

# THE LITERATURE OF SOVEREIGNTY IN LATE MEDIEVAL ENGLAND

by

ROBIN WHARTON

(Under the Direction of Andrew Cole)

## ABSTRACT

This dissertation examines how some Middle English writers bring the conventions of estates literature together with an emerging and evolving “literature of sovereignty” and thereby identify the individual as both a political subject and a target of regulatory authority. In these texts, the estate becomes a metonymy for rather than a definition of one's obligations to the polity as a whole. For the authors considered, estates do not order the polity. Instead, order results from self-governance in accordance with a generalized Christian morality as expressed in the law of the realm, self-governance of the kind counseled in earlier Latin productions such as the *Secretum Secretorum*, Giles of Rome's *De Regimine Principum* and Henry Bracton's *De Legibus et Consuetudinibus Angliae*. Ultimately, by removing the estate as a filter between self and realm, Middle English authors begin a radical transformation of the corporate metaphor. In the traditional medieval conception of the body politic, no single body marked as it is by its affiliation with a particular estate, can adequately represent the political whole; it can only represent that part of which it is itself a part, the head, heart, hands, etc. In a body politic unblemished by functional partitions, individual bodies become much more fungible, and the individual can more readily act as a representative of the whole. By

enabling a new metaphorical relationship between the individual and society, medieval authors enabled new ways of thinking about political participation and the relationship between the governors and the governed.

INDEX WORDS: Middle English, Henry de Bracton, Geoffrey Chaucer, William Langland, John Gower, Thomas Hoccleve, Thomas Wimbledon, John Wycliff, Wycliffite heresy, Lollardy, sovereignty, self-governance, estates satire, mirror for princes, medieval law

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ROBIN WHARTON

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J.D., University of Georgia, 1999

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ROBIN WHARTON

Major Professor: Andrew Cole

Committee: Cynthia Turner Camp  
Fran Teague

Electronic Version Approved:

Maureen Grasso  
Dean of the Graduate School  
The University of Georgia  
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## DEDICATION

For my mother, Paula, and my father, Eric, who set a good example.

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## CHAPTER 1

### ESTATES, PRINCES AND MIDDLE ENGLISH POLITICAL IDENTITY

In *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, Jurgen Habermas suggests that medieval political identity was defined by or circumscribed within membership in one of the ruling institutions of power, e.g., the lesser nobility, the Church, and the monarchy. Consequently, according to Habermas, unlike the eighteenth-century bourgeoisie who exercised a kind of political power that existed apart from and often in opposition to institutional authority, pre-modern political thinkers concerned themselves primarily with the question of how power should be divided between and among the ruling elite rather the question of whether the ruling elite had any real claim to that power in the first place.<sup>1</sup> In a thought-provoking move, Habermas excludes medieval England from his narrative about the evolution of the public sphere during the transition from feudalism to capitalism: “It is well known that where the prince's power was relatively reduced by a parliament, as in Great Britain, this development took a different course than it did on the continent, where the monarchs mediatized the estates.”<sup>2</sup> Presumably, what Habermas is getting at here is the idea that, unlike Continental rulers who embodied the law in their own persons, the relatively weak British monarch who was himself subject to a rule of law embodied in the

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1 Jurgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Boston: MIT Press, 1991), 26-27.

2 *Ibid.*, 27.

institution of Parliament did not have the authority to distribute or “divide” the “powers of command”<sup>3</sup> among members of the lesser nobility.

Habermas is not the first person to draw such a distinction between English and Continental models of kingship. John Fortescue observes that, as early as the fourteenth century, England conceived of the king as subject to, rather than as the living embodiment of, the law, and modern scholars--Sergio Bertelli, Michael Wilks, and Ernst Kantorowicz among them--have followed his lead. Habermas's point about the English monarchy may not be a new one. His claim, however, that legal conceptions of sovereignty may have “trickled down” to influence not only relationships between and among institutional authorities but also the evolution of pre-modern political identity more generally suggests, at least to me, a potentially fruitful and as yet inadequately explored site of analysis. Those of us who study Middle English literature accept as given the fact that estates literature or estates “theory” plays an important role in shaping literary depictions of the early English polity. The question that remains, though, is this: How do the conventions of estates literature work with other social and literary forms to produce socio-political identity in Middle English writing? Even though Habermas first hinted at such a connection more than forty years ago, we have only just begun to understand whether and in what ways a literature of sovereignty--collected in the mirror for princes tradition and expanded in a growing body of juridical texts such as Bracton's *De Legibus et Consuetudinibus Angliae*--shaped Middle English thinking about persons' obligations to authority and the constitution of the polity as a whole.<sup>4</sup>

3 Ibid., 27.

4 See Ruth Nissé, “‘A Corun Ful Riche’: The Rule of History in ‘St. Erkenwald,’” *ELH* 65 (1998): 277-95. Nissé's article presents one of the few relatively recent examples of literary criticism considering how Middle English texts incorporate juridical models drawn from Bracton's *De Legibus*.

In this project, I aim to survey, evaluate, and expand upon the work that has been done so far. In doing so, I offer a new way of thinking about the role of the individual in Middle English literature (both the classically sovereign individual of modern political theory, and the individual sovereign of medieval theories of kingship). In the Middle English texts that I will examine here, the “individual” emerges as a political subject that transcends jurisdictional and class boundaries and operates as the site upon which potentially conflicting social identities can be mapped and harmonized. This way of thinking about the relationship between individuals and the communities in which they participate contrasts with the more traditional estates model in which differentiated social identities are predicated upon one's place in the social hierarchy. Instead of three radically different categories of political actors who fulfill their carefully compartmentalized roles, a single political category is imagined in which every individual is the “same” as every other. The individual, rather than the estate, becomes the fundamental institution that exists for the benefit of the community of the realm. Other communal affinities, including class, trade, and religious standing, are subordinated to a person's responsibilities as a member of the polity of “England,” itself an emergent idea in its own right.

I am of course aware of that line of scholarship that focuses on the “rise of the individual” in medieval literature, particularly Robert Hanning's *The Individual in Twelfth Century Romance*. Hanning describes the influence in twelfth-century chivalric romance of a “new desire on the part of literate men and women to understand themselves as single, unique persons--as what we would call individuals.”<sup>5</sup> Where this

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5 Robert Hanning, *The Individual in Twelfth Century Romance* (New Haven: Yale University Press,

line of scholarship considers the individual as “[s]ingle, . . . distinct from others of the same kind; particular, special,” I am more concerned here with the individual as “[e]xisting as a separate indivisible entity; numerically one, single.”<sup>6</sup> The shift I see in medieval political discourse away from thinking about groups or estates to thinking about individuals has less to do with understanding the rise of modern consciousness and more to do with redefining the target of regulatory authority at a new level of granularity. The individual, as a site where institutional failures and conflicts between and among the various communities of the realm become visible, begins to emerge as the agency through which they might be remedied. By focusing on the individual as the site of regulation and reform, Middle English authors avoid some of the thorny jurisdictional questions that often complicated discussions of who exactly was responsible for punishing or ameliorating the failures of particular institutions. They redefine the tensions between and among various institutional authorities as largely personal problems that one must resolve for oneself. When it comes to providing the guidelines according to which conflicting social and personal obligations affecting individual persons can be reconciled, many Middle English authors turn to conventions and ideas that appear to be drawn from medieval literature dealing with questions of kingship and sovereignty, which literature offers a ready-made framework for thinking about oneself as an instrument of the public will. Although I am ultimately interested in how this discourse of self-governance informs Middle English literary imaginings of the polity, I cannot ignore the persistence of what Jill Mann might call “estates content”<sup>7</sup> in both Middle English literary

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1997), 1.

6 “individual, *n.*” *The Oxford English Dictionary*, 2nd ed., 1989, *OED Online*, Oxford University Press, 13 October 2009 <<http://dictionary.oed.com/cgi/entry/50115500>>.

7 Jill Mann, *Chaucer and Medieval Estates Satire: The Literature of Social Classes* (Cambridge:

production and our own modern understanding of medieval social organization. Before we can begin looking for the “something extra” that shapes how Middle English authors thought about and understood political identity, we need first to return to Mann, Georges Duby, and estates literature in order to understand just what exactly some Middle English authors are doing with it.

Mann's *Chaucer and Medieval Estates Satire: The Literature of Social Classes and the "General Prologue" to the "Canterbury Tales"* appeared in 1976. Duby published his *Les trois ordres ou l'imaginaire du féodalisme*, translated in English as *The Three Orders: Feudal Society Imagined*, in 1978. Together these two works have substantially shaped our understanding of how medieval authors conceived of and thought about the social organization of the realm and persons' obligations to authorities. Both Mann and Duby explore how, in its traditional formulation, the tripartite or trifunctional model describes an ideal social order in which society comprises three orders or estates, the first estate of those who preach and pray, the second estate of those who fight and govern, and the third estate of those who labor and, to an extent, suffer hardship without complaint. As Jill Mann describes it, the estates were organized according to “the concept of specialised services,” and it was the “interchange of such services which [led] to social harmony and fulfillment of God's will,” knitting the various estates into a unified whole.<sup>8</sup>

Mann and Duby also reveal that, although estates theory was for the most part an idealized literary construct that often failed to describe adequately the true complexity of

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Cambridge University Press, 1973), 5-10.

<sup>8</sup> Ibid., 85.

medieval society, throughout the Middle Ages and well into the early modern period, it continued to operate as a utopian prospectus for the ideal polity as well as the primary framework within which social problems could be understood. In Middle English literature, estates theory often provides a foundation for the social vision of writers as diverse as John Wyclif and John Gower. For better or worse, estates theory also continues to structure modern narratives of medieval political life. As persuasive and pervasive as the estates model continued to be,<sup>9</sup> however, and in spite of the role it continues to play in distinguishing the medieval from the modern in cultural critique,<sup>10</sup> even the early work of Mann and Duby suggests that later medieval writers, especially those writing in the vernacular, began to explore those points where the trifunctional social contract breaks down. A number of Middle English writers--Chaucer, Langland, and Hoccleve among them--seem to have been more intrigued by how estates theory made problems visible than by any proposed solution it may have offered for resolving them.

Mann, for example, suggests that part of Chaucer's originality rests in his departure from conventional estates satire where "society coheres through the mutual benefits arising from the interchange of services,"<sup>11</sup> and "[w]hether it is the 'good' or 'bad' version of an estate we are being given, the other is kept in our minds, so that the estate itself, rather than the individual, is the root idea."<sup>12</sup> Mann concludes that, unlike those

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9 Georges Duby, *The Three Orders: Feudal Society Imagined*, trans. Arthur Goldhammer, (Chicago: University of Chicago Press, 1980), 1-5; Mann, *Chaucer and Medieval Estates Satire*, 7-10

10 To the extent that my work suggests our modern interpretations of the trifunctional polity have been influenced as much by a desire to define modernity in terms of what it is not, as by a desire to understand how medieval authors understood their own historical context, it draws upon and extends the work of Norman F. Cantor in *Inventing the Middle Ages*, New York: W. Morrow, 1991.

11 Mann, *Chaucer and Medieval Estates Satire*, 73.

12 *Ibid.*, 14.

authors who present the estates model as a divinely ordered formula for social harmony, Chaucer demonstrates how, when taken to its logical extreme, the principle of specialization that governs the estates hierarchy leads to moral relativism and isolation of the individual from the rest of society.<sup>13</sup> Mann's reading of Chaucer rests, in part, on the presumption that estates satire usually and traditionally functions as a prescriptive discourse in which the estates themselves, rather than the individuals they comprise, are the focus of regulatory authority, and the failures of the individualized “types” of estates satire are really failures that can be mapped onto the estate as a whole. Duby's discussion of the clerical origins of estates theory in the eleventh and twelfth centuries in France supports this presumption. Duby emphasizes the role of trifunctionality as an “ideological oratory” designed to stabilize the institutions of government and keep disaffected sections of society, primarily the working class, in their proper places.<sup>14</sup>

In many cases Middle English authors did continue to emphasize the estate as a fundamental unit of social organization and regulation. Examples of the trifunctional polity abound in Middle English literature of course. For the moment I would like to focus on just two texts, *The Simonie* and Thomas Wimbledon's 1388 sermon *Redde Rationem Villicationis Tue*. The first is particularly useful as a point of comparison for the later works that will be discussed throughout, since it offers an early example, perhaps the earliest, of Middle English social complaint. The second offers a rare instance of a work that we know reached both a popular, public audience through its oral delivery, as well as as a somewhat smaller, English-literate audience through manuscript

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13 Ibid., 197-202.

14 Duby, *The Three Orders*, 124.

circulation. In his sermon, Wimbleton uses the familiar metaphor, drawn from the parable of the vineyard in Matthew 20:15, of the polity as an agricultural enterprise in which the estates labor together:

For ri3t as 3ee seeþ þat in tilienge of þe material vine þere beep diuerse laboreris: for summe kuttyn away þe voyde braunchis; summe maken forkes and rayles to beren up þe veyne; and summe diggen away þe olde erþe fro þe rote and leyn þere fattere. And alle þeise offices ben so necessarie to þe veyne þat 3if eny of hem fayle it schal harme getly or distroye þe vyne. . . .

Ry3t so in þe chirce beep nedeful þes þre offices: presthod, kny3thod, and laboreris. To prestis if falliþ to kutte away þe voide braunchis of synnis wiþ the swerd of here tonge. To kny3tis it falliþ to lette wrongis and þeftis to be do, and to mayntene goddis lawe and hem þat ben techeris þer of, and also to kepe þe lond from enemyes of oþer londes. And to laboreris it falleþ to trauayle bodily and wiþ here sore swet geten out of þe erþe bodily liflode for hem and form oþer parties. (62-63, ll. 27-46)

In this passage, Wimbleton describes the ideal trifunctional polity at work. The division of labor in society mirrors the division of labor in the fields. Although metaphorically, all social work becomes labor, that labor is segregated by time (vines are typically cut back in the winter, while the soil is worked and frames are repaired in the spring) as well as space (the material for the frames is made away from the fields). Further, the analogy between the labor done in the fields and the work done within the polity quickly begins to

break down. Wimbledon makes an explicit connection between the pruning of the vines and preaching by members of the first estate (“To prestis it falliþ to kutte away þe voide braunchis . . .”). The relationship between the work of the second estate and the labor of framing and tying the vines is left almost entirely implicit, however, while the actual physical work of the third estate threatens to subsume the contributions made by the other two as the conceptual boundary between vehicle--the cultivation of wine grapes--and tenor--all manner of agricultural labor--all but disappears. Although Wimbledon begins with a metaphor of the polity as a joint enterprise of laborers, his expansion of the analogy emphasizes the necessity of specialization, and he concludes this section of the sermon with an extended discussion of the command, “Herefore 'euery man see to what astaat God haþ clepid hym and dwelle he þer inne' by traouvayle acordyng to his degre.”<sup>15</sup>

Yet coexisting in *Redde Rationem* with what we might think of as a rather traditional formulation of estates theory, is an emphasis on personal accountability, indicating that the focus on individuals<sup>16</sup> that Mann reads in Chaucer is perhaps evidence of a broader literary trend in Middle English writing of the fourteenth century. In contrast to anti-clerical or other forms of estates satire where one might presume an authorial interest in lampooning and possibly reforming the estate itself, Wimbledon turns his

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15 Ione Kemp Knight, ed., *Wimbledon's Sermon: Redde rationem villicationis tue, a Middle English sermon of the fourteenth century* (Pittsburgh: Duquesne University Press, 1967), 67, ll. 98-100, hereinafter cited in the text by page and line number.

16 Mann, *Chaucer and Medieval Estates Satire*, 85, 201-202. Even though Mann identifies how each of Chaucer's pilgrims represents a group or class experience ("their views on the world are not individual ones, but are attached to their callings--in medieval terms, their estates," (201)), she ultimately concludes that Chaucer's perspective is a critical one that "throws into prominence the concept of specialised services of each class and subtly undermines the concept of the interchange of such services which leads to social harmony and fulfillment of God's will." (85) As a result, Mann argues, Chaucer paints a portrait in which "work as a social experience conditions personality and the standpoint from which an individual views the world. . . . [where] specialised work . . . ushers in a world where relativised values and the individual consciousness are dominant." (202) For Mann, unique individuals arise because of rather than in spite of their participation in and representation of the estates hierarchy.

attention to the moment when every person will be called to answer before God regarding the manner in which his or her life has been spent. Rather than generalizing from the individual to the estate, Wimbledon rewrites the failures of the estates as personal lapses of judgment for which the person, not the institution or social group to which he belongs, bears responsibility. Like Chaucer, Wimbledon seems to be using estates content as a means to get at the idea of the individual. Almost as Marx did to Hegel, Wimbledon turns the estates model on its head to look at how the failures of the estates are mapped onto their members, bringing the individual rather than the estate into focus as the subject of social critique and the agent of reform.

The shift in emphasis--from estate to member--in Wimbledon's sermon might of course be explained by the generic transition from satirical to pastoral; sermons simply serve a different function than the social critique offered up in estates satire. I think, though, that one can see a similar shift beginning to occur even in a Middle English staple of estates literature, *The Simonie*. Dating to the first quarter of the fourteenth century, *The Simonie* is one of the earliest surviving examples of what its editors call the "evil times complaint" in Middle English. Although earlier vernacular texts attack the failings and abuses of particular estates, *The Simonie* is the earliest extant Middle English text that draws together these separate traditions in an attempt to present a coherent picture of society as a whole.<sup>17</sup> Even as it strives for such comprehension, however, *The Simonie* seems far less concerned with discussing how the three estates organize themselves into a harmoniously functional social network than with identifying and

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<sup>17</sup> Dann Embree and Elizabeth Urquhart, *The Simonie: A Parallel-Text Edition* (Heidelberg: Carl Winter, 1991), 60. Quotations from the text of *The Simonie* have been cited parenthetically in the text throughout by version (A, B, C) and line numbers.

cataloging the moral failures of their membership. Any sense of the “ideal” polity emerges only by implication. The poet does, though, provide a fairly thorough description of how clerics, knights, nobles, and petty bureaucrats have repeatedly neglected and failed to fulfill their individual offices, and in doing so explores the role of the individual as a site of conflict between and among the estates and other communities the realm comprises.

For example, in the first section dealing with the greed and moral dissolution of the clergy, the poet observes how service to the secular ruler interferes with his obligations to “þe fraunchise of holi churche”:

But eueri man may wel iwite, whoso take 3eme,  
 Þat no man may wel serue tweie lordes to queme.  
 Summe beþ in office wid þe king and gaderen tresor to hepe;  
 And þe fraunchise of holi churche hii laten ligge slepe  
 Ful stille.

Al to manye þer beþ swiche, if hit were Godes wille. (A 43-48)

Through his attempt to participate in two communities at once, as both a clergyman and a courtier, the cleric has become the locus of friction between the two. *The Simonie* identifies the cleric's improper resolution of this conflict in favor of the king as the moral failure that leads him to neglect his duties as a member of the first estate. This first section dealing with the clergy also spends several stanzas lamenting how monks, canons, and friars show more loyalty to their particular orders than to a broader religious community that includes other members of the official church hierarchy as well as the

laity. Finally, even when they do actually turn to serving their constituents, the first estate is torn between the rich and the poor:

If a pore man come to a frere for to aske shrifte,  
 And ther come a ricchere and bringe him a gifte,  
 He shal into the freitur and ben i-mad ful glad,  
 And that other stant theroute, as a man that were mad  
 In sorwe.

Yit shal his ernde ben undon til that other morwe. (A 127-32, C 133-38)

Here again, the author figures the priest's moral failure, the sin of simony, as a failure to resolve appropriately a personal conflict caused by the interaction of these two communities at the site of his person.

The author's portraits of the second estate are similarly fractured by inter- as well as intra-community conflict. Rather than crusading on behalf of the Church in the holy land, knights fight one another:

Hii brewen strut and stuntise there as sholde be pes;  
 Hii sholde gon to the Holi Lond and maken there her res,  
 And fihte there for the Croiz, and shewe the ordre of knihte,  
 And awreke Jhesu Crist wid launce and speir to fihte  
 And sheld;

And nu ben theih liouns in halle, and hares in the feld. (A 247-52)

In this way, they are like the members of the religious orders mentioned in the first section. Men show greater allegiance to their particular household or lord than they do to

the institution they have been sworn to defend. The second estate, like the first, is corrupted as well by its interaction with another social order, this time one lower in the hierarchy:

Knihtshipe is acloied and deolfulliche i-diht;

Kunne a boy nu breke a spere, he shal be mad a kniht.

And thus ben knihtes gadered of unkinde blod,

And envenimeth that ordre that shold be so god

And hende;

Ac o shrewe in a court many man may shende. (A 265-70)

Like those priests who neglect their religious observations in favor of service to secular lords, the churls who exceed their station in life poison and corrupt those around them.

The poet's portraits of the various estates are in many ways conventional, drawing upon well-worn stereotypes and standard criticisms. Their collocation into a single text enables a new sort of lateral visibility, however, exploring how the familiar stereotypes of estates satire are so often created out of and defined by conflict among the estates themselves as well as the other communities that the realm as a whole comprises. By highlighting how the types of estates satire embody this conflict, the text reveals the role individuals play as the loci of social decay and potential sites of reform.

In addition to or instead of offering it as a prescription for social harmony, Wimbledon and the anonymous author(s) of *The Simonie* use the estates model as a diagnostic tool that uncovers the failure of individuals to resolve appropriately particular manifestations of a problem increasingly shared by all members of the realm. While I do

agree with Mann that in the *General Prologue*, Chaucer presents “class failings as if they were personal idiosyncrasies,” I think we get more from that presentation than “a sense of the individuality” of the figures.”<sup>18</sup> The “individual” does indeed come into focus in these texts, but not necessarily in the sense Mann urges, to return again to the definition quoted above, as “[s]ingle, . . . distinct from others of the same kind; particular, special.”<sup>19</sup> Rather, these Middle English authors, Chaucer included, begin the process of re-imagining the individual as a participant in a community that extends beyond the estate and encompasses the realm as a whole. Such an individual necessarily operates then as the site at which competing institutional and social loyalties come into conflict with each other and occasionally with one's duties to the polity more generally. As the site of such conflict, the individual emerges as a kind of public space and therefore as an appropriate target for regulatory authority and reformist energies. This particular manner of deploying the conventions of estates literature may not be unique to Middle English authors, but it certainly comes through with clarity in Middle English writing of the fourteenth century. The focus on the role of the group in analysis of medieval social organization has tended to obscure the real interest shared by a number of Middle English authors in individual accountability and the role of the individual as a unit of regulation and social organization.<sup>20</sup> As the individual moves to the forefront in these texts, the significance of the estates changes. Instead of an ordered hierarchy of distinct social categories predicated on specialized functionality, the estates become a series of metonymies for a still-evolving set of social obligations that flow from one's membership

18 Mann, *Chaucer and Medieval Estates Satire*, 198.

19 “individual, *n.*” *The Oxford English Dictionary*.

20 See, e.g., Susan Reynolds, *Kingdoms and Communities in Western Europe, 900-1300* (Oxford: Oxford University Press, 1997).

in the larger community of the realm. The estate becomes the expression of these obligations, rather than their source or definition.

Even as Middle English writers exploit the capacity of the estates model to represent in a new light the mechanism of social dysfunction, they simultaneously reveal the power vacuum that lies at its heart. To return to Mann's formulation, the trifunctional polity remains healthy only when there is a mutually beneficial exchange among the estates of their specialized services. In such a system of exchange, the estates may be obligated to one another, yet conflicts arising out of those very obligations--as in the case of the cleric who also holds a secular office--may be the root cause of failures within it. In *The Simonie*, for example, by highlighting how the types of estates satire evolve from the day-to-day interactions that take place between the communities it comprises, the poet reveals the inadequacy of the estates model as a framework for ordering and organizing them into a cohesive polity. The poet repeatedly, and predictably, identifies the king as the person or institution with the power to resolve the crisis the poem explores. Yet, as figured in the text, the king is ultimately an impotent figure, and the poet laments the king's ignorance of how the poor are overburdened and exploited by the corrupt officials who disperse and siphon-off tax revenues, and claiming that though the king "haþ the leste part . . . he haþ al þe curs" (A 334, B 424, C 382). The monarch's authority is undermined at every turn by the corruption and avarice of those who serve him. In one version of the text, the poet even implies that the king himself bears some of the blame for the problem, identifying the "iustices, shirreues, meires, baillifs" (A 321) of one version and the "iustises, scherefes, stywardes" (B 392) of another as "Mynystres

vnder þe kynge, þat shuld meyn ten ry3t,” (C 337) and in the very first passage quoted above, the king's encroachment upon the authority of the church over its clergy leads to rather than remedies social disruption. In the final analysis, none of the political institutions described in the text is sufficient to comprehend and merge the various factions within the realm into a functioning political unit. Because everyone is so self-interested, no one actually wields power *on behalf of* the church, the king, the local government, or any of the other communities the author describes.

Wimbledon, by emphasizing personal accountability, goes some of the way towards solving the problem that vexes *The Simonie's* author. Although he begins with a discussion of how the estates organize themselves into a polity, the sermon is really an exploration of how individuals become members of the greater community of the realm through their participation in the estates system. On the day of reckoning, everyone, regardless of his or her place in the social hierarchy, will respond to the same three questions:

And euerich of þese shal answe re to þre question: þe firste questioun, how hast þou entred; þe secunde, how hast þou reulid; and þe þridde, how has þou lyuuyd. And 3if þou canst wel assoyle þese þre questiouns, was þere neuere noon erply lord þat so rewardip his seruante wipoute comparisoun and by Lord God shal reward þe, þat is wip lif an ioye þat euere shal laste. But on þat oþer side, 3if þou passe hennis in dedly synnes, as þou wost neuere what shal falle to þe, alle þe tongis þat euere

weren oþer shal be mowen not telle þe sorwe and woo þat þou shalt suffre.

(70, ll. 145-56)

Like the author of *The Simonie*, Wimbledon is interested in how errors and omissions in rulership and governance lead to social disorder and the failures of the various estates.

Instead of looking to the secular ruler as an agent of enforcement or reform, however, he holds the individual responsible and suggests that even the most personal decisions can have public consequences, since the first and second estates will have to answer for themselves as well as for those in their care. (69-70, ll. 137-44)

Although Wimbledon explicitly exempts members of the third estate, or “þridde baylie . . . þat is euerich oþer Cristene man,” (86, ll. 401-07) from the requirement that they account for how their decisions have affected other men, the sermon abounds with examples that demonstrate how that membership, just like the clergy and the nobility, lead lives of public accountability that make them responsible for those around them. Regarding the question of whether and for what purpose one's children and dependents should be sent to school, he warns in the section of the sermon given over to discussing the duties of the clergy:

Why also setten men here sones oþer here cosynus to scole? Wheþer for to gete hem grete auancementis oþer to make hem þe betere to knowen how þey shulden serue God? Þis men may see openly by þe science þat þey setten hem to. Why y praye 3ow putteþ men here sones rapere to lawe syuyle and to þe kyngis court to writen lettres or writies þan to philosophie

oper deuinite but for þey hopen þat þyse occupations shul be euere menis  
to make hem grete in þe world. (69-70, ll. 137-44)

Citing Chrysostom, he goes on to say, “Moderis beþ lowynge þe bodies of here children  
but þe soule þey dispiseþ. . . . 3if þey see hem poore, þey sorweþ and sykeþ; but þou3  
þey see hem synnen, þey sorwen nou3t” (71, ll. 10-13). Mothers, like the prelates to  
whom this part of the sermon is ostensibly directed, must care for their children's spiritual  
as well as physical health, just as the priests themselves are curates of the worldly as well  
as spiritual goods entrusted to them by their parishioners . Consequently, even though,  
Wimbleton confines himself to a discussion of the first question in his address to the  
“þridde baylie” (86, l. 401), a term that itself suggests public and well as private agency,  
since at the time Wimbleton was writing “Sovereign control; dominion, sway; a  
domain,”<sup>21</sup> was counted among its many potential meanings--the implication is not that  
the other two do not apply. Rather, Wimbleton seems to have subsumed them into the  
first--“How entredist þou?”--since it goes without saying that every “office,” no matter  
how mean or low in the social hierarchy, consists of both living and rulership. In fact,  
Wimbleton abandons the estates divisions altogether in the second half of the sermon,  
where he describes the forum where all men, regardless of status, are to be judged.

What my reading of Wimbleton and also of *The Simonie* suggests is that, for a  
number of Middle English authors, the estates may have held more significance as a  
series of metonymies for naming or describing an overarching set of social obligations  
than as a set of categories to which groups of men and women could be assigned in a

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21 “baillī(e), n.<sup>3</sup>” *Middle English Dictionary*, 2001, *MED Online*, University of Michigan Press, 13  
October 2009 <[http://quod.lib.umich.edu/cgi/m/mec/med-idx?  
size=First+100&type=headword&q1=baillie&rgxp=constrained](http://quod.lib.umich.edu/cgi/m/mec/med-idx?size=First+100&type=headword&q1=baillie&rgxp=constrained)>.

divinely ordered hierarchy. Further, both authors imply that order in the polity is achieved through governance of individuals, not estates or institutions. While for the author of *The Simonie*, the power and authority to govern seems to remain squarely with the silent and absent king, for Wimbledon, men achieve order and political unity largely by “ruling” themselves. By uniting ideas of crime and sin, of public and private action, Wimbledon's sermon thus blurs the line between a discourse of sovereignty and the relationship of individuals to the secular law that can be found in a number of sources, in French, Latin, and the vernacular, and the discourse of personal, spiritual reform that one finds in texts that draw upon the penitential tradition. Although quite a bit of work has been done on the question of how religious practices of the fourteenth century may have influenced the English political climate, less has been done to investigate how emerging ideas about the monarchy and its relation to other medieval institutions may have shaped literary imaginings of individual political agency and the polity as a whole. That will be my task in this dissertation.

In tracing the origins of this discourse of individual accountability and personal responsibility back to what I have been calling the literature of sovereignty, I am guided by the work of Wilks, Kantorowicz, and Bertelli. As mentioned above, all three scholars chronicle a divergence between English and Continental notions of sovereignty during the late-medieval period as English jurists and writers attempted to account for the increasingly important role played by Parliament and the English constitution in thirteenth- and fourteenth-century political debate. Although much of the discussion took place in Latin and French, in the law courts and in treatises intended for learned authors,

by the late-fourteenth century, Middle English authors, most notably Gower in the *Confessio Amantis*, began to incorporate extended discussions of the monarch's duties and relative authority into vernacular works. Other scholars, such as H.G. Richardson, document the evolution of the king's coronation oath to reflect a distinctly English view of the king's relationship to the law. Although the order of the service for the coronation almost always appears in Latin in its textual form, contemporary accounts provide evidence that the oath itself was delivered in the vernacular, first in French and then in English, beginning at some point in the fifteenth century.<sup>22</sup> Much more recently, Ruth Nissé has persuasively argued that the idea of the limited or constitutional monarchy plays a significant role in shaping the *St. Erkenwald* poet's understanding of English heritage and literary identity.<sup>23</sup> The literature arising out of and documenting the Peasant's Revolt also supports an hypothesis that the power and authority of the king and the political agency of his subjects were closely linked in the minds of medieval English writers. In the Latin chronicle accounts, as well as in vernacular literature attributed to the rebels themselves, the rebels view the king as an ally in their quest for revolution.<sup>24</sup>

Kantorowicz provides perhaps the most succinct description of the English version of sovereignty in his discussion of Bracton in the chapter "Law Centered Kingship" from *The King's Two Bodies*:

Bracton, though quite unwilling to diminish the sublimity of the Crown or impair the royal prerogative by binding it without qualification to Positive Law of which the king was the lord, nevertheless admitted strongly what

<sup>22</sup> H. G. Richardson, "The English Coronation Oath," *Speculum*, 24.1 (1949): 46-47.

<sup>23</sup> Nisse, "'A Corun Ful Riche': The Rule of History in 'St. Erkenwald,'" 283-90.

<sup>24</sup> See, e.g., "The Rebels in London According to the 'Anonimale Chronicle,'" in *The Peasant's Revolt of 1381*, R. B. Dobson, ed. (London: The Macmillan Press Ltd., 1983), 158-65.

Frederick [the Second] admitted only with some reservation: that the king was “under the Law.” In other words, where Frederick deduced from the Roman law-books a confirmation of his personal prerogative rights while conceding to some degree his subjection to Natural Law and to Reason, Bracton deduced from the same passages that the king was under the Law of the land, but acknowledged at the same time the unique position of the king against whom Law could not legally be set in motion.<sup>25</sup>

As Kantorowicz explains, when Bracton uses the word “law” or “*lex*,” he does in fact mean Divine or Natural Law. Bracton's usage draws, however, upon Giles of Rome's definition of the Natural Law to include those parts of the Positive Law wherein the force of Natural Law has been preserved. Consequently, “the king was bound only to the Divine or Natural Law:”

However, he was bound to the Natural Law not merely in its transcendental and meta-legal abstraction, but also in its concrete temporal manifestations which included the rights of clergy, magnates, and people-- a very important point in an England which relied predominantly on unwritten laws and customs.<sup>26</sup>

What Bracton offers, and Kantorowicz describes, is a formulation of the law as a force that constrains the will, even of the king. Bracton interprets the maxim “*Quod principi placet, legis habet vigorem*,” (“What pleases the prince has the power of Law.”) to mean

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25 Ernst Kantorowicz, *The King's Two Bodies* (Princeton: Princeton University Press, 1997), 147.

26 *Ibid.*, 149

“not what has been rashly presumed by the will of the king, but what has been rightly defined by [his council] . . . and after deliberation and conference concerning it.”

Yet, in binding the king, the law simultaneously elevates him:

“In fact, however, restriction and exaltation of the king seem evenly distributed only because they were interdependent; for his restriction alone produces also, and justifies his exaltation: he is recognized as the “vicar of God” only when and where he acts “God-like” by *submitting* to the Law which is both his and God's.<sup>27</sup>

As Bracton himself explains, “[T]here is no king where arbitrary will dominates and not the Law. And that he should be under the Law because he is God's vicar becomes evident through the similitude with Jesus Christ in whose stead he governs on earth.”<sup>28</sup> The king, like Christ who submitted to the Law in order to redeem those under it, proves his worthiness and is most powerful when he binds himself to the law that is both the manifestation and the instrument of his will. Because Bracton effectively merges Positive and Natural Law, even though the king is not subject to jurisdiction in any earthly court, he is bound by the law's moral imperative. The law may be the king's, but God is its ultimate enforcer.

What Bracton provides is a way of thinking about the secular law as an institution that not only authorizes, through the creation of the king its head, but also orders the polity by binding each and every one of its members including the king. Although questions of earthly jurisdiction--who wields it, who is subject to it--still remain, by

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<sup>27</sup> Ibid., 155 (emphasis in original)

<sup>28</sup> Ibid., 156

erasing the conceptual boundary between crime and sin, Bracton gives the king's law the effective force of God's law. Whether or not he may be called to answer in a secular court, every person--be he priest or villein<sup>29</sup>--will be called to account before God. Individuals may occupy different offices, but they are all subjects--of the king and his law--first and officers second. One can see the same sort of logical sleight of hand at work in Wimbledon, where the juridical language of rulership and bailment call to mind the secular legal system as Wimbledon describes personal actions with public as well as spiritual consequences. This way of thinking about individuals and their relationship to the polity does not erase estates' distinctions. It, does however, shift the focus away from the estate as the primary determinant of one's political obligations, and transforms it instead into the means through which commonly shared political obligations predicated on membership in the emergent and over-arching political institution of the realm are expressed. The individual subject becomes the political subject, a member of an English community that is distinct both geographically and politically from other realms or kingdoms. Further, in a symbolic system in which the estates serve as metonymies for one another as well as for the set of obligations that give rise to them, kings and priests become true mirrors for third estate. The king exercises dominion over the physical realm by divine right, but he is also subject to the same law that orders the personal desires and community obligations of the meanest citizen, and on some level the

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29 The question of whether secular courts could exercise jurisdiction over members of the clergy continued to influence English jurisprudence well into the early modern period, as evidenced by Ben Jonson's ability to avoid a possible death sentence by claiming the benefit of clergy. Ian Donaldson, 'Jonson, Benjamin (1572–1637)', *Oxford Dictionary of National Biography*, Oxford University Press, Sept 2004; online edn, Oct 2008 [<http://www.oxforddnb.com.proxy-remote.galib.uga.edu/view/article/15116>, accessed 22 Oct 2009]. Villeins, as bondsmen, had no legal status outside of the traditional seigneurial courts. Consequently, they could not prosecute nor be called to answer for actions in the King's courts.

dominion he exercises within his domain or “baylie” is similar to that exercised by the poor laborer within his.

Even if many Middle English authors still depict the polity as organized cosmetically according to estates divisions, they increasingly begin to explore, I argue, how it works as a collection of individuals, each of whom owes the same duty to observe the law and must resolve all conflicts of interest in favor of that law. In such texts, the estates content remains useful for how it makes social problems visible as personal conflicts of interest, but the individual, not the estate, emerges as the locus of social decay and political reform. In thinking about this person's obligations as a member of the community of the realm, some authors draw upon the language of legal obligation and self-governance that characterizes Bracton's work. The manuscript evidence suggests that Bracton's *De Legibus* was widely copied and disseminated throughout the late-thirteenth and early-fourteenth centuries. Further, as I will show in the next chapter, the particular formulation of sovereignty promulgated in *De Legibus* shaped the political and legal discussion regarding the powers of the monarchy at the turn of the fourteenth century, which in turn shaped the discussion of the same issue at the turn of the fifteenth. Within the *De Legibus*, Bracton combines a wide variety of moral, spiritual and legal discourses aimed at understanding how individuals are linked through the law to the polity as a whole. Bracton's work might therefore be described as an early example of an English literature of political identity that deals not just with the composition and structure of the polity but also with why and how one's obligations to the various communities and institutions of which the polity is comprised must be organized. The

*De Legibus*, given its status as perhaps the most important legal treatise published prior to the fifteenth century, may also have provided a model of individual socio-political identity that influenced later authors writing in Middle English.

The rest of this dissertation will be given over to a discussion of the texts, both canonical and non-canonical, that arguably concern themselves, at least in part, with these themes. In Chapter Two, “Self-Governance and the Literature of Sovereignty,” I explain how the literary reception of continental works of political theory, including works in the mirror for princes tradition such as Giles of Rome’s *De Regimine Principum* and the pseudo-Aristotelian *Secretum Secretorum*, in fourteenth-century England may have been influenced by English-authored juridical writing of the thirteenth century, including Bracton’s Latin treatise *De Legibus et Consuetudinibus Angliae* and the French treatise known as *Britton*. In Chapter Three, “The Political Subject of Estates Literature,” I provide a detailed analysis of how Middle English authors refashion the estates model in order to bring the individual into focus as the site and agent of reform. Chapter Four, “Social Obligation and the King’s New Bodies,” considers how the individual political subject increasingly becomes the “real” subject/addressee of the Middle English literature of sovereignty, and demonstrates how authors use the genre to explore how generalized principles of self-governance operate within, and even occasionally outside of, the estates framework as a mechanism for resolving jurisdictional tensions. In the process, they transform what Duby maintains was an “ideological oratory” that “attempted to bring under control” the “widespread unrest” of the lower orders that surfaced in 11th century France<sup>30</sup> into a new discourse that links institutional reform with the (tightly regulated)

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30 Duby, *The Three Orders*, 123-24

exercise of individual political agency. Chapter four also begins to examine what the Wycliffite contribution to the Middle English literature of sovereignty may have been.

Where the first four chapters deal with fourteenth-century, primarily Ricardian literary production, I turn my attention in Chapter Five, “The New Body Politic and Legal Reform,” to the fifteenth century and early Lancastrian writing. The “Epilogue” ends the discussion with a reading of an episode in the B Text of Christopher Marlowe’s *The Tragical History of D. Faustus* or, as it is titled in that text, *The Tragedie of Doctor Faustus*, that suggests the contributions of Wycliffite authors to the history of ideas may have been more political than theological. It also looks at how, by removing the estate as a filter between self and realm, Middle English authors begin a radical transformation of the corporate metaphor. In the traditional medieval conception of the body politic, no single body marked as it is by its affiliation with a particular estate, can adequately represent the political whole; it can only represent that part of which it is itself a part, the head, heart, hands, etc. In a body politic unblemished by functional partitions, individual bodies become much more fungible, and the individual can more readily act as a representative of the whole. By enabling a new metaphorical relationship between the individual and society, medieval authors enabled new ways of thinking about political participation, the relationship between the governors and the governed, and altogether new political forms.

## CHAPTER 2

### SELF-GOVERNANCE AND THE LITERATURE OF SOVEREIGNTY

Michael Wilks begins his discussion of the “problem of sovereignty” in the later middle ages by reducing to three the “main schools” of late-medieval political thought:

In the first place there are those who continue to favour the omnipotence of a divinely constructed ruler, and these can be fairly sharply divided off from those who seek an alternative source of power in the community at large. Whilst between them there now appears an ever-increasing number, headed by Aquinas himself, who endeavour to unite both parties in an ideal of the ruler who is both absolute and limited at the same time. By the second quarter of the fourteenth century this latter attractive but inadequate theory has gained the field, and writers like Augustinius Triumphus and Marsilius of Padua, the exponents of sovereignty papal and popular, are left as lonely and isolated giants on the fringes of the main body of late medieval political thinkers.<sup>1</sup>

Wilks admits that “all attempts to separate writers and thinkers into groups and categories” are “necessarily of an arbitrary nature and exhibit a certain degree of artificiality,” but nevertheless maintains that “it still remains possible to discern three alternative views of the proper structure of authority in medieval society.”<sup>2</sup> On the one hand, he gives us the authoritarian model of divine-right kingship--with the papacy as its

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1 Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge: Cambridge University Press, 1964), 16.

2 *Ibid.*, 16.

chief exemplar--supported by “the development of Roman law principles in the twelfth century” in Europe. On the other, he offers an “Aristotelianism” that “revitalised old doctrines of the supremacy of the popular will and of an ideal of limited government which had all but disappeared beneath the encroachments of the absolute monarch, and provided a radically different answer to the problem of the origin of political authority.” Negotiating between these two, according to Wilks, was a third strand of political theory, of which Thomas Aquinas was perhaps one of the earliest and most-influential proponents, that attempted to reconcile the monarchy and the republic through an ideal of limited royal sovereignty.<sup>3</sup>

In the fifty years or so since Wilks first addressed “the problem of sovereignty,” his analysis has continued to exert a substantial influence over scholars who have approached the issue. Thus for the most part, more recent studies of the evolution of English political theory during the late-medieval period have emphasized the perceived antagonism between royal and individual sovereignty. They have also tended to focus upon the question of how English authors received and incorporated material and ideas appropriated from their continental predecessors. In discussing Gower’s *Confessio Amantis*, for example, Lynn Staley explains that, “By incorporating the broader rhetorical structure of Brunetto Latini’s *Trésor* into the version of the *Confessio* addressed to Henry of Lancaster, Gower attempts to translate into English the more republican concerns of Latini’s work:

Thus, where the first recension of the *Confessio* lavishly praises Richard, using *encomium* as the vehicle for advice, Gower holds up to Henry of

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<sup>3</sup> Ibid., 15.

Lancaster the duties of a good prince in relation to the need for secular reform. The two versions of Gower's closing lines are even more different than they appear. In the first, Gower presents his book to his king, protesting his own simplicity and Richard's worthiness; he then reaffirms his age and resolves to write of mundane love no longer. In the later ending, Gower promises that "whatever" king obeys God's laws shall bring prosperity to his kingdom and earn a memorial for himself. . . . Despite his modest disclaimers, Gower achieves an English poem capturing the treasures of the past for his own place and time. While the poem can serve as a gift for princes, it can also become a storehouse of civic memory.<sup>4</sup>

As Staley reads the poem, "[t]he king's individual reformation is one piece of what Gower outlines as a general process of reformation in which each person, by living according to the demands of his office, will share in recapturing a vanished peace."<sup>5</sup> She argues that Gower's attention to the "office" of the king, as opposed to his "person," locates him "within a relational hierarchy," wherein as in Latini's *Trésor*, educating citizens is just as, if not more important than educating the prince.<sup>6</sup> Similarly, James Simpson discusses the debts that Middle English authors of the fourteenth and early-fifteenth centuries owe "to a powerful Aristotelian tradition that has a built-in scepticism about political theory":

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4 Lynn Staley, *Languages of Power in the Age of Richard II* (University Park: Pennsylvania State University Press, 2005), 38-39.

5 Ibid., 38.

6 Ibid., 34, 38.

The presuppositions of this tradition are as follows: that the ideal form of a given entity is an *embodied* form; that the political order is a natural and desirable phenomenon, produced, intelligible, and controlled by human powers; and that the political order is either self-sufficient or at the very least a desirable good in and for itself. This tradition fed into late medieval English vernacular poetry from the political writings of both French and Italian scholastic theologians and Italian republican intellectuals. It is represented in English vernacular works both before and after Hoccleve's *Regement*.<sup>7</sup>

Among the earlier works that Simpson discusses in some detail are Gower's *Confessio* and the anonymous *Wynnere and Wastoure*. The latter poem in particular, he argues, "brilliantly exposes the heterogenous interests of nobles, merchants, and the king in a wonderfully candid account of national economic policy."<sup>8</sup>

My goal in this chapter is to reconsider Wilks's narrative of influences. I would like to explore the possibility that the idea of an absolute but nevertheless still limited monarch, as it emerges in English literature of the fourteenth century, may draw at least as much from a distinctly English debate regarding the legal and metaphorical relationship between the king and his subjects as it does from continental political theory. My argument will proceed primarily through an examination of two of the most significant and influential legal treatises written during the medieval period in England, Henry de Bracton's *De Legibus et Consuetudinibus Angliae* and the anonymously-

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7 James Simpson, *The Oxford English Literary History Vol. 2, 1350-1547: Reform and Cultural Revolution* (Oxford: Oxford University Press, 2002), 219.

8 *Ibid.*, 223.

authored, vernacular French treatise known as *Britton*. Both texts have been dated to the thirteenth century. Thus they are roughly contemporary with and perhaps even predate the influential work of Giles of Rome, Thomas Aquinas and Jacob de Cessolis. As texts that were apparently in relatively wide circulation in England by the beginning of the fourteenth century, they suggest the existence of English as well as continental origins for a Middle English literature of sovereignty. Taken together, they also tend to show that from an early period, English authors were concerned with the problem of whether and to what extent the king could serve as a model for the political subject more generally.

I do believe that Wilks's distillation of the problem of sovereignty continues to provide a useful framework for classifying and distinguishing among the important schools of medieval political thought. Nevertheless, in thinking about how we might go about defining the literature of sovereignty in general, and an English literature of sovereignty more specifically, I think we can gain a key insight by understanding how medieval authors in all three categories treat the problem of governance--of communities, institutions or realms--as first and foremost a matter of self-governance. In addition, as I noted in the preceding chapter with regard to Habermas and his discussion of the evolution of the public sphere, we should be attuned to the ways in which even the most "royalist" discussions of kings and kingship are also simultaneously, and almost inevitably concerned with individual political agency as exercised (or not) by the population at large.

As I use the term throughout, the literature of sovereignty includes efforts in the mirror for princes or *Furstenpiegel* tradition that use the exemplum as the primary

vehicle of royal instruction as well as those, such as the pseudo-Aristotelian *Secretum Secretorum* and Giles of Rome's *De Regimine Principum*, that rely more on exposition and "theory" drawn from Aristotelian and patristic sources to describe the virtues and vices associated with the exercise of temporal and, in some cases, spiritual dominion. It also comprises works, like the *Libellus de Moribus Hominum et Officiis Nobilium ac Popularium Super Ludo Scachorum*, commonly referred to as the *Chessbook*, of Jacobus de Cessolis and the *Trésor* of Brunetto Latini that address a broader audience on emerging ideas regarding collective political participation and show the influence of an Italian, pre-humanist concern with more republican political forms.<sup>9</sup> As a subset of English (meaning texts in Latin and French produced by English authors) and Middle English writing, the literature of sovereignty includes obvious candidates such as Wyclif's *De Officio Regis*, John Gower's *Miroir de L'homme* and *Confessio Amantis*, and the Wycliffite *Tractatus de Regibus*, in addition to works, such as Chaucer's *Man of Law's Tale*, that engage traditional mirror for princes subject matter but do not take the *Furstenpiegel* form.<sup>10</sup> Also, for reasons that I hope will become clear as this chapter and the dissertation itself continue, I think writing that addresses as a primary concern the role self-government plays in creating order and disorder within the polity must be read

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9 Staley, *Languages of Power*, 26-35. See also Jenny Adams, *Power Play: The Literature and Politics of Chess in the Late Middle Ages* (Philadelphia: University of Pennsylvania Press, 2006), 22-33.

10 Traditionally the mirror for princes or *Furstenpiegel* addresses a royal audience or a prominent patron who is depicted as a "prince" among men. As noted earlier, the primary vehicle of instruction is often the exemplum, and thus formally, the narratives tend to take shape as an extended series of episodes organized thematically and drawn from the matter of Rome, saints' lives and chronicle histories. Chaucer's *Man of Law's Tale*, although it does not share the formal characteristics of a mirror for princes, retells the story of Custance, which Chaucer has drawn from Nicholas Trivet's *Chronique* and Gower's *Confessio Amantis*. Chaucer, by appropriating from its traditional source material and invoking Gower by name, signals the tale's relationship to that genre, even as he rejects the majority of its narrative conventions.

as contributing to the genre. This final category includes works such as the *General Prologue* to the *Canterbury Tales* and Langland's *Piers Plowman*.

The emphasis that Staley, Simpson and others place on the influence of thirteenth-century, continental political theory in Middle English political writing of the fourteenth and fifteenth centuries is not unwarranted. Middle English authors regularly and openly acknowledge source material drawn from works such as the *De Regimine*, the *Secretum Secretorum* and the *Chessbook*. Further, in reworking the “matter of Rome” transmitted via the various continental mirrors for princes and the *Gesta Romanorum*, authors such as Gower, Chaucer and Hoccleve are clearly and consciously situating their own work within or in relation to the *Furstenpiegel* tradition. Nonetheless, I think that to date we have failed to appreciate the extent to which the Middle English reception of continental political theory may have been influenced by an English discourse of sovereignty embodied in thirteenth-century juridical writing such as *De Legibus* and *Britton*. Not only were these works themselves apparently widely disseminated and read among the learned and literate members of both the clerical and secular bureaucracies throughout the late-medieval period in England, they document and perhaps even provided the model for a legal debate over the relative sovereignty of the king, the law and his subjects that shaped political events from the mid-thirteenth century onward. To an extent, I think Middle English authors may have recognized the utility of Aristotelian political theory, particularly in its more republican formulations, because the functional model of the polity that it provides was already familiar, and perhaps more recognizably “English” than that provided elsewhere. To the extent, however, that English conceptions of royal

and individual sovereignty were not antagonistic, but rather complementary, English authors may have been just as interested in the king as a model political subject.

### I. Henry de Bracton and “King-Centered” Law

As discussed in the previous chapter, Ernst Kantorowicz identifies in Bracton’s *De Legibus et Consuetudinibus Angliae* a version of “law-centered” kingship in which “restriction and exaltation of the king seem evenly distributed . . . because they were interdependent; for his restriction alone produces also, and justifies, his exaltation: he is recognized as the ‘vicar of God’ only when and where he acts ‘God-like’ by submitting to the Law which is both his and God’s.” My intention here is to demonstrate how Bracton’s “law-centered” kingship creates a “king-centered” jurisprudence wherein the system of justice (“*ius*”),<sup>11</sup> which Bracton creates from both the laws (“*leges*”) and

11 Henry de Bracton, *On the Laws and Customs of England*, ed. George Woodbine, trans. Samuel Thorne (Cambridge: Harvard University Press, 1968-77) (Hereinafter cited in the text and notes as “*De Legibus*.” Throughout, citations to the *De Legibus* have been provided in the text, while citations to Woodbine’s and Thorne’s introductory and prefatory materials can be found in the footnotes.) In the text, Bracton’s use of the same terms (*lex* and *leges*) to describe both “whatever has been rightly decided and approved with the counsel and consent of the magnates and the general agreement of the res publica, the authority of the king or prince having first been added thereto” (II.19), and the entire body of English law, which also includes “usage” or “custom” that has not undergone this process of decision and authorization, tends to obscure the important conceptual distinction he maintains between the two. Given the difficulty of making this distinction in modern English, which gives us only “law” and “laws,” I think that we can forgive Bracton on this point. I have tried to clarify the conceptual distinction where it is important in my own discussion of Bracton’s text by using “law” or “laws,” “jurisprudence,” “system of justice,” and “law of the land” as well as Bracton’s own “laws and customs” when referring to the entire system, and “statutory law” or “common law” when referring specifically to those discrete branches of it. Bracton does on occasion use “*ius*” clearly to refer to the entire system of law and custom with which he treats, as in this passage:

INTENTIO auctoris est tractare de huiusmodi et instruere et docere omnes qui edoceri desiderant, qualiter et quo ordine lites et placita decidentur secundum *leges et consuetudines* Anglicanas, et de huiusmodi habere tractatum, ut doceantur et corrigantur errantes, puniantur contumaces. Item communis intentio est de *iure* scribere ut rudes efficiantur subtiles, subtiles subtiliores, et homines mali efficiantur boni et boni meliores, tum metu poenarum tum exhortatione praemiorum, iuxta illud,

Oderunt peccare boni virtutis amore,  
Oderunt peccare mali formidine poenae. (II.20, emphasis mine)

The intention of the author is to treat of such matters and to instruct and teach all who desire to be taught what action lies and what writ, [and], according as the plea is real or personal, how and by

customs (“*consuetudines*”) of the realm, becomes a mechanism through which sovereignty is transmitted to king and--here is the important point--subjects alike. What results is a model of the polity that creates itself in the process of creating and applying the laws and customs that govern it. It is a polity that comprises the entire jurisdiction of England, where unwritten law and custom prevail, as distinct from “almost all [other] lands [where] use is made of the *leges* and the *ius scriptum*” (II.19).<sup>12</sup> It nonetheless acknowledges and accommodates local difference through the incorporation of the “*consuetudines*” by which those localities are governed and distinguished into the general law of the land. Finally, and perhaps most significantly, it is a polity in which the idea of self-governance plays a prominent role.

#### A. History and Authorship of *De Legibus et Consuetudinibus Angliae*

*De Legibus et Consuetudinibus Angliae* was composed during the first half of the thirteenth century, was most likely complete by 1256 and in circulation by 1277.<sup>13</sup> Of the continental works mentioned above, only the *Secretum Secretorum* has an earlier composition date, with the Arabic original dating to the tenth century and the first Latin translation to circa 1150.<sup>14</sup> The text as it has come down to us survives in at least forty-

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what procedure, [by suing and proving, defending and excepting, replicating and the like,] suits and pleas are decided according to English laws and customs, and [the art] of preparing records and enrollments according to what is alleged and denied, and to treat of these so that those who err may be instructed and set right and those who obstinately do otherwise punished. The general intention is to treat of law that the unskilled may be made expert, the expert more expert, the bad good and the good better, as well by the fear of punishment as by the hope of reward, according to this [verse]:

Good men hate to err from love of virtue;  
The wicked from fear of pain.

Here, Bracton makes it clear that the “*ius*” from which his treatise has been compiled and in which those who desire it are to be instructed comprises both “*leges et consuetudines*”.

12 Latin: Cum autem fere in omnibus regionibus utatur legibus et iure scripto, sola Anglia usa est in suis finibus iure non scripto et consuetudine.

13 Thorne, *De Legibus*, I.xl-xlii

14 Giles of Rome’s *De Regimine Principum* dates to circa 1280. The *Chessbook* of Jacob de Cessolis to

six manuscripts, most of which George Woodbine, who produced the most authoritative modern edition of Bracton, dates to the first half of the fourteenth century.<sup>15</sup> It has been attributed to Henry de Bracton (d. 1268) (or “Bratton” as he was most likely known to his contemporaries), an ecclesiastic who eventually became canon of Well’s Cathedral and a justice of the *coram rege*. At the outset, I must note the question of authorship presents some difficulty. Not only do many, though not all, scholars now dispute the long-standing attribution of the text to Bracton, a great deal of controversy has always existed regarding what material can and cannot be described as the work of the text’s original author. Because both of these issues are relevant to my own argument regarding Bracton’s status as a medieval *auctor*, I want to take some space to address them here.

Samuel Thorne and Paul Brand both put forth persuasive evidence that the bulk of the text was originally composed by another author (or perhaps authors). Thorne argues that the text’s first author was William of Raleigh (along with one or more of his clerks) who was Bracton’s mentor and himself a former clerk of the renowned justice Martin Pattishall, and that Bracton, who had acquired the text sometime between 1234-45, merely revised and updated the treatise, occasionally interpolating or appending new material.<sup>16</sup> The exemplars that survive suggest they were derived from an imperfect “original” created by a posthumous redactor from Bracton’s own copy of the work as it existed at his death, complete with Bracton’s marginalia updating and clarifying the main text. In discussing the problem of the *addiciones*, which he defines as “any passage,

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circa 1290. Even the *De Regimine Principum* of Thomas Aquinas is roughly contemporary with Bracton, having a composition date of circa 1267.

15 Woodbine, *De Legibus*, I.1-3.

16 Paul Brand, “Bratton, Henry of (d. 1268),” *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), online ed., Jan 2008 [<http://www.oxforddnb.com.proxy-remote.galib.uga.edu/view/article/3163>, accessed 29 Oct 2009]. Thorne, *De Legibus*, III.x1-xlii.

irrespective of its length, which the manuscripts prove was added to Bracton's original draft of his work,"<sup>17</sup> Woodbine asserts:

Nothing is more plainly shown by the manuscripts than that after writing out the first copy of his treatise Bracton kept adding thereto. The definition of an "original draft" must not be made too rigid. As has already been suggested, the assumption which will best explain the peculiarities of the different text traditions is that a first copy, plus its marginalia added by Bracton, was copied as a new text, and that in this second copy Bracton wrote other marginalia, both the first and second copies being used as exemplars for later manuscripts. But whether Bracton worked over one or more than one copy of his treatise would be immaterial as far as the *addiciones* are concerned, were it not for the fact that many of the owners or users of the manuscript descendants of the author's own copy followed his example and kept working over the text to suit their own ideas, and to keep it up to date, making corrections and adding marginal passages. It is these later additions which have so complicated the problem as to make it almost too difficult to be solved. The discovery of additional passages is easy enough; the determination as to whether or not a particular *addicio* was written by Bracton is often impossible.<sup>18</sup>

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17 Woodbine, *De Legibus*, I.321.

18 *Ibid.*, I.321-22.

For the most part, according to Woodbine, the *addiciones* share a set of common traits: “The typical *addicio* is a passage absent from some manuscripts, found at different places in others, marked as additional by others, and marginal in yet others.” Although he is careful to note that “[n]ot all the *addiciones* combine all of these features,” he goes on to affirm, “in general these are the characteristic marks of an *addicio* which are revealed by a comparison of the manuscripts.”<sup>19</sup>

Thorne, who produced the most widely-used English translation of *De Legibus* from an edited version of Woodbine’s text, believes many of the *addiciones* can in fact be attributed to the original author or authors and describes the process of the book’s composition as the preparation of a “long, repetitious, and somewhat out of date book for publication,” that “needed the firm hand of an editor more than most.” According to Thorne, *De Legibus*’s firm-handed editor, “did not take everything it contained; indeed, more might well have been eliminated without loss. He deleted large-scale repetitive passages, eliminated the confusing marginal additions by incorporating most of them, and turned a tangled and untidy manuscript into one which, whatever its internal difficulties and contradictions, could be put in the hands of a copyist.”<sup>20</sup> Regarding *addiciones* that exist as marginalia in some manuscripts but have been incorporated into the continuous body of the text in others, Thorne maintains:

We would naturally expect additions to have been in the margin at first and taken into the text afterwards, that is, to be marginal in earlier manuscripts and in the texts of later. Since the text of OA is earlier and

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<sup>19</sup> Ibid., I.322.

