very deep. Alternatively, we discount uninterrupted links in political philosophy and practice between the ancient and medieval worlds. Our perspective is closer to that of the historian Andre Gunder Frank (1998) who views Asia as not only the most economically advanced society up until the Industrial Revolution, but the most culturally advanced and dynamic society. While we located the constitutional conditions for developing traditions of liberty further back—manifesting clearly in the High Middle Ages—we share Frank’s view that Western European exceptionalism is not ancient (and, likewise, that Asian—particularly Chinese—societies were the global all-stars for considerably longer prior stretches).

However, there are also ways in which our perspective differs from scholars in world history, alternatively called “multicultural,” “global,” and “world system” history.<sup>8</sup> For example, the historian Marshall Hodgson (1993, 86) notes that: “all attempts to invoke pre-modern seminal traits in the occident to account for the divergence in living standards can be shown to fail under close historical analysis.” Note that there is a subtle difference between claiming that Western Europe was economically or culturally advanced in pre-modern times, versus claiming that there were constitutional conditions in place that facilitated traditions of liberty to develop over time. So, we are claiming that there were pre-modern conditions that led (eventually) to Western European exceptionalism.

Furthermore, Frank believes that Western European ascendancy is

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8. O’Brien’s (2010) review of Pomeranz (2000) and related literature is a nice and concise introduction to some of this scholarship.

fleeting, as does Goody (1996) with his pendulum analogy. However, because we believe that traditions of liberty are demonstrably essential for a society's internally-driven, sustained economic development, we do not see pendulum-like behavior (or, put differently, regression to the global mean) as inevitable. While that could certainly be the case, we think it a matter of whether or not those traditions of liberty continue in the West, which is by no means certain; as well, the extent to which they are embraced or rejected by other societies, with, of course, due adaptation to their unique cultural and otherwise social circumstances. For example: will China again ascend because it decides to embrace liberalism while the West decides to reject it?

We are not exceedingly confident that the West will maintain its economic predominance as the future unfolds. However, whether it does will depend on its ability to maintain the traditions of political and economic liberty that the Medieval Constitution of Liberty fostered. It will also depend on whether other regions of the world embrace, adapt, pervert, or outright reject those traditions. In short: if the West remains (generally) more economically and politically free than the Rest, then it may very well continue to remain at the fore of the ongoing Great Enrichment. However, whether it will indeed continue to do so is by no means clear.

Yet another way in which we differ from scholars in world history is that, as alluded to above, we are providing what is best characterized as an internally-driven theory of liberty. With due acknowledgment to the potential role of deep historical factors, the fact remains that the Western Roman Empire encompassed, for all intents and purposes, the whole of Western Europe; the fall of Rome and the barbarian migrations then created unique historical circumstances that generated a politically fractured landscape. This is significantly different from a world history perspective.

World historians start from the prior that “world history unfolded in a world economic system” (Chew and Lauderdale, 2010, 152). As such, they emphasize that Western European science/technology was often developed first in Asia and/or that Western Europe got a leg up in intercontinental imperialism (e.g., Headrick 1981, 2012) and exploited other regions of the world to its own enrichment. Combined with an emphasis on deeper, exogenous factors, this leads world historians to a view of Western European exceptionalism that is decidedly externally-driven.<sup>9</sup>

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9. E.g., Abu-Lughod (1989), Frank (1998), Pomeranz (2000), and Hobson (2004). Imperialistic exploitation is also emphasized by other scholars who are unabashedly sympathetic to Western Europe and its achievements (e.g., Ferguson 2011).

As Duchesne (2006, 70) notes, the themes of technological and imperialistic exploitation are often complementary in world history: “For thousands of years, the West played with the cultural gifts of the East in the backyard of the world, but eventually it constructed its own original identity—a ‘racist restlessness’—that enabled it to rise (temporarily after the 1850s).”

Our own focus is liberty because there is compelling evidence that liberty correlates with the wealth and, more generally, well-being of nations. But we also have reasons to doubt the exploitation-centered models of Western European ascendancy. The economist and historian Deirdre McCloskey (2016) argues that the “persistent macho and deadly notion that power will cause plenty is popular amongst historians” (88). This is also true among many political economists and other social scientists. With McCloskey, we believe that this notion is: “Mixing up political domination with economic enrichment” (89).

An important part of our thesis is that polycentric sovereignty in Western Europe moderated eventual state power: its employment became constrained toward enrichment, rather becoming a tool of domination. When it did slip—more often than not toward external targets, in imperialist fashion—it was a wart on the overall project. While certain individuals did undeniably enrich themselves seeking out the rents of empire, the effect of such creeping coercion across the globe was nil to negative for the imperial powers. As McCloskey (2016, 89–90) comments, specifically on the case of England: “[t]he ordinary Scot or Cockney or Yorkshireman got nothing except the delight of seeing, by jingo, a quarter of the globe painted red. [. . . While] European countries poor in overseas empire, such as Sweden and Austria, eventually grew smartly, too, getting their bananas for breakfast from trade rather than ‘domination’.”

#### 8.4. *We Are “Ideationalists,” but a Different Brand*

In focusing on why Western Europe was first in terms of liberties, we are sympathetic to scholars emphasizing a unique development of liberal ideas in Western European Exceptionalism. The most prominent recent scholar in this vein is Deirdre McCloskey—and she gives us the term “ideationalist”—but we must also note Joel Mokyr (1990, 2002, 2016), who has consistently emphasized ideas (and we may broadly call them liberal, but that is not his decided focus) that led to Western Europe’s exceptional ability to develop new knowledge and, more

importantly, to import and innovate on knowledge from other regions of the globe.

However, we do differ with many scholars who have ideational views. As we discuss in chapter 10, we share Boettke and Candela's (2017) perspective that ideas can only develop when there is an institutional environment that allows for their development. And Mokyr's (2016) later work has also embraced this perspective. He emphasizes the role of "cultural entrepreneurs" in spurring innovation.<sup>10</sup> There was a market for ideas that promoted a "Republic of Letters" (i.e., a long-distance community within which handwritten letters were widely exchanged and circulated). Mokyr emphasizes how political fragmentation in Western Europe promoted that market, including via the continent-wide postal services that developed from the fifteenth century onwards. According to Mokyr, the Republic of Letters was critical for the development and diffusion of knowledge, both scientific and practical (i.e., directly useful for production in the economy).

Furthermore, we also share the economist Roger Congleton's (2011) perspective that political philosophical ideas, in particular, generally follow actual practice. As he points out, most of the ideas of key thinkers such as John Locke and James Madison were based on their understandings of northwestern European and North American political institutions, respectively. Consistent with this, we have been emphasizing how historical/political realities "on the ground" lead to governance innovations. As will be clear in chapters 9 and 10, we do also acknowledge how the rediscovery of certain Roman legal principles led to a development of fortifying political theories. As important as those fortifications were, however, they were appended *ex post* to the political institutional development.

### 8.5. *Yes, Western European Liberty Was Different*

Western Europe was, indeed, different in the sense that durable traditions in political and economic liberty emerged and developed there. They were critical to the Great Enrichment beginning there, and not elsewhere. Pro-liberty traditions arose from the unique historical circumstances left in the wake of the fall of the Western Roman Empire and the inflow of Germanic barbarian groups that filled the political power void. Those circumstances were certainly contingent on deeper, exogenous

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10. See Mokyr (2013) homing in on this specific point.

historical factors that helped to share the evolution of the Western European political landscape. But even accounting for these other variables, the medieval constitution that emerged was crucial to the emergence and development of liberty traditions.

To say that the emergence and development of pro-liberty traditions was endogenous is not at all to say that it was by design. The polycentric sovereignty of medieval Europe was accidental to the extent that no individuals planned it. But it did arise internally through individuals' interactions within the constitutional framework. Our view, then, is very different than that of many world history scholars who emphasize that Western Europe adopted existing useful knowledge from the rest of the world (mostly Asia) and then applied it toward exploitative colonization. This did happen, but we do not believe that it accounts for Western European exceptionalism. Rather, the Medieval Constitution of Liberty internally fostered the conditions to jumpstart the Great Enrichment.

Moving forward, we need to address the fact that polycentric sovereignty in medieval Western Europe yielded to the rise of centralized nation-states with significant state capacity. Yet political and economic liberty maintained, at least relatively, as Western European nation states flexed their new state capacity muscles. This is because of the constraints that were legacies of the Medieval Constitution of Liberty. To elaborate on these claims, we proceed to the fourth section of this book.

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PART 3

The Medieval Institutions of Liberty



## CHAPTER 9

# Representative Assemblies



In the previous chapters, we elaborated on the constitutional ideal type of polycentric sovereignty. The point of doing so was two-fold. First, we sought to understand how different constitutional frameworks can lead to different governance outcomes. We argued that the polycentric sovereignty ideal type tended to promote good governance and, by extension, political and economic liberties. Second, we made the argument that constitutional arrangements in medieval Western Europe approximated the polycentric sovereignty ideal type (at least more so than in other regions of the world).

In this and the next chapter we look at how the theoretical rubber meets the empirical road. We know that enduring traditions of economic liberty and representative government did originate in Western Europe. But the road from medieval to present-day times has been a long one. In this third section of the book we elaborate on two historical developments that paved the way. The first of these—and the focus of this chapter—is the development of representative assemblies, precursors to the parliaments and congresses of modern-day liberal democracies.

In the twelfth and thirteenth centuries, European monarchs responded to their desires for military and financial resources by con-

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Portions of this chapter are adapted from Salter and Young (2018) and Young (2022).

voking assemblies of the leading men of their realms. Representatives were drawn from—and often organized into groups according to—the politically powerful estates.<sup>1</sup> From the monarchs’ perspectives, these assemblies were means toward obtaining the desired military and financial resources. In exchange for consenting to additional military levies and/or taxes, the estates bargained for various rights and immunities. As these assemblies became institutionalized, some of them came to have direct influence over the expenditures and other policies of their monarchs.

The roots of such assemblies ran deep in Western Europe. In the eighth and early ninth centuries, Charlemagne regularly called together his leading men in anticipation of the campaigning season. At those assemblies “great matters of state were discussed in common” and a “prearranged agenda was proposed for debate and approval by separate lay and cleric blocs” (Riché 1993 [1983], 125). This certainly hints at the parliaments and congresses to come centuries hence. Yet there was a long way to go to get there from Charlemagne’s assemblies, and one where the destination was not certain. We trace the development of representative assemblies over time, both within and as a fundamental part of Western Europe’s constitutional framework.

### *9.1. Antecedents from Antiquity*

Polycentric sovereignty in Western Europe did not appear magically out of thin air; rather, it was a legacy of both the disintegration of the Western Roman Empire and the settlement of Germanic groups within its frontiers. The development of medieval assemblies must then be understood and interpreted within the context of that legacy. While there was much that was not unique about both the Roman and Germanic traditions, their confluence in the specific time and context proved fortuitous for political and economic liberty in the long run.

The Germani left no record of their governance institutions from their own perspectives. However, based on the observations of two Romans—Julius Caesar (100 BC–44 BC) and Cornelius Tacitus (56 AD–120 AD)—we get a glimpse at a number of aspects of Germanic governance. We discussed the observations of Caesar and Tacitus in some

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1. For example, see Myers (1975), Russell (1982), North and Weingast (1989), and van Zanden et al. (2012, 844–77).

detail in chapter 2; here we briefly review some of those observations, introducing some additional details and discussion that are particularly relevant to future traditions of political representation.

Both Caesar and Tacitus described Germanic societies where governance by assembly was well-established. Furthermore, Germanic governance was clearly influenced by the encroachment of Rome, associated with Caesar's consolidation of power in Gaul. Upon encountering the Suebi—a large confederacy of Germanic tribes—Caesar noted that both popular assemblies and more exclusive councils of leading men operated, but irregularly and infrequently. By the time Tacitus wrote, he could describe a popular Assembly of Warriors that met about once a month and debated important measures. It could adjudicate criminal accusations, especially those punishable by death; it could also appoint officials to adjudicate locally in particular villages or districts. Less important matters were taken up by a Council of Leading Men, which also exercised agenda control for the more inclusive Assembly of Warriors.

The Assembly of Warriors included all male citizens, both freemen and nobles (leading men; *principes*). Even though Tacitus simply refers to an assembly (*concilium*), Thompson's (1965) appendage, "of Warriors," is apt. Bearing of arms and military obligation were intrinsic to citizenship and political participation amongst the Germani. The rite of passage into manhood involved the bestowing of weapons "in the presence of the Assembly": "the first distinction publicly conferred upon a youth, who now ceases to rank merely as a member of the household and becomes a citizen" (Tacitus, ch. 13, 112). Furthermore, once weapons had been bestowed, to "throw away one's shield in battle is the supreme disgrace, and the man who has thus dishonoured himself is debarred from attendance at sacrifice or assembly" (Tacitus ch. 6, 106–7). Reminiscent of the politically powerful second estate of the High Middle Ages, being part of the politically active class in early Germania was fundamentally tied to military activity.

Lest we mistake early Germanic societies for democratic utopias, we emphasize that the Assembly of Warriors was not an all-inclusive governance body as women, slaves and freedmen did not participate in it. The difference between a slave and a freeman is fairly obvious. Alternatively, drawing a distinction between a freeman and a *freedman* may be unfamiliar to some readers, and why it matters in this context may be unclear. Unlike contemporary Roman society where an individual's manumission implied full freedom for his descendants, Germanic societies were characterized by a "half-free or freed class, a non-slave group which remained



in permanent hereditary dependence on particular members of the freeman class” (Heather 2009, 297).

The percentage of Germanic populations that were not-wholly-free is unclear. Heather (2009, 66) notes that for a considerably later period (sixth century), there is “[s]ome not very good Ostrogothic and Lombard evidence [suggesting that] freemen amounted to something like a quarter or a fifth of weapon-bearing males[.]” The reference to “weapon-bearing” implies that slaves are not included in these numbers. Slaves, in any case, were likely outnumbered by the freedmen. (This follows from the hereditary nature of freedman status.) This would suggest that slaves and freedmen were a large majority, with the latter being the majority of that majority.

However, the extrapolation of societal characteristics over five centuries is a heroic—if not outright foolhardy—enterprise. One of the most distinguished historians of the Germani, E. A. Thompson (1957) claims that unfree people could not have been a large part of the societies described by Caesar and Tacitus because, first, Tacitus implies that household slavery did not exist—or was negligible—among the Germani, “the care of the house, home, and fields being left to women, old men, and weaklings of the family” (ch. 15, 114). Second, preventing slaves from escaping would have been difficult in the vast, sparsely populated lands east of the Rhine. Third, slaves were typically prisoners of war that could profitably be sold with the imperial frontiers. (Caesar notes that the Suebi “give access to traders [. . .] to secure purchasers for what they have captured in war” [book IV, (2)]). East of the Rhine, slaves were costly to retain; and they were a profitable export to the west. Thompson infers from all of this that the unfree population must have been small.

Whatever the size of the unfree population in first century Germania, it is clear that the Assembly of Warriors did not imply the sort of open-access society described by North et al. (2009). However, when the Western Empire disintegrated, the Germanic groups that filled in the political landscape were accustomed to governance via assemblies of their nobles and other freemen.

### 9.2. *Why Assemblies?*

A tradition of governance via assemblies is not the same as a tradition of representation. Members of an assembly may or may not conceive of themselves as speaking for anyone but themselves; and their agreements

may or may not obligate anyone but themselves. Furthermore, speaking for and obligating need not go hand in hand, though they do so in cases of representative governance that we today would label democratic.

As noted in chapter 8, David Stasavage (2020) characterizes the Germanic societies described by Tacitus as “early democracies”: ones within which “tribal chiefs had to rule collectively with assemblies and councils that constrained their actions” (4).<sup>2</sup> However, when employing the term “early democracy” to characterize historical societies, there is the risk of equating the existence of assemblies with constraints on rulers. In the broadest sense, this equation is a reasonable one to make. (Rulers would clearly prefer to impose their will unilaterally.) However, by employing the term democracy there is the implication that assemblies are driven by what Boucoyannis (2015, 309) refers to as “societal bottom-up resistance”: the ruled imposing constraints on a ruler to better align governance with their interests. Yet assemblies may be “top-down” governance innovations in the sense that rulers find it desirable to compel attendance by their subjects. In doing so rulers can better achieve their own ends.

For example, even before the Carolingians, Frankish kings relied on assemblies. As recounted by Gregory of Tours, when the sixth century Frankish king, Clovis I, arranged for the murder of a rival king by the name of Sigibert, he subsequently called together the people of Cologne in an assembly. There they acclaimed Clovis their ruler with a clash of their weapons. Without doubt, the erstwhile subjects of Sigibert had little to say in the matter: they were not consulted and their consent was coerced. And yet Clovis insisted on the spectacle because “it conferred at least a mantle of legitimacy on his take-over and bound those present to abide by the ‘decision’ of the assembly” (Barnwell 2003, 14).

Of course, not every historical assembly was driven purely from the bottom up or the top down. Furthermore, the evaluation of any particular historical assembly will be complicated by the fact that political bargaining is always at play. And bargaining is always, at least to some extent, a two-way street. Any interaction between ruled and ruler will involve both bottom-up and top-down inputs. However, distinguishing between assemblies that are primarily bottom-up- versus top-down can be useful. For example, there is a meaningful distinction between, on the one hand, subjects collectively organizing an assembly to protest and make

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2. Stasavage (2020) discusses the early Germanic societies on pp. 101–3 and then concludes: “The system of assemblies described by Tacitus is early democracy” (103).

demands upon a ruler and, on the other hand, a ruler who compels his subjects to assemble because he can then better gather information for assessing taxable wealth.

Furthermore, extant theories of assemblies as governance institutions can be usefully—if loosely—categorized into bottom-up and top-down explanations. In terms of the former, there are the “bargaining model” and its “credible commitment model” variant. It is fair to say that the bargaining/credible commitment models are the most widely-embraced theories, particularly in regard to the emergence of representative assemblies in Western Europe. However, there are also top-down theories. Deborah Boucoyannis (2015, 2021) has recently offered an alternative that she labels a “compellence model.” We also argue that evidence of early medieval assemblies supports what can be called a “coordination model.” As we shall see, the compellence and coordination models can serve as complementary accounts of Carolingian assemblies in the ninth and tenth centuries.

We begin here by discussing the more widely-embraced bottom-up theories. The bargaining model was motivated by the English experience with Parliament but has subsequently been employed to characterize assembly experiences more broadly.<sup>3</sup> The model begins from the uncontroversial premise that rulers need resources from their subjects to pursue their agendas. However, there is an obvious agency problem: will the ruler use those resources in ways compatible with the interests of the ruled? Due to this agency problem, subjects are understandably hesitant to hand over those resources (i.e., to be taxed). The ruler, therefore, needs to bargain with his subjects. In exchange for resources to pursue his agenda, the ruler can offer an assembly in which the ruled are represented, can wield a veto over new taxes, and perhaps even exercise a prerogative over how taxes are spent. The veto and prerogative are, respectively, negative and positive checks on the ruler’s agenda that serve to mitigate the agency problem.

Based on the bargaining model, a general narrative has developed around the emergence of representative assemblies in Western Europe, particularly in the High Middle Ages. It runs along these lines. In the twelfth and thirteenth centuries, monarchs responded to military and financial demands by convoking assemblies within which the politically

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3. For just a few influential examples, see Bates and Lien (1985), Levi (1988), North (1990), Tilly (1990), Downing (1992), Ertman (1997), Barzel and Kiser (2002), Ross (2004), and Timmons (2005). In referring to the *bargaining* model we follow Boucoyannis (2015).

powerful estates were represented. These estates were the clergy (first estate), the nobility (second), and, increasingly over time, the city burghers (third). These assemblies were both the result of political bargaining between monarchs and estates, as well as a forum within which further political bargaining could occur. Even though the monarchs convoked the assemblies, those assemblies were clearly “peace offerings” to the leading men of their realms: in exchange for their consent to military levies and taxes, those leading men received rights to negatively check and/or positively contribute to monarchs’ agendas.

This bargaining model narrative implies a political landscape characterized by weak monarchs who, when in need of resources, were often at the mercy of their noble vassals, spiritual authorities, and urban wealth centers. As Grzymala-Busse (2020, 20) puts it: “No monarch could obtain assets without the compliance of at least some of the wealthy (and armed) elites—and so kings entered into explicit agreements with nobles, merchants, and clergy.” Monarchs faced “societal bottom-up resistance” (Boucoyannis 2015, 309) to them pursuing their agendas; as such, they were compelled to the bargaining table, and with a relatively weak position at that table; offering up checks on their agendas in exchange for the resources they desperately needed.

Related to the bargaining model, not only did monarchs need to commit to allowing checks on their agendas, they had to make those commitments credible. For example, a king might promise to use taxes to administer domestic justice but later on renege and divert the revenues toward external conquest. Since taxes were collected before agendas were pursued over time, a monarch bargaining for revenues from his subjects needed to find a way to make his commitments credible. Scholars have argued that this was an important function of representative assemblies (North and Thomas 1973; North 1990; Levi 1988; North and Weingast 1989; Congleton 2007, 2011).

Though outside of the medieval era, Douglass North and Barry Weingast (1989) provide what is perhaps the most famous illustration of an assembly facilitating the credibility of a monarch’s commitments: England’s Glorious Revolution. In November of 1688, following clandestine encouragement by members of Parliament, William of Orange led a Dutch armada into the English Channel. His invasion met nearly no resistance and, by early February, he and his wife, Mary (daughter of Charles I), had been installed as joint monarchs of England. According to North and Weingast, part of the bargain was a transfer of powers to Parliament such that it could effectively check the Crown’s ability to

default on its debts and confiscate the property of its creditors. North and Weingast argue that, as a result, sovereign commitments became credible and England was able to obtain funds less dearly—and therefore build state capacity more easily—than its rivals on the continent.<sup>4</sup>

While the bargaining/credible commitment model has great intuitive appeal—and furthermore, we argue, is important for accounting for assembly experiences in the High Middle Ages—it has weaknesses when placed against historical realities. This is particularly true when it comes to accounting for the emergence of representative assemblies. Deborah Boucoyannis (2015, 2021), a political scientist, notes that such assemblies tended to emerge in realms where monarchs were already strong. For example, England’s Parliament predates France’s Estates General. Governance in England became relatively centralized under strong monarchs during the twelfth century; comparable centralization of French governance was not achieved until a couple of centuries later.<sup>5</sup>

According to Boucoyannis, only a strong monarch could compel the leading men of his realm to attend an assembly. They were able to do so by leveraging their subjects’ demand for justice, meaning adjudication services, provided by the king. Indeed, attending a monarch’s assembly in medieval times was a legal obligation rather than a right; and fulfilling that obligation was not cheap in terms of travel, accommodations, and time spent away from one’s own estates. However, if a king did successfully compel attendance, he had the attendees in a good position from which to extract commitments.

Boucoyannis’ arguments complement those of Stasavage (2010, 2011), who argues that size mattered in medieval times, as in the size of a monarch’s territories. Convoking an assembly meant that a monarch had to compel leading men to incur the costs of attendance. Boucoyannis emphasizes that strong monarchs were better able to do so, *ceteris paribus*. Alternatively, Stasavage emphasizes that an important part of *ceteris* was not *paribus* across medieval polities: the geographic area from which representation was to be drawn. For a larger realm (such as France) the costs of attending an assembly for the median representative

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4. Congleton (2007, 2011) provides a formal analysis of constitutional bargains within a “King and Council” template where a king can, by ceding veto power, credibly commit to agendas that are in his council’s interests.

5. England’s history with strong centralized government under a monarch may stretch even further back. Stasavage (2020, 114) notes that around 1000 AD Anglo-Saxon England was the only polity in Christendom that levied a direct tax on agricultural production. See Strayer (2005 [1970], ch. 1) for a concise and yet relevantly detailed overview of England versus France in terms of centralization and state capacity.

were higher than for a smaller realm (such as England). Hence, a larger realm would require a stronger monarch to compel attendance. Comparatively, then, England (France) was doubly blessed (cursed) when it came to the emergence and development of representative assemblies.

But why would a monarch want to compel attendance at an assembly that (at least eventually) might check his ambitions? Boucoyannis argues that monarchs could leverage assemblies to oblige their subjects to commit to the mandates and agendas that they handed down from above: “Empowered representatives were required by the king to ensure the fulfillment of agreements reached: representative powers were thus a requirement from above, not a demand from below” (Boucoyannis 2015, 308). From Boucoyannis’ point of view, medieval assemblies were indeed commitment devices; but monarchs established them to strengthen not their own commitments, but rather those of their subjects.

