Spectacularizing Justice in Late Medieval England

A Politico-Judicial Examination of the Ritualization of Hanging, Drawing and Quartering

by

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Acknowledgements
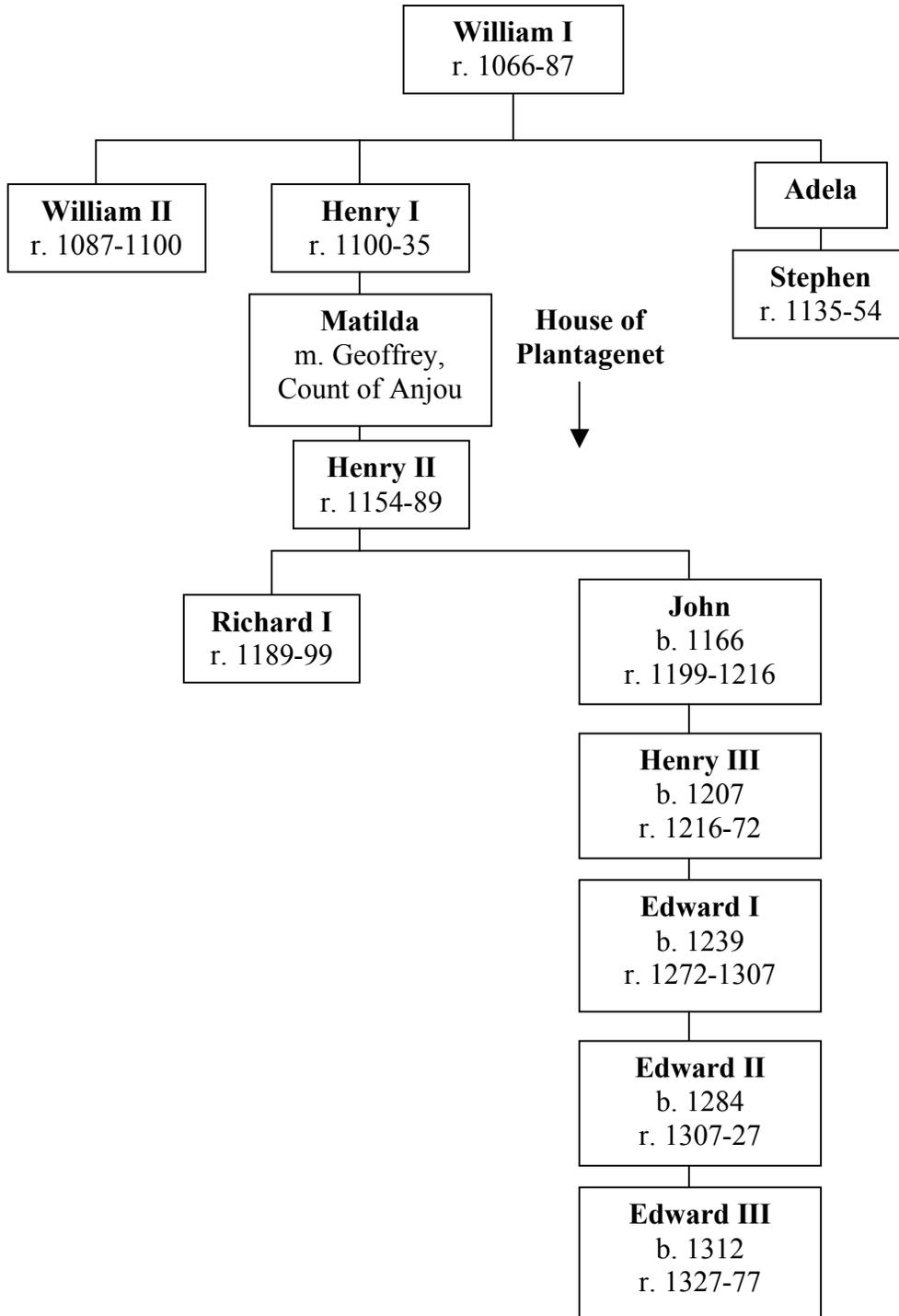
In all entertainment there is some efficacy and in all ritual there is some theatre.

Richard Schechner
Performance Theory, pg. 152

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[1] All dates taken from the *New Oxford History of England* (Bartlett, R. (2000). England Under the Norman and Angevin Kings; 1075-1225. Oxford, England, Clarendon Press. and Prestwich, M. (2005), Plantagenet England; 1225-1360. Oxford, England, Clarendon Press.)

Significant Dates

1215: First draft of the Magna Carta is produced during the rule of King John

1216: John dies and his son, Henry III, ascends the throne

1238: An attempted assassin of Henry III is drawn, beheaded and quartered

1242: William Marsh, convicted of hiring the assassin, is hanged, disembowelled, his entrails burned and his body quartered

1258: The Provisions of Oxford, establishing the rights of Parliament, are accepted

1259: The Provisions of Oxford are incorporated into the Provisions of Westminster

1261: Henry obtains a papal bull allowing him to annul both sets of Provisions

1264: Baronial champions for the Provisions initiate the Second Baron's War against Henry's son, Edward I, on behalf of royalist forces

1265: The leader of the Second Baron's War, Simon de Montfort, 6th Earl of Leicester, is killed on the battlefield, and his body dismembered by royalist forces

1267: Second Baron's War ends and the Statute of Marlborough is passed

1272: Henry III dies. His son, Edward I, succeeds the throne while on crusade.

1274: Edward I returns to England from crusade

1282: Llewellyn ap Gruffydd, the last acting prince of Wales, is killed by English forces and subsequently decapitated

1283: Llewellyn's brother, and the last Prince of Wales, Davydd ap Gruffydd, is drawn, hanged, beheaded, his entrails burned, and his body quartered

1298: Start of the First Scottish War of Independence

1305: One of its leaders, William Wallace, is drawn, hanged, beheaded, disembowelled, his entrails burned, and his body quartered by the English

1306: Scottish rebel Simon Fraser, the English Earl of Athol and three brothers to the Scottish King are all executed in permutations of the execution ritual as enacted on Davydd and Wallace

1307: Edward I dies. His son, Edward II ascends the throne.