<sup>20</sup> Thorne, *De Legibus*, III.xlv.

closer to the original than that of any other extant manuscript . . . and the additions are in its margin, that would seem to be their first appearance. Entered there at one time, in one or at most two hands . . ., they cannot, at this stage in the life of the *De Legibus* be anything but portions of the treatise omitted when the text proper was constructed. There then are more additions at the start than there are later on . . ., an apparent absurdity if they are afterthoughts. But they cannot be such if the manuscripts with the most marginal additions are the earliest and those with the fewest the latest, and if, as will appear, the subject matter of the additions is not recent and newly added but old and present from the beginning.<sup>21</sup>

Because the *addiciones* were in fact part of Bracton's text from the outset, as Thorne concludes, "[i]t is not surprising, therefore, that the *addiciones*, passages omitted from the treatise and then reintroduced, cannot be distinguished from the text in language form or content."<sup>22</sup>

Without attempting to settle the question of authorship, I think that we can perhaps draw a few conclusions of our own based upon the work of both Woodbine and Thorne. The first conclusion we might draw is the one I have already noted, that the continuous text as we have it today is most likely not the text Henry de Bracton produced during his lifetime. Nevertheless, to the extent the manuscript evidence confirms a particular *addicio* circulated in at least a majority of the medieval witnesses, particularly where it is incorporated into the main body of the text, we can infer that it was considered

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21 Ibid., III.xliv.

22 Ibid.

“authoritative” by many medieval readers and copyists. Second, for those *addiciones* that seem more likely to have been contributed by the readers themselves, they provide evidence that *De Legibus* continued to be relevant as a manual of practice, which needed to be updated and clarified periodically to maintain its utility, until well into the fourteenth century. Spurious *addiciones* also open a window onto how medieval readers and annotators may have interpreted and applied the book’s content.<sup>23</sup>

In addition to the unique questions raised by the particular circumstances of its composition and transmission, *De Legibus* also presents the usual issues we confront whenever we are discussing medieval “authorship.” Careful study by a number of experts on Roman (civilian) law has revealed that in addition to Azo’s twelfth-century *Summa Codicis*, large sections of which are copied verbatim into *De Legibus*, the text’s author also appropriated a significant amount of material from the *Digest* as well as Justinian’s *Code*.<sup>24</sup> Yet in spite of this heavy reliance upon civilian authorities, the composition of *De Legibus* is clearly motivated by the author’s desire to describe English law, using a vocabulary that he has synthesized from his Roman sources. In his preface,

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23 A similar methodological perspective has been taken by scholars who have considered spurious work attributed to Chaucer, Lydgate and Rolle, among others. *The Canterbury Tales* as a case in point offers some guidance in the use we can make of non-authorial interventions when attempting to understand medieval readership and their interpretations of a particular text. For example, the question of whether or not Chaucer’s Plowman was a Wycliffite figure seems to have vexed his later medieval and early-modern readers as well as modern scholars. Some medieval interpolators seem to have intervened in an attempt to insulate Chaucer’s text from charges of heterodoxy, or perhaps to inject an additional layer of irony (see my discussion of Hoccleve’s “orthodoxy” in chapter five) by inserting Hoccleve’s “Miracle of the Virgin” as the Plowman’s tale. In contrast, an early-modern edition of the *Canterbury Tales* has the Plowman reciting an early fifteenth-century anti-fraternal piece that clearly reflects Wycliffite sympathies. See, e.g., John M. Bowers, “The Ploughman’s Tale: Introduction,” in *The Canterbury Tales: Fifteenth-Century Continuations and Additions* (Kalamazoo: Medieval Institute Publications, 1992), 23. In short, manuscript evidence is relevant on a number of issues, of which the question of original authorship is only one. Since I am less interested in the question of “who wrote what” than in determining “what circulated when and how widely,” the approach to the manuscript evidence I have adopted here strikes me as a sound one.

24 Thorne, *De Legibus*, I.xxxvi.

he acknowledges the differences that distinguish the common law from the civil code, and even claims that England is unique in its use of the former:

Though in almost all lands use is made of the *leges* and the *jus scriptum*, England alone uses unwritten law and custom. There law derives from nothing written [but] from what usage has approved. Nevertheless, it will not be absurd to call English laws *leges*, though they are unwritten, since whatever has been rightly decided and approved with the counsel and consent of the magnates and the general agreement of the *res publica*, the authority of the king or prince having first been added thereto, has the force of law. England has as well many local customs, varying from place to place, for the English have many things by custom which they do not have by law, as in the various counties, cities, boroughs and vills, where it will always be necessary to learn what the custom of the place is and how those who allege it use it. (II.19)<sup>25</sup>

Although *De Legibus*'s author drew upon Roman sources for the authority of his text, its documented utility to jurists and practitioners derived from his incorporation of legal matter taken from the huge collection of English court precedent to which he had somehow gained access.<sup>26</sup> Further, as Thorne has noted, although its author used the

25 Latin: Cum autem fere in omnibus regionibus utatur legibus et iure scripto, sola Anglia usa est in suis finibus iure non scripto et consuetudine. In ea quidem ex non scripto ius venit quod usus comprobavit. Sed non erit absurdum leges Anglicanas licet non scriptas leges appellare, cum legis vigorem habeat quidquid de consilio et consensu magnatum et rei publicæ communi sponse, auctoritate regis sive principis præcedente, iuste fuerit definitum et approbatum. Sunt etiam in Anglia consuetudines plures et diversæ secundum diversitatem locorum. Habent enim Anglici plura ex consuetudine quæ non habent ex lege, sicut in diversis comitatibus, civitatibus, burgis et villis, ubi semper inquirendum erit quæ sit illius loci consuetudo et qualiter utantur consuetudine qui consuetudines allegant.

26 Henry de Bracton, *Bracton's Note Book: a collection of cases decided in the King's Courts during the Reign of Henry the Third / annotated by a lawyer of that time, seemingly by Henry of Bratton*, ed. F.W. Maitland (Buffalo, NY: William S. Hein & Co., 1999), 58-61. Maitland's attribution of the *Note Book*

form of the *Digest* as a model for *De Legibus*, his organization of the matter he borrowed from civilian legal authorities owes almost nothing to that work or any other:

There is, in fact, no discernible Institutional framework, nor anything to suggest that Bracton ever contemplated a *summa* in that form. That he knew the Institutes well and often borrowed from that work is clear, but his borrowings from it, as from Tancred, the Digest, and his other Roman and canon law authorities, serve the purposes of a treatise on English law, arranged in its own way. . . . It will be readily agreed that this is not the work of a man modeling his book on the scheme of the Institutes, but of one borrowing material from the Institutes to fit a scheme of his own.<sup>27</sup>

Thorne then goes on to note a number of places where the arrangement of Roman law material follows a clear pattern dictated by the English system of legal actions and the relationships and distinctions that medieval English jurists and practitioners made among them.

For the sake of convenience, I attribute authorship of the text to Bracton since that is the familiar attribution deployed by legal practitioners and scholars to this day, noting--when such details are significant for both readers of *De Legibus* and for my own argument--where quoted material may be a non-authorial *addicio* and/or where it can be traced back to one of the author's sources.<sup>28</sup> This way of thinking about "what Bracton

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to Bracton, along with its connection to *De Legibus* have been disputed, see, e.g. Thorne, *De Legibus*, III.xxxiv-xxxvi. His assessment of the quality and quantity of legal authority cited by Bracton in *De Legibus*, however, remains sound.

<sup>27</sup> Thorne, *De Legibus*, I.xliv.

<sup>28</sup> The original attribution of the work to Bracton dates to the last-quarter of the thirteenth century. Paul Brand explains:

The ascription of the treatise to Henry of Bratton can be traced back to within a few years of his

wrote” is, I think, in keeping with medieval notions of authority and attribution that emphasize the role authors played as the “sources” as well as the “creators” of the material and ideas contained in the texts they composed and transmitted. It also acknowledges Bracton’s status as a model for both the medieval readers and annotators of *De Legibus*, and those later medieval writers who consciously and explicitly attempted to position their own juridical writing within a tradition that Bracton was seen as having established. After *De Legibus*, three more English legal treatises were produced during the last quarter of the thirteenth century. The most important of these was *Britton*. The two others are in Latin, one being the work commonly known as *Fleta* and the other a true “abridgment” of *De Legibus* by Gilbert de Thornton, who was Chief Justice of the King’s Bench from 1289-95.<sup>29</sup> All of them derive, to one extent or another, from Bracton’s *De Legibus* and the two Latin treatises often reprint large sections of Bracton’s text verbatim, omitting the citations to civilian authorities that Bracton included in his own text. In a process much like the one that A. J. Minnis describes in his seminal study of medieval authorship, Bracton seems to have quickly supplanted the *auctores* upon whom he himself relies, becoming for his medieval readers an *auctor* in his own right.<sup>30</sup>

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death. The first folio of one of the earliest surviving manuscripts of Bracton has an inscription recording that this is “beginning of the book of lord H. de Bratton” and early in 1278 Robert of Scarborough acknowledged having received a loan of “the book which lord Henry of Bratton composed,” evidently a copy of the treatise. When the book found its way into print in 1569, the unknown editor (T. N.) not only ascribed authorship of the treatise to Bratton, but also adopted a reading of one passage near the beginning of the treatise (found only in a minority of surviving manuscripts) in which the authorial “I” was extended to “I Henry of Bratton.” The same anonymous editor also transformed Bratton’s surname into “Bracton,” the name by which both justice and book have generally been known since.

Brand, *Oxford Dictionary of Nat’l Biography*.

29 F.M. Nichols, ed. and trans., *Britton: The French Text Carefully Revised With an English Translation* (Holmes Beach, FL: W.W. Gaunt, 1983), I.xxv.

30 A.J. Minnis, *Medieval Theory of Authorship: Scholastic Literary Attitudes in the Later Middle Ages* (London: Scholar Press, 1984), 190-205.

Bracton thus provides us with an early example of the English literature of sovereignty as well as a primary “source” for later English efforts in that genre.

### **B. Law, King and Polity in Bracton**

Bracton begins the *De Legibus* with a brief discussion of “the needs of a king”:

To rule well a king requires two things, arms and laws, that by them both times of war and of peace may rightly be ordered. For each stands in need of the other, that the achievement of arms be conserved [by the laws], the laws themselves preserved by the support of arms. If arms fail against hostile and unsubdued enemies, then will the realm be without defence; if laws fail, justice will be extirpated; nor will there be any man to render just judgment. (II.19)<sup>31</sup>

In these first few lines, Bracton offers a model of the polity that will shape his discussion of sovereignty throughout the text. The realm of England is a geographic area that must be guarded against “hostile and unsubdued enemies,” but it is also a territory governed by a given set of laws and customs that Bracton goes on to define as unique among all other systems. On the one hand, law, like military force, is the king’s tool, to be used by him for preserving the peace of the realm. On the other hand, it is a necessary precursor for the existence of the realm and hence, the king in the first place. Where the realm without

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31 Latin: Quae sunt regae necessaria: In rege qui recte regit necessaria sunt duo hæc, arma videlicet et leges, quibus utrumque tempus bellorum et pacis recte possit gubernari. Utrumque enim istorum alterius indiget auxilio, quo tam res militaris possit esse in tuto, quam ipsæ leges armorum podio sint servatæ. Si autem arma defecerint contra hostes rebelles et indomitos, sic erit regnum indefensum: si autem leges, sic exterminabitur iustitia, nec erit qui iustum faciat iudicium.

The substance of the text regarding the relationship between force and justice and their utility to the king, Bracton has drawn from Azo and Glanville. The particular formulation regarding the king’s relationship to the law, though, is Bracton’s own.

an army is simply left defenseless, a realm without law ceases to be, leaving no man to “render just judgment.” Further, as noted earlier, the law of the land comprehends and orders a jurisdiction, controlled by local custom, that is not necessarily dependent upon the king for its operation.

Through the law, the realm becomes governable, and sovereignty, the capacity for governance, is conferred by the law upon the king and also his subjects. Regarding the utility of his treatise, Bracton has this to say:

The utility [of this work] is that it ennobles apprentices and doubles their honours and profits and enables them to rule in the realm and sit in the royal chamber, on the very seat of the king, on the throne of God, so to speak, judging tribes and nations, plaintiffs and defendants, in lordly order, in the place of the king, as though in the place of Jesus Christ, since the king is God's vicar. For judgments are not made by man but by God, which is why the heart of a king who rules well is said to be in the hand of God. (II.20)<sup>32</sup>

As Kantorowicz notes, a large portion of this passage is copied verbatim from Azo's *Summa*. Bracton has, however, elaborated on the authority conferred by knowledge of the law by placing the apprentices ennobled through perusal of his work, not just in the royal chamber, but upon the “very seat of the king, on the throne of God, so to speak,” so that they not only “judge tribes and nations, plaintiffs and defendants, in lordly order,”

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<sup>32</sup> Latin: *Utilitas autem est quia nobilem addiscentes et honores conduplicat et profectus et facit eos principari in regno et sedere in aula regia et in sede ipsius regis quasi in throno dei, tribus et nationes, actores et reos, ordine dominabili iudicantes, vice regis quasi vice Ihesu Christi, cum rex sit vicarius dei. Iudicia enim non sunt hominis sed dei, et ideo cor regis bene regentis dicitur esse in manu dei.*

they do so “in the place of the king, as though in the place of Jesus Christ.”<sup>33</sup> According to Bracton, men trained in the law exercise the same sort of vicarious sovereignty that the king does. Through the law, they come to govern themselves on behalf of, or just as the king who governs them. The relationship between the king and his subjects mirrors the relationship between God and the king, and the law is the means through which sovereignty is transmitted throughout the realm.

In a passage that combines language drawn from Azo and Justinian, and also shows parallels with William of Drogheda’s *Summa Aurea*, Bracton states: “The end of this work is to quiet disputes and avert wrongdoing, that peace and justice may be preserved in the realm. It must be set under ethics, moral science, as it were, since it treats of customary principles of behaviour.” (II.20)<sup>34</sup> In synthesizing his knowledge of English and Roman law, Bracton has not simply recast the former into the mold of the latter, or vice versa. Rather, for Bracton, the law derives from many sources, parliamentary statutes, the decisions reached in civil and criminal actions, customs and morals. By linking “law” (*lex*) with justice (*ius*), precedent (*praecedent*), custom (*consuetudines*), and morals (*mores*) throughout the text, he allows the term to accrete a multiplicity of connotations that express its identity as something more than a collection of statutes or causes of action. Even in its most codified form, as “whatever has been rightly decided and approved with the counsel and consent of the magnates and the general agreement of the *res publica*, the authority of the king or prince having first been

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33 Ernst Kantorowicz, *The King’s Two Bodies* (Princeton: Princeton University Press, 1997), 160.

34 Latin: Item finis huius rei est ut sopiantur iurgia et vitia propulsentur, et ut in regno conservetur pax et iustitia. Ethicæ vero supponitur quasi morali scientiæ quia tractat de moribus.

added thereto,” the law remains an expression of a shared and time-tested morality that connects lords and kings with the rest of the *res publica* of England.

Bracton’s development of the concept of *lex* within his treatise is inextricably bound up with his analysis of the problem with which Kantorowicz was centrally concerned, that is the nature of the king’s relationship to the law. Before turning to Kantorowicz, though, I want to take a moment to highlight one of the main features that distinguishes Bracton’s treatment of the polity from that offered in Giles’s *De Regimine* or even John of Salisbury’s twelfth-century *Policraticus* and marks one of his primary contributions to the English literature of sovereignty. Where the other works take up matters of law in the process of addressing the question of how eminent men should govern themselves,<sup>35</sup> Bracton subsumes the discussion of self-governance within an exposition of the law that governs everyone. By doing so, Bracton deploys a form of exemplarity that seems to track very closely with the legal operation of precedent. The exemplarity of kings, clerics and other great men in the *De Regimine* and *Policraticus* stems in part from their distinctiveness, their elevation above or separation from the rank-and-file commons. *De Regimine* and *Policraticus* begin with a prince among men, and from there draw analogies that connect him with those of lesser status. Bracton, however, reconfigures the polity so that the example set by the king becomes laterally,<sup>36</sup> as opposed

35 Giles addresses the *De Regimine* to Prince Phillip, soon to become Phillip the Fair of France. John of Salisbury dedicates the *Policraticus* to Thomas Becket, king’s chancellor and future Archbishop of Canterbury.

36 In the context of discussing my own work with me, Vincent Gillespie was the first one to offer “lateral visibility” as a way of describing the operation of exempla within the Middle English discourse of self-governance. I later discovered that Jenny Adams in her book *Power Play: The Literature and Politics of Chess in the Late Middle Ages*, also describes “lateral visibility” and its significance in Jacob de Cessolis’s *Chessbook* (36-41). De Cessolis wrote at least ten years after Bracton and more than a century after one of Bracton’s primary *auctores*, Azo. Given the fact that Bracton’s influence appears to have spread quickly and widely, I think that the idea of lateral visibility may already have been an established feature of the English literature of sovereignty by the time the *Chessbook* began to circulate

to hierarchically, visible as an operation of law, as opposed to station or office. He starts out with bondsmen (II.31), freedmen (II.31), children (II.31), men (II.31), women (II.31) and hermaphrodites (II.32),<sup>37</sup> and only after treating with these fundamental categories does he turn to a discussion of the offices, or estates of men. The king is indeed a special case, but his utility as an exemplum stems from how he is nevertheless still like the least of those who are subject to him.

Traditional mirrors for princes address specific, royal or prominent persons in order to explore the problems of government associated with the estate or office that person held. Bracton, however, uses the office to get at a different way of thinking about the “person” who occupies it as yet another legal or political abstraction. The “public law” “which pertains to the common welfare of the Roman *res publica* and deals with religion, priests and public officers” concerns the manner in which offices and officers, including those of the church, are created for the public benefit.<sup>38</sup> The “private law,” which “pertains primarily to the welfare of individuals and secondarily to the *res publica*”

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widely in England.

37 With regard to the hermaphrodite, Bracton notes only that, “A hermaphrodite is classed with male or female according to the predominance of the sexual organs (“HERMAPHRODITUS comparatur masculino tantum vel feminæ tantum secundum prævalescentiam sexus incalescentis”) (II.32). Thus even within the classes “male” and “female,” some variability and instability may exist.

38 Est autem ius publicum quod ad statum rei Romanæ pertinet, et consistit in sacris, in sacerdotibus et in magistratibus. Interest enim rei publicæ ut habeat ecclesias in quibus homines petant veniam suorum peccatorum. Expedi enim esse sacerdotes, a quibus de peccatis nostris pœnitentiam accipiamus, et qui orent pro nobis et dei nobis adiutorium adquirant et providentiam. Expedi etiam magistratus rei publicæ constitui, quia per eos qui iuri dicendo præsent effectus rei accipitur. Parum est enim ius in civitate esse nisi sint qui possint iura regere.

There is public law, which pertains to the common welfare of the Roman *res publica* and deals with religion, priests and public officers. For it is in the interest of the *res publica* that it have churches in which men may seek pardon for their sins. There must also be priests, from whom we may receive penance for our sins, who may pray on our behalf and obtain for us the aid of God and His providence. The public interest also requires that there be magistrates appointed in the state, for through such persons, men pre-eminent in the doing of justice, the law is given effect. For it is of little value that law exists in the state if there are none to administer it. (II.25-26)

(II.26), governs personal causes of action. Although he distinguishes between them, Bracton also highlights how both branches require a delicate balancing act between personal and social good: “Hence we say that it is in the public interest that no one misuse his own. And so conversely, that which is primarily public looks secondarily to the welfare of individuals.” (II.26) The Bractonian polity comprises essentially private individuals who become public actors through the operation of the law--both “public” and “private”--governing the realm. When Bracton turns to the king and the problem of sovereignty that he presents, he does so in the context of discussing the general category of “persons” and the many ways in which the “whole of the law,” which has been variously defined as “natural law,” (II.25) the *ius gentium*, (II.27) the civil law (II.27) and “English laws and customs,” treats with “persons” as opposed to “things” and “actions” (II.29). The categories of persons that he enumerates, rather than compartmentalizing men according to function, instead represent how one “person” or individual can occupy multiple, potentially overlapping stations defined by factors such as age, sex, marital status, etc., in addition to office as he or she progresses through life and becomes integrated into the fabric of society.

Now we turn to what is perhaps the most widely-quoted passage of *De Legibus* and Kantorowicz’s exposition of it:

The king has no equal within his realm, [*Subjects cannot be the equals of the ruler, because he would thereby lose his rule, since equal can have no authority over equal.*] nor a fortiori a superior, because he would then be subject to those subjected to him. The king must not be under man but

under God and under the law, because law makes the king, [*Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power.*] for there is no rex where will rules rather than lex. Since he is the vicar of God, [*And that he ought to be under the law appears clearly in the analogy of Jesus Christ, whose vicegerent on earth he is, for though many ways were open to Him for his ineffable redemption of the human race, the true mercy of God chose this most powerful way to destroy the devil's work, he would use not the power of force but the reason of justice. Thus he willed himself to be under the law that he might redeem those who live under it. For He did not wish to use force but judgment. And in that same way the Blessed Mother of God, the Virgin Mary, Mother of our Lord, who by an extraordinary privilege was above law, nevertheless, in order to show an example of humility, did not refuse to be subjected to established laws. Let the king, therefore, do the same, lest his power remain unbridled.*] There ought to be no one in his kingdom who surpasses him in the doing of justice, but he ought to be the last, or almost so, to receive it, when he is plaintiff. If it is asked of him, since no writ runs against him there will [only] be opportunity for a petition, that he correct and amend his act; if he does not, it is punishment enough for him that he await God's vengeance. No one may presume to question his acts, much less contravene them. (II.33)<sup>39</sup>

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39 Latin: *Parem autem non habet rex in regno suo, quia sic amitteret præceptum, cum par in parem non habeat imperium. Item nec multo fortius superiorem, neque potentiorem habere debet, quia sic esset inferior sibi subiectis, et inferiores pares esse non possunt potentioribus. Ipse autem rex non debet esse sub homine sed sub deo et sub lege, quia lex facit regem. Attribuat igitur rex legi, quod lex attribuit ei,*

In this passage, Bracton gives his fullest description of what Kantorowicz has described as “law-centered” kingship. According to Kantorowicz, for Bracton, “[t]he king, though peerless as God’s vicar, is yet bound by the Law, and he shall be like the least of his subjects before the judge--of course, only when being plaintiff, since it belonged to his prerogative that there lies no action against the king”:

Bracton’s method is always the same: exaltation through limitation, the limitation itself following from the king’s exaltation, from his vicariate of God, which the king would jeopardize were he not limited and bound by Law. This method may be called dialectical. It relies upon the logic that there cannot be a genuine “Prerogative” on the one hand without submission to the Law on the other, and that a legal status above the Law could only exist if there existed also a legal status under the Law. The Law-abiding king, therefore, becomes *ipso facto* a “Vicar of God”; he becomes a legislator (*auctor iuris*) above the Law and according to the Law; and he becomes the responsible expounder of the existing laws and of royal actions which may not be disputed by either officials or private

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videlicet dominationem et potestatem. Non est enim rex ubi dominatur voluntas et non lex. Et quod sub lege esse debeat, cum sit dei vicarius, evidenter apparet ad similitudinem Ihesu Christi, cuius vices gerit in terris. Quia verax dei misericordia, cum ad recuperandum humanum genus ineffabiliter ei multa suppeterent, hanc potissimam elegit viam, qua ad destruendum opus diaboli non virtute uteretur potentiae sed iustitiae ratione. Et sic esse voluit sub lege, ut eos qui sub lege erant redimeret. Noluit enim uti viribus, sed iudicio. Sic etiam beata dei genetrix, virgo Maria, mater domini, quae singulari privilegio supra legem fuit pro ostendendo tamen humilitatis exemplo legalibus subdi non refugit institutis. Sic ergo rex, ne potestas sua maneat infrenata. Igitur non debet esse maior eo in regni suo in exhibitione iuris, minimus autem esse debet, vel quasi, in iudicio suscipiendo si petat. Si autem ab eo petatur, cum breve non currat contra ipsum, locus erit supplicationi, quod factum suum corrigat et emendet, quod quidem si non fecerit, satis sufficit ei ad poenam, quod deum expectet ultorem. Nemo quidem de factis suis praesumat disputare, nec multo fortius contra factum suum venire.

persons. For were the king not Law-abiding, he were not a king at all but a tyrant.<sup>40</sup>

Regarding the text of the key passage from Bracton, Thorne believes that the italicized, bracketed material originated as interlinear and supplementary additions by Bracton or perhaps a later annotator, which were later drawn into the main body of the text.

Woodbine, however, based on his own assessment of the manuscript evidence, considered it to be part of the original text. Regardless of how the passage as we now have it came into being, collation of the manuscript witnesses by both Woodbine and Thorne confirms that this is its substance as it most likely circulated in most of the medieval copies of *De Legibus*. Further, the text that both Woodbine and Thorne consider authorial is sufficient, I believe, to support the key point Kantorowicz makes. That is, namely, that in the Bractonian polity, the king is a creature of the law who, in abiding by its mandates even though he is beyond the reach of its jurisdiction, invests the law and hence his own office with the legitimacy both require in order to be instruments of just governance.

Kantorowicz and his thesis have not escaped the critique of legal historians expert in both medieval and Roman law. For the most part, Kantorowicz's critics have faulted him for giving Bracton too much credit, for thinking that Bracton could have understood and grappled with the potential contradictions inherent in his conception of the king's relationship to the law. For example, Ewart Lewis argues the dialectic that Kantorowicz reads in *De Legibus* is actually just a "gap in [Bracton's] conception of the law itself," a gap "that accounts for his ability to explain so very easily that the *auctor iuris*, in spite of *q.[uod] p.[rincipi] p.[lacuit]*, can do nothing except in accordance with *ius*":

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40 Kantorowicz, *The King's Two Bodies* 157.

I have argued that the key to Bracton's conception of kingship is the formula he himself used, "*non sub homine, sed sub deo et sub lege*," and that nowhere, unless in one ambiguous passage, did he even suggest that a king might also be above the law. His insistence that law was the limit and criterion of royal power was not novel, but it was re-enforced, I think, by his professional reverence for the law, in its most concrete forms, as the standard by which all rights are measured and apart from which justice and judgment are meaningless: "*si defecerint leges, sic exterminabitur iustitia, nec erit qui iustum faciat iudicium*." Thus, he gathered arguments to emphasize that the function of a king, as the earthly representative of God's justice, required his conformity with law. At the same time, he sharply stated other inferences, also not wholly novel, from the king's role: he must be superior to his subjects; powers related to justice and peace were in principle inseparable from the crown; the king's conformity with law could be attained only through his self-restraint. The logic of these inferences was, of course, the logic of any concept of sovereignty; but the sovereignty recognized by Bracton was essentially judicial and executive; he did not set the king above the law.<sup>41</sup>

Because Bracton viewed the king as an "executor" or "mouthpiece" of the law, Lewis argues, he could "describe the *leges Anglicanae* in terms of requisite procedures," but lacked the "sophistication" to consider "these in terms of power." According to Lewis, Bracton did not acknowledge the existence of a "will above the law," such that "the

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41 Ewart Lewis, "King Above Law? 'Quod Principi Placuit' in Bracton," *Speculum* 39.2 (1964): 268-69.

*placet* that authorizes the law tends to connote a ‘pleasure’ that determines what the law shall be.”<sup>42</sup>

In spite of Lewis’s careful and well-documented textual analysis of both Bracton and his sources, I find his argument puzzling for two reasons. First, it tends to overlook how, throughout Bracton’s treatise, the law is what turns the individual, or private, will into an instrument of the public good by taking the place of purely personal preference in all judgments: “And though one is fit to judge and to be made a judge, let each one take care for himself lest, by judging perversely and against the laws, because of prayer or price, for the advantage of a temporary and insignificant gain, he dare to bring upon himself sorrow and lamentation everlasting” (II.21). In confronting the king’s role as a both an author as well as an administrator of justice, Bracton confronts one formulation of a problem that he will return to again and again throughout his discussion of what constitutes *lex* and *ius*.<sup>43</sup> The king, as the first among his judges, becomes an example for those who would sit “on the very seat of the king,” judging their fellow Englishmen. Thus Bracton’s discussion of how the king’s will should be bound by the law in fact reformulates and restates the proposition with which he begins, that those who presume to judge must follow the law, not their own personal pleasure. Clearly Bracton understood the potential contradiction between the statements, “What pleases the prince has the power of law,”<sup>44</sup> and “There is no king where will rules rather than law.”<sup>45</sup> In the case of the king, Bracton avoids the potential conflict between personal desire and the

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42 Ibid., 269.

43 For a more detailed discussion of how this “problem of sovereignty” informs the structure of *De Legibus* as a whole, see my discussion in chapter four, pp. 167-76, *infra*.

44 “Quod principi placet legis habet vigorem.” (II.305)

45 “Non est enim rex ubi dominatur voluntas et non lex.” (II.33)

demands of justice as he has elsewhere, by subordinating the individual will to the demands of the public good as embodied in the law of the realm. Kantorowicz's key insight regarding Bracton is not that Bracton places the king above the law, but rather that Bracton offers a definition of kingship that is not just "law-centered" but "law-bound." In submitting to the law of the realm and acknowledging its ultimate sovereignty, the king strengthens that law as the instrumentality that authorizes his own office, and incidentally every other office, right and prohibition that it has created.

This brings me to the second problem that I see with Lewis's analysis. In his discussion of Bracton, Lewis treats Bracton's theory of sovereignty as if it were a universally accepted idea that simply reflects relatively stable English attitudes regarding the king and the scope of royal prerogative in the late-thirteenth century. He does not consider how the formulation of sovereignty that we find in *De Legibus* enabled new metaphorical and theoretical relations between the king and his subjects within the English polity as Bracton imagines it. Nor does Lewis acknowledge its practical consequences for those involved in and affected by the political struggles between the king and the baronage that influenced English politics throughout the late-medieval period.

### **C. Bracton and the Late-Medieval Politics of Sovereignty**

A brief study of the history of the English coronation oath quickly reveals that, rather than simply restating received truisms regarding medieval kings and kingship, Bracton develops a legal theory of sovereignty that acknowledges and attempts to resolve an ongoing debate regarding the duty of the English king to maintain and observe English

law. As part of his long discussion of “jurisdiction,” that elusive concept whereby judgments acquire their validity and which necessarily includes the power of coercion so that judgments may be executed, Bracton states that the king “in matters pertaining to the realm . . . ought to act as judge . . . for to that he is held bound by virtue of his oath” (II.304).<sup>46</sup> Bracton then goes on to offer an accurate summary of that oath as it was set forth in the coronation office prior to 1308. As H. G. Richardson persuasively argues in a seminal article, the exact wording of the oath probably varied from the Latin text given in the coronation office, since the oath was delivered in the vernacular, first in French and later in English, starting at least as early as the twelfth-century. In substance, though, during Bracton’s time it consisted of three promises:

In the first place, that to the utmost of his power he will employ his might to secure and will enjoin that true peace shall be maintained for the church of God and all Christian people throughout his reign. Secondly, that he will forbid rapacity to his subjects of all degrees. Thirdly, that he will cause all judgments to be given with equity and mercy, so that he may himself be shown the mercy of a clement and merciful God, in order that by his justice all men may enjoy unbroken peace. (II.304)<sup>47</sup>

Through an examination of documentary evidence, Richardson also demonstrates that Henry III and Edward I most likely gave a fourth promise, required by canon law

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<sup>46</sup> Note how Bracton establishes and relies upon a metaphorical economy wherein a king can be exchanged for a judge and vice versa. “Judge” becomes a metonymy for the duties of the king, and “king” becomes a kind of metonymy for the power and authority exercised by the judge.

<sup>47</sup> Latin: *Imprimis se esse præcepturum et pro viribus opem impensurum ut ecclesiæ dei et omni populo christiano vera pax omni suo tempore observetur. Secundo, ut rapacitates et omnes iniquitates omnibus gradibus interdicat. Tertio, ut in omnibus iudiciis æquitatem præcipiat et misericordiam, ut indulgeat ei suam misericordiam clemens et misericors deus, et ut per iustitiam suam firma pace gaudeant universi.*

regarding the king's feudal subjection to the pope and not preserved in the text of the office, to maintain or preserve the rights and prerogatives of the crown.<sup>48</sup> As Richardson notes, Bracton's knowledge of the oath was probably limited to what he could glean from available books, so he does not include this fourth promise in his consideration of the coronation oath.<sup>49</sup>

Regarding that fourth promise, Richardson maintains that both Henry III and Edward I relied on it to argue they should be released from obligations or limitations placed on the crown by *Magna Carta* and other legislation favoring the magnates. Edward I eventually "made use of this oath to secure papal sanction [from Clement V] to the annulment of his [1301] confirmation of the charters," in 1305. In essence, Edward I argued that his promise to conserve the rights of the crown on behalf of the church negated the recent concessions he made to the baronage pursuant to *Magna Carta* and the Charter of the Forest. Consequently, "[c]onfronted with this situation, the baronage required from Edward's son a new promise binding him to observe the charters."<sup>50</sup> Prior to Edward II's coronation in 1308, most likely in late 1307 during the Michaelmas parliament, the oath was revised, resulting in what we now know of as the "fourth recension":

Archbishop:

Sire will you grant and observe and by your oath confirm to the people of

England the laws and customs granted to them by the ancient kings of

48 H. G. Richardson, "The English Coronation Oath," *Speculum*, 24.1 (1949): 56, 74.

49 Ibid., 44-45. If Thorne and Brand are correct, and Raleigh actually authored *De Legibus*, the omission of the fourth promise may have been deliberate, since Raleigh certainly would have been of an age to remember Henry III's coronation.

50 Ibid., 74.

England your predecessors just and devoted to God and especially the laws and customs and franchises granted to the clergy and to the people by the glorious king Saint Edward your predecessor?

King:

I grant them and promise them

Archbishop:

Sire will you keep toward God and holy church and clergy and people entire peace and concord in God according to your power?

King:

I will keep them

Archbishop:

Sire will you cause to be made in all your judgments equal and right justice and judgment in mercy and truth according to your power?

King:

I will do it

Archbishop:

Sire do you grant that the just laws and customs will be observed which the commonalty of your realm have chosen and do you promise to protect and enforce them to the honour of God according to your power?

King:

I grant and promise it<sup>51</sup>

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51 Guy Carlton Lee, ed. and trans., "Coronation Oath of Edward II," in *Leading Documents of English History* (London: George Bell & Sons, 1900), 195, citing *Statutes of the Realm* I.168.

Although he may not have known in their entirety the promises given by his own king, Henry III, at his coronation, Bracton predicted with a great deal of accuracy the formula of sovereignty embodied in the oath taken by Edward II and all subsequent English monarchs until the reformation.

In expanding and clarifying the scope of the king's duties as keeper of the peace and merciful judge, the fourth recension establishes the laws and customs of the realm as both the source and limit of royal authority. Richardson describes the revisions that resulted in the fourth recension in this way:

The first and third *precepta* were redrafted and became the second and third promises of the new oath. The second *preceptum* became superfluous in view of two new promises, the first and the fourth. While the first promise required from the king the observance of the whole body of law granted by 'ancient' kings, it especially singled out the laws of St Edward. This was a reference to a particular edition of the laws attributed to the Confessor, which embodied a tract on the duties of the king. A separate promise to maintain the rights of the Crown was consequently unnecessary. It is to be noted that this tract also requires the king to rule by the counsel of his magnates. The fourth promise is directed to securing the king's observance of the charters (as Edward II's advisers themselves recognized) and any similar "rightful laws and customs that the commonalty of the realm shall have chosen." While this clause is both retrospective and prospective, it is imprecise in that it does not define any

particular legislative process by which the will of the commonalty<sup>52</sup> is to be ascertained, but it does protect them from the arbitrary recission of rightful laws to which they have assented and inferentially from arbitrary law-making against their will.<sup>53</sup>

The king's abstract promise from the third recension, to "forbid rapacity to his subjects of all degrees," becomes in the fourth recension two specific undertakings. First, to observe the laws established by his predecessors, particularly those of Edward the Confessor, and second, to observe those laws that are established during his own reign. Richardson finds it "worth while" to note "that the theory of kingship embodied in the Laws [of Edward the Confessor, the work incorporated by reference in the text of the oath,] is transmitted substantially unaltered by Bracton and *Fleta*. The king is God's vicar, but he must rule by the counsel of his magnates."<sup>54</sup>

Returning once more to Bracton, he has the following to say on the subject of "for what purpose a king is created":

To this end is a king made and chosen, that he do justice to all men [*that the Lord may dwell in him, and he by His judgments may separate*] and sustain and uphold what he has rightly adjudged, for if there were no one to do justice peace might easily be driven away and it would be to no purpose to establish laws (and do justice) were there no one to enforce them. The king, since he is the vicar of God on earth, must distinguish *jus* from *injuria*, equity from iniquity, that all his subjects may live uprightly,

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52 Note from AWC: Take a look at Emily Steiner's essay in *New Medieval Literatures*.

53 Richardson, "The English Coronation Oath," 75.

54 *Ibid.*, 63.

none injure another, and by a just award each be restored to that which is his own. He must surpass in power all those subjected to him, [*He ought to have no peer, much less a superior, especially in the doing of justice, that it may truly be said of him, 'Great is our lord and great is his virtue etc.,' though in suing for justice he ought not to rank above the lowliest in his kingdom.*] nevertheless, since the heart of a king ought to be in the hand of God, let him, that he be not unbridled, put on the bridle of temperance and the reins of moderation, lest being unbridled, he be drawn toward injustice. For the king, since he is the minister and vicar of God on earth, can do nothing save what he can do *de jure*, [*despite the statement that the will of the prince has the force of law, because there follows at the end of the lex the words 'since by the lex regia, which was made with respect to his sovereignty'; nor is that anything rashly put forward of his own will, but what has been rightly decided with the counsel of his magnates, deliberation and consultation having been had thereon, the king giving it auctoritas.*] His power is that of *jus*, not *injuria* [*and since it is he from whom jus proceeds, from the source whence jus takes its origin no instance of injuria ought to arise, and also, what one is bound by virtue of his office to forbid to others, he ought not to do himself.*] as vicar and minister of God on earth, for that power only is from God, [*the power of injuria however, is from the devil, not from God, and the king will be the minister of him whose work he performs,*] whose work he

performs. Therefore as long as he does justice he is the vicar of the Eternal King, but the devil's minister when he deviates into injustice, For he is called rex not from reigning but from ruling well, since he is a king as long as he rules well but a tyrant when he oppresses by violent domination the people entrusted to his care. (II.305)<sup>55</sup>

According to Bracton, in the exercise of his office, the king is the servant of justice. He puts on the “bridle of temperance and the reins of moderation, lest being unbridled, he be drawn toward injustice.” Such restraints include “what has been rightly decided with the counsel of his magnates, deliberation and consultation having been had thereon,” as well as the principle “what one is bound by virtue of his office to forbid to others, he ought not to do himself.”<sup>56</sup> The maxim that “the heart of a king ought to be in the hand of God” links this passage to the one from the preface, quoted above, where Bracton addresses his

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55 Latin: Ad hoc autem creatus est rex et electus, ut iustitiam faciat universis, et ut in eo dominus sedeat, et per ipsum sua iudicia discernat, et quod iuste iudicaverit sustineat et defendat, quia si non esset qui iustitiam faceret pax de facili posset exterminari, et supervacuum esset leges condere et iustitiam facere nisi esset qui leges tueretur. Separare autem debet rex cum sit dei vicarius in terra ius ab iniuria, æquam ab iniquo, ut omnes sibi subiecti honeste vivant et quod nullus alium lædat, et quod unicuique quod suum fuerit recta contributione reddatur. Potentia vero omnes sibi subditos debet præcellere. Parem autem habere non debet nec multo fortius superiorem maxime in iustitia exhibenda, ut dicatur vere de eo, magnus dominus noster, et magna virtus eius etcetera. Licet in iustitia recipienda minimo de regno suo comparetur, et licet omnes potentia præcellat, tamen cum cor regis in manu dei esse debeat, ne sit effrenata frenum apponat temperantiæ et lora moderantiæ, ne cum effrenata sit trahatur ad iniuriam. Nihil enim aliud potest rex in terris, cum sit dei minister et vicarius, nisi id solum quod de iure potest, nec obstat quod dicitur quod principi placet legis habet vigorem, quia sequitur in fine legis cum lege regia quæ de imperio eius lata est, id est non quidquid de voluntate regis temere præsumptum est, sed quod magnatum suorum consilio, rege auctoritatem præstante et habita super hoc deliberatione et tractatu, recte fuerit definitum. Potestas itaque sua iuris est et non iniuriæ, et cum ipse sit auctor iuris non debet inde iniuriarum nasci occasio unde iura nascuntur, et etiam qui ex officio suo alios prohibere necesse habet, id ipsum in propria persona committere non debet. Exercere igitur debet rex potestatem iuris sicut dei vicarius et minister in terra, quia illa potestas solius dei est, potestas autem iniuriæ diaboli et non dei, et cuius horum opera fecerit rex eius minister erit cuius opera fecerit. Igitur dum facit iustitiam vicarius est regis æterni, minister autem diaboli dum declinet ad iniuriam. Dicitur enim rex a bene regendo et non a regnando, quia rex est dum bene regit, tyrannus dum populum sibi creditum violenta opprimit dominatione.

56 Although Thorne marks these passages as *addiciones*, Woodbine considers them authorial. Even if they are non-authorial, they suggest how Bracton’s own text was interpreted in light of the events discussed above and *infra*.

treatise to all men who would presume to judge their fellows. Throughout the paragraph, Bracton draws upon English sources, such as Glanvill's *Tractatus De Legibus et Consuetudinibus Regni Angliae*, John of Salisbury's *Policraticus*, in addition to the Bible and civilian authorities such as the *Institutes*. Bracton synthesizes, rather than simply compiles and parrots, the ideas that he has drawn from these diverse sources to produce a concept of royal sovereignty that addresses specific issues that troubled the English polity at the time he was writing and for a long time after. If Bracton's idea of kingship had a predecessor in the *Laws* of Edward the Confessor, it nevertheless came to be firmly associated with his treatise in the minds of his medieval readers by the late thirteenth-century.

What Bracton offers in the *De Legibus* is an idea of "law-centered" kingship in which the monarch's sovereignty is constrained by the law of the land. He imagines a polity in which men are governed, not by will, but by a system of justice flowing from and intended to sustain a shared set of moral precepts. Through the law of the realm, governance becomes a tightly-regulated form of self-governance, since those who participate in the making and administration of law, including those who simply try to live in accordance with it, exercise a sort of vicarious sovereignty delegated through it from the king. With the idea of "law-centered" kingship, Bracton establishes a lateral, as opposed to hierarchical, metaphorical relationship between the king and his subjects under the law, and to the extent the law works to limit the monarch's sovereignty, Bracton opens up a space for the exercise of political agency in the form of restraint through counsel, and in the role the *res publica* plays in creating *ius*. If Bracton is less than clear

about the procedures through which that agency is actually exercised, his equivocation in such matters leaves room for two possible scenarios. In the first, the king must get the approval of his counsel and “the people” before taking action on his own initiative. In the second, the king provides his seal of approval, as it were, to legal action initiated from below.<sup>57</sup>

This theory of sovereignty was not only, as Richardson so persuasively demonstrates, incorporated into the English coronation oath at the beginning of the fourteenth century. It provided the foundation for the Ordinances of 1311, which put the Ordainers in charge of Edward II’s household and attempted the banishment of his favorite, Piers Gaveston.<sup>58</sup> It was also deployed to justify Edward’s “abdication” of the throne in 1327.<sup>59</sup> In spite of its utility as an instrument of political action,<sup>60</sup> it was not, however, universally accepted and acknowledged. In an attempt to reassert the king’s authority to prevent encroachment on the royal prerogative, Edward II retaliated against the baronage in 1322 with the Statute of York, which repealed the Ordinances and

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57 Richardson, “The English Coronation Oath,” 64-74.

58 *Statutes of the Realm*, I.157-167. The Ordinances reaffirmed *Magna Carta* and the Charter of the Forest and required Edward II to obtain the approval of the baronage before making official appointments, leaving the realm, going to war and raising revenues through customs and prises. They also instituted annual parliament, repealed unpopular customs levies already in effect and required all future revenues to be paid to the exchequer, rather than to the king’s household.

59 Bertie Wilkinson, “Articles of Accusation against Edward II,” in *The Constitutional History of England, 1216-1399* (London: Longmans, 1948-58), II.170. The “Articles” accuse Edward of, *inter alia*, being unwilling “to listen to good counsel, or to adopt it, or to give himself to the good government of his realm; but he has always given himself up to unseemly works and occupation, neglecting to satisfy the needs of his realm.”

60 My discussion of how the medieval “theory” of sovereignty influenced thirteenth and fourteenth-century politics draws upon the work of John Watts, *Henry VI and the Politics of Kingship* (Cambridge: Cambridge University Press, 1996), and Paul Strohm, *Politique: Languages of Statecraft Between Chaucer and Shakespeare* (Notre Dame: University of Notre Dame Press, 2005). Watts and Strohm have suggested a return to the study of the institutions and ideas, as well as the people and places, of the Middle Ages. Both argue that medieval political discourse may in fact have offered a consistent framework for thinking through and rationalizing political behavior, even if that framework did not operate as a prescription or prospectus for action that might be predicted in advance.

purported to void any and all lawmaking--past, present and future--that tended to diminish the "Estate of the Crown."<sup>61</sup> These two concepts of royal power, one "law-bound" and the other absolute, would compete with one another throughout the fourteenth century, and perhaps well into the fifteenth. That ongoing competition, and its ultimate outcome in favor of the Bractonian model, would have significant consequences for the evolution of the Middle English literature of sovereignty.

## II. *Britton* and the King's Law

Although I am ultimately interested in points of correspondence between the model of the polity as represented in *Britton* and that which takes shape in *De Legibus*, I nevertheless think it useful to begin by highlighting how significantly *Britton's* author deviates from the Bractonian concepts of law and kingship. Where Bracton's king is created by the law, in *Britton* the law is entirely the king's creature. The book begins with a Prologue that purports to issue from Edward I himself, and the entire text is spoken in the royal first-person plural. Bracton imagines a law that comprises "the ancient judgments of just men," ("*vetera iudicii iustorum*") (II.19) "the judgments and the cases that daily arise and come to pass in the realm of England," ("*facta et casus qui quotidie emergunt et inveniunt in regno Angliæ*") and "customary principles of behavior" ("*mores*") (II.20). *Britton's* author, in contrast, defines the law as what the king has "commanded" or "ordained." Further, the law of *Britton* does not include the *consuetudines* that form an essential part of Bracton's idea of *lex*:

Desiring peace among the people who by God's permission are under our protection, which peace cannot well be without law, we have caused such

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<sup>61</sup> *Statutes of the Realm*, I.189.

laws as have heretofore been used in our realm to be reduced to writing according to that which is here ordained. And we will command, that throughout England and Ireland they be so used and observed in all points, saving to us the power of repealing, extending, restricting and amending them, whenever we shall see good, by the assent of our earls and barons and others of our Council; saving also to all persons such customs as by prescription of time have been differently used, so far as such customs are not contrary to law.<sup>62</sup>

While *Britton* does acknowledge the existence of law before the king, in the king's voice, *Britton's* author reclaims and reauthorizes that law for the king alone, "saving to [the king] the power of repealing, extending, restricting and amending [it], whenever [he] shall see good." Similarly, the text's author recognizes how "earls and barons and others" of the king's council participate through their assent in lawmaking, while still making clear that the legislative process begins at the king's initiative. Unlike the Bractonian polity that to an extent governs itself, including the creation of its own king, through the operation of a law that arises organically from multiple sources, the legal polity of *Britton* is governed by a law created for the realm by the king. In *De Legibus*, the king is

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62 F.M. Nichols, trans., *Britton*, 1-2:

Desirauntz pes entre le poeple qe est en nostre proteccioun par la suffrance de Deu, la quele pes ne poet mie ben estre sauntz ley, si avoms les ley qe hom ad usé en noster reaume avaunt ces hores fet mettre en escrit solum ceo qe cy est ordeyné. Et volums et comaundums qe par tut Engleterre et tut Hyrelaunde soient issi userz et tenuz en touz poyntz, sauve a nous de repeler les et de enoyter et de amenuser et de amender a totes les foiz qe nous verums qe bon serra, par le assent de nos Countes et Barouns et autres de noster conseyl, sauve les usages a ceux qe par prescripcioun de tens ount autrement use en taunt qe lour usages ne soynt mie descordauntz a dreiture.

a member of the polity under the law. In *Britton*, the king creates the polity by speaking the law through which he governs it.

#### A. *Britton*, Authorship and History

*Britton* was most likely completed sometime during the twentieth year of Edward I's reign, circa 1291-1292.<sup>63</sup> It is written in the French of late-thirteenth century England.<sup>64</sup> Previous scholars assigned a somewhat earlier date to the text's composition, circa 1275, based upon attribution of *Britton* to John le Britton or le Breton, Bishop of Hereford, in a few manuscripts of another text, the *History of Matthew of Westminster*, by the same author. F. M. Nichols, who produced what continues to be the only authoritative modern edition and translation of *Britton*, has fairly clearly demonstrated that John le Breton could not have authored the text. He bases his conclusion on the copious and well-integrated references in the work to statutes that were not enacted until many years after the bishop's death as well as the fact that, if it were indeed le Breton's work, it would have to have been composed within the few months that separated Edward I's coronation and le Breton's passing. Even if le Breton did author an early version of the treatise, it was substantially reworked and amended to incorporate later events and to produce the text as we now have it.<sup>65</sup> Although he does not offer another likely candidate in le Breton's place, Nichols suggests "if there were any materials to aid the search, that the author of *Britton* would be found among the clerks employed in the legal service of the Crown; and there are one or two passages which confirm . . . that the author was an ecclesiastic."<sup>66</sup>

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63 Ibid., xviii.

64 Ibid., xviii.

65 Ibid., xx-xxi.

66 Ibid., xxii.

As I noted earlier, *Britton* is one of three late-thirteenth-century works that update and condense the matter of Bracton's treatise. In addition to being the only vernacular law treatise to be produced during the period, Nichols notes that *Britton* also "appears to have been the only one which came into general use, the two others having scarcely survived in single manuscripts to modern times."<sup>67</sup> It is also the only medieval English legal treatise that purports to issue directly from the will and mouth of the king.<sup>68</sup> Nichols's catalogue of all of the manuscript copies of *Britton* held by public libraries includes twenty-two that contain the complete text, and another five that contain excerpts.<sup>69</sup> These manuscripts do produce some variant readings, which Nichols identifies in his edition of the text. *Britton* does not, however, present the problems arising from extensive interpolation that are associated with *De Legibus*. The manuscript witnesses cover the period following the text's composition through the late-fourteenth century. *Britton* is often bound with fourteenth-century legal matter, for example statutes or other commentaries on the law, and marginalia added by copyists and owners confirm its value to practitioners throughout the late-medieval period.<sup>70</sup> Like the *De Legibus*, the first print edition of *Britton* appeared in the sixteenth-century, and as we will see in chapter six, citations to *Britton* appear in some of the first examples of early-modern juridical writing.

I have provided this summary of *Britton*'s history in order to draw out some additional points of comparison with *De Legibus*, and in an effort to establish the status

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67 Ibid., xxv.

68 Ibid., xvii.

69 Nichols surmises that the public holdings to which he had access represent only a part of the surviving manuscripts, but he does not estimate how many more witnesses might be held in private collections.

70 Nichols, *Britton*, xlvi-lviii.

of Bracton's text as the leading medieval authority on English law. *Britton's* author assumes the persona and in all likelihood received the imprimatur of the king. Yet this posture has not been sufficient to prevent *Britton's* readers, both medieval and modern, from searching for the book's "real" author. Bracton's treatise, though, presents the greater difficulty in terms of determining what parts of the text were or were not the work of its original author, but only because Bracton himself seems to loom so large in the history of English jurisprudence. The marginalia appended to *Britton* by near contemporaries of the author, many of whom must have been the king's own justices,<sup>71</sup> tended to remain firmly in the margins rather than being subsumed within the rubric of the "king's" law. In contrast, Bracton's text, almost like the body of English law that he describes, accreted to itself and to Bracton's authority the work of later jurists and practitioners.

In thinking about the relationship between *Britton* and *De Legibus* and the influence of Bracton's work upon later authors and practitioners, the peculiarity of *Britton's* title proves noteworthy:

We owe to the ingenuity of Selden a conjecture respecting the origin of the name of Britton, which, if adopted, dispenses us from seeking for an author bearing the same name as the book. After observing that the surname of Henry de Bracton, the reputed author of the treatise known by his name, was sometimes written Britton, Briton, and Breton, he states his opinion, that the compendium of law called Britton (which he elsewhere

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<sup>71</sup> For example, Nichols makes a persuasive argument that the annotator of MS Cambridge Dd. vii. 6, which he identifies as N, was one John de Longueville of Northampton, who was either a Justice of the Bench or a Judge of Assise during the late-thirteenth and early-fourteenth centuries (lxii-lxiv).

describes as the royal abridgement of Bracton increased by the addition of some subsequent statutes), “took its name from the author out of whose work, in the king’s name and by the king’s command, it was composed.”<sup>72</sup>

Although *Britton* does draw upon Bracton, Nichols’s examination of the text reveals that the treatise known as *Fleta*, which was itself a redaction of *De Legibus*, must have served as the primary source.<sup>73</sup> Further, again according to Nichols, *Britton*’s author substantially alters the organization of his source material, and adds much that is new.<sup>74</sup> Even *Fleta*, which consists in large part of verbatim reproductions of Bracton’s text and clearly did not have the circulation that *Britton* commanded, came to be known by its own name. Given that fact, and in light of the substantial differences between *Britton* and *De Legibus*, shared subject matter would hardly seem sufficient basis for attributing the former to the author of the latter. Selden’s hypothesis is attractive, however, because of what it suggests about Bracton’s stature as a medieval *auctor*. As outlined above and as will be discussed in further detail, *Britton*’s author seems to respond, if not to Bracton’s *De Legibus* in particular, then to a version of sovereignty that was already in circulation at the end of the thirteenth century and that had already come to be closely associated with Bracton’s treatise. His response takes the form of an alternative concept of kingship that, while it is still perhaps “law-centered” is no longer “law-bound.” Yet, in spite of his attempts to reclaim the law for the king alone, the history of *Britton* and perhaps its very title suggest that its author may have been less than successful in establishing the king as the first and last authority on the law.<sup>75</sup>

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72 Ibid., xxiii.

73 Ibid., xxvii.

74 Ibid., xxiv.

75 In one of the marginal annotations contained in MS N, for example, a near contemporary of *Britton*’s

## B. The King's Jurisdiction in *Britton*

All legal jurisdiction in *Britton* begins with the king: “First, with regard to ourselves and our Court, we have ordained, that, inasmuch as we are not sufficient in our proper person to hear and determine all the complaints of our said people, we have distributed our charge in several portions, as is here ordained.” (I.2)<sup>76</sup> At first blush, this seems like a simple restatement of the Bractonian principle that, “the king himself and no other, could he do so unaided,” ought to act as the judge of all temporal matters within his realm. According to both texts, it would seem, the king exercises “ordinary” or, as modern legal scholars might say, “original” jurisdiction, and all other jurisdictional authority is “delegated” from the crown. As we have seen, though, in describing the king’s ordinary jurisdiction, Bracton defines it as yet another form of delegated or, to use a term I introduced earlier, “vicarious” jurisdiction, except the king’s jurisdiction is delegated from God. In *Britton*, in contrast, the king’s jurisdiction is truly original:

We will that our jurisdiction be superior to all jurisdictions in our realm; so that in all kinds of felonies trespasses and contracts, in all manner of other

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author has clarified the statement that the king alone has the “power of repealing, extending, restricting and amending [it], whenever [he] shall see good, but the assent of [his] earls and barons and others of [his] Council” with the following:

This Preamble or Prologue is divided into two parts; first, the regal style, where he says, “Edward &c.,” and then the salutation, where he says, “And we will and command &c;” affirming a prerogative in his person, that what he thinks right ought to be held law; according to the saying “Quod principi placuit pro lege habetur.” Because peace cannot be without law, nor law without a king: who can change the laws and establish others, but not without the assent of the Earls and others of his Council: quia ubi voluntas unius in toto dominatur, ratio plurimum succumbit [because where the will of one man dominates entirely (or in all things), the reason of many gives way].

Nichols, *Britton*, I.2 note b.

<sup>76</sup> French: En primes en dreit de nous mesmes et de nostre Curt avoms issi ordine, qe, pur ceo qe nous ne suffissums mie en nostre propre persone a oyer et terminer totes les quedeles del poeple avaunt dit, avoms parti noster charge en plusours parties, sicum est issi ordinee.

actions personal or real, we have the power to give, or cause to be given, such judgment as the case requires without any other process, whenever we have certain knowledge of the truth, as judge. (I.3)<sup>77</sup>

By an act of royal will, the king creates himself as the supreme lawgiver. His will, not the public law or the *res publica* itself, creates the various offices and officers, courts and causes of action through which the law is to be administered. Where in *De Legibus*, the royal will, and indeed the will in general, is to an extent depicted as a potential opponent of the law, in *Britton*, they become synonymous. The law derives its authority, not from the king who submits his will to it, but from the will of the king who dominates it.

*Britton's* author exhibits a remarkable singularity of purpose regarding the reclamation of the king's power over the law. In spite of that, however, he gives away a significant portion of the crown's power over the realm as a whole by adopting a very narrow understanding of what that law comprehends. I have already noted how *Britton's* author exempts "custom" from his definition of law. Even though Bracton's *consuetudines* do not depend upon the king for their existence or administration, they nonetheless make up an important part of the system of justice by and through which he governs. In a sense, what Bracton has given away with one hand, he takes back with the other. His broad definition of *lex* means that, as illustrated by the case of the king, the law's reach potentially extends beyond the jurisdiction of the king's courts. Such is not the case for the author of *Britton*.

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<sup>77</sup> French: Nous volums qe nostre jurisdiccioin soit sur totes jurisdiccioins en noster reaume; issint qe en totes maneres de felounies trespas et contractz, et en totes maneres de autres accioins personeles ou reales, eyoms poer a rendre, ou a fere rendre, les jugementz teus cum il afeert sauntz autre proces par la ou nous savoms la certyne verité cum judge.