However, monarchs may have also compelled their leading men to assemble for coordinative purposes. There are multiple sets of behaviors—some better; others worse—that it might be feasible for individuals to coordinate around. By codifying some particular set, a *de jure* constitution can provide the focal point around which coordination actually does occur (e.g., Hardin 1989; Mittal and Weingast 2013; Orde-shook 1992; Weingast 1997). An assembly can serve a similar coordinative purpose: it provides a forum within which a ruler can present an agenda to a relevant group of decision-makers. If that agenda represents a collectively feasible set of actions for the group, then the assembly can serve to promote that set as a focal solution.

As a simple and stylized example, consider a king who has two feuding magnates within his realm. There are two outcomes that can be self-enforcing and perpetuating. First, the magnates can continue escalating their violence against one another. Second, they decide to peacefully coexist. (Alternatively, it should be clear that one magnate escalating violence while the other stands down is unlikely to be self-enforcing and perpetuating.) We will assume that the king favors the second outcome. If he assembles both magnates together and focuses them on the peaceful outcome, then that increases the likelihood that they coordinate around it.

More generally, early medieval kings—even the strong ones—relied on the resources and coercive services of their leading men. And unlike the stylized example above, there were multiple potential coordination equilibria. Instead of a Hobbesian “war of all against all,” there were many different (relatively peaceful and/or productive) agendas around

which a king and his leading men could coordinate. Out of that set of potential agendas, a king would have attempted to coordinate his leading men around the specific agenda that he favored (i.e., the best agenda for him out of the feasible set).

An assembly provided a king with the opportunity to place his favored agenda in front of his leading men, as well as other subjects. Provided that agenda was an improvement over the status quo, it became the lowest coordination cost option. Furthermore, an assembly provided a forum for ceremony and spectacle that could highlight a king's power (i.e., his wealth and organizational ability) and the support for his agenda. As such, the king often deliberated on the agenda in advance with a subset of elites with whom his interests were shared. The agenda was then presented to a broader group of subjects at the assembly. With the agenda placed in front of all, visible displays of consensus (e.g., oaths; acclamations) were then elicited. These served to foster shared expectations within the group that individuals' behavior would be consistent with the agenda.

The discussion above implies a key distinction, rooted in basic game theory, between the coordination and bargaining models. In a coordination game, players have shared interests: they can all be better off if they behave similarly to one another. Bargaining games, on the other hand, are strategically like a prisoner's dilemma: when everyone else is behaving similarly, an individual player benefits by defecting. Think about this in the context of a medieval assembly. If a king has shared interests with the assembled, he can put forth his preferred agenda and everyone else is better off for acquiescing to it. Now consider a case where interests between king and subjects are divergent. For example, a king wishes to raise taxes while his subjects desire input into how the taxes are spent. The king likes taxes but not having to give up authority; his subjects like gaining authority but are not fond of paying taxes. In this case a *quid pro quo* between the king and his subjects must be negotiated.

Relationships between early medieval kings and their subjects often resembled coordination games. A king and his warrior nobles shared interests in raiding and conquest: as a king's wealth and realm grew, the nobles gained from his largess and distribution of landed benefices. The ecclesiastical elite also shared interests with their king. Bishops and other leading men of the Church sought to increase their spiritual authority and, in doing so, they legitimized the king's rule as part of the divine order. And as for the rest of a king's subjects, they likely viewed any tolerable stationary bandit as better than the roving alternatives.

Of course, the line between coordinating representatives at an assembly versus strong-arming then is a very murky one. Furthermore, an element of coercion at an assembly is not inconsistent with its coordinative role. (See below on this point.) This is why the compellence and coordination models are complementary. Furthermore, bargaining/credible commitment and compellence/coordination models are not mutually exclusive. Historically, representative assemblies need not have emerged for the same reasons that they persisted. Understanding the theoretical reasons behind assemblies, then, we turn to the actual, historical assembly experiences in medieval Western Europe.

### 9.3. *Assemblies in Medieval Western Europe*

Based on the Glorious Revolution of 1688, North and Weingast (1989) provide the most famous illustration of the bargaining/commitment model. But that is an early-modern case. Representative assemblies emerged and developed during the medieval era, not only in the Frankish realms and England, but also Spain, Italy and the polities east of the Rhine.<sup>6</sup> Why did such assemblies emerge? Why did they later persist and, importantly, did their functions change over time?

In accounting for the comparative experience of Western Europe versus other regions of the world, the bargaining/credible commitment model is important for the development of enduring traditions of liberty. Representative assemblies became effective checks on monarchs' agendas. They mitigated the incentive problems by forcing governance to be more consistent with the interests of the governed (most directly, the leading men from the estates of the realm). Representation also provided information to monarchs about conditions and policy preferences from across their realms, helping to mitigate incentive problems. Unlike those of other historical societies across the globe, Western European assemblies "scaled up" to the level of territorially large polities including, eventually, modern nation states.<sup>7</sup> Additionally, a political theory of representation developed to account for and legitimate these assemblies.

Representative assemblies were a governance innovation that was generally novel to Western Europe. However, different polities within

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6. Airlie (2003, 31) notes that assemblies east of the Rhine pre-dated the Carolingian expansion.

7. Stasavage (2016) provides an excellent review of the literature on the uniqueness of representative assemblies in Europe and why it may have been the case.



Western Europe often had very different experiences with those assemblies. This is true not only in terms of how those assemblies evolved over time—both in terms of their functions and structures—but also, importantly, why they emerged in the first place.

Obtaining the consent of representatives does not appear to have been an important motivation behind many early medieval assemblies. Recall the discussion of Clovis' assembly above. Everyone in attendance realized that their acclamation of the Frankish king was elicited under a threat of violence that was, at best, thinly veiled. Similarly, Clovis' son, Theuderic I (r. 511–533 or 534), faced rebellion and a claim on his throne from a nobleman named Munderic. As related by Gregory of Tours, Munderic assembled the people (*populus*) of the realm and made them swear oaths acknowledging him as king (Barnwell 2003, 17). Regardless of whether the people preferred Theuderic or Munderic, the latter used an assembly to present himself as a potential focal solution. The elicitation of oaths, made by all and with all to see, served to coordinate the people around that particular focal solution.<sup>8</sup> This is true regardless of any latent threat of violence. The people were likely better off united under *some* king, as opposed to lacking such leadership entirely. Out the relatively preferable outcomes, Munderic aimed to make himself the lowest coordination cost option.<sup>9</sup>

The assemblies of Clovis and Munderic were somewhat exceptional in that they involved the wholesale acceptance or rejection of a new regime. However, obtaining genuine consent (as opposed to acquiescence) was not an important function of more run-of-the-mill assemblies either. Barnwell (2003, 28) describes early medieval assemblies as having had a two-stage character. Prior to the assembly, the king and his most important magnates determined an agenda that was largely driven by the royal will. Only then was this agenda placed before an assembly, and in full expectation that it would be acclaimed: “By assembling, and by the act of acclamation, the ‘people’ symbolized unity of the kingdom and created an impression of agreement to royal actions[.]” This was not indicative of the sort of “warrior democracy” that Tacitus appears to have described. Rather, the purpose of early medieval assemblies “was not to arrive at consensus through discussion, but to provide a forum

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8. The emphasis on oaths would continue under the Carolingians (e.g., see McKitterick 1983, 88–89).

9. In the event, Theuderic successfully laid siege to Munderic and his rebels in Vitry. Munderic's followers had coordinated around what turned out ex post to be the wrong equilibrium!

in which unity could be displayed, announcements made, opposition quelled, and the royal will imposed.” This is consistent with a hybrid of Boucoyannis’ compellence theory and the coordination account that we have put forth.

The role of assemblies seems to have been similar in other parts of pre-Carolingian Western Europe. For example, consider the Third Council of Toledo in 589. Though organized by the bishop of Seville, this assembly of nobles and bishops was convoked by the Visigothic king, Reccared I (r. 586–601) and held in his name. The main agenda of this assembly was the conversion of the Visigoths from Arianism to the Catholicism: “It’s proceedings, however, were carefully constructed to give an impression of a broader degree of real agreement than actually existed” (Barnwell 2003, 19). And Visigothic assemblies in general “involved a degree of visible imposition of the royal will and the creation of a perception of agreement, at least as much as genuine participation” (19).

Reccared and the high-ranking clergy had a shared interest in the assembly agenda, however they had distinct interpretations “of the meaning of the goths’ ceremonial confession” (Stocking 2000, 66). While the clergy was concerned with the “converts’ [. . .] status within the Christian community” (66), Reccared sought to establish and/or strengthen his political ties to Franks in the northeast and also the element of nobility who still identified as Roman (Barbero and Loring 2005, 346–48). But each furthered their different ends by coordinating the Visigoths around the conversion to Catholicism. (For their part, individual Visigoths likely benefited from a shared religion but could not have cared less whether it was the Arian or Catholic variant.)<sup>10</sup>

For the Carolingian era, we have more details regarding the ceremony and spectacle of assemblies, details that are consistent with the coordination model. For example, we have a description of Charlemagne’s assembly at Paderborn in 799. This was the assembly that Pope Leo III travelled to seeking military aid for Rome, from the man he would crown emperor the following year. A contemporary poem, *Karolus Magnus et Leo Papa*, informs us that when Charlemagne was notified of Leo’s approach he

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10. Shared values, norms, and rituals facilitate social interaction by reducing the uncertainty involved in dealing with others (Ostrom 1990; Bicchieri 2006; Greif 2006). And a religion provides adherents with “a series of beliefs, values, behavioral codes, and rituals that turn [them] into a community of believers” (Gill 2021, 320). Within that community, individuals are more likely to trust one another and, therefore, interact in productive ways: to wit, individuals “start with something in common and the possibility of social interaction begins” (Gill 2021, 320; see 319–21 generally).

told his followers to arm themselves. It is worth quoting Airlie (2003, 34) at length on what happened next:

They duly bustle about, donning armour, mounting horses, raising banners, sounding trumpets, and forming a circle of mounted warriors, in the midst of which is the king, resplendent in a golden helmet and mounted on a mighty horse. Leo is greeted by the clergy and the army in a great performance of salutations and prayers. [. . .] [W]e are told that Leo was much impressed by its weaponry. But the warriors were spectators as well as actors and formed an audience for ceremonies designed to display the status of pope and king and their relationship, and thus to convince any waverers in the host of the righteousness of prospective intervention in Rome, if matters should come to that.

Airlie (34) then notes: “The ceremonies at Paderborn did not so much reflect consensus as create one.” Charlemagne was clearly not asking his warriors for permission to aid Rome; he was putting his agenda forth as a focal point and coordinating those warriors around it.

Other Carolingian royal assemblies also appear to have been largely coordinative in their function. The historian Charles West (2013, 94) generalizes that they “were not decision-making bodies, for the decisions had usually already been made behind closed door”; rather, “their rationale was more communicative, their function more self-referential.” Its purpose was to lay out an agenda; then allow participants to make their way to it as a foregone conclusion. An assembly served “to make a coordinated politics possible” (West 2013, 94).

The pomp involved in assemblies like the one at Paderborn was a fundamental part of rulers’ efforts to create focal points. Reuter (2006) emphasizes that early medieval assemblies were “staged occasions” and “moments of celebration and persuasion” (201): “Participants in assemblies [. . .] probably saw the staging and ritual as primary, and were more troubled than we might be when consensus and unanimity failed to materialise” (202).<sup>11</sup> Assemblies preserved, restored, or established har-

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11. Reuter borrows the term “celebration and persuasion” from Bisson (1982). See Althoff (1997) on how medieval Europeans were averse to public expressions of disagreement, preferring matters to be worked out behind the scenes. This aversion was rooted in them “lack[ing] a language in which conflict or opposition could be expressed in controllable form” (Reuter 2006, 203). To disagree in public was to insult; and in a society where protection of honor was at a premium, this was an invitation to violent, costly feuding.

mony around the agenda set by the ruler. Where true consensus might have been in doubt, a staged version was provided that was designed to be self-fulfilling.

The coordination model also fits the early Capetian assemblies of the eleventh and twelfth centuries. As Myers (1975, 66) notes: “The [Capetian] kings tried to avoid opposition by summoning these large assemblies only to give approval to the royal will.” And the coordination model remains relevant going even further into the High Middle Ages. For example, Stasavage (2020, 131) observes that the first Estates General in 1302 “by all accounts [ . . . ] was royal propaganda”; he notes that King Phillip IV’s (“the Fair”; r. 1285–1314) letters of convocation made reference to *quod omnes tangit, ad omnibus tractari et approbari debet* (“that which touches all should be approved by all”). This was a recently-rediscovered principle from Roman law. However, Phillip conveniently substituted *deliberare* (deliberated) for *approbare* (approved): “In other words, this was to be an assembly where there would be deliberation but the question of approval was seemingly off the table” (Stasavage 2020, 132).

The 1302 Estates General was half a millennium after Charlemagne, so even in the Late Middle Ages there were Western European monarchs who believed their assemblies to be more along the lines of coordination than bargaining. However, regardless of the reasons for their emergence, the general trend throughout the High Middle ages in Western Europe was for representative assemblies to become meaningful checks on royal agendas. This was “marked by the shift from assemblies to proto-parliaments and other kinds of representative assemblies, which takes place in the 1180s in Spain, from the early decades of the thirteenth century in England, slightly later in France, and as usual rather differently and belatedly in Germany” (Reuters 2006, 194; see also Bisson 1982).

Why did this trend develop? Working from her compellence model, Boucoyannis (2015, 2021) emphasizes that the adjudicative and administrative functions of monarchs became bundled. The former satisfied a bottom-up demand for dealing with disputes, a constant in medieval societies. Alternatively, administrative state capacity was largely aimed at funding and carrying out wars—a top-down demand and the “sport of kings” (Gennaioli and Voth 2015; also see Dincecco 2009). Also the demand for war was irregular while that for adjudication was always present. Understandably, subjects saw little to gain from regularizing assemblies at which the king could ask for taxes. However, in bundling the administrative and adjudicative functions, strong monarchs found a carrot to incentivize attendance at a regular meeting. As such, “it was not

the bargaining advantage of societal groups but the incapacity of elites to avoid taxation and royal justice that catalyzed representative institutions” (Boucoyannis 2021, 302).

While the above goes a long way toward explaining the institutionalization of representative assemblies, the question remains as to why the represented groups were able to increasingly exert bargaining power over their kings. The key to this question is to understand why the interests of kings and their subjects—particularly their lay and ecclesiastical elites—became increasingly divergent. This, in turn, allows us to understand why interactions between kings and their subjects came to resemble bargaining rather than coordination games.

During the High Middle Ages, there were several developments that contributed to divergent interests between kings and subject groups. For example, the end of the early medieval period was contemporaneous to the rise of self-governing cities. We will have more to say about these cities in the next chapter; for the moment we note that they played an important role in the transformation of assemblies from the tools of rulers into bulwarks of the ruled. These cities were sources of wealth creation and human capital; they were not dependent on the spoils of a king’s wars; alternatively, kings were eager to get their hands on the resources of these cities. Interactions between kings and these self-governing cities were bound to increasingly take the form of bargaining. Over time they were “able, as corporate bodies with rights and privileges, to gain access to what had previously been often a rather informal assembly” (van Zanden et al. 2012, 847).

Another factor contributing to well-defined interests that diverged from those of kings was the rise of dynastic banal lordships. Under the Carolingians, nobility flowed from the emperor and kings: the great lords were vassals who reciprocated landed benefices with their loyalty. However, the tenth and eleventh centuries witnessed the proliferation of lordships rooted purely in *de facto* power. These banal lordships had to respect kings as “greatest amongst equals” but their interests were decidedly their own. As Bisson (1982, 189) observes: “as the king’s ties with the mass of freemen were mediatized through the rise of dynastic lordships, so his relations with the great men were defined more concretely in terms of objective rights and obligations” (Bisson 1982, 189). To wit, the people of a king’s realm would coordinate with their individual lords; the latter would bargain with the king.

As divergent interests were leading assemblies to increasingly conform to the bargaining model, a political theory of representation was

developing. This was motivated largely by the increasing political importance of the self-governing cities. As Stasavage (2020, 127) notes, these cities posed a problem for defining representatives' spheres of decision-making authority. When assemblies drew their representation from only the first and second estates, they "did not require an advanced theory of political representation—people [e.g., counts and bishops] just showed up and were representing themselves." Alternatively:

The emergence of autonomous cities presented a challenge to this system because cities were groups of individuals that governed themselves in republican fashion. So, how could a city gain entrance to an assembly of individuals? (Stasavage 2020, 127)

One solution to this challenge was for cities to provide their representatives with strict instructions. This was the case, for example, in the 1188 *Cortes* convoked by King Alfonso IX of Leon (r. 1188–1240):

The urban representatives, the *procuradores*, were given careful letters of instruction by which they were strictly bound; this strengthened their hands in relation to the king, for unusual and unwelcome royal demands could be delayed and at times even eroded or evaded by a counter-move, the *procuradores* insisting that they must consult their constituents—a process that could take much time and lead to bargaining. (Myers 1975, 60)

This practice was widespread and while it may have indeed increased the bargaining power of assemblies relative to monarchs, it substantially increased bargaining costs overall.<sup>12</sup> Urban representatives could only lend their consent to specific policies: even if they were given advance notice of the agenda going into the assembly, negotiation would invariably involve compromises that were deviations from that initial agenda. When representatives had to return to their cities to consult their constituents and receive modified instructions, this was very costly in terms of both time and other resources. Alternatively, the business of the assembly might simply stall.

A different solution presented itself with the rediscovery of the Roman principle of *plena potestas*, which dates back to the Roman Emperor Alex-

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12. Stasavage (2020, 129) notes that: "The use of mandates by towns sending representatives was so widespread that it can be said to have been the norm."

ander Severus (r. 222–235). Severus declared that a principal was not legally liable for his agent’s actions if they violate or are outside of the instructions provided to said agent; the exception being if the agent has *plenam potestatem agendi*. In the latter case—and only in that case—the actions of the agent are fully representative of the principal. The rediscovery of the *plena potestas*, combined with the fact that the idea of legal personhood for corporate entities had been widely embraced and applied in Western Europe, made for a natural extension to the context of assembly representation. Chartered cities were corporate entities and, therefore, it could send—and, by monarchs, could be requested to send—representatives with plenipotentiary powers. This was common by the mid-thirteenth century and the norm by 1300.<sup>13</sup>

While *plena potestas* (along with corporate personhood) helped to make representative government legally justified, the principle of *quod omnes tangit ab omnibus probetur* (“what touches all should be approved by all”) provided ethical justification. Variants of this legal maxim were fundamental in the development of medieval theory regarding representative government (Pitkin 1967; Manin 1997; Schwartzberg 2014).<sup>14</sup> We have already encountered one such variant in discussing Phillip the Fair’s convocation of the first Estates General in France: *quod omnes tangit, ad omnibus tractari et approbari debet*. Of course, Phillip slyly substituted *deliberare* (deliberated) for *approbare* (approved). Was that a legitimate variant? Probably not, but there was a lot of wiggle room from a medieval perspective. Still, over time the estates latched onto the principle and leveraged it toward an understanding that monarchs should constrain their actions only in ways consistent with general interests. While monarchs may have initially convoked assemblies as coordinative devices, those assemblies ended up as forum within which politically important could coordinate their collective actions to influence and check the actions of those monarchs. *Quod omnes tangit* became the basis for a political theory and philosophy of representative government.

By the fourteenth century, then, the bargaining/credible commitment model provides a generally good account of representative assem-

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13. Post (1943) provides a comprehensive discussion of the rediscovery of *plena potestas*, its initial adoption in the context of Church councils, and eventual extension to representative assemblies; see also Stasavage (2020, 128–31). In 1268, Henry III was the first English king to summon representatives with plenipotentiary powers to Parliament; city representatives to the *Cortes* of Aragon and Castile may have come with full powers as early as 1215 (Post 1943, 368–69).

14. See Marongiu (1968, 33–37) and Stasavage (2016, 150–52) for a concise discussion of the development and application of different variants of the original maxim.

blies and how they functioned in Western Europe. Representatives, including those from the self-governing cities, were able to exert their de facto political power to protect their interests and bargain for various privileges, immunities, and rights. The city representatives were able to speak and bargain for their corporations, and formal political thought to explain and legitimize representative government was being developed.

#### 9.4. *The Importance of Structure*

Representative assemblies in the High Middle Ages and onward provided important limits on the powers of monarchs, but they also allowed them to build state capacity. Kings were able to raise more resources for their agendas, provided that those agendas were aligned with the interests of those represented in the assemblies.

As we discuss in the fourth part of this book, the past two decades have seen scholars shift their focus relatively away from limited, non-predatory government, and toward investments in state capacity (e.g., Besley and Persson 2009, 2010, 2011; Acemoglu et al. 2011; Acemoglu et al. 2015; Acemoglu et al. 2016; Gennaioli and Voth 2015). Alternatively, we emphasize that state capacity is only a good thing if its use is constrained by representative checks. Assemblies, of course, were fundamental to providing that important constraint.

The limited government and state capacity perspectives need not be in opposition. No one thinks that an all-powerful monopoly on coercion is unconditionally a good thing. A powerful but limited government is good precisely because it is limited to certain activities (e.g., enforcement of the rule of law). Alternatively, few would suggest that substantial state capacity in the hands of a tyrannical despot is desirable. Besley and Persson (2009, 1219) pose the following question: “Why are rich countries also high-tax countries with good enforcement of contracts and property rights?” Besley and Persson’s (2009; 2010) answer is that a state’s investments in fiscal capacity (to raise taxes) and legal capacity (to support markets) are complementary. In other words, rich countries are ones with states that have the capacity to raise substantial revenues and then limit their *use* to the provision of common-interest public goods and enforcement of property rights. To wit: rich countries have large but limited governments.

Representative assemblies generally fostered traditions of limited government, the establishments of those traditions were uneven across



countries. Why did the seventeenth century witness the entrenchment of absolutism in some countries (e.g., France and Spain) while others developed into limited monarchies (e.g., England and Sweden)? In other words, following the Peace of Westphalia in 1644–48, why were some countries better able to place limits on the use of modern state capacity? Western Europe was the general exception, but within it why did some polities do better in terms of establishing traditions of liberty?

There is no single answer to the above questions, but we are going to emphasize one relevant factor here. In particular, we explore a conjecture made by the early twentieth century German historian, Otto Hintze (1975 [1931]): that two-chamber representative assemblies were more effective at resisting absolutist tendencies than three-chamber assemblies. The English Parliament is an example of the former; the French Estates General of the latter. We are sympathetic to Hintze's conjecture but argue that the two- versus three-chamber distinction is coincidental to what really mattered: whether chambers had representation from single or multiple estates. When representatives of different estates were intermingled, the devolution of powers to the monarch was less likely.

The proceeding discussion will speak to the issue of how state capacity will be used. This issue involves two fundamental questions regarding agents with political authority. We have raised these questions before in this book. First, do those agents have the incentives to pursue policies that provide common-interest public goods and abstain from predatory behavior? Second, do they have the information necessary to identify the policies that are consistent with those incentives? Only if agents with political authority have the appropriate incentives and information can we expect state capacity to further human welfare. We argue that, all else equal, when chambers drew representation from multiple estates ("territorially based"), political bargaining yielded better information about common interests, and provided incentives for political agents to pursue them. Our analysis emphasizes the costs of expressing common versus special interests as a function of assembly structure. In mixed-representation assemblies, it was relatively costly to achieve corporate expression of estate-specific special interests. Alternatively, when chambers were "estate-based," achieving corporate expression of those special interests was relatively cheap. In that case, the monarch could bargain to satisfy an estate's special interests in exchange for additional powers. Assembly structures helped to determine the relative bargaining powers of estates vis-à-vis monarchs, and the extent to which their separate interests were expressed and pursued.

To emphasize and be clear about the historical realities we are addressing, medieval representative assemblies can be broadly divided into the estate-based and territorially based categories. The archetypal examples are France and England. The French Estates General was estate-based: it had three chambers with representation drawn from, respectively, the clergy, nobility, and burghers. Alternatively, the English Parliament was composed of two chambers with representation based solely on the county or borough from which representatives were to be drawn (territorially based). The House of Lords drew its representation from both nobility and clergy. The House of Commons began with invitations to the burghers of major towns to attend Montfort's Parliament in 1265 and first met as a distinct chamber in 1341. By the end of the medieval period, however, the gentry (lesser nobility) factored prominently in its representation (Wasson 1998). While representatives from different estates intermingled in both the Lords and Commons, each member represented a particular county or borough.