1318: John of Powderham, claiming to be the "true heir" to the English throne, is drawn, hanged and burned

1322: Thomas Plantagenet, 2nd Earl of Lancaster, is beheaded for leading a baronial revolt against the King, despite Edward II's request that he be punished to the full extent of the treason ritual

For their involvement with Lancaster, nine unnamed barons and eighteen knights are drawn and hanged

Sir John de Mowbray, Sir Roger Clifford and Sir Jocelyn de Dayvile are drawn and hanged

Sir Bartholomew de Badlesmere is drawn, hanged, and beheaded

1323: Andrew Harclay, 1st Earl of Carlisle, is drawn, hanged, beheaded, disembowelled, his entrails burned, and his body quartered

1326: In September, Edward II's queen, Isabella, and Roger Mortimer, 1st Earl of March, invade England supported by French forces

1327: In January, Edward II is forced to abdicate the throne to his son, Edward III

Hugh Despenser, favourite of King Edward II, is drawn, his genitals mutilated and burned, his heart removed and burned, his body quartered and decapitated

1330: Roger Mortimer orders for Edmund, Earl of Kent, and half-brother to Edward II be decapitated for supporting his reinstatement as king

Edward III regains control of the English Crown, ordering that Mortimer be drawn and hanged and his mother removed from power

1352: England's momentous Statute of Treasons is passed, codifying the scope of future treason convictions in the realm

Introduction

In 1283, Davydd ap Gruffydd, the last prince of the loosely independent Wales, was publicly executed in a manner so intriguing that lengthy and varied descriptions of it span every contemporary English chronicle. *The Chronicle of Lanercost* describes the event in the most compelling terms:

> *David himself was first drawn as a traitor, then hanged as a thief; thirdly, he was beheaded alive, and his entrails burnt as an incendiary and homicide; fourthly, his limbs were cut into four parts as the penalty of a rebel, and exposed in four of the ceremonial places in England as a spectacle; to wit – the right arm with a ring on the finger in York; the left [leg] at Hereford. But the villain's head was bound in iron, lest it should fall to pieces from putrefaction, and set conspicuously upon a long spear-shaft for the mockery of London.*[1]

Just over twenty years later, in 1305, a nearly identical punishment was inflicted on William Wallace, a fallen leader of the First Scottish War of Independence (c. 1298-1328) against England. The same chronicle retells:

> *[…] it was adjudged that [Wallace] should be drawn and hanged, beheaded, disembowelled, and dismembered, and that his entrails should be burnt; which was done. And his head was exposed upon London Bridge, his right arm on the bridge of Newcastle-upon-Tyne, his left arm at Berwick, his right foot at Perth, and his left foot at Aberdeen.*[2]

For one familiar with England's chronicles from the late Middle Ages, the appearance of these two accounts during the reign of Edward I (r. 1272-1307) is remarkably distinctive, but also, in a way, seem expected. All the aspects of these two men's executions had appeared earlier, with varying frequencies, in all the same texts, indicating that separately, each held its place in the accepted execution and post-mortem practices in medieval England. The amalgamation of these familiar acts into

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[1] Maxwell, H. (1913). The Chronicle of Lanercost; 1272-1346. Glasgow, James Maclehouse and Sons. (pg. 35)
[2] Maxwell, ibid. (pg. 176)

a singular ritual, however, is spectacular in a way that makes it impossible to disregard.

I use the word *ritual* because in cases of treachery use of a general 'script' as ordered by these two accounts emerges with surprising frequency in England in the late 13th and early 14th century. After Davydd's execution in 1283, only one "Welsh knight was drawn and hanged at Shrewsbury,"[3] which had already been established as the accepted punishment for traitors.[4] In 1306 however, pointing to Edward I's (r. 1272-1307) increased confidence in the ritual after the execution of William Wallace, Simon Fraser, another Scot involved in the Scottish War of Independence, was "first drawn, then hanged, thirdly beheaded, and his head set up on London Bridge."[5] Then, the Earl of Athol, despite being a close kinsman to the King, "was taken to London, where he was drawn, hanged, and beheaded, and his head was set upon London Bridge above the heads of William Wallace and Simon Fraser."[6]

Later the same year, Thomas the Bruce, the King of Scotland's brother, was "drawn at the tails of horses […] then to be hanged and afterwards beheaded" for his role in the murder of John Comyn, Guardian of Scotland.[7] The same day, the King also commanded that two other of Robert the Bruce's brothers were "to be hanged […] and afterwards beheaded; whose heads, with the heads of the others aforesaid, were set upon the keep of Carlisle" for the same transgression.[8] This flurry of

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[3] Prestwich, M. (1988). Edward I. California, US, University of California Press. (pg. 203)
[4] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (ii, pg. 500)
[5] Maxwell, ibid. (pg. 178)
[6] Maxwell, ibid. (pg. 179)
[7] Prestwich, M., ibid. (pg. 509)
[8] Maxwell, ibid. (pg. 180)

'spectacular justice,' the list of which can be long extended from Edward I's reign,[9] along with its sustained use over the later centuries, indicates that what had once been considered only isolated events had become accepted practice. This of course does not mean that the ritual was the rule – other punitive measures such as fines or common hanging were still used to punish misdemeanours and felonies – but for the most heinous of England's crimes, that of treason, this ritual became the public spectacle of its perpetrators demise. Not even the Earl of Athol, a high noble, was spared on account of his socio-political status.[10]

In his influential *Discipline and Punish*, Michel Foucault created a powerful image of the public spectacle of execution in pre-modern Europe. In order to address the shift in the penal system that occurred between the 18th and 19th centuries towards reformative rather than purely punitive judicial acts, he contrasted the ritual on topic for this work with the modern prison system and its associated sterilized and anesthetized execution ritual. Extracting the most vivid account of a similar, albeit augmented,[11] execution of mid-18th century France, he described the execution of "Damiens the regicide […] condemned to make the *amende honorable*."[12] Despite the differences in this punishment and the ritual under examination for this work, Foucault's emphasis on the heightened spectacle of the event, as well as the

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[9] Prestwich, M., ibid. (pg. 509) offers some of many more examples

[10] Prestwich, M., ibid. (pg. 509)

[11] Although Damiens' execution did not include hanging or beheading, he was drawn and quartered by horses while still alive in a gruesomely prolonged death. He also suffered extreme torture before this, having flesh torn from his body with hot iron pincers and the wounds filled with a variety of corrosive materials, and having the right hand with which he supposedly committed the crime burned away with sulphur.

[12] Foucault, M. (1977). Discipline & Punish; The Birth of the Prison. New York, Pantheon Books. (pgs. 3-6)

symbolism expressed through acts against the victim's body, make his analysis particularly valuable as a starting point for my own.

Foucault's address of spectacular justice is lacking, although his analytic construction is not at fault. He prefaced the main body of his work with "four general rules" with which he would consider "the history of the modern soul on trial." In the first rule, he wrote that one should "not concentrate the study of punitive mechanisms on their 'repressive' effects alone," but should also "situate them in a whole series of their possible positive effects." This is an important directive to keep in mind, as in doing so, one will "regard punishment as a complex social function." In the second rule, he demanded that we consider retributive justice "as techniques possessing their own specificity in the more general field of other ways of exercising power" thereby "regard[ing] punishment as a political tactic."[13] These points are extremely useful in the consideration of judicial punishment as the multi-dimensional expression of society that it was, and will be evident throughout this work.