So, in explaining how the crown's jurisdiction is reserved to matters temporal, *Britton's* author makes a fairly clear distinction between the law with which he treats and that which pertains to matters spiritual: "For we will that Holy Church retain her liberties unimpaired, so that she have cognizance of judging of mere spirituality, of testaments, of matrimony, of bastardy, of bigamy, and in the felonies of clerks, and in the correction of sins" (I.28).<sup>78</sup> As a result of this division of labor, the law of *Britton* does not extend into those areas where the church exercises exclusive jurisdiction. Thus, for example, in cases where the outcome turns upon the question of bastardy, *Britton's* author describes how the proceedings are to be stayed while the matter is referred to an ecclesiastical court (II.130, 150). Although he notes that the matter may be submitted to a jury upon the consent of all parties involved, his text is silent regarding what procedures will be followed after the matter is referred to the church. Like *Britton's* author Bracton acknowledges that some determinations are beyond the jurisdiction of the secular legal system, yet they are not therefore outside the scope of his treatise. He offers a detailed description of how an inquest of bastardy should proceed:

The duty of the ordinary will be this: after calling the parties together, in their presence, if they wish to be present, let him make a diligent and summary enquiry, according to the form of the writ, whether there were espousals or marriage, or there were none at all, or there was a marriage but an unlawful one. We must therefore see [something] of marriage, of which we have spoken above in the tractate "who is a lawful heir," where

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<sup>78</sup> French: Car nous volumns qe Sainte Eglise eyt ses franchises desblemies, issi qe ele eyt conisaunce a juger de pure espiritualité, de testament et de matrimonie, de bastardie et de bigamie, et en felonies de ses clers, et en correciouns des pecchez . . . .

it is said that he is the lawful heir whom lawful nuptials prove to be such, whether the marriage is secret or public, by words de praesenti or de futuro, as long as it cannot be dissolved, or [if] contracted under a prohibition, has not been dissolved in the lifetime of the contracting parties, since espousals or marriage is the joining together of a man and a woman holding to a single tenor of life. By this it may easily be ascertained who is legitimate and who a bastard. When the ecclesiastical judge has made the inquest, there is to be no appeal from him by anyone, neither by the demandant nor the tenant: not by the demandant, since he chooses that jurisdiction and that judge; not by the tenant, because he could in this way protract the cause from judge to judge ad infinitum, until it reached the pope, who could thus indirectly take cognisance of a lay fee. Also because the enquiry proceeds equally well whether the tenant is absent or present. But from a judge delegate or an official he may appeal, if they are alleged to have erred or acted collusively, to the bishop or other ordinary, because the ordinary may correct the error of such persons and revoke their judgment, though not his own, except with difficulty. When the enquiry has been made, as said above, and when the party who sues comes to court with the inquest, let the plea which remained *sine die be* at once resummoned . . . . (IV.305-06)<sup>79</sup>

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79 Latin: OFFICIUM vero ordinarii erit quod convocatis partibus, in earum praesentia si interesse voluerint fiat diligens et summaria inquisitio secundum formam brevis, et si sponsalia vel matrimonium sint vel omnino nullum, vel si matrimonium tamen illegitimum, videndum igitur erit de matrimonio de quo supra dictum est in tractatu, quis heres sit legitimus, et ubi dicitur quod heres legitimus est quem iustae nuptiae demonstrant, sive clandestinum fuerit matrimonium sive publicum, sive per verba de praesenti sive per verba de futuro, sive sub condicione contractum, dum tamen dissolvi non possit nec in vita

I have quoted at length here in order to highlight how Bracton subsumes the inquiry of the ecclesiastical court into a seamless procedure whereby the entire cause of action may be determined. He even provides several examples of writs alleging the various circumstances upon which an exception of bastardy may be maintained. The writ issued by the secular court determines the scope and purpose of the ecclesiastical inquiry, and appeals therefrom are limited based upon the secular nature of the original proceedings. The silence of *Britton's* author regarding the procedures of the “court Christian” (II.130) suggests that the law of *Britton* governs but a single slice of the polity as he imagines it, a polity that comprises a multiplicity of jurisdictions, each governed according to its own special set of rules. Ideally, these jurisdictions cooperate with one another, but *Britton's* author does not provide any evidence of an overarching scheme that regulates the terms of that cooperation. The polity of *De Legibus* also consists of multiple jurisdictions, but they are all governed according to the single body of Bractonian *lex*. Although Bracton may maintain that “nothing relating to the clerical estate is relevant to this treatise” (II.304),<sup>80</sup> acknowledging that the clergy are in many cases to be considered “dead” as far as the secular legal system is concerned (IV.310),<sup>81</sup> officers of the ecclesiastical courts

contrahentium fuerit dissolutum, cum sponsalia sive matrimonium sit coniunctio maris et feminæ individuum vitæ retinens consuetudinem. Et per hoc de facili perpendi poterit quis legitimus fuerit et quis bastardus. Cum autem iudex ecclesiasticus inquisitionem fecerit, non erit ab eo appellandum ab aliquo, nec a petente nec a tenente: a petente non ex quo talem iurisdictionem et talem iudicem eligit, a tenente non quia sic posset causam in infinitum protrahere de iudice in iudicem usque ad papam, et sic posset papa de laico feodo indirecte cognoscere. Item quia tantum operatur tenentis absentia quam præsentia, sed a delegato et ab officiali si dicantur errasse vel collusionem fecisse appellari poterit usque ad episcopum vel alium ordinarium, quia ordinarius errorem talium et sententiam poterit revocare et corrigere, licet non possit proprium nisi cum difficultate. Facta igitur inquisitione secundum quod prædictum est cum pars sequens venerit ad curiam cum inquisitione, statim resummonetur loquela quæ remansit sine die, et summoneatur tenens per hoc breve.

80 Bracton makes a clear distinction between matters that pertain to the church and matters that pertain to the realm. He makes such distinctions, however, in the context of his discussion of jurisdiction. The king may not intrude upon the jurisdiction of the church and vice versa. Regarding English law, however, as demonstrated by his definition of the “public law,” it creates and governs both jurisdictions.

81 COMPETIT etiam exceptio tenenti ex persona petentis peremptoria propter mortem civilem, ut si quis

are, like the king, nonetheless officers of *lex*, created by it so that they can assist in its implementation and administration.

Further, by removing the “correction of sins” from the purview of the law as pronounced in *Britton*, that work’s author deprives the law of some of its coercive force. Kantorowicz observes that the law of the Bractonian polity binds the king because it is an embodied form of divine law.<sup>82</sup> The law as described by *Britton*’s author has a claim to moral authority solely because it is an expression of the king’s will. The king’s subjects in *Britton* may have a moral and spiritual obligation to follow the law, but that obligation is derivative of their moral and spiritual obligation to submit to the king. Bracton’s *lex*, however, to the extent that it expresses natural law (“*ius naturale*”) as well as shared morality (“*mores*”), exerts a moral imperative all on its own. Thus, as S. J. T. Miller explains, self-interest and the desire to preserve one’s immortal soul ultimately serve the ends of justice in the Bractonian polity:

[That the king should be bound by the law even though he cannot be forced to submit to any earthly jurisdiction] appears to be a form of double-talk, but it is more than this. No human agency can force the king’s will in a legal manner. However, the king is surrounded by convention and must act according to his conscience, with the strong hint

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se religioni contulerit et postmodum ad sæculum reversus agere velit et hereditatem petere, non audietur, cum semel quis se religioni contulerit renuntiat omnibus quæ sæculi sunt, habita tamen distinctione utrum habitum probationis tantum susceperit vel habitum professionis.

A peremptory exception arising from the person of the demandant also lies for the tenant because of civil death, as where one has betaken himself to religion and afterwards, having returned to the world, wishes to sue and claim an inheritance; he will not be heard, since he who has once betaken himself to religion renounces all things that are of the world, this distinction, however, being taken, whether he has assumed only the habit of probation or the habit of profession. IV.310

82 Kantorowicz, *The King’s Two Bodies* 149.

that he must also act with regard to due process. Although such men as Frederick of Sicily and John of England may have been rulers who scoffed at revealed religion and thought in terms of royal absolutism, the normal king, if he was not insane, a truly malignant person, an idiot or a child, would have his conscience and his sense of justice so sharpened by training and admonition that he would tend to act within the patterns of feudal justice. One of the primary tenets of that justice, as we have seen, was that the king should be as the least among his subjects in submitting to the law.<sup>83</sup>

According to Bracton, governance, the exercise of dominion or sovereignty over things and people, is always inextricably bound up with self-governance. If one would compel another's compliance with the law, one must first willingly submit to the network of private and public obligations that binds each individual to the larger community of the realm. To get justice as a plaintiff, one must first give oneself over to the jurisdiction of the court. Even more importantly, though, in exercising the dominion one has by right, one must always be mindful of how that dominion, even when granted by "private" law, is limited by the "public interest." In *Britton*, in contrast, where the law takes shape as the mechanism through which the will of one man (tempered, of course, by "counsel") is imposed upon everything subject to his temporal dominion, governance becomes a simple matter of enforced obedience.

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83 S.J.T. Miller, "The Position of the King in Bracton and Beaumanoir," *Speculum* 31.2 (1956): 263-96, 275.

What Bracton offers that *Britton*'s author does not is a means whereby the law compels the will, even in the absence of judicial process. In *Britton*, the "law" is defined in terms of offices and officers, processes and procedures that, for the most part, surface in daily life only when one becomes the subject or servant of legal proceedings. In the Bractonian polity, however, the law is omnipresent because it comprises more than statutes and the results of judicial proceedings. It governs the relations between man and wife, and mothers and their children, as well as the dealings between king and subject.

### C. *Britton* and Bracton On the Subject of the King

I have attempted to draw out and highlight the distinctions between *De Legibus* and *Britton* in order to demonstrate how both texts participate in a contested discourse of sovereignty, of kings and kingship, that shaped English politics of the late-thirteenth century and beyond. As divergent as they are, though, taken together, the two texts confirm what Habermas seems to have suspected all along, that in medieval political writing, particularly in England, the legal conception of sovereignty tends to "trickle down." In *Britton*, the author's deployment of what some scholars might call a more "continental" model of kingship, with its relatively uncomplicated understanding of "*quod principi placuit*," results in the formation of a polity that reflects what Habermas and others have characterized as distinctly medieval institutional and jurisdictional divisions. The king's exercise of temporal dominion is as absolute as that exercised by the church in matters spiritual, and the right of either to claim such authority is never called into question. The jurisdictionally compartmentalized polity imagined by *Britton*'s author can be read as an alternative to the polity imagined by Bracton wherein the king's

own power is conceptually limited by a single body of law that creates, organizes and regulates the various jurisdictions from which the realm is composed. In such a polity, where the law's power to compel obedience potentially extends beyond the jurisdiction of the courts and institutions established to administer and enforce it, self-governance plays a prominent role in regulating all manner of social transactions, both public and private. In addition, the law that authorizes the exercise of power by an individual or institution becomes the standard according to which their right to dominion in the first instance can be measured.

In addition to determining institutional relations within the polity, the idea of the king also influences how these two authors are able to conceive of political identity more generally. According to both authors, the king is without peer. Only for the author of *Britton*, though, does the king's peerlessness govern the metaphorical as well as the "actual" relations between the king and his subjects. Taking on the persona of the king, *Britton's* author thereby excludes the king as a potential auditor. *Britton* may be a manual of instruction, but the book's author does not number the king among those who might benefit from it. Further, because he exercises a truly "original" or "ordinary" jurisdiction, the king cannot effectively lead his subjects by setting a good example. He is neither an "officer" nor a "person" as the law of *Britton* defines such things. The king is, as much as *Britton's* author can make him, literally and figuratively unlike anyone else. The author isolates the king so completely that he is immune not only from suit but from the rhetorical operations of analogy as well.

Although Bracton pays lip service to the obligatory idea that “[t]he king has no equal within his realm” (II.33), he dedicates a substantial part of the text to enumerating the various ways in which the king is nevertheless “like” his subjects in every way that counts, save one. The king is immune from judicial process, but he is bound by his oath of office to obey the law, nevertheless. Quoting Azo, Bracton observes that when one defines freedom as the “natural power of every man to do what he pleases, unless forbidden by law or force,” even the bondsman is free. Because the bondsman, “contrary to the law of nature” has been “subjected to the dominion of another,” however, he is not “free” as defined by the *ius gentium*. In the example of the bondsman, the category with which Bracton begins his discussion of persons under the law, we have perhaps the least of the king’s subjects. In one sense, the bondsman and the king are fundamental opposites. The bondsman is subjected to the dominion of his fellow man, while the king exercises absolute temporal dominion over all persons, things and actions within his realm. Yet in another, equally significant way, they are quite similar. Both men are “free,” to the extent they exercise the “natural power of every man to do what he pleases, unless forbidden by law or force.” Through a classification of the differences--such as sex, age, status, and office--that distinguish persons within the realm from one another, Bracton synthesizes a handful of characteristics that seem to be common to them all. The first and foremost among these seems to be the manner in which all persons--from king to bondsman--exercise a limited, extremely limited in the case of the bondsman, form of sovereignty. Through this shared trait, Bracton creates a network of analogy that potentially links the king to them all.

### III. The Bractonian Polity and Political Subject in Middle English Literature

We can read the intellectual legacy of Bracton's political model in the absolutist framework that *Britton* attempts to reinscribe into English law, as well as the heated debates regarding the relative sovereignty of the king and the baronage that occupied a great deal of parliamentary discourse throughout the fourteenth century. We can read that same legacy, I think, in a number of fourteenth-century Middle English texts that confront the question of how and by whom the polity can and should be ordered. Within these texts, the subject of political discourse bears a striking resemblance to the Bractonian political subject, an individual, generic person who is subject to the laws and customs of England. The "subjects" of these texts configure and reconfigure the polity through the exercise of personal, as opposed to institutional or official, political agency, and they provide a textual site where discourses of individual self-governance drawn from a wide variety of sources, including the mirror for princes tradition, converge with a literary project of socio-political reform. In the next two chapters, I will examine how Bracton's ideas resonate within the three most canonical examples of Ricardian literary production, Geoffrey Chaucer's *The Canterbury Tales*, William Langland's *Piers Plowman* and John Gower's *Confessio Amantis*. Because these three texts clearly and explicitly invoke the vocabulary of estates satire in order to describe what appears to be a Bractonian idea of the individual, self-governing political subject, they provide fruitful sites for exploring the question with which I begin in chapter one: How do the conventions of estates literature come together with other social and literary forms in Middle English writing?

At this point, however, I would like to take a moment to examine how even the individual subject of fourteenth-century Middle English romance might be read as drawing upon and operating within a Bractonian framework. In a key episode in the early-fourteenth-century romance, *Bevis of Hampton*,<sup>84</sup> after Bevis has returned from his wanderings in Europe and the Holy Land and been reconciled with the king, Bevis's extraordinary horse, Arondel, strikes and kills the king's son when he attempts to steal the horse from Bevis's stables (3555-64). The king, distraught and angered by his son's death, calls for Bevis's execution:

Men made del and gret weping  
 For sorwe of that ilche thing;  
 The king swor, for that wronge  
 That Beves scholde ben anhonge  
 And to-drawe with wilde fole. (3565-69)

The reference to hanging and quartering makes clear that the king believes Bevis to be guilty of treason for killing the heir to the throne. Collectively, the baronage stays the king's hand, however:

The barnage it nolde nought thole  
 And seide, hii mighte do him no wors,  
 Boute lete hongen is hors;  
 Hii mighte don him namore,  
 For he servede tho the king before. (3570-74).

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<sup>84</sup> All citations are to *Bevis of Hampton* in *Four Romances of England*, ed. Ronald B. Herzman, Graham Duke and Eve Salisbury (Kalamazoo: Medieval Institute Publications, 1999).

The barons argue that, since Bevis was serving in the king's hall at the time the accident happened, all the king can do is hang Bevis's horse. The poet appears to refer here to the law of the deodand, which was intended to repair harm to the community caused negligently or even unintentionally. Bevis, who had no deliberate hand in the killing, cannot be punished for treason. Rather, the crime is more akin to involuntary homicide, in which cases the instrument or chattel that resulted in the death is to be "given to God," i.e. confiscated by the crown.<sup>85</sup> In these ten lines, the poet provides a neat summation of the Bractonian idea of kingship. The king's will must be governed by law and reason, not passion, and the baronage, voicing the law, acts as the primary source of legal restraint. The reference to the deodand, from "*deo dandum*," serves as a reminder, though, that even though his power is thus limited, the king is nevertheless god's vicar on earth. Just as significant as the judgment itself is Bevis's response:

"Nai," queth Beves, "for no catele  
 Nel ich lese min hors Arondele,  
 Ac min hors for to were  
 Ingelonde ich wile forswere;" (3575-78)

In a surprising turn, Bevis defies the judgment of the king and his counsellors, and instead chooses to resume his long exile rather than forfeit his horse. In contrast to the king, who gives up whatever private claim he may have against Bevis as his subject, Bevis refuses to relinquish his claim of private dominion in the interest of the public good. His defiance, though, still works within the English legal framework, since his

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<sup>85</sup> William Pietz offers an excellent summary of the legal and cultural history of the deodand in, "Death of the Deodand: Accursed Objects and the Money Value of Human Life," *Res: Anthropology and Aesthetics* 31 (1997): 97-108.

self-imposed exile effectively operates as a form of outlawry. At this moment in the text, the law results from a sort of compromise undertaken by the king, the baronage, and Bevis himself.

After several more adventures in exile and the birth of his heirs, Bevis eventually returns to England, where the king receives him with clemency, and with the assent of the baronage, restores to Bevis his ancestral holdings. Justice is temporarily thwarted, however, by the king's steward who, acting under false color of the king's authority, names Bevis as a traitor and rouses the London populace to move against him:

And of all the stiward telle we,  
 That hateth Beves, also is fo.  
 Sixty knightes he tok and mo,  
 In to Londene sone he cam,  
 And into Chepe the wei he nam  
 And dede make ther a cri  
 Among the peple hasteli,  
 And seide: "Lordinges, veraiment,  
 Hureth the kinges comaundement.  
 Sertes, hit is befalle so,  
 In your cité he hath a fo,  
 Beves, that slough the kinges sone;  
 That tresoun ye oughte to mone.  
 I comaunde, for the kinges sake,

Swithe anon that he be take!” (4324-38)

Bevis eventually wins the day, and the king restores peace to the realm by wedding his daughter to Miles, Bevis’s heir (4560-69), but not until “al Temse was blod red,” and “To and thretti thosent” had been slain (4530-32). Taken together, the two episodes explore how sovereignty may be exercised within the realm by various constituents to different ends. Although Bevis’s act of self-governance has dangerous consequences for himself and his household and arguably leads indirectly to the London massacre, unbridled and ungovernable sovereignty of the sort exercised by the steward, ostensibly on the king’s behalf, presents the greatest and most immediate threat to public order within the poem. The examples set by both men tend to reinforce the point, which Bracton also makes, that execution of the king’s justice is to a large extent dependent upon the knowing and willing submission of his subjects to the law’s regulatory authority.

My invocation of *Bevis of Hampton* clarifies how the limited or vicarious sovereignty that a subject exercises within the Bractonian polity differs from the “inalienable” sovereignty of the subject as conceptualized in modern political theory. Even the highly individualized freedom of action that Bevis seems to exercise within the poem is still contained, even if only barely, within a narrative framework that ultimately mobilizes that agency as a central component of the king’s justice. Personal agency is not something to be desired or tolerated for its own sake; it is a powerful and dangerous force that must be channeled in order to be socially productive. Similarly, the purpose of the judicial system in Bracton is to interpret and implement the law in order to maintain the stability of the realm, not to protect and preserve the rights of the people. Bracton does

not define any regulatory territory that is “off limits” as far as the law is concerned. The “freedom” granted to every person under natural law might be circumscribed by bondage, political and religious persecution, capital punishment and outlawry, and these limitations would all be seen as acceptable and just as long as they operated in accordance with the law. In addition, even though the stated end of Bractonian law is to preserve “justice,” there are no legal procedures whereby “unjust” laws can be declared as such and nullified.

Nevertheless, as the example of Bevis also confirms, neither is the sovereignty exercised by the Bractonian subject the functionally limited submission to official duties espoused by medieval estates theory in its “traditional” or “ideological” formulation. People within the Bractonian polity are always individuals first and officers or members of a particular estate second, and even the lowly bondsman must in the first instance decide for himself how to strike the balance between personal desire and the limits of his station. If he guesses wrong, he may, of course, be punished, but we should not underestimate how the idea of self-governance closes the loopholes and resolves the uncertainties created by a system of multiple concurrent jurisdictions that often presents difficulties in determining what law can be imposed by what authority against what person. Further, when those who stand beyond the jurisdiction of any court, e.g. the king, fail to live up to the legal standard set for them, individual persons have not only a right, but also a duty to petition them for reform. Participation in the life of the Bractonian polity requires more than just knowing one’s place, it requires an understanding of how

obligations common to all are expressed in the station, or sometimes stations, that one occupies.

Matt Giancarlo and Wendy Scase have both argued that legal or juridical discourses of the fourteenth century exerted substantial influence over English literature produced during the Ricardian and early-Lancastrian period. According to Giancarlo, an “aesthetics of parliamentarianism” pervades the representations of the body politic produced by “authors, clerks and audiences in and around Westminster” during the latter part of the fourteenth century. At the intersection of parliament and poetry, Giancarlo finds “a locus of public discourses artistically representing the conflict over what it meant for a voice to *be* ‘common’ or public in the first place.”<sup>86</sup> Although she turns to examine a different forum, Scase seems to be equally interested in how private actors assumed newly constructed or available public personae in both English law and literature during the late-thirteenth through the mid-sixteenth centuries. She describes how increased access to the king’s courts for those who had previously been barred from that forum as well as procedural changes that affected how both criminal and civil cases were prosecuted facilitated an exchange between the legal and literary complaint. Through this exchange, the peasant plaint of the late-thirteenth century evolved into the “clamour literature” of the late-fourteenth and early-fifteenth.<sup>87</sup>

Although I do not take issue with the conclusions drawn by either Scase or Giancarlo, I do think that, by focusing on the particular procedures and places where legal discourse was deployed in the late-medieval period, they have not examined how

<sup>86</sup> Matt Giancarlo, *Parliament and Literature in Late Medieval England* (Cambridge: Cambridge University Press, 2007), 15.

<sup>87</sup> Wendy Scase, *Literature and Complaint in England, 1272–1553* (Oxford: Oxford University Press, 2007).

law as an hermeneutic practice evolved and became institutionalized during the same time. As noted above, the late-thirteenth century saw the production of a flurry of legal treatises, all influenced by *De Legibus*, that attempted to collect, organize and define the scope of English law. The first Year Book, a summation of important cases decided annually within the realm, was produced in 1268 and regular installments followed until the last printed Year Book was published in 1535. The king's jurisdiction did, as Scase notes, expand substantially over the course of the fourteenth century. As a result procedures in the local and manorial courts came into alignment with practice before the king's bench in London and Westminster.<sup>88</sup> The gradual establishment of the inns of court as a training ground for young lawyers also began around the middle of the fourteenth-century, and the four surviving inns can trace their official history as far back as the first quarter of the fifteenth century. As the most comprehensive and influential law treatise produced in late-medieval England, Bracton's *De Legibus* inevitably shaped how law was practiced in English courts. Further, as discussed above and as will be discussed in more detail in chapter four, the Bractonian idea of kingship dominated parliamentary discourse regarding the prerogatives and obligations of Edward II and his successors. While I do not think that we can attribute all appearances of the Bractonian polity to an author's familiarity with Bracton's text, I do think we need to consider the influence that *De Legibus* arguably exerted over the juridical discourses from which emerging ideas about the polity may have been derived.

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<sup>88</sup> Anthony Musson and W.M. Ormrod, *The Evolution of English Justice* (New York: St. Martin's Press, 1999), 8-10, 42-74, 189-93.

Moreover, in thinking about how Middle English authors “borrow” from continental works of political theory, we need to understand the extent to which that appropriation was perhaps motivated and determined by Bractonian notions of sovereignty, self-governance and political organization. Anthony Musson and W. M. Ormrod argue persuasively that the mirrors for princes produced for the ruling English elite, together with formal legal treatises, such as *De Legibus* and *Britton*, that were studied in the universities and inns of court formed a “didactic discourse of justice” that proved highly effective at inculcating in the fourteenth-century ruling elite the norms which it espoused.<sup>89</sup> For English authors who already held in mind the Bractonian polity where self-governance plays such a central role, the distinction that Lynn Staley makes between the two strains of Aristotelian political theory may not have held that much significance. To an extent, the “republican concerns” of Italian authors may already have been on the minds of English writers who were beginning to think of the king as yet another incarnation of a political subject who brings order to the realm by exercising a limited kind of sovereignty in accordance with the law.<sup>90</sup> Similarly, the nascent constitutionalism that James Simpson reads in late-fourteenth and early-fifteenth century literary production may actually be the result of English authors exploring how the individual political subject operates as the site where legal and jurisdictional conflicts--

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89 Musson and Ormrod, *The Evolution of English Justice*, 162-63.

90 In *Chaucerian Polity: Absolutist Lineages and the Anatomy of Associational Form* (Stanford: Stanford University Press, 1997), David Wallace, to an extent working within the critical paradigm first established by Wilks and which I summarize at the outset of this chapter, has suggested that Chaucer interpreted his Italian source material in light of “the most crucial material and ideological conflict of the Italian Trecento: the conflict between republican *libertas* and dynastic despotism” (1). I do not dispute that Chaucer’s political theory may have been influenced by his encounter with the political landscape of Renaissance Italy. Nevertheless, my analysis does suggest that Chaucer may have been less interested in political forms than in the political subjects that populated and propagated them.

between natural and positive law, between the church and the crown, between the king and parliament, between public and private--become visible and governable. In the chapter that follows, I will discuss how this articulation of the Bractonian idea of the person as a site of regulatory potential involves a reconfiguration of the traditional forms and conventions that medieval English authors inherited from estates satire.

## CHAPTER 3

### THE POLITICAL SUBJECT OF ESTATES LITERATURE

As I suggested in chapter one, the turn that some Middle English writers make towards thinking about the individual political subject as a target of regulatory authority and a potential agent of reform does not necessarily involve a turn away from the forms and vocabulary of estates literature. As Jill Mann and Georges Duby first demonstrated more than thirty years ago, the conventions and vocabulary of estates literature continued to exert a profound influence over a wide variety of literary production throughout the middle ages and well into the early modern period. Scholars working since Mann and Duby have tended to view the continued presence of estates content in Middle English literature in one of two ways. Some, like Paul Strohm, seem to read such content as a kind of vestigial inheritance, an obligatory recitation of what no longer works alongside what is truly “new” in Middle English writing. Strohm argues that, although Chaucer borrows heavily from the estates tradition, the truly distinguishing feature of the “*Canterbury Tales* is the extent to which its generic and stylistic variety is couched in polyvocality, in its embrace of separate and distinctive voices as a means of asserting social difference.”<sup>1</sup> Other scholars, such as Russel Peck in his introduction to Gower’s *Confessio Amantis*, view the incorporation of estates content as indicative of a continued or renewed commitment to traditional ideology.<sup>2</sup>

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1 Paul Strohm, *Social Chaucer* (Cambridge, MA: Harvard University Press, 1989), 168.

2 Russel Peck, ed., “Introduction” in John Gower, *Confessio Amantis* (Toronto: University of Toronto Press, 1980), xx.

Like Strohm, David Wallace also tends to downplay the significance of the estates material in order to highlight how Chaucer engages with particularly late-medieval associational forms in the *General Prologue*. He argues that despite Chaucer's use of an estates vocabulary, he actually structures the Canterbury pilgrimage as a kind of medieval guild, a "*communitas*" or corporate body constituted to carry out a mutual goal.<sup>3</sup> He is reluctant, though, to make the jump from corporate body to body politic. Conceding that his analysis "might please critics who have strained to see Chaucer's *felaweshipe* as expressive of a newly emergent nation-state consciousness," he nevertheless maintains that "such a metaphor is very difficult to sustain (the rest of the *Tales* offers us little encouragement) . . . . [C]haucer's *felaweshipe* is very unlike a ship of state."<sup>4</sup> Because he wishes to avoid entry into the nationalist debate, Wallace stops short of accounting for what the "estates form" and the "estates material" are still doing in the *General Prologue*, if they are not there to bridge the metaphorical gap between *communitas* and realm.<sup>5</sup>

Lee Patterson, in contrast, argues that the class politics of the countryside and a rather traditional view of the trifunctional polity, not the mercantile concerns and emergent associational forms of the city, provide the overarching framework within

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3 David Wallace, "The *General Prologue* and the Anatomy of Associational Form," in *Chaucerian Polity: Absolutist Lineages and Associational Forms in England and Italy* (Stanford: Stanford University Press, 1997), 70.

4 *Ibid.*, 71.

5 Ultimately, like Wallace, I conclude that attempts to frame the evolution of Middle English political thought within the terms of a nationalist or constitutionalist debate miss the point. My focus, as with that of the authors of the texts I will consider throughout, remains with the "person" as it takes shape as a sort of hermeneutic or epistemological tool for bridging the gaps and resolving potential conflicts among smaller associational forms, such as the estate, the *communitas*, or the institution, in order to incorporate them, through the operations of a jurisdictionally transcendent regulatory system, into the larger community of the realm. My differences with Wallace stem from my desire to understand how Middle English authors use the investigation of the interactions within and among various communities as a means of understanding, not necessarily the differences among the communities themselves, but rather the similarities that potentially unite the "persons" who inhabit them. I do not take any issue with the distinction he makes between medieval communities and the modern nation state.

which the drama of the *Tales* unfolds. Patterson grants that Chaucer begins by setting “aside a principle of order sanctioned by social authority in favor of one derived from a literary form that continually proclaims its own marginality,” when he has the Miller upset the Host’s plan for organizing the tale-telling contest.<sup>6</sup> Patterson ultimately concludes, though, that Chaucer brings the *Canterbury Tales* to “its appointed and orthodox conclusion,”<sup>7</sup> in the *Parson’s Tale* in part by “disarming” the “urgent social issues raised by the *Miller’s Tale*”<sup>8</sup> through a reinscription of “the hegemony of aristocratic values”<sup>9</sup> that characterize the trifunctional polity and with which the *Tales* begin. Even David Aers, in his seminal study of *Piers Plowman*, to an extent seems to be working within the critical paradigm that I am describing. He reads Langland’s inclusion of estates matter as an “affirmation of established ideologies,” that works in an almost dialectic opposition to the author’s recognition and representation of new social realities in which such ideologies can no longer be accommodated.<sup>10</sup>

Although these two lines of scholarship do recognize shifts within and authorial reconfigurations of the estates framework within Middle English writing, both approaches tend to describe those shifts and reconfigurations as a sort of discursive breakdown. Even where they have recognized how authors manipulate estates conventions in response to changing socio-economic conditions, scholars have tended to downplay how this modified estates discourse thereby acquires new representational

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6 Lee Patterson, “The *Miller’s Tale* and the Politics of Laughter,” in *Chaucer and the Subject of History* (Madison: University of Wisconsin Press, 1991), 244-45.

7 *Ibid.*, 279.

8 *Ibid.*, 277.

9 *Ibid.*, 278.

10 David Aers, *Chaucer, Langland, and the Creative Imagination* (London: Routledge & Kegan Paul, 1980), 1.

value, as the means for describing a set of socio-political obligations common to all. Strohm, for example, argues the increasing importance in the fourteenth century of capital as a basis for determining both social status and feudal allegiance put pressure on the representative capabilities of the estates system as a political model. According to Strohm, fourteenth-century writers responded to the failure of the trifunctional model to represent adequately the social reality they observed around them by interpolating additional social groupings into that model and emphasizing the interdependence, rather than the stratification of the different communities the realm contained. So for example, the Latin sermons of Bishop Thomas Brinton offer four estates and a body politic configured to reflect the economic realities of indentured servitude as well as the importance of these “new orders” to the well-being of the polity:

Brinton is very much of his own time in devoting a part of a sermon on the mystical body of the Church to a body politic consisting of separate but united members. Its head (or diplomatically, heads) is kings, princes, and prelates (“reges, principes, et prelati”); the eyes are judges and true counselors (“iudices sapientes et veraces consillari”); the ears are the clergy (“religiosi”); the tongue is doctors (“doctores boni”); the right hand consists of strenuous knights (“milites ad defendarum parati”); the left hand of merchants and devoted craftsmen (“mercatores et fideles mechanici”); the heart, explicitly designated as the middle position (“quasi in medio positi”), comprises citizens and burgesses (“cives et burgenses”);

the feet, which support the whole are peasants and workers (“agricole et laborantes”).

We should immediately notice the considerable weight given by Brinton to the middle groups within society--especially in his characterization of knights as its right arm, merchants and faithful craftsmen as its left arm, and citizens and burgesses as its heart. This expansion is accomplished by two strategies distinctive to the later fourteenth century: a demotion of the knights and a promotion of certain categories of tradesmen.<sup>11</sup>

Strohm perceptively identifies how fourteenth-century authors in general, and Chaucer in particular, struggled and innovated with old forms in order to represent an increasingly complex and diverse social reality.<sup>12</sup> Ultimately though, my interest in Strohm’s analysis stems from a line of inquiry that he opens up but does not himself pursue: For Brinton, as for a number of other late-medieval writers, the estates vocabulary becomes increasingly useful for describing similarities, as opposed to differences, among the various individual bodies from which the body politic is compounded.

What intrigues me most about Brinton’s description of the body politic is not how well it accommodates previously invisible and emerging social categories, but rather how it suggests that knights are somehow like merchants and faithful craftsmen by

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11 Strohm, *Social Chaucer*, 4.

12 Duby makes a similar point about how the trifunctional model evolved during an earlier period in France. See, e.g., *The Three Orders: Feudal Society Imagined*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1980), 346-53. Where all of the scholarly work under discussion thus far tends to emphasize how the trifunctional model evolved as medieval writers attempted to represent social “reality,” I want to examine how, even as the trifunctional model loses that representative capacity, it acquires another. In my reading, the subject of representation in estates’ discourse is not so much society as a whole but the “person” who operates as a point of intersection between and among various regulatory discourses.

deliberately placing them in the same anatomical relationship to the social body. In discussing the Poll Tax of 1379, Strohm uncovers similar evidence of an emerging lateral visibility that could cut across estates boundaries:

As in many documents of the period, society is seen in a dual perspective. Hierarchy and separation of estates are maintained, especially in the composition of the first category, which consists entirely of gentle ranks ranging from the Duke of Lancaster himself through esquires without lands, rent or chattels. This separation is qualified, however, by a second standard of condition or economic status, according to which comparisons are made across different groups. The mayor of London, for example, is assessed at the same rate as a count; other mayors, like barons; apprentices at law and substantial merchants, like knights. The framers of the tax seem aware of the comparative nature of their scale; we read that the mayor of London shall pay “come un Conte,” the aldermen and other mayors “chescun come un Baron,” and the substantial merchants “come Bachilers.” The contemporary sense of the essential difference between the gentle and nongentle estates would hardly have been overridden by such comparisons. Nevertheless, likening of the conditions of the various estates could only lessen the sense of their fundamental difference.<sup>13</sup>

The 1379 legislation, very much like the work of Bracton and the authors of the texts that I examine below, begins what I will argue is a studied dismantling of the categorical relations among the estates in order to construct a new set of metaphorical relationships

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<sup>13</sup> Strohm, *Social Chaucer*, 8.

that expose how shared circumstances give rise to shared obligations. The statute, like the works I will discuss in this chapter and the next, takes this rhetorical turn in order to render a set of regulations applicable to one group available for application to another.

Even before changing socio-economic reality began to test the representational capacity of the estates framework as a political model in the fourteenth century, English authors had already begun the process of shifting the focus of estates discourse onto a new subject of representation. Beginning perhaps with Bracton in the early thirteenth century, the individual political subject, not the realm as a whole or even the estate, started to emerge as the real subject of estates stereotype. Thus, in his classification of persons in *De Legibus*, Bracton draws upon the conventions of estates discourse in discussing how men are organized within the socio-political hierarchy of the realm:

[W]ith men,<sup>14</sup> in truth, there is a difference between persons, for there are some of great eminence [who] are placed above others and rule over them: in spiritual matters which belong to the priesthood, the lord pope, and under him archbishops, bishops and other less exalted prelates; in temporal matters which pertain to the kingdom, emperors, kings and princes, and under them dukes, earls and barons, magnates or vavasours and knights, also freemen and bondsmen. Various powerful persons are established under the king, namely, earls, who take the name ‘comites’ from ‘comitatus’, or from ‘societas,’ a partnership, [who may also be

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14 In the original Latin text, set forth in the note below, Bracton uses “*homines*” here. Bracton generally uses terms such as “*viri*” (III.114) or “*masculi*” (II.31) elsewhere to distinguish male from female persons. In contrast, “*homines*” usually denotes the whole of the human race, as in the brief section given over to discussing the classification of men, women, and hermaphrodites (II.31). Consequently, “mankind” might be a better translation than the “men” Thorne gives us.

called consuls from counseling,] for kings associate such persons with themselves in governing the people of God, investing them with great honour, power and name when they gird them with swords, [that is, with sword belts.] (II.32)<sup>15</sup>

Characterizing Bracton's discussion of the three estates as "typical of ideologically conditioned texts in presenting the system as self-evident, as the only possible form of social organization,"<sup>16</sup> Strohm concludes that Bracton's depiction of the estates hierarchy functions as a "conspectus of society" in late-medieval England:

Although Bracton here accepts the influential model of the "three estates" of society, consisting of knights (or kings), priests, and peasants, he employs it in a form that poses no threat to hierarchical principles. His presentation of the three estates downplays notions of interdependence, emphasizing instead the separate levels at which the estates exercise their functions. Hierarchy is maintained by a detailed attention to the secular and religious aristocracies on the one hand, and a more sketchy but dutiful attention to the peasantry on the other, without acknowledgment of "middle" or other intervening categories that could blur this strict

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15 Henry de Bracton, *On the Laws and Customs of England*, ed. George Woodbine, trans. Samuel Thorne (Cambridge: Harvard University Press, 1968-77) (Hereinafter cited in the text and notes as "*De Legibus*,". Throughout, citations to the *De Legibus* have been provided in the text, while citations to Woodbine's and Thorne's introductory and prefatory materials can be found in the footnotes.). Latin: Apud homines vero est differentia personarum, quia hominum quidam sunt præcellentes et prelati et aliis principantur: dominus papa in rebus spiritualibus quæ pertinent ad sacerdotium, et sub eo archiepiscopi, episcopi, et alii prelati inferiores. Item in temporalibus imperatores, reges, et principes in his quæ pertinent ad regnum, et sub eis duces, comites et barones, magnates sive vavasores, et milites, et etiam liberi et villani, et diversæ potestates sub rege constitutæ. Comites videlicet qui a comitatu sive a societate nomen sumpserunt, qui etiam dici possunt consules a consulendo. Reges enim tales sibi associant ad regendum populum dei, ordinantes eos magno honore et potestate et nomine quando concingunt eos gladiis, id est ringis gladiatorum. (II.32)

16 Strohm, *Social Chaucer*, 2.

separation of social levels. Hierarchy is further underscored by emphasis on social difference among persons (“differentia personarum”) and on the orderly submission of inferiors (“inferiores”) to their superiors within the social order.<sup>17</sup>

Strohm is certainly correct in noting that Bracton’s enumeration of the estates of men “downplays notions of interdependence, emphasizing instead the separate levels at which the estates exercise their functions.”<sup>18</sup> Nevertheless, this reading overlooks how Bracton’s formulation of estates theory actually reveals multiple organizational principles at work in this passage. For instance, it does not fully account for the context of this reference to offices and officers within the section of *De Legibus* dedicated to Bracton’s consideration of the various and sundry legal definitions of personhood. Although Bracton is working with the estates framework in mind, the contours of that framework are more contingent, and therefore more flexible, than we as scholars have previously been willing to recognize.

Rather than presenting the three-estates model as “the only possible form of social organization,” Bracton instead allows that the estates are neither natural nor even absolutely determinative of one’s political function. Bracton begins the passage by emphasizing that, “God is no respecter of any men whomsoever, free or bond, ‘for there is no respect of persons with God,’ for as to Him, ‘he that is greatest, let him be as the smallest; and he that is chief as he that doth serve.’” (II.32).<sup>19</sup> Echoing the rhetorical structure of his entire discussion of “persons” as a legal category, in this section Bracton

<sup>17</sup> Ibid., 3.

<sup>18</sup> Ibid., 3.

<sup>19</sup> As indicated in the notes to Thorne’s translation, Bracton has of course drawn this particular principle not from Azo or from his civilian authorities, but from the Bible, Rom. 2:11.

starts from the two fundamental categories of freemen and bondsmen, and reminds the reader that estates or offices, like servitude, are a creation of the *ius gentium*, not natural or divine law. As he explains earlier, quoting from Azo's *Summa*, "Servitude is an institution of the *jus gentium*, by which, contrary to nature, one person is subjected to the dominion of another." (II.30)<sup>20</sup> Consequently, even these two basic categories of free and bond are essentially unstable and subject to constant redefinition. Bondsmen are "free with respect to the *jus naturale*" since, like all men, the bondsman is free "to do what he pleases, unless forbidden by law or force." (II.29), and freemen may be made bond and bondsmen made free by operation of positive law. In his enumeration of the estates, Bracton invests the official category of "earls" (*comites*) with a similar instability. The occupants of this office may go under different names depending upon whether they are acting collectively or individually as an army (*comitatus*), a business partnership (*societas*),<sup>21</sup> or a counsel of advisors (*consules*).

Bracton does, as Strohm contends, present the estates as a hierarchy intended to sort men into categories according to function. Those categories, however, operate more like convenient names for, rather than definitions of the functional occupations that they identify. Depending upon the needs of king and kingdom, an "earl" might just as easily be a "knight," a "partner," a "councillor," or all three at once. Although it may look at first blush like "chicken or the egg" semantics, Bracton's revision of the estates hierarchy into a vocabulary that describes, as opposed to prescribes, socio-political relations in the

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20 Latin: Est quidem servitus constitutio iuris gentium qua quis dominio alieno contra naturam subicitur. (II.32)

21 For a discussion of Bracton's possible incorporation of the law governing business partnerships in the controversial "*Addicio de cartis*" see Charles M. Radding, "The Origins of Bracton's *Addicio de Cartis*," *Speculum* 44.2 (1969): 239-46.

realm does important conceptual work. What really interests Bracton is the question of dominion, who owes what to whom, and how one man (or woman) comes under the sway of another. Upon closer inspection, Bracton's discussion of estates reveals itself as yet another attempt to refine his definition of the English political subject as a generic but individual person *subject to* the laws and customs of England. The "person," as Bracton describes it, precedes the categories by which it is marked and through which it becomes a member of the polity. The emphasis on functional interdependence that Strohm argues is lacking from this "estates moment" in Bracton's treatise actually pervades it from beginning to end. Bracton's exposition of the *leges et consuetudines* is in fact an exploration of how the process of law-making engages all men, from the king himself to the lowliest bondsman, in a common enterprise. If Wimbledon's version of the parable of the vineyard, discussed in chapter one, tends to segregate the various estates in time and place, Bracton's exposition of English legal procedure, in all of its quotidian minutiae, brings men and women<sup>22</sup> from every stratum of society together in both writ and courtroom.

Over one hundred years later, we can still see Middle English authors such as Chaucer, Langland and Gower using the estate, as Bracton does, in order to get at and describe the "person" who occupies it. By exploring how the formal conventions of estates literature exploit the seemingly endless potential for conflict--among the estates themselves and between personal desire and the public good--within the estates hierarchy, they represent the problem of reform as a problem related to the governance, not of institutions or groups of people, but of the individual person. They flatten out the

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<sup>22</sup> Hence his use of "*homines*" in this passage, discussed in note 14, *supra*.

hierarchical or categorical relations among the estates into a series of fungible metonymies for an underlying public obligation that seems to bind everyone equally, and in doing so bring the individual subject to the forefront as a target for regulation and a potential agent of reform. Estates content in these texts is neither an anachronistic hold-over nor an “ideologically conditioned” representation of “self-evident” social forms. Instead, it does the work of political theory, bringing the focus to bear on individual subjects and tending to dissolve the differences among them in order to open up the field for the application of a regulatory discourse of self-governance drawn from a variety of sources. The idea of the individualized political subject mediates across estates boundaries by operating as the location at which jurisdictional conflicts within and among the estates become visible and negotiable. It also in and of itself helps to resolve or avoid jurisdictional conflict by mediating between the estate and the realm as a whole. Finally, it bridges the gap between public and private, so that social accountability becomes a fact of life rather than a function of one’s station or office. As a result of all of these changes, governance, of the realm, as well as the institutions and estates comprised within it, is reconfigured as a problem of regulating the individuals within it. By recasting political reform as individual reform, Middle English authors relocate political agency in a way that tends to highlight good self-governance, rather than simple obedience, as a quintessential social virtue.

### **I. Social Reorganization in *The Canterbury Tales***

My examination of Middle English estates literature begins with the distinction Jill Mann makes between “estates form” and “estates material.” Drawing upon the work

of Ruth Mohl, Mann defines estates literature as comprising “any literary treatments of social classes which allow or encourage a generalised application.”<sup>23</sup> She distinguishes, however, between “works which have an estates form” and “those which simply contain estates material.”<sup>24</sup> The estates form, according to Mann, is characterized by an ordered presentation of estates portraits in an attempt to give one a sense of the estate or polity as a whole.<sup>25</sup> “Estates material,” on the other hand, refers to the inclusion of stereotypes or caricatures drawn from estates satire in a work where some other topical framework, such as that of the seven deadly sins, predominates.<sup>26</sup> Thus Mann initially distinguishes between works like the *General Prologue* that follow the estates form in the presentation of estates material, and works such as *Piers Plowman* that include estates material but owe their narrative structure to some other organizing principle.<sup>27</sup> The rough distinction that Mann makes between these two formal types begins to break down, however, at the level of character. Over the course of her study of the *General Prologue*, Mann identifies how the estates hierarchy structures not only the *narrative* but Chaucer's characterization of the individual pilgrims themselves:

Subjectivity characterises both the pilgrims' attitude to the world, and the world's (or the reader's) attitude to the pilgrims. But at least in their case, it must be repeated that their views on the world are not individual ones, but are attached to their callings--in medieval terms, their estates.<sup>28</sup>

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23 Jill Mann, *Chaucer and Medieval Estates Satire* (Cambridge: Cambridge University Press, 1973), 3.

24 *Ibid.*, 4.

25 *Ibid.*, 4-6.

26 *Ibid.*, 7-10.

27 *Ibid.*, 3.

28 *Ibid.*, 201-02.

Chaucer's pilgrims are who they are because of--not in spite of--the stereotypical roles they play within the polity.<sup>29</sup> This is her real, critical insight, her point of departure from earlier studies done by J. M. Manly and G. L. Kittredge that emphasize Chaucer's humanizing and individualizing tendencies.<sup>30</sup> It is also an insight that opens the door to a new way of thinking about the cultural and political work that estates material is doing in a number of Middle English texts.

As invested as Mann's argument is in a discussion of how formal estates conventions shape the *General Prologue* and the characters who populate it, in her conclusion she ultimately returns to an emphasis on content in discussing how, within the *General Prologue*, specialized labor leads to specialized points of view. In that return to content, she does not consider what her formal analysis might suggest about a new set of metaphorical, as opposed to hierarchical or categorical, relations that might be drawn between and among Chaucer's estates' stereotypes:

The *Prologue* proves to be a poem about work. The society it evokes is not a collection of individuals or types with an eternal or universal significance, but particularly a society in which work as a social experience conditions personality and the standpoint from which an individual views the world. In the *Prologue*, as in history, it is specialised

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29 Jill Mann, ed., "Introduction," in Geoffrey Chaucer, *The Canterbury Tales* (London: Penguin Books Ltd., 2005), xxii ("Whatever the vividness with which their speech and behaviour are realized for us, they are conceived at the level of the general rather than the individual. Each represents a class, a mass of experience that is widely shared. It is significant that Chaucer does not refer to the pilgrims by their personal names.").

30 J.M. Manly, "A Knight Ther Was," *Trans. Am. Phil. Assoc.*, 38 (1907), 89-107. G.L. Kittredge, "Chaucer and the *Roman de Carite*," *MLN* 12 (1897), col. 113-15, and "Chaucer and the Alanus de Insulis," *MP* 7 (1910), 483, and *Chaucer and his Poetry*, Cambridge, Mass (1927).

work which ushers in a world where relativised values and the individual consciousness are dominant.<sup>31</sup>

In spite of what her work implies about the possible formal similarities between and among Chaucer's depictions of the pilgrims, Mann bases her final analysis upon how the content of those depictions distinguishes and even alienates them one from the other. I would like to pick up that thread Mann leaves dangling. The specific details--that is to say the content--of the pilgrims' experiences within the estates hierarchy may, as Mann argues, segregate the society of the *General Prologue*. The form of that experience, which Chaucer figures again and again as confrontation with and negotiation of jurisdictional conflicts between and among the various communities with and within which each pilgrim participates, remains remarkably consistent, however. For Chaucer, as for Langland, Gower and the other Middle English authors whom I will discuss in this chapter, the diverse and varied stereotypes of estates literature share this in common: a body that is subject to and in many cases marked by multiple communal affiliations. More even than the estates themselves, this body--its slippery unwillingness to stay put within a single, proper social classification, and its relationship to a unified, singular body politic--is the political subject of Middle English estates literature. Through their manipulation of estates conventions, Middle English authors stage a confrontation with the question of how and by what, or more precisely whom this body is to be governed.

We can see this dynamic in action even in the *General Prologue*, which as Mann observes takes the form of an ordered presentation of the estates and those who occupy them. One of the problems that we encounter in reading the *General Prologue* is how it

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<sup>31</sup> Mann, *Chaucer and Medieval Estates Satire*, 202.

merges a set of characters drawn from estates satire with the narrator's unquestioning presentation of those often highly critical portraits of morally dubious characters as what Strohm might call "self-evident" political forms. Mann has already noted how Chaucer's narrator suspends judgment. *The General Prologue* is not *The Simonie*. Chaucer does not give us a narrator who complains about how often the imperfect stereotype, rather than the estates' ideal, seems to occupy a given social place. Instead, Chaucer puts the satirical in a paratactical relationship with the ideal that reveals how all estates stereotypes, whether they name "good" or "bad" office-holders, share certain peculiar formal similarities. The most significant of these similarities for my purposes is how their persons express both virtue and vice in terms of how well, or how poorly, a particular individual negotiates the jurisdictional conflicts to which he or she is inevitably subjected as a member of the polity.<sup>32</sup> We routinely describe the *General Prologue* as a "frame" for the tales that follow. The term implies constraint or containment, as well as display. Consequently, we need to consider what is being contained or constrained, even while it is being foregrounded by the poem. Clearly, it is not the tales themselves, which range from bawdy to devout, inventive to formulaic, and which only receive a mention in the very last lines of the prologue. Rather, by introducing his readers to the pilgrims, Chaucer identifies the common source from which the tales proceed. While I agree with Strohm that Chaucer embraces a polyvocal social order, the multiplicity of voices that we hear in *The Canterbury Tales* issues from a sort of "standard-issue" political body. That body is ultimately marked not by its conformance or nonconformance with the

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<sup>32</sup> In effect, by suspending judgment, Chaucer shifts our focus away from the problem of sorting bodies into categories, this time those of "good" v. "bad" pilgrims, and refocuses it upon what they all share as formal constructs, or representatives of the "person" more generally.

functionally specific rules of any particular estate, but by its location at the site of multiple overlapping communities and jurisdictional conflict.

In this, we can see Chaucer playing inventively with the *Decameron* as an analogue.<sup>33</sup> Like Boccaccio, Chaucer ultimately contains narrative variety within a single community. Where Boccaccio identifies that community with a single estate, that of the courtly nobility, however, Chaucer constructs a narrating identity that to an extent transcends such social classifications. Boccaccio's plague refugees have a history that precedes their retreat from Florence. Although the exact nature of the ties that bind them remain relatively obscure, the reader is nevertheless made aware of the fact that the men and women are joined by bonds of estate, kinship, friendship and romantic love. In contrast, the Canterbury pilgrims are divided by these same forces, and indeed several others. Boccaccio's tale-tellers fall in together because of their social, economic and affective ties. Chaucer's end up together in spite of such things. Although the poem begins with a nod to the forces of nature, Chaucer notes that his pilgrims are a group "Of sondry folk, by *aventure* yfalle / In felaweship" (ll. 25-26, emphasis mine).<sup>34</sup> As discussed below, the pilgrims are eventually organized into a social collective, Chaucer begins, though, with a random assortment of characters upon whom the narrator *imposes* an estates framework. Nevertheless, in spite of their differences, the pilgrims do have

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33 In his explanatory notes to *The Canterbury Tales* in Geoffrey Chaucer, *The Riverside Chaucer*, ed. Larry D. Benson (Boston: Houghton Mifflin, 1987), Larry Benson notes that a fair amount of debate exists regarding how well Chaucer may have known the *Decameron* and exactly what he may have borrowed (795). Nonetheless, even if Chaucer had only indirect knowledge of Boccaccio's work and the *Decameron* "offered little more than the bare suggestions for his plan" (Benson 796), Chaucer does seem to be offering an interesting variation on Boccaccio's general theme. As Benson observes in his introduction to the tales in the same volume, Chaucer seems to have borrowed and adapted other structural elements of the *Decameron* (4).

34 All citations are to Geoffrey Chaucer, *The Canterbury Tales* in *The Riverside Chaucer*, ed. Larry D. Benson (Boston: Houghton Mifflin, 1987).

one thing in common. Rather than making a religious journey to “straunge strondes, / To ferne halwes, kowthe in sondry londes;” the pilgrims have selected a more localized focus for their pilgrimage: “And specially from every shires ende / Of Engelond to Caunterbury they wende” (ll. 15-16). The “I” of Chaucer as narrator is first, and until he is explicitly identified with Chaucer, an anonymous English pilgrim,<sup>35</sup> something that he shares with all of the other members of the Canterbury pilgrimage.<sup>36</sup>

A similar concern with how notions of community based on shared geographic space intersect with social identities predicated on other modes of affiliation creeps into Chaucer’s description of the Knight, the Squire and the Yeoman. As a noble household composed of a father, his son, and a free-born servant, these characters and the relations among them seem to be defined by “natural” or “customary” rules regarding family relationships, feudal allegiance and status. Chaucer disrupts the “traditional” unity of the

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35 In “Anatomy of Associational Form,” Wallace identifies Chaucer’s inclusion of himself with the group comprising the Reeve, the Miller, the Summoner, the Pardoner, and the Manciple as the “first authorial signature” (80). He argues that, at this point, Chaucer begins to associate himself more firmly with the mercantile class, and highlights parallels between this last group of six and the guildsmen: “The dropping of the guildsmen was precipitated, I would suggest, by a twofold realization of political and artistic redundancy. Their individual crafts are matched (the Reeve is a carpenter) and surpassed by the more promiscuous and interesting group of six tacked onto the rear of the compaignye; and their group polity as fraternitee is replicated by the pilgrimage as felaweshipe” (80).

36 A number of scholars, most recently Gerald Morgan in “Moral and Social Identity and the Idea of Pilgrimage in the General Prologue,” *The Chaucer Review* 37.4 (2003): 285-314, have taken this shared religious identity as an indication that the fundamental organizing principle of the Canterbury fellowship must also be a religious one. Thus Morgan explains, a “moral and spiritual consensus (at once English and Catholic)” and “taken for granted by Chaucer himself” (289) is ultimately what orders the community that takes shape in the General Prologue. I think, though, that Chaucer calls the category of the pilgrim to mind simply to point out how pilgrims as a class of actors are divided in the geographic focus of their piety. Some choose to seek out holy sites in strange lands, while still others journey to sanctified spaces within the borders of their homeland. Division, not consensus, gives rise to the Canterbury fellowship. The very fact that Chaucer has his pilgrims take the latter course is what locates his depiction of the trifunctional polity within an English, as well as a Christian context. Further, the pilgrimage might just as easily be described as a community predicated upon shared legal status, a status that incidentally also unites them in spite of social and economic difference. For an overview of the law surrounding pilgrimage in late-medieval England, see generally, Susan Signe Morrison, *Women Pilgrims in Late Medieval England: Private Piety as Public Performance* (New York: Routledge, 2000), pp. 43-82, 150-67.

group, however, by layering it with a coded vocabulary of gender and geographic relations. By marking the Knight and the Squire not as feminine *per se*, but as feminine *in relation to* the Yeoman, he encourages us to see how the two nobles are similar, in spite of the differences between them, in how they both differ from their servant.

The Knight is an epic hero, a crusader who has seen service in holy wars “as wel in cristendom as in hethenesse” (l. 49). His reputation for bravery on the battlefield and wisdom in all things precedes him wherever he goes (l. 67-68). Even though he is noble, his steed and his dress testify to a concern with utility rather than finery. The Knight’s “hors were goode, but he was not gay,” (l. 74) and his tunic is of “fustian,” (l. 75) which is “[a]l bismotered with his habergeon” (l. 76). His son, the Squire, is in contrast the picture of a courtly and chivalric ideal drawn from romance. Unlike his father, he takes care with his appearance. He has “lokkes crulle as they were leyd in presse,” (l. 81), and “Embrouded was he, as it were a meede/ Al ful of fresshe floures, whyte and reede” (ll. 89-90). Whether this last applies to the Squire’s gown, “Short . . . with sleeves longe and wyde,” (l. 93), or his complexion remains somewhat unclear in the text. The Squire’s prowess on the battlefield, much like his “syngynge” and “floytynge” (l. 91), results from his “hope to stonden in his lady grace,” providing yet another contrast between father and son.

The differences between father and son do not, in and of themselves, suggest anything other than the existence of two alternative models of masculinity within the second estate. The Knight represents an ideal drawn directly from estates satire, the second estate crusader who spends most of his time in defense of the church. The Squire

exemplifies an ideal drawn from medieval romance, the courtly youth who cultivates skill at arms and other talents in order to impress his chosen lady. A subtle formal comparison of how the identities of the Knight and the Squire are constructed is implied, however, with the Yeoman's entrance. Where the nobles display their military prowess on an international stage—the father in “Alisaundre,” “Pruce,” “Lettow,” and “Ruce,” (ll. 51-54) among others, and the son “In Flaundres, in Artoys, and Pycardie,” (l. 86)—the Yeoman's might appears to be focused within a more localized geographical space: “A forster was he, soothly, as I gesse” (l. 117). Again, one might argue that the Yeoman simply represents a third alternative model of masculinity, this one more appropriate to his station, except for how Chaucer ascribes feminine characteristics to both the Knight and the Squire while emphasizing the Yeoman's manliness. The Yeoman's portrait fairly bristles with barely concealed phallic references:

A sheef of pecok arwes, bright and kene,  
 Under his belt he bar ful thriftily  
 (Wel koude he dresse his takel yemanly;  
 His arwes drouped noght with fetheres lowe),  
 And in his hand he baar a myghty bowe. (ll. 104-08)

Some irony may be at work here. With his impressive complement of phallic substitutes, the Yeoman bears at least a passing resemblance to the compensatory self-portrait offered by the impotent Reeve, the miller, Symkyn, who sports his own phallic artillery of bladed weapons.<sup>37</sup> Manliness does seem to collapse into “yemanly”-ness in these lines, however.

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<sup>37</sup> See Larry Skrute, *Virtue of Necessity: Inconclusiveness and Narrative Form in Chaucer's Poetry*; Columbus, Ohio: Ohio State University Press, 1984, 116-17. Alfred David, *The Strumpet Muse: Art and Morals in Chaucer's Poetry*; Bloomington: Indiana University Press, 1976, 114-17.