While Otto Hintze emphasized the three-versus two-chamber distinction (which obviously applied to the French and English cases), we follow Ertman (1997, 20–22) in emphasizing estate-based versus territorially-based chambers. The estate-based versus territorially-based distinction is more important in an analysis of collective action and rent-seeking, and also more easily generalizable across empirical assembly experiences. Not only was France's Estate General estate-based, but so were the *Cortes* of different Spanish kingdoms, and the assemblies of Naples and Sicily. Not only was England's Parliament territorially-based, so were the assemblies of the Scandinavian countries.<sup>15</sup> Alternatively, many assemblies clearly deviated from the two-versus three-chamber distinction. For example, the Swedish *Riksdag* post-1527 included representatives from four separate estates: clergy, nobility, burghers, and the yeomanry (farmers who were freeholders of their plots). Also, Spanish *Cortes* sometimes drew representation from four estates (or *brazos*), but in their case these were the clergy, towns, and, separately, greater and lesser nobility.

Otto Hintze conjectured that three-chamber, relative to their two-chamber counterparts, were more likely to concede powers to a monarch and promote "constitutional drift" toward absolutism. While we have moved toward an estate-based versus territorially-based distinction, we agree with Hintze's intuition. Here is why. First, there were

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15. For example, the *Cortes* of the kingdom of Leon and Castile were estate-based (Myers 1975, 60–62).

common interests that existed among representatives, across estates, in those assemblies. Second, the structure of an assembly was an important determinant of the extent to which those common interests would find corporate expression vis-à-vis estate-specific (special) interests. In particular, members of different estates were “intermingled” in a territorially based assembly. This intermingling made it relatively costly for a monarch to strike bargains with one estate at the expense of the others; it also meant that corporate expression of inter-estate (common) interests was more likely than that of estate-specific (special) interests. Alternatively, in estate-based assemblies, special interests were more likely to be expressed; bilateral deals between a monarch and a particular estate were more likely to be struck.

The expression of special versus common interests is related to tendencies toward absolutism. The expression of the common interests tended to check such tendencies. Representatives in medieval assemblies were important governance providers. As we have emphasized in previous chapters, these governance providers had political property rights that were bundled with economic property rights: they were shareholders in the realms for which they provided governance and, therefore, residual claimants to returns associated with that governance. They were better off when the governance they provided furthered the interests of the governed. When the jurisdictions of governance providers from different estates overlapped, their common interests were defined by their shareholding in the same assets. The “common” of common interests would be based on territorial rather than estate bases. The expression of those common interests would help to constrain a monarch to those functions.<sup>16</sup>

The above paragraph expresses the key point, which is worth restating succinctly. Each individual representative had certain interests rooted in his being a member of a particular estate; he also had certain other interests rooted in being from a particular territory. When the representatives from a particular chamber were all from the same estate, they would have been able to coordinate on expressing their special interests at relatively low cost. Alternatively, when the representatives of a particular chamber were from different estates, they would have been able to more cheaply coordinate on interests that were common to all of their different territories, i.e., the interests of the broader realm.

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16. The common interests of lower-level, territorial governance providers would have been in the monarch’s provision of security and justice (Southern 1992 [1953], 145–46).

The corporate expression of common interests in an assembly would tend to check expansion of a monarch's powers and limit his activities to governance provision consistent with a generality norm (Buchanan and Congleton 2003 [1998]). In this context, a generality norm refers to promoting collective action that is generally welfare-enhancing to all in the relevant collective (group): e.g., the provision of public goods and/or protection of property rights (what Buchanan and Congleton refer to as “non-discriminatory” collective action). But collective action can also be predatory, aimed toward special rather than common interests (Buchanan 1975). Whether or not an assembly tends to express common or special interests will be a function of its institutional structure.<sup>17</sup>

However, assemblies could also express the special interests that were estate-specific. Consider the second estate. Feudal bonds were based on the principle of voluntary contract (Bloch 1968a [1939], 145–62; Vinogradoff 1968 [1922]). Vassals and their lords agreed to arrangements of reciprocal obligations, typically involving the former promising military support in exchange for a grant of land (fief or benefice) from the latter. At the top of this hierarchy, the principle nobles were vassals of their monarch. Given the standard form of these arrangements, members of the second estate had special interests in relation to their monarchs. Members of the first estate also had special interests. These were bound up in the overarching institution of the Church. A well-known example involves the Gregorian reform and Investiture Controversy of the late eleventh century. The Gregorian reform called for a clear distinction between ecclesiastical and worldly matters, including forbidding clergy to do homage to laymen and provide military services.<sup>18</sup> This worked to distinguish the first estate's interests from those of the second.

And let us not forget the third estate, the urban burghers. As will be discussed at length in the next chapter, prosperous cities in the twelfth and thirteenth centuries were able to leverage their wealth to bargain with monarchs, nobility, and clergy for rights of self-governance (Young 2017). The third estate's special interests were decidedly different from those of the first and second, since the burghers' livelihood was commerce. Nobles and clergy tended to look upon commerce with disdain. Also, commerce raised legal problems that neither lay nor ecclesiastical

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17. Buchanan and Tullock (1962, ch. 16) is an early analysis of how assembly structure relates to coalitions of representatives being able to exert control of chambers, logroll across them, and rent seek.

18. See Fukuyama (2011, ch. 13) for an overview; also Bisson (2009, 197–212), Southern (1992 [1953], ch. 3), and Wickham (2016, 113–17).

judicial procedures could deal with efficaciously and expeditiously: the “multiplicity of authorities governing the town itself offended [the burgher] as obstacles to the proper control of business transactions [. . .]” (Bloch 1968b [1940], 354). Consider Henry II’s 1155 royal privilege to London:

Know that I have granted to my citizens in London that none of them shall plead outside of the walls of the city[. . .] [A]nd that none of them shall be tried by battle[. . .] I grant further that they shall have their lands and pledges and debts whoever owes them; and that right shall be done them according to the law of the city respecting their lands and tenures within the city; and that please respecting all their debts contracted in London, and respecting pledges were taken, shall be held in London. (Mundy and Riesenbergh 1958, 141–42)

The royal privilege helped to ensure that London burghers were exempt from legal authorities whose interests were inconsistent with the promotion of commerce.

The existence of special interests creates possibilities for rent-seeking games. Special interest groups can act collectively, seeking to use political power to benefit themselves at the expense of other groups, as well as society more broadly. In the case of the medieval estates, each one represented a special interest that could benefit as a function of how other estates’ resources were governed. This created opportunities for inter-estate rent-seeking. In an example described earlier in this book, in the eighth century the Frankish nobility were able to increase their land holdings through Charles Martel’s expropriation of Church properties. Alternatively, under Charles’ successors, the Church was able to utilize the military services of the nobility to lay the foundations for the Papal States in northern Italy.

Special interests were more likely to find corporate expression in assemblies with estate-based chambers. As Ertman (1997, 21) observes: “the overriding concern of each individual [estate-based] chamber was to protect and, if possible, extend group-specific privileges.” Of course, representatives of a particular estate had special interests regardless of whether they all met in one chamber. However, when they did meet separately then the costs of achieving corporate expression of their special interests were lower. They had a single forum within which to formulate those interests, without representatives from other estates providing contrary discussion and/or disruption. This made collective bargaining with the monarch cheaper.

An assembly with estate-based chambers was therefore conducive to inter-estate rent seeking and particular types of political bargains. In exchange for privileges and other rents, an estate would be willing to concede additional powers to the monarch. An excellent example of this involved the French monarchy's struggle to shore up its authority in the fourteenth century:

The military disasters [. . .] culminating in the capture of King John [II, "the Good"] encouraged the [. . .] great demands for control of the government. Led by the third estate, and within that estate by Etienne Marcel, provost of the merchants of Paris, they demanded in 1355 the collection and spending of taxes they voted by elected tax-gatherers under the estates' supervision; then, after Poitiers in 1356, they demanded the election by themselves of a council of state to govern the kingdom. The Dauphin [Charles V], as regent for his captive father, had to make temporary concessions to gain time; but he was helped by the hostility of the nobles and clergy to the pretensions of Marcel and the third estate[. . .] A reaction set in, Marcel was murdered, his supporters were executed, and the monarchy was restored. (Myers 1975, 68–69)

Here, in a moment of weakness, the French monarchy was able to adroitly play estates off one another in bargains that restored its power.

Note that each estate might have been willing to exchange privileges for additional monarchical powers despite the fact that absolutism was ultimately bad for all estates. Consider the *Cortes* of Navarre and Portugal:

[The estates] watched with jealous eyes any royal attempt to change or defy the laws without their consent, yet they sprang to the air of the monarchy if they felt that the independence of Portugal or Navarre was threatened. In the fifteenth century the turbulence of the nobility in Portugal, as in Castile, became so great as to lead to a reaction among the towns and clergy in favour of the Crown, and so to a fatal weakness in the power of the *Cortes* in those two countries; [. . .] (Myers 1975, 65)

An estate-based assembly reduced the costs of expressing special interests. Conversely, it raised the costs of inter-estate cooperation, leading potentially to a prisoner dilemma: cooperating to check the monarch would make all estates better off, but high costs of cooperation lead each estate to promote absolutist tendencies. Alternatively, territorially-based

assemblies were less likely to encourage absolutism and more likely to promote governance consistent with a generality norm.

Our arguments above are consistent with what we know about the decision-making rules in medieval assemblies. Admittedly, we have less information on these assemblies than we would like. Generally, though, it appears that each chamber deliberated and came to a decision based on approval of a majority or greater. And in some cases the standard for approval differed from chamber to chamber in a single assembly. For example, in Catalonia the clergy and city chambers required majority approval while unanimity was the nobility's standard (Lord 1930, 37; Myers 1975, 64). Alternatively, in Aragon each of the four estates required unanimity (Myers 1975, 32). While there was variation across assemblies, it was most often the case that, within a given chamber, "the opposition of a considerable and determined minority sufficed to thwart a project, or even that unanimity was required for a decision" (Lord 1930, 136). In an estate-based chamber, supermajority rules would not have hindered corporate expression of estate-based interests. Alternatively, they would allow individual estates to check one another in a chamber with mixed representation.

Supermajority rules within estate-based chambers would also have decreased the likelihood of inter-estate logrolling. Logrolling is a term employed by political economists in reference to the exchange of political favors, most notably votes in modern-day legislatures.<sup>19</sup> Logrolling increases the tendency of special interests to be expressed relative to more common interests. When logrolling is easier to pursue, representatives in an assembly would have been more likely to deviate from their ideal positions in bilateral bargains (Aksoy 2012).<sup>20</sup> In the case of unanimity, alternatively, each member of a particular estate would have had an incentive to wield his influence toward preventing his chamber's deviation from its ideal—in modern parlance, to whip the other members of his estate. (Supermajority rules would have had a similar, though lesser, effect on logrolling.)

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19. Though social scientists have long recognized the phenomenon of logrolling, Tullock (1959) and Buchanan and Tullock (1962) are the seminal works in the modern literature on the subject. Important subsequent contributions include Tullock (1970), Riker and Brams (1973), Ferejohn (1986), Stratmann (1992, 1995), and Carrubba and Volden (2000). For literature reviews see Miller (1977) and Mueller (2003, ch. 5).

20. Aksoy provides evidence based on European Union legislative proposals that is consistent with this argument.

### 9.5. *Why Estate-Based versus Territorially-Based?*

We have just provided a comparative analysis of institutions that suggests, when looking back on medieval assemblies, that those characterized by chambers with mixed representation from multiple estates were more resistant to the absolutist ambitions of monarchs than those with estate-based chambers. But that analysis raised the question: what accounts for the observed variation in relevant assembly structure across medieval European polities?

For scholars concerned with long-historical developments, this sort of question is important. In the context of medieval assemblies, we would like to know not only why certain assembly structures promoted or checked absolutist tendencies, but also why those assembly structures existed in the first place. On the one hand, then, this book has had a lot to say about the fall of the Western Roman Empire and how early medieval Western European governance structures emerged. Therefore, it makes sense to comment on how assemblies in different Western European polities may have developed different structures. To do so, consider the cases of France and England. These two cases are obviously not comprehensive of Western Europe, but France and England are often treated as archetypal of, respectively, the paths to absolutism and constitutional monarchy; thus the cases of most general interest.

In France, the evolution of a three-chamber assembly can be traced back to Carolingian developments in the eighth and ninth centuries. At its height under Charlemagne, the Carolingian Empire encompassed a much larger territory than that which ultimately became France. However, France of the High Middle Ages corresponded roughly to West Francia, a kingdom resulting from the Treaty of Verdun (840) that divided the Empire among three of Charlemagne's grandsons. To explore the roots of the Estates General, then, we need to look back on Carolingian governance traditions.

In chapter 3, we discussed how, after consolidating his political power, Charles Martel—the great pretender and successful usurper to Merovingian power—set about investing in state capacity. To do so he strategically granted benefices of land to nobles throughout both west and east Francia in exchange for their faithful service as agents of local revenue collection and governance. This involved extensive confiscations of Church properties, a practice that was continued by his sons Carloman and Pippin III, and represented a substantial transfer of wealth from the clergy to the nobility. While the Carolingians struck a political bargain



with the second estate at the expense of the first, they still needed the Church and had something to offer in return. In expanding their realm, the Carolingians sought the legitimacy that the Church could provide; while the Church was in need of protection from the threat of Lombard kings in northern Italy.

The details of the political bargains have been discussed in chapter 3, but suffice to say that the legacy of Carolingian rule on the continent was built upon, on the one hand, bonds of homage and fidelity forged in bargains with nobles and, on the other, bargains with the Church to secure its authority. It is not surprising, then, that political relationships became defined in terms of the first and second estates. Given this backdrop, it is also unsurprising that when monarchs called assemblies they were organized to facilitate the expression of each estate's interests separately. This was the case at least as far back as Charlemagne whose *conventus generalis* (general assembly) was characterized by a "prearranged agenda [. . .] proposed for debate and approval by separate lay and cleric blocs [. . .]" (Riché 1993 [1983], 125).<sup>21</sup>

While Carolingian governance institutions eventually did leave their mark on England, they did not do so until the eleventh century when the Normans attempted to superimpose them on well-developed Anglo-Saxon institutions of local governance. The latter became fundamental to the rule of English monarchs. Given these local governance institutions and the prominence of local (non-noble; non-ecclesiastic) personages in the administrative and judicial systems, residents of English counties were less likely to perceive their collective interests along the lines of particular estates. Furthermore, since they needed these local personages to effectively govern, it was natural for them to be represented in assemblies.

England's institutions of local governance can be traced back to the unique circumstances it faced during and after the decline of the Western Roman Empire. Roman Britain was always somewhat of a backwater and the imperial military presence had effectively disappeared by the beginning of the fifth century (Heather 2009, 278). Unlike the continent where large Germanic confederacies such as the Visigoths, Ostrogoths and combined Vandals-Alans formed to face imperial armies,

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21. This appears to have been true for other assemblies. For example, in an 811 capitulary Charlemagne implored members of the nobility and clergy to "meet at the palace in separate groups, to discuss complaints about counts having trespassed on episcopal territory and vice versa" (de Jong 2005, 110; Riché 1993 [1983], 125-26).

relatively small barbarian retinues could effectively plunder the island.<sup>22</sup> Abandoned by the imperial military and threatened by raids from the north by Picts and Scotti, Roman elites sought to bargain for protection with the Anglo-Saxons in exchange for land and food subsidies (Heather 2009, 277–78). But the Anglo-Saxons were not a cohesive group with which meaningful bargains could be struck. As the Anglo-Saxons migrated across the North Sea, Romans soon found themselves overrun by numerous, relatively small armed retinues. The result was the establishment of a number of small Anglo-Saxon kingdoms. Concomitant to this was a predominance of local-level governance institutions that would survive into the thirteenth century and fundamentally affect the structure of English Parliament.<sup>23</sup>

Following the Western Empire's fall, England would go centuries without a dominant polity. Such a dominant polity began to emerge from King Egbert's Wessex in the early ninth century. England suffered Viking invasions for the next hundred years, but Egbert and subsequent Wessex kings were relatively effective in halting and reversing the Vikings' progress; in doing so they established a single overarching English polity by the mid-tenth century. The Wessex kings superimposed Carolingian models of royal county-level administration upon existing shire-level local governance structures (Campbell 1986a, 1986b; Ertman 1997, 162).

Then came William the Conqueror's invasion (1066) and the Normans subsequently moved to install members of their own elite into governance positions, such as those of county sheriffs. Being familiar with the Carolingian-type royal governance, however, the Normans preserved the local governance structures upon which it had been superimposed (Ertman 1997 163–64). The Normans and Plantagenet kings that followed made important innovations to central governance, most notably the chancery, the Exchequer, and royal circuit justices (Hollister and Baldwin 1978). However, in doing so they always maintained cooperative relationships between central and local governance: "Whatever improvements were made at the center, the key to the effective operation of English government lay in the shires, or counties [. . .]" (Ertman 1997, 165).

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22. See Young (2016) and the references therein.

23. Some scholars characterize the Anglo-Saxon migration in terms of "elite transfer": Anglo-Saxon elites co-opted existing local institutions and governed with the aid of local leaders (Heather 2009, ch.6 and the works cited therein). Other scholars argue that the Anglo-Saxons decimated the Romano-British sociopolitical infrastructure to the extent that the emergence of a large-scale successor state was impossible (Ertman 1997, 159 and the works cited therein).

The Wessex kings formulated their policies in the forum of a royal council (*witan*). Important matters such as legislation were vetted in a larger version of this council (*witangemot*) that included high-ranking nobility and clergy.<sup>24</sup> Following the unpopular taxes of the Plantagenet kings Richard and John, Magna Carta (1215) built upon the tradition of the *witangemot* and stipulated that the king would levy extraordinary taxes only with the consent of a *Magnum Concilium* that included the ecclesiastical magnates and principle nobles. However, local governance structures remained fundamental to the administration and adjudication of the realm. Relative to the continent, then, the claim that an assembly of the first and second estates spoke for the general community seemed tenuous (Cam 1953). As early as 1254, King Henry III had set a precedent by inviting each shire to send two knights as additional representatives. His successor King Edward I (1272–1307) additionally invited two representatives from each borough.<sup>25</sup>

These Great Councils—referred to as Parliaments by the end of the thirteenth century—had by the 1330s settled on a structure consisting of a House of Lords containing between 40 and 100 nobles and about 50 ecclesiastical magnates, and then a House of Commons containing 74 shire representatives and about 150 representatives from the boroughs.<sup>26</sup> The two-chamber English Parliament provided, relative to many of its continental counterparts, a strong check on monarchical encroachments. By no means was the check always effective: in particular, the early Stuart kings (James I and Charles I; r. 1603–1649) moved toward absolutism. However, that absolutism proved transient, halted by the English Civil War. Following the Restoration, a reinvigorated and Whig-led Parliament pressed its constitutional claims, resulting in the Glorious Revolution and the permanent establishment of a constitutional monarchy.

### 9.6. *The Legacy of Representative Assemblies*

No one would claim that Charlemagne's assemblies marked his empire as a liberal democracy. Nor would anyone make such a claim regarding England when Edward I called the Model Parliament in 1295. Still, medieval assemblies were critical for the eventual development of representative government, in terms of both political practice and thought. The development of representative assemblies in Western Europe was found

24. See Loyn (1984, 140–54).

25. See Brown (1989, 156–57, 161–69).

26. See Brown (1989, 169, 173–74, 178–79, 182–83, 188, 202).

dational to the enduring traditions of liberty that would follow. While assemblies were political institutions, they were foundational not only for political but also economic liberties. This is because representation was drawn from the important holders of both landed wealth (second estate) and commercial assets (third estate): the checks on monarchs' agendas, then, flowed from the interests of individuals who wanted to be free to use their assets to create wealth.

One of the authors has explored, with his colleague Jamie Bologna Pavlik, the long-run importance of medieval representative assembly experiences for political and economic liberties (Bologna Pavlik and Young 2021), and also for state capacity (Bologna Pavlik and Young 2020). Furthermore, they explore the relationships between medieval assembly experiences, liberty, and state capacity today for not only Western Europe but also countries across the globe. How have they done this? Bologna Pavlik and Young exploit two recent and novel datasets. First, Stasavage (2010) compiles data for 30 European polities on their representative assembly experiences during the medieval and Early Modern periods. Stasavage codes whether assemblies existed (i.e., they were called and actually met) and how frequently they met; he also codes if the assemblies could veto taxes and/or exert control over expenditures. The Stasavage data is, of course, indicative of European assembly experiences. However—and second—Putterman and Weil (2010) assemble data that allows Bologna Pavlik and Young to explore the relationship between those European assembly experiences and outcomes across the globe. Putterman and Weil's dataset provides estimates, for the present-day populations of 165 countries, of where their ancestors lived circa 1500.

Exploiting these two datasets, Bologna Pavlik and Young explore the extent to which historical assembly experiences have left their mark on political and economic institutions across the globe today. Using the Stasavage medieval/Early Modern assembly experiences, they use the Putterman and Weil (2010) data to construct for each country worldwide a weighted average of medieval/Early modern assembly experiences. Doing so is based on the large literature from the fields of history, psychology, and sociology on “collective memory” (or what Bologna Pavlik and Young call “long institutional memory”) and also the literature on the importance of entrenched culture for political and economic outcomes.<sup>27</sup> The idea is to look at the proportion of a country's population

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27. For a review of the literature on “collective memory” see Olick and Robbins (1998). For the relationships between culture and institution; examples include Licht et al. (2007), Klasing (2013), and Davis and Abdurazokzoda (2016).

today that is descended from European countries with assembly experiences in the medieval and Early Modern eras, and ask if it is related to the country's institutional quality.

It turns out that historical European assembly experiences are indeed related to liberties, both political and economic, and state capacity today. Countries with populations more historically steeped in assembly experiences are associated with stronger rule of law and property rights, and also greater executive constraint in their governments. Such countries are also associated with higher tax revenues and greater state control over violence. Now, some might object that higher state capacity is antithetical to greater liberty. But not necessarily so. An important stylized fact of today's world is that rich economies are characterized not only by rule of law and strong property rights, but also strong, highly centralized governments (Johnson and Koyama 2017). This is a potential paradox that will be explored in chapters 11 and 12. For now, though, we will briefly say that we do not think there's an actual paradox: high state capacity can achieve much in terms of productive public goods; but if the state is not constrained in its use of that capacity, it will almost certainly resort to predation that harms society at large.

Before we get to those interesting and important issues in chapters 11 and 12, we need to first consider self-governing cities—another important result of medieval polycentric sovereignty in Western Europe. The next chapter will focus on those self-governing cities. There we will encounter the legal maxim, *die stadtluft macht frei* (city air makes you free), a phrase unfortunately reminiscent of the chilling and horrific *arbeit macht frei* (work makes you free) from the gates of Auschwitz. Yet *die stadtluft macht frei* predates the Holocaust by centuries and, to medieval people, it symbolized the potential for individual liberty.

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## The Self-Governing Medieval City



From the last chapter, we know that monarchs in medieval Western Europe found themselves compelled to invite representatives from the cities to their assemblies, take their counsel, and sometimes yield when those representatives did not consent to the monarchs' agendas. More than just taking its place at the political bargaining table with the first and second estates, the third estate built the table in large part.

While we believe that the rise of self-governing cities was a fundamental step toward representative government, we have also acknowledged that causation is tricky here: self-governing cities may have strengthened assemblies and made them truly representative, but representative assemblies could have been the means through which the third estate was able to self-govern in their cities. Even if—and to some extent this was certainly true—causality ran both ways, the rise of self-governing cities was itself an independent and important contributor to the enduring traditions of economic and political liberty that developed in Western Europe.

Not only did self-governing cities emerge as critically important, corporate players in political bargaining, they also became laboratories within which classically liberal ideas blossomed. The economist and historian Deirdre McCloskey (2006, 2010, 2016a) has repeatedly emphasized ethical and rhetorical changes that she pinpoints in sixteenth cen-

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This chapter draws heavily on Young (2017).

tury northwestern Europe. To her mind, these ethical and rhetorical changes were fundamental causal factors underlying what she calls the Great Enrichment: “a gigantic improvement for the poor and a promise now being fulfilled of the same result worldwide” (2016a, xii).