In his actual argument however, Foucault grounds his comparison in the assertion that "the ceremony of punishment [was] an exercise of terror,"[14] indicating his belief that the desired political tactic of the ruler was to prove their force through control over the tortured body. While it is undeniable that the body of the criminal was used during this execution ritual to convey a message, and in doing so functioned as a political tool, this expression as it originated was not unidirectional, but rather, a mode of conversation between the King and his people.[15] Foucault's argument is

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[13] Foucault, M., ibid. (pg. 23)
[14] Foucault, M., ibid. (pg. 49)
[15] Please note that while it is customary to capitalize the word "king" only when it precedes the name of a specific monarch, this thesis works to set up a juxtaposition between *King* and

weakened by his historical approach, which is purely archaeological. He uncovered a practice at a singular moment in time, examined what he had exposed, and used this examination as a point of contrast to consider the emergence of prisons.

His case hinges on the premise that the late Middle Ages were a time when "the law represent[ed] the will of the sovereign" and the execution ritual was "a policy of terror: to make everyone aware, through the body of the criminal, of the unrestrained presence of the sovereign." Foucault was not incorrect in extracting this impression from contemporary writers; it is clear in his sources from the period of Damiens's execution that the ritual, declining in popularity before the massive political shift of the French Revolution, was at this point perceived to be another manifestation of oppression from their tyrant. The issue however is that he anachronistically applied the analysis of contemporary writers to the ritual's origin in the Middle Ages. He wrote that this "theatre of terror" was not just "a lingering hang-over from an earlier age" because this age had "inscribed in the political

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Crown that made it preferable to capitalize the term so as to contrast the two as distinct entities. I therefore chose to capitalize the term when referring to "the King" (unless a quoted text chose not to capitalize it) and keep it as a common noun in all other cases.

The use of the terms "people" and "subjects" will also regrettably need to remain ambiguous for the purpose of clarity in this thesis. While I assign a level of political activity to this category, this is only true if it was represented ideally as I later construct in my discussion of feudal hierarchy. Based on the history of this time period, it is clear that true political power truly only ever extended down to the upper nobility: the barons. However, given that these barons held vast amounts of land that the rest of the English subjects were allocated through the hierarchy, the "idealized" or theoretical structure would result in these barons representing the interests of all the "people" in the realm. We know from the emergence of later peasant rebellions that this could not have always been the case, but as we do not have access to information regarding the political beliefs or experiences of the vast majority of this group, the commoners, it must be assumed in order to make use of the texts at hand that the upper echelons represented their "ideals", if not their voices. Therefore, when I use either of these terms, I am referring to *all* the people in the realm (unless otherwise specified), as they were represented politically by their lords. The chronicles and legal treatises referenced for this work frequent relied on the same ambiguity in a way that any modern historian would struggle with.

functioning of the penal system […] its ruthlessness, its spectacle, its unbalanced play of forces, its meticulous ceremonial, its entire apparatus." Foucault therefore placed blame for the common conception of public execution as purely an exercise of the monarch's control on a time that he did not adequately explore. In extending a – relatively – temporal theory of the execution ritual back through the five hundred years of history that utilized it, he failed to do justice to its complexity. In this failure, perhaps unintentionally, he compelled his reader to apply this analysis to any period of time when the execution ritual was employed, in any monarchical European country. In England, however, and during this time period, this could not have been the interpretation of the ritual for reasons he discounts in his discussion of medieval political theory.[16]

The question as originally posed for this thesis focused on the 'spectacle of justice' that emerged during the reign of Edward I, and asked how its origination, or the process of 'spectacularization,' occurred. From Foucault's work, we see that an archaeological approach to this aspect of history, in its reliance on interpretation from only one point in time, is too limited to address the complex past of this highly significant ritual. A genealogical approach, as he took in considering the modern penal system, is preferable in this case as well, as it carries us back to the origin of the practice, and therefore, it's fundamental meaning. The exploration of a retributive practice of justice inevitably leads one to the legal precedents that commanded it, and in late medieval England, where law emerged through a prolonged and extremely dynamic, dialectic, and conflictual relationship between the King and his subjects, the perception of king as absolute ruler will inevitably lead to our misinterpretation of the

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[16] Foucault, M., ibid. (pg. 49)

ritual. Foucault's statement regarding what the late Middle Ages "inscribed" in early-modern spectacular justice is absolutely true save for conception of what this "unbalanced play of forces" truly means. While the feudal system of land tenure did lead to a variety of "forces" in medieval England, it is truly at the moment of this execution ritual's enactment that their greatest equilibrium was reached.

A purely theoretical observation of feudalism in medieval England places the potential for absolute power in a theocratic king, whose power is divinely conferred. Through an examination of England's constitutional history in the late Middle Ages, however, we will observe that this theoretical construction was never actualized due to the demands the feudal system placed on its lower strata, and the fundamental rights this inevitably internalized in them. Feudal structure necessitated a king that was both authoritative and fallible, therefore, the independent construction of *Crown* emerged incurring certain expectations from the English people which a king's birthright did not necessarily make him capable of satisfying. In such a society, a massive distance can grow between the *body natural* of the King and his people, who may feel that he is not adequately fulfilling his role as a *body politic*, or guardian of the Crown. Given this potential, the King had a massive stake in ensuring that his people felt that justice served to protect the entire realm, rather than just its highest echelon: himself. Foucault was only partially correct in his assertion that "by breaking the law, the offender has touched the very person of the prince"[17] because if retributive justice defended only the person of the prince, it could not have survived in a society that continuously demanded that the same prince's authority be mediated by the ideals of the kingdom. In investing his people in the crime of treason through

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[17] Foucault, M., ibid. (pg. 49)

a performative expression of justice, which acted as a form of communication through the body of the condemned, Edward I assured that a traitor who broke the law touched not just the person of king but offended every person in the realm. Thus, the message conveyed through the fragmented body of the traitor was not simply an exercise of power, but a royal invitation extending down the feudal hierarchy to share in a vested interest in the realm.

The works that currently exists addressing the execution ritual of late medieval England contains a gap that this thesis works to fill. Largely, this literature can be separated into two separate categories. Legal and political historians such as Bellamy, Pollock & Maitland, Stubbs and Plucknett compiled extensive texts addressing their respective fields. In these works many forms of execution were mentioned but their respective "gruesomeness" was quantified only as a means of analyzing how serious a transgression its associated crime was considered contemporarily. Thus, treason was considered to be medieval England's most atrocious crime because it exacted the most atrocious execution.[18] While this correlation is correct, the intricate symbolism of execution practices was largely ignored.