We can contrast this thoroughly “manly” portrait of the Yeoman, with Chaucer’s description of the Knight, who in his deportment is “as meeke as is a mayde” (l. 68), while the Squire’s rose and white complexion or clothing (l. 90) will be recalled in the Knight’s own description of Emelye in the *Knight’s Tale* (l. 1053).

The Knight and the Squire who arguably occupy two places at once, the “international” community of crusade and courtly romance and the more localized English community of the Canterbury pilgrimage itself, are both subtly marked with feminine attributes. The Yeoman, who seems to be entirely oriented within a local space, is almost hyper-masculine. Given the obviously satirical and critical representation of the Reeve’s Miller, already mentioned above, who himself seems to be another occupant of a decidedly “local” community surrounding Cambridge, it would be difficult to argue that Chaucer establishes a stable binary between “bad,” feminized and heterogenous identities and “good,” masculine, and homogenous ones. In addition, as discussed below, the heterogenous figure of the Monk, is described, apparently without irony, as another “manly man” (l. 169)--though other features of his portrait may indeed be ironic. To put it another way, I do not think that Chaucer critiques as “feminized” characters who occupy multiple social spaces at once. Rather, by deploying the vocabulary of gender here and elsewhere,<sup>38</sup> Chaucer highlights how even terms and images associated with the

38 The *General Prologue* is of course not the only place where Chaucer uses female adjectives to describe and suggest comparisons between male bodies. In *The Miller’s Tale*, the Miller himself describes Nicholas as being “lyk a mayden meke for to see” (l. 3202), and he has Absolon protest, “I have swiche love-longynge . . . I may nat ete na moore than a mayde” (l. 3707). In the prologue to *Sir Thopas*, the Host jokingly, and perhaps ironically, compares his own physique with Chaucer’s, describing the latter as a “popet . . . smal and fair of face” (ll. 700-702). As a number of scholars have noted, Chaucer’s female characters, such as the Wife of Bath and Custance in *The Man of Law’s Tale*, often exemplify how the “estate-less” female body is able to transcend the bounded social spaces that men typically occupy. That critical insight suggests the use of feminine markers to describe the Knight and the Squire, as well as the other male characters mentioned, may be Chaucer’s attempt to highlight how men as well as women share a social or political body that precedes, and therefore, transcends to an extent

seemingly stable categories of “male” and “female” acquire new signifying power when they are employed to describe the similarities and differences between and among essentially masculine bodies. Further, Chaucer focuses his comparison upon a formal similarity that the Knight and the Squire, in spite of their obvious differences in almost every other aspect, share with one another but not the Yeoman. In doing so he signals how two individuals marked as “different” using estates conventions, may nevertheless share some fundamental similarity based on how their bodies act as a bridge between two different communities. He thereby begins a turn of the descriptive focus of all three estates stereotypes onto the “person” behind the estate, rather than the estate itself.<sup>39</sup>

That turn continues as the narrator makes the transition into his depiction of the next three pilgrims, the Prioress, the Monk and the Friar. As discussed above, the Squire’s portrait, when viewed as a representation of his estate, does not necessarily reflect negatively upon the estate itself. By consistently associating the Squire’s mode of being with vice in others, however, Chaucer encourages further consideration of what it might say about the Squire as an individual. The Prioress, Monk and Friar are all linked to him through their dedication to the school of love, their fine clothes, and their pursuit of courtly leisure. These same things provide points of contrast with his father the

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the communities that mark it.

39 To the extent that Chaucer may also be using the three characters to invoke the literary genres from which they have been drawn (e.g., the Knight from estates satire or epic, the Squire from romance, and the Yeoman from folklore), he may be exploring what differentiates but also perhaps invites comparisons among the “subjects” of these three discursive forms. For a discussion of the Yeoman’s potential relationship to folk heroes such as Robin Hood, see, e.g., J.C. Holt, “The Origins and Audience of the Ballads of Robin Hood,” *Past and Present* 18 (1960): 89-110; and “Robin Hood: Some Comments,” *Past and Present* 19 (1961): 16-18. In the latter article, Holt suggests that yeomen may have straddled the somewhat blurred social boundary separating the lower orders of gentry from the “upper crust of the peasantry” (17). If that is the case, then it supports my contention here that what differentiates the Knight and the Squire from the Yeoman is not necessarily status within the estates hierarchy, but rather geographic orientation.

Knight, who--unlike the Monk, for example, who has “Ful many a deyntee hors” (l. 168) in his stable--has only one “goode” (l. 74) steed that we know of. Although many critics have observed that Chaucer’s critique of the Squire, if it exists, is a gentle one, one cannot help but hold him up against the standard of his father. The two men ostensibly occupy the same estate and share certain formal similarities as characters who negotiate between an among various international and local communities. Nevertheless, the differences between father and son, given Chaucer’s use, discussed in more detail below, of courtly manners, occupations and diversions to signify gluttony, sloth and lust in others, at the very least beg the question of whether such pursuits are really appropriate for anyone. If such attributes cannot be read as negative statements about the state of the second estate, so to speak, then perhaps we might read them as providing some insight into the character of the “person” who wears them.

In these first three portraits, Chaucer explores how even idealized estates stereotypes tend to reveal the conflicting moral and communal affiliations to which the members of a single estate or a single household can be subject. In doing so, he reveals that, though it may be more subtle in the case of the estates’ ideal, a heterogenous identity arising from one’s occupation of multiple stations or communities at once is more often than not a hallmark of any individual’s participation in the life of the realm. Even the Yeoman, who does not share the divided geographic loyalties of the Knight and the Squire, nevertheless sits at the intersection of multiple communal affiliations predicated on his social status, profession, geographic orientation, gender, etc. Vice and virtue are not necessarily a function of *whether* one occupies multiple social spaces at once, but

*which* spaces one chooses to occupy and *how* one occupies them. At the intersection of multiple, overlapping communities Chaucer locates a “person” who can function by analogy as a site where the conflicts within and among the jurisdictions (social, religious, legal, geographical, etc.) those communities represent come into focus and become negotiable at an individual, as opposed to institutional, level.

With regard to vice, one can observe how estates conflict marks, and at the same time identifies the socialized body of the morally fallible in the narrator's description of the Nun, the Monk and the Friar. Stephen Knight, for example, has argued that “the Monk is a bogus knight,” whose “estate false consciousness is the underlying *General Prologue* motif,” and is realized in his tale.<sup>40</sup> According to Knight, the Monk is trying to occupy two social positions at once. Drawing upon Knight’s analysis, we can see that these three characters, like just about everyone else within the polity of the *General Prologue*, are already and always should be occupying multiple social spaces. What their affinity for the second estate actually signals is a failure to position themselves properly within and in relation to the third, as required by their religious calling.

Chaucer's narrator describes the Nun as a woman of dainty manners that nevertheless manage to suggest desires inappropriate to her station:

At mete wel ytaught was she with alle;  
 She leet no morsel from hir lippes falle;  
 Ne weete hir fyngres in hir sauce depe;  
 Wel koude she carie a morsel and wel kepe  
 That no drope ne fille upon hire brest.

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<sup>40</sup> Stephen Knight, “My Lord the Monk,” *Studies in the Age of Chaucer* 22 (2000): 381-86, 383.

In curteisie was set ful muchel hir lest.  
 Hir over-lippe wyped she so clene  
 That in hir coppe ther was no ferthyng sene  
 Of grece, whan she dronken hadde hir draughte.  
 Ful semely after hir mete she raughte. (ll. 127-31)

Although she is careful to keep from dirtying her person with drippings from the table, the Prioress is by no means abstemious. In these lines, Chaucer summons images of gustatory excess--the grease and grime that can only be contained with elaborate hygiene--in which the Prioress participates. Her fine feast-day manners, along with the extravagant diet of “rosted flessch, or milk and wastel-breed” (l. 147) that she feeds to her “smale houndes” (l. 146), her ostentatious rosary and brooch (l. 158-62), and even, perhaps, her name “Eglentyne”<sup>41</sup> all attest to her pretensions to the role of courtly lady. The “Frensshe” she speaks “ful faire and fetishly, / After the scole of Stratford atte Bowe,” however, signals that the Prioress lacks the breeding of the courtly nobility. That she is of relatively low birth is also suggested by the fact that she “peyned hire to *countrefete* cheere/ Of court, and to been estatlich of manere,/ And to ben holden digne of reverence” (ll. 139-41, emphasis mine). “Countrefete” in this context can imply that she not only seeks to emulate gentle manners but also wishes to cultivate a worldly respect that she does not necessarily deserve as a birthright and to which her clerical office does not entitle her.<sup>42</sup> Similarly, the multiple potential meanings of “curteisie” (l. 132) work to situate the Prioress in an ambivalent space between court and cloister.<sup>43</sup>

41 Benson, *The Riverside Chaucer*, 804 n. 121.

42 Ibid., n. 139-40.

43 Ibid., n. 132.

The same lines that mark her as upwardly mobile also suggest deficiencies in her service to the estate she presently holds. Her ladylike delicacy and concern for small animals render the absence of any mention of her compassion for her fellow humans all the more conspicuous:

But for to speken of hire conscience,  
 She was so charitable and so pitous  
 She wolde webe, if that she saugh a mous  
 Kaught in a trappe, if it were deed or bledde.  
 Of smale hounds hadde she that she fedde  
 With rosted flessch, or milk and wastel-breed.  
 But soore wepte she if oon of hem were deed,  
 Or if men smoot it with a yerde smerte;  
 And al was conscience and tendre herte. (ll. 142-50)

Chaucer's use here of words such as "conscience," "charitable" and "pitous," and his double emphasis on the compassion the Prioress shows when the creatures are dead or wounded call to mind the duties of charity, pity, care for the sick and prayer for the dead that she neglects in order to minister so lavishly to dumb beasts. Indeed, as Mann has observed, "pitous" implies a union between "beholder" and "sufferer," so that the "pitous" figure is "both 'pitiable' and 'pitying,'" an ambivalence suggesting that the Prioress's depth of feeling for animals is perhaps even unnatural and irrational, rather than virtuous.<sup>44</sup> She has forsaken her human ministry for a bestial one. The Prioress embodies the typical vices of her estate in a body that attempts to inhabit two spaces at

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<sup>44</sup> Jill Mann, *Feminizing Chaucer* (Cambridge: D.S. Brewer, 2002), 108.

once; she is a member of a religious order who aspires to noble status. Perhaps even more striking, though, her portrait suggests that there is an additional social space, the one occupied by those to whom she is supposed to minister, that she refuses to enter.

As Knight has observed, the Monk--like the Prioress--aspires to a station other than that which he presently occupies, and like her, he has a fascination with beasts that seems to distract him from the obligations of his clerical estate:

A Monk ther was, a fair for the maistrie,  
 An outridere, that lovede venerie,  
 A manly man, to been an abbot able.  
 Ful many a deyntee hors hadde he in stable,  
 And whan he rood, men myghte his brydel heere  
 Gynglen in a whistlynge wynd als cleere  
 And eek as loude as dooth the chapel belle  
 Ther as this lord was kepere of the celle. (ll. 167-72)

In these first few lines, Chaucer deliberately associates the Monk's status as an "outridere" -- one who has business outside the monastery -- with his passion for hunting, inviting the reader to consider whether the Monk has been drawn outside the cloister by house business or personal pleasure. The din of his horse's bridle threatens to drown out the chapel bells, which as Mann notes, fail to call him home to service.<sup>45</sup> As occupied as he is with hunting and horsemanship, he has little time or patience for study, or much of anything else, for that matter:

What sholde he studie and make hymselfen wood;

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<sup>45</sup> Mann, *Chaucer and Medieval Estates Satire*, 26.

Upon a book in cloystre alwey to poure,  
 Or swynken with his handes, and laboure,  
 As Austyn bit? How shal the world be served?

Lat Austyn have his swynk to hym reserved! (ll. 184-88)

Chaucer figures the Monk's dismissal of the Benedictine and Augustinian rules of monastic piety as a rejection of work and the social value of labor: "How shal the world be served (l. 187)?" What remains implicit in Chaucer's depiction of the Prioress becomes explicit here. Chaucer locates the Prioress and the Monk at a point where the second estate comes into contact not only with the first, but also with the virtues and values, as well as the economic and spiritual needs, of the third. To put it another way, Chaucer expresses the typical vices of the first estate--gluttony, sloth, lust--in terms of a perceived conflict between the courtly pursuits of the nobility and the industry of the commons. That conflict plays itself out within and upon the persons of these two members of the clergy.

As the Friar's portrait begins, Chaucer at first seems set to figure that pilgrim's vice in terms of the same conflict. Although Huberd's musical and romantic talents might make him a fine Squire, they are somewhat less suited to his obligations as a Friar:

Wel koude he synge and pleyen on a rote;  
 Of yeddynges he baar outrely the pris.  
 His nekke whit was as the flour-de-lys;  
 Therto he strong was as a champioun. (ll. 236-39)

In his description of the Friar, as in his depictions of the previous two pilgrims, Chaucer paints the lapsed mendicant as an aspiring member of the second estate, this time a would-be romantic hero. Similarly, like the Prioress and the Monk, the Friar fails in his ministry to the underprivileged, the “lazar[s]” and “beggere[s]” with whom he refuses to have any “aqueyntaunce” (ll. 242-45). Yet, in the case of the Friar, rather than a conflict between the pursuit of courtly leisure and the industry of labor, his vice actually originates in a tug-of-war between the profit motive that drives the upwardly mobile members of the third estate and the dedication to charity and poverty that should govern his actions as a member of a mendicant order:

He knew the taverns wel in every toun  
 And everich hostiler and tappestere  
 Bet than a lazar or a beggestere,  
 For unto swich a worthy man as he  
 Accorded nat, as by his facultee,  
 To have with sike lazars aqueyntaunce.  
 It is nat honest; it may nat avaunce,  
 For to deelen with no swich poraille,  
 But al with riche and selleres of vitaille.  
 And over al, ther as profit sholde arise,  
 Cuteis he was and lowely servyse;  
 Ther nas no man nowher so vertuous;  
 He was the beste beggere in his hous;

[And yaf a certeyn ferme for the graunt;  
 Noon of his bretheren cam ther in his haunt;]  
 For thogh a wydwe hadde noght a sho,  
 So plesaunt was his “*In principio*,”  
 Yet wolde he have a ferthyng, er he wente. (ll. 240-55)

The image of the richly attired, lisping Friar charming the shoeless widow out of her last farthing provides a vivid depiction of clerical greed. Taken together with the lines suggesting the wealth and prosperity of the “hostiler[s]” and “tappestere[s]” with whom the Friar shares the greatest affinity (l. 241), it is also a testament to the fault lines that have begun to divide the members of the third estate one from the other and create new moral hazards for those who are supposed to minister to them.<sup>46</sup> The Friar provides a site where the rift between the haves and have-nots of the third estate becomes visible and must be resolved.

To the extent that the Friar does what both the Monk and the Prioress refuse to do, that is enter the typical social spaces occupied by the third estate, he reveals how the persons of estates figures act as the mediators between and among the traditional estates as well as the emerging social categories that cannot be contained within the standard trifunctional model of the polity. Where the pilgrimage as a whole and the group of the Knight, the Squire, and the Yeoman reveal how persons exist at the intersection of

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46 The upward mobility of the merchant class, although it is a source of vice for the Friar here, is not in and of itself a bad thing within the *General Prologue*. Chaucer’s portrait of the five merchant guildsmen emphasizes the “solempne and greet fraternitee” (l. 364) of their professional association, and as Mann notes, lacks the usual associations with greed and unfair business practices (Mann 104), which by way of contrast abound in *The Simonie*. Rather, Chaucer makes a point of demonstrating how divisions within a given community create a regulatory conundrum that affects not only that community but also those who occupy stations outside of it but nonetheless work within or minister to it.

geography with other categories such as religion, vocation, and status, the Monk, the Prioress and the Friar reveal how the needs and values of the estates themselves intersect at the level of the individual. The problem is not necessarily that Huberd navigates between the tavern and the widow's hovel. The problem is that in doing so, he moves the money in the wrong direction. He is simultaneously a source of, and a potential remedy for the extreme economic disparity that has begun to divide the third estate. The description of his dress towards the end of his portrait draws upon and suggests a parallel between this emerging intra-estate conflict and a similar clash of ideals that typically marks anti-clerical, satirical portraits of the first estate:

And rage he koude, as it were right a whelp.  
 In love-dayes there koude he muchel help,  
 For ther he was nat lyk a cloysterer  
 With a thredbare cope, as is a povre scoler,  
 But he was lyk a maister or a pope.  
 Of double worstede was his semycope,  
 That rounded as a belle out of the presses. (ll. 257-63)

The Friar's person is thus marked by moral dissent from within his own estate, as well as the dissent he encounters when interacting with the realm at large. By bringing these two examples of intra-group conflict together at the site of one individual, Chaucer exposes how the same estates figure can serve double-duty as a name or image for two distinct estates problems: the growing economic rift between the rich and poor commons, and the debate over "theoretical" versus actual poverty dividing the clergy. He highlights the

public or political consequences of the Friar's seemingly personal decisions, e.g., to cheat the poor widow and then spend the money gained thereby fraternizing with her wealthier counterparts in the tavern, or to adopt "theoretical" rather than "actual" poverty. In the course of identifying the person behind the estates stereotype as a mediating figure whose moral responsibilities and social agency transcend traditional estates boundaries, Chaucer suggests that reforming the Monk's "person," rather than the estate or institution he represents, might be the key to fixing the problems for which he is at least partially responsible.

As Mann, and more recently Marion Turner,<sup>47</sup> have suggested, Chaucer constructs the experience of community within the *General Prologue* as one of moral relativism and conflict. In doing so, he ultimately transforms the estates framework from a principle of order into an expressive vocabulary for talking about how jurisdictional tensions within the polity become visible and negotiable at a personal level. The critique that emerges is one that, although it is aimed at various institutions and social categories, identifies the individual as the location and agent of lapse and reform. As a series of names for vice and virtue, rather than a set of social categories to which members of the polity can be definitively assigned, the various estates stereotypes become newly fungible. They operate as metonymies, as opposed to mutually exclusive classifications. Romantic and

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<sup>47</sup> Marion Turner, *Chaucerian Conflict* (Oxford: Oxford Univ. Press, 2007), 4-7. Turner's analysis of the Canterbury pilgrimage is in many ways a response to Wallace's discussion of associational forms. Like Wallace, she agrees that the pilgrims govern themselves in accordance with principles and procedures common to professional associations like the medieval guild. Turner, however, emphasizes the suspicion with which such organizations were regarded by the public generally, and concludes that "[l]ike guildsmen, the pilgrims are held together by shaky self-interest that could at any moment induce one of them to stab another in the back. The *Canterbury Tales* depicts the aggressivity rampant within the associational form itself" (166). For my purposes, I find Turner's analysis useful for how it uncovers Chaucer's dissatisfaction with top-down regulatory schemes aimed at a single group or community that arguably failed to account for or accommodate the multiple social roles that any single individual might occupy.

chivalric ideals cherished by the second estate provide ways of naming vice in the clergy, and are held up to scrutiny by drawing them into comparison with each other as well as the values that characterize the lower orders. Similarly, not only the Plowman, but also the Clerk and the Parson are identified as virtuous laborers. Community continues to operate as the primary determinate of individual identity.<sup>48</sup> Potentially conflicting communal obligations and conflicts between the communities themselves are increasingly organized and resolved at or through the individual, however. Thus whether one might be classified as a “good” or “productive” member of the community becomes a function, not just of how good one is at operating within the jurisdictional limits defined by one’s estate, but how one negotiates the conflicts that may trouble the estate from within, as well as those that erupt between and among different social strata.

That process of negotiation is the subject of the following chapter. For the moment, what I want to underscore is that, although a number of organizational principles seem to be at work in the *General Prologue*, the pilgrims only become a collective, working towards the production of a common goal, when the Host Harry Bailey initiates the tale-telling contest. At that moment, the last hint of the estates as a categorical framework for determining and assigning social obligation disappears.<sup>49</sup>

Although the generic form of a tale may be dictated by its teller’s social status, each one

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48 In my argument, I am building on analyses by Caroline Walker Bynum in “Did the Twelfth Century Discover the Individual,” in *Jesus As Mother: Studies in the Spirituality of the High Middle Ages* (Los Angeles: Univ. of California Press, 1984), 82-109; and David Aers in “A Whisper in the Ear of Early Modernists; or Reflections on Literary Critics Writing the ‘History of the Subject,’” in *Culture and History, 1350-1600: Essays on English Communities, Identities and Writing*, ed. David Aers (Detroit: Wayne State Univ. Press, 1992), 177-202. Both Aers and Bynum argue that the importance of communities--religious, social, economic, etc.--as determinants of medieval identity does not necessarily preclude a concern with the idea of the individual as a social and political actor.

49 Although the influence of the estates hierarchy does appear to persist at first in determining the order in which the tales are told, any such sense of hierarchical ordering disappears with the Miller’s drunken interruption of the Host at the end of the Knight’s tale.

is an expression prompted by an underlying obligation that binds all of the pilgrims equally. The plan<sup>50</sup> is that every pilgrim will tell four tales, and all of the tales will be judged to determine which are best--not according to standards specific to genre, and hence estate--but according to a universal standard. The winner will be the pilgrim whose tales are “of best sentence and moost solaas” (l. 798) for the company as a whole. What the Host proposes, perhaps in spite of his own intentions to the contrary, is a new social order where the contributions of the Plowman will be compared not just to those of the Cook and the Carpenter, but also with those of the Knight and the Prioress, and everyone competes for the same basic reward.

## II. Social Identification in *Piers Plowman*

Although William Langland seems somewhat less willing than Chaucer to accept that a sort of social heterogeneity inevitably results from one’s participation in the life of the realm, he nevertheless consistently foregrounds the role that jurisdictional conflicts within and among the estates play as the primary source of social disorder within the imagined polity of *Piers Plowman*. Further, like Chaucer, Langland seems far more interested in exploring how the “person,” rather than the social group or institution that person represents, operates as a locus where those conflicts become visible and negotiable. The end result, as in Chaucer’s *General Prologue*, is a movement towards a principle of social organization in which a complex and variegated regulatory framework rewards virtue and punishes vice largely without regard to status or estate. Consequently, in my analysis, I tend to depart from that line of scholarship, exemplified perhaps most

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<sup>50</sup> This original plan, is of course, ultimately abandoned, but it is the one formulated at the end of the *General Prologue*.

recently by Kathryn Kerby-Fulton and Wendy Scase, that views *Piers Plowman* as a poem primarily concerned with clerical reform.<sup>51</sup> Rather, I draw more upon the work of those, such as Christopher Cannon, Larry Scanlon, and Nicolette Zeeman, who uncover how the poem's wide-ranging social commentary actually emerges from Langland's engagement with a rather astonishing variety of discursive forms.<sup>52</sup>

I have already noted above that Aers reads Langland's use of estates material as signaling the "fundamental importance of traditional ideologies to Langland's perception and judgment." Aers does go on to conclude that, in spite of "the essential place they held in his conscious values and hopes," Langland's poetry nevertheless "released his imagination to embrace realities which pressed against his received ideologies." What results, Aers contends, is the "affirmation of established ideologies and their negation in the same poem," an "interplay" that "turns out to be a central factor in the organization and magnificent achievement of *Piers Plowman*."<sup>53</sup> Like a number of the critics and scholars who have written since Aers's groundbreaking study, I ultimately agree with him that Langland constructs his poem in part through a negation or reconfiguration of the discursive forms that he inherited from his literary predecessors as well as those in

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51 Kathryn Kerby-Fulton, *Reformist Apocalypticism and Piers Plowman* (Cambridge: Cambridge University Press, 2007). Wendy Scase, *Piers Plowman and the New Anticlericalism* (Cambridge: Cambridge University Press, 2007).

52 Christopher Cannon, "Langland's *Ars Grammatica*," *Yearbook of Langland Studies* 22 (2008): 1-25, for example, argues that *Piers Plowman* bears the distinctive stamp of the pedagogic forms and practices that would have characterized Langland's grammar school education. Larry Scanlon, "Personification and Penance," *Yearbook of Langland Studies* 21 (2007): 1-29, whose argument is discussed in greater detail below, identifies how Langland uses personification of the sins in order to illustrate the "paradoxical" (25) interior nature of the penitent who lays claim to his identity as a sinner only in order to "transform" it (28). Nicolette Zeeman, *Piers Plowman and the Medieval Discourse of Desire* (Cambridge: Cambridge University Press, 2006), explores how "Langland delineates the dynamic by which the lived experience of sin's inevitability brings about its own benefits within the soul," (11) a process in which "human desire can be turned, through a natural experience of sin and suffering, to good" (19).

53 Aers, *Chaucer, Langland and the Creative Imagination*, 1.

circulation around him. What I would like to add to the analysis that Aers gives is a more nuanced understanding of the different kinds of cultural work that estates material performs within the narrative of *Piers Plowman*. In particular, I argue that we need to pay careful attention to how Langland plays with his estates material, critiquing its use as an “ideological” discourse prescribing a set and static social order while simultaneously exploiting its metaphorical potential as a set of metonymies illustrating virtue and vice.<sup>54</sup> Langland seems to locate the subject of his estates discourse at the center of an opposition between these two alternatives.

Elizabeth Salter and John Finlayson have both remarked on the frequent parallels between the prologue of *Piers Plowman* and *The Simonie*.<sup>55</sup> Given that the two poems share similar subject matter--indeed Salter argues that *The Simonie* may have been one of Langland’s sources--it is useful to consider where Langland’s treatment of that shared subject matter departs from what is offered in the earlier poem. In addition to drawing upon the familiar tropes of vice associated with particular estates figures, the portrait of the polity that Langland gives us in these first 200 or so lines, like the polity that takes shape in *The Simonie*, is also dysfunctional at best. *The Simonie*, though, is perhaps most remarkable for how it operates at the level of mimesis, for the way in which its author(s) cobbles together a representation of the English polity from the various bits and pieces of

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54 In addition to being indebted to Aers, I owe some of the inspiration for the shape of my argument to Sarah Tolmie’s article, “Langland, Wittgenstein, and the Language Game,” *Yearbook of Langland Studies* 22 (2008): 103-29, in which she argues that in reading *Piers Plowman* “we are forced repeatedly to appreciate the proprietary stakes of linguistic communication, to concede the alienation of Will from his interlocutors, and thereby to understand why the quest for the big picture does not advance, at least not cumulatively” (116-17). I examine Tolmie’s work and her reading of the figure of Reason in more detail in the next chapter.

55 Elizabeth Salter, “*Piers Plowman* and ‘The Simonie,’” *Archiv für das Studium der neueren Sprachen und Literaturen* 203 (1966-67): 241-54. John Finlayson, “The Simonie: Two Authors?,” *Archiv für das Studium der neueren Sprachen und Literaturen* 226 (1989): 39-51.

estates stereotype. As *The Simonie* evolved, it accreted ever more specific references, to the plague, the urban poor and the city officials who cheated them, etc., that enhanced the historical and political specificity of its social commentary. While the “fair feld ful of folk” has a similar mimetic register, from the outset Langland reminds us that we are in the realm of allegory. Will encounters the polity of *Piers Plowman* in a dream, and it lies between the “tour” of “Treuthe” in the East and the “depe dale” of “Deth”<sup>56</sup> in the West.

Just as Chaucer abandons the estates form but retains his estates material at the end of the *General Prologue*, Langland’s engagement with the special relationship that seems to exist between the general and the particular, the public and the personal, in political life leads him away from mimesis into allegoresis, where his estates material acquires additional signifying power. Discussing the vitality with which Langland invests the penitential tradition, Scanlon reminds us that the controlled “tension between mimesis and allegoresis” that Langland maintains throughout *Piers Plowman* invests the poem with a “semantic complexity” that is “nearly inexhaustible,” and that “can never be reduced to a single hierarchy of meaning, however finely nuanced.”<sup>57</sup> To an extent, the tension that Scanlon describes between these two registers seems to work in a manner similar to the “contradictions” that Andrew Cole has previously described as arising out of Langland’s blending of the historical with the literary in the poem.<sup>58</sup> Through

56 All citations are to William Langland, *Piers Plowman*, Vol. I, ed. A.V.C. Schmidt (London: Longman, 1995). In both A and B, the allegorical significance of the tower and the dale is less explicitly underscored. Langland tells us only that the tower to the East is “tri3ely imakid” or “trieliche ymaked,” suggesting that it has been conscientiously or faithfully, as well as perhaps in accordance with the mandates of honesty or morality, constructed. The “dep” or “deep” dale contains a dungeon, “dredful” or “dredfulle of si3te.” (A&B.14-16)

57 Scanlon, “Personification and Penance,” 2.

58 Andrew Cole, “Trifunctionality and the Tree of Charity: Literary and Social Practice in *Piers Plowman*.” *ELH* 62.1 (1995): 1-27, 6-11. Although I draw upon Cole’s analysis of how the historical comes together with the literary in Langland’s poem, my analysis of what Langland is doing with the estates material in *Piers Plowman* offers a somewhat different reading of what Cole describes as the

mimesis, Langland ties *Piers Plowman* to its historical moment, to the social and political crises that the poem explores and critiques. Using allegory, he establishes an essential connection between the vocabulary of estates satire, the vocabulary of his historically situated social complaint, and the various discourses of individual reform, such as that drawn from the penitential tradition, that might offer a solution to the socio-political failures of which he complains. The bodies of his estates stereotypes become the formal locus where these two discursive strands intersect.

Taken separately, the two forms are inadequate to their respective tasks. Working together, however, they complement one another by “suturing”<sup>59</sup> the discursive gaps--between public and private, between socio-political reality and estates theory, between the discourses of institutional and individual reform--that they reveal. The stereotypes that populate the Prologue do reflect “real” figures, “Al 3e welthe of the world and 3e wo bothe” (C.10). They also personify abstract virtues and vices, “Of treuthe and tricherye, tresoun and gyle” (C.12). The body of the estates stereotype becomes the formal device that mediates between the two. Langland might be more critical of the state of affairs that he catalogues than Chaucer, but like Chaucer, he seems to be moving beyond simply using estates stereotypes to describe how the world has fallen into exploring how they might be deployed to explain how the world works.

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“ideological form” of the trifunctional model as it takes shape within the work. I agree that Langland generally proscribes the “blurring” of estates boundaries by particular figures (n. 26). As I demonstrate throughout this section, however, Langland nonetheless cultivates and encourages a metonymical reading of the estates personae who populate *Piers Plowman* in order to highlight how the vices and virtues of the “person” as an abstract concept are personified through the bodies of his estates stereotypes.

59 Cole, 9, n. 45.

For example, whereas *The Simonie* implicitly suggests that everything might be all right if everyone would just keep to his place, Langland seems to have less faith in the estates hierarchy as a system of order. In a passage that appears in substantial part in all three versions of the poem and shares quite a bit of imagery with *The Simonie*, Langland refines and highlights an aspect of the trifunctional polity that tends to remain in the structural background of *The Simonie*:

Bischopes and bachelers, bothe maystres and doctours --  
 That han cure vnder Crist, and crownyng in tokene,  
 Ben charged with Holy Chirche charite to tylie,  
 That is lele loue and lyfe among lered and lewed --  
 Leyen in Londoun in Lenton and elles.  
 Summe seruen þe Kynge and his siluer tellen,  
 In þe Cheker and in þe Chancerye chalengen his dettes  
 Of wardus and of wardemotis, wayues and strayues.  
 And summe aren as seneschalles and seruen oþer lordes  
 And ben in stede of stewardus and sitten and demen. (C.85-94)<sup>60</sup>

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<sup>60</sup> The text of B reads:

Bisshopes and bachelers, boþ maistres and doctours --  
 That han cure vnder Crist, and crownyng in tokene  
 And signe þat þei sholden shryuen hire parisshens,  
 Prechen and praye for hem, and þe pouere fede --  
 Liggen in Londoun in Lenten and ellis.  
 Somme seruen þe King and his siluer tellen,  
 In þe Cheker and in þe Chauncelrie chalangen hise dettes  
 Of wardes and of wardemotes, weyues and streyves.  
 And somme seruen as seruaunt<sup>3</sup> lordes and ladies,  
 And in stede of stywardes sitten and demen. (ll. 87-96)

Langland shows a decided interest here in how the estates system itself functions as a source of social and institutional deterioration. In these lines, we recognize the familiar trope of an estates stereotype--the clergyman who abandons his rural benefice for urban profit--figured as the site of community conflict, this time a jurisdictional struggle between the king and lesser nobility and the church. Langland's interest in both that conflict and the individual's responsibility for resolving it can be deduced from the revisions that take place between the A and C versions. Langland's critique of absent office-holders in A reads:

I sau<sup>3</sup> bisshopis bolde and bacheleris of deuyne  
 Become clerkis of accountis þe King for to serue;  
 Archideknes and denis þat dignites hauene  
 To preche þe peple and pore men to fede  
 Ben ylope to Lundoun be leue of hire bisshop,  
 And ben clerkis of þe Kinges bench þe cuntre to shende. (A.90-95)

The "bisshop" who gives "leue" to the lower orders, the "Archideknes and denis," who abscond to London, and thus takes on an official role in A by absorbing responsibility for the failures of his inferiors, is absent from C. By eliding that reference, the later version emphasizes personal, as opposed to institutional accountability for the lapse by creating

fault in every man who has so absconded.<sup>61</sup> By including additional orders of gentry,<sup>62</sup> and referring to the duties these men leave behind as charged by “Holy Chirche” herself in C, Langland also heightens the sense of tension between the interests of the first and second estates.

By bringing estates material together with the forms and conventions of the penitential tradition, Langland transforms representations of official or institutional immorality into the personification of personal vice, i.e., greed. The errant clergy of the prologue, and the fasting knights and hard-working laborers of Passus 1 are representations of the three estates and their particular failures and virtues, true. They are also, however, general depictions of how vice and virtue work as inappropriate and appropriate responses to conflicts of social and personal interest that affect all individuals in all social categories. In spite of what his use of anti-clerical stereotypes might at first suggest, over the course of the prologue and the evolution of the three versions of the poem, Langland gradually shifts the emphasis of his critique from the institution onto the person who represents it. In a rhetorical move that calls to mind Chaucer’s deliberate abandonment of the estates form at the end of the *General Prologue*, Langland even allows the estates hierarchy momentarily to collapse into the undifferentiated pack of mice in the fable regarding the belling of the cat that Langland added in B and C. Where

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61 The frequent plural references--to bishops, clerks, archdeacons, and deans--are something else that *Piers Plowman* shares with *The Simonie*, and other examples of estates literature. The presence of multiple bodies supports a reading that emphasizes the “persons” behind the stereotypes, rather than the institutions those stereotypes represent. Usually, corporate representation hides multiple bodies behind one body that stands in and takes on the responsibility for all of the others. The more bodies there are, the harder it becomes to determine which one, if any of them, can be “representative” in that sense. By giving us multiple bishops, when one is enough to stand in for the whole category, Langland simultaneously personalizes their representative capacity.

62 These revisions are also present in B; see note 60.

the locus of responsibility for political upheaval in the A text of the prologue remains somewhat diffuse, only occasionally coalescing around the figure of the king, Langland's inclusion of the fable regarding the belling of the cat in B and C presents a clear "problem of sovereignty."<sup>63</sup>

Aers maintains this episode casts doubt upon the king's ability to be anything but another source of socio-political disorder:

As for the king, we do not meet him until well into the Prologue (ll. 112 ff.), and no sooner have we noted the image of a harmonious distribution of power and responsibility than Langland relates the fable about the belling of the cat. While "þe commune profit" is invoked (Pr. 148, 169), the fable presents the ruler as one acquisitive and violent interest among other similar ones. Neither in theory nor practice is it possible to identify 'commune profit' in the manner envisaged by the presiding social ideology. Whatever Langland's own attitudes to the mouse who advises quietistic resignation in the face of an irresponsible and predatory ruling group, he shows that political power is contended for by autonomous groups and individuals motivated by immediate economic interests.<sup>64</sup>

I do agree with Aers that Langland's use of the fable in these two later versions of the poem calls into question the power of any one group or individual to govern the others.

Where, however, Aers reads the mouse who "advises quietistic resignation" as "participat[ing] in the cool egotism that seems prevalent among both the predators and

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<sup>63</sup> I have, of course, borrowed the phrase from Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge: Cambridge Univ. Press, 1964).

<sup>64</sup> Aers, *Chaucer, Langland, and the Creative Imagination*, 5.

those thinking about resistance,”<sup>65</sup> I believe that the mouse instead opens the door to a new strategy of reform by re-presenting the problem of sovereignty with which the fable concerns itself as a problem, first and foremost, of individual self-governance:

“Y seye it for me,” quod þe mous, “Y se so much aftur,  
 Shal neuer þe cat ne þe kytoun be my conseil be greued,  
 Ne carpen of here colers þat costede me neuere.  
 And thow hit costed me catel, byknowen Y ne wolde,  
 But soffre and sey nou3t -- and so is þe beste --  
 Til þat meschief amende hem, þat many man chasteth.  
 For many mannys malt we muys wolde distruye,  
 And 3e route of ratones, of resete men awake,  
 Ne were þe cat of þe court and 3onge kitones toward;  
 For hadde 3e ratones 3oure reik 3e couthe nat reule 3owsulue.” (C.207-  
 16)<sup>66</sup>

The mouse does advise suffering in silence until the great are amended through the misfortune that they bring down upon themselves. Where the episode begins with an

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65 Ibid.

66 The B text reads:

For may no renk þer reste haue for ratons by ny3te.  
 For many mannes malt we mees wolde destuye,  
 And also ye route of ratons rende mennes cloþes,  
 Nere þe cat of þe court þat kan yow ouerlepe;  
 For hadde ye rattes youre wille, ye kouþe no3t rule yowselue.  
 “I seye it for me,” quod þe mous, “I se so muchel after,  
 Shal neuere þe cat ne þe kiton by my conseil be greued,  
 Ne carpynge of þis coler þat costed me neuere.  
 And þou3 it costned me catel, biknowen it I nolde,  
 But suffren as hymself wolde [s]o doon as hym likeþ --  
 Coupled and vncoupled to cacche what þei mowe.  
 Forþi ech a wis wi3t I warne -- wite wel his owene!”

unruly ruler, however, the mouse ends it with another problem altogether, that of a populace incapable of self-governance: “For hadde 3e ratones 3oure reik 3e couthe nat reule 3owsulue.” Because the rodents cannot rule themselves, they are essentially ungovernable, except through a reign of terror by a monarch so foreign that he is not even of their own species. What Langland seems to be communicating here is the futility of pursuing the reform or reigning in of particular institutions or social groups in the absence of any clear set of principles according to which persons might govern themselves. Although Langland’s sentiment echoes that of Gower in the *Vox Clamantis* -- the commons are unruly, and unprincipled beasts -- it also contains a fairly scathing critique of those in power: Rulers who are like children, and hence cannot “amende” themselves, are incapable of effective governance.

Langland uses the conventions and vocabulary of estates satire to examine the important role that self-governance plays in the life of a polity where individuals figure as the point of entry for order as well as disorder. Through the deployment of estates stereotypes, institutional failures can be reconceptualized as personal moral lapses, and reform can be reimagined as a process of individual self-regulation. This duality of Langland’s estates stereotypes becomes even clearer as we move into Passus 1. From the enumeration of the various categories of people who populate the fair field full of folk at the end of the prologue, Langland moves immediately into Holy Church’s discussion of the one thing they share in common:

“The tour vpon þe tofte,” quod she, “Treuthe is þerynne,  
And wolde þat 3e wroghton as his word techeth.

For he is fader of fayth and formor of alle;

To be fayful to hym he 3af 3ow fyue wittes

For to worschipe hym þerwith þe whiles 3e lyuen here.” (C.I.2-16)

Although Holy Church warns Will, “Leef nat thy lycame, for a lyare hym techeth” (C.I.36) and goes on to relate how the “fend and thy flesch folwen togederes,” (C.I.8),<sup>67</sup> the body is also the creation of Truth, and the body’s physical and mental faculties are the tools of worship in this world. The link Holy Church makes between sin and the body’s physical desires as well as the idea that the body itself can provide access to spiritual enlightenment are of course medieval commonplaces. I am not arguing that such insights are uniquely Langlandian, nor am I even really invested in showing that Langland’s contextualization of the individualized body of contemplative or romantic poetry within a narrative that politicizes it by layering it with estates content is unique to *Piers Plowman*. My point here is that Langland makes an essential connection between this personal body, with all of its potential for vice and virtue, and the political bodies that populate the estates in the prologue. Having considered in some detail how the individual will both creates and compromises the “order” of the estates system in the first part of the poem, Langland basically begins again with a new subject that emerges as a result--the body that pre-exists the estates framework and provides the theater where conflicts within it play out as sin.

The confessions of the sins do not begin in earnest until Passus 5, but their personification through characterization, as Scanlon has described it,<sup>68</sup> begins much

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67 From this point, I will quote from C and note where significant variation exists among the versions.

68 Scanlon, “Personification and Penance,” 25-29.

earlier. Thus in Passus 2 where we are first introduced to Lady Meed and her coterie, the occupants of various estates and offices mingle freely with, and are thereby transformed into personified abstractions:

Thus lefte me that lady lyggynge aslepe,  
 And Y say how Mede was married, metyng as it were.  
 Al þe riche retenauce þat rotheth hem o fals lyuyng  
 Were beden to þe bridale a bothe half þe contre,  
 Of many manere men þat of Mede kynne were ---  
 Of knyghtes, of clerkes, of other comune peple,  
 As sysores and sompnors, shyryues and here clerkes,  
 Bydels and bailifs and brokeres of chaffare,  
 Vorgoers and vitalers and voketes of the Arches;  
 Y kan nou3t rykene þe route þat ran aboute Mede.  
 Ac Simonye and Syuile and sysores of contrees  
 Were most pryué with Mede of eny men, me thoghte.  
 Ac Fauel was þe furste þat fette here out of chambre  
 And as a brokor brouhte here forth to be ioyned wiþ False. (C.II.53-66)<sup>69</sup>

Having demonstrated an understanding of the traditional estates framework by which the individual stereotypes might be ordered, Langland deliberately rearranges his estates material according to a new set of categorical rules. In one line, knights join the clergy and “other comun peple,” (C.II.58). They still represent their respective estates, but they

<sup>69</sup> While the cast of characters is substantially the same in A and B, only in C does Langland identify the extended retinue, “Al þe riche retenauce þat rotheth hem o fals lyuyng” (C.II.55) as “kynne” to Meed. In A and B, Langland identifies them as “Alle þe riche retenauce þat regniþ wiþ False” (A.II.32), and “al þe riche retenauce þat regneþ with þe False” (B.II.54), respectively.

are also now associated with one another as the “kynne” (C.II.57) of Meed. Although their bodies can be separated into estates categories based on the differences among them, those same bodies are simultaneously marked by a fundamental similarity, their kinship with or devotion to Meed’s vice. The “men” of this passage include the jurors of the assize, summoners, sheriffs and their clerks, beadles and bailiffs, merchants, victualers and lawyers, in addition to Simony, Civil, Favel and False. Similarly, at the end of Passus 2, Langland transforms the persons of merchants, shopkeepers, salesmen, quack physicians and friars into personifications of False, Guile and Liar (C.II.217-52).

Throughout Passus 2 and 3, as the marriage is interrupted and Lady Meed’s trial commences, Langland deploys estates stereotypes to name the general vices that trouble the realm. In Passus 3, he introduces the idea that they can also perform a similar operation as metonymies for the virtues by which those troubles might be remedied. With this turn, he completes his demonstration of how the bodies of his estates stereotypes mediate and create a bridge between the discourses of socio-political and individual reform. In doing so, he renders a quasi-legal regulatory discourse of labor available as the means through which the polity as a whole might be ordered. Concluding his response to Lady Meed in which he distinguishes Meed from Merit, Conscience declares that he and “kynde loue shal . . . togyderes / . . . maky of lawe a laborer” (C.III.451-52), creating a new social order in which:

Vche man to pley with a plogh, a pikois oþer a spade,

Spynne, oþer speke of God and spille no tyme;

Prestes and persones *Placebo* and *Dirige*

Here sauter and here seuene psalmes for alle synful preyen.

Haukyng or huntyng, yf eny of hem hit vse,

Shal lese þefore his lyflode --- and his lyf parauntur.

‘Shal nother kyng ne knyght, constable ne mayre

Ouerkarke þe comune ne to þe court sompne,

Ne potte men in panele, ne do men plihte here treuthe,

But aftur þe dede þat is ydo the doom shal recorde

Mercy or no mercy as most trewe acorden. (C.III.462-71)<sup>70</sup>

Langland returns in this passage to the familiar biblical allegory of the laboring polity but with a new twist. Specialization is still evident in the divisions among those who till the field, those who preach and pray and those, the king and his knights, who enforce the law. The end of the law, however, is to ensure that every man, regardless of his station, *works*, and Langland identifies lawmaking itself as labor, in which all men, those who are summoned to court as well as those who do the summoning, engage. Like Bracton, Langland conceives of an ideal lawmaking enterprise in which jurisdictional divisions have been transcended, in which “Kynges court and comune court, consistorie and chapitre --- / Al shal be bu a court and o buyrne be iustice: / That worth Trewe-tonge, a tydy man þat tened me neuere.” (C.II.472-74). Langland identifies social reform with legal reform --- with the transition away from the pandemonium that arises out of specialized courts and divergent regulatory schemes targeted at particular categories of

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<sup>70</sup> Although A does contain the reference to making of law a laborer (A.II.276), it ends there. Only B and C elaborate on what sort of social and judicial order will emerge as a result.

actors, towards a unified system focused on individual deeds and their consequences.

Further, Langland personifies this reformed system itself as a laborer.

By the end of Passus 4 Langland has moved his reader beyond the estates framework in which estates stereotypes represent values or social failures associated with particular institutions, into an allegorical one in which they personify individual vice and virtue more generally.<sup>71</sup> To reinforce that transition before the confessions of the sins begin in earnest, he takes a moment in the beginning of Passus 5 in C to offer a pointed critique of the more “traditional” view of the estates, lest we fall into the trap of thinking that sins, such as Gluttony, whose portraits draw heavily upon stereotypes of the common laborer or worker, do not also run rampant among the higher orders. Anne Middleton has described this “autobiographical” portrait as “one of the most densely overdetermined and intertextually saturated passages in any version of the poem.”<sup>72</sup> In explaining to Conscience why it is that he does not do anything that Conscience might define as work, Will offers a textbook discursion on the appropriate specialization of each estate within the trifunctional polity. He concludes with a critique of the transgressions of estates divisions by “bondemen barnes” (C.V.71), “barnes bastardus” (C.V.72), “sopares and here sones” (C.V.73), and “lordes sones” (C.C.73), among others, which he argues

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71 Nearly forty years ago, Mary C. Schroeder explored how personification and representation work within the allegorical framework of *Piers Plowman* to layer allegorical figures, such as Conscience, with a social and political, as well as religious meaning. In “The Character of Conscience in ‘Piers Plowman,’” *Studies in Philology* 67.1 (1970): 13-30, she observes that “Langland frequently gives his personifications social roles which are analogous to their psychological or moral ones--Reason is the king’s chief advisor, for example. Similarly, Conscience’s role as a knight is analogous to his psychological one” (18). What I describe here is the process through which Langland provides an allegorical meaning for the social, political figures within the poem.

72 Anne Middleton, “Acts of Vagrancy: The C Version ‘Autobiography’ and the Statute of 1388,” in *Written Work: Langland, Labor and Authorship* ed. Steven Justice, and Kathryn Kerby-Fulton (Philadelphia: Univ. of Pennsylvania Press, 1997), 246.

justifies his idleness. Astounded by Will's obtuseness, Conscience exclaims, "By Crist, Y can nat se this lyeth;" (C.V.89).<sup>73</sup>

Middleton has observed that Will's plea he should be exempted from hard labor directly engages with the text of the second Statute of Laborers, enacted in 1388,<sup>74</sup> which provides in pertinent part:

It is accorded and assented, That of Every Person that goeth begging, and is able to serve or labour, it shall be done of him as of him that departeth out of the Hundred and other Places aforesaid without Letter Testimonial as afore is said, except People of Religion, and Hermits having Letters testimonial of their ordinaries. And that the Beggars impotent to serve, shall abide in the Cities and Towns where they be dwelling at the Time of the Proclamation of this Statute; and if the People of Cities or other Towns will not or may not suffice to find them, that then the said Beggars shall draw them to other Towns within the Hundreds, Rape, or Wapentake, or to the Towns where they were born, within Forty Days and the Proclamation made, and there shall continually abide during their Lives. And that of all them that go in Pigrimage as Beggars, and be able to travail, it shall be done as of the said Servants and Labourers, if they have no Letters testimonial of their Pilgrimage under the said Seals. And that the Scholars of the Universities that go so begging, have Letters testimonial of their Chancellor upon the same Pain.<sup>75</sup>

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<sup>73</sup> This exchange is absent from A and B.

<sup>74</sup> Middleton, "Acts of Vagrancy," 252.

<sup>75</sup> *Statutes of the Realm*, 12 Ric. II, cap. 7, 58.

We can note how the 1388 legislation, similar to the Poll Tax of 1379, creates a metaphorical relationship among “People of Religion” and “Scholars of Universities” lacking proper documentation and the similarly undocumented “Servants and Labourers” of an earlier chapter (12 Ric. II, cap. 3), in order to render the same set of penalties applicable to all three categories of persons. Although they are divided by social status and vocation, they share in common their idle and undocumented status. Tracing the legislative history of the act, Middleton argues the first Statute of Laborers, enacted in 1349, “emphasized the restoration of the economic status quo before the plague . . . largely implicitly, proposing to merely shore up rather than revise traditional lord-servant relations.”<sup>76</sup> In the 1388 statute, in contrast, the “public interest”<sup>77</sup> or the “common profit” largely replaced the “the master’s rights as lord-landowner” as “the end or raison d’être” of labor regulation. Also significant for my purposes here, Middleton identifies how the regulatory focus on the category of the vagrant, whose idleness is conceived “as an individual failing, not an attribute of any specific group identifiable as such or self-identified in any other way,” emerges out of a momentary convergence of a wide array of social interests.<sup>78</sup> To an extent, in the text of the 1388 statute, the vagrant’s body, which itself blurs or transcends traditional estates boundaries, became a site where the social

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76 Middleton, “Acts of Vagrancy,” 225-226.

77 Ibid., 237-38.

78 Ibid., 244-45: “As we have seen, however, the apparently monologic authority and broad synthetic imagination from which the Statute seems to speak was born not of overwhelming consensus but of precisely the opposite: a brief moment of intersection among divergent interests, and strategic efforts to forge political alliances between forces inherently at odds. It was only when both king and Appellants, in the effort to consolidate their respective positions in the wake of the Merciless Parliament, were forced to vie for the support of the commons that parliament would appear to endorse, in a comprehensive program of national legal sanctions, the gentry’s diverse fears and hybrid ideological analysis of the ills that afflicted the realm. . . . [A]t this brief and critical moment in 1388, the composite narrative etiology of the suspect vagrant inscribed in the several clauses of the Statute had acquired a kind of rough dynamic stability, sufficient at least to obviate the need for prefatory rationales in the text of the enactment.”

and political conflicts that Middleton describes became momentarily visible and resolvable.

I do not necessarily disagree with Middleton that the autobiographical episode in C, Passus 5 “suggests that the vagrancy law of 1388 (and for that matter most of the rest of the enactments of the Cambridge Parliament) was a bold act of projective imagination rather than an achievable regulation.”<sup>79</sup> Nonetheless, in my reading, I would like to emphasize how the passage also reveals the inadequacy of the traditional three estates model as a conceptual framework for thinking about an individual’s social obligations in the signifying economy that Langland has created. Through his interpolation of the 1388 statute, Langland constructs Will’s identity at the same nexus of multiple and divergent interests that gave rise to the legislation. His engagement with the parliamentary text also places Will at the discursive boundary between the new regulatory order that the statute proposes and Will’s reactionary invocation of an “ideologically conditioned” view of the trifunctional polity that attempts to reinscribe the status quo. In addition, Langland’s incorporation of the autobiographical material also situates Will’s body at a site where the sustained tension between mimesis and allegoresis is strained almost to the breaking point. Without endorsing either the transgressions of estates boundaries that Langland has Will criticize or the similar transgressions in which the 1388 statute might be said to engage, Langland nonetheless signals and reinforces here the inscription within *Piers Plowman* of a new relationship among person, estate and realm. Rather than emerging out of or remaining confined within any one estate, Will’s person, like that of the vagrant in the 1388 statute, instead mediates between and among multiple estates. It provides a

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<sup>79</sup> Ibid., 216.

site where the underlying legal and social obligations that the 1388 statute, as well as Conscience and Reason, attempt to impose upon him can be expressed through, even though they can no longer be defined by trifunctional terms. In this scene, Will's body also mediates between the rather conservatively "reformist" agenda of estates satire, and the more radically "transformative" regulatory discourses offered by both the Cambridge Parliament and the penitential tradition.

As illustrated in this episode, although Langland draws upon the rhetoric of trifunctionality to describe and diagnose the polity of *Piers Plowman*, he tends to look elsewhere when it comes to identifying how and by whom the polity is ordered. For the moment, I can conclude by reiterating and elaborating upon the points with which I began. By deploying his estates material in a way that foregrounds the role that jurisdictional conflicts within and among the estates play as one of the primary sources of social disorder, Langland does not necessarily question the validity of the estates hierarchy itself. Rather, he calls into question the usefulness of social specialization as a model for thinking through the relationship between the individual and the polity. The estates moments in *Piers Plowman* provide more than opportunities to critique this "ideological" use of the estates framework, however. Just as Chaucer uses his estates material to examine how the individual operates as a site where social conflicts become visible and resolvable, Langland uses his own estates material to identify the person of the estates stereotype as a discursive space where a variety of regulatory discourses become available as potential solutions for the political, social and institutional failures that estates satire so vividly describes. In so doing, he reconstitutes the subject of these

multiple discursive strands as one in the same entity, a generic body whose personal moral choices become the mechanism through which political and social reform can be effected.

### III. Individual and Political Reform in the *Confessio Amantis*

An examination of John Gower's *Confessio Amantis* reveals how the construction of an individualized political subject through a rearticulation of the forms and conventions of estates satire might provide a touchstone for conceptualizing a Middle English literature of sovereignty. Of the three works I have discussed thus far in this chapter, the *Confessio* is the only one explicitly fashioned as a manual of princely instruction. Chaucer draws upon the matter of Rome and the mirror for princes tradition in a number of the *Canterbury Tales*, and Langland's consideration of the relationship between self-governance and good governance proves central to *Piers Plowman*. Similarly, Bracton is clearly preoccupied with the figure of the king and questions of royal and individual sovereignty. Only Gower, though, names the king himself, or the future king in the case of the third recension, as the addressee of the *Confessio*.<sup>80</sup> Nevertheless, in spite of this "nominal" difference, Gower's construction of the subject of the *Confessio*--both the subject of its address as well as the subject of its discourse of regulation and reform--depends upon an engagement with and reconfiguration of the subject of estates satire. In the *Confessio*, as in *The Canterbury Tales*, and *Piers Plowman* and even to some extent in the *De Legibus*, the idea of the individual as a target

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80 Peck has identified Bodleian Library MS 3883 Fairfax 3, which dates to the late-fourteenth century, as the "premiere third recension manuscript." It is a first recension copy that has been revised, possibly under Gower's supervision, to include the third recension material, including the dedication to Henry of Lancaster. See, Russel Peck, "Introduction," in John Gower, *Confessio Amantis*, Vol. I, ed. Russell A. Peck (Kalamazoo: Medieval Institute Publications, 2006).

of regulatory authority and a potential agent of socio-political reform emerges out of the author's consideration of how estates stereotypes function as convenient names for, rather than sources or definitions of social obligations that arise on account of one's participation in the life of the realm.

Although a great deal of interesting work has been done examining the *Confessio* as a site of ethical discourse, curiously much of it omits a consideration of how Gower's engagement with estates material at a number of the key moments in the *Confessio* shapes the ethical subject around which the book centers. The various ways in which scholars have described that subject nonetheless together confirm that the subject Gower has in mind operates outside of or transcends traditional discursive boundaries predicated on the office or station of the reader. William Robins, for example, has suggested that Gower attempts to situate his readers "at the intersection of two discursive modes," in part by contrasting the narrative forms of ancient romance and exemplum.<sup>81</sup> Jenny Rebecca Rytting offers a reading of the *Confessio* as a "marriage manual," that although it "works well," as an effort in that tradition, "differs from [other medieval marriage manuals], of course, in that it is not explicitly a conduct manual . . . directed exclusively or primarily towards women," and it urges reciprocal virtues for husband and wife where "[c]onduct manuals geared towards women . . . tend to emphasize unquestioning obedience to one's husband."<sup>82</sup> Perhaps most relevant to my discussion here is Hilary E. Fox's analysis, which describes the ethics of the *Confessio* as "practical," derived from an Aristotelian tradition, and concerned with the theme of "self-responsibility":

81 William Robins, "Romance, Exemplum and the Subject of the *Confessio Amantis*," *Studies in the Age of Chaucer*, 19 (1997): 157-81, 158.

82 Jenny Rebecca Rytting, "In Search of the Perfect Spouse: John Gower's *Confessio Amantis* as a Marriage Manual," *The Dalhousie Review* 82.1 (2002): 113-26, 25-26.

In this sense, the tale [of Perseus and the Gorgons] is a lesson in the formulation of an intelligent practical ethics, and an illustration of behavior and its consequences, as opposed to the more abstract interpretations offered by the commentaries upon which Gower might have drawn to construct this tale and its companions in the *Confessio Amantis*. The transforming of the Ovidian narrative reflects the general theme of transformation that permeates the *Confessio Amantis*, the need to play out transformation in narrative and *by* narrative, to produce the desired result: that of Amans's final restoration to his true and natural identity, as well as his reassumption of free choice and responsibility.<sup>83</sup>

These readings and others confirm the significant role that self-determination and individual ethics play in the *Confessio*, and they offer insight into the variety of ethical discourses upon which Gower draws. They do not, however, adequately account for the connection that Gower makes between individual and public reform. While Lynn Staley's analysis of the *Confessio* as a "storehouse of civic memory,"<sup>84</sup> which I discussed in chapter two, bridges that gap, Staley also remains silent on how Gower's incorporation of estates content enables him to examine the public consequences of personal moral choices, placing the ethical subject into a socio-political context.

Of those scholars who have considered how estates theory informs Gower's composition in the *Confessio*, Russell Peck gives us perhaps the most comprehensive understanding of just how closely Gower integrates the estates material with the other

83 Hilary E. Fox, "'Min Herte is Growen Into Ston': Ethics and Activity in John Gower's *Confessio Amantis*," *Comitatus* 36 (2005): 15-40, 29, 40.