According to McCloskey, individuals began to appreciate that an individual’s commercial activity not only advanced his own interests, but it also furthered the interests of others. Entrepreneurship and innovation was accorded a new, higher status: it became *virtuous*. Furthermore, individuals began to write and talk about this, transforming commercial public discourse. Europeans then collectively made an invisible handshake on what McCloskey calls the “Bourgeois Deal”:

You accord to me, a bourgeois projector, the liberty and dignity to try out my schemes in voluntary trade, and let me keep the profits, if I get any, in the first act—though I accept, reluctantly, that others will compete with me in the second act. In exchange, in the third act of a new, positive-sum drama, the bourgeois betterment provided by me (and all those pesky, low-quality, price-spoiling competitors) will make you *all* rich. (2016a, 21)

Why did Western Europe collectively experience this “Bourgeois Revaluation” of commercial society? According to McCloskey it arose out of the “egalitarian accidents of 1517–1789” (2016a, 152). McCloskey memorably labels these “accidents” as the “four R’s: the Reformation, the Dutch Revolt, the revolutions of England and France, and the proliferation of reading” (2016b).

We do not discount the importance of the ethical and rhetorical changes emphasized by McCloskey. However, by attributing them to “egalitarian accidents” McCloskey rules out institutional factors, including the medieval constitution, as mechanisms contributing to those ethical and rhetorical changes. The reader will be unsurprised that we disagree. We share the perspective of Boettke and Candela (2017, 20) on McCloskey’s arguments:

This dynamic effect [on ethics and rhetoric] may only take place within a larger context of rules that permitted, or at least did not prevent, the contestation of ideas in the first place, from which the ethical values emerged to underpin the extension of the market to capture greater gains from trade and greater gains from innovation.

In this view, McCloskey's arguments not only seem to be an incomplete account of the Great Enrichment; they are also unsatisfactory in explaining Western Europe's enduring traditions of economic and political liberty. McCloskey treats Early Modern ideological traditions as if they sprung forth "out of the blue," independent of the institutional environment within which individuals chose what and whether to think, speak, and write about.

Alternatively, we believe that the self-governing cities of medieval Western Europe were a necessary condition for emergence and nurture of bourgeois ethics and dignity. This is true both because ideas emerge as a function of the institutional environment, and because "ideas must—somehow—be translated from the realm of abstraction to the realm of action; that is, they must be implemented" (Weingast 2016, 190), which is conditional on the institutional environment within which they circulate. Furthermore, while McCloskey suggests that such ethics and dignity did not emerge until the sixteenth century, we believe that there is evidence of their emergence in cities as early as the twelfth century.

### 10.1. Die Stadtluft Macht Frei

As we have seen, a rough balance of power existed between monarchs and the politically powerful estates in medieval Western Europe. In the early medieval era, the first and second estates were most relevant politically. Monarchs were situated in a governance hierarchy with a militarized nobility below them. The Church had its own governance hierarchy that was overarching but also entangled with the feudal system. Kings were in principle under the spiritual authority of the papacy, and by extension, so were their vassals. At the same time, they were also governance providers to bishops and other high-ranking clergy, who were themselves often vassals to a king. From medieval polycentric sovereignty, commercially focused cities arose; their burghers would come to represent a politically powerful third estate. The rise of the burghers left an indelible impact on the High Middle Ages and the subsequent development of Western European institutions.

The precedents for these commercially focused cities were merchant caravans that settled outside of fortified burghs and episcopal towns in the tenth and eleventh centuries (Pirenne 2014 [1925]). These caravans were in German called *hanse*, and the term is recognizable in the later (thirteenth century and on) Hanseatic League of guilds and cities

(Röriq 1967, 41). Merchants, relative to the other town/city/burg residents, were distinct in terms of their interests, background, and culture. They tended to congregate together when settling down, often building an “outside burg” adjacent to the burg. (This is the root of why we today speak of suburbs.) These merchants and their families came to be referred to as residents of the “new burghs” which evolved into the term “burghers.”

Merchant caravans became increasingly prevalent in the tenth into the eleventh centuries, travelling as “armed bands, the members of which, equipped with bows and swords, encircled the horses and wagons loaded with bags, packs and casks” (Pirenne 2014 [1925], 77). They were associations of merchants, bound to one another by oath; corporate entities that provided security to the group, bought and sold goods in common, and whose members were shareholders with residual claims on the profits (76–77).

Having settled down, these merchant associations eventually came to rival the wealth of their adjacent burghs. This often led to tensions between the merchants and the ecclesiastical or noble authorities that governed those burghs. On the one hand, those authorities were eager for merchants to fill their coffers with market tolls. The clergy, in particular, benefited by the increase of their flocks and the revenue-generating baptisms, marriages, and deaths that came with them. On the other hand, the nobility looked down on merchants—market activities were dishonorable; virtue lay in the warrior’s life—and the Church viewed commercial activities as dangerous to one’s soul (Pirenne 2014 [1925], 79–83, 106–7). For their part, the merchants “were strangers [and] hardly inclined to value the interests, rights and customs [of the towns and burghs] which inconvenienced them” (Pirenne 2014 [1925], 102).

In particular, merchants found existing legal institutions, both lay and ecclesiastical, to be unsuited to their needs. “Judicial procedure, with its rigid and traditional formalism, with its delays, with its methods of proof as primitive as the duel, with its abuse of the absolutory oath, with its ‘ordeals’ [. . .] was for merchants a perpetual nuisance” (Pirenne 2014 [1925], 82). Merchants needed a legal system that was more straightforward, expeditious, and equitable. They met at markets and fairs and developed a commercial code (*jus mercatorum*) for themselves.<sup>1</sup> Further-

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1. Legal institutions that were unsuited to the new commercial class may have been reasonable within the context of an agricultural, feudal economy. For example, Leeson (2012) argues that ordeals accurately assigned innocence and guilt to accused parties. Some scholars have linked the medieval *jus mercatorum* to the modern *lex mercatoria* that

more, “as the towns developed both in self-consciousness as closely knit communities and also as centres of wealth, it came to seem unrealistic for the higher clergy and the nobles to speak for the towns in matters of taxation” (Myers 1975, 56). Medieval communes—a term originating in Italy that denotes a self-governing city—established tribunes to adjudicate disputes between burghers according to the *jus mercatorum*; they also established a peace to provide security to the commune (Pirenne 2014 [1925], 110–11).

Medieval cities and their burghers found themselves in a position to pursue self-governance at the constitutional bargaining table. They were becoming important sources of wealth and administrative capital to both monarchs and the aristocracy. As such, they “were able to negotiate crucial freedoms from external authority by playing off noble and king[;] [f]ixed sums of money [. . .], artisanal weaponry, and administrative specialists were exchanged for clearly stipulated rights, freedoms, and immunities” (Downing 1989, 217; see also Rörig 1967, ch. 3; Reynolds 1997, 2004; Møller 2018). Starting with the charter granted to St. Omer in 1127, cities in the Low Countries were increasingly able to obtain charters that codified those rights, freedoms, and immunities (Pirenne 2014 [1925], 123).

Polycentric sovereignty characterized Western Europe generally, but the balances of power between different estates and monarchs varied across regions and polities. This variation determined the bargaining positions of particular cities and the alliances that they sought. For example, in southern France, nobles and the towns tended to ally against an increasingly powerful king in the north. Northern Italian nobles and cities did similarly to thwart encroachments from the Holy Roman Empire and Church. Alternatively, in the northern parts of Western Europe, towns were fearful of independent, powerful nobles; they were more likely to ally with the Holy Roman Emperor (Downing 1989, 217).<sup>2</sup> In general, though, medieval cities gained significant bargaining power which they exercised to their benefits. Those included rights, privileges, and immunities; also the hosting of assemblies at which such rights, privileges, and immunities were negotiated (Rokkan 1999; van Zanden et al. 2012; Dincecco and Onorato 2016; Grzymala-Busse 2020).

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provides rules for international transactions (e.g., Berman 1983; Trakman 1983; Benson 1992); for an opposing view see Volckart and Mangels (1999).

2. Considering the German principalities within the Holy Roman Empire, Moraw (1989, 645) comments: “The cities, distrustful of the territorial princes, initially sided with the empire but changed sides after 1470, when imperial taxation demands grew.”

In the twelfth and thirteenth centuries, cities across Western Europe increased in population and wealth and obtained charters recognizing “special forms of urban land tenure, free from servile or rural obligations, and of special town customs and courts adapted to the demands of trade” (Myers 1975, 22). The political bargaining that led to these charters differed depending on time, place, and circumstances; and the “bargaining” was not always peaceful.<sup>3</sup>

Burghers were thus able to leverage their wealth and associated political pull to increase self-governance of their cities. Furthermore, they approached it from a background of individuals possessing legally recognized freedom.

The legal status of merchants eventually gave them a thoroughly singular place in that society which they astonished in so many respects. By virtue of the wandering existence they led, they were everywhere regarded as foreigners. No one knew the origins of these eternal travelers. [. . .] [A]nd serfdom was not to be presumed: it had to be proven. The law necessarily treated as a free man one who could not be ascribed to a master. (Pirenne 2014 [1925], 80–81)

Settled within a city, burghers both recognized their own free status and were inconvenienced by the non-free status of other residents. For example, if a merchant married a serf there were negative consequences for his children (since one’s legal status generally corresponded to that of his or her mother). As such, “[t]he ancient law, in seeking to impose itself upon a social order for which it was not adapted, ended in manifest absurdities and injustices which called irresistibly for reform” (Pirenne 2014 [1925], 105).

It is not surprising, then, that burghers insisted on extending their rights and liberties to newcomers. In doing so the “development of [city] autonomy occurred simultaneously with the transition from the personal to the territorial principle in law” (Rörig 1967, 27). In medieval cities, relations to a lord were no longer to define an individual’s legal status. The autonomy of cities was itself a foundation for this transition from a personal to territorial legal principle. For an individual to make his way to a self-governing city was in itself, then, a substantial step toward free-

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3. Burghers in medieval France most often looked to the king for guarantees of their rights against the encroachments of princely lords (Rörig 1967, 58). Alternatively, in the battle of Worrigen (1288) “the people of Cologne overcame the archbishop and his entourage with a coalition of his princely enemies” (Rörig 1967, 24).



dom. It became customary law that someone who resided a year and a day within a self-governing city became a free individual of that city. The legal maxim spread across Western Europe: in the German, *die stadtluft macht frei* (the city air makes you free) (Rörig 1967, 27–29; Pirenne 2014 [1925], 125–26).<sup>4</sup>

### 10.2. *The Medieval City as a Necessary Condition for the Egalitarian Accidents*

Adam Smith (1976 [1776], xl) famously claimed that, “Little else is requisite to carry a state to the highest degree of opulence from the lowest barbarism but peace, easy taxes, and a tolerable administration of justice; all the rest being brought about by the natural course of things.” Anticipating the later work of New Institutional Economists such as Ronald Coase, Douglas North, and Elinor Ostrom, Smith was emphasizing institutional structures as a fundamental cause of economic development; “all the rest [i.e., the proximate causes] being brought about by the natural course of things.”

Smith’s statement above might lead one to think that he had a fairly bland, “Washington Consensus” view of what institutional environment led to development. However, Smith was keenly aware of the importance of virtue and dignity, and emphasized the conditions—including institutional conditions—under which they might flourish. In that spirit, we argue that phenomena such as the Reformation, the Dutch Revolt, the English and French revolutions, and the spread of literacy were made possible by the institutional environments of self-governing cities. Only in self-governing cities were individuals free enough to introduce and discuss revolutionary ideas. Furthermore, self-governing cities provided for the thriving commerce that increased the demand for literacy; as well as the institutions of learning that increased its supply. Not only did increased literacy eventually lead to the expression of a bourgeois dignity, as McCloskey points out; before that, it provided the means by which revolutionary ideas could be disseminated.

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4. There was also the maxim *rodung macht frei* (“clearing makes you free”) (Jordan 2012, 9–11). Europe had a sparse population and was heavily forested. Individuals who fled their lords into the forests could, by clearing the land and using it for agricultural production, escape their feudal ties.

Consider the Reformation. Luther was educated in Wittenberg and it was on the door of All Saints' Church in Wittenberg that he nailed his *Ninety-Five Theses*. Wittenberg had been chartered in 1293. Calvin was educated at the Universities of Orléans and Bourges, cities that were chartered in 1057 and 1118, respectively.<sup>5</sup> These clergymen exploited the free air of medieval cities to push their revolutionary ideas against the Catholic Church. And universities were themselves corporate entities that were inventions of medieval cities in the High Middle Ages. Indeed, they were modeled after cities as self-governing communities of masters and their students. Additionally, when the Spanish King and Holy Roman Emperor, Charles V, sought to root out Protestantism from his realms, he funded his wars with heavy taxes on the wealthy cities of the Low Countries, which was a major impetus for the Dutch Revolt.

It was self-governing medieval cities that made McCloskey's "four R's" possible. It is also likely that those urban centers of relative freedom had, in the High Middle Ages, already begun contributing to a bourgeois dignity.

Granted, the claim made above is tricky to evaluate. McCloskey relies heavily on narrative evidence to support her own thesis, and that is reasonable given it concerns burghers' self-perceptions, their perceptions of one another, and others' perceptions of them.

McCloskey identifies Early Modern narratives (including novels, poetry, and plays) that indicate a bourgeois dignity and point, often implicitly, to a lack of earlier narratives that do the same. "We are talking here about what brought honor, not what actually happened" (McCloskey 2016a, 163). All well and good. However, relying on narrative evidence of burghers' perceptions stacks the deck in favor of pinpointing the Bourgeois Revaluation in the Early Modern period.

Why does the reliance on narrative evidence stack the deck? The reason is that literacy trends almost assure that narrative evidence of a bourgeois dignity markedly increased from medieval into the Early Modern period. Quite simply: If burghers were not writing, then they did not leave narrative evidence of a dignity that they may or may not have been perceiving in themselves or others.

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5. These are the dates of initial charters. Medieval cities were often able to renegotiate and receive new charters ensuring new rights and immunities. For example, Orleans received a number of charters from 1057 to 1281. See Guizot (1881) for a good source of details and dates.

The individuals most relevant to McCloskey's thesis were the urban merchants, as opposed to the burghers more generally. The latter included all lay, non-noble city dwellers; these included artisans and laborers, as well as merchants. Merchants, alternatively, followed a tradition of long-distance trade, coordinating the import of raw materials to the city and the eventual export of goods to distant locales. For example, consider the task of a cloth merchant from the Flemish town of Ypres circa 1300:

[T]here was no system whereby the product that was being worked upon could be passed from one 'master' to the 'master' concerned with the subsequent process in the manufacture; after each process the goods had to be restored to the cloth merchant, who checked the work that had been done and then turned it over to another man of his choice to continue the process. Thus the cloth being made was continually going back to the business premises of the man who owned the wool, until finally he took receipt of the finished cloth which he then disposed of on the European market. (Rörig 1967, 84–85)

While artisans and unskilled laborers plied their particular trades, the medieval merchant coordinated their activities and bore the risks of long-distance importation and exportation; they were the entrepreneurs of the medieval era. If we are interested in “the ideas in the heads of the entrepreneurs for the betterments themselves [. . .] and the ideas in the society at large *about* the businesspeople and their betterments” (McCloskey 2016a, xii), then we are first and foremost concerned with the merchants.

We would like to have narrative evidence of how these medieval merchants perceived their role in society, and how others perceived their role. In particular, we would like to know how merchants and other burghers perceived the role of merchants' activities in relation to their own well-being. This is because we cannot reasonably expect to find many nobles and clergy heaping praise upon the merchants. To begin with, estate-based political bargaining often put them in an adversarial relationship with the upstart burgher class. Furthermore, the nobility and the Church both had a decidedly dim view of commerce and the merchants who undertook it. Nobles were members of a warrior class who held commerce and labor generally to be beneath them; and the Church

was always suspicious of commerce as sinful.<sup>6</sup> If there existed a medieval bourgeois dignity it would be primarily reflected in the narratives and art of the burghers themselves.

While the nobility's contempt for merchants may not ultimately be of import to the researcher of bourgeois dignity—after all, even if they would have deigned to put pen to paper on the matter, most of them could not write—that of the clergy definitely is. While recent scholarship has largely rejected the idea that the so-called Dark Ages were a period of cultural barbarity<sup>7</sup>, the early medieval period was certainly one where the scope of literacy narrowed significantly and concentrated on the clergy. As Anderson (2013 [1974], 131) puts it, the Church “was, indeed, the main, frail aqueduct across which the cultural reservoirs of the Classical World now passed to the new universe of feudal Europe, where literacy had become clerical.” Most early medieval writing flowed from the pens of the clergy. And, indeed, the chroniclers of towns were most often town clerks who were drawn from the ranks of the clergy (Rörig 1967, 139).

The predominant claim to literacy in Western Europe by the clergy would persist for centuries. The preeminent sociologist, Michael Mann (1986, 379), further notes that the clergy's claim was combined with a “communications infrastructure [that] was provided by literacy in a common language, Latin, over which it enjoyed a near monopoly until the thirteenth century.” This was important because people very seldomly wrote and read in their own everyday languages; and Latin was the only language in which formal education and correspondence occurred.<sup>8</sup> Because the first estate claimed a near monopoly on Latin, and possessed the infrastructure to communicate using it (e.g., to produce and distribute literature), the perspective on merchants that has come down to us is decidedly biased.<sup>9</sup>

One has to dig a bit deeper for evidence of a bourgeois dignity during the Middle Ages. That evidence is admittedly scant. Still, we have reason to believe that, despite what the clergy thought, merchants did often view their activities as virtuous; not only in terms of their own interests,

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6. For the clergy's view of commerce, see Peacock (1969); Pirenne (2014 [1925], 78–80); Tawney (2015 [1926], ch. 1).

7. For example, see Wickham (2009).

8. See Bäuml (1980).

9. Even by the mid-fifteenth century, only 10 percent of adult males were able to sign their names; the variation across polities was not very large. See Allen (2003, table 2) who breaks it down by country/region for 1500: Netherlands and Belgium are highest at 10 percent; Austria/Hungary, Germany, and Poland are lowest at 5%.

but also in terms of benefiting society more broadly.<sup>10</sup> For example, this is evident in merchants' fascination with portraiture in the Late Middle Ages. Portraiture allowed merchants and other urban leaders an escape from ecclesiastical portrayals.

The portrait emerged as a purely secular end in itself. [. . .] [T]he people who commissioned these portraits much more frequently belonged to the urban patriciate and the merchants than to the nobility or clergy. [They] made the greatest use of the new possibilities offered by the development of a technically and above all conceptually advanced form of art, and it is thus not surprising that it should have played the major role in the secularisation of culture. (Rörig 1967, 133)

Merchant portraits depict individuals who find dignity in their professions: they are set in their places of business; business correspondence, account books, and clerks are prominent. These merchants were not hiding from their bourgeois identities. Rather, they commissioned portraits that celebrated those identities and handed them down for posterity.

In figure 4 we can see an example in a 1532 portrait of Georg Giese, a merchant who hailed from Danzig and operated out of London. This portrait was contemporary to the English Reformation (which, as we have seen, was itself very unlikely outside of the context of self-governing cities) and prior to the Dutch Revolt and revolutions, both English and French, to which McCloskey points.

### *10.3. The Medieval City's Place in Western Europe's Constitution of Liberty*

The self-governing medieval city as a phenomenon that could not have been possible absent the polycentric sovereignty that characterized medieval Western Europe. It was a product of the Medieval Constitution of Liberty. Yet it also furthered that constitution, creating political environments that themselves, collectively, became sovereign political players at the political bargaining table. These cities were both generators of wealth and liberties.

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10. Peacock (1969) suggests that burghers, finding themselves rebuked by members of the clergy, may have turned toward mystics to alleviate their anxiety and guilt. (Hopefully they succeeded!)



Fig. 4. *Portrait of Georg Giese*, by Hans Holbein the Younger (1532)  
Source: The Gemäldegalerie in Berlin, Germany. Image is in the public domain, courtesy Wikipedia.

McClosky has called attention to the importance of individuals perceiving dignity in their entrepreneurial (or, more generally, market-based) activities, as well as those of their neighbors. She has convincingly argued that ethical and rhetorical changes were fundamental to the Great Enrichment. Scholars are undeniably better for McClosky's scholarly efforts over the last decade. Her emphasis on the Bourgeois

Revaluation is a welcome one in an economics literature too often dominated by mechanical descriptions of homogenous capital accumulation and “black box” technological change. We agree that ethical and rhetorical changes were important in ushering in an era of sustained improvements in human welfare. However, in attributing the change to “egalitarian accidents,” McCloskey downplays the role of institutions and, thus, the medieval constitution that provided fruitful environments for those happy accidents in the Early Modern period.

We emphasize that self-governing cities and representative assemblies were both consequences and causes of Western Europe’s enduring traditions of economic and political liberty. They emerged from the medieval constitution of liberty, and also furthered the development of that constitution. In this chapter, we have focused on self-governing cities and argued that the Bourgeois Revaluation would not have been possible outside their contexts. Burgher populations were able to leverage their wealth and human capital to strike constitutional bargains by playing monarchs, nobles, and clergy off one another. The results of these bargains were various immunities, liberties, and rights codified in cities’ charters. Without these immunities, liberties, and rights, medieval Europe would not have nurtured McCloskey’s egalitarian accidents.

Self-governing cities and their de facto power at the broader political bargaining table was part and parcel of the polycentric sovereignty that characterized medieval Western Europe; that was conducive to good governance, wealth creation, and traditions of liberty generally. The last two chapters have elaborated on how polycentric sovereignty led to representative assemblies, self-governing cities, and the governance innovations that were forthcoming from both. However, there are scholars who argue that there are downsides to a constitution characterized by polycentric sovereignty, such as inefficiently strong vetoes on collective action. Additionally, there are scholars who argue centralized power and the accumulation of state capacity was fundamental to the Great Enrichment. In the fourth and final section of this book, we address and make our case against those scholars.

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PART 4

The Rise of the Nation-State



## The Tragedy of the Medieval Anticommons? State Capacity and the Origins of Economic Growth



At this point, our presentation and analysis of the medieval constitution is complete. We started by outlining the historical process by which medieval governance institutions arose, beginning with the fall of Rome and culminating in the thirteenth century. Next, we explored the medieval constitution itself, arguing it is best understood as an incentive-compatible distribution of political property rights. Specific features of those rights, notably residual claimancy and the procedures for constitutional exchange, resulted in a governance network that we characterized as polycentric sovereignty. The existence of fragmented, overlapping, and competing governance providers, combined with the ability of agents at differing stages of the feudal hierarchy to enforce their own rights, is what makes medieval Western Europe different. When exploring the foundations of political liberalism, characterized by broadly rights-respecting governance according to a generality norm, polycentric sovereignty is the answer to the question: “Why Europe, and not elsewhere?” Finally, we showed this in greater detail by further analyzing two important pillars of the medieval constitution: representative assemblies and self-governing cities.

The resulting depiction of medieval Europe’s *de facto* constitution is decidedly proto-liberal. While it would stretch the truth to claim the

medieval constitution was itself liberal, it undoubtedly laid the foundation for liberalism. We cannot understand modern constitutions without reference to the medieval chartered liberties that preceded them. Furthermore, because (political, procedural) liberalism is an important component of the wealth-creating nature of modern governance institutions, the medieval constitution also helped to create the background conditions for sustained, broad-based economic growth.

But our theory confronts a serious challenge, especially considering the contemporary literature on the political economy of growth and development. Armed with the findings of the state capacity literature, skeptics of the quality of medieval governance institutions apparently have a ready reply. Our argument thus far was laudatory of the *de facto* privatization of political authority, in the form of political property rights, that prevailed throughout the medieval period. Yet the Great Enrichment—the process of broad-based economic growth by which Western Europe escaped the Malthusian trap—did not begin until centuries later. Even during the zenith of the High Middle Ages, Europe remained poor. As a matter of history, this point is unassailable. And as a matter of theory, those scholars who question the efficacy of medieval governance argue it was precisely the privatization of political authority that prevented economic growth. Pointing to the complex network of privately owned jurisdictions in the context of overlapping legal authority, the contention that medieval European governance institutions were plagued by an anticommons problem appears plausible.