In the second category of literature, there are writers such as Caroline Walker Bynum, R.C. Finucane and Katherine Royer, who have constructed extremely fine interpretations of the variety of practices emerging from the ritualistic tendencies of later medieval society that enact symbolism on the body. These studies transcend

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[18] For example, Pollock and Maitland distinguish treason from felonies and misdemeanours firstly by writing that "it earned a peculiarly ghastly punishment," and then continue on with other distinctions between the categories of crimes that existed at the time. (Pollock, S. F. and F. W. Maitland, ibid. ii, pg. 500) The other sources mentioned draw heavily on this text.

political barriers, both episodic and geographic, and focus purely on the way meaning is expressed and publicly interpreted in our treatment of all bodies – criminal, religious, or royal. While spectacular justice is discussed in their works, its meaning is addressed in comparison to other practices, and is rarely correlated to a concrete historical genealogy.

Studying the execution ritual on topic for this work however compels us to consider its symbolism as an expression of the intense fluctuation occurring in this time period between various theses of government and the legislation their enactments produced. Only after unravelling the intricately connected constitutional and legal histories of England can we consider the spectacularization of the execution ritual. To do so, it is necessary to utilize a theoretical framework to explain how such a blunt practice could have been delicately manipulated to offer satisfaction to all members of feudal society, which contained groups with varying, and often oppositional, ideologies. Through the framework provided by Richard Schechner in *Performance Theory*, we will see how the ritual simultaneously exhibited "efficacy" and "performance" in a balanced manner that left all parties – royal, noble, and common – feeling as though they had actively participated in an extremely useful practice, whose correlated entertainment value sustained society's interest over centuries.

Part 1

Government & Law

Chapter 1 – Themes of Government

Accepting the premise that hanging, drawing and quartering arose not as an infliction from ruler onto his subjects, but rather organically from contemporary English society, we must first consider the governmental history of the kingdom leading up to the execution ritual's emergence. King Edward I (b. 1239, r. 1272-1307) is consistently credited with popularizing and normalizing this form of capital punishment,[1] despite the fact that, as will later be addressed, each act within the ritual had its own distinct and established precedent. In considering the socio-political climate before Edward I' ascension to the throne, we may better understand the relationship between the sovereign and his people that allowed the ritual to prosper at this specific junction in time.

Feudal England

By the 12th and 13th centuries, feudalism was the well-established socio-political design of the kingdom of England, and had been for over a century. In the basic structure of feudal land tenure, the King was the proprietor of all the land in the realm, which he lent in fee to his nobility. These nobles allocated land to their vassals in the form of *fiefs*, who were responsible for overseeing the care and revenue of that land. The land work itself was done by peasants, commonly referred to as *villeins*,

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[1] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. Royer, K. (2003). "The Body in Parts: Reading the Execution Ritual in Late Medieval England." Historical Reflections/Réflexions historiques **29**: 319-339. Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press. Finucane, R. C. (1981). Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages. New York, St. Martin's Press.

who lived on the property and kept whatever produce not due to their lord for their own subsistence.

While feudalism was initiated as a means of apportioning land, the significance of property and produce meant that power, both social and political, was also apportioned in this system. In exchange for land, all levels in the system were required to pay homage, termed an oath of *fealty*, to those immediately above them. Ideally, fealty extended up the chain of hierarchy; a villein was loyal to his vassal first, but the vassal's loyalty to the King meant that the villein's actions should serve to benefit the King as well. Nobles especially were required to rally their vassals and gather arms to support the King's military endeavours should he require it. [2]

Medieval Political Theory

Walter Ullman, a prominent historian of medieval political thought, dichotomizes two prevailing ideals of government as *ascending* and *descending*. If one were to consider the distribution of power in a given society in these terms, they could perhaps best be analogised as opposing triangles; in the ascending framework, political power is distributed upwards from the general population to the ruler, while the descending framework spurs a "supreme organ, in whom all power is located and who hands it 'downwards.'"[3] While these frameworks are rarely actualized in their most absolute forms, the tension between the two can be interpreted as a main source of strife throughout political history.

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[2] Barrow, G. W. S. (1956). Feudal Britain; The Completion of the Medieval Kingdoms 1066-1314. London, UK, Edward Arnold Publishers Ltd.
[3] Ullman, W. (1961). Principles of Government and Politics in the Middle Ages. London, England, Butler & Tanner Ltd. (pg. 21)

Despite the seemingly modern concept of ascending government, equivalent to the label of *populism*,[4] Roman republican law and government displays theses of ascending government, from which medieval scholars were able to draw a model. With the proliferation of Christianity by the 4th century however, the power that the magistrates of the republic had once held through their citizenship was overpowered by descending governmental trends, in the form of theocracy. Throughout Europe, a similar shift is observed. Early Germanic texts show that the ruling king was elected from a popular assembly, composed of a collection of *pagi*, or tribes. While candidacy was restricted to those of noble birth, Tacitus (c. AD 56-117), senator and historian of the Roman Empire, wrote that the King had "the power of influence rather than the power to command,"[5] thus the seeds of ascending governance were apparent in this political structure. Not only was the King elected from a pool of candidates, but here also originated the theoretical right to resistance, as these kings could be deposed if their "influence" verged on "command," and frequently were. Over time however, descending government succeeded populism throughout most of Europe. Given the rarity of exceptions – only in Scandinavia and the Holy Roman Empire was populist kingship retained in any form – it is certainly fair to say that in medieval Europe, descending kingship prevailed ideologically, if not completely practically.[6]

At the basis of descending government, a singular locus of power exists. In the Middle Ages, this locus, referred to by Ullman as the "supreme organ," was

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[4] Note that Ullman's designation of the term "populism" to ascending government should not be conflated with modern political usage of the same term.
[5] This is a loose translation of the phrase that the King is listened to "*auctoritate suadendi magis quam jubendi potestate*" (Ullman, W., ibid. pg. 22)
[6] Ullman, W., ibid. (pg. 21-22)

divine, and the King his material representative. Many modern representations of the medieval King depict him in this way, as being purely theocratic. In theory, a fully theocratic king is an absolute ruler, unbound by constructed human legislation. While he may allow the presence of advisors around him, and even heed their advice if it pleases him, he is never legally compelled to do so, and his word is therefore, fundamentally, the law. Theocratic absolutism is not based on a fear of physical oppression by the sovereign – although the threat of this may be a device attempted by the ruler to keep rebellions at bay – but on the true religious conviction of the people, who believe the King to be a manifestation of God's will for their kingdom on earth. While the source of English kings' power in the 13th century was fundamentally divine, history shows us that feudalism offered an alternate means for a people to challenge their king should he veer towards this theoretical theocratic absolutism.