84 Lynn Staley, *Languages of Power in the Age of Richard II* (University Park: Pennsylvania State University Press, 2005), 39.

matter from which the narrative throughout the poem derives. Indeed, Peck argues that the estates framework operates beyond the Prologue to provide an overarching structure for the long poem:

The progress of Amans's confession may be measured by the expository sections of the poem. These sections have often been labeled digressive, but I suspect that Gower saw them to be dramatically appropriate as well as central to his theme. They appear to be carefully arranged to link the Prologue and Epilogue with the romance plot. . . . The first [section deals with the] "difficulty of justifying war of any kind." . . . The remaining three expository sections pertain to the three estates described in the Prologue: the estate of rulers, the estate of the church, and the estate of the commons. The first of these discussions (IV.2363-2700) occurs in the book on Sloth and applies to the third estate. . . . The next (V.729-1970) is the history of religions and pertains to the second estate. . . . The last expository section (Book VII) is the longest and most complex. It pertains to the first estate and is the account of King Alexander's education. The topics are dealt with in reverse order from those in the Prologue, perhaps to suggest a working outward from disorder toward right order as Amans relearns proper governance.<sup>85</sup>

I have quoted at length from Peck's description because it clearly demonstrates two very important points. The first point is this: Middle English authors like Gower use both estates content and the estates form creatively and flexibly to explore the role of

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85 Peck, *Confessio Amantis*, xx.

individual self-governance as source of social and political order. The second is: In attempting to identify the role that estates discourse played in shaping medieval conceptions of the polity, modern scholars like Peck have perhaps been more receptive to the “ideological conditioning”<sup>86</sup> that it attempted than the medieval authors that we study. Peck’s insight<sup>87</sup> into the link that Gower makes between personal and political reform--between individual and collective governance--has been essential in shaping my reading of the *Confessio*. Yet even in the process of articulating that insight, Peck is still committed to a traditional view of how estates content functioned within Middle English literary production.<sup>88</sup>

The realm Gower describes for us within the *Confessio* is a polity divided within itself, and he expresses that division through estates stereotypes constructed from many of the same jurisdictional conflicts that inform characterization in the *General Prologue* and *Piers Plowman*. First estate failures in the *Confessio* are embodied in clergy who attempt to usurp the functions of the nobility:

But whil the lawe is reule so  
That clerkes to the werre entende,  
I not how that thei scholde amende  
The woful world in othre thinges,  
To make pes betwen the kynges

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86 Duby, *The Three Orders*, 124. Strohm, *Social Chaucer*, 2.

87 According to Peck, “Amans’s search for proper repose is of course, analogous to England’s search for peace and just administration.” Peck, *Confessio Amantis*, xx

88 For example, Peck argues that for Amans, recovery takes place in three stages as he recovers his commons, his Christianity, and his sovereignty (Ibid., xx-xxi). Where Peck’s reading is still informed by a view of the estates as hierarchical, my reading emphasizes how Gower collapses estates distinctions so that, by the end of the poem he has recovered, or rather created a unified political body, unblemished by functional partitions.

After the lawe of charite,  
 Which is the propre duete  
 Belongende unto the presthode. (P.252-59)<sup>89</sup>

The church has become so embroiled in matters of secular controversy that “In to the swerd the cherche keie/ Is torned” (P.272-73). Further, just as divisions within the estates themselves create moral hazards for Chaucer’s Friar and Langland’s Piers, so too in the *Confessio* intra-estate conflict finds embodiment in persons who occupy the estate in question as well as those with whom they interact:

For every man hise ogne werkes  
 Schal bere, and thus as of the clerkes  
 The goode men ben to comende,  
 And alle these other god amende:  
 For thei ben to the worldes ye  
 The Mirour of ensamplerie,  
 To reulen and taken hiede  
 Between the men and the godhiede.(P.491-98)

In the first two lines, Gower reminds us that “every man his ogne werkes / Schal bere.” Like Langland, Gower seems to highlight personal over institutional responsibility for the clerical lapses he depicts. Every man is and shall be held responsible for his own deeds. At the same time, however, the verb “bere” in this context can just as easily be interpreted as “wear.” Men wear their deeds, just as they wear the clothing that marks their office.

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<sup>89</sup> All citations are to John Gower, *Confessio Amantis*, Vol. I, ed. Russell A. Peck (Kalamazoo: Medieval Institute Publications, 2006).

These first-estate stereotypes, like Langland's, serve a sort of representational double-duty. As mediators between "men and the godhiede," the persons of the clergy, doubly-marked by deed and station, depict the moral failures of their estate. For the laity, they also offer visible representations of virtue and vice more generally. As it functions in the broader discursive space that Gower maps out over the course of the *Confessio*, exemplarity itself thus depends upon an idea of the person that both pre-exists and transcends familiar estates' categories.

In his enumeration of the sins of the nobility and the clergy, we can see Gower deploying the vocabulary of estates satire to describe the social problems that his "bok for Engelondes sake" (P.4) attempts to address. The critical focus of his estates' stereotypes, however, emphasizes the person behind the estate, rather than the estate itself, as the target of the *Confessio*'s reformist enterprise. It is hardly surprising, therefore, that when he turns to the question of how the polity can be put right, Gower's language and imagery suggest that reform of the body politic might require a reconfiguration of the political body. Like Langland, Gower is certainly not arguing that estates distinctions should be eradicated in reality, or that the estates framework does not have continued value as a vocabulary of images for diagnosing and representing social problems. He does seem to shift focus away, however, from the investment of estates satire as a genre in institution-specific, and somewhat piecemeal reform of the estates themselves. Thus as he moves away from talking about what is wrong with the realm into understanding how it might be put right, he introduces a new image of disorder to take the place of the familiar estates stereotypes. Gower draws upon the familiar biblical allegory of

Nebuchadnezzar's dream in which the ages of the world are embodied in a statue with a head and neck of gold, a torso of silver, a lower torso of brass, and legs and feet of a crumbling alloy of earth and iron:

Of Bras, of Selver and of Gold

The world is passed and agon,

And now upon his olde ton

It stant of brutel Erthe and Stiel,

The whiche acorden nevere a diel;

So mote it nedes swerve aside

As thing the which men sen divide. (P.874-79)

The fragile polity has become a clumsy fabrication of earth and iron, and as Gower warns us: "For Erthe which is meynd with Stiel/ Tokedre may nocht laste wiel," (P.647-48). In one interpretation the dream provides an explanation for the imperfection that exists in a fallen world. Gower offers it, however, to demonstrate why things "that upon divisioun / Stant" are doomed to failure. With regard to the source of the "divisioun" that plagues the polity, Gower maintains that "man is overal / His oghne cause of wel and wo" (P.546-47). More specifically, men fail to understand "That we fortune clepe so / Out of the man himself it groweth" (P.548-49) and in doing so, for want of "propre governance / Fortuneth al the worldes chance" (P.583-84). The lack of "propre governance" that Gower laments of course implicates, and as I will discuss in greater detail in the next chapter, perhaps even indicts Richard II. The king's failures as a governor, however, are reflected everywhere in the ungoverned, and hence ungovernable bodies of his subjects.

Further, the metallurgical heterogeneity of the divided body in Nebudchadnezzar's dream to an extent mirrors the heterogeneity of the bodies in Gower's estates portraits, marked as they are by multiple community affiliations. At the same time, it also mirrors the heterogeneity of the traditional image associated with the medieval body politic, which has the king for its head, the clergy for its heart, the knightly nobility for its arms and hands, the laborers for its feet, etc. Thus, in choosing this particular image, Gower suggests that reform must involve more than simply putting everyone back in his proper place, because the post-reform body politic in such a scenario would still be a divided one. Similarly, reform as it takes shape in Peck's formulation, which involves the internalization and reconstitution of the estates hierarchy within the individual, would leave the individual body still marked and divided according to functional partitions.

Instead of a new or renewed theoretical body shaped or determined by the estates framework, at the end of the Prologue Gower offers a vision of the polity in which "the comun with the lord, / And the lord with the comun also" (P.1066-67) are "sette in love bothe tuo" (P.1068). In context, the image might be interpreted in two ways. In the first interpretation, the sovereign and the commons are brought into harmony with one other, while the clergy and the remaining members of the second estate are quite mysteriously elided. In the second interpretation, all three estates are brought into harmony under divine lordship, thus eliding official distinctions altogether. What either interpretation offers is a way of thinking about political bodies, that is, bodies that are included within the polity, as preceding estates partitions. In order to make the central conceit of the

poem work, Gower did, as Peck intuits, have to construct an individual body that could adequately represent, not just a single estate, but the realm as a whole. Rather than mapping the estates framework onto the individual body, however, Gower accomplishes this task by occluding or bridging the estates distinctions that mark his own, and hence Amans's, person.

Early in the Prologue, Gower as narrator labels himself as a "burel clerk" (P.52), yet even before that revelation, he embarks on a process of re-identification that will permit the narrator to represent the polity entire within the symbolic economy of the poem. Significantly, Gower chooses to write in English and highlights that choice as exceptional among learned men, while at the same time claiming the English-literate community as his own: "And that for fewe men endite / In *oure* englissh, I thenke make / A bok for Engelondes sake" (P.22-24, emphasis mine). Later in the Prologue, after the announcement of his occupation and his presentation of both the noble and clerical estates in third-person narration with occasional first-person singular asides, Gower slips easily and strategically into first person plural in his description of the state of the commons:

Bot what man wolde himself avise,  
 His conscience and noght misuse,  
 He may wel ate ferste excuse  
 His god, which ever stant in on:  
 In him ther is defalte non,  
 So moste it stonde upon *ousselve*

Nought only upon ten ne twelve,

But plenerliche upon *ous alle*,

For man is cause of that schal falle. (P.520-28, emphasis mine)

In contrast to the sections dealing with the first and second estates, and in even starker contrast to his descriptions of the third estate in the *Vox Clamantis*, Gower does not narrow the applicability of the critique in this section through reference to the traditional “offices” of the third estate. In addition, his use of “ousselfe” and “ous alle” implicate Gower himself and also the members of the first and second estates with which he has already dealt in the process of lapse and reform that he describes in this section.

Consequently, when Gower the narrator returns to first-person singular narration at the end of the Prologue, he emerges as a member of a newly-expanded commons, and men in general, rather than gentry, clergy, or commons in particular, are at the heart of the problem: “And in this wise, as I recorde, / The man is cause of alle wo, / Why this world is divided so” (P.964-66).

Many scholars have tended to detach the story of Amans from both the Prologue and the ending of the poem in which Amans the Lover is unmasked as Gower the Poet, and the “dullness” of Book VII, often characterized as an “interruption” of the Lover’s confession, has led others to overlook its relationship to the *Confessio* as whole.<sup>90</sup> Dismembering the poem in this way, however, destroys the formal structures through which Gower links the story of Amans to the larger project of socio-political reform with which the *Confessio* is concerned. By wrapping the Lover’s personal confession around

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90 M. A. Manzalaoui, “‘Noght in the Registre of Venus’: Gower’s English Mirror for Princes,” in *Medieval Studies for J. A. W. Bennet*, ed. P. L. Heyworth (Oxford: Clarendon Press, 1981), 159-71.

Book VII, which is primarily a translation of the pseudo-Aristotelian *Secretum Secretorum* and operates as a mirror within a mirror,<sup>91</sup> Gower draws a parallel between Amans and Venus, and Alexander and Aristotle. In addition, by bookending Amans's story with the dedication--either to Richard II or Henry of Lancaster--in the Prologue and the revelation of Amans's identity in Book VIII, Gower encourages comparison between both master/discipulus pairs and the relationship that he establishes with his chosen lord.<sup>92</sup> By first removing any vestigial traces of the estates divisions that might otherwise limit his representative capacity and then linking Amans to other figures that appear within the poem, either through analogous relational structures or explicit identification, Gower assigns multiple valences to the figure of the Lover. He associates Amans's personal journey toward self-recognition with the desire for social reconciliation and good governance expressed in the Prologue. Hence Amans, with whom Gower encourages the reader to identify, becomes a subject of address and a political actor who transcends traditional social divisions as well as the boundaries between confessional discourses focused on personal and spiritual accountability and a political rhetoric of secular and institutional reform.

#### **IV. Governing the Polity Through Political Bodies**

In each of the works discussed above, the author employs estates material in order to express or represent order and disorder within the polity. In doing so, Chaucer, Langland and Gower, like Bracton, tend to diminish its significance as a prescription for social order, and instead shift the focus of estates literature onto a new subject of

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<sup>91</sup> Ibid., 159.

<sup>92</sup> The two Prologues and the implications of Gower's reconfiguration of the lord/servant relationship into a choice rather than the acceptance of a command are discussed in more detail in the next chapter.

representation. While jurisdictional tensions between and among the estates may provide opportunities for social deterioration or renovation in the *General Prologue*, *Piers Plowman*, and the *Confessio Amantis*, the true source of harmony and conflict within the community of the realm in all three texts is the political subject who emerges out of the reconsideration of estates conventions and must negotiate, organize and resolve those jurisdictional tensions. In Middle English literature of the late-fourteenth and early fifteenth centuries, the estates framework still provides a vocabulary for illustrating and even limiting the modes of participation available to the political subject, but increasingly, the subject, and the target of reformist discourse is the individual and not the estate or institution he represents.

Perhaps the clearest instance of this rhetorical process can be found in the early-fifteenth century alliterative poem *Mum and the Sothsegger*. In a dream vision, the narrator of the poem encounters an imagined model of the polity. Frustrated by his long search for the Sothsegger through all ranks of society and having found only the followers of Mum, the narrator falls asleep. In his dream, he approaches a “frankeleynis freholde al fresshe newe” (l. 946).<sup>93</sup> When he encounters the owner of this lovely place, the narrator finds the remarkably spry “olde auncyen man of a hunthrid wintre” (l. 956) caring for his beehive:

He hoved over a hyve, the hony forto kepe  
 Fro dranes that destrued hit and dide not elles;  
 He thraste thaym with his thumbe as thicke as thay come,

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<sup>93</sup> All citations are to James Dean, ed., *Mum and the Sothsegger in Richard the Redeless and Mum and the Sothsegger* (Kalamazoo: Medieval Institute Publications, 2000).

He lafte noon alive for thaire lither taicches. (ll. 966-79)

When the narrator wonders why the man is squashing the drones beneath his thumb, the old man allegorizes the beehive to a human polity. In a community where everyone is supposed to work for the common benefit, he considers those who do not to be the worst of the lot. Some bees gather nectar. Some stay home to make honey and raise the young. Still others contribute to the architectural marvel of the hive, while others forecast the weather. The drones do nothing that constitutes work. Rather they simply live off of the fruits of others' labor. As a consequence, in order to preserve the hive, a good steward will destroy the drones before they have a chance to corrupt the hive with their lazy ways.

In this extended analogy, the poet conceives of the polity as a collection of individuals, all of whom share the same fundamental obligations: to work and to serve the king. Although some groups fulfill these obligations in different ways, the poet has redefined all service to the polity and the king as work, and the obligation to work derives from membership in the hive community. With regard to the drones who meet their unfortunate end beneath the gardener's thumb, the poet identifies them not by their estate but by their refusal to work for the benefit of that community and their wasting of its resources. What you do--or refuse to do in the case of the drones--determines your place in society. This obviously contrasts with the estates model in which who you are determines what it is you do. With a nice bit of rhetorical sleight of hand, the poet transforms the idea of the estate from the source of one's social obligations as a member of a particular class into the expression of one's affiliation with the greater polity of the realm. In addition, with the introduction of the gardener, the poet suggests a source for

an exercise of regulatory authority that exceeds the social boundaries set by any one estate. Rather than taking for granted an established order or social hierarchy predicated upon institutional or categorical affiliation, the poet investigates how the realm as a whole, both physically and as an abstract community, evolves out of a set of obligations that targets the individual, rather than a group or class of actors. In addition, the narrator encounters truth and a solution to the problem of social decay presented in the poem only when he leaves behind the realm as it is with its established order and bureaucracy of yes-men. The poet locates the impetus for political change outside of the existing apparatus of government, and he identifies the Sothsegger, the person who speaks the truth--not the king or the pope, or parliament or the clergy--as the person, not the institution, that can cure society's ills.

Previous scholarship has focused on whether and how medieval writers refashioned the estates model in order to reflect as well as emphasize social differences within the polity *as a whole*. What I am suggesting is that, in the process of cataloguing those differences, a number of Middle English authors identify strategies of association predicated on how individual persons operate as the vehicles of satire, the sites of institutional deterioration, and the potential agents of reform within estates literature.<sup>94</sup> By representing the political experience at a new level of granularity, these authors somewhat paradoxically realize how that experience bridges community boundaries and thereby gain access to and make available discourses of regulation and reform that were previously foreclosed to them. For this reason, in trying to delineate the contours of an

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94 This point builds upon Fiona Somerset's description of how translation operated to make discourses of reform newly available and potentially dangerous in *Clerical Discourse and Lay Audience in Late Medieval England* (Cambridge: Cambridge Univ. Press, 1998).

English, and in particular a Middle English literature of sovereignty, the first criterion we might establish is a concern with identifying an individual but still generic or generalized political subject whose personal, moral choices become the catalyst for social change. To the extent that process of identification involves the manipulation and redeployment of estates material in order to describe the role that individuals play as the site of institutional deterioration and reform, we might identify a second key characteristic. Looking ahead to the discussion in the next chapter of the regulatory discourse of self-governance itself, where that discourse exhibits a tendency to link the project of reform with a (tightly regulated) individual political agency that looks a great deal like Bractonian, and perhaps also Wycliffite, “obedient disobedience,” we might perhaps specify a third.

## CHAPTER 4

### SOCIAL OBLIGATION AND THE KING'S NEW BODIES

In thinking about how political order arises out of the exercise of self-governance by the “person” that emerges from the reconfiguration of estates’ relationships in Middle English literature, I believe it is helpful to return once again to Bracton and his examination of what kings have in common with persons more generally. Significantly, Ernst Kantorowicz identifies how Bracton re-creates a king under the law by merging positive and natural law. Through this merger, Bracton effectively erases any remaining conceptual boundary between the king’s religious and political identities:

In fact, however, restriction and exaltation of the king seem evenly distributed only because they were interdependent; for his restriction alone produces also, and justifies his exaltation: he is recognized as the “vicar of God” only when and where he acts “God-like” by *submitting* to the Law which is both his and God's.<sup>1</sup>

In submitting his will to the law, the Christ-like king submits his will to God’s. To disobey the law by imposing his will against it amounts to defying God. I have already noted in chapter two how, even though no temporal court could compel the king to answer a complaint filed against him, the moral compulsion placed upon him to obey the law to the extent it embodied a divine mandate was in all likelihood a powerful one.<sup>2</sup>

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1 Ernst Kantorowicz, *The King's Two Bodies* (Princeton: Princeton University Press, 1997), 155 (emphasis in original)

2 S.J.T. Miller, “The Position of the King in Bracton and Beaumanoir,” *Speculum* 31.2 (1956): 263-96,

Like all of his subjects, the king is, for Bracton, a man under God first, and that fundamental relationship between the person and the divine provides the touchstone for determining the king's relationship to his office and the law.

Once we understand how Bracton strategically merges religious and political identity in the case of the king, we can begin an exploration of how he accomplishes a similar merger of religious and political identity, or to put it another way, crime and sin throughout *De Legibus*. I understand, of course, that the conceptual boundary between crime and sin during the middle ages often remained blurry where it existed at all. I argue, though, that Bracton deliberately exploits that conceptual fuzziness in order to lay the groundwork for a jurisprudence that relies on self-governance in accordance with the law as the mechanism through which jurisdictional problems could be avoided or resolved. As he explains in one of the opening sections of *De Legibus* dedicated to the definition of *ius*:

*Jus* is derived from justice and is used in a number of different senses. For it is sometimes used for the *ars boni et aequi* itself, or for the written body of *jus*. It is called the art of what is fair and just, of which we are deservedly called the priests, for we worship justice and administer sacred rights. *Jus* is sometimes used for natural law which is always fair and right; sometimes for the civil law only; sometimes for praetorian law only; sometimes for that which results from a judgment, for the praetor is said to do *jus* even when he does it unjustly, the word referring not to what he in fact did but what he ought to do. *Jus* is sometimes used for the place in

which law is administered, sometimes for the tie of personal connexion, as when we speak of the *jus cognationis* or *affinitatis*. *Jus* is sometimes used for an action, sometimes for an obligation, sometimes for an inheritance, as for the *proprietas* of a thing, sometimes for the possession of goods. Sometimes it signifies *potestas*, as when it is said ‘He is *sui juris*.’ Sometimes it stands for law in all its rigor, as when we distinguish between law and equity. *Jus* is [here] put for the art as such, not for everything contained within it, for not all *jus* enjoins since some permits. Or it is here used for all the *jus* that enjoins, [for all the *jus* that enjoins enjoins] us to live virtuously, to harm no one and to give each his right. (II.23-24)<sup>3</sup>

Bracton acknowledges the multiple potential meanings of *ius*, which include, *inter alia*, the practice of law, written law, natural or divine law, judicial decisions, and the courtroom in which proceedings take place. When he chooses the two definitions that he will be using in his treatise, however, he takes the word in what are perhaps its two

3 Henry de Bracton, *On the Laws and Customs of England*, ed. George Woodbine, trans. Samuel Thorne (Cambridge: Harvard University Press, 1968-77) (Hereinafter cited in the text and notes as “*De Legibus*,”). Throughout, citations to the *De Legibus* have been provided in the text, while citations to Woodbine’s and Thorne’s introductory and prefatory materials can be found in the footnotes.). Latin: DE hoc autem quod dicit ius suum, id est iustitiæ, et sic dicitur ius iustitia quia in ea stant omnia iura. Ius ergo derivatur a iustitia, et habet varias significaciones. Ponitur enim quandoque pro ipsa arte, vel pro eo quod scriptum habemus de iure, quod ius dicitur ars boni et æqui, cuius merito quis nos sacerdotes appellat. Iustitiam namque colimus et sacra iura ministramus. Item ius quandoque supponitur pro iure naturali, quod semper bonum et æquum est. Quandoque pro iure civili tantum. Quandoque pro iure prætorio tantum. Quandoque pro eo tantum quod competit ex sententia. Prætor enim ius dicitur reddere, et cum inique decernit, relatione facta non ad id quod prætor fecit, sed ad illud quod prætor facere debuit. Item supponit quandoque ius pro loco in quo redditur ius. Supponit etiam quandoque pro necessitudine, sicut pro iure cognationis vel affinitatis. Supponit etiam ius quandoque pro actione. Quandoque pro obligatione qualibet. Quandoque pro hereditate, sicut pro proprietate rei. Quandoque pro bonorum possessione. Quandoque pro potestate, ut cum dicitur iste est sui iuris. Quandoque pro rigore iuris, ut cum dicitur inter ius et æquitatem. Item ponitur pro ipsa arte, non pro quolibet iure quod invenitur in ipsa arte: nec enim omne ius præcipit, immo quoddam permittit. Vel ponitur pro omni iure quod præcipit honeste vivere, alterum non lædere, ius suum cuique tribuere.

broadest senses. First, he identifies *ius* as the “art of what is fair and just” or the judicial practice through which laws are enforced. Second, he alternatively describes *ius* as that which “enjoins . . . us to live virtuously, to harm no one and to give each his right.” After enumerating definitions of the word in which the potential difference between morality and legality is expressed with varying degrees of clarity, Bracton explicitly chooses two definitions in which that distinction has been almost entirely elided.

Having settled upon the proper meaning of *ius* as a general concept, Bracton goes on to describe the various manifestations of it as the *ius publicum*, the *ius privatum*, the *ius naturale*, the *ius civile*, and the *ius gentium*. The *ius publicum*, or public law comprises that “which pertains to the common welfare . . . , and deals with religion, priests and public officers” (II.25). The *ius privatum*, or private law, “is that which pertains primarily to the welfare of individuals and secondarily to the *res publica*” (II.26). The *ius privatum* “is deduced partly from the rules of natural law [*ius naturale*], partly from those of the *ius gentium* and partly from those of civil law [*ius civile*]” (II.26). The *ius naturale* Bracton defines as “that which nature, that is, God himself, taught all living things” (II.26). He defines *ius gentium* as “the law which men of all nations use, which falls short of natural law since that is common to all animate things born on the earth in the sea or in the air,” and the *ius civile* as that “which may be called customary law,” and “may also be called all the law used in a state [or the like], whether it is natural law, civil law or the *ius gentium*” (II.27). Over the course of Bracton’s description, we can see how the various types of *ius* begin to blend into one another and back into the general idea of *ius* with which Bracton begins. All of them ultimately serve the ends of the *praecepta*

*iuris*, which “are three: to live virtuously, to injure no one, [and] to give to each man his right” (II.25).

With this expansive, to say the very least, idea of *ius* in mind, Bracton then identifies how the subject matter to which *ius* pertains has been defined pursuant to the *leges et consuetudines*. At the outset he declares, drawing from Azo’s *Summa*, that “the whole of the law [*omne ius*] with which we propose to deal relates either to persons or to things or to actions, according to English laws and customs” (II.29). As a category of legal subjects, the “persons” with whom Bracton treats, like the persons that emerge in the texts discussed in the previous chapter, exist at the center of a complex nexus of moral, official and legal obligations. Thus, even as he starts sorting men and women into the fundamental categories of “free or bond” in accordance with the *ius gentium*, Bracton acknowledges that personal identity, whether for the lowliest bondsman or the king himself, ultimately begins with one’s existence under the terms of natural law:

“Freedom is the natural power of every man to do what he pleases, unless forbidden by law or force.” But if so, it then appears that bondsmen are free, for they have free power [to act] unless forbidden by force or law. But freedom is defined by that law by which it is created, by virtue of which they are called free. For though bondsmen may be made free, since with respect to the *jus gentium* they are bond, they are free with respect to the *jus naturale*, thus free and bond, but from different points of view, and so wholly free [or] wholly bond, not in part one and part the

other, as was said above. And in this connexion the civil law or the *jus gentium* detracts from natural law. (II.29-30)<sup>4</sup>

In this passage, Bracton is not simply playing a semantic game according to which men might be defined as free or unfree, depending upon which system of classification one chooses to apply. Rather, he makes the point that, although the bondsman's free status pursuant to natural law has been "obscured" by the *ius gentium* (II.28), that natural legal status persists in the bondsman's person and is in fact what allows the bondsman to be freed through the process of manumission:

Manumissions also come from the *jus gentium*. Manumission is the giving of liberty, that is, the revelation of liberty, according to some, for liberty, which proceeds from the law of nature, cannot be taken away by the *jus gentium* but only obscured by it, for natural rights are immutable. But say that he who manumits does properly give liberty, though he does not give his own but another's, for one may give what he does not have, as is apparent in the case of a creditor, who [may alienate a pledge though the thing is not his, and in that of one who] constitutes a usufruct in his property. For natural rights are said to be immutable because they cannot be abrogated or taken away completely, though they may be restricted or diminished in kind or in part. (II.27-28)<sup>5</sup>

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4 Latin: EST autem libertas naturalis facultas eius, quod cuique facere libet, nisi quod iure aut vi prohibetur. Sed secundum hoc videtur quod servi sint liberi, nam et ipsi liberam habent facultatem nisi vi aut iure prohibeantur. Sed definitur libertas eo iure quo prodita est, ex qua liberi vocantur. Licet enim servi efficiantur liberi, tamen quoad ius gentium servi sunt, quoad ius vero naturale liberi, et ita liberi et servi diversis tamen respectibus, et sic omnino liber et omnino servus et non pro parte, et secundum quod prædictum est. Et in hac parte ius civile vel gentium detrahit iuri naturali.

5 Latin: MANUMISSIONES autem iuris gentium sunt. Est autem manumissio datio libertatis, id est detectio, secundum quosdam, quia libertas, quæ est de iure naturali, per ius gentium auferri non potuit,

The bondsman's legal status as a person who is currently unfree but might be made free by operation of the same law that binds him depends upon the same fundamental relationship that determines the king's relationship to the law, that is the relationship between the person and the divine. Bracton constructs the bondsman's legal status through a deliberate merger of natural and positive law in his idea of *ius*, as "the art of what is fair and just," the system of jurisprudence through which English laws and customs determine how *ius* comes into being and is enforced.

At the beginning of his enumeration of offices and officers under the king, which I also discuss in the previous chapter, when Bracton states that, "God is no respecter of any men whomsoever, free or bond, 'for there is no respect of persons with God,' for as to Him, 'he that is greatest, let him be as the smallest; and he that is chief as he that doth serve,'" (II.32) he does more than pay lip service to yet another medieval platitude. As is the case when he discusses the conceptual "freedom" of the bondsman, Bracton simply reminds us once again that the relationship between the person and the godhead is the essential condition of personhood upon which the various legal definitions that he explores have been constructed. That relationship provides the foundation for the three *praecepta juris* and thus for all *ius* as Bracton describes it. In addition, this fundamental nature of religious identity extends beyond the law dealing with persons to the law dealing with things and actions. Persons, "because of whom all rights are established," (II.29) acquire dominion over things, on their own behalf or on behalf of other persons or

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licet per ius gentium fuerit obfusata. Iura enim naturalia sunt immutabilia. Sed dic vere quod libertatem dat qui manumittit, licet non suam sed alienam. Dat enim quod non habet, sicut videtur in creditore, qui usum fructum constituit in re non sua. Iura enim naturalia dicuntur immutabilia, quia non possunt ex toto abrogari vel auferri, poterit tamen eis derogari vel detrahi in specie vel in parte.

institutions, and through actions persons take on legal obligations or incur liability for wrongdoing.

### **I. Jurisdictional Conflict and Individual Self-Governance**

Jurisdiction, as a legal or political concept, encompasses the specific “power of declaring and administering law or justice,” as well as “legal authority or power,” more generally, both of which meanings were in circulation in Middle English by the end of the fourteenth century.<sup>6</sup> As they arose during the latter part of the fourteenth century and into the first two decades of the fifteenth, conflicts of jurisdiction appear to have implicated both meanings of the term, since they frequently involved the question of who had the power to make or interpret, and to enforce the law as well as irresolution regarding the ultimate scope of the law’s power. Legal uncertainties in this period were often perceived as resulting from doubts or disagreements regarding the jurisdiction of various institutional authorities—the monarch, the commons, the Church, the university, the local government—to interpret and enforce the law. At the same time, the jurisdictional authority of the law itself, the extent to which it could be enforced against various classes of people, also came under intense scrutiny. In such an environment, Bracton’s concept of the *leges et consuetudines* as a regulatory system that encompasses the multiple jurisdictions from which the realm is comprised remained relevant as a theoretical framework for thinking through such problems, even if his description of the content of the law itself was outdated by more than a century.

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6 “jurisdiction, n.1,” *The Oxford English Dictionary*, 2nd ed., 1989, *OED Online*, Oxford University Press, November 12, 2009 <[http://dictionary.oed.com/cgi/entry/50124816?single=1&query\\_type=word&queryword=jurisdiction](http://dictionary.oed.com/cgi/entry/50124816?single=1&query_type=word&queryword=jurisdiction)>.

As discussed in chapter two, Bracton and the author of *Britton* both identify the English legal subject as potentially subject to a number of concurrent and occasionally conflicting jurisdictional forces. Where, however, the author of *Britton* attempts to lay the specter of jurisdictional conflict to rest by defining English personhood in accordance with a relatively narrow body of secular law belonging solely to the king, Bracton embraces an idea of personhood that arises from a synthesis of the oppositions that define it. *Britton's* author in effect offers obedience to the law and strictly compartmentalized jurisdictional authority as strategies whereby jurisdictional conflicts can be avoided. Bracton, in contrast, acknowledges jurisdictional conflict as an essential condition of being. Thus Bracton begins his treatise with the observation, already examined in detail in chapter two: "The utility [of this work] is that it ennobles apprentices and doubles their honours and profits and enables them to rule in the realm and sit in the royal chamber, on the very seat of the king, on the throne of God, so to speak, judging tribes and nations, plaintiffs and defendants, in lordly order, in the place of the king," (II.20). He creates a jurisprudence that, through its merger of natural and positive law, to an extent transcends jurisdictional boundaries and can therefore be applied to address and resolve jurisdictional conflict whenever it is encountered. It is a jurisprudence well-suited to regulation of an individual social body, an idea of the "person," that itself transcends and mediates among various jurisdictional authorities. To the extent that the jurisdictional reach of Bractonian *ius* exceeds the jurisdictional authority of the courts established to enforce it, Bracton relies upon the idea of self-regulation in accordance with a divine

mandate to suture the gap. Consequently, where *Britton* is a treatise concerned primarily with compliance, *De Legibus* presents itself from the outset as a manual of governance.

Nowhere does this become more evident than in the *addicio de cartis*, which passage Woodbine identifies as “one of the most important in the whole manuscript.”<sup>7</sup> Most Bracton scholars put the *addicio de cartis* firmly into the spurious category, for, as Woodbine also observes: “That this particular *addicio* is a very old one there can be no doubt--it seems to be a not very distant echo of the trouble between Henry III and his barons; but the authority on which it rests is far too insufficient to allow us to regard Bracton as the author of it.”<sup>8</sup> Thorne, on the other hand, maintains the *addicio de cartis* was redacted from the text of the “archetype” of *De Legibus*, “the somewhat abridged version of Bracton’s manuscript made after 1256.”<sup>9</sup> Later copyists, however, “rescued” the passage from the original manuscript and copied it, along with numerous other *addiciones* that had suffered a similar fate, back into the margins of the archetype from whence it was re-introduced into the textual tradition.<sup>10</sup> I will once again return to the complex questions of authorship raised by that tradition in a moment. For now, though, I want to summarize the manuscript authority for the *addicio de cartis* in an effort to show

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7 Woodbine, *De Legibus*, I.252.

8 Ibid., I.333.

9 Thorne, *De Legibus*, III.xlviii.

10 Ibid., III.xlix. Thorne posits that “transmission of the treatise thus begins with three manuscript exemplars which have a substantial amount of work in their margins: the supplemented archetype, OA [Bodleian Library, MS Digby 222] and LA [Lambeth Palace Library, MS 92].” Where, in Thorne’s opinion, “[t]heir texts proper were reproduced more or less adequately, . . . their progeny took only what they pleased of the marginalia” (III.xlix). Since Thorne observes that the *addicio de cartis* is omitted in both OA and LA, he leaves us with the conclusion that it must have been transmitted with the archetype itself. Although he contends that the makers of OA and LA most likely omitted the *addicio de cartis*, in addition to a number of *addiciones* that appear in later manuscripts but are omitted from both of these important early copies, because “[t]hey were apparently considered, as the maker of the archetype had considered them earlier, not worth copying,” he concedes that the omission may have been “accidental,” arising from a failure on the part of the scribe responsible for copying the section of the treatise in which it appears to compare his work against the supplemented archetype. (III.xlix)

that, however insufficient it might have been for Woodbine's purposes, it nonetheless supports a conclusion that the *addicio de cartis* was most likely considered authoritative by a number of Bracton's readers and circulated with Bracton's text in at least half of the surviving copies.

Using Woodbine's three basic genealogical groupings,<sup>11</sup> the *addicio de cartis* survives in all exemplars that he has placed in group II, with the exception of one. It also comes down to us in five MSS from group I, and one MS from group III.<sup>12</sup> The *addicio de cartis* thus survives in 24 of the 48 surviving manuscripts.<sup>13</sup> Woodbine argues that in those MSS from groups I and III where the *addicio de cartis* survives, "in these additional passages the manuscripts . . . have left the line of their main text," to follow the "tradition of (II)" which "is the group which especially contains interpolations from a variety of sources not connected with Bracton."<sup>14</sup> While Thorne generally concurs with Woodbine's assessment of the quality and value of the MSS in group II,<sup>15</sup> it is worth noting that the *addicio de cartis* is included in Bodleian Library, MS Rawl. C. 159, identified by Woodbine as "OC," which is, according to Thorne, one of the "three oldest extant manuscripts in the three lines of descent," and descends with OA and LA (see n. 6, above) from a common ancestor.<sup>16</sup> Whatever the value of group II may be regarding the question of authorship or the effort to reconstruct a textual "archetype," I think the fact the *addicio de cartis* survives in nearly all of the exemplars of a group showing the

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11 Woodbine, *De Legibus*, I.246.

12 Ibid., I.252.

13 Ibid., I.378. Woodbine counted 46 surviving MSS. Since Woodbine's edition was published, two more manuscripts have come to light, to put the total at 48 (Thorne, "Preface," *De Legibus*, III.liv).

14 Ibid., *De Legibus*, I.333.

15 Thorne, "Preface," *De Legibus*, III.liv

16 Thorne, *De Legibus*, I.vii.

greatest degree of interpolation and variation is rather persuasive evidence that many medieval readers and copyists considered the *addicio de cartis* to be, if not authoritative, then at the very least an essential part of the *De Legibus*. Its very early infiltration into the textual tradition in a manuscript that shows a great degree of fidelity, in Thorne's opinion, to an archetypal "original," whatever that might have been, further supports such a conclusion.<sup>17</sup>

Turning now to the text of the *addicio de cartis* itself, it provides that, although the king has the first and last word when it comes to interpreting the meaning and enforceability of royal charters, all subjects bear responsibility for seeing that justice is done, even when doing so involves taking action against the king himself:

Private persons cannot question the acts of kings, nor ought the justices to discuss the meaning of royal charters: not even if a doubt arises in them may they resolve it; even as to ambiguities and uncertainties, as where a phrase is open to two meanings, the interpretation and pleasure of the lord king must be awaited, since it is for him who establishes to explain his deed. And even if the document is completely false, because of an erasure or because the seal affixed is a forgery, it is better and safer that the case proceed before the king himself. <No one may pass upon the king's act [or his charter] so as to nullify it, but one may say that the king has committed an *injuria*, and thus charge him with amending it, lest he [and the justices] fall into the judgment of the living God because of it. The

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<sup>17</sup> As discussed above, Thorne seems to think that the *addicio de cartis* was actually part of the text Bracton prepared and was most likely copied back into the margins of the archetype made from that text after the passage was redacted by the archetype's maker.

king has a superior, namely, God. Also the law by which he is made king. Also his *curia*, namely, the earls and barons, because if he is without bridle, that is without law, they ought to put the bridle on him. [*That is why the earls are called the partners, so to speak, of the king; he who has a partner has a master.*] When even they, like the king, are without bridle, then will the subjects cry out and say “Lord Jesus, bind fast their jaws in rein and bridle.” To whom the Lord [will answer], “I shall call down upon them a fierce nation and unknown, strangers from afar, whose tongue they shall not understand, who shall destroy them and pluck out their roots from the earth.” By such they shall be judged because they will not judge their subjects justly, and in the end, bound hand and foot, He shall send them into the fiery furnace and into outer darkness, where there will be wailing and gnashing of teeth.> (II.109-110, material in angle brackets represents Woodbine’s demarcation of the scope of the *addicio*, the italicized, bracketed material is what Thorne identifies as Bracton’s interpolations)<sup>18</sup>

18 Latin: DE cartis vero regis et factis regum, non debent nec possunt iustitii nec privatae personae disputare, nec etiam si in illis dubitatio oriatur possunt eam interpretari. Etiam in dubiis et obscuris, vel si aliqua dictio duos contineat intellectus, domini regis erit expectanda interpretatio et voluntas, cum eius sit interpretari cuius est condere. Et etiam si omnino sit alsa propter rasuram, vel quia forte signum appositum est adulterinum, melius et tutius est quod coram ipso rege procedat iudicium. <Item factum regis nec cartam potest quis iudicare, ita quod factum regis irritetur. Sed dicere poterit quis quod rex iustitiam fecerit, et bene, et si hoc eadem ratione quod male, et ita imponere ei quod iniuriam emendet, ne incidat rex et iustitii in iudicium viventis dei propter iniuriam. Rex habet superiorem, deum scilicet. Item legem per quam factus est rex. Item curiam suam, videlicet comites et barones, quia comites dicuntur quasi socii regis, et qui socium habet, habet magistrum. Et ideo si rex fuerit sine fræno, id est sine lege, debent ei frænum apponere nisi ipsimet fuerint cum rege sine fræno. Et tunc clamabunt subditi et dicent, Domine Iheus in chamo et fræno maxillas eorum constringe. Ad quos dominus, Vocabo super eos gentem robustam et longinquam et ignotam, cuius linguam ignorabunt, quae destruet eos et evellet radices eorum de terra, et a talibus iudicabuntur, quia subditos noluerunt iuste iudicare. Et in fine ligatis pedibus eorum et manibus, mittet eos in caminum ignis et tenebras exteriores, ubi erit fletus et stridor dentium.

To the extent the king's official actions contravene the demands of *ius* and thereby result in injury, he is liable, not to his subjects pursuant to the *ius gentium*, but to God pursuant to the *ius naturale*. Similarly, the justices and officers who multiply that injury through continued application of an unjust act or charter become personally responsible pursuant to the same authority, because before God, there are no kings and officers. There are only men (*homines*). Within the Bractonian polity, where everyone including the king is a subject under God and the law first, one does not become exempt from divine judgment simply because one was acting under orders.

Bracton builds his whole idea of what can be considered "just" or "lawful" upon a foundation of Christian morality, the *ius naturale*. Consequently, living in accordance with English law and custom necessarily involves the possibility that one might from time to time encounter a conflict between one's moral and ethical obligations pursuant to the *ius naturale* and one's legal obligations under the *ius gentium*. When confronted with such a conflict, those of the king's subjects who themselves hold some measure of power are charged in the *addicio de cartis* with taking the reins and putting a bridle on the monarch so that he may be led back into conformity with the law. In the event the "earls and barons" fail in this task, even the relatively powerless are called upon to petition God, not to plead that those in power be enlightened so they may amend themselves, but so that God may "bind fast their jaws in rein and bridle." Granted, praying to God for retribution is not much of a substitute for a legal system through which the injustices of those in power might be remedied. Nevertheless, by effectively merging notions of crime and sin, Bracton constructs a legal subject for whom the moral imperative to avoid sin

occasionally requires the assertion of one's will against those in power. For the Bractonian subject, whether king or commoner, compliance with the law involves a delicate and almost constant process of interpretation through which the spirit and the letter of the law must be reconciled.

Throughout *De Legibus, ius*, the *ars boni et aequi* which comprise construction, application and administration of the law, takes shape as a socio-political project in which all men and women participate, regardless of station or status. Taking up once again the contrasting textual traditions of Bracton and *Britton*, the multiplicity and instability of Bracton's text suggests that the original compositors, readers and copyists of *De Legibus* actually had a sense of the English common law as something embodied in and arising from the very processes and procedures designed to implement it. The utility of Bracton's text for his medieval audience seems to have stemmed, not necessarily or at least not only from its demonstration of what the law *was*, but from its revelations about how the law *worked* as a complex interaction of morality, custom, statute and precedent that played out within and upon the persons who remained subject to it, even as they pronounced upon it. The *De Legibus*, like the law it describes, became a process of interpretation, application and reinscription, useful for its ability to cultivate the hermeneutic practice that originally produced it, as opposed to a static set of rules or *sententiae* to be valued for the wisdom they contain.

In contrast, *Britton* offers a jurisprudence in which the law springs from a single source, the king. It does not extend the same invitation to its reader, "if he finds in this work anything superfluous or erroneous," that Bracton does, "to correct and amend it"

(II.20). Doing so would amount to an admission that the king from whom the treatise purports to issue was fallible or open to correction. The textual history of *Britton*, in which the text remained relatively stable and even the most insightful and useful of annotations remained in the margins, suggests it was remarkably successful, particularly for a medieval text, in segregating the role of author from that of copyist and reader. It seems to have been less successful, though, in establishing a similarly sharp distinction between the political bodies of the king and his subjects. Canonical as well as non-canonical texts comprised within the Middle English literature of sovereignty draw upon Bracton's model of royal sovereignty, often while simultaneously showing awareness and acknowledging the existence of the competing model offered in *Britton*.

Bracton's England is a realm constructed under God and under the king within which spiritual devotion and good citizenship consist of essentially the same thing for everyone: living one's life in accordance with the law governing the geographic territory over which the king exercises legal, and through delegation from God, spiritual dominion. To the extent Bracton takes up what Wilks might describe as the "problem" of sovereignty, he does so in order to demonstrate how it is a problem that all men confront. Both Kantorowicz and Sergio Bertelli give a reading of continental models of medieval kingship in which the king has two bodies, one physical and mortal and the other divine and immortal, and that sets him apart from his subjects. In contrast, Bracton gives us a king whose singular body occupies multiple jurisdictional roles, and through that body he is linked, by the operations of analogy or perhaps even homology, to his subjects. For Bracton the king, like all persons who must live in accordance with the laws and customs

of England, is a composite of multiple, overlapping identities--legal, official, moral, and spiritual--and the law itself, as an embodiment of the *ius naturale* that orders all of creation, provides the mechanism through which those identities are harmonized and expressed. Because the Bractonian king is a true *princeps*, the first among many, the exemplarity of *De Legibus* therefore functions somewhat differently from that encountered in a more typical mirror for princes. If Bracton concerns himself with showing the king how he is *like* other men and therefore can be taught through their example, he is at least equally concerned with showing other men how they are like the king and must therefore teach, and perhaps even *lead*, through the example they set.

Before turning to the literary texts, I would like to dedicate some space to a discussion of how Bracton's idea of the polity seems to inform some of the historical events leading up to and surrounding the deposition of Richard II. Providing a complete description of the political environment of the period lies outside of the scope of this chapter. Nevertheless, a brief turn to history will help us to understand how jurisdictional uncertainty during the late-fourteenth century seems to have resurrected, or perhaps simply continued a political discussion of the problem of sovereignty that both Bracton and *Britton* address: What, exactly, is the king's relationship to the law? When he ascended to the throne in 1377, Richard II swore the same four-part oath that Edward II took in 1307. As formulated during Richard's coronation, the fourth promise to uphold the law of the realm, which I discuss in detail in chapter two, provided that he was bound to preserve those laws that his subjects would "justly and reasonably" choose.<sup>19</sup>

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19 Nigel Saul. *Richard II* (New Haven: Yale University Press, 1997), 25.

As Nigel Saul notes, Richard's advisers would probably have preferred to leave out the fourth promise altogether;<sup>20</sup> but they recognized that doing so might cost them valuable support in the commons.<sup>21</sup> Consequently, the words "juste et rationabiliter" were most likely inserted as a compromise in an attempt to circumscribe the obligation imposed upon the king. In addition, the traditional order of the coronation ceremony was modified, so that Richard took the coronation oath before he was presented by the archbishop for the acclamation of the congregation, a switch that Saul explains downplayed the significance of election and "served to emphasize the people's allegiance to a king who was already their ruler *de jure*."<sup>22</sup> In spite of the steps taken at his coronation to emphasize to his subjects Richard's sovereign legal authority, ensuing political events as well as the historical record preserved in contemporary chronicle accounts indicates that public sentiment inclined to the view that the king could and should be made to answer at law for his personal and political activities.

In 1386, as Richard approached his majority, the "Wonderful" Parliament took advantage of John of Gaunt's temporary absence from England and appointed the Commission of Government, forcing Richard to submit his authority to the baronial council.<sup>23</sup> Although Richard clearly chafed at and openly rebelled against the constraints thus imposed, the "Merciless" Parliament of 1388 acted once again to curtail the royal prerogative, and Richard was required to re-enact the coronation oath-taking in June of

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20 Ibid.

21 George Holmes. *The Good Parliament* (Oxford: Oxford University Press, 1975), 166 (suggesting that, as Pope Gregory's power declined in Northern Europe, the commons became a much more powerful force in English politics).

22 Saul, *Richard II*, 25.

23 Adam Usk writes that Richard was "incensed that as a result . . . the royal liberty to which he was accustomed was being curtailed by his own subjects." Adam Usk, *The Chronicle of Adam Usk, 1377-1421*, ed. and trans. Chris Given-Wilson (Oxford: Oxford University Press, 1997) 9.

the same year as part of his reconciliation with the baronial council, suggesting the oath's growing importance as part of the regulatory framework within which his subjects expected the king to operate.<sup>24</sup> Having failed at more overt forms of opposition, Saul maintains that, between 1390-95, Richard used his outward display of sensitivity to and cooperation with the demands of his subjects as a kind of cover in order to gain political leeway to implement measures intended to strengthen the royal prerogative.<sup>25</sup> Chronicle accounts tend to confirm Saul's assessment that towards the end of the decade, Richard had begun to exercise royal authority in new and dangerously unfamiliar ways.<sup>26</sup> During the same period, Richard's lavish expenditures upon the ceremonial trappings of kingship drew further censure from his subjects. When, however, in the January parliament of 1397, the commons criticized the "great and excessive" cost of the royal household, Richard was quick to respond that a king's subjects had no business interfering in his personal affairs, and the lords supported him, declaring that such criticism amounted to treason.<sup>27</sup>

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24 Richard Firth Green, *Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 2002), 233-34.

25 Saul, *Richard II*, 245-69.

26 Walsingham, in the *Annales Ricardi Secundi*, accuses Richard of abusing his royal power in order to curtail the freedom of his subjects: "Thus was the king continually scheming to entrap and grind down his subjects, lest at any time in future an opportunity might arise for them to regain their former liberty. . . ." Chris Given-Wilson, ed. and trans., *Chronicles of the Revolution: 1397-1400 The Reign of Richard II* (Manchester: Manchester University Press, 1993), 76-77. Although the partiality of Walsingham's account must be taken into consideration, even the relatively sympathetic Dieulacres chronicler, who argues that "[f]or a servant or subject to rebel against his lord in ridiculous," has harsh criticism for Richard's actions in drawing up the so-called "blank" charters:

Blank charters were also drawn up, which were to be sealed by both the churchmen and the laymen of each county in the realm, and all the people were made to swear faithfully to acquiesce in whatever was written on them. As a result of this, evil rumours began to spread through the whole community, because of the harsh bondage to which they were subjecting themselves. *Ibid.*, 98.

27 Saul, *Richard II*, 369.

In spite of Richard's apparent political victory on this point, the fact the commons believed the apparatus of government could be used to control not only Richard's political activities—they also complained about his method of appointing local sheriffs and escheators, his failure to protect the Scottish Marches adequately, and his distribution of “liveree de signes” to non-resident esquires—but also his personal conduct is telling in and of itself. It implies some consensus within the commons regarding a Bractonian interpretation of the law as an institution that governs the conduct of the king as well as that of his subjects. Finally of course, to the extent that Richard failed to recognize potential limits on his authority in his dealings with Henry Bolingbroke, that failure eventually led to his deposition and death. The “Record and Process,” a piece of pro-Lancastrian propaganda justifying Richard's deposition, seems to have been designed to appeal to those subscribing to a Bractonian theory of the monarchy in which the exercise of royal power is circumscribed within certain legal bounds. It begins by describing how Richard II, reminded that “at an earlier time . . . he had promised . . . that he was willing to yield up and renounce his crowns of England and France and his royal majesty, on account of his own inability and insufficiency,” declared “that he was willing to carry out what he had formerly promised in this regard,” and signed the “Cession and Renunciation . . . at the foot with his own hand.”<sup>28</sup> It then records how:

Following this acceptance [by those present at Westminster of the king's resignation and the reasons for it] it was publicly declared that, as well as accepting this Cession and Renunciation, it would be of great benefit and advantage to the realm if, in order to remove any scruple or malevolent

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28 Given-Wilson, *Chronicles of the Revolution*, 170

suspicion, the many wrongs and shortcomings so frequently committed by the said king in his government of the kingdom, which, as he himself confessed in his Cession, had rendered him worthy of deposition, were to be set down in writing in the form of articles, publicly read out, and announced to the people.<sup>29</sup>

Implicit in the contention that Richard had rendered himself “worthy of deposition” through the “many wrongs and shortcomings so frequently committed . . . in his government of the kingdom,” is the idea that a subject’s duty of obedience ends when the king fails to comply with the body of law that governs his exercise of royal authority. The truth of the accusations listed in the “Cession and Renunciation” and incorporated into the “Record and Process” is less important, it seems to me, than how they conceptualize Richard’s misrule. The “Record and Process” casts his tenure as sovereign in the form of a conflict between competing models of royal power. In one, the Bractonian model adopted as normative by the Record, the sovereign’s right to govern and the subject’s duty of loyalty evaporate when the king contravenes a body of law with the power to bind his person. In the other, exemplified by Richard’s actions and the author of *Britton*, only the king himself has the power to “change or make the laws of his kingdom.”<sup>30</sup>

Within the “Record and Process,” as in *De Legibus*, the law takes shape as a regulatory force that transcends the jurisdictional limitations of the institutions through which it is administered to encompass the king’s own person. Acknowledging those

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29 Ibid., 172.

30 Ibid., 172-84, particularly Articles 16-20.

institutional limitations, however, the document relies heavily upon a fiction of Richard's voluntary compliance as the mechanism through which his deposition is legitimated. As they are counseled to do in *De Legibus*, the king's subjects confront Richard in the "Record and Process" with an account of his misdeeds, demanding not simply his compliance but his resignation. Recognizing his failures as an office holder, Richard does what any morally virtuous, Bractonian king in his shoes would do, and quietly exits the political stage. From what we know of history, the "Record and Process" does indeed paper over regicide--or perhaps tyrannicide, depending upon one's sympathies--with a tidy narrative about the orderly administration of justice. It also, though, effects a rather neat compromise in which no one branch of institutional authority, neither king nor commons, can claim truly superior jurisdiction under the law. Self-governance in accordance with an omniscient law, rather than a precise location of the authority to enforce it, provides the solution to jurisdictional uncertainty.

Even in the very brief summary that I have offered here, one can see how the constitutional issue that surfaced again and again throughout Richard's reign, the problem of defining the king's relationship to the law, ultimately resolves itself, in the "Record and Process," into a narrative of individual self-governance. Where previous scholars have read the emergence of English constitutional thought in both *De Legibus* and the political events of Richard's reign, I argue for an alternative reading of both. Neither *De Legibus* nor the "Record and Process" set out a framework for thinking about anything resembling a modern "balance of power" between parliament and the monarchy. Rather, what both offer is a way of thinking about legal personhood that gets around all of the

complicated institutional conflicts that constitutionality would eventually confront head-on. In the process, they give us a vision of the polity in which persons, not institutions, govern themselves through a body of law whose jurisdictional authority, which stems first and foremost from its embodiment of a moral imperative, is not necessarily tied to its jurisdictional enforceability. It is a polity where the exercise of political agency is a condition of one's social being as a member of the realm under the law, rather than a prerogative of one's office.

The remainder of this chapter will be given over to considering how Chaucer, Langland, and Gower, as well as their Wycliffite contemporaries, seem to engage with a Bractonian political model in which the merger of religious and legal identity gives rise to a social order where individual self-governance plays an increasingly important role. Continuing the work of the previous two chapters, I intend to demonstrate how Middle English authors construct the "person" that emerges from the reconfiguration of estates conventions, discussed in chapter three, as the subject of a Middle English literature of sovereignty. In doing so, they seem to draw upon and extend Bracton's restatement of the problem of sovereignty, i.e., the problem of how the law operates to transform the fundamentally sovereign individual will into an instrument of the public good, as one that all men and women must confront regardless of status or station. My inclusion of Wycliffite literature serves two significant functions. First, I want to continue to chip away at the wall that a number of modern scholars have erected over the years between orthodox and heterodox vernacular literary production during this period in English history.<sup>31</sup> Second, I want to begin an exploration of what seems to be a complementary

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31 Although I am deeply indebted to the excellent scholarly work of James Simpson, his conclusions that

relationship between the Bractonian political subject and the Wycliffite formulation of religious and spiritual identity.

## **II. Reflecting Bractonian Personhood in the Middle English Literature of Sovereignty**

As we have seen in the preceding two chapters, considering how Middle English authors appear to draw upon English, as well as continental sources in constructing a discourse of sovereignty leads to a reconsideration of how a Middle English literature of sovereignty might be defined. Rather than reading Middle English texts within a political context defined solely according to terms set by Italian or French authors, as Wilks and those scholars influenced by his critical paradigm so often do, we need to be attentive to how Middle English authors reconfigure and deploy inherited political discourses within a conceptual framework that draws at least as much from authors such as Bracton and the anonymous author of *Britton* as it does from Thomas Aquinas, Giles of Rome, Brunetto Latini or Jacob de Cessolis. Consequently, continuing the work of chapter three, I argue that, even though only the *Confessio Amantis*, of the three works considered in this section, addresses itself to the king (or would-be king, in the third recension), all three of them nevertheless exhibit a clear concern with understanding how individual self-governance operates in conjunction with the law to stabilize the community across jurisdictional boundaries. This common characteristic, rather than an engagement with

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Wycliffite literary production “almost without exception set out to be discursively stable, unimaginative, and instrumental” and was “in fundamental respects, wholly at odds with *Piers Plowman*,” are perhaps chief among the recent restatements of this cultural division with which I must ultimately take issue. James Simpson, *Reform and Cultural Revolution* (Oxford: Oxford University Press, 2002), 371.

the *Furstenspiegel* tradition or its source material, is what most clearly identifies them as contributions to the Middle English literature of sovereignty.

**A. Law and the *Imitatio Christi* in the *Man of Law's Tale***

Although I have no desire to flatten what Paul Strohm has called the “polyvocality” of the *Canterbury Tales* with an attempt to impose an artificial unity upon their narrative diversity, I do want to note how a number of them address the necessity of self-governance and the relationship between public and private forms of individual agency as central themes. Obviously, the tales in the “Marriage Group,” comprising the narrative contributions of the Wife of Bath, the Clerk, the Merchant, and the Franklin, deal directly and explicitly with the problem of sovereignty between husband and wife as it presents itself in public and private life. Chaucer also gives us the *Tale of Melibee*, in which the private consultations between Melibee and Prudence influence and are refracted in the more public confrontations between Melibee and his other “counselors.” The *Monk's Tale* replicates the mirror for princes form in miniature, offering exempla drawn from the lives of great men. To an extent, the *Nun's Priest's Tale* plays upon and perhaps parodies the thematic concerns of all of the tales mentioned thus far in its self-consciously sententious recitation of the foibles and moral education of the cock, Chauncleer. Finally, we have the *Parson's Tale* in which the Parson responds to the Host's command to “knytte up wel a greet mateere,” (*Parson's Prologue*, l. 28)<sup>32</sup> with a sermon on sin and penitence.

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<sup>32</sup> Geoffrey Chaucer, *The Parson's Prologue and Tale* in *The Riverside Chaucer* (3d ed.), ed. Larry D. Benson (Boston: Houghton Mifflin Company, 1987).

The tales do offer a variety of moral and social perspectives, even where they share a similar subject matter and even the same generic form. Nonetheless, the profusion of discourses of self-governance that we encounter in a substantial number of them indicates what Emily Steiner might call the “topicality”<sup>33</sup> of such discourses for Chaucer himself, as well as for the writers from whom he gets his source material and upon whose work he comments. Further, by enclosing his treatment of both mirror for princes material and the problem of individual sovereignty more generally within the frame of the *General Prologue*, Chaucer situates the generic political subject that emerges from his treatment of estates conventions in the *General Prologue* as the subject of address for the rest of the tales. To some degree, all mirrors for princes at least pay lip-service to a readership beyond the king or noble patron to whom they are nominally addressed. In the *Canterbury Tales*, however, Chaucer erases any distinction between the literate kings and great men to whom productions such as the *Monk’s Tale* would more usually be addressed, and the poor, dirty, illiterate peasants who typically make up the Parson’s audience. In the process, he explores how the problem of self-governance that lies at the heart of his mirror for princes material also shapes discourses of reform that deal with “persons,” e.g., *Melibee* and the *Parson’s Tale*, rather than kings or officers.