In this chapter, we begin to address these challenges. We start by providing a summary of the state capacity literature, which argues that modern, centralized states were necessary for sustained increase in living standards. According to state capacity advocates, it is more correct to claim the West became rich not because of its medieval heritage, but despite it. We then focus on the subset of the literature that discusses serious problems in medieval governance institutions, which potentially explain why the Great Enrichment did not begin until centuries later. We conclude this chapter by noting that there is an important problem with state capacity explanations for the wealth and poverty of nations. While this literature is empirically rigorous, we believe there are serious errors of interpretation that render its explanations incomplete, at best. We relegate a full-fledged defense of polycentric sovereignty against state capacity to the next chapter.

The state capacity literature is extensive, and in recent years there has been a marked increase in the number of contributions. We cannot possibly summarize it all. Instead, we focus on the subset of the state

capacity literature most relevant to our argument concerning medieval institutions and good governance. Our goal is to selectively draw from this literature to steel man the most high-profile argument against our thesis. Of course, we fully expect to overcome this challenge over the remainder of this book. However, because of our objective, our discussion of state capacity is necessarily limited. Readers interested in a rigorous yet accessible overview of state capacity should consult Dincecco (2017). Johnson and Koyama (2017) provide an overview of the literature with special emphasis on economic history. Bardhan (2016) explores the relevance of state capacity to international aid organizations and developing economies today. We recommend each of these sources for those who wish to go into greater depth.

### *II.1. State Capacity and Economic Growth: A Bird's-Eye View*

At a general level, state capacity refers to “the state’s ability to accomplish its intended policy actions—economic, fiscal, and otherwise” (Dincecco 2017, 3). More specifically, it “describes the ability of a state to collect taxes, enforce law and order, and provide public goods” (Johnson and Koyama 2017, 2, emphasis removed). The literature on state capacity has its antecedents in the literature emphasizing the role of institutions in determining economic outcomes.

Institutions matter because they structure the incentives that direct economic activity into either socially productive or unproductive ends. Thus, rather than focusing on whether a particular policy was beneficial or not, the ‘institutional turn’ directed attention to how particular political or economic institutions provided the necessary preconditions for economic growth to take place, first in western Europe and then in other parts of the world. (Johnson and Koyama 2017, 3)

Institutional economics thus carries forward Adam Smith’s (1763, 1776) project, in exploring both the foundations of social order and the wealth of nations. Scholarship by fiscal historians such as Tilly (1975; see also 1990) and economic historians such as North (1981, 1990) and Weingast (North and Weingast 1989) were important contributions linking specific governance mechanisms to changes in economic outcomes, especially with respect to the ability to tax and protect private property rights. Recent contributions in this vein, such as North, Wallis, and Weingast

(2009) and Acemoglu and Robinson (2012), are fellow travelers of the state capacity literature. The former focuses on the preconditions of the open society, i.e., one where elites are unable to monopolize rents. The latter emphasizes inclusive institutions, characterized by large segments of the population being included—or at least not having their interests ignored—by the political process. In each of these stories, the modern state is the factor promoting openness and inclusiveness.

The state capacity literature proper takes its starting point at the Great Divergence: the rapid increase in living standards experienced by countries with well-developed, coherent states, as compared to countries with weak or failed states, which remain trapped in poverty. Importantly, economic enrichment and political consolidation went hand-in-hand: “Alongside this unprecedented increase in wealth, the transformation in the scope and scale of the state has also been remarkable. OECD countries today tax between 20–40% of GDP. By contrast, preindustrial societies rarely succeeded in taxing more than 5% of GDP” (Johnson and Koyama 2017, 1). Wealthy societies, whose governments are able to uphold market-supporting institutions, have states that are long-lasting and centralized (e.g., Besley and Persson 2009, 2010, 2011, 2013; Borcan et al. 2014; Dincecco and Katz 2014). This explains the observed high correlation between income per capita and tax revenues per capita (Besley and Persson 2011; Karaman and Pamuk 2013; see also Dincecco 2017, 50–51), one of the key measures of state capacity. The insight is that highly competent states are able to collect larger tax revenues with minimal excess burden. Those revenues are then used to provide crucial public goods, such as defense, infrastructure, and legal uniformity, that promote economic development.

The archetypal example of the “effective state” (cf. Dincecco 2011, 2015) is Britain. By the early eighteenth century, the British state was both strong and relatively responsible. Its strength lay in its high fiscal capacity, which allowed it to raise significant revenue in a timely fashion via both taxation and borrowing. However, the British state was also responsible, because it was lawful: it did not wield its power arbitrarily. The combination of a strong yet constrained sovereign is the ideal outcome in the literature at the intersection of institutional economics, development economics, and economic history (North and Weingast 1989; Weingast 1995; Acemoglu et al. 2005a, 2005b; Acemoglu and Robinson 2012).

The state capacity literature points to several mechanisms that link state capacity with sustained, broad-based economic growth. While these mechanisms are continuous with each other, it is nonetheless extremely useful to separate them conceptually. We discuss three: coercive capacity, fiscal-legal capacity, the rule of law.

## 11.1.1.1. COERCIVE CAPACITY

Wealth is endogenous to the ability to defend it. Societies that accumulate wealth become more attractive as objects of predation (Hendrickson et al. 2018; Geloso and Salter 2020). Predation is ultimately an economic activity, and the prevalence of “raiding” compared to “trading” depends on the net payoffs of each (Hirshleifer 2001). Deterring against aggression is thus the most basic task of the state. The implication is that “state capacity and coercive capacity are inherently linked” (Geloso and Salter 2020, 374). Rulers’ motivations for increasing the coercive capacity of their states—as well as state capacity more generally—was primarily a rational response to the changing political-economic circumstances of early modernity: “Rulers in early modern (1500–1800) Europe built state capacity in the pursuit of state power and victory in war. Prosperity and economic development were largely means to this end; they did not anticipate the possibility of modern economic growth. Many of their policies were destructive in the short-run” (Johnson and Koyama 2017, 3). But in the long run, the internal monopoly on violence, combined with external deterrence of predation, created the possibilities for safe and sustainable wealth creation.

Importantly, innovations in coercive capacity (Batchelder and Freud- enberger 1983; Tilly 1990; Turchin et al. 2013) were complementary with innovations in fiscal capacity, especially with respect to interactions between the fisc and the monetary-financial system (Gennaioli and Voth 2015). The creation and maintenance of large military forces required not only new military technology, but new financial procedures that facilitated resource mobilization. It also required coherent taxing authority. For example, Becker et al. (2016) show that, between 1200 and 1750, more conflict-prone German polities developed more sophisticated systems of taxation. The oft-used aphorism “fiscal-military state” thus rests on a crucial truth: links between coercive and fiscal capacity were mutually reinforcing.

## 11.1.1.2. FISCAL AND LEGAL COMPLEMENTARITIES

There is also a relationship between fiscal capacity and legal capacity. “First, a high capacity state must be able to enforce its rules across the entirety of the territory it claims to rule (legal capacity). Second, it has to be able to garner enough tax revenues from the economy to implement its policies (fiscal capacity)” (Johnson and Koyama 2017, 2). While it was



appropriate to discuss fiscal-military relations first, because deterrence against aggression is the first duty of the state, this relation is profitably viewed as a special case of the general link between fiscal and legal institutions. Fiscal-legal innovations enabled states to finance and produce important common-interest goods that promoted general economic development. Because of this, scholars frequently view state capacity and market performance as complementary.

Well functioning markets are not only required for allocative economic efficiency, they also provide the necessary conditions for sustained economic growth over time. But markets cannot operate in an institutional vacuum. They require property rights that are well defined and enforced and rely on governance institutions that can arbitrate claims and disputes. (Johnson and Koyama 2017, 9)

Although commercial governance can be successfully provided by non-state entities (Greif 1989, 2006; Leeson 2014; Stringham 2015), the state increasingly performed these roles in the centuries before the Great Divergence. “An account of the onset of modern economic growth in western Europe cannot therefore abstract away from the greater role played by public order institutions during this time period” (Koyama and Johnson 2017, 9).

First, centralized states resulted in greater market integration. Before early modernity, markets were highly fragmented, both due to geographical barriers to moving goods and institutional barriers, such as tolls (Epstein 2000; Dincecco 2010). (We will discuss tolls at greater length in the subsequent section.) Full market integration did not occur until the nineteenth century, but states were crucial in driving the process. “An account of the onset of modern economic growth in western Europe cannot therefore abstract away from the greater role played by public order institutions during this time period” (Johnson and Koyama 2017, 9). In addition to improving overall productive capacity, market integration and financial development often proceeded apace, bolstering the mechanism discussed in the previous sub-section.

Second, centralized states helped create effective bureaucracies. Professional administrators were often necessary to govern the larger centralized states that emerged out of the highly fragmented landscape of the High Middle Ages. Because bureaucrats often suffer from many incentive and information problems, which cumulatively may result in a divergence between the welfare of the governors and those of the governed (Tullock 1965), ensuring both effective and responsible bureaucracies is

crucial. Competent bureaucracies were essential in raising and dispersing state revenues. Improvements in the administering of taxes was a particularly notable achievement. Examples include the development of regular (monetary) taxes out of previous in-kind payment schemes (including forced labor) as well as the cessation of tax farming. “Collecting taxes in this way requires a bureaucracy that is impartial and not excessively corrupt” (Johnson and Koyama 2017, 11). They also helped overcome the power of entrenched local elites, who had an incentive to resist governance changes that were privately costly yet socially beneficial (Acemoglu 2003; Acemoglu and Robinson 2000). While these kinds of governance improvements did not immediately cause takeoff growth, they nonetheless fostered political and cultural improvements, such as lower levels of corruption and higher levels of trust, that persist to this day (Becker et al. 2016; Johnson and Koyama 2017, 11).

### 11.1.3. RULE OF LAW

The rule of law is “the degree to which a society is governed by general rules which are applied to all citizens equally” (Johnson and Koyama 2017, 11–12). Following Hayek (1960), we can say the rule of law has three important components. First, social rules ought to be general. They should apply to citizens *qua* citizens, as implied in the maxim that the law is “no respecter of persons” (cf. Acts 10:34). Second, social rules ought to be predictable. Citizens should reasonably be able to expect how the law will apply to their particular circumstances. Third, social rules ought to be *non-discriminatory*. The law should not be an instrument for benefiting one group of citizens at the expense of others. States that can enforce general rules can create the legal-political antecedents necessary for long-lasting economic growth.

This is the mechanism most often discussed by fellow travelers of the state capacity literature. North’s (1990) discussion of the wealth-enhancing properties of institutions, Acemoglu and Robinson’s (2012) conception of inclusive institutions, and North et al.’s (2009) analysis of open-access orders laud the benefits of general, predictable, and non-discriminatory rules. The centralized state is uniquely positioned to create a level legal playing field, in contrast to the often specific, capricious, and prejudicial social rules exhibited by decentralized, traditional, and often informal legal systems.

Enforcing the rule of law requires significant state capacity to overcome the centrifugal tendencies of social systems dominated by local elites. “Low capacity states are unable to implement or enforce general

rules” (Johnson and Koyama 2017, 12). High capacity states are able to do so, and often have an interest in doing so. Rulers of centralized, or centralizing, states found that the “costs of applying centralized fiscal and administrative rules to heterogeneous populations were lowered when those rules and institutions were made more general” (Johnson and Koyama 2017, 12). Hence, the rule of law was often an unintended byproduct of ambitious state-building projects. But according to state capacity theorists, those projects were a necessary antecedent.

### 11.2. *The Medieval Anticommons*

The findings of the state capacity literature present a significant challenge to our thesis concerning the proto-liberalism of medieval governance institutions. Indeed, it is not an exaggeration to say that the institutional structures state capacity scholars point to as causing the Great Enrichment are nearly the opposite of ours.

Though our analysis of polycentric sovereignty is a positive one, it is undoubtedly clear we believe, considered as a general constitutional type, that it promotes “good” governance. Furthermore, we contend that, in the specific case of medieval Western Europe, polycentric sovereignty promoted the evolution of traditions of political and economic liberty that have defined Western exceptionalism. However, we have to contend with the subset of the state capacity literature that focuses on the deficiencies of the medieval constitution. The scholars who contribute to this literature are skeptical regarding the quality of medieval governance institutions. In particular, we must address their general argument that complex networks of jurisdictions with overlapping political property rights created an “anticommons problem,” which held back the Great Enrichment.

#### 11.2.1. THE TRAGEDY OF THE ANTICOMMONS

The anticommons problem is the analogue of the more well-known (*tragedy of the*) commons problem. The latter involves a “common pool resource,” defined as a resource which is rivalrous (i.e., if you are currently using it then I cannot also be using it) but is also non-excludable (i.e., it is impossible—or at least very costly—to enforce who is using it). Common-pool resources can be subject to overuse for obvious reasons. Consider the Ogallala Aquifer. This is an example that is literally right

under the authors' feet. It is a largely non-renewable water source that exists beneath the US Great Plains and runs from its southernmost point under South Dakota down into west Texas. Without enforceable rules (exclusionary rights), each individual can extract water without taking into account the cost in terms of others having less water available. Other examples where commons problems can arise include fisheries and grazing lands.

The anticommons problem is the mirror image of the commons problem: instead of too few exclusionary rights among users of a resource, there are too many (Buchanan and Yoon 2000; Heller 1998). Excessive exclusionary rights imply that too many potential users of the resource have a veto. This means that there may be globally welfare-enhancing changes to how use of the resource is governed that never occur because one (or a small number) of users block them. Recalling our discussions of a generality norm, that sort of a norm implies that governance changes are adopted when they work to the benefit of *almost* everyone involved. But nearly every potential change in government will leave some with a smaller piece of a potentially larger pie. Anticommons problems prevent these changes, due to distributional concerns.

In the context of medieval Europe, many scholars contend that local political elites had incentives to use their political property rights to prevent governance changes that, for example, could result in broader market integration (e.g., better roads, safer trade routes, a uniform legal and fiscal structure). This may create more wealth for the region as a whole, but diminish elites' own political and economic standings in the process. There may also have been classic holdout problems. For example, any single governance provider in a nexus of markets may have prevented overall beneficial integration by being obstinate in an attempt to extract more of the surplus for himself.

To illustrate the anticommons argument, we briefly present two examples: the proliferation of tolls that hindered trade along the Rhine River, and the anticompetitive practices of the European trade guilds. There are undoubtedly many more, but these examples have the benefit of parsimoniously demonstrating the tragedy of the anticommons, as well as enjoying significant scholarly consensus.

#### 11.2.2. EXAMPLE ONE: TOLLS ALONG THE RHINE

A well-studied case is the stifling of Rhine River trade caused by excessive tolls (e.g., Johnson and Koyama 2017, 9–10, and the references therein).

Because river commerce was easier to tax than other sources of wealth, such as agricultural output and merchant income, political elites in whose jurisdiction a portion of the river passed were eager to implement tolls. But each implemented tolls without regard to the costs that the entire structure of tolls (most of which, from the viewpoint of a representative lord, were implemented by other elites, and hence outside of that lord's control) would create for river commerce. Hence the resource in question—the Rhine—may have been inefficiently underutilized. Just as a tragedy of the commons may result in a resource being overexploited, a tragedy of the anticommons may leave a valuable resource underexploited.

During the High Middle Ages, the Holy Roman Emperor (and the empire's Electors) maintained somewhat coherent control over tolls. But in subsequent centuries the central authority of the emperor waned. Local political elites became comparatively stronger, and the number of tolls proliferated (Johnson and Koyama 2017, 9). Arguably this situation was at its worst in the early seventeenth century, several hundred years after the High Middle Ages. However, it can certainly be argued that the heritage of medieval political institutions—too many lords, spiritual and temporal, exercising exclusionary rights for the purposes of preserving rents—was to blame.

### 11.2.3. EXAMPLE TWO: GUILDS

The European trade guilds are another important instance of the “too many vetoes” conundrum. “A guild is an association of people engaging in the same activities and wishing to pursue shared purposes” (Ogilvie 2019, 4). They were especially important institutions in European economic history from approximately 1000 through 1880 AD. “After 1500, they gradually declined in some places while becoming more entrenched in others. The last guilds in Europe were not abolished until 1883” (Ogilvie 2019, 9). Guilds are generally classified as either craft guilds or merchant guilds, although the former category can be misleading, because it includes an enormous range of activities beyond what we normally think of as craft work. Because guilds were important and prominent, classical economic thinkers paid significant attention to them. When Adam Smith (1776) famously argued, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation

ends in a conspiracy against the public, or in some contrivance to raise prices,” he was writing about guilds.

Ogilvie (2019, 4), one of the most accomplished scholars of the European guilds, classifies them as “classic exemplars of particularized institutions.” Particularized institutions entail special rules for individuals based on ethnicity, sex, religion, social status, or occupation. In contrast, “[g]eneralized institutions are ones whose rules apply uniformly to everyone in society, regardless of that person’s identity or group membership” (Ogilvie 2019, 2). There is an obvious commonality with Ogilvie’s emphasis on generalized institutions and North et al.’s (2009) and Acemoglu and Robinson’s conceptions of open-access orders and inclusive institutions, respectively. As particularized institutions, guilds can be analyzed as political devices for restricting competition, which generates artificial economic profits for guild insiders. The social costs, from reduced market productivity and efficiency, are potentially enormous. Thus guilds must be at least partially viewed as “protecting and enriching their members at the expense of consumers and non-members; reducing threats from innovators, competitors, and audacious upstarts. And generating sufficient rents to pay off the political elites that enforced guilds’ privileges and might otherwise have interfered with them” (Ogilvie 2019, 17).

Not all scholars take a uniformly dim view of guilds. Defenders of the thesis that the longevity of the guilds implies economic benefits include Hickson and Thompson (1991), Epstein (1998), and Epstein and Prak (2008), to name only a few. It would certainly be surprising if guilds did not provide some economic benefits, such as facilitating human capital accumulation and limiting violence among practitioners of similar trades. But as with institutions in general, with guilds “it is imprudent to focus on any one of its activities in isolation” (Ogilvie 2019, 31). Because guilds imposed entry barriers, manipulated markets, resisted technological innovation, and used political elites to enforce these policies, there is a strong argument that they held back broad-based economic growth. In fact, the political strength of guilds inversely predicts economic performance: “European societies with relatively weak guilds saw comparatively rapid economic growth from the late medieval period onwards” while “strong guilds were not associated with high per capita GDP or rapid economic growth at any point between 1300 and 1850” (Ogilvie 2019, 562–63, emphasis removed).

Guilds exemplified the anticommons problem because they had sig-

nificant power to stifle economic change that would be socially beneficial, but privately costly for established commercial and political elites. While private property rights *within* the market can eliminate many commons problems, private property rights *to* the market create anti-commons problems. Guilds' politically enforced privilege enabled them to "operate as a cartel of producers. Cartels, by limiting competition, secure artificially high profits for their members, extracting resources from other groups in society and imposing deadweight losses on the whole economy" (Ogilvie 2019, 565). On this view, the persistence of guilds is best explained not by the creation of generalized economic benefits, but the stability of the resultant coalition of commercial and political elites, which monopolized the rents the guild system created. Their persistence is a classic case of "concentrated benefits, dispersed costs" logic: "Guilds were institutions whose total cost was substantial, but were spread over a large number of people—potential entrants, employees, and consumers—who faced high transaction costs in resisting a politically entrenched institution. The total benefits of guilds, by contrast, were small, but were concentrated within a small group—guild members and political elites—who faced low costs of organizing alliances. Guilds survived for so long in so many places because of this logic of collective action" (Ogilvie 2019, 583).

Guilds weakened when rulers of centralizing states realized their political projects were better advanced by promoting generalized institutions instead of particularized institutions. Factors tilting the calculus in favor of general institutions included "strong representative institutions . . . a more highly diversified urban system . . . a more variegated social structure . . . and governments that generally made taxation more generalized and developed markets for public borrowing" (Ogilvie 2019, 585). England and the Low Countries were notable early adopters of the generalized approach to political-economic institutions. Ultimately, weakening privileges for peripheral elites had to await innovations in coercive, fiscal, and legal capacity that favored centralizing elites. As with other cases of the medieval anticcommons, the answer was state capacity.

#### 11.2.4. ESCAPING THE CLUTCH OF THE ANTICOMMONS

These examples reflect a pattern of governance problems, the concern of which is ultimately much larger: the medieval European constitution may have dispersed political property rights too widely. As a con-

sequence, wealth-enhancing institutional innovations were stifled. As Epstein (2000, 36, emphasis in original) argues:

The main institutional bottleneck in pre-modern states . . . [arose] from the coordination failures caused by the *absence of undivided sovereignty* over the political and economic spheres. Multiple sovereignty was a source of both economic and political inefficiency. Because the state did not have a monopoly of power within its borders, feudal lords, cities, corporations, and other ‘public’ or chartered bodies derived income from jurisdictional rights that constrained Smithian growth and challenged the theory and practices of the sovereign state.

Because local elites had an incentive to use their exclusion rights to preserve and enlarge their rents, “strong feudal and urban jurisdiction was incompatible with long-run economic growth” (Epstein 2000, 51).

How were these anticommons problems solved? Acemoglu et al. (2011) and Gennaioli and Voth (2015) argue that exogenous shocks (for the former, the invasion of Germany by France following the French Revolution; for the latter, the threat of large-scale warfare between states in the early modern period) subverted the anticommons equilibrium and paved the way for coherent, centralized states that had the power to implement broadly welfare-enhancing reforms. Changes in military technology undoubtedly facilitated this process (Batchelder and Freudenberger 1983), due to the rise of significant scale economies in maintaining coercive capacity. This enabled central elites (e.g., kings) to increase their power at the expense of peripheral elites (e.g., noblemen, guilds). Central elites’ state-building projects ultimately reshuffled the distribution of political property rights, resulting in the hierarchical, centralized state. Eventually democratic assemblies would replace kings, but by this time the modern state was already well-established (de Jouvenel 1993).

Again, fellow travelers of the state capacity literature have made similar arguments. Decades earlier, Mancur Olson (1982) developed an important argument suggesting that political-economic equilibria characterized by elite capture and broader social stagnation required such a destabilizing event, such as war, to push societies back on the path to greater liberty, equality, and wealth. North, Wallis, and Weingast (2009) tell a similar story in their account of the rise of “open-access orders” from traditional, elite-dominated political arrangements, as do Acemoglu and Robinson (2012) in their analysis of how some societies achieve inclusive economic and political institutions, while others fail to do so.



### 11.3. *Reflecting on State Capacity*

The overall picture assembled from the above works is that medieval governance institutions, because of anticommons problems, were a curse and not a blessing. It is important to emphasize that the state capacity literature is founded on well-supported historical facts. The link between coercive capacity, fiscal and legal capacity, and the rule of law that we take for granted in coherent states did not arise until after the medieval period. Furthermore, we know that the Great Enrichment did not begin until several decades into the Industrial Revolution. This suggests that, if there is a link between liberalism and a set of political-economic institutions, the correct ones to emphasize are the relatively centralized arrangements of modernity, not the relatively decentralized arrangements of the High Middle Ages.

But this cannot be the whole story. There remains an important lacuna in using state capacity to explain the rise of good institutions. We can all think of states, such as Cuba, North Korea, and the Soviet Union, that had powerful centralized states yet remained poor, often desperately so. Furthermore, this is not a mere happenstance: the societies ruled by these states remained poor in large part because elites wield state capacity in a fundamentally predatory fashion. Johnson and Koyama (2017, 3) express the problem succinctly: “powerful states can also impede economic growth and produce economic stagnation. The link between greater state capacity and sustained economic growth is contingent: it depends on whether state policies complement markets and market-supporting institutions. The experience of the twentieth century teaches that attempts to build state capacity in the absence of the rule of law or a market economy have failed to generate sustained economic growth.”

State capacity theorists sometimes appeal to the concept of the “effective state” to escape this quandary (cf. Dincecco 2017, sec. 2). Generalized prosperity requires not only high state capacity, but also mechanisms to ensure that state capacity is used in protective and productive, yet not predatory, ways. This is a valid point, but it poses significant problems for positing a causal link between state capacity and good governance. For what constrains and profitably directs state capacity cannot be state capacity itself. It appears we have merely rediscovered the paradox of government, as famously expressed by James Madison in *Federalist No. 51*: “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

In the next chapter, we will critique state capacity much more extensively. We will also explain why the medieval constitution's polycentric sovereignty was a necessary starting point for ensuring the various state-building projects in Western Europe succeeded. For now, we note the following. Our argument is *not* that medieval European governance was better than that which prevailed in the era of state-building, or that which exists currently. Instead, we contend that several foundational governance institutions whose benefits are widely perceived today, such as representation, concurrence, and reserved rights (especially for minority groups), cannot be understood without explicit reference to their medieval heritage. Stasavage (2016) points out another stylized fact whose importance is not often acknowledged in these discussions: representative government and consent of the governed arose in medieval Western Europe, and not elsewhere. That these institutions are important for modern economic prosperity and personal liberty is near-unanimously affirmed by social scientists. But without remembering the setting in which these institutions arose, we cannot understand enduring Western traditions of constitutional liberty. These include restrictions on predation that existed at the beginning of the centralizing period, as well as those that continued to shape the path of state building in the centuries to come.