As we will see throughout this chapter, although feudalism was structured as a descending distribution of power, the basic needs of the English people meant that upper levels had tangible responsibilities to the lower strata that contributed an opposing tide to this force. Feudal hierarchy placed the nobles beneath the King, but also above a complex web of lesser lords, who were responsible to their villeins. This system was not one of a diminutive succession of advantages, at the end of which the peasants had no assured benefits, but rather a bilateral system in which duties of taxation were exchanged for protection in a social contract. 'Protection' could be of the physical nature during wartime or through the court system, but on a quotidian basis, it ideally ensured that peasants would not be subjected to exploitation that

would make their work efforts of no value to themselves. Villeins worked the land free of charge in order to gain subsistence from their labour, but at feudalism's earliest stages, the percentage of produce they owed to their lords was not strictly regulated. When an absolutist king put pressure on this hierarchy from the top of the chain, nobles were strained by the complaints of their lesser nobles, who were directly managing the land and the peasants who laboured on it, for whom increased taxation from their produce and its profits meant a very real threat of starvation. Balancing the desires of the King – which he often perceived as his divine right – with the needs of the peasantry through this complex web therefore became a fundamental struggle in the development of feudalism throughout English history.[7]

The Dilemma of the Feudal King

Through a superficial observation of monarchical political history, it seems fairly simple to label the clashes between the King and his subjects as the consistent effort of a theocratic king to quell populist attempts at establishing a bottom-up distribution of power. From English history, however, emerges the feudal King, a ruler whose source of power lies at the locus of the fluctuation between ascending and descending government. While at its base, feudalism was simply a system of land tenure, the significance of land in the lives of late medieval Englishmen meant that the same system also defined their sociocultural interactions.

The conflict inherent in the feudal King had been identified as early as the reign of Henry II (r. 1154-89). His chief justiciar, Rannulf Glanvill, composed a

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[7] Barlow, F. (1999). The Feudal Kingdom of England. New York, USA, Addison Wesley Longman Limited. Barrow, G. W. S. (1956). Feudal Britain; The Completion of the Medieval Kingdoms 1066-1314. London, UK, Edward Arnold Publishers Ltd.

treatise (c. 1187-1189) on the contemporary laws and customs of England, whose prologue contains this explanation:

> *Although the laws of England are not written, it does not seem absurd to call them laws – those, that is, which are known to have promulgated about problems settled in council on the advice of the magnates and with the supporting authority of the prince – for this also is a law, that 'what pleases the prince has the force of the law.' […] It is however, utterly impossible for the laws and legal rules of the realm to be wholly reduced to writing in our time, both because of the ignorance of scribes and because of the confused multiplicity of those same laws and rules.*[8]

Glanvill believed that the English 'common law'[9] had been formed by precedent as judged by a council of magnates, whose authority was supported by the prince, but immediately followed this with an opposing statement, that "what please[d] the prince" immediately became the law. Thus, Glanvill prefaced his attempt to concretize England's 12th century common law – a collection of conditionally upheld precedents that varied to different degrees depending on one's location[10] – with a statement that adequately represents the extremely contradictory ideologies being expressed in the realm.

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[8] Glanvill, R. (1993). <u>The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill</u>. Oxford, Clarendon Press. (pgs. 2-3)

[9] Please note that the term 'common law' as used in this thesis does not represent anything akin to our modern conception of the phrase. As Pollock and Maitland wrote, "It is not until there is a considerable mass of enacted law, until the king's exceptional privileges are being defined, until the place which local custom is to have in the legal system is being fixed, that the term becomes very useful." Thus, for the purpose of this thesis, 'common law' will refer to this "considerable mass of enacted law," and its representations tempered by local custom and canon law. (Pollock, S. F. and F. W. Maitland, ibid. i, pgs. 177-178)

[10] Glanvill expresses this when he refers to the "confused multiplicity of those same laws and rules." The same sentiment is corroborated a generation later by jurist Henry de Bracton (c. ~1235), who wrote that "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 various counties, cities, boroughs and vills, which it will always be necessary to learn what the custom of the place is, and how those who allege it use it" (Bracton, H. d. (1968). <u>De Legibus et Consuetudinibus Angliæ (On the Laws and Customs of England)</u>. Cambridge, Massachusetts, Belknap Press of Harvard University Press, pg. 19)

This treatise displays the dilemma of the feudal King's ambiguous role; despite his obligations to the realm, he was constantly faced with the option to test the boundaries of his divine authority. A theocratic kingship was far simpler for a sovereign to maintain and afforded him the most liberties, therefore the most 'successful' King would be one who conserved the highest level of theocratic authority while enacting just enough of his feudal responsibilities to avoid outright rebellion. While Henry II actively sought legal reforms and worked within the bounds of the customs as outlined by Glanvill,[11] the multitude of ways in which "what please[d] the prince [having] the force of law" could interfere with a council of magnates, whose authority was conferred on them by the same Prince (or King) himself, and could cause strife is not difficult to imagine.

On a daily basis, the medieval English King acted more practically within his feudal context, but to ever cross his theocratic privileges – far less negotiable but never codified – would likely result in the most severe punishment. The most significant right of a theocratic king's privileges was the *pacem Regis* – "the King's peace" – as was firmly established in most charters and ordinances at the time.[12] In practice, this meant that the more unbridled his theocratic power became, the more

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[11] Glanvill wrote of Henry II: "he truly does not scorn to be guided by the laws and customs of the realm which had their origin in reason and have long prevailed; and, what is more, he is even guided by those of his subjects most learned in the laws and customs of the realm." (Glanvill, R. (1993). The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill. Oxford, Clarendon Press, prologue, pg. 2) While Glanvill may have been a biased observer as chief justiciar, this sentiment is confirmed in Henry II's most comprehensive biographies (Warren, W. L. (1973). Henry II. Berkeley & Los Angeles, California, University of California Press, ch. 6)

[12] Stephenson, C. and F. G. Marcham (1937). Sources of English Constitutional History; A selection of documents from A.D. 600 to the present. New York, Harper & Brothers Publishers.
For the extensive usage of *pacem Regis* in medieval governance and legal discourse, see Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (ii, pgs. 463-464)

legitimized he felt in keeping *his* rightful peace at any cost. The dilemma for both the King and his subjects was then determining what standard to hold him to; a feudal king was tied to a social contract, but a theocratic king answered to God alone.