I have chosen to examine the *Man of Law’s Tale* in detail here because, of the tales dealing with the relationship between the individual sovereign and notions of the sovereign individual, it offers perhaps the clearest example of Chaucer’s engagement

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33 Emily Steiner, “Commonalty and Literary Form in 1370s and 1380s,” in *New Medieval Literatures, Vol. VI*, ed. David Lawton, Rita Copeland, and Wendy Scase (New York: Oxford University Press, 2004), 201 (“To put this idea a different way, clamour shows how a vernacular poet writing in the 1370s and 1380s might understand topicality not simply as the rehearsal of an even or the appropriation of a discourse, but as a set of structural concerns informing politics and poetry alike.”).

with a Bractonian idea of the political subject. Within the tale, Chaucer explores how one's perceived obligations as a Christian determine whether and how one is able to exercise agency within the polity. He draws the substance of the tale primarily from two sources, Nicholas Trivet's "Life of Constance" in the Anglo-Norman *Chronique* and John Gower's "Tale of Constance" from the *Confessio Amantis*, both of which explicitly participate in the mirror for princes tradition. Through a subtle manipulation of his source material, however, Chaucer transforms the story so that it functions within an economy of exemplarity similar to that imagined in *Britton*, in which no operation of metaphor or analogy can bridge the gulf that separates the king from his subjects. By eliding the incest plot that drives the narrative in its analogues and methodically denuding his heroine of all of her traditional virtues save one, Chaucer distills the tale into an object lesson in the havoc wrought by those who equate Christian duty with suffering quietly the tyranny of fools.

In what continues to be an important and informative study of Chaucer's sources for the *Man of Law's Tale*, Margaret Schlauch identifies the relationship between the tale and what she calls the "folk-lore of accused queens."<sup>34</sup> Although accused queen tales such as the Middle English *Emaré* did not supply clearly identifiable source material for the *Man of Law's Tale*, they are useful because they provide us, not only, as Schlauch argues, with an understanding of the thematic concerns of the body of fable and folk-lore out of which Chaucer's tale grows, but also with some idea of the narrative structure that governed their telling. Carolyn Dinshaw has noted that the Man of Law suppresses the

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34 Margaret Schlauch, *Chaucer's Constance and Accused Queens* (New York: AMS Press, 1973), 7.

incest plot that originally played a central role in the Constance story cycle.<sup>35</sup> Although I would like to return later to Dinshaw's discussion of how incest nevertheless continues to haunt the *Man of Law's Tale*, for the moment I would like to examine how the incest plot operates in *Emaré*, as a near-contemporary analogue for Chaucer's tale, to create a space where its central character exercises considerable political as well as personal agency.

This Middle English lay appears in only one manuscript, dated to the early-fifteenth century.<sup>36</sup> The text itself has been dated to the late-fourteenth century, and, according to Schlauch, it is fairly typical of the body of popular folk-tales known as the "Constance-saga": "The folklore motifs in *Emaré* are shared with folktales from throughout the world. Here we find an accused queen, the monstrous birth (in this case, alleged), magic clothes, exchanged letters, an incestuous father, a persecuting mother-in-law, and a child who redeems its parents."<sup>37</sup> As *Emaré* begins, the narrator identifies the title character as the only child of the good king Artyus and his wife, Dame Erayne (ll. 30-48).<sup>38</sup> When Dame Erayne dies, leaving Artyus with no male heir to succeed him, his eye falls upon his daughter as a potential replacement for his wife:

The mayden that was of semblent swete,  
Byfore her owene fadur sete,  
The fayrest wommon on lyfe;

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35 Carolyn Dinshaw, "The Law of Man and Its 'Abhomynacions,'" in *Chaucer's Sexual Poetics* (Madison: University of Wisconsin Press, 1989) (hereinafter, "Law of Man"). As noted below, both Trivet and Gower suppress the incest plot as well, suggesting that the Man of Law's invocation of incest is perhaps intended to recall the analogues, as well as the sources, for his tale.

36 Anne Laskaya and Eve Salisbury, eds., "Introduction" to *Emaré* in *The Middle English Breton Lays* (Kalamazoo: Medieval Institute Publications, 1995).

37 Ibid.

38 Anne Laskaya and Eve Salisbury, eds., *Emaré* in *The Middle English Breton Lays* (Kalamazoo: Medieval Institute Publications, 1995).

That all hys hert and all hys thowghth  
 Her to love was yn browght:  
 He byhelde her ofte sythe.  
 So he was anamored hys thowghtur tyll,  
 Wyth her he thowghth to worche hys wyll,  
 And wedde her to hys wyfe. (ll. 220-28)

Although the narrator has previously described Emaré's many womanly accomplishments—she is exceedingly well-mannered and skilled in weaving and sewing, for instance (ll. 55-69)—here the king's devotion is inspired by her appearance alone. "Anamored," he looks upon her as an object, and compelled to "worche hys wyll," Artyus sends to the Pope and actually receives dispensation to permit him to wed his own daughter (ll. 229-40). In spite of papal sanction for their union, however, Emaré resists Artyus's desire and advises him, "Nay syr, God of heven hyt forbede," and "Take God you beforne!" Artyus, furious at her disobedience, sets her to sea without food, water or money, clothed only in a robe made of a rich and mysterious cloth (ll. 265-76).

In these opening moments of the poem, Emaré sets her authority in matters of religious law against that of her father and the Pope. The narrative originates in this act of female resistance. Thus, empowered to decide for herself what is right and to speak the rule of law, Emaré becomes the agent of her own tale. She sets it in motion, and through the act of concealing her identity, she keeps it going until she is reconciled with her father by her son (ll. 997-1020). Although Emaré may be a type character without much depth, she is an important agent within her own story, and the other characters such

as Artyus, and her mother-in-law the “olde qwene” are punished for failing to recognize that agency.

Caroline Dinshaw has argued that Chaucer’s Man of Law, with his aversion to and suppression of the originating moment of incest in the Constance tale, creates Custance and ““Woman”” as “an essential blankness that will be inscribed by men and thus turned into a tale; she is a blank onto which men’s desire will be projected; she is a no-thing in herself.”<sup>39</sup> As a result, even though Custance does exercise a form of agency within Chaucer’s version of the story, “[h]er self-perceived identity as a saint enables her to do no more than endure injuries, as does her consciousness of her own womanhood . . . .”<sup>40</sup> The Custance that Dinshaw reads in the *Man of Law’s Tale* seems to be a far cry from the resisting Emaré of the near-contemporary analogue discussed above, the Emaré who speaks the law in defiance of not only her father, but the Pope as well. Chaucer, however, simply completes a transformation that Nicholas Trivet began in his Anglo-Norman interpretation of the Constance-saga, “The Life of Constance.”

Trivet apparently composed his *Chronique* for Marie the daughter of Edward I. By incorporating a version of the Constance legend into what was ostensibly a history, Trivet translated the story’s central character from medieval folk hero into an exemplum, a model for princely behavior, making the metaphorical and situational vocabulary of the legend available in a new, perhaps more politicized form of discourse. Given the context within which Trivet was writing, it is hardly surprising that he suppressed the incest narrative to avoid any adverse implications that might be drawn by (or against) his royal

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39 Dinshaw, “Law of Man,” 110.

40 Ibid., 112.

patron and audience. To explain Constance's exile, Trivet introduces the conversion narrative, which Lillian Herlands Hornstein argues he derived from the legend of the *King of Tars*.<sup>41</sup> Within a narrative structured by the themes of Christianization and heathen or pagan resistance, the motivations of many of the characters acquire added weight and significance. Most notably, Constance becomes an exemplar of the ideal Christian emissary, and the wicked mother-in-law, the Sultanesse, becomes a defender of the Muslim faith:<sup>42</sup> "Avynt que la mere le soudan, que vnquore viuoit (allas! si ne fut la volunte dieu), veaunte que sa ley estoit ia en poynt destre destrute par Cristiens qi furent en Saraisines, senpensa de mal e de tresoun" (167).<sup>43</sup>

In addition to politicizing the tale, Trivet's retelling also deprives his heroine of an important moment of personal agency; her story begins not in defiance of, but in submission to the patriarchal and religious authorities. Nevertheless, Trivet's Constance retains far more personal agency than Chaucer's Custance. As in *Emaré*, Constance is an only child, (165) and in a moment that suggests the unstable position of an only daughter in a succession hierarchy governed by the rule of male primogeniture, Constance becomes, not a substitute wife, but a substitute son. She is thus educated in "la fey Cristien" as well as "lez sept sciences, que sount logiscience, naturel, morale, astronomie, geometrie, musique, perspectiue, que sount philosophies seculeres apelez" and "diuerses langages" (165). Because of her extraordinary education, Constance is able to convert the pagan merchants with her preaching, and they take away with them tales of her

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41 Lillian Herlands Hornstein, "Trivet's Constance and the King of Tars," *Modern Language Notes* 55.5 (1940): 354-57.

42 Ibid.

43 Nicholas Trivet, "The Life of Constance," ed. Margaret Schlauch, in *Sources and Analogues of Chaucer's Canterbury Tales*, ed. Carleton Brown, et al. (Chicago: Chicago University Press, 1941).

intelligence and learning, as well as her beauty (165). Later in the narrative, when she lands in Northumbria, Constance converses with Elda and Hermyngyld in their native tongue (168). Hermyngyld's conversion results from Constance's proselytizing as much as from the example of Christian piety that she sets (169). Unlike Custance, who is in Dinshaw's persuasive reading a blank inscribed with received meaning, Trivet's Constance is a speaking subject, creating her own signification. She does more than pray and become a vessel for someone else's power; she preaches<sup>44</sup> and conquers her potential enemies with intelligence and persuasion. Nowhere is this distinction between the two versions of this character more apparent than in the scene where Constance overcomes her would-be rapist. Confronted with the threat of physical violation, Constance, "pur sa chastete sawer," tricks her attacker out onto the open deck of the ship and, after sneaking up behind him, pushes him into the water, where he drowns (176).

Trivet's Constance retains a level of personal agency that Chaucer denies to Custance. One must remember, however, that Trivet's introduction of the conversion plot works to contain Constance's agency within a narrative of submission to religious and political authority. Constance's father sets the tale in motion, by sending her to be married to the converted Sultan, and he also brings it to a close—Constance is rescued by a senator sent by her father to avenge her death. Yet, because Constance, in her role as substitute son, has been educated like a man, she nonetheless continues to serve as a suitable example of "princely" behavior. She suffers, but not passively or silently. Like

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<sup>44</sup> I find it interesting that in Chaucer's tale, the idea of a female evangelist is suppressed, given links between Wycliffite theology, lollardy and female preachers. Chaucer also suppresses another detail from Trivet. In the scene where Constance is accused of Hermyngild's murder, the lying squire's teeth, as well as his eyes, are knocked from his head, suggesting he is punished for swearing falsely as well as for looking at Constance with an ill-directed lust. Chaucer and Gower both omit this detail, another thought-provoking omission because of the lollard aversion to swearing, especially swearing falsely.

Trivet, Gower uses the Constance-saga as part of a politicized discourse of exemplarity. Gower shifts the focus, however, away from Constance and onto the Sultanness, the lusty knight, and Domilde as negative exempla. Situated within the “Liber Secundus” of the *Confessio Amantis*, “The Tale of Constance” operates as an exposition on the dangers of the sin of Envy, specifically its manifestation as Detraction and Malbouche.<sup>45</sup> Constance is of course central to the tale, but for Gower any value she has as an exemplum in and of herself is incidental. Constance is still an only child (II.593), and she still achieves conversion of the merchants with her “wordes wise” (II.606). Yet, she is also a character constructed to suffer. By layering the conversion narrative with an additional, explicit discourse of sin and salvation, Gower takes a certain amount of narrative agency away from Constance and entrusts it to God, who rewards Constance’s patient suffering and punishes the sin of her three persecutors.

Where in Trivet’s narrative, Constance represents the threat of conversion, an alternative law that threatens to supplant the Sultanness’s own religious faith, in Gower the danger the Sultanness perceives is far less sweeping and much more personal. She fears that she will lose her “joies here” and, as a consequence, her estate “schal be so lassed” when her son marries the Christian Constance (II.648-49). Rather than a confrontation between rival faiths, the stand-off between Constance and her first mother-in-law is, in Gower’s telling, more akin to a squabble between two women over a man’s affections. Constance’s agency is also subtly erased in those passages dealing with Hermyngheld’s murder. Envie, not Constance herself, is the agent that provokes the knight of Elda’s

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45 John Gower, *Confessio Amantis*, Vol. 2, ed. Russell A. Peck (Kalamazoo: Medieval Institute Publications, 2006), 107-08.

household to lust and murder (II.809-11). Further, as Trivet tells the tale, Constance discovers the murder, and with a full-throated scream, discloses it to the household, while, in Gower, Elda discovers the murder, and Constance herself falls immediately into a profound swoon (II.840-51). Constance's exemplarity in Trivet's version of the story depends largely upon how she fails to conform to the usual standards of womanly education, eloquence, intelligence and behavior. In the *Confessio*, although she retains some vestigial traces of the almost masculine identity with which Trivet endows her, Constance's significance as a character depends far more upon her womanliness, her ability to suffer persecution with patience and resignation. Gower's alteration of the rape scene further underscores this transformation. In this version of the tale, Constance does use some guile in convincing the knight to "loke out ate porte, / That noman were nyh the stede, / Which myhte knowe what thei dede," (II.1114-1116). It is "goddess hond," (II.1124) however, that pushes the knight overboard in response to Constance's hasty prayer. In her transformation from substitute son into obedient daughter, Constance loses guile and inner resourcefulness, and along with them her ability to function as an exemplum in her own right.

For Chaucer, however, Constance's loss of agency in the *Confessio* seems to have opened up new possibilities for crafting a narrative that explores the role of acceptance and patient suffering as distinctly Christian political virtues. Those in power gain where Constance loses. In the *Man of Law's Tale*, Chaucer draws upon the transformations wrought by both Trivet and Gower in their reworking of the Constance-saga. He creates Custance by erasing the last traces of Constance's agency, and he defines the limits of

female exemplarity by distinguishing womanly Custance, the epitome of female virtue, from her mannish counterparts, the Sowdanesse and Donegild. Further, by linking Custance's suffering with the general human condition, Chaucer examines the ultimate usefulness of the *imitatio Christi* as a model for male as well as female political virtue. Custance, in the Man of Law's telling, is not identified as an only child but merely as "[a] doghter" (l. 157).<sup>46</sup> Her display of feminine virtue does not depend in any way upon unusual learning, nor are wisdom or intelligence listed among her many positive qualities. Instead, the Man of Law extolls her beauty, humbleness and untainted youth:

"In hire is heigh beautee, withoute pride,  
 Yowthe, without grenehede or folye;  
 To alle hire werkes vertu is hir gyde;  
 Humblesse hath slayn in hire al tirannye.  
 She is mirour of alle curteisye;  
 Hir herte is verray chambre of hoolynesse,  
 Hir hand, ministre of fredam for almesse." (ll. 162-68)

From this first passage, Custance's extreme passivity is apparent in the manner in which the Man of Law describes her. She does not even seem to possess her own attributes. Beauty and youth exist in her. "Humblesse" has "slayn in hire al tirannye." She is merely a reflective mirror of "curteisye," and a dead vessel for "hoolynesse." In the final line, the only one that even suggests engaged activity on Constance's part, the intransitive verb has been elided, and must be implied from the one preceding. She is inhabited and

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<sup>46</sup> Geoffrey Chaucer, *The Man of Law's Tale* in *The Riverside Chaucer*, ed. Larry D. Benson (Boston: Houghton Mifflin Company, 1987).

possessed by a host of virtues, and she seems to have taken no part in, and indeed, is given no credit for their cultivation.

Custance's ability to suffer silently her own virtues as well as the slings and arrows of Fortune are contrasted with the unruly manliness of the Sowdanesse and Donegild. With regard to the former, Chaucer has restored the Sowdanesse to her assigned role, in Trivet, of protector of the Muslim faith. Thus the confrontation between the Sowdanesse, "Virago" and "feyned womman" (ll. 359, 362), once again bears extra significance as an encounter between Eastern and Western religion. Donegild, twice described as a tyrant and excoriated with "Fy, mannysh, fy," (ll. 696, 779, 782), also displays an arguably justifiable motive in persecuting fair Custance. Donegild fears the possible consequences of her son's union with "[s]o strange a creature unto his make" (l. 700). Constance's strangeness may derive from her unknown origins and her foreign religion, but it may also be the result of her inexplicable passivity, the "hoolynesse" that she must set aside to fulfill her duties as a wife and mother (l. 713). In each of these encounters, the Man of Law marks the distinction between Custance's ability to accept her fate as a good woman should, and the mannish, but also unnatural resistance of her female foes. Further, as Jill Mann has argued, his frequent declamations regarding man's general helplessness when faced with the machinations of divine will encourage his audience to see in Custance's trials an exemplar of the human condition.<sup>47</sup> For the Man of Law, to suffer patiently is a human, as well as a womanly, virtue.

In spite of his exhortations to the contrary, however, (and perhaps in spite of his own purposes) the Man of Law frequently calls into question the efficacy of such a mode

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47 Jill Mann, *Feminizing Chaucer* (London: Boydell & Brewer Ltd., 2002), 101.

of living. For example, after describing how Custance is miraculously delivered from the rapacious knight in a scene that removes all traces of Constance's clever dissembling, the Man of Law goes on to compare her with the biblical David and Judith (ll. 918-45). The comparison, between a man who confronted and defeated a giant and a wily female assassin, and Custance, who is unable even to pray for deliverance but only "cride pitously" (l. 919) seems inappropriate. Particularly when one considers that, ultimately, Custance, unlike Constance, for all of her virtue and "hoolynesse," never actually succeeds in converting anyone herself. Deviating from both Trivet and Gower, Chaucer leaves the merchants unconverted; they ogle Custance like any other tourist attraction and then carry tales of her, but not her faith, on their journeys back East (ll. 169-89). The Christianized Saracens ("The Sowdan and the Cristen everichone") are all murdered by the Sowdanesse and her conspirators (l. 429). Alla and the constable are only converted after witnessing miracles, and even Hermengyld is converted by "Jhesu . . . thurgh his grace," (l. 539), rather than Custance's learned persuasion.

The comparisons with more lively biblical defenders of the faith and Custance's ineffectiveness as a missionary, not to mention what seems to be her own lack of missionary zeal, suggest a subtle critique of Custance at work within Chaucer's narrative. True, Custance exemplifies the virtues of the *imitatio Christi*, up to a point. She patiently suffers God's will with grace and acceptance. Yet where Christ's suffering could redeem the entire human race, Custance arguably fails to redeem anyone. Evil is avenged, and the faith is defended, but not by Custance. Further vengeance and defense of the faith, not Custance's silent acceptance, are what propel the narrative forward. Consequently,

the twin specters of incest and tyranny, which Dinshaw argues continue to haunt Chaucer's tale, are never completely vanquished. In yet another departure from his sources, Chaucer depicts Custance, in a penultimate scene which, as Dinshaw notes recapitulates similar scenes from the incest narratives,<sup>48</sup> abasing herself at the feet of her father, throwing herself upon the mercy of forces that have never in the past been merciful.

In working over his source material, Chaucer uncovers and draws into focus the political implications of religious identity.<sup>49</sup> He highlights how the political meaning of Custance's example shifts as she is transformed from a defiant defender of the faith into a mute figure of suffering. At the same time, by multiplying the atrocity that attaches itself to her narrative even as he deprives her of the last vestiges of agency, he suggests that her very passivity is what enables and perpetuates the tyranny exercised by others in her story. Without engaging in any fruitless attempts to pin-down what might be referred to as Chaucer's own authorial perspective on the debate he stages, we can nevertheless see how the conflicting definitions of sovereignty offered up in the tales are shaped by the English context in which the debate is staged. Rather than a contest between republicans and royalists in which the limited monarchy evolves as a sort of intermediate compromise, the discussion of sovereignty within the *Canterbury Tales* takes shape as a standoff between those who subscribe to a Bractonian model of the polity in which the problem of sovereignty permeates even the most mundane aspects of domestic life, and

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48 Dinshaw, "Law of Man," 102.

49 In transforming Custance's story into a sort of hagiographical narrative, he also seems to explore the limits of that genre as a mode of political instruction. For a consideration of the relationship between Middle English hagiography and the political climate of the fourteenth and fifteenth centuries, see Sarah Salih, "Power and Authority," in *A Companion to Middle English Hagiography* (London: D.S. Brewer, 2006), 70-86.

the model of *Britton* in which the problem of sovereignty is really no problem at all. The Man of Law completely rejects the idea of an obediently disobedient Bractonian political subject, whose moral compass occasionally requires her to resist and even to set her individual will against those who exercise power over her.

That rejection is so thorough, in fact, that the Man of Law inadvertently reveals how the Bractonian framework for conceptualizing political identity, in which the shape and scope of royal sovereignty determines and is also determined by the individual agency exercised by the king's subjects, provides the foundation for the model of subjectivity that he has evolved to oppose it. In reciting his tale, the Man of Law creates a subject to complement the king of *Britton*, a silent auditor who can only obey, not correct. Lacking even the limited political agency available to the Bractonian political subject, Custance negotiates among multiple jurisdictions without joining them together into anything resembling a community, Christian or otherwise. By explicitly inviting us to read the tale in context with its source material, Chaucer perhaps encourages his readers to view Custance and the consequences of her virtue with a bit of ironic detachment, but the Man of Law himself certainly does not. Chaucer's critique thus works in two directions at once. His portrayal of Custance certainly brings to light some of the potential problems associated with living a life of unrelenting and unreasoned obedience to even the most tyrannical abuses of social, economic and religious authority. His tale also turns on its teller, causing the reader to question the wisdom of those who would have us believe that to do so is the height of virtue.

Further, we can distinguish Custance, not only from her counterparts in Constance and Emaré, but also from some of the other women who populate the *Canterbury Tales*. Although Dame Prudence shows a great deal of forbearance and patience when dealing with Melibee, both her learning and her eloquence set her apart from the white and silent Custance. Custance is of course a stark contrast to the lusty and loquacious Wife of Bath, and also from the wily and loathly lady of her tale. Even Pertelote the hen, from the *Nun's Priest's Tale* shows more initiative in treating her husband Chauntecleer for indigestion in order to cure his troubled dreams. Unlike Custance, each of these female characters arguably acts to curb the worst excesses of male passion, helping to “rein-in” masculine willfulness for the good of the community. If we are sometimes dissatisfied with how often the disenfranchised must rely on gentle persuasion, rhetorical manipulation, compromise and outright trickery in order to get their way in the *Canterbury Tales*, we should remember that in this, too, Chaucer is working within a Bractonian framework. These are the forms of *ex officio* political agency available to the relatively powerless in a polity ostensibly regulated by a universal idea of *ius* but lacking any official legal mechanism through which that standard can be enforced against all of its members. To the extent that we can draw parallels between Custance and Griselda, Walter's long-suffering and much-abused wife in the *Clerk's Tale*, those parallels suggest further engagement on Chaucer's part with how law and religion intertwine to create both governor and the governed as political subjects.<sup>50</sup> As a wife who is also a subject,

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50 As with the *Man of Law's Tale*, scholars have argued that the *Clerk's Tale* must be read as a religious allegory, with Walter acting as a figure for an ultimately incomprehensible and omnipotent god. See, e.g., David D. Steinmetz, “Late Medieval Nominalism and the *Clerk's Tale*” *Chaucer Review* 12 (1977): 38-54, and Robert Stepsis, “*Potentia Absoluta* and the *Clerk's Tale*” *Chaucer Review* 10 (1975): 129-46. Others have suggested the tale, although it takes up both issues, makes a clear distinction between spiritual and political obedience. See, e.g., Donald H. Reiman, “The Real *Clerk's*

Griselda sets a political example as well as a domestic or moral one. If, as the Clerk warns, Griseldas have grown scarce in the world (ll. 1177-82), then also perhaps with them, the Walters.

### **B. Individual Regulation and Self-Governance in *Piers Plowman***

Chaucer's *Man of Law's Tale* helps us to see more clearly how the debate over the nature and scope of royal and individual sovereignty, as that debate is exemplified in Bracton and *Britton*, provides an English political background from which the Middle English literature of sovereignty emerges. Returning once more to Langland and *Piers Plowman*, we can see how the Bractonian idea of universal *ius* gradually comes to replace the estates model in this emerging literary tradition as a paradigm for thinking about social regulation. Significantly, at several key moments in *Piers Plowman*, Langland reveals how ideals and desires that motivate individual bodies provide the means by which they might be incorporated into the community of the realm when they are channeled through the appropriate regulatory framework. My examination of the role that individual regulation plays within Langland's poem draws much from those scholars who have examined the issue before me. David Aers was perhaps one of the first to note how Langland struggles with the problem of individual motivation in the episode involving the plowing of the half-acre:

As soon as "werkmen" reject the employer's work ethic they are classified as "wastours." For these people, responding perfectly rationally to their place in the existing division of labour, land and resources, work is no

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*Tale*. or, Patient Griselda, Explained," *Texas Studies in Language and Literature* 5 (1963): 356-73. What I argue is that both tales bring together questions of law and morality, of spiritual and political identity, in order to explore how they come together at the level of the individual subject, giving rise to and circumscribing the forms of political agency available to her.

more than a means to acquire wages for immediate enjoyment of material comforts and the convivial pleasures found in the pub. Their work is in itself of no special concern, hardly the case for those working holdings which could be made to yield their families subsistence and cultural needs. Nor will those who have to sell their labour-power at whatever rates current market conditions dictate have quite the same attitudes to work, time, and the future as those who do not.<sup>51</sup>

In spite of his investment in the predominant estates ideology, argues Aers, Langland squarely confronts the problem of regulating laborers as a collective when in reality there were such apparent divisions between those working their own lands and those working for wages. Aers also observes that, although contributing to the “development of an ethos that would prove appropriate to early capitalist societies” could not “have been further from Langland’s overall values,” *Piers Plowman* “at this point . . . was coming to do so.”<sup>52</sup> Where Aers reads ambivalence in Langland’s treatment of the issue, Nicolette Zeeman offers a very persuasive reading in which *Piers Plowman* unequivocally “argues for a recurring and beneficial pattern operating in creation according to which human desire can be turned, through a natural experience of sin and suffering, to good.”<sup>53</sup>

The analysis that I will offer here to an extent accounts for both of the readings offered by Aers and Zeeman. I agree with Aers that, in the context of the plowing of the half-acre episode, Langland ultimately proves uneasy with a “new work ethos” in which

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51 David Aers, *Community, Gender and Individual Identity: English Writing, 1360-1430* (New York: Routledge, 1988), 42.

52 Ibid., 49.

53 Nicolette Zeeman, *Piers Plowman and the Discourse of Desire* (Cambridge: Cambridge University Press, 2006), 19.

charity is “transformed into a discriminatory instrument of poor relief under lay control.”<sup>54</sup> Drawing upon Zeeman’s analysis, however, I read the episode as a Langlandian turn away from, not a reaffirmation of, established ideologies of social control, towards an alternative regulatory system focused upon accounting for and molding the individual will into an instrument of public good. In Passus 8, Piers makes essentially the same mistake that Will makes in Passus 5 when he attempts to reinscribe the estates model as a prescriptive framework for thinking about social obligation within the poem. Passus 8 begins as a temporary diversion from the pilgrims’ quest for Truth (C.8.1-18),<sup>55</sup> a digression in which both Piers and Will the dreamer learn an important lesson about the problems associated with any political model that fails to account adequately for role that individual motivation plays as an agent of social change.

After the conclusion of the confessions of the sins in Passus 7, Langland recalls and recapitulates the rhetorical move that he makes in the fable regarding the belling of the cat in Passus 1. When Repentauce finishes the prayer for mercy and Hope has sounded “an horn of *Deus, tu conuersus viuificabis nos*” (C.VII.151-52), the congregation, comprising all manner of men as well as the allegorical figures of the sins and their compatriots, becomes once again an undifferentiated throng:

A thousand of men tho throngen togyderes,  
 Criede vpward to Crist and to his clene moder  
 To haue grace to go to Treuthe -- God leue þat they mote!  
 Ac þer was wye non so wys þat the way thider couthe,

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<sup>54</sup> Aers, *Community Gender and Individual Identity*, 44.

<sup>55</sup> William Langland, *Piers Plowman, Vol. 1*, ed. A.V.C. Schmidt (New York: Longman Group Ltd., 1995).

But blostrede forth as bestes ouer baches and hulles,

Til late was and longe, þat thei a lede mette

Yparayled as a paynyem in pilgrimes wyse. (C.VII.154-60)

Traces of the beast fable remain, since although they are men, the pilgrims wander aimlessly as beasts. Like the rodents of Passus 1, they have a common goal but no real idea of how it is to be achieved or indeed what will really be accomplished thereby. In addition, once Piers begins to give directions, we learn that the quest itself is not necessarily one suited to a collective undertaking. One gains access to “Treuth” by walking the designated path in accordance with the ten commandments (C.VII.204-30), and over the course of that process, the seeker and the destination are merged into one entity:

And yf Grace graunte the to go in in this wyse,

Thow shalt se Treuthe sitte in thy sulue herte,

And solace thy soule and saue the fram payne,

And chare Charite a churche to make

In thyne hole herete, to herborwe alle trewe

And fynde alle mannere folk fode to here soules,

3ef loue and leute and oure lawe be trewe:

*Quodcumque pecieritis in nomine meo, dabitur enim vobis.* (C.VII.253-60)

In effect, the problem of governing the collective resolves itself once again into another problem of self-governance. The fortress in which Truth dwells turns out to be another figure for the body that emerges at the beginning of Passus 1 after Langland’s exploration

of the estates in the prologue. It is a body fortified by “Wyt” against the predations of “Wil” (C.VII.233), and it is the social body through which any meaningful reform must be accomplished. Langland, like Bracton, takes seriously the medieval truism, which Piers repeats without really understanding what it implies in Passus 8, that before God there are only persons, who are to be judged worthy or not, as the case may be according to the universal standard of Christian law (C.VIII.45-46).

Although Piers seems to have internalized this lesson, the other members of the collective have not, and that is what undermines Piers’s attempts to impose order in the episode involving the plowing of the half-acre. Piers eventually realizes that his workers must be governed in part through a regulatory system that focuses upon what they share as persons in order to overcome those circumstances that prevent them from being regulated as a class. Thus he calls upon Hunger to govern labor relations for a while, but with only limited success:

“For Y am wel awroke of wastours thorw thy myhte.  
 Ac Y preye the,” quod Peres, “Hunger, ar thow wende,  
 Of beggares and biddars what beste to be done?  
 For Y woet wel, be þow went, worche þei ful ille;  
 Meschef hit maketh they ben so meke nouthe,  
 And for defaute this folk folweth myn hestes.  
 His is nat for loue, leue hit, thei labore thus faste,  
 But for fere of famyen, in fayth,” sayde Peres. (C.VII.208-15)

Piers's parting question to Hunger demonstrates that he has acquired two crucial insights into the nature of social relations. The first is that what looks like virtue, far from indicating the "natural" functioning of a divine principle of order, may just as likely be the end result of self-interested striving. The second is that things work best when personal and public interests come into alignment. Over the course of the episode, Piers learns and Langland reveals that when it comes to social regulation and reform, sorting individual bodies into the appropriate categories before attempting to govern them simply leads, more often than not, to confusion and political disorder. This is in large part due to the fact that rewarding virtue and punishing vice inevitably require that comparisons be drawn between persons inhabiting widely divergent social categories.

In order to organize individuals into a functioning polity, one must first have a regulatory system in which working for the collective good *always* serves a self-interested purpose as well. This is the lesson of Truth's pardon and Passus 9. As Andrew Cole has observed, during the course of this episode, Langland struggles with the discursive conventions of anti-Wycliffite propaganda that have blurred the lines delineating various classes of people through an indiscriminate application of anti-fraternal rhetoric:

That he isolates ideal "lollares" from despicable ones means that he . . . does not want to cluster all "Lollardes" together, nor does he want to predicate every sense of "lollare" upon antifraternal tropes. He is recuperating and appropriating the term "lollare" for an ideal form of apostleship (105-39), which we shall investigate more thoroughly . . . .

For now, we can deal with the associations and distinctions in the phrase, “lollares and lewede Eremytes.” For in this expression, Langland goes to the heart of anti-Wycliffite “lollare” discourse and restricts such discourse to its anti-fraternal terms. To him the bad “lollare” heretic is a friar who shuns work--not a Wycliffite.<sup>56</sup>

In his long discussion of “lollares” in C Passus 9, argues Cole, Langland wants to exclude lazy friars from the scope of the pardon, but he wants to do so without also excluding virtuous people who subscribe to Wycliffite ideas about “neo-fraternal lay practice, poverty, alms, and preaching,”<sup>57</sup> and who have therefore been painted with an anti-fraternal brush in contemporary anti-Wycliffite propaganda. To accomplish this task, Langland has to engage in a series of comparisons among the “lollares and lewede Eremytes,” whom Cole calls the “bad” lollards, and the deserving poor, the disabled, and the “lunatyk” or “good” lollards, which latter groups are to be included within the scope of the “bulle” (C.IX.60).<sup>58</sup> What results from this discussion is not only a clearer picture of how the “bad” lollards differ from the “good,” but also a better understanding of what qualities in the three groups who are included make them worthy of inclusion.<sup>59</sup> To put it

56 Andrew Cole, *Literature and Heresy in the Age of Chaucer* (Cambridge: Cambridge University Press, 2008), 40.

57 Ibid., 66.

58 Ibid., 40-45, 60-66.

59 In his attempt to understand how the word “lollard” perhaps signifies differently in different contexts, Langland once again engages in a sort of “language game,” designed to “disabl[e] our assumption that we already know what the words mean, in order for us to rediscover what it means to learn how to read.” Sarah Tolmie, “Langland, Wittgenstein, and the Language Game,” *Yearbook of Langland Studies* 22 (2008), 108. By treating with language in this manner, Tolmie argues, Langland creates a situation in which “within its limitations--Langland owns the language of his own poem” (127). The combined implication of Cole’s and Tolmie’s readings is that, as I contend throughout, we need to be attentive to how Langland, as well as the numerous other writers under discussion, appropriate rather than simply borrow inherited discursive modes. In effect, Langland’s language games can be seen as an assertion of individual sovereignty, through an assertion of his power to decide what words mean and create a signifying economy of his own within the poem, that Chaucer, through the Man of Law denies to Custance. It is akin to the assertion of authorial control that Gower makes, which is discussed in the

another way, we begin to see that sloth, willful ignorance, and heresy, among other things, merit exclusion, while industry, piety and charity to those in need will be rewarded. I will return in the next chapter to the question of why, as Cole maintains, Langland might find it useful to bracket certain Wycliffite practices in this way.<sup>60</sup> For the moment, I will simply observe that Langland's introduction of the "lunatyk lollers" explores how the universalizing concept of Christian morality provides a new vocabulary for describing social obligation that seems to be less dependent upon official--as in defined by one's "office" or "station" in life--categories.<sup>61</sup>

Even though the estates framework continues to structure a great deal of the discussion of who will and will not be included within the scope of the pardon, as with Bractonian *ius*, natural law ultimately provides the overarching framework within which the particularities of official obligation are to be understood and evaluated. Of course, when Piers unfolds the pardon for the priest to translate, it consists of just two lines:

And Peres at his preyre the pardon unfoldeth --

And Y byhynde hem bothe byheld alle þe bulle.

In two lynes hit lay, and nat a lettre more,

And was ywryte ryhte thus in witesse of Treuthe:

*Qui bona egerunt ibunt in vitam eternam;*

*Qui vero mala, in ignem eternum.* (C.IX.282-87)

The promise of salvation and the threat of damnation provide the means through which individual self-interest is brought into alignment with the demands of the collective. As

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following section, when he reclaims the *Confessio* as his to dispose of as he sees fit.

60 Cole, *Literature and Heresy in the Age of Chaucer*; 40, 60.

61 Ibid., 64. Cole discusses the significance of the "extra-official" status of the "lunatyk lolleres."

Zeeman observes, Langland considers how the complex operations of desire transform temptation and sin into opportunities for salvation and reconciliation. In the process, he reveals that the desiring, individual body of the penitent sinner, rather than the estate or institution, is the social body that must be governed before reform becomes a realistic and achievable goal.

Where administration and enforcement of the law of man may resemble the kangaroo court in which Lady Meed is tried, administration of natural law, which in *Piers Plowman* becomes the law of kind, is largely a project of self-governance. Thus, introducing yet another figure for the penitential body that we first encounter in Passus 1, Wit explains to Will that, “‘Sire Dowel dwelleth,’ . . . / ‘In a castel &at Kynde made of foure kyne thynges.’” (C.X.128-29):

“Inwit and alle wittes [y]closed been þerynne;  
 By loue and by leute -- þherby lyueth *Anima*,  
 And lyf lueth by Inwit and leryng of Kynde.  
 Inwit is in the heued and *Anima* in herte,  
 And moche wo worth hym þat Inwit myspeneth.  
 For þat is Goddes oune goed, his grace and his tresour,  
 That many a lede leseth thorw lykerous drynke,  
 As Lote dede and Noe and Herodes þe daffe,  
 3af his douhter for a dausyng in a disch &e heued  
 Of þat blessed Baptist before alle his gastes.  
 Euery man þat hat Inwit and his hele bothe

Hath tresor ynow of Treuthe to fynden hymsulue.” (C.X.174-83)

In likening the individual body to a castle here and in the previous passage regarding Truth’s dwelling, Langland makes the Bractonian point that all men exercise a certain limited sovereignty over their own persons. That sovereignty, which is delegated from God according to the law of “Kynde” or natural law, takes the form of “Wit” or “Inwit,” which ideally governs the person in place of “Wil.” As an expression of the Bractonian idea of *ius*, the law of kind operates within *Piers Plowman* as a universal principle of regulatory order that has the potential to unify the polity by transforming “Wil” into “Wit,” thereby unifying the bodies that populate the poem.

### C. Personal Agency and Royal Sovereignty in the *Confessio Amantis*

In the previous chapter, we have seen how Gower, like Chaucer and Langland, constructs a new idea of the political subject out of the deconstruction of the estates’ hierarchy. The three authors also seem to consider how this emergent political subject provides a nexus where a variety of ethical and political discourses intersect. For example, they all share an interest in what the penitent, who stands at the center of the seven deadly sins tradition, seems to share with the subject of address in less personal, more public or political discursive forms, such as those found within law books, mirrors for princes, and grammar school “textbooks.”<sup>62</sup> In the process, they explore how the

62 Christopher Cannon, “Langland’s *Ars Grammatica*,” *The Yearbook of Langland Studies* 22 (2008): 1-25, describes how Chaucer’s *Melibee* in particular and the *Canterbury Tales* as a whole, like *Piers Plowman* draw heavily upon a cannon of grammar school texts and forms (3-6, 9-25). Although Gower does not engage the grammar school tradition as extensively, references to Cato’s *Distichs*, a work that Cannon identifies as central to schoolroom instruction, do make an appearance in the *Confessio* (III.815, 2235; IV.1086-89), and, as noted in chapter two, Gower self-consciously mirrors the *magister/discipulus* relationship between Aristotle/Alexander in his relationship to Richard II/Henry of Lancaster. By locating the Bractonian political subject at the intersection of such a wide variety of instructional modes, Middle English authors offer an effective demonstration of how well that subject operates to harmonize regulatory standards across socio-political boundaries predicated on social and economic status and institutional affiliation.

language of Christian morality might operate as sort of universal, jurisdictionally transcendent vocabulary for describing social obligation without reference to official status or station. Describing how the polity is ordered through the merging of notions of crime and sin, of spiritual and legal obligation, they reveal how individual self-governance within a sort of ground-up universal regulatory framework provides an alternative to top-down compartmentalization and definition as a solution for bridging the jurisdictional and social gaps that threaten to undermine political unity. Gower's particular concern with the collective consequences of individual actions can be seen in how he frames his exposition of the seven deadly sins as a very personal, and even semi-autobiographical confession that nevertheless resonates as a public assertion of Bractonian political agency.

Although James Simpson has argued that Book VII of the *Confessio Amantis* structures the poem from the inside out,<sup>63</sup> the relationship between Book VII and the other books is more complicated than that. While I agree with Simpson, that to some extent the other books offer the exposition of ethics and economics that Book VII promises but fails to deliver, I nevertheless read the discussion of politics and the duties of kingship in Book VII as one particular expression of the more general framework for self-governance offered by the penitential tradition. Similarly, even though, as Simpson observes, as Gower explores the role that divine and positive law both play in constraining the will<sup>64</sup> the morals of the exempla he offers "become increasingly

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63 James Simpson, *Sciences and the Self in Medieval Poetry: Alan of Lille's Anticlaudianus and John Gower's Confessio Amantis* (Cambridge: Cambridge University Press: 1995), 220-23.

64 *Ibid.*, 194. Simpson argues that beginning in Book III, Genius begins "to invoke principles of law, both divine and positive, which constrain, *though by no means efface*, the powerful source of natural law" (194). To the extent that Gower defines natural law, in opposition to divine and positive law, as a law of physical forces and desires, natural in animals but rendered unnatural in man through the operation of

political,”<sup>65</sup> Gower still takes opportunities, even relatively late in the *Confessio*, to remind us of the personal origins of his political discourse.

The final exemplum in Book VII, for example, which relates the apocryphal biblical tale of Tobias and Sara, deals with the question of what constitutes chastity within marriage. In this episode, Gower recounts how Sara’s first seven husbands, who marry her solely to satisfy their lust, are strangled on their wedding night by the demon Asmodeus. Tobias, Sara’s eighth and presumably final husband, manages to escape a similar fate, however, since he weds for love rather than lust (VII.5325-65). Gower thus makes a final return to the very private realm of the marriage bed, before giving us the public moral:

As whilom to king Alisandre  
 The wise Philosophre tawhte,  
 Whan he his ferste lore cawhte,  
 Noght only upon chasteté,  
 Bot upon alle honesteté;  
 Wherof a king himself mai taste,  
 Hou trewe, hou large, hou joust, hou chaste  
 Him oghte of reson for to be,  
 Forth with the vertu of Pité,

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divine and positive law, he departs somewhat from Bracton’s reading of it as the *ius naturale*, as “that which nature, that is, God himself, taught all living things” (II.26). Nevertheless, in spite of the distinction he makes between nature, on the one hand, and God, on the other, like Bracton, Gower ultimately constructs his idea of “the lawes” that govern man out of a consideration of how the “lawes of nature,” which govern both man and beasts, divine law or “reson,” and positive law come together at the site of the person (*Confessio*, VII.5370-82).

65 Simpson, *Sciences and the Self*, 194.

Thurgh which he mai gret thonk deserve  
 Toward his Godd, that he preserve  
 Him and his poeple in alle welthe  
 Of pes, richesse, honour and helthe  
 Hier in this world and elles eke. (VII.5384-97)

The leap from boudoir to public stage may seem to us a strange one. For Gower, however, the marriage bed provides an example of a social space in which only self-governance or supernatural intervention can provide the mechanism for enforcing the spirit as well as the letter of the law. Similar to the king's duty to observe the law, moral prohibitions against rape or over-indulgence, although they govern the persons of husband and wife--just as they govern the persons of men and women more generally--were not enforceable at law. As Simpson suggests, in spite of its seemingly very personal subject matter, the tale of Tobias and Sara has a very public moral: A king who follows his will rather than the law, like Sara's first seven husbands, will meet with divine retribution. Making the connection between the exemplum and its moral, however, requires us to understand how Gower links them through the body of the sinner with which the *Confessio* begins, rather than the person of the king to whom the matter of Book VII was originally addressed.

In a sense, Simpson's desire to read the *Confessio* from the inside out stems from his desire, discussed in more detail in chapter two, to locate the poem's consideration of the problem of sovereignty within the paradigm that Wilks first established. Simpson wants to read Gower's poem as a contribution to the continental debate regarding the

sovereignty of institutions. Thus, looking at how Gower draws upon Brunetto Latini's *Trésor* in Book VII, Simpson argues that, even though like all mirrors for princes, the *Confessio* can be read as potentially useful for a much broader audience, "Gower directs the burden of his poem to the instruction of a king."<sup>66</sup> He then goes on to observe that Gower's reliance on Latini provides a basis for distinguishing him from Alan of Lille and Giles of Rome, who offer a theological interpretation of Aristotelian political philosophy that differs markedly from the more practical layman's perspective Latini provides. Because he does not consider how the *Confessio* reconfigures the problem of sovereignty within an English legal and political context, Simpson does not account adequately for how the discussion of individual sovereignty in the bulk of the *Confessio* provides the backbone for the idea of the individual sovereign that emerges in Book VII. To put it another way, where Simpson reads the *Confessio* as a poem for the king that is addressed only incidentally to his subjects, I maintain that Gower addresses them both in the form of the Bractonian political subject.

We can read the influence of the English formulation of the problem of sovereignty in the changes Gower makes between the first and third recensions of the *Confessio*. In the first recension, Gower recounts his famous meeting with Richard II in a barge upon the Thames:

As it bifel upon a tyde,  
 As thing which scholde tho bityde,  
 Under the toun of newe Troye,  
 Which took of Brut his ferste joye,

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<sup>66</sup> Ibid., 218-219.

In Temse whan it was flowende  
 As I by bote cam rowende,  
 So as Fortune hir tyme sette,  
 My liege lord par chaunce I mette;  
 And so bifel, as I cam neigh,  
 Out of my bot, whan he me seigh,  
 He bad me come into his barge.  
 And whan I was with him at large,  
 Amonges othre thinges seyde  
 He hath this charge upon me leyde,  
 And bad me doo my busynesse  
 That to his hihe worthinesse  
 Som newe thing I scholde booke,  
 That he himself it mighte looke  
 After the forme of my writyng. (P.\*25-\*53)<sup>67</sup>

The *Confessio* thus begins its life as a “Bok for Richardes sake,” written by a loyal subject at the king’s behest. Gower acknowledges the compulsion that the king’s words placed upon him, declaring “For that thing may nought be refused / Which that a king himselve byt” (\*74-\*75). In spite of the overt humility of its Prologue, however, the poem that Gower produces in response to Richard’s charge nonetheless suggests that, even in the first recension, Gower understood his duty as a subject within a Bractonian

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67 The first recension verses appear in the notes to line 24 in Volume 1 of the TEAMS edition of the *Confessio Amantis* to which I have referred throughout.

political framework. Rather than a book of praise, or even a more typical, and typically flattering, manual of princely instruction such as that produced by John of Salisbury or Giles of Rome for their great patrons, Gower gives the king an encyclopedic dissertation on the havoc wrought by unchecked will. He even underscores its novelty as a “newe thing.” He begins the *Confessio* by complaining about how far the world has fallen and then, through resort to the elaborate formal structure that I have already discussed in detail in chapter two, invites the king to make a less-than-flattering comparison between his own royal person and the rather ridiculous figure of Amans. Gower weds his political plea for sweeping social reform to a personal and pointed invitation to repent.

In the third recension, Gower famously rededicates the poem to Henry of Lancaster, soon to be Henry IV, and removes all of the Prologue’s references to Richard,<sup>68</sup> save one, the one identifying the *Confessio* as having been written in “The yer sextenthe of Kyng Richard” (P.25). Although he thereby transforms the poem into a “Bok for Engelondes sake,” Gower retains some sense of its original purpose in his consideration of how the books “be daies olde” served to document the triumphs and tyrannies of historical figures:

And natheles be daies olde,  
Whan that the bokes weren levere,  
Wrytinge was beloved evere  
Of hem that weren vertuous;  
For hier in erthe amonges ous,

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<sup>68</sup> Russell A. Peck, ed., “Introduction,” in John Gower, *Confessio Amantis*, Vol. 1 (Kalamazoo: Medieval Institute Publications, 2000).

If no man write hou that it stode,  
 The pris of hem that weren goode  
 Scholde, as who seith, a gret partie  
 Be lost; so for to magnifie  
 The worthi princes that tho were,  
 The bokes schewen hiere and there,  
 Wherof the world ensampled is;  
 And tho that deden thanne amis  
 Thurgh tirannie and cruauté  
 Right as thei stoden in degré,  
 So was the wrytinge of here werk. (P.36-51)

Rather than the making of a new thing, Gower now describes the composition of the *Confessio* as the recovery of a prior mode of literary production that recalls a time “Whan that the bokes weren levere,” and “Wrytinge was beloved evere / Of hem that weren vertuous.” He adopts a Janus-like authorial perspective that, in the dedication to Henry, looks toward the future while linking it to a more literate, and consequently more virtuous past. In the process, he identifies the present as an age in which great men, such as Richard himself perhaps, no longer value books as a source of moral instruction.

Together, the first and third recensions of the *Confessio* seem to prefigure the historical and narrative progression of the “Record and Process.” In the first recension, as in the first instantiation of the “Record and Process” as an instrument of government administration, Richard is presented with a “mirror” of his misdeeds in an effort to get

him to see the error of his ways. In the third recension, as in the afterlife of the “Record and Process” as a piece of pro-Lancastrian propaganda, accounts of how great men have engaged in noble acts of resignation and submission to the law are circulated with a catalogue of similarly great failures in order to provide an example for virtuous men, including perhaps the king’s own successor. Both the *Confessio* and the “Record and Process” originate in obediently disobedient acts of political agency by subjects who seem to subscribe to a Bractonian model of the polity. Further, the dual function served by both texts suggests that instructing the king’s subjects is essential, rather than simply incidental to instructing the king himself.

### III. Wycliffite Bodies and the Bractonian Political Subject

Some recent work done within the field of Wycliffite studies suggests that understanding the complex relationship between Wycliffism<sup>69</sup> and the vernacular literary movement of the fourteenth and fifteenth centuries in England requires a reevaluation of how we know and define “Wycliffism,” “Lollardy,” and their place in the social and literary imagination of the later middle ages. For example, Fiona Somerset has argued that, rather than comprising a discursive territory of doctrine and ideology that was effectively “unsayable” by the end of the fourteenth century, “Wycliffite ideas . . . . instead are everywhere enmeshed with mainstream literary and cultural history.”<sup>70</sup>

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69 As I attempt to show, Andrew Cole and others have argued that there is a significant distinction between “Lollardy” as a contentious and shifting semantic territory in late-fourteenth and early-fifteenth century political and legal discourse, and the ideas and cultural production that can be more clearly associated with the theology of John Wyclif and a number of his Oxfordian contemporaries. In an effort to maintain that distinction, I use “Wycliffite” and “Wycliffism” except in those circumstances, such as in my discussion of *Piers Plowman* above, where an author seems to be deliberately engaging the figure of the “Lollard.”

70 Fiona Somerset, “Here, There and Everywhere? Wycliffite Conceptions of the Eucharist and Chaucer’s ‘Other’ Lollard Joke,” in *Lollards and Their Influence in Late Medieval England*, ed. Jill Havens, et al., 127-38 (London: Boydell Press, 2003), 128.

Consequently, popular writers like Chaucer could draw upon the vocabulary associated with the Eucharistic debate as a source of humor without implicating themselves or their writings as part of an ideological machinery that necessarily must have operated in favor of one side or the other. In addition, looking at how usage of the very word “lollard” evolved in late-medieval literary production, Andrew Cole has proposed that, in late-fourteenth century writing, the term is associated with multiple symbolic possibilities, not all of them pejorative or even unambiguously heterodox.<sup>71</sup> Working from a much broader perspective, but employing a similar critical methodology, Kantik Ghosh explores Wycliffism as a systematic intellectual project engaged with a wide range of social issues that influenced the ways in which orthodox as well as heterodox members of society thought and wrote about those issues.<sup>72</sup>

What this kind of scholarship offers is a basis for understanding Wycliffism as a discursive or hermeneutic enterprise, an epistemology, or way of knowing, rather than a stable and self-contained body of knowledge or dogma. In this regard, the work of Somerset, Cole, Ghosh and others who take a similar critical approach engages with the significant questions raised by scholars such as Aers and Margaret Aston who have investigated how Wycliffite political and theological discourse ultimately fails to provide any coherent system of principles for social or religious governance.<sup>73</sup> Looking at

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71 Andrew Cole, “William Langland and the Invention of Lollardy,” in *Lollards and Their Influence*, 37-58.

72 Kantik Ghosh, *The Wycliffite Heresy: Authority and the Interpretation of Texts* (Cambridge: Cambridge University Press, 2002).

73 David Aers, “Walter Brut’s Theology of the Sacrament of the Alter,” in *Lollards and Their Influence*, 115-126, 126 (“In my view, however, the absence [of a coherent ecclesiology] represents unresolved and corrosive problems in Wyclif’s own theology, an absence that Wycliffism may not have had the resources to address coherently. But that is another, though closely related story.”). Margaret Aston, *Lollards and Reformers: Images and Literacy in Late Medieval England* (London: Hambledon Press, 1984).

Wycliffism as a framework for thinking about, rather than or in addition to definitively answering questions of social organization, morality and theology during the later medieval period opens up an avenue for exploring the relationship between Wycliffism and late-medieval political theory. When viewed within their historically specific political context, Wycliffite vernacular works such as the *Thirty-Seven Conclusions of the Lollards*, the “Tractatus de Regibus,” and an unedited discourse on the oath of papal loyalty sworn by bishops at their ordination, provide what I would argue is an internally consistent analytical model for addressing and resolving troubling legal questions that surfaced during the late-fourteenth and early-fifteenth centuries. That these texts seem to focus upon determining who is responsible for deciding questions of law and who is affected by such decisions, rather than establishing concrete principles for defining legality or illegality, is perhaps due to the fact that the issue of jurisdiction, who had the power to make and enforce the law and who was subject to it, presented itself more urgently than the question of substantive content, what the law in fact said.<sup>74</sup>

As we explore the contours of a Middle English literature of sovereignty, I think we cannot ignore how connections between this emerging form of political discourse and

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<sup>74</sup> In this regard, I do not think that my analysis of the constitutional debate departs materially from that presented by Richard Firth Green in his book, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: University of Pennsylvania Press, 1999). See particularly pp. 238-41, where Green suggests the debate was formulated as a battle between those bent on changing the law and those who were sworn to preserve it. Rather, like Stanley Fish (“The Law Wishes To Have a Formal Existence,” in *There’s No Such Thing as Free Speech, and It’s a Good Thing, Too* (Oxford: Oxford University Press, 1994), 141-78) I would argue that, in a common law system, both preservation and change require an authoritative act of interpretation, of defining the source of the law and finally of saying what the law is. Where the battle for this sort of interpretive authority is staged between two distinct governmental bodies—meaning there is no accepted arbiter of the interpretive dispute, i.e., a judge—the question of what the law is or should be is more often than not reformulated as one of jurisdictional sovereignty, i.e., who has the power to decide the issue at hand in the first instance. Instead of thinking in terms of power to govern whole categories of people or institutions, however, the jurisdictional problem is nearly always presented in the texts under discussion here in terms of individual regulation.

the social realities of late-fourteenth century England come into focus quite clearly in Wycliffite writing. Wycliffite authors were working in the wake of recent events, beginning perhaps as early as 1371, when an increasingly powerful and anti-clerical court faction made an unsuccessful attempt to deprive the clergy of temporalities, and continuing through the deposition of Richard II and the accession of Henry IV. One is hardly surprised, therefore, to see that Wycliffite texts are concerned with locating and establishing the source of secular legal authority within the realm. What is surprising is the fact that no one has really explored the extent to which they express this anxiety through the application of literary and rhetorical strategies that also shape the work of their more canonical contemporaries.

In describing some of its salient features, I depart from an understanding of Wycliffite political discourse as only or even primarily concerned with the relative authority of king and Pope. Wycliffite authors do address this issue, of course, but--like Chaucer, Langland and Gower--they reformulate the problem of secular v. religious sovereignty as a jurisdictional conflict that affects individuals as well as institutions. Rather than trying to establish and define the institutional boundaries within which broadly defined categories of political actors are expected to operate, Wycliffite authors articulate a political model that attempts to avoid and resolve potential jurisdictional conflicts between institutional authorities like the church and state by focusing on the *individual*, and then exploring how those conflicts become visible and negotiable at a personal level. As in the texts discussed in the preceding chapter, Wycliffite writers still rely on estates theory to provide a framework for conceptualizing “authority,” while at

the same time absorbing a discussion of the relative rights and powers of the three estates into a discursive exploration of the individual subject and how that subject participates in political life.

As Wilks has observed, Wyclif also focuses to an extent on the individual political subject in works such as the *De officio regis*, *De potestate papae*, and even the *Summa theologica*.<sup>75</sup> Wycliffite vernacular texts focus even more exclusively on the individual subject than does Wyclif himself, a focus that finds expression in the oft-repeated idea that no man may serve two masters:

[A]nd 3if þe lege man of an worldly kyng wipinne his rewme reseyuede  
 up on hym an oþer more chefe worldly lord unwityng his kyng he were an  
 traytour to hym, so þis bischopp siþ isweryng to þis article resyueþ a more  
 chefe worldly lord upon hym and on all þat is of his þan is his kyng.

The Wycliffite author of this late-fourteenth century treatise on the oath of papal loyalty, which appears at folios 1-13v in British Library MS Additional 24202, criticizes that oath because it requires the bishop to receive “up on hym an oþer more chefe worldly lord,” thereby creating a potential conflict between the bishop's loyalty to the Pope and the allegiance he owes to the king. In taking the oath, the bishop renders himself a “traytour” for subjecting himself to an ultimate authority other than his secular lord. The text does

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75 Wilks, Michael. “Reformatio Regni: Wyclif and Hus as Leaders of Religious Protest Movements,” in *Wyclif: Political Ideas and Practice; Papers by Michael Wilks*, Anne Hudson, ed. (Oxford: Oxbow Books, 2000), 63-84, 73 (“Sovereignty, as Bodin later pointed out, cannot recognize the existence as independent entities of any other corporate bodies; and Wyclif in his own way was making exactly the same point. It is sometimes suggested that Wyclif was trying to create his own order of friars, a preaching order modeled on the Franciscans, but the real purpose of his urge for the creation of an *ordo Christi* was to make all men equal as subjects under the king. It was to be an order to end all others, and end to the divisive effects of independent ecclesiastical corporations, and to bring all together in unity under the crown. The new order in society, born out of the reformation, would mean a new order of political beings, of all men as citizens, giving obedience to the lay prince as both priest and king.”).

exalt the king's secular power over that of the Pope, and that is most likely the Wycliffite author's primary purpose. In the process, however, by moving the site of this conflict between Church and State to the person of an individual bishop, he reconfigures the cleric as an example of a generic political subject of which the individual layperson is also representative.

The two figures are linked as bodies that inhabit a common social space, that of the realm under the king, regardless of what other social spaces they might also occupy at the same time, in the case of the bishop, that of the church under the Pope. Because they inhabit a common social space, both men bear the same political obligations and duties designed to order that space, the most important of which is: *allegiance, first and foremost, to the king*. Further, as in *De Legibus* and the "Record and Process," the focus of this narrative of jurisdictional struggle remains with the bishop who becomes responsible for recognizing and resolving it, presumably through his refusal to take the oath. The author represents allegiance, not as something imposed from above, by either the king or the Pope, but rather as something the bishop willingly "receives" upon himself.

Wycliffite authors rather consistently reject a reading of clerical identity in which the person of the clerk represents the institution of the church. To put it another way, they present the jurisdictional conflict between king and Pope in personal, not institutional terms. Wycliffite authors do *not* predicate the king's authority to regulate individual members of the clergy upon his authority over the church as an institution. Instead, Wycliffite authors highlight all of the things members of the clergy share as individuals

with the average royal subject, and then use that basis for comparison to argue that, because they are like any other subject, clerics should be subject to royal authority. Thus the author of the early-fifteenth-century *Tractatus de Regibus* makes the significant connection between geographic location and legal identity:

Among oþer þinges þat distroyen rewmys, þis is a special þat anticriste haþ brou3t, inne þat sectes bene in rewmes by auctorite of þhe pope and bene nou3t kyngis lege men, al3if þai take here lordschipe more largely þen oþer men, and by lesse servyce, for þus my3t rewmys be distroyed by cautels of anticrist. As if alle þo freris of Yngelonde hadden howses and godes in þhe rewme of Yngelonde and maden þo pope lord of hem, þo popis lordschipe were to myche, ande regalye were lessid. And þus, by processe of tyme, my3t þo londe be conquerid al into þo popis honde as oþer rewmys bene. (5-19: 11 ll. 1-9)<sup>76</sup>

This Wycliffite author articulates and resolves the conflict between institutions, what we might call the church and the state, as a question of personal jurisdiction: Who has power over whom where? Eliding institutional boundaries altogether, he re-imagines the realm as a collection of “lege men” and a physical area, both of which are unobjectionably subject to the monarch’s jurisdiction. The cleric’s person, when it is located in the realm, should be similarly free of jurisdictional ambiguities. Since, according to the author, the friars still owe their personal allegiance to the Pope, even though they now live in England, it is as if they had “howses and godes in þherewme of Yngelonde, and maden

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<sup>76</sup> Jean-Phillipe Genet, ed., “Tractatus de Regibus” in *Four English Political Tracts of the Later Middle Ages* (London: Royal Historical Society, 1977), 5-19, 11 ll. 1-9.