That centralized states displaced decentralized proto-states is not sufficient reason to affirm the total superiority of the former. After all, a group of bandits may be chased off by a sheriff and his posse, or by even nastier bandits. Why assume the former instead of the latter? Something must have prevented the exercisers of political power from behaving in predatory fashion, or else the Great Enrichment could not have occurred. We contend this something was the patrimony of the High Middle Ages, in the form of traditions of political and economic freedom.

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## What State Capacity Cannot Do



In order “for liberty to emerge and flourish, both state and society must be strong. A strong state is needed to control violence, enforce laws, and provide public services that are critical for a life in which people are empowered to make and pursue their choices. A strong, mobilized society is needed to control and shackle the strong state.” These words are from the preface of Daron Acemoglu’s and James Robinson’s important book, *The Narrow Corridor: States, Societies, and the Fate of Liberty* (2019, xv). As this quote shows, Acemoglu and Robinson are writing within the state capacity literature. But they are doing so in a unique way that extends the research program, while also suggesting its limitations. Although the central, hierarchical state is an important part of their story, what constrains the state and directs it to promote the general welfare matters just as much.

Acemoglu and Robinson develop a tripartite framework for explaining the relationship between state capacity and good governance. The state can fall into one of three categories: absent leviathan, despotic leviathan, or shackled leviathan. Without a strong central authority, we are doomed to a Hobbesian “war of all against all.” The insecurity of life, liberty, and property ensures life is “solitary, poor, nasty, brutish, and short.” Centralized states, by maintaining a monopoly on violence, can end the war of all against all. But “such states are likely to act despotically, repress their citizens, and stamp out liberty rather than promote it” (Acemoglu and Robinson 2019, 24). Despotic leviathan hardly seems an improve-

ment over absent leviathan. Instead, we “need a state that has the capacity to enforce laws, control violence, resolve conflicts, and provide public services but is still tamed and controlled by an assertive, well-organized society” (Acemoglu and Robinson 2019, 24). In other words, we need a way to institutionalize the protective and productive state, while avoiding the predatory state (Buchanan 1975). Hence, we need shackled leviathan: a state that is “powerful, but coexists with and listens to a society that is vigilant and willing to get involved in politics and contest power” (Acemoglu and Robinson 2019, 27). Why shackled leviathans are so rare in human history, and what lessons we have learned about how to achieve one, is the major focus of their book. Their title, *The Narrow Corridor*, refers to this delicate balancing act between absent leviathan and despotic leviathan, an obstacle that has proved insurmountable for so many societies.

Acemoglu and Robinson deserve much credit for shifting the conversation. It is not enough to create coherent states with unchallengeable coercive authority, responsible bureaucracies, etc. Something must get us to shackled leviathan. It will not happen on its own, merely as the result of state building. Sovereignty will not limit itself, and in fact cannot limit itself. Bodin, Hobbes, and Filmer were right on this score, at least. Instead, sovereignty must be constrained *de facto* by other countervailing powers. Acemoglu and Robinson (2019, 49–50) collectively refer to these powers as “society” or “societal mobilization”:

By societal mobilization we mean the involvement in society at large (in particular non-elites) in politics, which can take both noninstitutionalized forms, such as revolts, protests, petitions, and general pressure on elites via associations or the media, and institutionalized forms through elections and assemblies. Noninstitutionalized and institutionalized powers are synergistic and support each other.

This is obviously a broad category, and little can be said about it *a priori*. We must turn (as Acemoglu and Robinson do) to the historical record to see how these intermediating institutions, which can be political, quasi-political, or even non-political, work in specific contexts.

The something that enabled effective states to rise in the West is polycentric sovereignty. The features of the medieval constitution that created polycentric sovereignty were political property rights, overlapping jurisdictions, and constitutional exchange. These in turn created a generality norm (Buchanan and Congleton 1998): a political filter that

promoted generally welfare-enhancing outcomes and discouraged constitutional rent-seeking. Hence the rise of the West must be viewed not as an escape from the High Middle Ages, but a continuation of the proto-liberal traditions that solidified in the High Middle Ages.

The status quo matters greatly for the process of political exchange (Buchanan 2004). This includes constitutional exchange, which we showed can be conceived as exchange of political property rights. A useful model that shows the importance of the status quo for the feasibility of exchange is the Edgeworth box. Familiar to generations of economics undergraduates, the Edgeworth box shows trade potentials between two agents, who are each endowed with a specific quantity of resources. For simplicity, production is ruled out: the only way for each agent to improve his self-perceived welfare is through rearranging resource endowments, i.e., exchange. What is being traded, of course, is property rights (Alchian and Allen 2018). Importantly, endowments determine the potential for mutually beneficial exchange. The position and shape of the contract curve depends on who starts with what.

What is true for property rights to apples and oranges is true for property rights to demesnes and bishoprics. Who begins with what political property rights determines the parameters of the constitutional contract curve. Since we are discussing exchange among sovereign agents, whose rights-claims are self-secured by definition, violence is always a possibility. Hence norms and other rules matter, too. What keeps us on the constitutional contract curve is polycentric sovereignty.

Constitutional exchange would not have yielded effective states, except for the status quo of the High Middle Ages, which is why the medieval constitution is so important. It is also why we cannot make recourse to state capacity, without answering why it was wielded in protective and productive, but not predatory, ways. Appealing to state capacity is relying on leviathan to get us the Great Enrichment. But as Acemoglu and Robinson show, both theory and history suggest that this gamble rarely pays off. When it does, it is because members in society have hedged their bets: they have made complementary investments in institutional innovations that keep leviathan shackled.

State capacity can be only a part of a social-scientific explanation for the rise of political liberalism and the ensuing Great Enrichment. The chief task of social science is understanding how social patterns emerge without conscious direction or intention on the part of agents. As Carl Menger ([1883] 1985, 146) famously asked: “How can it be that institutions which serve the common welfare and are extremely significant

for its development come into being without a common will directed toward establishing them?” This implies social science has two related tasks. First, understanding how agents acquired the information necessary to act in a manner that creates unintended social patterns. Second, understanding why agents faced the incentives necessary to act in a manner that creates unintended social patterns. Political liberalism and the Great Enrichment are certainly unintended social patterns: they were not the conscious goals of any agent, whether during the High Middle Ages or early modernity. Nonetheless, they occurred, and figuring out why is arguably the *raison d'être* of social science (Smith 1776). Because state capacity is primarily a morphological theory of governance institutions, it is inadequate to this task by itself. The degree to which coercive institutions are hierarchical or decentralized, coherent or muddled, etc., does not speak to the information and incentive problems entailed by generalized political-economic development. In other words, on social scientific grounds, state capacity is simply not the right kind of explanation.

In this chapter, we develop an extended critique of state capacity. We begin by surveying the information and incentive problems associated with the rise of political liberalism and the Great Enrichment. The nature of these problems will clarify why state capacity cannot solve them. We then survey recent works that challenge state capacity explanations for the wealth of nations. We finish by showing where state capacity fits into a generalized theory of political-economic development. Our conclusion is simple: the medieval constitution of liberty is why we ended up with shackled leviathan, rather than despotic leviathan.

### *12.1. Information Problems with State Capacity*

In his classic article, “The Use of Knowledge in Society,” F. A. Hayek argues that the definition of the economic problem that we frequently encounter in principles textbooks—the allocation of scarce means among competing ends—is misleading. “The reason for this is that the ‘data’ from which the economic calculus starts are never for the whole society ‘given’ to a single mind which could work out the implications, and can never be so given” (Hayek 1945, 519–20). Instead, the economic problem arises from the fact that the information needed to answer allocation questions (or even frame those questions in the first place) cannot be harnessed in the requisite manner. That information “never



exists in concentrated or integrated form, but solely as the dispersed bits of incomplete and contradictory knowledge which [. . .] separate individuals possess” (519). The economic problem, then, is not about optimal resource allocation. Rather, it is how to organize production such that the information specifying the tradeoffs can be generated and harnessed.

In addressing the economic problem, Hayek argued that the price system both economized on and generated the knowledge required to facilitate widespread social cooperation under the division of labor. His argument spawned a massive literature on the economics of information, comparative economic systems, and political economy, which continues to this day. Importantly, Hayek’s work cautions that information problems should be taken as seriously, if not moreso, as incentive problems.

While state capacity theorists often recognize incentive problems with building state capacity (see our next section), there is almost no recognition of the information problems with building state capacity. There is, in fact, a significant knowledge barrier, which is not unlike the one Hayek described. As Geloso and Salter (2020, 375) recognize:

Constructing state capacity is, in part, an economic problem: how should resources be allocated to developing the institutions necessary for enforcing a uniform rule of and financing crucial public goods internally, as well as resisting predation externally? Something in the complicated process of state-building must be performing a knowledge generation and knowledge surrogacy rule, similar to the role played by the price system in markets. As of yet, scholars of state capacity have yet to identify a suitable mechanism.

In fact, there is not a single work in the state capacity literature that confronts the information problem just described. Yet it is clear this is a challenge that must be met. The Great Enrichment occurred because societies found ways to extend social cooperation under the division of labor farther than ever before. As a result, they continually allocated resources to their highest-valued uses, resulting in broad-based economic growth. Economic development is just this process working over time; it is not qualitatively different depending on the modes of production a particular society uses (Bauer 2000). Thus, the information problem applies both to the ordinary working of markets, as well as the construction of the institutional mechanisms that enable markets.

Elites in early modernity built centralized states to solve their immedi-

ate political problems. They were not concerned with generalized economic prosperity, except insofar as it helped to cement their rule. The resulting investments in governance made sense in the context of their plans. But it is something else entirely to suggest that plan was one of widespread increasing prosperity. Nevertheless, widespread prosperity eventually resulted. Since the outcome was one that was not, and could not have been, consciously intended, we confront Menger's question: how was this outcome brought about? As yet, state capacity theorists have not tried to answer this aspect of the problem. They have focused entirely on the incentive problem. Incentives matter, but this does not justify the neglect of the information problem. We must overcome both to get to the Great Enrichment.

The answer we offered was the residual claimancy feature of political property rights. Elites confronted the costs and benefits associated with governance innovations. This contained a crucial knowledge feedback mechanism: the value of elites' patrimony. Even before the revival of markets and monetary exchange, elites understood whether a given change in governance would be good or bad for their realm's productivity. In combination with jurisdictional overlap and the generality norm, constitutional exchange was subject to a filtering process, whereby only generally wealth-enhancing changes made it through. This process would not have worked with the knowledge-generating features of residual claimancy.

Furthermore, this situation continued to hold in the state-building era. Centralization did not alter the fact that the state-builders were elites with significant political property rights holdings. For example, in the Germanic polities following the Peace of Westphalia (1648), innovating princes who desired to strengthen their authority at the expense of remaining feudal magnates, and hence centralize the polity, were the heads of their newly constructed bureaucracies, as well as the polity's "largest estate-owner, largest banker, and supreme aristocratic magistrate" (Krieger 1972 [1957], 31). By the eighteenth century, the political bargains whereby aristocrats ceded their political authority to princes in exchange for lucrative positions in the state hierarchy were largely complete. This strengthened the residual claimancy of ruling elites. Good governance increased princes' and nobles' wealth; poor governance shrank their wealth. "This not only provided the prince and nobles with an incentive to govern well, but [also] provided valuable informational feedback concerning which policies responsibly stewarded the realm, and which did not" (Salter 2016, 300).

The feedback mechanism inherent in political property rights was a crucial component of solving the knowledge problem in the context of governance: learning which institutional innovations enabled wealth accumulation, and which did not.

Although the composition and structure of elites was different in England and the Low Countries, a similar story could be told for them as well. Elites build the centralized state. Elites were elites because of their political property rights. These political property rights provided crucial information about the consequences of governance innovations. And because the ongoing rearrangement (exchange) of political property rights set the course of political-economic development, the historical path by which they came into elites' hands is an essential element to the story. This is why we cannot ignore the political property rights structure of the medieval constitution. If we do, we will be at a loss to answer how the informational difficulties associated with state building were overcome.

### 12.2. *Incentive Problems with State Capacity*

Geloso and Salter (2020, 375) succinctly explain the other problem with state capacity: "Once a centralized and powerful state is constructed, what is to prevent those who wield political power to prey on others, benefiting themselves at the expense of broader economic prosperity?" This is the incentive problem. In the context of governance, it has many formulations: Madison's "paradox of power," Juvenal's *quis custodiet ipsos custodes?*, etc. In contrast to the information problem, state capacity theorists sometimes confront the incentive problem head-on. While the recognition of the incentive problem is promising, scholars in the field have yet to arrive at a widespread consensus for solving it.

Sometimes, scholars' recognition of the incentive problem is only partial. For example, Johnson and Koyama (2017, 10), commenting on some recent state capacity articles that address fiscal issues, note "how the pressure of war could make it incentive-compatible for some, but not all, European states to overcome local rent-seeking arrangements and centralize their fiscal systems." Or again, when discussing the rule of law (Johnson and Koyama 2017, 12): "While high capacity states do not necessarily enforce general rules, the historical record suggests that as rulers invested in capacity, they were often confronted with strong incentives to make their rules more general. This was often simply because the costs

of applying centralized fiscal and administrative rules to heterogenous populations were lowered when those rules and institutions were made more general.” Johnson and Koyama correctly note that much of this literature does not go far enough in distinguishing the incentives that led to state building from the incentives that would result in the Great Enrichment. Clearly, elites often had incentives to pursue centralizing projects. But what incentives did they have to use the new machinery of governance in generally wealth-enhancing ways? Power has been an instrument for predation throughout most of human history. What was different this time?

Acemoglu and Robinson’s (2019) emphasis on shackled leviathan is important, because it recognizes that state capacity, to be wielded in the general interest, must be constrained. But state capacity cannot constrain itself. Whatever *de jure* procedures are in place, power can only be restrained *de facto* by power.

Again, the High Middle Ages are notable as the starting point for the constitutional bargains whose results were modern states. Our analysis of polycentric sovereignty showed why political property rights holders were *de facto* constrained, in the context of the medieval constitution. Sovereign holders of political property rights, who enforced their own rights, interacted under an overarching set of rules (polycentricity) that resulted in a generality norm for constitutional exchange. This was the status quo for the early centralizers, whose state-building projects necessarily started from this balance of power. Significantly, this narrowed the feasibility set of future political exchanges, which had the unintended consequence of taking some of the more predatory governance options off the table.

What does this have to do with state building? Using some familiar concepts from the literature on entrepreneurship and industrial organization, we can see that the transformation of medieval into early modern governance followed a definite trajectory that altered, but did not abolish, the underlying political property rights structure. Medieval elites, in virtue of their political property rights holdings, used their political authority to deploy productive economic assets in the service of a plan (Lachmann 1956). In this way, asset ownership was entrepreneurial: as the bearers of residual risk and the exercisers of residual judgment (Foss and Klein 2012), political property rights holders, especially if they were sovereign, ultimately determined the course of political-economic plans. The structure of these plans depended not only on the internal workings of a given political property rights hierarchy, but also on bargains between hierarchies.

This implies that state-building stories must also be political property rights stories. As Salter (2018, 418) recognizes, “Because political property rights specify who has the right to make political decisions, what the costs and benefits of those consequences are, and whether those costs and benefits will accrue to the decision maker or be passed on to others, a theory of state-building that takes account of political property rights is necessary to answer the questions of incentive alignment.” The structure of political property rights that prevailed during the High Middle Ages was basically patrimonial. “Under this arrangement, governance is nothing more than the contractual agreements, formal and informal, that exist between owners of the realm. There is no distinction between the assets or wealth of the realm, and the assets of wealth of the realm owner” (Salter 2018, 418). In other words, there was no separation of ownership and control (Fama and Jensen 1983).

With the development of state capacity, exercised through modern bureaucracy and administration, this arrangement changes. The state comes to have a separate institutional identity from those who comprise it and fill its offices. Even if princes or nobles contribute their private capital to state enterprises, the body of enterprises and organizations that comprise the state are conceptually—and with the development of modern jurisprudence, legally—distinct from its officers. (Salter 2018, 418–19)

In contrast to the patrimonial model of the High Middle Ages, the early modern state adhered to a corporate model.

Batchelder and Freudenberger (1983) employ an essential similar classification in their discussion of how the equilibrium (optimal) governance structures changed from medieval times to modern times. They characterize feudal arrangements as “a firm that produces its overall output in several regional plants and assigns the manager of each plant an exclusive franchise to sell output in his region” (Batchelder and Freudenberger 1983, 4). “Military operations especially were decentralized, and given feudal military technology heavily favored defensive tactics, a king who delegated power to a noble in exchange for fealty incurred a serious risk that the noble would renege *ex post*. Medieval kings, as proto-sovereigns, accounted for this by giving nobles and other magnates a property right to the wealth falling within their jurisdiction,” (Salter 2018, 419), which “imposed efficient incentives upon local military leaders by implementing the medieval defense technology without incurring the high overhead cost of bureaucratic monitoring” (Batchelder and Freudenberger, 1983, 4).

But this changed in early modernity, as technological, fiscal, and legal factors created extraordinary economies of scale in the employment of coercion.

The development of the mobile siege cannon in the sixteenth century precipitated these changes, as defensive military tactics, which had favored local elites, gave way to offensive military tactics, which favored central authorities, who could more easily bear the fixed costs associated with military operations. The residual risk from military operations had shifted to the central authority. In terms of aligning incentives and facilitating an economically efficient breakdown in the assignment in managerial vs control rights, the central authority came to specialize in ownership of polity wealth (risk bearing and monitoring), while local elites and civilian administrators came to specialize in carrying out tasks delegated from the central authority (managerial execution). (Salter 2018, 419)

The result was “the separation of certain governmental activities from the direct authority of military leaders [local elites], especially the collection and appropriation of taxes, and the creation of a civilian bureaucracy to administer these activities” (Batchelder and Freudenberger 1983, 5). In other words, local elites lost their sovereignty and became incorporated into new state hierarchies. Former feudal magnates were put “on salary” (5) by state-building princes.

Of course, this is an extremely brief overview of a complex process. If this were an analysis of the industrial organization of state building, we would then have to answer how the resulting principal-agent problems between new sovereigns and formerly independent magnates were solved. For our purposes, the important takeaway is that residual claimancy to governance innovations did not vanish. Elites were still significant political property rights holders. The initial structure of those rights was a holdover from the decentralized arrangements of the High Middle Ages. Yet the incentive-aligning mechanism of private realm ownership continued to function much as it did in the thirteenth century: “the political property rights structure during these times meant that sovereign entrepreneurs were largely residual claimants. If they governed well, the wealth of their polity increased, and the likelihood of their regime perpetuation increased. If they governed poorly, the wealth of their polity decreased, and the likelihood of their regime perpetuation decreased” (Salter 2018, 421).

This story clearly does not have the same relevance to explaining con-

tinued economic growth today, since the residual claimancy structure of political property rights in liberal-democratic polities is quite different. But it is essential for understanding the mechanisms underlying the construction of effective states in Western European history. We cannot appreciate the convergence between incentives for state-creation and incentives for wealth-creation without recourse to the initial distribution of political property rights (medieval, patrimonial) and their subsequent reallocation (modern, corporate). Although often inchoate, state capacity explanations for overcoming incentive problems are also political property rights explanations.

### 12.3. *Recent Challenges to State Capacity*

Several recent commenters on the state capacity literature recognize that this literature falls short of satisfactory solutions to the information and incentive problems. Like us, these authors object to state capacity theorists' interpretations, rather than facts. These recent contributions highlight several deficiencies in the state capacity literature that prevent it from bearing the causal weight the most optimistic state capacity scholars place upon it.

Boettke and Candela (2020) push back on the idea that state capacity is the fundamental cause of the Great Enrichment. These authors usefully distinguish “between economic explanations that (1) *explain* the emergence of political rules that shackle Leviathan, deliver state capacity and unleash economic development, and (2) those that *describe* the *initial conditions* of analysis required to shackle Leviathan and therefore deliver state capacity” (Boettke and Candela 2020, 336). Obviously (2) is important, because it relates to the constitutional status quo, and hence the path of constitutional exchange. But too many state capacity theorists think that by doing (2), they either render (1) superfluous, or also answer (1) by necessity. “The puzzle, then, becomes, how does such a check on public predation *emerge* through time? It is the *prerequisite* of state capacity, the establishment of political constraints on public predation, that is essential to explaining its relationship to economic development” (Boettke and Candela 2020, 336). In other words, explaining why modern states were built in the first place is conceptually separate from why state capacity was wielded in protective and productive, but not predatory, fashion. Boettke and Candela explicitly build on Buchanan (1975), as we do, in making this point. From this perspective,

we can see that to the extent that a causal relationship exists between state capacity and economic development, the relationship is *proximate* rather than fundamental. If we understand state capacity to be analogous to Buchanan's productive state, then state capacity itself is a byproduct of the protective state itself. State capacity emerges from an institutional context in which the state is constrained from preying on its citizenry in violation of predefined rules limiting its discretion. (Boettke and Candela 2020, 338)

Their key insight is that “state capacity is the institutional capacity to constrain the state from public predation” (Boettke and Candela 2020, 339, emphasis removed). As a corollary, “the state cannot credibly commit to a set of rules, or otherwise be constrained from violating such rules, then the productive state will degenerate into a predatory state, one in which the capacity of the state to enforce property rights becomes inhibited” (Boettke and Candela 2020, 339), as happened in Sicily following Italian unification (Candela 2020), as well as in late- and post-communist Russia (Boettke 1993; Boettke et al. 2015).

Geloso and Salter (2020) offer a fundamental reinterpretation of the state capacity literature's findings. Whereas state capacity theorists believe state capacity causes economic growth, Geloso and Salter argue economic growth causes state capacity. In answering why there are no examples of wealthy countries with low state capacity, they claim that there is a filtering mechanism that weeds out such societies. The filtering mechanism is the coercive power of the state itself. The filter has similar effects to those first discussed by Alchian (1950) in the context of firm survival (Geloso and Salter 2020, 373, citations omitted):

If a society becomes rich in the absence of a state, as some examples in the economics of anarchy literature suggest is possible, then the relative returns of trading compared to raiding will fall at the margin. We should thus expect societies to invest more in raiding as they become wealthy, *ceteris paribus*. Externally, this incentivizes investments in national offense on the part of other societies. These investments are meant to capture rents and thus, the investments are themselves rent-seeking. Economic growth generates an externality that plays against future growth in that it is more susceptible to attacks. This reaction in turn incentivizes the richer society to invest more in its defense, which is meant to protect against rent-seeking but generates outcomes equal to rent-seeking. This simple price-theoretic explain why low- capacity high-development outcomes are unstable.



They conclude that “the relationship [between state capacity and economic development] is more akin to a *survivability condition*. We observe a historical process culminating in high-income, high-state capacity polities beginning in early modernity because these polities were capable of conquering without themselves being conquered” (Geloso and Salter 2020, 375, citations omitted).

Their argument has two premises: the symmetry of coercive capacity (national defense implies national offense) and the military uses of many civilian public goods (e.g., lighthouses). Using the case studies of French Atlantic Canada up until 1755 (Geloso and Salter 2020, 377) and “England’s divergence” (Geloso and Salter 2020, 380), they provide an example of a wealthy society that was expropriated due to a lack of state capacity, as well as a wealthy society that resisted expropriation by developing state capacity.

The two implications of Geloso and Salter (2020, 373) are that “state capacity is an outcome variable of growth, not an input into growth” and that “wealth is endogenous to the ability to defend it.” Hence, “while state capacity can be argued to be beneficial to economic activity on some margins, the impetus for state capacity has little to do with the aim of improving general welfare. Thus, some of the economic development observed occurred in spite of, not because of, investments in state capacity” (Geloso and Salter 2020, 374, citations omitted).