The Magna Carta and the Legal Legitimization of Feudal Principles

By the time King John (b. 1166, r. 1199-1216), Edward I's grandfather, ascended the throne just over a century after the Norman invasion, feudalism had already become a powerful force in England. The social ideals it necessitated to function therefore drove a series of constitutional changes in the kingdom, as John pushed the boundaries of his theocratic authority in his feudal role.

The beginning of John's reign was marked by the realm's loss of Normandy to the French King, Philip II, in 1202. By 1214, further antagonism from Philip II, along with a series of unsuccessful attempts to regain the lost territory in France, left John's formerly vast French territories reduced to Poitou and Gascony alone. Not only was this was a heavy blow to his reputation, having lost the realm the English royal family had inherited every generations since William the Conqueror (r. 1066-87), but the loss of income from this significant portion of land put the King and his treasury in uncharted economic peril. Faced with this financial dilemma, John began extracting more money from his subjects to cover his immense losses. His three main sources of income in this effort were from administrators, such as sheriffs, who often paid large sums to retain their positions due to opportunities for their own exploitation efforts; from the justice system, as significant fines were extracted for breaking a multitude of laws governing the vast collection of royal forests, and it was

often customary for defendants of any kind to offer large sums of money in order to avoid harsher punishment; and from his nobles, from whom John was exacting indiscriminate taxation through the feudal system of land tenure. While abuses of all three of these means of income led to the rebellion against John, it was perhaps the third that built up the most resentment towards him. Most significantly, the taxation of nobles had previously been governed by convention, and it was the ease with which King John broke with tradition at his convenience that caused his barons to realize the necessity of legitimizing these long-held customs.[13]

Dissatisfaction with the monarchy resulting in rebellions had been fairly common occurrences throughout English history, but since the Norman invasion, the threat of other claimant's to the throne had always been present as pressure for the King to better respect the kingdom's common law,[14] if he wanted to avoid constant rebellion.[15] This form of pressure was legitimate in system of divine inheritance; if two – or even more – competitors for the throne existed with fairly equal claims of

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[13] Breay, C. (2002). Magna Carta; Manuscripts and Myths. London, The British Library (pg. 12). Holt, J. C. (1992). Magna Carta. Cambridge, England, Cambridge University Press. (ch. 3, pg. 50-74)

[14] Examples begin as early as William the Conqueror (r. 1066-1087), who spent the last period of his kingship subduing the revolt of his son Robert. Between his three surviving sons, Robert (duke of Normandy 1087-1106), William II (r. 1087-1100) and Henry I (r. 1100-1135), battles were constantly fought over the inheritance of their father's realm, divided at the time into Normandy and England. Upon his accession, John himself is believed to have ordered the murder his one legitimate contender, his nephew, Arthur of Brittany, after witnessing the numerous clashes between his four elder brothers for succession. (Bartlett, R. (2000). England Under the Norman and Angevin Kings; 1075-1225. Oxford, England, Clarendon Press. (pg. 6-7))

[15] It should be noted that this point is contentious, because in each example, the King won against rebel claimants by force, rather than by negotiation with the people. However, given that barons provided this force for the King, the contender capable of rallying the strongest army represented the support of many vassals, which would be given to the candidate they thought would best represent their interests. This does not mean that the rights of the common Englishman were protected, but that the feudal hierarchy was, at the very least, being respected.

birthright, then the replacement of the monarch could be defended as the new King being a better representative of God's will for England than the previous one.[16] John, therefore, was in an unprecedented situation; his elder brothers had all predeceased him, and his only legitimate contender, his adolescent nephew, Arthur of Brittany, had disappeared at the start of his uncle's reign.[17] This placed John's disgruntled barons in a difficult position in 1214 as they had no other candidate for the throne to support, which may have otherwise pressured him into recognizing their demands. When he became too oppressive, exacting inappropriate fines from his nobility to support a number of failing military campaigns, the barons that opposed him were forced to address him directly.

As John's attempts to subdue his barons with small concessions failed, discontent grew, ending with their renouncement of him as their king and their engagement in open rebellion. Before reaffirming their oaths of fealty, the barons demanded a vow that John would reinstate the revered laws of Edward the Confessor (r. 1042-66), the last Anglo-Saxon King before the Norman invasion,[18] and Henry I (r. 1100-35), who had incorporated some clauses of ancient Anglo-Saxon law in his Coronation Charter (alternately named the Charter of Liberties, c. 1100).[19] By the start of 1215, the barons had become an organized body, bound together by oath, and, as such, entered into further negotiations with John to expand these ancient customs

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[16] Bartlett, R., ibid. (ch. I, I)

[17] For reference to the events concerning Arthur of Brittany, please see footnote 14 on the previous page

[18] For a summary of the laws of Edward the Confessor, see Stubbs, W. (1881). Select Charters and Other Illustrations of English Constitutional History; From the Earliest Times to the Reign of Edward the First. Oxford, England, Clarendon Press.. (pg. 76-79)

[19] For the full text of Henry I's Charter of Liberties, see Stubbs, W., ibid. (pg. 99-102)

for their contemporary needs, which they outlined in their Articles of the Barons.[20]

These negotiations continued in various forms for months, eventually leading to the

establishment of the original Magna Carta in July of 1215.[21]

While this document contains many commonalities with both ancient and

common law, it is perhaps more significant to note that the Magna Carta was the first

charter to have ever been forced upon an English king by his subjects. Without any

physical threat, John's most important barons had stripped him of much of his

authority, and forced him to concede not just to the charter, but to a lengthy and

legitimate discourse that would shape it. The final product of these negotiations, in

essence, set clearly defined limits for benefits the King could extract from his nobles

for their temporary ownership of 'his' land. Chapter 61 of the charter even stipulates

that a council of twenty-five barons be elected to oversee the fulfilment of the charter,

essentially for the purpose of ensuring that the King be monitored in the

implementation of his word. This council, in the original text, were to "with all their

might […] observe, maintain and cause to be observed the peace and liberties which

[they] had granted and confirmed to them by this […] charter." The chapter

continues by instructing that if anyone in the land – and this included the King –

broke "any of the articles of peace or security," the barons retained the right to "seize

[their] castles, lands and possessions […] until, in their judgement, amends [had]

been made; and when [the breech had] been redressed they [were] to obey [the

council] as they [had] before."[22] This chapter is perhaps the most novel and

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[20] For the full text of the Articles of the Barons, see Stubbs, W., ibid. (pg. 289-296)
[21] Holt, J. C., ibid. (ch. 6; pg 188-236)
[22] Holt, J. C. (1992). Magna Carta. Cambridge, England, Cambridge University Press. (pg. 471)

impressive, but we should not overstate its significance. While this is the first time that an English king's behaviour could be legally supervised by his barons, allowing them to inflict consequences as they deemed appropriate, this portion of the Magna Carta was never enforced.