þo pope lord of hem,” as if “þai take here lordschipe more largely þen oþer men, and by lesse servyce.” Here again, although this passage deals with the clergy specifically, it does so by redefining the friars as a particular subset of the larger category of “lege men,” or vassals, all of whom inhabit the same geographic territory and therefore owe allegiance to the same lord. Further, as in the passage discussed above, the conflict between king and Pope plays out upon and through the persons of the friars;<sup>77</sup> they are the agents in this passage, even though they exercise their agency on behalf of someone else, i.e., the Pope.

Wycliffite political theory resolves the jurisdictional conflict between king and Pope by redefining the secular state as well as the Church as a distinctly English community of the faithful, all of whom are under the secular power of the king and subject to God’s law. The clergy are not subject to regulation as clergy *per se*, but because they are the king’s subjects and like the king himself, must therefore be regulated by the king’s law. In this way, Wycliffism effectively elides the institutional boundary that would otherwise separate members of the clergy from their lay counterparts.<sup>78</sup> Thus, for the author of the “Tractatus de Regibus,” discussing “how þo kynges iurisdictione schulde be spred in his rewme and about what þinge,” maintains: “But hit is no drede þat ne by þo law of God, where ever þis kynges hap lordschipe schulde be þo powere of his

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<sup>77</sup> As I noted in chapter three with regard to Langland’s bishops and archdeacons, the multiplication of the clerical bodies in this passage tends to emphasize individual over institutional accountability for the friars’ lapses. The friars represent their various orders as well as the interests of the pope, but through the increase in their numbers, they acquire an added layer of significance as persons.

<sup>78</sup> For another perspective on how Wycliffite political discourse attempts to create community across jurisdictional lines, see Jill Havens, “‘As Englishe is Comoun Langage to Oure Puple’: The Lollards and Their Imagined ‘English’ Community,” in *Imagining a Medieval English Nation*, ed. Kathy Lavezzo (Minneapolis: University of Minnesota Press, 2004), 96-128, 106-07, 120 (examining how Lollard sense of community was organized around shared language and moral values in a way that transcended geographic boundaries).

lawe, sithen þo kyng schulde mayntene his lordschipe by powere of his lawe” (9: ll. 25-29). He also makes clear that good citizenship consists in virtuous living, and doing what is most needful for the spiritual health of the realm (11: ll. 31-33; 10: ll. 15-24).

Further, as in the Bractonian model, Wycliffite political theory presumes that the king and his subjects are subject to the same law, governed by the same rules of moderation and charity, establishing a law of universal application that cuts across institutional and estates boundaries. In the *Thirty-Seven Conclusions*, for example, it is maintained that “Cristene kingis and temporal lordis shulden teche here meyne and sugetis the comaundementis of God in constreynynge hem to kepe Goddis heestis and to be not hard to breke tho in the presance of hem.”<sup>79</sup> Following a trend already visible in *De Legibus*, the Wycliffite author of this treatise then goes on to criticize harshly the contention that ecclesiastical judges are not bound in their judgements by the law of the realm as reflected in secular court proceedings:<sup>80</sup>

[T]he popis lawe seith thus, “Though clerkis ben conuict of crime bifore a seculer iuge, or knouleche crime bifore him, thei shulen not be condempnid in ony maner

79 John Purvey [attrib.], *Thirty-Seven Conclusions of the Lollards* under title, *Remonstrance Against Romish Corruptions*, ed. Josiah Forshall (London: Longmans, 1851), 31 (“A Corollary”); see also “Tractatus,” p. 8: ll. 15-19 (“Hit were forþer for to se what office have kyngis, ande hit is certeyene by þo lawe of God in þat þat þai bene men, þai schulden lif in vertues and also in charite boþe to God and man, but in þat þat þai ben kynges, þai schulden rewle rewmes by ry3t of God, boþ by drede and love.”).

80 Throughout the *De Legibus* statements to the effect that clergy were to be treated as “dead” as far as the secular courts were concerned and therefore could not sue or be sued compete with assertions that “a secular cause” “ought not to be” “transferred to the ecclesiastical forum because of the privilege of an ecclesiastical person” (IV.263-64). Thorne accounts for these contradictions with his persuasive argument that *De Legibus* was in fact compiled over a very long period of time, perhaps twenty years or more, and what was clearly the law ca. 1230 when composition began was just as clearly not the law ca. 1250 when revisers were working to put the book into something resembling its present form. The evolution of the law over the course of the thirteenth century, as it is reflected in *De Legibus*, indicates a growing consensus on the point expressed by the Wycliffite author here: Whether clergyman or commoner, secular or ecclesiastical forum, all were to be governed by the *leges et consuetudines* in matters falling within the ever-expanding competency of that body of *ius*.

herfore of here bisshop. For as a sentence gouen agens a man of a iuge that is not his iuge holdith not, so an knouelechinge maad bifore that iuge holdith not.” Lo! herbi it sueth that neither the king, neither his iustisis han iurisdiccoun on clerkis, trespace thei neuere so moche, and though a preest or a clerk be conuict bifore the king bi neuere so solempne enquestis of robberie, manquellinge, and auoutrie, yit his bisshop shal no thing condempne him therfore. Lo! hou greet worshipe the bisshops don to the king and seculer lordis, whanne thei set so lital bi here doom agens clerkis. (29-30 (the xij article))

This author contends that “the popis lawe” provides that errant clerics “shulen not be condempnid in ony maner herfore of here bishop” even though they “ben conuict of crime bifore a seculer iuge, or knoueleche crime bifore him.” He argues that the “popis lawe” in essence establishes the ecclesiastical courts as an alternative legal system in which “neither the king, neither his iustisis han iurisdiccoun on clerkis, trespace thei neuere so moche.” Because it permits the co-existence of disparate legal standards, one applicable to the laity, the other to the clergy, this so-called pope’s law logically implies that the regulatory authority of the *leges et consuetudines* does not extend to certain of the king’s own subjects when they are acting in certain roles.

The surprise the Wycliffite author expresses that anyone could reach such an untenable conclusion would most likely be shared by any of his orthodox contemporaries familiar with Bracton. Throughout the *De Legibus* statements to the effect that clergy were to be treated as “dead” as far as the secular courts were concerned and therefore could not sue or be sued there compete with assertions that “a secular cause” “ought not

to be” “transferred to the ecclesiastical forum because of the privilege of an ecclesiastical person” (IV.263-64). Thorne accounts for these contradictions with his persuasive argument that *De Legibus* was in fact compiled over a very long period of time, perhaps twenty years or more, and what was clearly the law ca. 1230 when composition began was just as clearly not the law ca. 1250 when revisers were working to put the book into something resembling its present form. As in the passage, discussed in detail in chapter two, where Bracton deals with the legal exception of bastardy, in the *Thirty-seven Conclusions of the Lollards* both the ecclesiastical courts and the secular courts are seen as part of an overarching English judicial system. The evolution of the law over the course of the thirteenth century, as it is reflected in *De Legibus*, indicates a growing consensus on the point expressed by the Wycliffite author here: Whether clergyman or commoner, secular or ecclesiastical forum, all were to be governed by the *leges et consuetudines* in matters falling within the ever-expanding competency of that body of *ius*.

Although Wycliffite authors often make reference to the “king’s law” and consistently emphasize the king’s role as a regulatory authority in his own right, the Wycliffite formulation of the king’s law draws upon and in the end does not substantially differ from the Bractonian idea of *ius*. As the “Tractatus de Regibus” suggests, “kynges schulden in rewmes punysche synnes þat ben in hem generaly,” because “synne in rewmes distroyes hem and makys hem passe fro folke to folke, for synnes þat bene done in hem” (11: ll. 23-26). Like Bracton, Wycliffite authors rely on the merger of “crime” and “sin” to create the king’s law as a universal regulatory system. The king’s law, like

Bractonian law, is ultimately God's. The Wycliffite polity is one in which, again according to the "Tractatus de Regibus," "lordes and comyns lif by Gods law and truste to his lorde þat he wole save hym in blis if þai kepen þis lawe to þer lyves ende" (19: ll. 11-13).<sup>81</sup> The unification of church and polity eradicates any moral boundary between clergy and laity, between a life of piety and a life of political citizenship. Within Wycliffite society, for everyone without exception, spiritual devotion and good citizenship comprise the same activities: charity, moderate living, and obedience to the law.

Repeatedly, Wycliffite writers return to images that suggest the law is a palpable physical constraint to be experienced in daily life by all members in society, and it is the individual body, marked by its adherence to that constraint, that identifies one as a member of the community. Thus, in the "Tractatus de Regibus," the king is identified as a "man" who "may . . . kepe Cristis word," in "[t]hre maners . . . : furste, in his owne persone, ande schape his lyve after hem. Þo secunde is þat by his powere he schappe hym to mayntene hame. Ande þo thrid, þat he preche Cristis lawe to his dethe" (17: ll. 23-26). In the *Thirty-Seven Conclusions of the Lollards*, good deeds take the form of garments, clothing the bodies of secular rulers: "Seculer lordis owen to be ournid other excellentli clothid with rightfulnessse to God and men, bothe riche and pore, and to treete resonabli and charitabli here tenauntis and sogetis servauntis othir bonde men" (102 (the xxiiij article)). With regard to the clergy, teaching through example becomes in the corollary to this article even more important than speech as a mode for communicating

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<sup>81</sup> See also Barr, Helen, "Wycliffite Representations of the Third Estate," in *Lollards and their Influence*: 197-216.

the word of God: “For the lyuvynge of prelatiſ other of curatiſ, iſ the book and techinge of the puple; and the word of dede ſterith more than the nakid word of mouth. And ſo it iſ worſ to teche error in dede opinli, than to teach error bi nakid word of mouth” (5).

The lordſhip of all men, even that of the king himſelf, muſt be exerciſed within the confines of the law in order to be conſidered legitimate. As expreſſed in the *Thirty-seven Concluſions of the Lollards*, men who fail to govern, either themſelves or their demesnes, in accordance with the law render themſelves “traitouris to God and hiſ puple”:

If temporal lordis leeuen out rightfulneſ and the drede of god, and vſen tirauntrie and extorcious on the puple whiche thei ſhulden defende from enemies and wrogis, thei ben traitouris of Criſt, menquelleris of pore men, and tirauntis of antechriſt. Thiſ ſentence iſ opin of itſilf, with the proces of holi ſcripture and of opin reeſoun. For ſith thei ben the mynyſtris of God to gouerne hiſ puple in rightfulneſ and equite, in the xiiij. c. to Romayniſ, and othere auctoritees aleggid in the nexte article, if thei don wrogis and extorcions to the puple thei ben traitouris to God and hiſ puple. (103)

As illuſtrated by the events ſurrounding Richard II’s depoſition and death, an organizational ſtructure in which the king can turn traitor logically implies the poſſibility that he may be called to account for failing to uphold and live by the law.<sup>82</sup> In ſome Wycliffite literature, therefore, blanket aſſertions of the ſubject’s duty of obedience to the

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82 Michael Wilks, “Predeſtination, Property and Power: Wyclif’s Theory of Dominion and Grace,” in *Wyclif: Political Ideas and Practice*, ed. Anne Hudson (Oxford: Oxbow Books, 2000), 16-32 (“Now in fact neither Wyclif nor Huſ denied that a ruler’s ſubjects had the right to declare him depoſed. But thiſ was on the quite different groundſ that he had broken the law. For thiſ was a denial of hiſ official capacity, a failure to carry out hiſ divinely ordained function. It was the law which made him king or pope, aſ the caſe might be, and he could be removed for breach of it.”).

sovereign sometimes sit uneasily alongside more qualified statements. In this, Wycliffite authors seem to directly engage the Bractonian idea of the political subject, whose moral obligations sometimes require obedient disobedience. For example, the declaration in the *Thirty-Seven Conclusions*, that “Seruauntis owen to serue here lordis mekeli, wilfuli, and feithfulli, not oonli to feithful or cristene lordis, but also to vnfeithful lordis, othir paynymis,” (104 (the xxxij article)) is almost immediately qualified by a corollary: “If seruantis othir bonde men bi colour of cristene fredom forsaken to serue mekeli and feithfulli to cristene lordis in sich seruise that is not contrarie to Goddis heestis neithir to reesoun, thei ben trespassouris of Goddis lawe, and ben basfemeris of God, and ben worthi of temporal prisoun, and of othere peynis to be put on here bodies” (105). The corollary does go on to reiterate that subjects must submit, even to a sinful lord, but it leaves open the possibility that such submission is limited to situations where the required service is “not contrarie to Goddis heestis neither to reesoun.”

As radical as Wycliffite theology may have been, Wycliffite authors clearly share a great deal with their orthodox contemporaries when it comes to describing how the law orders the polity as a collection of individuals under God and the king. Within Wycliffite political discourse, the problem of sovereignty presents itself in a framework defined by Bracton and *Britton*, and followed in substance by Chaucer, Langland and Gower as well. Although to an extent Wycliffite authors are less hesitant than their orthodox counterparts to address the “big” issue of institutional sovereignty as it arises in the jurisdictional conflict between the king and the Pope, they reframe that debate in familiar Bractonian terms: What is the relationship between the individual political subject, whether he be

king, Pope, clergyman or commoner, and the law? For Wycliffite and orthodox authors alike, English law orders the polity through targeting and regulating the individual bodies, not the institutions or estates, from which the realm is comprised. Because the authority of the law to govern the persons subject to it is coextensive with the moral authority it commands as an embodiment of divine law, it binds all subjects, including the king. In those cases, however, where that substantive unity begins to unravel, subjects have a moral obligation to see that justice is done, even if that means asserting one's will against those in power.

#### **IV. Conclusion**

As much as they differ, both Bracton and *Britton* offer a sort of hermeneutics or epistemology of sovereignty in which understanding the king's relationship to the law becomes the key for understanding one's own place in the social and political order. In a way, Habermas gets it partially right when he describes how political identity worked in the middle ages. The Middle English authors under discussion here do use the vocabulary of the estates hierarchy to describe the relationship between person and polity. One's identity as a subject, however, at least within the English polity as it takes shape in late-fourteenth and early-fifteenth century Middle English literature, was rarely circumscribed within the boundaries of a single estate or institution. Habermas thus comes closer to the mark when he exempts England from his narrative about the transition from the medieval to the modern and seems to recognize how the nature and scope of political agency available to various members of the polity was produced to a large extent by the definition of royal sovereignty to which the polity subscribed. During

the latter part of the fourteenth century, the Bractonian definition of royal sovereignty arguably became increasingly associated in Wycliffite writing as well as anti-Lollard propaganda with popular unrest and a dissatisfaction with both the monarchy and the institutional church. The consequences of this guilty association, and the response of two early fifteenth-century writers to the political fallout that it seems to have precipitated will be explored in chapter five.

## CHAPTER 5

### THE NEW BODY POLITIC AND LEGAL REFORM

In his *Commentaries on the Laws of England*, William Blackstone describes the history of the prosecution of heresy in England as a gradual and unjust intrusion by the Church into the king's jurisdiction and an infringement upon his sovereignty:

Christianity being thus deformed by [the] daemon of persecution upon the continent, we cannot expect that our own island should be entirely free from the same scourge. And therefore we find among our ancient precedents a writ *de haeretico comburendo*, which is thought by some to be as ancient as the common law itself. However it appears from thence, that the conviction of heresy by the common law was not in any petty ecclesiastical court, but before the archbishop himself in a provincial synod; and that the delinquent was delivered over to the king to do as he should please with him: so that the crown had a control over the spiritual power, and might pardon the convict by issuing no process against him; the writ *de haeretico comburendo* being not a writ of court, but issuing only by the special direction of the king in council.

But in the reign of Henry the Fourth, when eyes of the Christian world began to open, and the seeds of the protestant religion (though under the opprobrious name of lollardy) took root in this kingdom; the clergy, taking advantage from the king's dubious title to demand an increase of their own

power, obtained an act of parliament [2 Hen IV, c. 15], which sharpened the edge of persecution to its utmost keenness. For, by that synod [sic], might convict of heretical tenets; and unless the convict abjured his opinions, or if after abjuration he relapsed, the sheriff was bound *ex officio*, if required by the bishop, to commit the unhappy victim to the flames, without waiting for the consent of the crown. By the statute 2 Hen. V, c.7. lollardy was also made a temporal offence, and indictable in the king's courts; which did not thereby gain an exclusive, but only a concurrent jurisdiction with the bishop's consistory.<sup>1</sup>

I have quoted Blackstone at length in order to draw out two important points concerning his discussion of the law of heresy in late-medieval England. The first point concerns the care with which we always approach anything purporting to be a “history” of abstract principles such as “justice” or “fairness,” upon which modern institutions--for example the Anglo-American legal system--have been founded. First published in England between 1765 and 1769, Blackstone’s *Commentaries* is an exacting and thorough study of English jurisprudence upon which legal historians and modern jurists continue to rely when trying to make sense of the convoluted and frequently confusing evolution of the common law. Yet in spite of his conscientious attention to sources and precedents, Blackstone also participates in a Protestant, Whig historiography that makes a direct ideological connection between medieval Lollardy and an Enlightenment political agenda characterized by religious tolerance and demands for a constitutionally limited monarchy.

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<sup>1</sup> Sir William Blackstone, *Commentaries on the Laws of England*, 1st ed. (1765-69; New Haven: The Avalon Project, 2008), [http://avalon.law.yale.edu/subject\\_menus/blackstone.asp](http://avalon.law.yale.edu/subject_menus/blackstone.asp), 4.4.46-47.

Blackstone offers medieval anti-heresy law as an early example of the “daemon of [religious] persecution,” which impeded that reformist program in his own time. His portrayal of the medieval church is thus shaped as much by the Old Whig opposition to an established Church of England, an ecclesiastical institution that sought to use the law against nonconformists in order to protect its exclusive privileges, as it is by any basis in historical fact. Blackstone has a stake, as it were, in telling stories that paint the church as power-hungry and self-interested.

My second point relates to the reason why, in spite of its polemical tenor, I find Blackstone’s discussion of *De heretico comburendo* and fifteenth-century anti-heresy law to be useful. Habermas, in his discussion of the evolution of the public sphere, draws a clear distinction between “claims against the public authority . . . directed against the concentration of powers of command that ought to be ‘divided’” and those that “undercut the principle on which existing rule was based.”<sup>2</sup> In this passage, Blackstone, who was arguably himself a member of what Habermas has defined as the public sphere in eighteenth-century England,<sup>3</sup> collapses that significant distinction. Unlike Habermas, Blackstone does not separate the problem of jurisdiction, who among the existing authorities should regulate what, from questions of legal substance, what should be regulated, and who should be given regulatory authority in the first instance. He couches

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2 Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*, trans. Thomas Burger, and Frederick Lawrence (Boston: MIT Press, 1991), 27-28.

3 Blackstone, who did not become Sir William until he was knighted in 1770, was the son of a London merchant, and part of the rising, eighteenth-century bourgeoisie who, Habermas argues, participated in the public sphere. He was a law professor, Member of Parliament, king’s counsel, and ultimately a justice on the Court of Common Pleas. Wilfrid Prest, “Blackstone, Sir William (1723–1780),” in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and Brian Harrison (Oxford: Oxford Univ. Press, 2004); online ed., ed. Lawrence Goldman, October 2009, <http://www.oxforddnb.com.proxy-remote.galib.uga.edu/view/article/2536> (accessed November 15, 2009).

his substantive critique of the law (for clearly, he thinks criminalizing heresy is a bad idea, no matter who is in command) in jurisdictional terms. In previous chapters, I have attempted to demonstrate how some Middle English authors of the fourteenth century use the exploration of jurisdictional conflicts between and among the institutions within which medieval political identity was thought to be defined to evolve an idea of the political subject that was not so constrained. As a result, these authors redefine the literature of sovereignty within a very broad discursive field as a regulatory framework for thinking about how individuals, regardless of their stations or estates, participate in public life and exercise political agency. Broadly speaking, for these Middle English authors, Habermas's conceptual separation of jurisdictional from substantive issues was meaningless, which may ultimately explain why he exempts England from his account of medieval politics. After all, what is a constitutionally limited monarchy but a jurisdictional solution for a whole host of substantive legal problems?

In this chapter, I would like to consider how two fifteenth-century authors, Thomas Hoccleve, in his *Regiment of Princes*, and the anonymous author of *Dives and Pauper*, once again configure a substantive question of law in jurisdictional terms. Both authors confront the criminalization of heresy as a sort of turf-war where jurisdictional overreaching threatens to destabilize the political forms and quite possibly criminalize hermeneutic practices that identify the individual subject as both the site and agent of social and institutional reform. Although neither author goes so far as to argue the crime of heresy should be abolished altogether, they are very careful to corral its definition within the confines of a largely theological debate over issues such as the actual presence

of Christ in the eucharist and the role of pilgrimage and the veneration of images in religious observance. At the same time, they continue the cultural work of the literature of sovereignty by absorbing the institutional church, along with the two remaining estates and the various other communities that live and operate within the geographical locus of England, into the broader spiritual *communitas* of the realm. Elucidating more clearly the historical developments to which Hoccleve and the author of *Dives and Pauper* are responding, does however, require a brief return to Blackstone and the origins and evolution of anti-heresy law in England before turning to their texts.

### **I. Heretical Jurisdiction in England**

Blackstone identifies a transition that took place soon after Henry IV ascended to the throne in September 1399, from a common law framework in which the king, at the very least, exercised (or was perceived as exercising)<sup>4</sup> concurrent jurisdiction with the ecclesiastical authorities to a statutory regime that arguably deprived him of that authority. Tinged as it is with teleology, Blackstone's analysis nonetheless finds support in the historical record. As his source for the existence of a common law writ of *De heretico comburendo*, Blackstone cites Sir Anthony Fitzherbert's *La Novell Natura Brevium*, first published in 1534, which in turn cites a work that should be familiar from my discussion in chapter two of the emergence of an English literature of sovereignty:

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4 In discussing legal developments in this way, I do not think there is much difference between reality and perception. Even if heresy was prosecuted only rarely before 1400, the historical evidence suggests jurists perceived the law as encompassing heresy as a capital crime prior to *De heretico comburendo*. Further, even if the procedures after 1400 were substantially the same as they were previously, both *De heretico comburendo* itself and the literary works under discussion below support a conclusion that the law effected some sort of power shift, even if it was only in how jurisdiction was described or thought of in the abstract, as opposed to practiced in the courts. To the extent the law provided a framework for rationalizing (I am not going so far as to claim that it necessarily prescribed them) outcomes in particular cases, that framework seems to have been reconfigured early in the fifteenth century with regard to cases involving heresy.

Note, it appeareth by *Britton* in his Book, that those persons shall be burnt who feloniously burn others Corn or others Houses, and also those who are Sorcerers or Sorceresses; and Sodomites and Hereticks shall be burnt: And it appeareth by that Book . . . that such was the Common Law. But note, that the person who shall be burnt for Heresie ought to be first convict thereof by the Bishop who is his Diocesan where he dwelleth, and abjured thereof, and afterwards, if he relapse into that Heresie or any other, and thereof be condemned in the said Diocess, then he shall be sent from the Clergy to the Secular Power, to doe with him as it shall please the King, etc. And then it seemeth the King, if he will, may pardon him the same. (594)<sup>5</sup>

According to Fitzherbert, issuance of the common law writ *De heretico comburendo* rested entirely within the king's discretion. The bishop of the diocese exercised authority to make a finding of relapse, but at that point, the relapsed heretic was to be "sent from the Clergy to the Secular Power, to doe with him *as it shall please the King*" (emphasis mine). *Britton* itself confirms the account given in Fitzherbert, and that text antedates the statute *De heretico comburendo* by nearly a century, though it does not offer any procedural embellishments:

Let inquiry be made of those who feloniously in time of peace have burnt others' corn or houses, and those who are attainted thereof shall be burnt, so that they may be punished in like manner as they have offended. The

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<sup>5</sup> Anthony Fitzherbert, *The New Natura Brevium* (London: Rawlins, Roycroft and Flesher, 1686). I have checked the English translation in this edition against the French text that appears in the original 1534 edition), and it appears to be a faithful one.

same sentence shall be passed upon sorcerers, sorceresses, renegades, sodomites, and heretics publicly convicted. (II.17)<sup>6</sup>

Given the author's preoccupation elsewhere in *Britton's* text with clearly delineating the jurisdictional roles of the ecclesiastical and secular courts, his omission of any mention of the church's jurisdiction in such matters here seems to suggest that heresy could be prosecuted just like any other crime in the king's courts. Marginal notations to this passage in an early fourteenth-century exemplar of *Britton* (Cambridge MS Dd. vii. 6) tend to confirm the king in fact exercised concurrent jurisdiction at common law with the church in such matters:

Burners of corn and houses, wives guilty of treason against their husbands, sorcerers, sodomites, renegates, and misbelievers, run in a leash (currunt en une leesse) as to their sentence of being burned. But the inquirers of Holy Church shall make their inquests of sorcerers, sodomites, renegates, and misbelievers; and if they find any such, they shall deliver him to the king's court to be put to death. Nevertheless, if the king by inquest find any persons guilty of such horrible sin he may put them to death, as a good marshall of Christendom (come bon Mareschal de la Chrestienete). (II.17, n.2)<sup>7</sup>

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6 F.M. Nichols, ed. and trans., *Britton: The French Text Carefully Revised With an English Translation* (Holmes Beach, FL: W.W. Gaunt, 1983), I.xxv.

7 Regarding the MS from which the note has been drawn, Nichols dates it to the early-fourteenth century. Although the marginal commentary appears to have been inserted after completion of the main text, the layout of the page suggests that it was contemplated in the original plan of the work, and Nichols cites internal evidence drawn from the marginalia themselves as well as external historical sources that would place their completion at some point between 1295-1316. In addition, the annotator may have been, not just a contemporary, but also a colleague of *Britton's* author (I.lxi-lxii).

The note does not provide any evidence to confirm Blackstone's contentions regarding the extraordinary nature of the writ, which he maintains was essentially equivalent to an act of Parliament: "[T]he writ *de haeretico comburendo* being not a writ of court, but issuing only by the special direction of the king in council." The distinction the annotator makes between the "Burners of corn and houses," et al., for whom the sentence of burning followed as a matter of course, and those whom "Holy Church" adjudged heretics, who had to be delivered "to the king's court to be put to death," does however, imply that the king, via his authority over the secular judicial system, exercised some discretion in sentencing. The final sentence additionally seems to confirm the independent jurisdiction, based on the king's traditional role within the trifunctional hierarchy as a defender of the faith,<sup>8</sup> of the king's courts to conduct inquests into and make findings of their own regarding matters of heterodoxy.

So far, on the question of the king's jurisdiction at common law in cases of heresy, Blackstone appears to get it mostly right.<sup>9</sup> The church had the power to adjudge someone guilty of heresy, for which the customary punishment prior to 1400 was burning at the stake, but ecclesiastical authorities were dependent upon the secular court system when it came to imposing and carrying out the death sentence via the common law writ *De heretico comburendo*. Whether the writ issued or not was left entirely up to the secular

<sup>8</sup> Although the description of the king as a "marshall of Christendom" could imply that his jurisdiction was subordinate to that of the church, the term "*mareschal*" seems to have been used solely in connection with describing secular officers. "mareschal n.m.," *Dictionnaire de l'ancien français*, 2nd ed., Algirdas Julien Greimas (Paris: Larousse, 1992). In addition, in the context of *Britton*, which is so clearly focused upon describing how the king's courts operate within a system of multiple, concurrent jurisdictions, each with its own clearly bounded area of competence, it seems logical to interpret the annotation as I have done here.

<sup>9</sup> A.K. McHardy, "De Heretico Comburendo, 1401," in *Lollardy and the Gentry in the Later Middle Ages*, ed. Margaret Aston and Colin Richmond (New York: St. Martin's Press, 1997), substantially confirms Blackstone's account as well, arguing that the statute *De heretico comburendo* was not necessary to give the king power to consign a heretic to burning at the stake (113-15).

courts, and may even have depended upon a personal act by the king himself. The writ that appears as an example in the *Natura Brevium* is that condemning William Sawtre to be burnt at the stake. Since Sawtre was executed in 1401, after the enactment of the first statutory re-incarnation of *De heretico comburendo* in 1400,<sup>10</sup> the writ calling for his execution does not, standing alone, provide compelling evidence of practice prior to that legislation. Given the fact, however, that Sawtre's prosecution spanned the divide between the common law and statutory regimes--he was first tried for and abjured heresy before the 1400 statute went into effect, and was prosecuted as a lapsed heretic after its enactment--Sawtre's case does indicate the existence of a civil, criminal penalty before 1400.<sup>11</sup> Further, and here is where the problem of jurisdiction becomes particularly important as far as the substance of the law is concerned, the secular courts also held concurrent jurisdiction with the ecclesiastical courts to initiate proceedings prior to 1400. Thus the king, through those courts, controlled at least part of the precedent according to which heresy was to be defined in any individual case.

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10 R.H. Helmholz and John Hamilton Baker, *The Oxford History of the Laws of England: The Canon Law and Ecclesiastical Jurisdiction From 597 to the 1640s* (Oxford: Oxford Univ. Press, 2004), xxiii.

11 In her recent work, *Books Under Suspicion: Censorship and tolerance of Revelatory Writing in Late Medieval England* (Notre Dame: Univ. of Notre Dame Press, 2006), Kathryn Kerby-Fulton argues that legislative and legal responses to the Wycliffite heresy must be viewed within the larger context of a history of religious censorship in England, and on the continent, that substantially pre-dates both Wyclif and his most controversial ideas. I do not take issue with Kerby-Fulton's contention that the church in England and elsewhere went to great lengths to prevent the publication and dissemination of work that it viewed as heretical long before Wyclif and his followers appeared on the scene. Nevertheless, to the extent "heresy" was something defined at English common law and that came under the jurisdiction of the secular courts, the statute *De heretico comburendo* does appear to mark a distinct shift in how heresy was to be defined and the procedures through which it was to be policed. In the statute, the "Lollard problem" is explicitly identified as the motivating force behind the break with previous standard operating procedure that the statute professes to make. In addition, to respond to Kerby-Fulton's argument regarding the continuity of practice in pre- and post-Wycliffite England, I do see a clear distinction between the suppression, through ecclesiastical administrative procedures, informal acts of intimidation, and the occasional public book burning, of works that espouse suspect doctrine, and the wholesale attempt to clamp down on vernacular religious activity more generally by burning authors and owners, both clergy and laymen, along with their books.

Regarding Blackstone's contention that the act of 1400 represented a power grab by the church that deprived the sovereign of both discretion and jurisdiction, one really has only to read the text of the legislation. The "desperate times call for desperate measures" preamble with which it begins signals that the statute does more than simply codify an existing state of affairs. That preamble reads as follows:

Whereas, it is shown to our sovereign lord the king on the advice of the prelates and clergy of his realm of England in this present Parliament, that although the Catholic faith builded upon Christ, and by his apostles and the Holy Church, sufficiently determined, declared, and approved, hath been hitherto by good and holy and most noble progenitors and predecessors of our sovereign lord the king in the said realm amongst all the realms of the world most devoutly observed, and the Church of England by his said most noble progenitors and ancestors, to the honor of God and the whole realm aforesaid, laudably endowed and in her rights and liberties sustained, without that the same faith or the said church was hurt or grievously oppressed, or else perturbed by any perverse doctrine or wicked, heretical, or erroneous opinions. Yet, nevertheless, divers false and perverse people of a certain new sect, of the faith of the sacraments of the church, and the authority of the same damnably thinking and against the law of God and of the Church usurping the office of preaching, do perversely and maliciously in divers places within the said realm, under the color of dissembled holiness, preach and teach these days openly and

privily divers new doctrines, and wicked heretical and erroneous opinions contrary to the same faith and blessed determinations of the Holy Church, and of such sect and wicked doctrine and opinions they make unlawful conventicles and confederacies, they hold and exercise schools, they make and write books, they do wickedly instruct and inform people, and as such they may excite and stir them to sedition and insurrection, and make great strife and division among the people, and other enormities horrible to be heard daily do perpetrate and commit subversion of the said catholic faith and doctrine of the Holy Church . . . . Upon which novelties and excesses above rehearsed, the prelates and clergy aforesaid, and also the Commons of the said realm being in the same Parliament, have prayed our sovereign lord the king that his royal highness would vouchsafe in the said Parliament to provide a convenient remedy.<sup>12</sup>

Where in previous times the efforts of the king and his noble ancestors might have been sufficient to defend the faith, something more was required to keep at bay the “diverse and perverse people of a certain new sect” who were coming out of the woodwork to “make unlawful conventicles and confederacies, . . . hold and exercise schools, . . . make and write books” and otherwise “wickedly instruct and inform people,” exciting and stirring them to “sedition and insurrection.”<sup>13</sup> Gestures are made in the text toward the role played by “the commons of the said realm” in its enactment, but the claims of “the prelates and clergy” are presented from the outset as the driving force behind the

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<sup>12</sup> *Statutes of the Realm*, 2.127-28.

<sup>13</sup> *Ibid.*

legislation.<sup>14</sup> Substantively, although it preserved the role of the secular court when a fine was to be levied against a first-time offender who abjured his heretical beliefs, in the case of a lapsed or unrepentant heretic, sheriffs mayors, and bailiffs of the city, town and borough were charged with carrying out the death sentence as a matter of course after a finding of relapse or obdurance had been made. To that end, the act required their presence at the ecclesiastical proceeding if it was requested and provided that “credence” should be given to any determinations of the bishop or his “commissaries in this behalf.”<sup>15</sup>

What becomes clear from a careful reading of the history of English anti-heresy law is that the statute *De heretico comburendo* marks a shift in the law, though not necessarily because it transformed heresy into a civil, capital crime. Heresy was already a crime punishable (like most felonies) by death at common law. Rather, the act of 1400 changed the state of affairs by redefining that crime in terms of commonplace public activities such as preaching, teaching and writing, where previously heresy had been identified along with what we can probably safely presume were rather extreme and relatively isolated practices such as arson and sorcery.<sup>16</sup> Arundel’s Constitutions, which followed in 1409, explicitly targeted *actions*--such as unlicensed preaching, vernacular biblical translation and religious debate--without regard to the doctrinal orthodoxy of the *beliefs* expressed by the actor (or his books), confirming the church’s intent to police the

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14 McHardy, see note 8 above, even suggests the possibility that the statute “originat[ed] in the administration of Archbishop Arundel,” and that, “[i]f that were so, the drafters could be found among Arundel’s advisers.” (118).

15 *Statutes of the Realm*, 2.127-28.

16 Here again, as in note 9, above, I want to distinguish my argument from that of Kerby-Fulton in *Books Under Suspicion* by clarifying that the timeline I am giving here has to do primarily with how heresy was defined at common law in accordance with secular legal precedent, rather than how heresy was interpreted by ecclesiastical authorities pursuant to canon law.

faith by criminalizing previously lawful (or at least unregulated) expressive activity.

Nicholas Watson, for example, has observed, “While the legislation clearly has Lollardy primarily in mind throughout, it at no point distinguishes Lollard from other vernacular theological texts (as, for example, does the *De heretico comburendo*); rather, its regulations apply to writers and owners of all vernacular religious texts, except the simplest.”<sup>17</sup>

The emphasis on action, as opposed to mental state, is not unusual in medieval law. The idea that a crime requires both an overt act or *actus reus* as well as criminal intent or *mens rea* is a relatively modern development. Medieval criminal law, as Richard Firth Green<sup>18</sup> and any number of other scholars have pointed out, was more focused on the harm done to the community than individual culpability. In the legal environment within which both *De heretico comburendo* and the Constitutions came into being, heresy was in essence a strict liability crime. One could be guilty regardless of whether or not one even understood the difference between heresy and orthodoxy or intended to promote one over the other. Consequently, when we read both pieces of legislation, we are not out of bounds in reading a legislative intent to criminalize or at least bring under suspicion the enumerated expressive activities, largely without regard to knowledge or intent.<sup>19</sup>

The statute *De heretico comburendo* also transferred substantial control over the judgment and sentencing of heretics to the church, depriving the king’s courts of their

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17 Nicholas Watson, “Censorship and Cultural Change in Late-Medieval England: Vernacular Theology, the Oxford Translation Debate, and Arundel’s Constitutions of 1409,” *Speculum* 70.4 (1995): 822-84, 829.

18 See generally, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia: Univ. of Pennsylvania Press, 2002).

19 The process of abjuration acted as a sort of “safety valve” whereby mistakes could be remedied, but an

traditional role in such proceedings. It was arguably perceived by some--particularly someone who, like Hoccleve, worked within the judicial system as a privy seal clerk--as a real and immediate intrusion by the church upon the king's jurisdiction. Further, the activities that it targeted for regulation were the primary avenues through which the emerging ideas regarding individual political agency that have been under discussion in previous chapters were disseminated, as well as the means by which such agency could be exercised. By confronting the problem of jurisdiction and trying to contain the church's new-found authority by defining heresy largely as a matter of conscience--as personal adherence to a set of erroneous doctrines--both Hoccleve and the author of *Dives and Pauper* attempt to preserve the public forum for political action. To put it another way, in response to criminal legislation that arguably transforms anyone who complains, preaches, teaches or writes into a suspect, these two writers offer elaborate performances of doctrinal orthodoxy that not only shield them to an extent from charges of heresy, but also attempt to cut the church's prosecutorial authority back down to an acceptable size.

## II. Reform and Exemplarity in *The Regiment of Princes*

As James Simpson has observed,<sup>20</sup> John Bale calls Hoccleve a Wycliffite in his *Catalogus*, asserting--astonishingly given Hoccleve's own repeated and vociferous

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abjured heretic was still guilty of heresy. Given the relative indifference of medieval law generally to questions of justification or intent, the insistence of both Hoccleve and *D&P*'s author that heresy requires a sort of knowing adherence to false doctrine is even more surprising. By in effect expanding the definition of heresy to include previously lawful, or at the very least unregulated activity, *De heretico comburendo* and the Constitutions may have presented, perhaps more clearly than at any point previously, a situation where intent was actually a significant factor in determining whether the harm caused to the community by an action justified its criminalization.

20 James Simpson, *The Oxford English Literary History Vol. 2, 1350-1547: Reform and Cultural Revolution* (Oxford: Oxford University Press, 2002), 29.

rejections of such a position--Hoccleve adhered to the doctrine of Wyclif and Berenger that the physical bread and wine remain after consecration.<sup>21</sup> We could, of course, dismiss as Reformist propaganda Bale's identification of Hoccleve with the Wycliffites as proto-Protestants, even though Bale does cite to Walsingham and the *Historia Anglicana* as the source of his information.<sup>22</sup> I prefer, however, to interpret Bale's reading of Hoccleve as a very early effort in a long critical tradition that has struggled to come to terms with Hoccleve's complex relationship to and participation in the political, social and literary events that shaped his historical moment and his writing.

Simpson, who contends "the discursive forms of both humanist and Christian reformist writing are significantly more liberal in the [late-fourteenth and early-fifteenth centuries] than [in the sixteenth century],"<sup>23</sup> maintains the *Regiment* is one of a number of fourteenth and fifteenth century political poems that not only advocated for limited sovereignty but in and of themselves exercised a "power . . . to constrain the king."<sup>24</sup> In contrast, in his study of the "language of legitimation" that pervades Lancastrian literary production, Paul Strohm has described the *Regiment* as an "unabashedly partisan" work that defines and dramatizes the legitimacy of Lancastrian accession and succession "via the creation of a decidedly *unorthodox* and *illegitimate* group [i.e., Lollards] internal to the realm."<sup>25</sup> Nicholas Perkins reads in Hoccleve's work an anxiety about ecclesiastical regulation of vernacular literary production in the name of preserving orthodoxy, but

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21 John Bale, *Scriptorum Illustrium Maioris Brytanniae Quam Nunc Angliam & Scotiam, Vocant: Catalogus* (Basel: 1557-59), 537.

22 Ibid.

23 Simpson, *Reform and Cultural Revolution*, 33.

24 Ibid., 202-03.

25 Paul Strohm, *England's Empty Throne: Usurpation and the Language of Legitimation* (New Haven: Yale Univ. Press, 1998), 181-82.

ultimately concludes Hoccleve, in an effort to reinforce the integrity of the state, becomes an apologist for Lancastrian royal prerogative, albeit a reluctant one.<sup>26</sup> More recently, Andrew Cole has argued Hoccleve produces a careful and nuanced “political criticism,” as opposed to revolutionary discourse on the one hand or Lancastrian “propaganda” on the other, by “rethinking and revising the official images and topics [most notably those concerning heresy] that were taken up in a range of contemporary sources.”<sup>27</sup>

For those scholars who have tended to emphasize the role public images--of kings and heretics, coronations and executions--play within Hoccleve’s writing, the subject or problem of Hoccleve’s religious and political leanings has been, and continues to be, a contentious one.<sup>28</sup> We can see a similar back-and-forth taking place among those scholars who bring to the fore a consideration of the role autobiography and authorial self-fashioning play in Hoccleve’s poetry. Larry Scanlon, for example, views Hoccleve’s own literary authority as closely tied to the authority he manufactures for both Henrys in the *Regiment*. By generating images of “powerful and unconstrained” kingship and then “identifying” himself with the king, Scanlon argues, Hoccleve “share[s] the king’s power,

26 Nicholas Perkins, *Hoccleve’s Regiment of Princes: Counsel and Constraint* (Cambridge: D.S. Brewer, 2001), 11, 146-50.

27 Andrew Cole, *Literature and Heresy in the Age of Chaucer* (Cambridge: Cambridge Univ. Press, 2008), 105.

28 In identifying how Simpson, Strohm, Perkins and Cole emphasize the “political” over the “personal” in Hoccleve’s writing, I do not mean to suggest these scholars are not attentive to the role that autobiography and private concerns play in Hoccleve’s work. Rather, their readings begin from the point of considering Hoccleve as a public poet and then turn to an evaluation of how Hoccleve’s own authorial and autobiographical personae become imbricated with the public subject matter of his poetry. Scanlon and Knapp reverse this critical turn, using the issue of autobiography as a the initial point of access into Hoccleve’s texts and moving from there to a consideration of the public, political dimensions of his work. John Meyer Lee, “Thomas Hoccleve: beggar laureate,” in *Poets and Power from Chaucer to Wyatt* (Cambridge: Cambridge University Press, 2007), 88-124, engages perhaps most directly with how the public and the personal evolve together in Hoccleve’s writing. Meyer Lee argues that Hoccleve’s search for an “authentic” perspective from which he could speak with authority ultimately led to his rejection of what Meyer Lee calls a “laureate poetics” in which the poet’s status as the heir of a great literary tradition depends upon the poet’s ability to leverage his royal patronage without acknowledging his absolute dependence upon it (80-87, 89).

even when that power distinguishes [the king from the poet], because such power still distinguishes both [of them] from all those below.”<sup>29</sup> Arguing for an alternative reading that situates Hoccleve, his authorial identity and his autobiography within an emergent bureaucratic culture, Ethan Knapp focuses on the Prologue and maintains that, in the *Regiment*, “Hoccleve pursues a connection between the work of the scribe and the vulnerability and mortality of the human body, a connection in which we can read both a claim about the importance of writing as a technology for supplementing the body and also a corresponding fear that writing is made at the cost of the scribe’s body, literally wasting the writer as he labors.”<sup>30</sup> Although, Knapp does consider how Hoccleve’s participation in the Lancastrian politics of succession may have influenced the *Regiment*’s composition, he concludes Hoccleve remained “wary” of “authority and paternal figures” in a political environment where “notions of paternity, inheritance, and counsel could not be used simply and innocently.”<sup>31</sup>

Various as the field of Hoccleve studies may appear at first blush, the critical discord might actually be read as a sort of consensus regarding Hoccleve’s interest in and deployment of the political forms and practices of what I have been calling a Middle English literature of sovereignty. As I have attempted to show in the preceding chapters, Middle English ideas about kingship, sovereignty, self-governance, and political identity and agency seem to have been influenced as much by early English contributions such as *De Legibus et Consuetudinibus Angliae* (Bracton) and *Britton* as they were by continental

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29 Larry Scanlon, *Narrative, Authority and Power: The Medieval Exemplum and the Chaucerian Tradition* (Cambridge: Cambridge Univ. Press, 1994), 319.

30 Ethan Knapp, *The Bureaucratic Muse: Thomas Hoccleve and the Literature of Late Medieval England* (University Park: Pennsylvania State Univ. Press, 2001), 83.

31 *Ibid.*, 126-27.

texts such as the *De Regimine Principum*, the *Secretum Secretorum*, and the *Chessbook*. Competition between the two versions of kingship offered in Bracton and *Britton*, as it played out in the ongoing debate over the meaning of the coronation oath and in the depositions of Edward II and Richard II, highlighted the role jurisdictional conflicts played as the sources of political and social discord. It also presented the problem of ordering the polity as first and foremost a matter of bringing the individual will into alignment with the public interest as expressed in the laws and customs of the realm. If Hoccleve appears in the *Regiment* to be as interested in petty bureaucrats<sup>32</sup> as he is in princes, it is because he deploys an idea of the political subject that transcends the jurisdictional boundaries that separate them. Further, if he seems to argue for the absolute sovereignty of the king over the law, while at the same time maintaining the young prince will make a good monarch only if he submits to it, the contradiction arises from his interpolation of Bracton's self-reinforcing "king-centered" jurisprudence, wherein strong laws make a strong king who makes the laws even stronger (thereby elevating his own majesty even further) by conducting himself in accordance with them. Finally, if Hoccleve seems suspicious of fifteenth-century anti-heresy legislation while also enthusiastically embracing rather narrow, doctrinal definitions of the heretic and his crimes, we are reading his attempt to limit church "meddling" with or intrusion into the administration of the realm while also establishing the orthodoxy of his politics and hermeneutic practices.

#### **A. Addressing the Prince as Political Subject**

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<sup>32</sup> A great deal of the "Prologue," for example, is given over to Hoccleve's personal complaint, which deals with the trials and tribulations that he experiences as a clerk of the privy seal, and as discussed in more detail below, a number of the exempla seem to be directed as much towards those who would serve the prince as they are to the prince himself.

I intend to show that in the *Regiment* Hoccleve imagines a secular regulatory system that embodies divine as well as positive law and can therefore bind the king and his subjects. In doing so, like the other Middle English authors discussed in previous chapters, he effectively absorbs the institutional and moral authority of the church into the king's jurisdiction. He strategically blurs and even erases conceptual boundaries between crime and sin and merges the individual's duties as a member of the church with his or her obligations as a subject of the realm. In such a conception of the polity, where political participation becomes a form of religious observance, the purview of the institutional church really is appropriately limited to policing doctrine, both to avoid jurisdictional conflict and also to preserve important outlets for the exercise of political agency. As a poet writing for a public, royal audience after 1401, the statutory enactment of *De heretico comburendo*, and the Constitutions, Hoccleve certainly could not openly sympathize with heretical opinions. Because the English literature of sovereignty includes Wycliffite as well as orthodox contributions, however, Hoccleve attempts to mark his own work as legitimate by bracketing off the political discourse that he shares with, and perhaps even borrows from, heterodox authors. He does so by segregating it from the more recognizable (at least to us) forms of Wycliffite heresy: controversy over the eucharist and the use of images in worship.

The re-staging of John Badby's execution, which of course stages an opportunity for Hoccleve to establish his orthodoxy, comes early in the *Regiment's* Prologue. Before turning to that scene and its implications, however, I would like to discuss those aspects of the poem that identify it as participating in the Middle English literature of

sovereignty. Hoccleve acknowledges three sources, Giles of Rome's *De Regimine Principum*, the pseudo-Aristotelian *Secretum Secretorum*, and Jacob de Cessolis's *Chessbook*. Where the first two works represent that line of Aristotelian (largely French-authored) political theory<sup>33</sup> given over to king-centered notions of the polity, the *Chessbook* comes out of an Italian tradition that concerns itself with more republican political forms. Consequently, even though, as Scanlon and others have noted, Hoccleve draws upon the *Furstenpiegel* tradition, he weds his discussion of the king's absolute sovereignty to an exposition of the roles that private individuals of all classes play in public life. This interest in a political subject that transcends the jurisdictional boundaries that segregate king and commoner is evident as well from the hybrid generic form of the *Regiment*. Any number of scholars have remarked upon the lengthy Prologue, which is in essence an extended begging letter, and its relationship, or lack thereof, to the body of the poem. Simpson, however, comes closest to explaining how the two work together when he notes:

The politics of the *Regiment* emerge from the lack of congruence between different jurisdictions: the household and the state each unsuccessfully compete for domination over the other, and out of this stand-off emerges a potential contact between household and king. This is not 'constitutionalism' in the sense of applying preformed ideas to the practice of politics, but a political practice does emerge that constrains both

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<sup>33</sup> I discuss this topic in more detail in chapter two.

household and state. The same is true of near-contemporary texts written out of parliamentary concerns. . . .<sup>34</sup>

I agree with Simpson that, as with the fourteenth-century texts discussed previously, the political discourse of the *Regiment* emerges out of and attempts to resolve jurisdictional conflict. Even though Hoccleve is ultimately interested in institutional reform, e.g., of the king, however, he does not locate the agency for reform within any particular institution, e.g., the household or parliament. Rather, Hoccleve personalizes such conflicts by mapping them onto the subjects who populate the *Regiment* and in doing so represents the problem of reform in terms of individual regulation, as a question of how the individual will can be transformed by the law of the realm into an instrument of the public good.

The poem begins with Hoccleve's midnight musings on how Fortune and death are the ties that bind all men together, regardless of their respective stations in life:

Me fil to mynde how that nat longe agoo  
 Fortunes strook doun thraste estat rial  
 Into mescheef, and I took heede also  
 Of many anothir lord that hadde a fal.  
 In mene estat eek sikirnesse at al  
 Ne saw I noon, but I sy atte laste  
 Wher seuretee for to abyde hir caste.

In poore estat shee pighte hir pavyloun

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<sup>34</sup> Simpson, *Reform and Cultural Revolution*, 214.

To kevere hir fro the storm of descenyge  
 For shee kneew no lower descencion  
 Sauf oonly deeth, fro which no wight lyvyng  
 Deffende him may; and thus in my musyng  
 I destitut was of joie and good hope,  
 And to myn ese nothyng cowde I grope.

For right as blyve ran it in my thoght,  
 Thogh poore I be, yit sumwhat leese I may.  
 Than deemed I that seurtee wolde noght  
 With me abyde; it is nat to hir pay  
 Ther to sojourne as shee descende may.  
 And thus unsikir of my smal lyflode,  
 Thoght leide on me ful many an hevye lode. (22-42)<sup>35</sup>

Rather than dwelling upon how Fortune operates idiosyncratically within any single estate, in a mere twenty lines Hoccleve collapses the high, middle and low estates into the single category of those brought low and then ultimately abandoned by Fortune on her race to the bottom. From the outset, therefore, Hoccleve signals his interest in a political subject that operates and can therefore be regulated independently from traditional social categories. In addition, lest we fail to see how these particular examples provide the contours of a general subject of address, Hoccleve proffers his own state of mind as an

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<sup>35</sup> All citations are to Thomas Hoccleve, *Regiment of Princes*, ed. Charles R. Blyth (Kalamazoo: Medieval Institute Publications, 1999).

example of what happens when readers lack the sort of “lateral visibility” that is so central to the operation of the exemplum within the Middle English literature of sovereignty:

Whan to the thoughtful wight is told a tale,  
 He heerith it as thogh he thennes were;  
 His hevy thoghtes him so plukke and hale  
 Hidir and thidir, and him greeve and dere,  
 That his eres availle him nat a pere;  
 He undirstandith nothyng what men seye,  
 So been his wittes fer goon hem to pleye. (99-105)

Although Hoccleve continues to target the individual auditor here, he also cautions against the processes of differentiation<sup>36</sup> that threaten to undermine a project that attempts to produce socio-political unity through individual regulation. The “thoughtful wight” is so caught up in a consideration of his “hevy thoghtes,” that he does not realize how stories of other men might be applied to resolve his own situation. Rather than being immersed in a tale, “He heerith it as thogh he thennes were,” as if he is distant from it. Hoccleve’s restless, sleepless, and troubled mind not only reflects the “worldes stormy wawes” (51), it is also to an extent the cause of that instability. For Hoccleve in the *Regiment*, as for Gower in the *Confessio Amantis*, social and political turmoil are caused not so much by Fortune, as by a failure of self-regulation. Men, including Hoccleve, all

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<sup>36</sup> These include the potential for social fragmentation caused by the division of labor within the estates hierarchy, which Mann details in *Chaucer and Medieval Estates Satire* (Cambridge: Cambridge Univ. Press, 1973), or the isolation of the individual through social and political conflict that Turner discusses in *Chaucerian Conflict: Languages of Antagonism in Late Fourteenth-Century London* (Oxford: Clarendon Press, 2007).

too often allow their wits to “pleye” and consequently fail to understand how the regulatory discourses in circulation *around* them might apply *to* them.

Further, like his Wycliffite predecessors and contemporaries, Hoccleve intervenes in disputes between and among the institutions of the realm in order to explore how self-regulation, for both prince and commoner, involves navigating the perceived jurisdictional dislocation or conflict created by debates over the ultimate locus of authority. As it often does within both Wycliffite literary production as well as more orthodox estates literature such as Chaucer’s *General Prologue*, friction between obligations to the secular and religious authorities figures prominently in *The Regiment*. For example, Hoccleve identifies the problems created when priests are torn between the duties imposed by their benefices and their hopes for courtly preferment:

“A dayes now, my sone, as men may see,  
 O chirche unto o man may nat souffyse;  
 But algate he moot han pluralitee,  
 Elles he can nat lyven in no wyse.  
 Ententyfly he keepith his service  
 In court; his labour there shal nat moule;  
 But to his cure looketh he ful foule.” (1415-1421)

Here, the anonymous old man whom Hoccleve the narrator meets while out walking on the morning after another sleepless night offers a familiar catalogue of the sins of the clergy. The practice of holding multiple benefices figures in this passage as a conflict not only between the responsibilities one owes to multiple congregations but also a conflict

between “cure” and “court.” Hoccleve directs the old man’s critique, however, not to the church or the court, the institutions that permit the practice to continue, but to the individual who elevates his personal desire for wealth above the obligations that he owes to his office, or in this case offices:

“Thogh that his chauncel roof be al totorn  
 And on the hy auter it reyne or sneewe,  
 He rekkith nat, the cost may be forborn  
 Crystes hous to repeire or make neewe;  
 And thogh ther be ful many a vicious heewe  
 Undir his cure, he takth of it no keep;  
 He rekkith nevere how rusty been his sheep.

"The oynement of holy sermonyng  
 Him looth is upon hem for to despende.  
 Sum person is so thredbare of konnyng  
 That he can naght, thogh he him wys pretende;  
 And he that can may nat his herte bende  
 Therto, but from his cure he him absentith,  
 And what therof comth, greedyliche he hentith.” (1422-35)

Hoccleve does seem to acknowledge that the priest’s neglect of his country parish arises in part from a dislocation of institutional authority: Is the church at fault for failing to regulate or appropriately discipline its priests? Or does the fault lie with the secular lord

who has taken the priest into his service, thus keeping him from his country flock? He locates ultimate responsibility for the situation with the priest, however. Neatly sidestepping larger jurisdictional issues involved in regulating institutions, Hoccleve locates agency for institutional shortcomings, and by implication institutional reform, with the individual who must avoid or at least negotiate the conflicts that arise when ecclesiastical and secular authorities come into contact and conflict with one another.

This sort of jurisdictional dislocation even shapes Hoccleve's biographical self-fashioning in the Prologue. In explaining to the "poore old hoor man" why he is in such dire financial straits, Hoccleve describes how "sum lordes man" would come to the office of the Privy seal to have a writ prepared:

"But if a wight have a cause to sue  
 To us, sum lordes man shal undirtake  
 To sue it out, and that that is us due  
 For our labour, him deyneth us nat take;  
 He seith his lord to thanke us wole he make;  
 It touchith him, it is a man of his,  
 Wher the revers of that, God woot, sooth is." (1499-1505)

In these lines, the simple, arm's-length transaction between hard-working scribe and a petitioner to the king's courts is needlessly complicated by the intervention of the middleman who claims, falsely, to be acting under color of his lord's authority. Inequity arises from the uncertainty created when individuals can represent institutions, in this case the lord's household, as well as themselves. The scribe has no way of knowing on

whose behalf he is working, whether for the individual petitioner or the institution that he claims (through the middleman) to represent. By the time the scribe discovers the deception, it is too late:

“And whan the mateere is to ende ybrought  
 Of the straunger for whom the suyte hath be,  
 Than is he to the lord knowen right noght;  
 He is to him as unknowen as we;  
 The lord nat woot of al this sotiltee,  
 Ne we nat dar lete him of it to knowe,  
 Lest our compleynte ourselven overthrowe.” (1520-26)

The lord is under no obligation to pay court costs on behalf of a stranger, and Hoccleve cannot pursue a claim against his man because doing so would not only be an exercise in futility, but would also put him in bad graces with them both:

“What shul we do? We dar noon argument  
 Make ageyn him, but faire and wel him trete,  
 Lest he reporte amis and make us shent;  
 To have his wil we suffren him and lete.  
 Hard is be holden suspect with the grete;  
 His tale shal be leeved but nat ouris,  
 And that conclusioun to us ful soure is.” (1513-19)

Implicit in Hoccleve’s complaint is the suggestion that the law, both as embodied in the chancery courts whose inner workings Hoccleve describes, and as an abstract framework

for resolving disputes, works best when it treats with individuals, as opposed to the estates or institutions they represent. Making distinctions between and among participants in the system on the basis of their social or institutional affiliations only leads to uncertainty and injustice.

Although these examples may certainly be read as the particular pitfalls that priests, liveried servants, and chancery court clerks encounter in fulfilling their respective offices, as with the high, middle, and low estates who are all subject to Fortune's whim, Hoccleve emphasizes the similarities among them. Institutions may be the source of the problem, both because they assume jurisdiction where they perhaps should not, and also because they fail to act where they should. He presents the individual office holder, however, again and again as the party responsible for institutional failure and reform. Like Chaucer's pilgrims, Hoccleve's "lordes man" and absentee priest serve as metonymies pointing to the fundamental political problem that shapes the poem, and indeed the literature of sovereignty as a genre, how to regulate the will so that it serves the common weal. Hoccleve locates the solution, not in a more rigorous definition of and adherence to the separate duties of the individual estates, but in an alternative regulatory system that focuses on the individual, and the common principles of charity and moderation that all men and women should observe as subjects of the realm.