Piano (2019) analyzes the state capacity literature from the standpoint of public choice economics. While he finds much of value in the state capacity literature, he also contends that “the literature ignores the effect of investments in state capacity on the degree of rivalry that characterizes the market for governance” (291). Importantly, “observing an increase in state capacity does not necessarily tell us how that capacity will be employed, but merely that the ruler now is better able to ‘collect taxes, enforce law and order, and provide public goods’” (294, citation omitted). Building on the works of scholars such as James Buchanan, William Riker, and Mancur Olson, and Yoram Barzel, Piano focuses on the mechanisms at work that force centralizing elites to act in a manner that, in addition to achieving their own plans, also results in widespread economic enrichment.

As Piano (2019) emphasizes, state capacity scholars often neglect competition in the market for governance. Such competition helps to determine the elasticity of demand for a ruler’s governance: “In general, a ruler operating amidst many small sovereignties can be expected to face a more elastic demand curve for its services than otherwise” (296).

This perspective lends credence to the work of scholars such as Jones (2003) and Cox (2017), who attempt to rehabilitate the jurisdictional competition aspect of European governance during the High Middle Ages. We share Piano's (2019) view that the state capacity literature focuses too much on optimal taxation and public goods provision at the expense of jurisdictional competition. Importantly, these dimensions are not independent. If the conditions under which rulers tax and produce collective output change, the competitive environment among rulers will change, too. We should expect rulers constrained by competition to be more sensitive to the needs of those whom they govern than rulers who do not face that constraint.

Finally, Piano and Salter (2020) explore the foundations of the "effective state." Building on Salter (2015) and Piano (2019), they argue that the property rights structure underlying effective states must be made more explicit. Thus far, state capacity theorists cannot answer an important question: "why did political elites not use state capacity to enrich themselves at the expense of the rest of society?" (Piano and Salter 2020, 3). Instead of elite predation and widespread poverty, we observed productive public investments and broad-based growth. Without a political property rights explanation, the "effective state" is a black box.

Piano and Salter (2020) conclude that the institutional contingencies associated with state capacity diminish its usefulness as a general concept, and hence as a causal explanation for the Great Enrichment. Because state capacity varies greatly across time and space, focusing on it as an abstract category will not help us much in understanding economic and political development. Piano and Salter instead focus on the effective state as one possible manifestation of state capacity, which exhibits a specific political property rights pattern. Extending the classic insight of Coase (1960) with respect to transaction costs, Piano and Salter (2020, 6) "argue that effective states are usefully conceived as bundles of political property rights that align the interests of rulers with the welfare of the ruled." Their contribution also extends the recent literature on the "political Coase theorem" (Acemoglu 2003; Parisi 2003; Munger 2019).

Piano and Salter (2020) analyze political property rights at length in medieval Western Europe, the Italian Renaissance city-states, and the myriad of Germanic polities following the Peace of Westphalia. For our purposes, what matters is their conclusion: "State capacity does partly explain economic development. But it is ultimately epiphenomenal; what determines how rulers act within the nexus of administrative capabilities created by modern states depends on the information they have

and the incentives they face” (Piano and Salter 2020, 26–27). Also worth mentioning is their cautious reinterpretation of recent works (e.g., Acemoglu and Robinson 2005, 2012; North et al. 2009) that heavily emphasize “inclusive institutions” for economic development. The rulers who built state capacity, “whether in the Parliament-dominated ‘aristocratic republic’ of England, or the monarch-dominated ‘absolutist’ polities of Germany,” were residual claimants to the revenues from governance (Piano and Salter 2020, 27). Accordingly, we should distinguish the economic effects of breaking up “rent-preserving feudal privileges” from a widespread attenuation of traditional elites’ political property rights (Piano and Salter 2020, 27–28). A measure of political-economic inclusion is certainly preferable to North et al.’s (2009) “natural state.” But governance can be too inclusive. Dispersing power so widely that individuals have little incentive to exercise their public power responsibly can also cause political-economic sclerosis. “Such situations devolve into either the mob tyranny of the Greek polis, or the soft ‘democratic despotism’ feared by Tocqueville” (Piano and Salter 2020, 27–28).

All of the pieces we discussed in this section have one thing in common: they seek to provide an institutional underpinning for the state capacity thesis, which it currently lacks. This literature should not be seen as rejecting state capacity as an explanation for modern economic growth, but in modifying the mechanisms such that the result is a valid social scientific explanation. Again, the goal is meeting the dual challenge of information and incentive compatibility.

#### 12.4. *Going Medieval: The Right Way to Use State Capacity*

The construction of coherent, centralized, hierarchical states is one of the great political-economic occurrences of modernity. Accordingly, any explanation for the wealth and poverty of nations must make some reference to state capacity. It can and must be a part of the story. But this does not mean it can or must bear the greatest share of the causal load. Whatever its merits, state capacity is institutional morphology, not political-economic theory. This is not the kind of explanation that can provide answers to the crucial questions of information- and incentive-alignment, which are the primary issues in any social scientific explanation.

This is why we emphasize the *de facto* medieval constitution of the High Middle Ages. Polycentric sovereignty, as embodied in this constitution, can answer questions of information- and incentive-alignment. The

key is political property rights. Information feedback is generated by the effects of constitutional exchange on the value of the realm. Incentive alignment is generated by the self-enforcing nature of political property rights exchange under the generality norm, which filters out governance innovations that do not obtain supermajority consensus. Furthermore, the “initial conditions” of the political property rights distribution permitted the formation of protective and productive states, while constraining the predatory state. We cannot understand the prerequisites of effective states without recourse to the path of political bargains along the constitutional contract curve that culminated in such states. Hence any state capacity explanation for the Great Enrichment must also make recourse to Western Europe’s medieval patrimony.

“Any scheme of thought emphasizes some phenomena and suppresses others,” Richard Wagner (2021, 3) explains. “This situation holds for political economy just as strongly as it holds for other fields of study.” Again, it is not helpful to think of the issue as a binary choice over the kinds of explanations—modern state capacity or medieval polycentric sovereignty—we employ. All theories of complex social processes entail an analytical foreground and an analytical background. The question is, what features go where? Which phenomena do we emphasize, and which do we suppress? Our contention is, if we wish to understand good governance and the Great Enrichment, then state capacity must go in the analytical background. The analytical foreground should include the medieval constitution, as well as other modes of governance that plausibly generate information and align incentives. While the architecture of these institutions matters—the degree to which institutions are centralized or decentralized, for example—it is not primary.

How can state capacity be situated in the broader research agenda on the causes of the Great Enrichment? A useful analogy can be drawn between, on the one hand, state capacity and polycentric sovereignty and, on the other, the production possibilities frontier (PPF) and markets (Salter and Young 2019, 1249). In basic economics courses, the PPF represents technological possibilities: the best that can be achieved in terms of turning inputs into outputs. But a society’s actual choice of production—its specific point on the PPF—will depend on the incentive-aligning and information-generating properties of markets. Similarly, state capacity determines the limits on governance outcomes; while the structure of political property rights determines the quality of actual governance within those limits. In a similar manner, state capacity is an insti-

tutional technology (e.g., Djankov et al., 2003) that determines the limits of possible governance outcomes. The structure of political property rights determines how governance is provided in relation to those limits.

We began this chapter with Acemoglu and Robinson's recent contribution to the study of effective states, so it seems appropriate to close the chapter with their remarks on medieval Europe. Acemoglu and Robinson (2019, 29) note that "several European countries have managed to build broadly participatory societies with capable but shackled states." Their answer "focuses on the factors that led much of Europe toward the corridor [of development] during the early Middle Ages as Germanic tribes, especially the Franks, came to invade the lands dominated by the Western Roman Empire after its collapse . . . [T]he marriage of the bottom-up, participatory institutions and norms of Germanic tribes and the centralizing bureaucratic and legal traditions of the Roman Empire forged a unique balance of power between state and society, enabling the rise of Shackled Leviathan" (Acemoglu and Robinson 2019, 39, emphasis added; see also ch. 6). Their explanation has much in common with ours. Importantly, they recognize that modern states and political liberalism are complements under the right circumstances. Those circumstances included the High Middle Ages constitution.

The medieval constitution of liberty has been neglected in the recent literature on the Great Enrichment and good governance. This is unfortunate. We cannot explain the bounty of modernity without recourse to those features of pre-modernity that foreshadowed effective states. Our contribution is showing that the High Middle Ages mattered. It was no mere residual. As we said in this chapter's introduction, the right narrative is one emphasizing continuity and development with the medieval constitution, rather than a rupture. This narrative can help scholars focus on the governance properties that forestall predation, while enabling production and protection.

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## Postscript—The Road Away from Polycentric Sovereignty



The most important event for social science to explain is the Great Enrichment, the unprecedented increase in the living standards of ordinary people that began between the eighteenth and nineteenth centuries (McCloskey 2006, 2010, 2016). The Great Enrichment resulted in the bounty of economic modernity, as well as a divergence between the West and the rest of the world. With few exceptions, scholars agree that institutions, the humanly devised constraints that structure the incentives people face and the information they have at their disposal (North 1990), explain the Great Enrichment. Largely through a series of historical accidents, several Western European nations arrived at a set of political rules that protected private property rights for the masses, not just elites, and generally adhered to the rule of law. However, there is significantly less agreement as to what caused good institutions.

We believe the answer is *political* and *economic* liberalism: limited government combined with some consensual mechanism for collective decision-making, subject to the constraint that there are certain rights upon which politics may not trespass. To the extent economists and political scientists agree with this story, they argue that the cause is the modern nation-state. Without impugning the value of “state capacity”

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Portions of this chapter are based on Salter (2015) and Salter and Wagner (2018, 2019).



scholarship, we disagree. We must go back further to find the roots of political liberalism. Additionally, we must take care not to allow the discontinuity of the Great Enrichment blind us to the deeper continuities in institutional change. Our answer is that today's full-blown liberalism arose from an older, proto-liberal political tradition that flourished in Western Europe during the High Middle Ages. Modern liberty derives from medieval liberties, which came from the delicate balance of power that characterized Western Europe as late as the thirteenth century. This *Medieval Constitution of Liberty* (cf. Hayek 1960) has been unjustly neglected as the source of widely cherished political traditions. We wrote this book to correct that oversight.

To meet our argumentative burden, we had to conduct a novel analysis of the medieval constitution. Our work was primarily in the tradition of positive constitutional economics, as pioneered by Buchanan and Tullock (1962) and continued recently by Congleton (2011). We first described the initial conditions of constitutional exchange: The fall of the Roman Empire, the transformation of wandering barbarian tribes to a permanent military aristocracy, and the growth of the Roman Catholic Church as an international institution. We then explored how these initial conditions yielded the (often violent) political exchanges that established the medieval constitution. We focused on three key constitutional features. The first was political property rights—essentially, privately owned political authority—which created a degree of incentive- and information-alignment over the economic resources within elites' jurisdictions. The second was sovereignty, a hierarchical organization of political property rights in a pyramid of privileges and obligations, topped by a person or group who enforced their own rights-claims. The third was polycentricity: the interaction of multiple sovereigns within an overarching set of *de facto* rules, which created a balance of power between the Estates of the Realm. This balance, which we called polycentric sovereignty, was our major novel contribution to constitutional political economy.

After constructing this institutional typology, we explored in-depth two crucial institutions that operated within the medieval constitution. The first was the free trading cities, whose chartered privileges and immunities contributed to a commercial revival and the rise of a politically powerful burgher class. The second was the medieval representative assembly, which allowed for beneficial collective action while forestalling the ever-present tendency for coalitional rent-seeking. These two institutional pillars were indispensable in supporting a broader set of

meta-rules for political innovations that channeled private ambition into public stability.

The final section of this book critiqued the competing hypothesis of state capacity. Undoubtedly, as a matter of history, states were important determinants of economic growth. The question is how they were able to foster the Great Enrichment. We contended that the medieval constitution provided the appropriate backdrop. In other words, just as the initial conditions in post-Roman Europe provided the requisite conditions for the medieval constitution of liberty, so the medieval constitution of liberty provided the requisite conditions for well-behaved states. This partially answers the question of why the Great Enrichment happened when and where it did, and not in other times and places with powerful unitary states, such as China (Ko, Koyama, and Sng 2018) or Rome (Scheidel 2019).

Throughout our argument, we repeatedly referred to the idea of “good governance.” We took a minimalist conception: “good governance” means protecting private property rights and providing crucial public goods, while refraining from using the means of governance predatorily (Buchanan 1975). The reason the medieval constitution delivered good governance—at least for its time—was that the features of this constitution, operating in tandem, created a generality norm (Buchanan and Congleton 1998): a political filter that permitted governance innovations that were broadly beneficial, while blocking governance innovations that were beneficial to some at the expense of others.

Because we evaluated good governance based on the preferences of the agents subject to that governance, rather than whatever welfare criteria we ourselves prefer, our project stays on the positive side of the positive-normative divide. (We freely admit that we value liberty, and would like to see more of it.) Nevertheless, as in any social-scientific project that touches on welfare considerations, our work does have normative implications. To the extent we have discovered a set of generalizable constitutional mechanisms that contribute to political-economic wellbeing, we have good reasons to assess contemporary constitutional mechanisms to see whether they perform the same functions as the ones we discussed in this book.

There are two important questions we must address before concluding. It is beyond the scope of this work to provide comprehensive answers to these questions. But it would also be irresponsible to ignore them. The first question is, given our laudatory reflection on the pan-European constitution of the High Middle Ages, why did it not last? The

second is, what implications does our work have for the social-scientific study of constitutions, both positive and normative?

### *13.1. The Breakdown of the Medieval Constitution*

Economists distinguish between underlying variables and induced variables in markets (e.g., Kirzner 2015 [1973]). Underlying variables include tastes, technologies, and resource endowments. Induced variables include the prices, quantities, and profits or losses. Institutions, such as property and contract law, determine the processes by which the underlying variables yield the induced variables.

We have taken a similar approach to constitutions. The medieval constitution is the sum of de facto and de jure conditions that specified the rules governing medieval politics. It determined the bounds of collective action and the side constraints that limited the ability of any one coalition to benefit itself by imposing costs on other coalitions. The medieval constitution was the result of a centuries-long bargaining process, beginning in the late fifth century and culminating in the thirteenth century. These bargains did not occur in a vacuum. They had a history, as well as an intelligible trajectory. The medieval-constitutional contract curve was itself induced by familiar underlying variables, such as resource endowments, coercive capacities (warfare technology), and political transaction costs. In some alternate history where the underlying constitutional variables had been different, the medieval constitution—if it even makes sense to continue referring to it as such—would have been different, too. Were this so, we might not have any cause to refer to the medieval constitution of liberty at all.

Obviously, the medieval constitution eventually broke down. It was suited to a specific set of underlying variables, and when those variables changed, so did the constitutional bargaining process among the various Western European political entities. The Crisis of the Late Middle Ages saw a series of exogenous shocks that deeply upset the hard-won political equilibrium. These included famine in the early fourteenth century and disease (plague) in the mid-fourteenth century. Both were plausibly exacerbated by changed climate conditions, namely decreased temperatures and increased flooding. Even nobles confronted hardships, as the returns to land (and hence rents) decreased significantly. Popular uprisings against medieval elites, previously localized and rare, became much more common. Although almost always defeated by the

nobility, the increase in popular violence demonstrates that the previous explicit and implicit political bargains across medieval orders was no longer incentive-compatible. Finally, political sclerosis in the Holy Roman Empire resulted in the erosion of imperial authority, an important component of the pan-European system of checks and balances. This too resulted in new political bargains, with a resultant constitutional equilibrium that began more closely to resemble early modernity than the High Middle Ages.

This is obviously not an exhaustive list, and these bird's-eye remarks cannot give us any deep understanding of how European political conditions evolved after the close of the thirteenth century. They do not, by themselves, make for a constitutional analysis. We include them only to demonstrate the importance of underlying variables for determining political-institutional equilibria, including the medieval constitution. We should not be surprised that the medieval constitution did not persist given the economic and political shocks in the fourteenth century. Nor should we be surprised that changes in military technology affected the equilibrium distribution of coercive capacity, setting the stage for modern states. Again, we think it only makes sense to view modern political arrangements as a series of bargains that proceeded from the medieval constitution.

Our goal was to explain the medieval constitution. While we admire it for laying the foundations of modern political liberty (and hope we have convinced readers it was valuable for this purpose) we do not think it is the be-all, end-all of constitutions. The medieval constitution was the (unintended) solution to a very specific set of political problems. Institutions are adaptive responses, whose evolved properties can and must be rendered intelligible in terms of the purposes and constraints of the agents who constructed them. Thus, we lose nothing by admitting that the medieval constitution ceased to be a living reality when the conditions that determined the equilibrium distribution of political property rights changed. The bargains necessary to sustain the medieval constitution simply were no longer in the interests of governors and governed.

We realize this commits us to a delicate balancing act. On the one hand, we argue that the construction of modern states only yielded the Great Enrichment because it was a step further along the constitutional contract curve, the position of which was set by polycentric sovereignty. The outcome of previous constitutional exchanges was the endowment point of constitutional exchanges headed into modernity. On the other hand, we also argue that the content of the medieval constitution—

especially its traditions of divided powers, checks and balances, and chartered immunities—was meaningfully preserved, even in the face of extraordinary institutional change. How were processes that emphasized concurrence and reserved rights preserved in the face of increasing centralization and hierarchical administration? To the extent that these liberal properties were preserved, how much sense does it make to talk about concentration and hierarchy?

This tension can only be resolved by adequately distinguishing between form and function in institutions. Once we distinguish between governance architecture and governance mechanisms, we see that one set of institutions can perform quite different tasks, depending on the particulars of time and place. Architecture and mechanism can align in one era and diverge in another. We think it is helpful to follow Furtton and Martin (2018) and think in terms of “institutional mismatch” in the event of the latter. This helps us understand why state-building in early modernity eventually resulted in the Great Enrichment, while also giving us pause about some ways states behave today. Furthermore, by exploring these questions in terms of the mechanisms (rather than the architecture) of the medieval constitution, we can see why the mismatch occurs.

### 13.2. *The Contemporary Challenge*

How should we view the retreat from polycentric sovereignty? It is interesting to contrast the accounts of Bertrand de Jouvenel (1993 [1945]) and Roger Congleton (2011), because both take a constitutional bargaining perspective, and hence a political property rights perspective, on the breakdown of the medieval constitution. But whereas Congleton’s account is optimistic (2010, 606–7), de Jouvenel’s is decidedly less so. Congleton’s story of constitutional evolution entails a series of mutually beneficial bargains, beginning with the political exchanges between kings and nobles. He presents a convincing argument for how kings could improve their own welfare by ceding powers: Relinquishing decision rights functions as a credible commitment mechanism (e.g., Acemoglu 2003, Parisi 2003; see also Williamson 1983) to refrain from political predation. The result is increasing overall prosperity. A similar logic holds for franchise extensions and the rise of democracy.

For de Jouvenel, in contrast, these changes are a decidedly mixed bag. In fact, the phrases he uses to characterize the modern state reveal

his trepidations. Throughout his work, de Jouvenel (1993 [1945]) calls the modern state “Power” and “the Minotaur.” Particularly worrisome to de Jouvenel is the continuous growth in state power, even as ordinary individuals replaced aristocrats and kings as wielders of that power. Entrenched centralized power “threatened Western society’s ability to enjoy ordered liberty” (Salter 2015, 83, citation omitted). Thus, we have two perspectives that take seriously the importance of political property rights and largely agree on the basic history, yet end up with very different interpretations. What does this mean for our own analysis of medieval constitutional exchange, and what are the implications for modern constitutional exchange?

It is undoubtedly true that political institutions became more centralized and hierarchical throughout early modernity. It is also true that there is a link between this and democratization. To create a society of citizens who were equal before the law, intermediate institutions, both political and quasi-political, had to be weakened. This process was not necessarily antithetical to political liberalism. At least since John Stuart Mill, liberals have argued that local, decentralized institutions could be every bit as tyrannical as distant, centralized ones. Jacob Levy (2014) recognizes that there has always been a fruitful tension between pluralist and rationalist “liberalisms” about whether liberal freedoms are best preserved by intermediate groups or the centralized state. And the modern state certainly has a role to play in creating and preserving open-access orders (North et al. 2009), meaning economic and political institutions that are inclusive and permissive. More recently, important advancements in minority rights derived from states and their capacity to promote social equality.

However, these benefits were not achieved without cost. Because the size and scope of states has increased so much, the *de facto* constraints upon them may bind less tightly. Furthermore, contemporary liberal democracies are subject to several information and incentive problems. This stems from a lack of political property rights—or rather a lack of formalized political property rights, since no society can abolish them completely, as we will discuss further below. Nothing like the formalization of privately-owned political authority, as existed in the medieval constitution, can exist under modern liberal-democratic constitutions. Forbidding such arrangements plausibly contributes to maintaining an open society (Popper 1945). But it also leaves a gap in the feedback loop between governors and governed. Ownership and exchange of political property rights was a crucial part of our account of how medieval governance overcame information and incentive problems.

One obvious consequence is that today's political elites are making decisions for which they personally bear only an infinitesimal share of the costs. In other words, residual claimancy is weak. The absence of a robust link between cost and choice (Buchanan 1999 [1969]) results in governors facing skewed incentives (Hendrickson and Salter 2020). It also creates information problems since governors do not have reliable feedback (Hayek 1948) as to the economic consequences of their decisions. This is why we mentioned institutional mismatch (Furton and Martin 2018) earlier. It is not that modern states cannot cope with these difficulties. It is that the architecture of existing hierarchical-centralized institutions has, over time, lost congruence with the mechanisms that would be necessary to ameliorate incentive and information problems.

Another architecture-mechanism tension in modern states is weakened federalism. The importance of federalism is clear for the US's Constitutional structure, but its application to other Western polities is harder to see. Yet this difficulty is only apparent. In fact, because federalism creates space for local governmental units, as well as institutionalizes competition between local and national governmental units to protect individual rights, federalism is much more broadly applicable as a governance principle. For example, in his classic article on market-preserving federalism, Barry Weingast (1995) argues persuasively that federalism was crucial for robust economic growth in the United States beginning in the nineteenth century, as well as England beginning in the eighteenth century. Throughout our own argument, especially the chapters on free cities and representative assemblies, we showed the importance of *de facto* federal structures for polycentric sovereignty. The erosion of local governmental authority, which was essential to the state-building project and continued apace throughout the twentieth century, had the unintended consequence of stifling local government's ability to check encroachments by the national government. For contemporary Europe, there is another dimension as well, since nontrivial decision-making authority has passed up beyond even national governments, and now lies with the European Union government.

Again, it would be incorrect to classify these developments as *per se* undesirable. That is not our argument. Unitary governments (and we include in this category governments where local units are administrative conveniences for the central government, rather than meaningfully independent entities) are well-adapted to solving many problems. Creating the conditions for social equality is an example, as we discussed before. But this comes with its own institutional mismatch problem.

Given the existence of unitary governments, what complementary mechanisms exist to ameliorate incentive and information problems? Federalism was an important contributor to polycentric sovereignty, which was an overall bundle of mechanisms that gave political agents a veto over potentially destructive outcomes. The bargaining process amongst these agents was how incentive and information problems were solved. This required not only concurrence but also competition among political agents. Without the competitive element, concurrence results in local governments cooperating with the central government to advance political operatives' goals, minus the requisite mechanisms to ensure those goals are broadly wealth-enhancing. Instead of market-preserving federalism, we get cartel federalism (Greve 2012). Ironically, this is often antithetical to the maintenance of open-access orders, which was the original justification for weakening local governments in the first place.

Positively, centralized states have facilitated a great amount of wealth creation. Normatively, we applaud their contributions to social equality. But rarely do large political changes confer unmixed blessings. Sound governance innovations in centuries or decades past can nevertheless wind up confounded by institutional mismatches. Studying the medieval constitution is valuable because it shows us what mechanisms deliver governance in the interests of the governed. The medieval constitution also suggests what kinds of complementary institutions create those mechanisms. Government is like a puzzle: all the pieces must fit together to get the desired results. Good governance is a never-ending quest for constitutional congruence. The medieval constitution was one case of congruence; the pieces fit, and the resulting picture was clear. This can and should help us piece together contemporary governance puzzles.

### 13.3. *Constitutional Realism*

Once again, the circumstances that yielded the medieval constitution can be fairly characterized as an historical accident. Nobody planned its beneficial features. Nobody intended to lay the foundation for political liberalism. Likewise, no one consciously sought the degradation of the medieval constitution, and the attendant atrophying of polycentric sovereignty. State-builders wanted to solidify their own authority, of course. But this is a much more limited plan than a change in the pan-European constitutional order.