English medieval historian James Holt wrote that the charter "was intended as a peace and it provoked war" and that "it pretended to state customary law and it promoted disagreement and contention." Overall, Holt deemed it "a failure."[23] These statements are partially correct, in the sense that a significant transitory goal of the 1215 Magna Carta was to stop the ongoing rivalry between the King and his nobility, and this was not achieved. However, any potential it had of succeeding was ruined as the legal validity of this version document lasted only three months before it was significantly amended, and its most novel content, the aforementioned Chapter 61, removed. Unfortunately for the barons, while the contents of the chapter could be considered a very primitive forerunner to parliament, it was actualized in this time.[24]

Regardless of this fact, the 1215 Magna Carta was a significant step in English political history and greatly shaped the King's quickly evolving relationship to his people, and thus, the manifestation of his power. The Magna Carta is a controversial document given the many permutations of the charter that have been adapted since its establishment nearly 800 years ago and the multitude of interpretations associated with each version.[25] These varied interpretations are possible because a close look at the document shows incredible ambiguity of purpose. An example that Holt astutely

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[23] Holt, J.C., ibid. (pg. 1)
[24] Holt, J.C., ibid. (ch. 1)
[25] For example, Edward Coke, 17th century jurist, revived interest in the Magna Carta in his own time, applying many seemingly anachronistic messages from the charter to England's post-feudal society. (Holt, J. C., ibid. pg. 6)

observed is Chapter 16, which has been translated to: "No man *shall* be compelled to perform more service for a knight's fee for any other free tenement than is due therefrom."[26] Given that the text was produced in Latin however, we should consider it in the language it would have been read by clerics and jurists at the time, and the original term for "shall", "*debeter*", more literally translates to "ought." Applied to the chapter, this meant that no knight *should* have been compelled to perform more service than what was 'appropriate,' and the bounds of propriety were never defined. Similarly, Chapters 20, 21, and 22 all make reference to various socio-political strata that were to be amerced by their peers, but no unaffected and therefore unbiased men existed in the realm to make such judgments.[27]

Examples of ambiguity such as these are found all throughout the original 1215 Magna Carta, and Holt suggested that this was due to the weariness of the negotiators,[28] as well as the overwhelming complexity of the administrative system that these men had contended with, much of which was still "very much the private perquisite of the king."[29] However, I disagree with his contention that the charter was a "failure,"[30] despite its ambiguity and the barons' inability to enact its most innovative measure. Their ambiguous terms of settlement still reflect a tide of political change that was only beginning in England, emerging openly and unapologetically. At the very least, the men damaged the sanctity of the "private perquisite of the king" by coercing him to accept any of their terms in an official way, publicly destabilizing the force of John's will in the land.

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[26] Holt, J.C., ibid. (pgs. 7, 455)
[27] Holt, J.C., ibid. (pgs. 7, 457)
[28] Holt, J.C., ibid. (pg. 6)
[29] Holt, J.C., ibid. (pg. 7)
[30] Holt, J.C., ibid. (pg. 1)

John's rule was perhaps the most significant example of a feudal king who too greatly pushed his theocratic boundary, which is what gave the barons the drive necessary to formally establish what had hitherto been understood as common law. King John, whose legal records were heavy with terms referring to the *gratis* of the King, provided ample abuses of these long-held customs by stressing his theocratic function while downplaying his feudal responsibility to his vassals.[31] Therefore, the majority of the Magna Carta was aimed at solidifying the feudal responsibilities John owed to his nobility. However, Chapter 61, the establishment of a committee to monitor the King's exercise of his own will, was a direct limitation of his theocratic power; even the possibility that his will could be deemed a breach of the law theoretically meant that his *voluntas* was no longer the law itself. Therefore, if this legislative confirmation of a significant aspect of the feudal social contract diminished John's theocratic authority, then this is the point in English history when the position of king began to take shape as a distinct legal entity, separate from the man who held the position. Not only did the Magna Carta define specific responsibility that any future English king should have to his people, but it also legitimized the King's removal from authority should he breach his responsibility in the contract. Because a king's power in the feudal system was expressed through his symbolic ownership of the entire realm, he would be essentially stripped of power if his "castles, lands or possessions" were seized, as stipulated in Chapter 61 of the charter. The Magna Carta was adapted and this clause removed, but as will soon become apparent, the significant concept of the people's right to monitor monarchic

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[31] Ullman, W., ibid (pg. 158)

absolutism was retained in English society and manifested quickly in other legislative developments.

Unlike the Charter of Liberties, the somewhat similar English charter that had preceded it,[32] for which Henry I had legalized a series of extremely ambiguous laws to pacify the nobility that contested his succession, the Magna Carta was the product of the King's public acknowledgement that the law was an entity in itself, separate from his temporal position at the top of the hierarchy, and therefore, separate from his desire to enforce it. While the charter, in its widest interpretation, only protects all "free men," a relatively small proportion of the English population in the 13th century,[33] these principles were ingrained in society, a step pivotal to legitimizing the fundamental, but hitherto purely customary, principles of feudal hierarchy, regardless of the charter's lack of enforceability. The leash of theocratic power of English monarchy, although consistently flexed, had been significantly and lastingly shortened. It was the true beginning of the legally validated separation between *King* and *Crown*, which, despite the best efforts of future kings, the English people would not allow him to forget.

King and Crown

As the individual power of the King was limited in England, the significance of the Crown as an independent entity emerged. Although the base intentions of the

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[32] White, A. B. and W. Notestein (1915). <u>Source Problems in English History</u>. New York, Harper & Brothers. For the full text of Henry I's Charter of Liberties, see Stubbs, W., ibid. (pg. 99-102)
[33] Holt, J.C., ibid. (pg. 5)

barons were to better control the actions of King John,[34] the document that their

negotiations produced had begun to outline the role of the monarchy in medieval

England.

The King himself lies at the nexus between two constructions of this

monarchy that dominate medieval English political theory; he either fills the role, or

he defines it. Ernst Kantorowicz refers to this dual nature of the King respectively as

his "body politic" and "body natural" in his book, *The King's Two Bodies*. Through

Kantorowicz's lens, the Magna Carta clearly defined the King's body politic as a

series of feudal obligations consistent with the responsibility of the Crown,[35] while

limiting the importance of his body natural, which, in John's example, was

manifested by his own volition as a greater attempt at theocratic autocracy. However,

while John's rule may have been the first significant legal break between the King's

concurrent roles, England's political history was continuously complicated by wars

and debates that can generally be boiled down to the question of the necessity of a

body politic, and, furthermore, who held the responsibility to uphold it. By

uncovering the answer to this question, we can begin to understand governmental

retribution in medieval England as it manifested in capital punishment.