He first makes this point at the end of his long discursion on how contemporary social climbers flaunt the sumptuary laws. As Scanlon has argued, these stanzas do help to establish important parameters of the social order.<sup>37</sup> Hoccleve, however, concludes, by

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<sup>37</sup> Scanlon, *Narrative Authority and Power*, 304-05.

arguing that lords could secure an end to such abuses by adopting moderate dress themselves:

“Ther may no lord take up no neewe gyse  
 But that a knave shal the same up take.  
 If lordes wolden wirken in this wyse  
 For to do swiche gownes to hem make  
 As men dide in old tyme, I undirtake,  
 The same get sholde up be take and usid,  
 And al this costlewe outrage refusid.” (505-11)

Although one would never find such guidance in any sumptuary law, clearly, for Hoccleve, the best solution is to eliminate the double standard altogether and offer uniform advice to both lord and commoner.

In the Prologue, Hoccleve uses the form of the begging letter as an opportunity to re-imagine the relationship between the individual sovereign of medieval theories of kingship, and the increasingly sovereign individual who, over the course of the fourteenth century, seems to have become the real political subject of Middle English contributions to the literature of sovereignty. Traditionally, in the begging letter the poet addresses his wealthy patron as the source of inspiration and financial support that will allow him to emerge from whatever dire straits he is in presently. Thus the Prologue begins as a petition to the king to see that Hoccleve’s annuity is paid. By the end of it, however, Hoccleve has effectively reversed the position of patron and supplicant. The king has become the one who needs something “to dryve foorth” his presumably sleepless nights,

and Hoccleve is now in a position to offer the counsel by which the king may profit (2136-42).

For Hoccleve, as for the fourteenth-century authors treated in previous chapters, this new idea of the political subject resolves the problem of jurisdictional multiplicity because it cuts across class boundaries. It is something that every member of the polity, including possibly the king, potentially shares with every other member of the polity, regardless of social rank or station in life. In the body proper of the poem, Hoccleve places the secular ruler in the framework of the generic political subject that gradually takes shape over the course of the Prologue. The main body of the poem is loosely, and some have argued rather arbitrarily, divided into three sections. The first “De justitia,” is concerned primarily with the intersection of legal and moral definitions of justice, and how they shape or should shape one’s understanding of “virtue.” The second, “De pietate,” explores the particular virtue of pity or compassion.<sup>38</sup> In the final section, “De misericordia,” Hoccleve turns to an exposition of mercy, which is arguably an embodied form of pity that has been put into the service of justice.

Within each section, Hoccleve uses the exempla, as in a more traditional mirror for princes, to illustrate abstract principles of good governance for the prince himself. Yet in the beginning of “De justitia,” he constructs a model of the polity in which these abstract principles apply not just to the secular ruler but, through his person, to the individual, setting a universal standard of behavior for society as a whole. Hoccleve’s interest in kingship specifically thus becomes an exploration of individual political

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<sup>38</sup> Cole, *Literature and Heresy*, 118, argues that Hoccleve represents pity as a passion that only becomes virtuous when it is channeled through or disciplined by justice in the form of mercy.

identity more generally. In describing the social organization of the polity, Hoccleve uses language drawn from the *Secretum*:

By feith is maad the congregacioun  
 Of peple and of citees enhabitynge;  
 By feith han kynges dominacioun;  
 Feith causith eek of men the comunyng;  
 Castels by feith dreden noon assailyng;  
 By feith the citees standen unwerried,  
 And kynges of hir sogettes been obeied. (2206-12)

The context of this passage clarifies that Hoccleve is using the word “feith” in its sense of “trust” rather than “a system of religious belief.” His repetition of the word suggests that it means more than simple faith in the king’s coronation oath (2199-2205), however. Faith is of course that which runs from subject to prince and underlies the “kynges dominacioun.” It also runs from subject to subject, making the “congregacioun,” and causing “eek of men the comunyng.” Because it connects the subjects to one another as well as to their king, “feith” elides the potential geographic boundary between the “congregacioun” of the realm, and that “of citees enhabitynge,” as well as the jurisdictional boundary between sovereign and subject. Hoccleve’s depiction of the community as a “congregacioun,” seems to draw upon the multiple meanings of that word, as a guild or, as it is used in Wycliffite texts, a congregation of the faithful. He clearly departs from estates discourse that imagines a singular body politic comprising fundamentally different “members” and formulates a new model for the polity composed

of *bodies* politic, all of whom share a certain fundamental similarity on account of the “feith” through which they are joined first into a “congregacioun” and then into a polity where the “feith” that joins man to man is the same “feith” that joins king and subject.

He reinforces the idea that the king is not only a ruler, but also a member, of the political community when, glossing Giles of Rome with language drawn from Bernard of Clairvaux, he speaks of a “right of brethirhede,” by virtue of which the good ruler has an obligation as a “brothir,” not somewhat surprisingly as a father, to teach his subjects by example:

Every man owith studien and muse  
 To teche his brothir what thyng is to do  
 And what behovely is to refuse;  
 That that is good, provokynge him therto.  
 And thus he moot conseille his brothir, lo,  
 Do that right is and good to Goddes pay,  
 In word nat ooly but in werk alway.

Lawful justice is, as in maneere,  
 Al vertu, and who wole han this justice,  
 The lawe of Cryst to keepe moot he leere.  
 Now if that lawe forbeeded every vice,  
 And commande al good thyng and it cherice,  
 Fulfille lawe is vertu parfyt

And injustice is of al vertu qwyt. (2500-2506)

Hoccleve describes a king whose duties and obligations to the community flow from his status as a member of that community, as well as from his position as *princeps*, the first among many. Like his citizens, the secular ruler has an obligation to keep the “lawe of Cryst,” doing what is right “In word nat oonly but in werk alway.” The obligations imposed upon the sovereign by his office are in essence the same as those imposed upon “Every man” within his realm. Exemplarity, one’s duty “To teche his brothir what thyngge is to do,” is a universal condition of community membership, rather than something that arises on account of one’s special status or privilege within that community. In this passage, we can see echoes of Bracton’s idea of the *jus gentium*, the law “common to men alone, as religion observed toward God, the duty of submission to parents and country, or the right to repel violence and injuria (II.27)”<sup>39</sup>

We can also read the influence of Bracton’s idea of what Kantorowicz has called “law-centered” kingship, or what I have referred to previously as “king-centered” law:

The king must not be under man but under God and under the law, because law makes the king. Let him therefore bestow upon the law what the law bestows upon him, namely, rule and power. For there is no *rex* where will rules rather than *lex*. Since he is the vicar of God, . . . that he ought to be under the law appears clearly in the analogy of Jesus Christ, whose vicegerent on earth he is . . . . There ought to be no one in his kingdom who surpasses him in the doing of justice . . . . If it is asked of

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39 All citations are to Henry de Bracton, *On the Laws and Customs of England*, ed. George Woodbine, trans. Samuel Thorne (Cambridge: Harvard University Press, 1968-77) (Hereinafter cited in the text and notes as “*De Legibus*.”).

him, since no writ runs against him there will [only] be opportunity for a petition, that he correct and amend his act; if he does not, it is punishment enough for him that he await God's vengeance. No one may presume to question his acts, much less contravene them (II.33).

By imagining within *The Regiment* a polity that is a congregation or brotherhood of the faithful, as well as a collection of subjects beneath the king, Hoccleve describes how the the “lawe of Cryst” might be absorbed into the law of the realm. He seems to aspire to a Bractonian polity in which men become subjects of the realm, entitled to “Lawful justice,” by learning to keep God’s law. Further, to the extent that the “lawe,” a referent that seems to encompass both the “lawe of Cryst” as well as secular “Lawful justice,” forbids vice and commands men to “cherishe” all “good thyng,” fullfilment of it “is virtue parfyt.” Through a deliberate commingling of juridical and moral language Hoccleve blurs the line between crime and sin, and erases the distinctions between one’s obligations as a member of the church and as a subject of the realm. By a sort of rhetorical sleight of hand that merges the secular and spiritual realms, he imagines that the law of England might be an agency that could bind even the king because it is the earthly embodiment of God’s law. He describes an ideal polity in which only a weak or immoral person, or a weak or immoral king, would dare to contravene the law since “injustice is of al vertu qwyt.”

In such a regulatory framework within which the law binds everyone equally, the king not only sets an example for his subjects, but those subjects, through their obedience

to the law and their observation of Christian moral precepts, set an example for the king.

As Simpson has noted:

Royal ethics, this poem implies, are largely coincident with subtle hermeneutics. Once read as a subtle act of communication itself, the ethical advice so often derided as naive can be redescribed as a sustained performance of royal instruction. Hoccleve offers Henry a mirror for princes in which Henry is taught to read the reflection of his subjects' bodies.<sup>40</sup>

Just as significantly, the king's subjects set examples for one another. Immediately following upon his discussion of the realm as a congregation bound together through the law of Christ, Hoccleve turns to an exposition of several exempla concerned with the role advisors play in enhancing, or far more often, diminishing the king's majesty:

Ful often sythe it is wist and seen  
 That for the wrong and the unrightwisnesse  
 Of kynges ministres, that kynges been  
 Holden gilty; whereas, in soothfastnesse,  
 They knowen nothyng of the wikkidnesse;  
 Unjust ministres ofte hir kyng accusen,  
 And they that just been, of wrong hem excusen.

If the ministres do naght but justice  
 To poore people in contree as they go,

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40 Simpson, *Reform and Cultural Revolution*, 214.

Thogh the kyng be unjust, yit is his vice  
 Hid to the peple; they weene everemo  
 The kyng be just for his men gye hem so.  
 But ministres to seelde hem wel governe;  
 Oppressioun regneth in every herne. (2528-41)

In this passage Hoccleve once again emphasizes the political ramifications of individual actions. Ministers who disobey their king, whether for evil or virtuous reasons, cannot be said to be acting on his behalf. Nevertheless, their actions reflect back upon him. Further, he suggests that the king's ministers have an obligation to see that justice is done, even when the king himself is unjust. The most obvious implication of these lines is that just kings should be discerning in whom they choose as their advisors, since what those justices do as individuals will determine how the king's subjects view his rule, and a number of the exempla offer variations on this theme.

Yet, in addition to the stories of an idealized Edward (2556-62) and the fictional Camilus (2584-2632), kings who embody the qualities of good judgment and political subtlety, Hoccleve offers tales such as that of Lysimachus:

I fynde how that Theodorus Sireene,  
 For that he to the kyng of Lysemak  
 Tolde his deffautes, the kyng leet for teene  
 Crucifie him, and as he heeng and stak  
 Upon the Crois, thus to the kyng he spak:  
 "This peyne, or othir lyk therto, moot falle

Upon thy false conseiloures alle.

“Nat rekke I thogh I rote on hy or lowe,  
 As he that of the deeth hath no gastnesse;  
 I dye an innocent, I do thee knowe;  
 I dye to deffende rightwisnesse.  
 Thy flaterers enhaunced in richesse  
 Dreden to suffre for right swich a peyne,  
 But I therby nat sette rissches tweyne.” (2570-86)

Although negative exempla often figure as prominently as positive ones within the *Gesta Romanorum* and *Furstenpiegel* traditions, as in the previously quoted passage, Hoccleve seems to shift the focus in this narrative away from the king and onto his advisors.

Theodorus Cyrenaicus, an “innocent” crucified for speaking his mind, clearly serves as a figure for Christ, and he directs his parting shot, not at Lysimachus who apparently gets away with being a tyrant, but at his counsellors who acquiesce in the king’s injustice:

“This peyne, or othir lyk therto, moot falle / Upon thy false conseiloures alle.” The exemplum thus provides a further extension of Hoccleve’s discussion of the obligations imposed by faith upon the brotherhood of the realm. It is not just the king himself or the saintly Lysimachus who have a duty to lead by example. All of the king’s advisors, like all of his other subjects, share in the responsibility “to deffende rightwisnesse,” and to prevent the king’s unlawful persecution of innocent men.

As we have seen, within the political rhetoric of kingship that took shape in the parliamentary rolls and chronicle accounts over the course of the fourteenth century, the personal failures of Richard II inevitably include not only his inability to rid himself of advisers who led him to make poor decisions, but also his failure to follow the advice of those who counseled restraint. Hoccleve turns the tables, so to speak, and suggests that the advisors who remained silent should bear part of the blame as well.<sup>41</sup> As deployed within *De Legibus*, the idea that subjects have a duty to curb the excesses of tyranny or misrule by speaking their minds leads to Bracton's concern with educating subjects as well as kings. Hoccleve continues this tradition by offering exempla that speak to the future subjects of the prince, even perhaps more than to the prince himself. In this particular instance, Theodorus provides a positive example of a subject whose "obedience" to the king consists of speaking out, even unto death, against the king's injustice. The kind of political agency that Hoccleve seems to offer here works within, and highlights all the contradictions of the Bractonian model. Subjects such as Theodorus can, and even have an obligation to petition the king and ask him to conform his behavior to the law. Beyond that, however, they have little recourse because ultimately the king exercises an absolute sovereignty over his own person and the bodies of his subjects. With the example of Theodorus, Hoccleve teaches an object lesson in the heavy obligations that men and women bear and also the substantial risks they confront as subjects of the realm.

### **B. Segregating the Political Subject From the Heretic**

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41 While depicting the king as having been led astray by sycophantic yes-men and advisers with evil motives is perhaps a familiar trope, blaming advisors for their failure to restrain the king when he himself is the source of the problem recalls Bracton and the *addicio de cartis*, addressed in the preceding chapter.

Hoccleve's exploration of the king's majesty as an expression of how well or how poorly his subjects exercise the limited political agency with which they are endowed in the Bractonian model takes on an added topical dimension in "De pietate," with Hoccleve's retelling of the story of Perillus and the burning bull. Cole has already examined this exemplum as a commentary upon the virtue of mercy and a critique of the Lancastrian campaign against heresy.<sup>42</sup> I do agree that in this episode, Hoccleve criticizes Lancastrian endorsement of the use of capital punishment in defense of orthodoxy. What I would like to do is recontextualize Cole's analysis of this exemplum and its relationship to the account of John Badby's execution in the Prologue within the narrative of the juridical evolution of English anti-heresy law that I have outlined above. Such a recontextualization reveals how and also explains why Hoccleve's critique takes the form of an attack against *De heretico comburendo* as a sort of jurisdictional "lese majeste." That is to say that, rather than a frontal assault on the statute's substance, Hoccleve launches an end-run that targets the jurisdictional concerns raised by the law in order to call into question its moral, and hence its juridical authority.

The exemplum of Perillus and his bull begins with a description in which king and subject are aligned in the delight they take in cruelty:

Whilom ther was a tirant despitous,  
 That so delytid him in crueltee  
 That of nothyng was he so desyrus.  
 Now shoop it so, a man that to pitee  
 Fo was and freend unto iniquitee,

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<sup>42</sup> Cole, *Literature and Heresy*, 120-30.

A sotil werkman in craft of metal,  
Wroghte in this wyse, as I yow telle shal.

His lord the kyng he thoghte plese and glade,  
And craftily he made a bole of bras,  
And in the syde of it he slyly made  
A litil wyket that ordeyned was  
To receyve hem that stood in dethes cas,  
Undir the which men sholden sharp fyr make  
Tho folk to deeth for to brennen and bake. (3004-17)

Hoccleve has taken some liberties with his source. Jacob de Cessolis writes of Perillus that he fabricated the bull thinking to please (“credens complacere”) the tyrannical Phalaridus.<sup>43</sup> In Hoccleve’s version, Perillus becomes an enemy of pity and friend of iniquity, so that the bull’s construction fulfills the cruel desires of its maker as well those of the king he thinks to serve. By giving Perillus personal as well as political motivation for his fiendish invention, Hoccleve exaggerates his status as a “bad” advisor, someone whom the king should know better than to imitate. Thus, when the king sinks to his subject’s level, so to speak, his failure of insight is rendered all the more obvious. I also want to take a moment here to highlight how the diminution of the king’s majesty in this exemplum flows primarily from his acquiescence in a brutal punitive scheme designed by one of his subjects. That Perillus is “guilty” and deserving of some form of punishment

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<sup>43</sup> Jacob de Cessolis, *Libellus de Moribus Hominum et Officiis Nobilium ac Popularium Super Ludo Scachorum*, ed. Anita Marie Burt (doctoral dissertation, University of Texas, 1957), 17.

is without doubt. Hoccleve's characterization of Perillus makes that even clearer in *The Regiment* than it is in *The Chessbook*. The king does not err when he judges Perrilus. Rather, he errs when he substitutes the dehumanizing and mechanistic cruelty of the bull for what should instead be his own merciful justice.

The significance of this distinction becomes clearer when we turn to the Badby episode in the Prologue:

“My lord the Prince - God him save and blesse -  
 Was at his deedly castigacioun  
 And of his soule hadde greet tendrenesse,  
 Thristynge sore his sauvacioun.  
 Greet was his pitous lamentacioun  
 Whan that this renegat nat wolde blynne  
 Of the stynkyng error that he was ynne.

“This good lord highte him to be swich a mene  
 To his fadir, our lige lord sovereyn,  
 If he renounce wolde his error clene  
 And come unto our good byleeve ageyn,  
 He sholde of his lyf seur been and certain;  
 And souffissant lyflode eek sholde he have  
 Unto the day he clad were in his grave.

“Also this noble prynce and worthy knyght -  
 God qwyte him his charitable labour -  
 Or any stikke kyndlid were or light,  
 The sacrament, our blessid Sauveour,  
 With reverence greet and hy honour,  
 He fecche leet, this wrecche to converte,  
 And make our feith to synken in his herte.

“But al for naght, it wolde nat betyde;  
 He heeld foorth his oppinioun dampnable,  
 And caste our holy Cristen feith asyde  
 As he that was to the feend acceptable.  
 By any outward tokne resonable,  
 If he inward hadde any repentance,  
 That woot He that of nothyng hath doutance.” (295-322)

As Cole has noted, Hoccleve rewrites historical sources as well as perhaps his own eyewitness testimony in order to erase the institutional church from his account of Badby's execution. Consistent with his merger of the secular and spiritual realm in “De justitia,” Hoccleve transforms the young prince Henry into a spiritual as well as legal intercessor. In addition to writing against the received historical discourses of this particular event, Hoccleve is also writing in opposition to the clear intention of the statute

*De heretico comburendo*, and the jurisdictional shift that its clerical proponents arguably meant to effect.

The language of the statute expressly commandeered the secular bureaucracy and pressed it into service of the church authorities, demanding the presence at ecclesiastical proceedings of secular officials and mandating swift and unquestioning execution of the death sentence once a finding of lapse or obdurance had been made. The statute, in essence, wrote the king, whose efforts it deemed no longer effective against the new threat posed by “lollards” and heretics, out of the picture, replacing his traditionally concurrent jurisdiction to pronounce on who was and was not a heretic with the exclusive jurisdiction of the ecclesiastical courts. It further substituted a very specific and mandatory penalty, i.e., death by fire in some highly visible place, for the flexible sentencing that *Britton* and its witnesses suggest existed prior to the statute. If the *status quo* prior to the statute created jurisdictional ambiguity and provided the king with an out by placing final authority for sentencing in the hands of the king and his courts, the state of affairs after the statute arguably brought the king, should he decide to exercise his power to pardon the offender, into direct conflict with the archbishop and the law itself. After 1401, in cases of heresy the king’s mercy was conceptually circumscribed by his obligation, as understood by Bracton and Hoccleve, to submit to the law where it was backed by the moral authority of God’s law. Although no act of parliament could deprive the king of his sovereign prerogative to offer a pardon to one of his subjects should he so choose, the statute *De heretico comburendo* went as far as it could to make the case for a pardon extremely difficult to argue.<sup>44</sup>

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44 To this end, the statute provides that the unrepentant or relapsed heretic shall be “burnt, that such

By writing ecclesiastical authorities out of the picture in *The Regiment*, Hoccleve reclaims the jurisdictional space within which the king's powers of pardon traditionally operated in criminal cases, including cases of heresy.<sup>45</sup> He also goes some of the way towards bringing the the machinery of justice in the chancery courts and his own place therein firmly back into the exclusive purview of the king, thereby shielding both from the threat of jurisdictional conflict between church and sovereign presented by the statute. Further, by making the claim that jurisdictional space for mercy should exist, Hoccleve calls into question the moral authority of the law itself by suggesting that it could be just only in its application, not in the abstract. To put it another way, the judgment (as distinguished from the punishment) of Perillus carries a moral authority of its own; it is justified by Perillus's own poor character as well as his behavior as a "bad" political subject who led the king astray. In contrast, Hoccleve represents the judgment passed against Badby pursuant to *De heretico comburendo* as potentially lacking the sort of moral authority that would normally, in the Bractonian model of the polity upon which Hoccleve seems to draw, bind the king to acquiesce in the law's operation. The fact that Hoccleve rather masterfully separates issues of crime and punishment in the burning bull

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punishment may strike fear into the minds of others, whereby, no such wicked doctrine and heretical and erroneous opinions, nor their authors and fautors, in the said realm and dominions, against the Catholic faith, Christian law, and determination of the holy church, which God prohibit, be sustained or in any way suffered; in which all and singular the premises concerning the said ordinance and statute, the sheriffs, mayors' and bailiffs of the said counties, cities, boroughs and towns shall be attending, aiding, and supporting to the said diocesans and their commissaries." *Statutes of the Realm*, II.127-28. It attempts to close off the possibility of mercy by specifying that neither heretical beliefs and practices, nor their "authors and fautors" are to be "sustained or in any way suffered," since such sustenance or sufferance would be in opposition to "Christian law" as well as the "Catholic faith, . . . and determination of the holy church." The statute then ends by reiterating its claims upon "the sheriffs, mayors' and bailiffs of the said counties, cities, boroughs and towns" who are charged with carrying out the will of the "said diocesans and their commissaries."

45 Fitzherbert's construction suggests that the king's power of pardon in heresy cases ("and then it seemeth the King, if he will, may pardon him the same,") stemmed from the king's jurisdiction to "doe with [the heretic] as it shall please the King, etc."

exemplum suggests that his blurring of such issues in the Badby episode is a deliberate attempt to get at the substance of the law through a critical erasure of the jurisdictional quagmire that it created.

Such a conclusion also finds support in Hoccleve's repeated attempts to redefine heresy in terms of doctrinal heterodoxy regarding matters of religious observance and privately held belief, rather than as public participation the host of vernacular expressive activities enumerated in *De heretico comburendo* and the Constitutions. In the Prologue, he characterizes Badby's crimes, which in the historical record include openly espousing and teaching heretical opinions, as a problem more of personal belief than of public dissemination of those beliefs: "The precious body of our Lord Jhesu /In forme of brede he leaved nat at al;" (288-89). He also uses the Badby episode to provide himself with an early opportunity to deflect any accusation that he holds Wycliffite sympathies when the old man demands of Hoccleve the narrator, "Sone, if God wole, thow art noon of tho / That wrappid been in this dampnacioun?" (ll.372-373). With the old man's question, when Hoccleve the narrator has said nothing to indicate the doctrinal heterodoxy for which the poem insists Badby was executed, Hoccleve the author signals his own anxiety that the law as it stands brings under suspicion all of those who complain and call for reform, regardless of their religious motivation or lack thereof. He has the narrator respond with the orthodox, if still somewhat equivocal, "Of our feith wole I nat despute at al, / But at o word, I in the sacrament / Of the auter fully byleeve and shal." In so answering, Hoccleve frames heresy once again within the narrow confines of the

eucharistic debate. Later, in the main body of the poem, he denounces the belief that images lead to the sin of idolatry.

Hoccleve's rather insistent definition of the Wycliffite heresy as a debate over the personal, interior experience of the sacrament of communion and the use of images selectively identifies what is and is not heretical about Wycliffism itself, and omits significant and more broadly applicable aspects of Wycliffism, including the more political features of Wycliffite discourse that have been outlined in the previous chapter. By attempting to limit both the jurisdictional and substantive scope of *De heretico comburendo*, Hoccleve does accomplish an elevation of Lancastrian majesty *vis a vis* a diminishment of the church's authority to intervene in the administration of civil judicial matters. Just as significantly, though, by containing the statute's reach, he attempts to preserve outlets for political agency that are created and maintained by the Middle English literature of sovereignty in which *The Regiment* participates and establish as orthodox hermeneutic practices and political ideas that he shares with his Wycliffite as well as orthodox contemporaries and predecessors.

### **III. Sovereign Obedience in *Dives and Pauper***

My interest in whether *Dives and Pauper* engages the literature of sovereignty is two-fold. First, the work and its author, from very early on in the fifteenth century, occupied an ambivalent space between orthodoxy and heterodoxy. In attempting to ward off suspicion of heresy, *D&P*'s author engages in rhetorical strategies similar to those Hoccleve employs in the *Regiment of Princes*, giving rise to the question: If it is not the heterodoxy of the religious doctrine espoused in *Dives and Pauper* that explains its

equivocal position, what then was it?<sup>46</sup> Second, in the process of incorporating and explaining subject matter arguably drawn from the literature of sovereignty, *D&P*'s author discovers a political space where individuals exercise sovereignty outside of the jurisdiction of secular, as well as religious authorities. My goal here is not to attempt a comprehensive analysis of this truly compendious work, but rather to answer the narrow question of whether and to what extent its anonymous author may have been influenced by the ideas of political subjectivity, individual sovereignty, and law-centered kingship with which his near-contemporary Thomas Hoccleve was more centrally concerned. Towards that end, much of my discussion will focus on the section dedicated to exposition of the fourth commandment, to honor one's father and mother, wherein the most pointed remarks about such subjects can be found.

*Dives and Pauper* was composed sometime during the first two decades of the fifteenth century.<sup>47</sup> As Priscilla Heath Barnum, the text's modern editor has observed, the author's deployment of a dialogue form in which "he presents not just two speakers but two speakers with distinct and often clashing points of view"<sup>48</sup> is unique among both decalogue commentaries specifically and manuals of lay instruction more generally. Barnum offers a Latin provenance for the form, but perhaps *D&P*'s author draws as well upon a vernacular tradition exemplified in Gower's *Confessio Amantis*, Langland's *Piers Plowman*, and Trevisa's *Dialogue on Translation Between a Lord and a Clerk*, among

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46 As noted below, *D&P*'s author also appears to have authored the Longleat sermons, which were previously attributed to Wycliffite authorship. See Anne Hudson, "Old Author, New Work," *Medium Aevum* 53.2 (1984): 220-38.

47 Priscilla Heath Barnum, ed., *Dives and Pauper* (London: Early English Text Society, 1976), I.xxiii-xix. Barnum establishes a *terminus post quem* of 1402 based on the author's descriptions of the spectacular appearance of a comet in 1402 and the *De heretico comburendo*.

48 *Ibid.*, II.xxxv.

others, all of which enliven the *magister/discipulus* exchange by merging it with the debate form. Further, like his contemporary Hoccleve, *D&P*'s author engages the problem, central also to Wyclif's *De mandatis divinis* and the vernacular Wycliffite works discussed previously, of "Can God's laws and man's laws be harmonized?"<sup>49</sup> In addition to sharing these formal characteristics and broad thematic concerns with the Middle English literature of sovereignty, *D&P*'s author seems to draw upon a model of the political subject offered in both orthodox and Wycliffite contributions to that genre.

Before turning to a more thorough exploration of what, if anything, *Dives and Pauper* seems to borrow from the Middle English literature of sovereignty, though, I would like to take some time to consider the equivocal legal status of the text, as well as the manner in which its author attempts to shield his literary endeavor by limiting the reach of heretical jurisdiction. As Anne Hudson notes in *The Premature Reformation*, one Robert Bert underwent prosecution for heresy based largely on his possession of a copy of *Dives and Pauper* while at almost the same time, the abbot of St. Alban's monastery could commission a copy for his library without reprisal.<sup>50</sup> Barnum has identified passages within *D&P* itself and within the Longleat sermon cycle, which he also authored, where this "radically" orthodox<sup>51</sup> writer expresses fear of reprisal.<sup>52</sup> She concludes that "[t]he writer's attitude towards the sacraments of the Church [along with other controversial subjects such as confession, images, and oath-taking], to the extent that he discusses them at all, is unexceptionally orthodox,"<sup>53</sup> and reasons "that suspicions

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49 Ibid., II.xvi.

50 Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (Oxford: Clarendon Press, 1988), 417-21.

51 Ibid., 420.

52 Barnum, *Dives and Pauper*, II.xx-xxvi.

53 Barnum, *Dives and Pauper*, II.xlvii.

about *D&P* . . . were based not on its content but on the fact that it was a book.” Among the laity, where book ownership in general was relatively rare, the possession of any vernacular literature at all might be suspicious, less so among the bookish clergy. Given the fact *Dives and Pauper* consists in large part of vernacular translations and glosses of biblical material, and considering the potentially sweeping breadth of the Constitutions, which were likely in effect prior to its completion, Barnum’s inference is a logical one. It also goes part of the way towards explaining why *D&P*’s author, in spite of the fact he was clearly aware that the church’s jurisdiction to police the faith was in reality very broad indeed, takes pains insistently and somewhat repetitively to allow a very narrow scope for that regulatory authority, even while he concedes the point in matters of doctrinal orthodoxy.

For example, in the middle of his discussion of the fourth commandment, the author has Dives observe:

Resoun 3euith þat men schuldyn techin her childryn Godis / lawe & goode  
þewys & for to takyn hed to God þat made us of nout & bou3te us se dere.  
But now men seyn þat þer schulde no lewyd folc entrymettyn hem of  
Godis lawe ne of þe gospel ne of holy writ, neyþer to connyn ne to techyn  
it. (I.327.1-5)

In this passage, *D&P*’s author reduces the substance of the Constitutions to a mere rumor, passed around among the relatively ignorant laity. He then has Pauper confirm Dives’s inference regarding the demands of reason, and here his critique echoes the Bractonian

legal model in which the strength of the law's juridical authority varies in direct correlation with the moral imperative behind it:

þat is a foul errour & wol perlyous to mannys soule, for iche man & woman is boundyn aftir his degre to don his besynesse to knowyn Godis lawe þat he is bondyn to kepyn. And fadris & moodris, godfadris & godmodris arn boundyn to techyn her childryn Godis lawe or ellys don hem be tau3t. (I.327.5-8)

In effect, *D&P*'s author ridicules the very idea that one could outlaw things such as vernacular transmission of scripture because doing so would be counter not only to reason, but to God's law as embodied in the ten commandments. He is quite comfortable allowing the institutional church to define the appropriate attitude toward the sacraments, the use of images in worship, the role of pilgrimage as a form of religious observance, the correctness of swearing oaths, etc., even when the members of the clergy doing the defining are themselves in the wrong (I.338.39-44, I.340.1-12). He is not, however, willing to confirm that the church's authority to police doctrine necessarily includes jurisdiction over the channels through which it is disseminated.

Neither, as it turns out, is *D&P*'s author willing to concede that sort of jurisdiction to the secular authority. In his discussion of the first commandment, which is by far the longest section of the treatise, the author criticizes the use of the death penalty to punish those who "speke with the trewthe a3ens here falshed":

And so I drede me that God wile maken an ende of this lond, for we louen no pees, we seken no mercy, but oure lykyngge is al in warre and wo, in

mordre and shedyng of blood, in robrie and falshed. And oure besynesse be nyght and day is to meynntenen synne and to offenden God. And ouermore, so welawey, they haue ordeyned a comoun lawe that what man speke with the trewthe a3ens here falshed he shal ben hangen, drawen and heueded. (I.148-49.42-46)

Barnum identifies the “comoun lawe” at issue in this passage as *De heretico comburendo*. She ascribes the “confusion” regarding the penalty either to the relative “novelty” of punishing heresy with death by immolation, or to a veiled reference to a 1402 case in which a Franciscan of Ayelsbury convent was executed for treason because of his continued loyalty to Richard II.<sup>54</sup> She also notes that as the fifteenth century progressed, heretics were increasingly punished as traitors, especially after the “Lollard Rebellion” of 1414.<sup>55</sup> I find it difficult to give any credence to the idea that *D&P*’s author made a mistake about the penalty imposed by *De heretico comburendo*, particularly since death by fire was the penalty traditionally associated with the crime of heresy at common law. Further, if the composition of *Dives and Pauper* continued, as Barnum contends it did, until after the Constitutions, then *De heretico comburendo* was arguably already a legal fixture, not a novelty, when its author was writing. If this passage is a reference to *De heretico comburendo*, then the author has deliberately substituted the penalty traditionally associated with treason--hanging, drawing and quartering--for the real statutory penalty.

I also believe it is possible that the author may not be referring to *De heretico comburendo* at all but rather to the second parliamentary statute enacted to deal with the

<sup>54</sup> Barnum, *Dives and Pauper*, II.xix, n. 148/44.

<sup>55</sup> *Dives and Pauper*, II.n. 148/44. See also, John G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge Univ. Press, 1970).

Lollard problem, 2 Hen. V. cap. 7. Although my hypothesis would push the earliest possible end date of the text's composition back by at least four years from the date Barnum gives, from 1410 to 1414 or 1415, it would make a great deal of sense in context. The statute to which I am referring, and to which Blackstone also refers, returned to secular courts the power to indict and arrest subjects on charges of heresy. Where the preamble of *De heretico comburendo* locates motivation for the statute with the prelates and clergy of the realm, the preamble to this legislation has the king's fingerprints all over it:

Whereas for as much as great Rumours, Congregations and Insurrections, here in the Realm of England by divers of the King's liege People, as well as by them which were of the Sect of Heresy commonly called Lollardry, as by other of their Confederacy, Excitation and Abetment, now of late were made, to the Intent to adnull destroy and subvert the Christian Faith and the Law of God and Holy Church within this same Realm of England, and also to destroy the same our Sovereign Lord the King and all other Manner of Estates of the same Realm [of England], as well Spiritual as Temporal, and also all Manner of Policy, and finally the Laws of the Land: the same our Sovereign Lord the King, to the Honour of God and in Conservation and Fortification of the Christian Faith, and also in Salvation of his Royal Estate, and of the Estate of all his Realm, willing against the Malice of such Hereticks and Lollards to provide a more open Remedy and Punishment than hath been had and used in the Case heretofore, so

that for ear of the same Laws and Punishment, such Heresies and Lollardries may the rather cease in time to come, by the Advice and Assent aforesaid and at the Prayer of the said Commons hath ordained and established . . . .<sup>56</sup>

Regarding the continued jurisdiction of the church, the law gave with one hand and took away with the other. It conceded exclusive jurisdiction over determinations regarding heterodoxy to the ecclesiastical courts, but it provided that, in cases where the suspect had also been indicted on charges “whereof the conisance belongeth to the secular judges and officers” suspects were to be delivered into the hands of church authorities only after “they be acquit or delivered before the secular Judges of such [Things].”<sup>57</sup> The secular indictments were not to be used as evidence in the ecclesiastical proceedings, but were rather to be provided “for information before the spiritual Judges” who were directed to “commence their Process against such Persons in the same manner as though no Indictment were, having no Regard to such Indictments.” In other words, the king’s courts were given the first bite at the apple. The church retained its exclusive jurisdiction in matters spiritual, but its jurisdiction was also by implication clearly limited to those matters alone. The references in the preamble to preserving the king’s “estate” and the “estate of all his realm” imply that treason is chief among the secular offenses of which heretics may also be guilty.

Whether *D&P*’s author is referring to *De heretico comburendo* or the later statute, the literary context of the reference to a “comoun lawe” that turned truth-telling into

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<sup>56</sup> *Statutes of the Realm*, II.181.

<sup>57</sup> *Ibid.*, II.183.

treason, suggests the author's critique is aimed at the king and the secular authorities, rather than the church. Not only does he invoke the penalty for treason, a crime that to this day remains closely connected with the physical person of the sovereign as well as his (and now, her) office, but at this moment in the text Pauper is bemoaning the general state of the realm, not the state of the church in particular. The chapter also ends shortly thereafter with Pauper's citation of a biblical passage, Ecclesiastes 10:8, that deals with the transitory nature of secular "remes" that fail to heed divine mandates. Like Hoccleve, *D&P's* author attempts to limit definitions of heresy in order to prevent jurisdictional encroachment upon the limited discursive space--that of advice, petition and complaint--that Bracton and the Middle English literature of sovereignty carve out for the exercise of individual political agency. Unlike Hoccleve, who seems content to wrest jurisdiction over that space from the church in order to put it into the hands of the king, *D&P's* author takes the much bolder position that neither the secular nor the ecclesiastical authorities should be vested with jurisdiction to control the expressive channels through which "truth" is disseminated. Hoccleve depicts heresy as a jurisdictional tug-of-war between the church and the king. In *Dives and Pauper*, heresy becomes something even more revealing, a three-way struggle among the church, the king and the sovereign individual.

As I have noted above, *Dives and Pauper* shares both formal and thematic similarities with Hoccleve's *Regiment* and with a number of the fourteenth-century works discussed in previous chapters. The lively dialogue form, which marks it as unique among decalogue commentaries and other manuals of lay instruction, is a narrative strategy that one sees frequently in Middle English works dealing with the problem or

question of secular political identity. The text's author also tends to emphasize the connections, rather than the distinctions, between and among the various estates in the process of formulating moral and legal standards that seem to (or at least should) regulate the behavior of all individuals, regardless of status or station. For example, Barnum has observed how, in the "Holy Poverty" prologue, within a discussion of the active versus the contemplative life, the distinction between the two modes of living begins to break down as Dives and Pauper explore how they both might obtain "hye perfeccioun" in an uncloistered setting.<sup>58</sup> Pauper describes the two ways in this manner in the prologue:

Overmore, þu shalt vnderstondyn þat þere been too maner of lyuys be qheche man may be sauyd. The ferste is clepyd a lyf contemplatyf. Þe secunde is clepid a lyf actyf. The ferste staant princepaly in besynesse to knowyn God and Godys lawe and louyn hym abouyn alle thyngge. The secunde staant princepaly in goode dedys and good reule and helpe of oure euene cristene. The thre ferste preceptys of þe ferste table longyn to alle, but princepaly to hem þat been in lyf contemplatif, þat han forsakyn þe word and wordly besynesse for þe loue of God. The seuene preceptys of the secunde table also longyn to alle, but princepaly to hem þat been in þe lyf actyf and in besynesse of þis word. The lyf contemplatyf is in eese and reste of herte. The lyf actyf is in doynge and trauayl and besynes of body and soule. (I.68-69.42-54)

As the work progresses, however, it becomes clear that the highest duty of the clergy, even those who choose the cloistered life, is not to retreat from but to minister to the laity

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<sup>58</sup> Barnum, *Dives and Pauper*, xvii-xviii.

(I.317-321.1-56). Thus the “lyf comtemplatyf,” rather than consisting solely of “eese and reste of herte,” instead seems to require something of the “doyngge and trauayl and besynes of body and soule,” that characterize the “lyf actyf.”

Nor do the clergy leave behind all of their worldly obligations when they take the cloth. As Pauper explains in response to Dives’s question, “What 3if fader & moder fall in myschef aftir þat her sone is profes in religion?” (I.316.31-33):

3if he be a religious mendyant, he may beggyn for his fadir & moodir as he doth for hymself & so helpyn hem & releuyn hem be menys elmesse . . . . And 3if he be a religious possessioner induyd be temperil goodis, he may releuyn hem in þe same maner, or ellys be elmesse of þe hous, whyche is enduyd princypally to helpyn þe nedy, & namely fadir & modir. (I.316-18.44-52)

Mendicants, even though they may forsake most worldly concerns, are still obligated to honor their parents, and therefore must provide for them using what means are available to them. With regard to those who pursue the active life, the very fact that the text’s extended discussion of “God and Godys lawe” is directed to a layman indicates that the active life requires its fair share of contemplation. Though some commandments may have more relevance for those who take up a place within the institutional church, all of them apply to and regulate the lives of all individuals who make up the larger congregation of the realm. Within the text, priests, lords and commoners are taken out of the hierarchical context of estates satire and redeployed within a new setting that makes

the examples they set laterally visible as expressions of a regulatory framework, that of the ten commandments, that binds them all equally.

For *D&P*'s author, reimagining the community of the realm as a collection of individual bodies that are all marked to one extent or another by a set of rules common to them all offers the same advantage as it does to those authors discussed previously. It permits him to reframe the problem of institutional reform as a matter of individual self-regulation, thereby avoiding the jurisdictional conflict and dislocation that often attends any attempt to regulate the institutions themselves. Where, however, the authors discussed previously tend to resolve jurisdictional conflict by absorbing one's religious identity into one's identity as a subject of the realm so that crime effectively becomes synonymous with sin, *D&P*'s author maintains a distinction between the two. In response to the following inquiry from Dives:

Y suppose þat my lyche lord, þe kyng, byddith me don a þing & myn maystir or myn soueryn byddith me don þe contrarie, or 3if my curat byddith me don a þing contrarie to my buschopys byddyng, to whom schal Y obeyn? (I.338.1-4)

The author has Pauper provide a standard answer with a somewhat surprising caveat:

In þat cas þu schalt obeyn to þi kyng, þat is þin soueryn & þin maystrys souereyn also. And þu schal obeyn to þin buschop, þat is þin curatis prelat & þin also, 3if þe kyngis byddyng & þe buschopys ben nout a3enys Godis worchepe. And 3if þin kyng, þin pope, or þin buschop, or ony souereyn bydde þe don onyþing þat þu wost wel is a3enys Godis

worchepe & a3enys hys lawe, þu schal nout obeyn hem in þat but to God  
 [þat is] er soueryn & þin also. (I.338.4-11)

In this passage, *D&P*'s author takes the analogy that the Middle English literature of sovereignty draws between kings and their subjects to its final, logical extreme. If kings are only bound by the law when it embodies God's will, then--to the extent the king's subjects are like the king--their duty of obedience is to God first, king and his law second.<sup>59</sup> Elsewhere in the same section the author, through Pauper, may opine that sufferance of tyrants is man's God-given fate (I.336.3-14). Here, though, out of a jurisdictional conflict between the individual, and his or her secular and spiritual sovereigns, *D&P*'s author carves a space within which the individual operates relatively independent of institutional control.

In another equally telling exchange, the author has Pauper give the following reply to Dives's question, "Whan þe offyceris of þe kyng wetyn wel þat a man or woman is dampnyd to þe deth vngyltelyche, schul þei obeyn to þe iuge þat byddith hem slen man or woman withoutyn gilte?" (I.342-43.1-3):

3if þe officer be sykyr þat he is vngylty, he schal nout slen hym but he  
 schal obeyn to God þat byddyth hym slen no man ne woman vngylty.

But 3if he be in doute weyþer he is gylty or vngylty, þan he schal obeyn

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<sup>59</sup> David Aers, *Faith, Ethics and Church: Writing in England, 1360-1409* (Cambridge: D.S. Brewer, 2000), notes that both Aquinas and Okham provide similar answers to the same question when considering how reason and knowledge contribute to faith and the understanding of one's political duty of "obedience" (1-10). While the idea presented in this passage may be a commonplace in Latin works of theology, it is still somewhat surprising to see in a vernacular manual of practical instruction addressed to a layperson. Further, as Aers describes it, both St. Thomas and Okham emphasize the role that participation in embodied social institutions plays in generating the knowledge of God or God's will that should inform one's sense of what is right and wrong (11-14). In this passage, Pauper's argument relies heavily on personal logic and the language of individual sovereignty, not reason or knowledge passed down through institutional or associational forms, to make its point, resulting in an abstract morality that precedes and also supersedes both church and realm.

to þe iuge & don his byddyng, & he is excusyd be his obedience, . . . .  
 Netheles þe sogetis must bewar in swyche doutis þat þei presumyn nout to  
 mychil on hir owyn wit, for wol oftyn a man wenyth to knowyn a þing &  
 ben certeyn of his knowynge & 3it is he deseyuyth & it is nout as he  
 wenyth. . . . And þerfor Y wolde conseyllyn þe sogetis and þe officerys in  
 swyche þingis to stondyn to þe conscience & þe ordinance of her  
 souereynys & obeyyn with sorwe of herte, hauynge pyte of manys deth &  
 of his dishese & no lykyng in cruelte. (I.343.4-18)

The question as well as its answer resonate in an historical context where *De heretico comburendo* and possibly the later legislation, 2 Hen. V cap. 7, mobilize the secular bureaucracy in a crusade against heresy that criminalizes any number of previously lawful activities. By hedging his answer with the qualifier, “sogetis must bewar in swyche doutis þat þei presumyn nout to mychil on hir owyn wit,” Pauper makes it clear that the sort of “civil disobedience” that he is excusing here results from the substitution of divine for institutional will. The political subject is still a subject in the sense that his or her political identity and agency are derivative of a sovereign. Nevertheless, the sovereignty that an individual subject exercises on behalf of God is apparently unconstrained by any earthly institution.

Reasoning in this manner, *D&P*'s author ultimately arrives at a definition of virtuous obedience that marks out a wide swath of territory where the individual is on his or her own with only God and the ten commandments for a guide:

Ouyrmor, leue frend, 3e schul vndirstondyn þat . . . sum þingis ben purly goode of þeself, & swyche we ben bondyn be Godis lawe, as þe ten comandementis. Sum arn wol wyckyd of þeself, & þo we ben bondyn to flen be Godis lawe withoutyn ony byddyng of ony souereyn vndir God; and þerfor in swyche þingis stant nout propirly þe vertu ne mede of obedience to man or woman. Oþir þingis þer ben þat mon ben goode & it mon ben wyckyd, & wel don & euel don, & in swyche þingis stant propirly obedience þat men owyn to her souereynys, for in swiche we schul stondyn to her wil & to her wit mor þan to our owyn, for in swyche stant propyrly þe vertue of obedience þat we owyn to man for Godis sake, and þe harder þat þe precept be, 3if it stonde with resoun, þe mor medful is þe obedience. For þe mor þat man or woman forsakith his owyn wil for Godis sake, þe mor is his lownesse & þe mor is his mede. (I.346.21-35)

According to Pauper, some things are clearly prescribed by the ten commandments, and one is therefore bound by God's law to do them. Other things are clearly proscribed by the same set of mandates, and one is therefore bound by God's law to abstain from them. Obedience, as a virtue, rests only in submitting to one's sovereign in those matters that fall in between, in doing those things that might be good or wicked, well done or evilly done, depending upon the circumstances. In reading this statement, we should remember the context. *Dives and Pauper* is a work given over to reconciling God's law and man's law. Its author does a creative and relatively thorough job of demonstrating that most of one's daily life can be regulated through reference to the decalogue, God's law. Given

that as the case, it seems institutions in general, be they secular or religious, play a limited role in defining how one participates in community of the realm.

If Custance in the *Man of Law's Tale* is the political embodiment of an orthodox religious ideal that we can also identify with the model of royal sovereignty prescribed in *Britton*,<sup>60</sup> the political subject that emerges in *Dives and Pauper* embodies, to its fullest extent, the Wycliffite ideal of a contemplative, questioning and sovereign spiritual identity that seems to borrow a great deal from Bracton. In Bractonian jurisprudence, the juridical authority of the law stems in large part from its status as an expression of divine, as opposed to merely royal will. Within such a system, where there is virtually no distinction between “crime” and “sin,” the duty of “persons” to obey the law is always qualified by their responsibility to avoid sin. “Obedience” to God sometimes includes a qualified sort of disobedience of one’s secular superiors. As a number of Middle English authors discovered over the course of the late-fourteenth and early-fifteenth centuries, the Bractonian legal model maps rather neatly onto a Wycliffite model of the polity in which one’s identity as a Christian is merged with one’s identity as a member of the *communitas* or *congregatio* of the realm. In combining these two ideas, the Middle English literature of sovereignty opened the door to an individual political subject, which though it does not experience “subjectivity” in the clichéd modern sense,<sup>61</sup> nevertheless precedes and exercises political agency independent of the jurisdictional authority of not only the

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60 As Aers notes in *Faith, Ethics and Church*, the version of the Christian duty of obedience that comes to be associated with the orthodox position after the statute *De heretico comburendo* in works such as *The Testimony of William Thorpe* counsels submission to tyrants even against the demands of reason (18-25). The version offered in *Dives and Pauper* and Bracton, wherein the demands of faith occasionally require one to stand up to abuses of secular power that contravene God’s law, is associated with heresy in the same text (19).

61 Even for the relatively “sovereign” political subject of *D&P*, truly subjective, and therefore individualized, interiority is displaced by the divine mandate of the decalogue.

institutional church, but the king and his law as well. Once one allows that rational men can critique and even ignore their spiritual “betters” when those above them in the institutional hierarchy of the church fall short of the mark, then to the extent the secular realm is constituted as a community of the faithful charged to live according to God’s law, it is a rather short leap to say the same goes for their secular superiors.

## CHAPTER 6

### EPILOGUE

Before concluding, I would like to examine one more place where the continuities between orthodox and heterodox political discourse come through with some degree of clarity. In spite of what a number of early modern authors get wrong when it comes to thinking about the relationship between medieval Wycliffism and the English reformation, some of them nevertheless perceptively identify how the response of the orthodox church to both movements seems to have been motivated just as much by a desire to maintain temporal dominion as by an interest in doctrinal purification. For example, in one of the most significant additions<sup>1</sup> to the B text of Christopher Marlowe's *The Tragicall History of D. Faustus* or, as it is titled in that text, *The Tragedie of Doctor Faustus*, Faustus rescues the fictitious papal rival, Bruno, from persecution at the hands of the pope-in-power, Adrian (3.1.54-201, 3.2.1-56).<sup>2</sup> The first and longest of the Pope Bruno scenes occurs soon after Faustus and Mephistophilis enter Rome. The Pope orders Bruno to stoop and uses his back as footstool to ascend the papal throne:

Ray.: Saxon Bruno stoop,

Whilst on thy back his Holiness ascends

Saint Peter's chair and state pontifical.

Brun.: Proud Lucifer, that state belongs to me.

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1 Eric Rasmussen, *A Textual Companion to Doctor Faustus* (New York: St. Martin's Press, 1993), 40-41, 44-45.

2 All citations are to Christopher Marlowe, *The Tragedie of Doctor Faustus (B Text)*, ed. Hilary Binda (The Perseus Digital Library, accessed November 15, 2009), <http://old.perseus.tufts.edu/cgi-bin/ptext?doc=1999.03.0011>.

But thus I fall to Peter, not to thee.

Pope: To me and Peter, shalt thou groveling lie,

And crouch before the papal dignity.

Sound trumpets then, for thus Saint Peter's heir,

From Bruno's back, ascends Saint Peter's chair. (3.1.89-96)

...

Brun.: Pope Adrian, let me have some right of law;

I was elected by the Emperor.

Pope: We will depose the Emperor for that deed,

And curse the people that submit to him;

Both he and thou shalt stand excommunicate,

And interdict from churches privilege,

And all society of holy men.

He grows too proud in his authority,

Lifting his lofty head above the clouds,

And like a steeple overpeers the church.

But we'll pull down his haughty insolence,

And as Pope Alexander, our progenitor,

Trod on the neck of German Frederick,

Adding this golden sentence to our praise,

That Peter's heirs should tread on emperors,

And walk upon the dreadful adder's back,

Treading the lion, and the dragon down.  
 And fearless spurn the killing basilisk,  
 So will we quell that haughty schismatic,  
 And by authority apostolic  
 Depose him from his regal government. (3.1.126-46)

As Leslie Oliver notes, this scene closely resembles, and in fact explicitly refers to an episode from *Acts and Monuments*, where John Foxe describes how Pope Alexander III required Emperor Frederick, who like the Emperor in *Faustus* supported a rival, to submit to him:<sup>3</sup>

The proud Pope setting his foote vpon the Emperors necke, sayd the verse of the Psalme: Holy scripture abused. Super aspidem & basiliscum ambulabis & conculcabis Leonem & Draconem: That is, Thou shalt walke vpon the Adder and the Basiliske, and shalt tread downe the Lion and the Dragon, &c. The Pope treading on the Emperours neck. To whom the Emperour aunswering agayne, sayd: Non tibi sed Petro, that is, not to thee but to Peter. The Pope agayne, Et mihi, et Petro, both to me and to Peter. The Emperor fearing to geue any occasion of further quarelling, held hys peace and so was absolued, and peace made betwene them: the conditions wherof were these. First, that he should receiue Alexander, for the true Pope. Secondly, that he should restore agayne to the Church of Rome, all

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3 Leslie Oliver, "Rowley, Foxe, and the Faustus Additions," *Modern Language Notes* 60.6: 391-94.

that he had taken away before. And thus the Emperour obtayning agayne  
hys sonne, departed. (IV.204-05)<sup>4</sup>

The scene in *Faustus* certainly recalls, but does not precisely recapitulate this moment. The play interposes the Pope's rival in the Emperor's place, and the Pope's threats not only to excommunicate but to depose the Emperor, not present in Foxe's account, have been added in the play. Like Oliver, I read these additions in the B text as a "sidewise glance at the Papal bull against Elizabeth,"<sup>5</sup> intended to encourage the audience to draw a connection between Saxon Bruno, Queen Elizabeth I, the Archbishop of Canterbury, and the other early English Protestant reformers that Foxe mentions elsewhere in his book. Later, the play makes the connection between Bruno and the Reformation explicit when Faustus, disguised as a Cardinal, declares to Pope Adrian what sentence should be carried out against Bruno and the Emperor:

Most sacred patron of the Church of Rome,  
By full consent of all the synod  
Of priests and prelates, it is thus decreed:  
That Bruno, and the German Emperor  
Be held as Lollords, and bold schismatics,  
And proud disturbers of the Church's peace.  
And if that Bruno by his own assent,  
Without enforcement of the German peers,  
Did seek to wear the triple diadem,

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4 All citations are to John Foxe, *Acts and Monuments* [. . .] (1583 edition, hriOnline, Sheffield, accessed November 15, 2009), <http://www.hrionline.shef.ac.uk/foxe>.

5 Leslie Oliver, "Rowley, Foxe, and the Faustus Additions," 392.

And by your death to climb Saint Peter's chair,  
 The statutes decretal have thus decreed:  
 He shall be straight condemned of heresy,  
 And on a pile of fagots burnt to death. (3.1.173-85)

When Faustus announces “That Bruno, and the German Emperor / Be held as Lollords,<sup>6</sup> and bold schismatics,” the play clearly links the action on the stage to the English Reformation by invoking the image of Lollards, who figure prominently in Foxe’s work as early Protestant martyrs.

In spite of the fact that the scene draws upon Foxe for its subject matter and cultural relevance, however, it reconfigures the meaning of its borrowed subject matter significantly. For Foxe, the scene between Pope Alexander III and Emperor Frederick represents an episode of “foule schisme and great discord” within a fallen and corrupt Catholic church. Foxe makes a point of the fact Alexander’s rival garnered the support of nine Cardinals, in addition to that of the Emperor. Foxe even mentions but discounts another account that puts only three Cardinals in the rival Pope’s favor. According to Foxe, Frederick was “required to take vp the matter” only after the schism had “long continued” (IV.204). The story as Foxe tells it is not really part of the trajectory of Reformation; after all Frederick is willing to submit to the office of the papacy if not to the man who holds it. Rather, the exchange between Alexander III and Frederick provides yet another example of the corrupt papacy abusing temporal power.

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<sup>6</sup> This is an unusual spelling. There may be a pun here on “lords” to provide additional emphasis that this is a struggle over temporal sovereignty, not religion or morality.

The B text of Faustus basically collapses the Reformation into this narrative about royal sovereignty and the appropriate relationship between the church and state, as in the dialogue between Pope Adrian and Bruno regarding Pope Julius's promise to "Princely Sigismond . . . To hold the Emperors their lawful Lords," where Pope Adrian responds he is not bound by the former Pope's promise because, "Is not all power on earth bestowed on us?" (3.1.147-53). In this invocation of Lollardy, the B text ties the Reformation to an episode in church history that involves a confrontation between the Church and the monarch's sovereign authority. Consequently, the Church's usurpation of temporal power, which was in fact just one of its many doctrinal sins according to Reformist ideologies, is reconfigured as the only issue in a standoff between royal and papal sovereignty. Doctrinal differences between the Reformed and Catholic churches are elided through the alliance the play forges between Faustus and Satan on the one hand, and the Emperor and Bruno on the other. The implication is, of course, that, should the Emperor succeed with Faustus's help, it is doubtful the new spiritual regime will be any less corrupt or tainted by Satanic influences than the present one. In addition, because Faustus's loyalty lies with the Emperor and Germany, not God, Bruno's liberation is an act of nationalist, not religious, rebellion against the foreign influence of Rome and the international Church.

The association in the B text among Faustus, the Lollard heresy, and the English Reformation, may be a deliberate choice on the part of the author to distance all of them from the theological debate that Martin Luther inspired. The author of these scenes, whether it was Marlowe himself or someone else, unwinds and reverses, as I have tried to

do in this chapter, the work done by medieval writers such as Hoccleve and *D&P*'s author, both of whom attempt to obscure the politics of Wycliffism by emphasizing its religious components. In doing so, he reveals what may have been one of the real contributions of Wycliffism to the reform movement: A vision of the secular polity within which the king's law precedes and governs the institutions of the realm through governance of the individuals the realm comprises. Looking back from our modern vantage point, we can clearly see the role religion so often played--from Alfred to Henry VIII--in legitimating the exercise of secular power in England. With regard to the period under discussion here, nearly forty years ago, Michael Wilks argued that the real historical contribution of Wyclif and Hus may have been a political one.<sup>7</sup> Yet, since then, in examining whether and to what extent Wycliffite authors may have influenced, or at the very least shared common ideas with their orthodox contemporaries, we have often limited our inquiry to matters of doctrine alone. What I have attempted in this dissertation is a separation of the problem of theological reform from that of political or institutional reform in order to foreground the significant points of continuity between heterodox and orthodox political discourse. Wilks was right: Wyclif did conceive of a polity in which the king rules over both the secular and spiritual realms. That political innovation was not necessarily unique to Wycliffite writing, however, and the "problem of sovereignty" that such a political model was designed to address concerned the king's subjects as much, if not more so, than the king himself.

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7 Michael Wilks, "Reformatio Regni: Wyclif and Hus as Leaders of Religious Protest Movements" in *Schism, Heresy and Religious Protest*, ed. Derek Baker (Cambridge: Cambridge Univ. Press, 1972), 109-30.

From a polity fractured and dismembered by its functional partitions, the authors under discussion in this dissertation evolved an idea of the realm in which multiple bodies become governable subjects because underneath the differences that mark them, they share a fundamental sameness. In formulating an idea of the political body that preceded or transcended many, and in some cases all, of the estates, communities and institutions of which the medieval realm was composed, the Middle English literature of sovereignty enabled new representational relationships between the individual and the realm he or she inhabited. Previously relegated to mere “membership,” the individual acquired new significance as the site and agent of institutional, social and political reform. In the *Confessio Amantis*, the body of the lover/poet stands in for the community of the realm as well as the person and office of the king. In *Dives and Pauper*, the individual subject, not the king or the pope, comes to occupy the place of God’s vicar on earth, exercising a kind of divine sovereignty on God’s behalf. This transformation in how Middle English authors imagined political identity was not merely coincident with the emergence of Wycliffism. It became one of the defining features of Wycliffite political discourse, and it was something Wycliffite authors frequently shared with their orthodox contemporaries. Consequently, when early modern authors describe this or that medieval author or actor as a “Lollard” or a “Wycliffite,” I do not think we can always dismiss the label as an example of revisionist history. Rather, at least on occasion, I think we should take care to understand when such “name-calling” does perhaps signal an important continuity in the history of ideas, a kind of “guilt by association” resulting from a shared set of hermeneutic or political--as opposed to religious--practices.