Bargains along the constitutional contract curve follow an intelli-



ble, if not predictable, process. But there is no guarantee that constitutional innovations will be ‘good’ (or ‘bad’ for that matter). To better understand *de facto* constitutions, we need a healthy dose of constitutional realism. Especially in the era of *de jure* constitutions, framed with lofty goals and the best of intentions, this perspective can be difficult to cultivate. But economists already are skilled at distinguishing between intentions and results. It should not be too much of a stretch to extend this way of thinking to society’s most basic governance institutions.

Constitutional realism requires we use rational choice, methodological individualism, and politics-as-exchange (Buchanan 1949, 1952, 1987) to understand how constitutions actually work. While not sufficient, a necessary component of this project is treating political authority as a property right. A property rights perspective on collective decision-making (Barzel 1997a, 1997b, 2002; see also Candella 2020) helps social scientists focus on the relevant margins of constitutional exchange, as well as make predictions about the benefits and costs that arise from these exchanges. Constitutional analysis based on political property rights helps us keep in mind both sides of the ledger.

North et al. (2009) write persuasively about the benefits of open-access orders, compared to elite-monopolized natural states. However, to conclude from their analysis that open-access orders are globally superior social orderings is too hasty. There is such a thing as too open: Dispersing political authority too widely may create a tragedy of the constitutional commons, in which noisy information and weak incentives prevent coherent decision-making. Furthermore, disrupting political property rights to promote open-access orders is a transitory solution, at best. Nature abhors a vacuum; even if formal political property rights are abolished, informal processes will arise to allocate scarce constitutional authority to the relevant actors. But these informal compensating adaptations can easily result in worse governance, not better. Wealth dissipation and cost-maximization are familiar outcomes in situations where rules and procedures substitute for ownership and exchange (von Mises 1944; Niskanen 1968).

While conscious reforms undoubtedly have some control over the structure and distribution of political property rights, they cannot do away with the feature of political property rights that often raises our normative hackles: Personal, exclusionary benefits from wielding power. Political property rights will always exist and be allocated somehow. Constitutional choice operates on the margins of formality vs. informality, horizontally vs. vertically dispersed, and similar considerations of degree

rather than kind. A constitutional economics that makes its insight its axiom, which treats constitutions *de facto* as analytically prior to constitutions *de jure*, is best suited to offer reliable guidance about significant realignments in political authority.

While underappreciated, this paradigm is not new. The Italian “social economists” of the early twentieth century pioneered these kinds of analyses. Robert Michels (1915) famously penned the “iron law of oligarchy,” contending that even in the most democratic and egalitarian environments, hierarchical and exclusionary institutions will arise, because they are useful for advancing political plans. Hierarchy and exclusion are simply too effective at reducing political transaction costs to abolish. Creating open-access governance by removing established gatekeepers is the constitutional equivalent of whack-a-mole: “always and necessarily there springs from the masses a new organized minority which raises itself to the rank of a governing class” (Michels 1915, 233). As a result, “there will always be an autonomous element stemming from personal decision making, which is not reducible, or oftentimes even traceable, to a democratic mandate” (Salter and Furton 2018, 41, citation omitted; see also Tullock 1992).

Gaetano Mosca (1939) bequeathed the important concept of the “political formula,” meaning “legal and moral basis, or principle, on which the power of the political class rests” (70). Importantly, political formulas are not (necessarily) crafted by the powerful, nor tailored to suit their interests. Instead, “Mosca notes that all societies have some political formula, and that there is a dialectic between elites and the political formula: the selection of elites is determined in part by the formula; the actions of elites in positions of political authority serve to change public interpretation of the political formula; the selection criteria for new elites alters, and so on” (Salter and Furton 2018, 42). This matters for constitutional economics because wielders of political authority (elites) treat the political formula as a constitutional Schelling (1960) point. We typically evaluate constitutions based on their capacity to bind. But from the standpoint of *de facto* constitutionalism, their capacity to coordinate (Hardin 1989; Ordeshook 1992) is just as important. In open-access orders, political (and especially constitutional) exchange operates in a noisy feedback environment, because informal political property rights introduces ambiguity in allocating the resulting costs and benefits. In absence of formal ownership and exchange mechanisms, political formulas necessarily play a larger role in facilitating coordination (Martin 2010). “With weaker feedback comes a looser filter, which requires some

additional social superstructure in order for agents to successfully navigate the political world and coordinate their actions. The political formula, as defined by Mosca . . . is an important piece of ‘social technology’ which performs this role” (Salter and Furton 2018, 42).

Vilfredo Pareto needs no introduction for economists. But his work on political sociology does. Pareto’s classification of action as logical vs. non-logical matters greatly for interpreting political exchange. Pareto (1935, 77) calls those actions logical that “conjoin means to ends not only from the standpoint of the subject performing them, but from the standpoint of other persons who have a more extensive knowledge—in other words, to actions that are logical both subjectively and objectively.” In contrast, for non-logical actions, “[t]he objective end differs from the subjective purpose” (Pareto 1935, 78). Logical action is not necessarily rational, and non-logical action not necessarily irrational. Instead, actions are logical to the extent the actor can verify, using experience as feedback, whether an action attains its desired end. Actions are illogical to the extent the causal connection between desired and actual consequences does not match the actor’s beliefs.

Logical and illogical action are primarily determined by the prevailing institutional environment. The rules shape how information is created and disseminated (Hayek 1948); actions that are logical in one context can be illogical in others. For example, action in markets is largely logical. Demanders receive direct feedback, in the form of anticipated vs. realized satisfaction, from consuming a good. Suppliers receive direct feedback, in the form of profit and loss, from production. In contrast, action in politics is often illogical, because the institutional environment is noisier. Wherever the link between cost and choice is loose, illogical action can persist, and may even be adaptively beneficial. In open-access systems, where political property rights are informally defined, action tends toward illogicality. “The ultimate importance of non-logical action in politics lies in the lack of mechanisms for adjudicating tradeoffs in a manner that results in widespread coordination of plans. As with markets, in politics, we can identify the formal characteristics that successful vs unsuccessful action will take. But because the constraints on plans of action are significantly weaker in politics than in markets, outcomes are less predictable, especially for agents outside of the nexus of a given plan” (Salter and Furton 2018, 43). This implies that constitutional exchange in open-access orders will have to grapple with coordination issues as various agents advance political plans by engaging in constitutional exchange.

Let us be clear: we do not argue for the superiority of formal as opposed to informal political property rights. Instead, we cited the Italian social economists to highlight the unique challenges confronted by open-access political orders. Constitutional exchange in open-access orders can certainly yield welfare-enhancing rearrangements of political property rights. Weingast and Marshall (1988) offer a persuasive account of how institutions that reduce the transaction costs of political exchange can improve the welfare of legislators. More recently, Cutsinger (2019) discusses governance innovations that improve the durability of agreements between legislators and interest groups. Both accounts can be read as political property rights stories: Specific allocations of (informal) political property rights increase the capacity for exchange with credible commitments among political actors. Of course, it is not certain that benefits for the governors imply benefits for the governed. But it is at least plausible that the governed benefit from political durability, even if the relevant policies are first-order suboptimal (Albrecht et al. 2022). What matters is the specific constitutional problems that emerge under open-access political conditions, and how they are solved. Focusing on political property rights helps us ascertain what solutions political insiders come up with, and whether political outsiders will share in the benefits.

#### 13.4. *Final Thoughts*

To conclude, we offer some brief thoughts on the positive and normative dimensions of our project, including implications for future research. Positively, we sought to explicate the features of the medieval constitution that created the background conditions for political liberalism. This included the development of our novel constitutional typology, polycentric sovereignty. We see polycentric sovereignty as a meaningful empirical description of an institutional network. In other words, it differs categorically from the portions of our framework we used as an interpretive scheme, and hence were tautologous. All governance structures can be characterized in terms of political property rights, for example. But precious few exhibit a distribution of these rights commensurate with polycentric sovereignty.

Normatively, we sought to describe what “good” constitutions look like, and what they do. This is downstream from our positive analysis; it depended on a functionalist account of institutions that was primarily

concerned with process, and relatively less so with outcomes. We relied heavily on Buchanan's (1975) typology of protective, productive, and predatory states. Whether a state fits the typology is a positive (means-ends) question. But our concerns were broader: We also claimed there was independent value in promoting protective and productive governance, while avoiding predatory governance.

We argued the generality norm (Buchanan and Congleton 1998) embedded within the medieval constitution resulted in governance that was usually protective and productive, but not predatory. Again, this must be viewed against the backdrop of historical conditions and constraints. Western Europe during the High Middle Ages was nobody's idea of utopia, ours included. Nevertheless, we believe the features of divided powers, checks and balances, and concurrence embedded in the medieval constitution were valuable. They set the stage for early modern and contemporary attempts to secure and understand the "good society" (Buchanan 1958). We admire this, and we think our fellow students of society should, too.

For future research, we already discussed why we think political property rights-centered approaches are important. Added to this, we recommend evaluating constitutional structures in other times and places in terms of their approximation (or realization) of polycentric sovereignty. This is an advancement on existing institutional classifications. For example, polycentricity is an invaluable concept in comparative institutional studies, but by itself, it risks understating the importance of hierarchies, exchangeable rights, and residual claimancy. Likewise, federalism can overemphasize decentralization *per se*, and is often underspecified in terms of how local and central governments interact. Polycentric sovereignty integrates these institutional concepts as features of an overall constitutional order. Positively, students of constitutions should add polycentric sovereignty to their toolkit for assessing constitutional durability and efficacy.

To us, the most important task of normative constitutional studies is to ascertain which institutions best align the interests of governors with the welfare of the governed. Exit, voice, and loyalty (Hirschman 1970) all shape the feedback process between those who exercise power and those who are subject to it. A society's basic rules for rule-making—its constitution—will determine whether governance is in the general interest, or the interest of some at the expense of others. We contended that polycentric sovereignty tended systematically toward the former. Therefore, we believe a constitution characterized by polycentric sovereignty

is an important contributor to the “good society.” As medieval Europe showed, not all societies whose constitutions exhibit polycentric sovereignty will fully reach political liberalism. But also as medieval Europe showed, polycentric sovereignty was an indispensable antecedent of political liberalism. It is also an ongoing embodiment of political liberalism. Those who seek a society of free and dignified equals, which eschews both discrimination and domination (Horn 2011), should make polycentric sovereignty their constitutional lodestar.

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# Appendix

## *Historiographical Notes*



We are trained as economists, not as historians. As such, we have relied very heavily on secondary sources (i.e., the works of other historians), as well as tertiary sources. However, there are several primary sources (i.e., accounts that are contemporary to the historical period being considered) from which we have benefited significantly. In this appendix, we discuss those primary sources and the caveats that go along with their use. We also discuss the secondary and tertiary sources that have been most impactful on our work. Lastly, we preemptively address those who might accuse us of having indulged in “Whig history.”

### *A.I. Primary Sources*

Primary sources from the ancient and medieval era need to be handled with care. First, the authors had their own agendas, and those agendas bias the accounts. Yet those agendas are often hard to identify, and explanations by modern-day historians can be controversial. Second, it does not help the situation that, using economists’ jargon, ancient and medieval accounts have bequeathed to us a “thin market”—the number of contributing authors is quite small, and the fraction of their works that have come down to us is even smaller. As such, scholars today have rela-

tively little in terms of competing views from which they separate wheat from chaff.

As a summary statement: all the primary sources mentioned below need to be taken with a grain—sometimes an entire shaker—of salt. But they are also all chock full of gems and are indispensable for constructing a full (as possible) picture of ancient and medieval society.

Regarding the governance practices and institutions of the Germanic groups around the turn of the common era, Julius Caesar's *The Gallic War* and Tacitus' *The Germania* provide us with intriguing observations. Given that these two works are based on experiences approximately 50 years before and then after 0 AD, respectively, they also give us an idea of how those practices and institutions changed based on Rome's encroachment upon the barbarian frontiers.<sup>1</sup> Furthermore, our understanding of how those practices and institutions related to the interactions, both violent and diplomatic, of barbarian retinues and the later Empire has been informed by Ammianus Marcellinus' late fourth century history; to a lesser extent also the Anonymous Valesianus accounts, particularly those identified with the later fourth century, and Orosius' fifth century *History against the Pagans*.<sup>2</sup>

Regarding governance in the early Germanic successor kingdoms, we gain insights regarding the Visigoths and other barbarian groups in Gaul, and a decidedly Roman perspective on them from the letters of Sidonius Apollinaris, penned during the mid- to late-fifth century. We also have the state papers of Cassiodorus, another Roman senator who served in the Ostrogothic administration of Theodoric the Great in the earlier sixth century. Based largely on a lost history written by Cassiodorus, we also have *The Origin and Deeds of the Goths* by the sixth century Constantinopolitan historian Jordanes. Finally, Katherine Fischer Drew has provided translations of the Burgundian, Lombardian, and Salic law codes; they show us how, at least in principle, governance was meant to look in the successor kingdoms.

Once we get to the Merovingian and Carolingian eras, the primary sources for Frankish society become a bit more abundant. Certainly, Gregory of Tours' sixth-century *History of the Franks* is indispensable.<sup>3</sup>

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1. As has been explored by one of the present authors (Young 2015).

2. As "Anonymous" would suggest, this is not an author's name; rather we are dealing with a seventeenth-century compilation of two sets of accounts, one of which is generally believed to be from the late fourth century (and, in that sense, a reliable historical source).

3. The same can also be said for the seventh-century *Chronicle of Fredegar* (along with the *Continuations* that take the original work into the eighth century and the Carolingians).

There are also numerous capitularies and other Carolingian governments that are extant; we have often relied on secondary sources that have provided translations from individual cases, but Loyne (1975) also provides a collection of such documents from Charlemagne's rule and adjacent time periods. Finally, we have two biographies of Charlemagne that have come down to us: one written by Einhard, a scholar and advisor to the emperor, and another written within a generation of Charlemagne's death by a Benedictine monk, Notker the Stammerer.

When it comes to the High Middle Ages, we have relied largely on translations and sections of primary materials that are provided within secondary sources. An exception is Mundy and Riesenbergl (1979 [1958]) a selection of documents relevant to medieval cities (e.g., statutes, charters, and league constitutions).

## A.2. Secondary Sources

The secondary sources that we employ are numerous. We cite them throughout the book and they are listed in the references. Here we just note a relatively small number that were particularly influential in our research.

Although it is now considered dated, E. A. Thompson's (1965) *The Early Germans* was a starting point for looking more deeply into Germanic governance during the Western Roman Empire. The more recent works of Peter Heather (2006, 2010) have been invaluable as comprehensive accounts of the Germani and their relationships to Rome. In thinking about how the barbarian groups were settled within imperial frontiers during the fifth and early sixth centuries, Walter Goffart's (1980, 2008, 2010) work was exceptionally stimulating. Although Goffart's theory of *hospitalitas* as executed through tax share allocations is controversial, it guided our thinking about and further research into the earliest constitutional foundations of medieval Western Europe. We would also be remiss in not mentioning the works of Chris Wickham (2009, 2016), a historian who brings to his readers encyclopedic knowledge of medieval Europe and its links to the Roman past.

When we came to considering the early medieval Frankish kingdoms, there were numerous excellent works to consider. Among them, Ian Wood's

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However, there is not (to our knowledge) a published English translation of the entire *Chronicle*. Therefore, our exposure has been largely via translated portions in various secondary sources, including Wallace-Hadrill (1982 [1960]).

(1994) book on the Merovingian kingdoms is excellent. Regarding the Carolingian era, we owe debts to books by Ganshof (1971), Rosamond McKitterick (1983), and Riché (1993 [1983]) that provide a wealth of facts and discussion of the Carolingian family and the Frankish kingdoms under their rule. Furthermore, Matthew Innes' (2000) work on early medieval society in the Frankish kingdoms, is excellent; and Geoffrey Koziol's (1992) on, in particular, political ritual and culture was essential reading.

The works on feudalism by Marc Bloch (1968a [1939] and 1968b [1940]) and F. L. Ganshof (1964) provided the starting point for our thinking about the feudal system in Western Europe. We supplemented them with Georges Duby's (1980 [1978]) book on the system of estates (or orders). These classics are dated but still provided a wealth of facts and other intellectual morsels. Of course, moving forward was impossible without digesting and confronting Susan Reynolds' (1994) full frontal attack on the "f-word." Alternatively, we felt that Charles West's (2013) book tempered her critique in certain ways.

Regarding the emergence of the High Middle Ages feudal order from the so-called post-Carolingian anarchy, Thomas Bisson's (1994, 1995, 2009) work was the obvious starting point. Our point of departure was to explore how political bargaining led to new, stable political structures. We have emphasized the Peace of God and related movements in this process, and Geoffrey Koziol's (2018) short book on the subject along with the collection of articles edited by Tomas Head and Richard Landes (1992) provided excellent overviews and analyses, as well as serving as launchpads into related literature.

As for medieval assemblies, the book by A. R. Myers (1975) was a first and foremost source of details and an important guide toward cases to further explore. Antonio Marongiu's (1968) classic work was also essential. And our thinking about earlier medieval assemblies as coordination devices rather than bargaining forums drew much inspiration from the collection of papers assembled by P. S. Barnwell and Marco Mostert (2003). For an introduction to medieval cities, the classic by Henri Pirenne (2014 [1925]) as well as Fritz Rörig's (1967) book provided excellent starting points.

### *A.3. Tertiary Sources*

We owe a great debt to social scientists who have produced research about early modern politics and political economy. By necessity, we are most selective with these sources in mentioning only a few authors.

Roger Congleton's (2011) work on the evolution of constitutional structures toward modern Western liberalism and representative government is always in the background of our thinking. Congleton's emphasis on political bargaining—including constitutional bargaining—and its implications for evolutionary (rather than revolutionary) institutional change is clearly reflected throughout this book. Fundamentally, it leads to our emphasis on political property rights, the exchange of which we interpret as constitutional change within a society.

Our thinking and analyses draw broad inspiration from Douglass North, John Wallis, and Barry Weingast's (2009) book on violence and social orders. Consistent with Congleton's approach, these authors emphasize how historical developments can lead, over time, to a society's transition from a "limited access" order to one with "open access" to political processes. This transition is not inevitable. As it proceeds, it can stall or reverse at any time. But North et al. focus on how a successful transition will necessarily be incremental, including an approach to the "doorstep" of open-access, characterized by, among other things, political elites obtaining rights enforceable under the rule of law. Gradually, these rights are extended to larger swaths of society and, eventually, the general public. This relationship between this perspective and our own will be obvious to any reader of our book.

When we began thinking about medieval Western Europe and how to trace the general contours of the medieval constitution, there were several treatments of the era that informed our conception. Importantly, these included the books by Eric Jones (1981), Harold J. Berman (1983), Brian M. Downing (1992), and Thomas Ertman (1997).

In setting out to account for how Western traditions in liberty arose, we had to be clear about how representative institutions that developed in Western Europe were distinct. We had to differentiate it from assembly governance that has historically existed at different times everywhere on the globe. David Stasavage's (2016) paper was a critical starting point, and his book (2020) furthered our thinking on this matter.

Another book by David Stasavage (2011) along with Margaret Levi's (1988) work were foundational to our thinking about the relationship between political bargaining, representative institutions, and the emergence of nation-states with high state capacity. Lastly—published while we were writing this book—Deborah Boucoyannis' (2021) work on the origins of parliaments in Western Europe provided a very different approach to thinking about the evolution of representative institutions.

#### A.4. *Shameless Whig History?*

Are we shamelessly doing the sort of “Whig history” that Herbert Butterfield (1965 [1931]) famously condemned? We emphasize how historical, constitutional conditions in medieval Western Europe were ripe for the development of enduring traditions of liberty, both political and economic. We also are explicit about the fact that we value those traditions both for their consequences and for their own sake. As such, it makes sense for us to preemptively address a charge of Whig history.

An immediate problem with addressing this charge is that there have been many different interpretations about what Butterfield was attacking and why. The historian E. H. Carr (1962, 50) wryly noted that Butterfield’s polemic “was a remarkable book in many ways—not least because, though it denounced the Whig interpretation over some 130 pages, it did not [. . .] name a single Whig except [Charles James] Fox, who was no historian, or a single historian save Acton, who was no Whig.”

In general, it seems to us that Butterfield was critiquing “present-centered history” (Wilson and Ashplant 1988). But this can be interpreted in both a broad and a narrow sense, both of which Butterfield suggests. In the broadest sense, a Whig historian is one who “studies the past with reference to the present” (Butterfield 1965 [1931], 11). For Butterfield, the targets for the term were mid-nineteenth-century British historians and other intellectuals whose starting point was a present of parliamentary governance and religious tolerance and who sought to understand how that present had been arrived at from the past.

However, there is a narrower (or more specific) sense in which Butterfield was criticizing “the habit of some English constitutional historians of seeing their subject as a progressive broadening of human rights in which good, ‘forward-looking’ liberals were continuously struggling with the backward-looking conservatives” (Mayer 1990, 301). Here the critique is based on assigning agency in the past toward the circumstances of the present. Furthermore, since the latter are deemed desirable by Whig historians, Butterfield’s critique expresses a “distaste for history as a morality play”: “There should be no heroes or villains if history is properly done” (Gottfried 2017, 89 and 90, respectively).<sup>4</sup>

Perhaps the classic work that is most pointed to as characteristic of Whig

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4. Writing during his tenure as president of the American Historical Association, William Cronon (2012) places the assignment of “white and black hats” to historical characters who are “viewed as agents of progressive change” as among the “worst sins of whiggishness.”

history—both in the sense of being subject to Butterfield’s critique and being indicative of specific historians that he (allegedly) had in mind—is Thomas Babington Macaulay’s five-volume *The History of England*. While it is not considered up to par in the contemporary academy, there is no doubt that Macaulay’s work was pathbreaking and has influenced innumerable scholars since its publication (between 1848 and 1855).<sup>5</sup> The first paragraph of the first chapter of the first volume in part reads:

I shall trace the course of that revolution which terminated the long struggle between our sovereigns and their parliaments, and bound up together the rights of the people and the title of the reigning dynasty. I shall relate how the new settlement was, during many troubled years, successfully defended against foreign and domestic enemies; how, under that settlement, the authority of law and the security of property were found to be compatible with a liberty of discussion and of individual action never before known; how, from the auspicious union of order and freedom, sprang a prosperity of which the annals of human affairs had furnished no example; how our country, from a state of ignominious vassalage, rapidly rose to the place of umpire among European powers; how her opulence and her martial glory grew together[.]

One gets the sense of a morality play: Macaulay’s history aims to tell us how England “rose from a state of ignominious vassalage” to one of “opulence and martial glory” through the “security of property” and “liberty of discussion and individual action” through the Revolution Settlement of 1689–1701.

If we think about our own work relative to Macaulay’s archetypal Whig history, we can be rightly accused of studying the past with reference to the present. We are exploring Western European history to understand why durable traditions of political and economic liberty emerged and developed there rather than elsewhere. We can also be rightly accused of emphasizing those presently existing traditions of “good.” In fact, we have explicitly stated that we value them for themselves. We also value them instrumentally, because we believe they set the stage for the Great Enrichment. This makes our work “present-centered” in the broad sense discussed above.

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5. This refers to the first four volumes. Macaulay died (1859) while writing a fifth volume, which was later published after being prepared by his sister.



Importantly, however, our narrative and analyses lack the sort of agency that makes Macaulay's history wide-open to the charge of being a morality play. When one reads Macaulay, there are historical heroes and villains in the struggle leading up to the Glorious Revolution; then he "relate[s] how the new settlement was, during many troubled years, successfully defended against foreign and domestic enemies" (more heroes and villains). Without doubt, there is agency throughout our own book, but it is agency of the political economist. We discuss the medieval world in terms of individuals—often, in particular, those finding themselves in positions to govern—and how we expect them act and interact given the associated incentives and information problems provided by constitutional arrangements. We do not treat individuals as part of a farsighted struggle for (or against) liberty. For example, Charles Martel was no hero of liberty; but his actions were significant toward the rise of polycentric sovereignty in Western Europe. The emergence and development of liberty are, in our analysis, a long-run unintended consequence of the actions of individuals such as Charles, Bishop Wido of Le Puy, King John's barons, and innumerable others whose names we will never know.

We believe that it is this narrower sense of "present-centered"—where agency in the past is assigned purposefully (if not consciously) toward where we have presently arrived at—that is what makes a writing meaningfully Whiggish. In this sense, we agree Whiggish should be avoided. The history we have provided is decidedly not this kind of Whig history.

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