The Magna Carta, despite its crystallisation of emerging feudal principles,

clearly realistically failed in satiating the nobility's necessary assertion of rights over

their King given its significant amendments.[36] Just as Glanvill summarized the

contradictory role of a feudal king in the 1180s, two generations later, during the rule

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[34] Holt, J. C. (1992). <u>Magna Carta</u>. Cambridge, England, Cambridge University Press.
(introduction)
[35] Kantorowicz, E. H. (1957). <u>The King's Two Bodies; A Study in Mediaeval Political
Theology</u>. Princeton, New Jersey, Princeton University Press. (pg. 13)
[36] Holt, J.C., ibid. (pg. 378-405)

of Henry III (b. 1207, r. 1216-72), jurist Henry de Bracton[37] made similar, albeit significantly more extensive, conclusions. In his introduction to *De Legibus et Consuetudinibus Angliæ (On the Laws and Customs of England)*, he wrote that "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 the law."[38] Here, he acknowledged the importance of a "counsel of magnates" and public approval, but their authority remained secondary to that of the King or Prince, which had to be considered first. The text continuously references the connection between "the general agreement of the *res publica*" and justice, but Bracton also interjects in this connection that "justice proceeds from God" [39] and that "the very seat of the king [is] on the throne of God" – "the king is God's vicar"[40]. The complexity of an English king's role was perhaps best summarized later; when discussing the purpose of one, he wrote:

> *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 the law,*[41] *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*

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[37] The extent of Bracton's authorship of *De Legibus* has been disputed by authors such as Pollock & Maitland (*History of English Law)*, Plucknett (*A Precise History of the Common Law*) and Kantorowicz (*Bractonian Problems*), with many suggesting that William Raleigh, the judge whom he worked for, wrote the text and then passed it to Bracton for final revisions.

[38] Bracton, H. d. (1968). De Legibus et Consuetudinibus Angliæ (On the Laws and Customs of England). Cambridge, Massachusetts, Belknap Press of Harvard University Press. (ii, pg. 19)

[39] Bracton, H. d., ibid. (ii, pg. 22)

[40] Bracton, H. d., ibid. (ii, pg. 20)

[41] This is in reference to the earlier quoted statement by Rannulf Glanvill.

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.[42]

Despite the King being "the minister and vicar of God on earth," he then continued by negating the same King's theocratic infallibility,

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.*[43]

In the first quotation, Bracton was explaining the nature of the King's body politic, in that the purpose of the Crown was not to construct law but to give it *auctoritas* – authority – on behalf of the people, who are represented by a "counsel of magnates." Ullman best explained this conflict when he wrote, "the thesis upheld by the common law itself [was] that the king was 'above the law' […] but he could not himself make the law – this was not his prerogative."[44] As for the man who fills the seat of the Crown, the body natural, Bracton seemed to be the first theorist who questioned the King's assumed theocratic origin, stating that he is only "God's vicar" if he is ruling *well*, not simply holding the seat of power. In his referring to the people of England as being "entrusted to [the king's] care," he explained the reciprocal nature of the feudal relationship between sovereign and people; the King's role was to protect his people from each other, from external threats, even from the potential his own tyranny – and, in doing so, he protected the essential function of the Crown. Rebellions such as the one that instigated the production of the Magna Carta attacked the body natural of any king who would exploit the lack of structure in written

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[42] Bracton, H. d., ibid. (ii, pg. 305)
[43] Bracton, H. d., ibid. (ii, pg. 305)
[44] Ullman, W., ibid. pg. 185

English law regarding the nature of the body politic in order further his own interests, as John did. As participants in the same feudal contract, it is the responsibility of the King's subjects to rebel against this exploitation, as it detracts from vital position he holds at the top of their hierarchy.

From John to Edward I

In the generation between King John's concessions and the reign of Edward I, the time when the punishment we are considering was ritualized, England was confronted with greater constitutional upheaval than ever before. By the end of John's reign, his son, Henry III, inherited not only acute civil unrest, but also a political climate that Michael Prestwich, prominent English historian, rightly described as "intensely personal," making "the character of the king himself […] a crucial element."[45] While Henry's character, as Prestwich noted, did not show the "cruel streak" of his father, he was a man of great ideology and passion for the structure of government and what the role of England's monarchy should be. Thus, despite the difference of Henry's intention when contrasted to John, his strict beliefs regarding kingship "amounted to absolutist ideas"[46] that led reformers to face obstacles similar to those from the generation before. The Magna Carta was reissued in 1216, 1217, and 1225, but these amendments were made when Henry was still too young to lead negotiations with factional divisions. These reissues of the charter had lost much of its original reformation lustre; new amendments pertained mostly to taxes and income from the royal forests that would improve the wealth of the Crown

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[45] Prestwich, M. (2005). <u>Plantagenet England; 1225-1360</u>. Oxford, England, Clarendon Press. (pg. 82)
[46] Prestwich, M., ibid. (pg. 82)

in the face of various wars, and the most innovative chapter, that regarding the council of twenty-five barons resembling an early parliament, had been removed.[47] The personal ambitions of the reformers had clouded the progress of English government, giving Henry the opportunity to retest his theocratic boundaries when he fully came of age.

Henry's attempts to regain much of the absolute authority lost by his father were seriously damaged by a French noble, Simon de Montfort, who came to England in 1230 to claim the title of 6th Earl of Leicester that his family had obtained through marriage. Henry originally supported the man immensely, as he had charisma and clear ambition, and in only a decade, de Montfort had risen to the top of Henry's court. However, by the early 1250s, the relationship between the King and the Earl had soured, due to a series of personal conflicts involving royal funds, and de Montfort's clandestine marriage to Henry's sister. This personal feud finally manifested in the Earl's outright rebellion against Henry's absolutist tendencies.[48] Thus, as Prestwich had pointed out, the personal was quickly conflated with the political.

During this time, other barons in England rallied around de Montfort due to their own grievances with the King, and they used opportunities in which Henry III needed their approval – such as a tax augmentation to pay for a crusade in 1251 – to demand amendments to and reconfirmations of the Magna Carta.[49] This cycle came

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[47] Holt, J.C., ibid. (pg. 378-405)
[48] Prestwich, M., ibid. (ch. 4)
[49] Prestwich, M., ibid. (pg. 101)

to a head in 1258, when seven of the realm's most powerful nobles[50] formed a coalition, supported by the arms and knights they had at their disposal, and demanded that the King accept their reforms.[51]

The 'Provisions of Oxford'[52] had emerged from negotiations in June of that year, soon extended into the Provisions of Westminster in 1259, in what was a massive political development in England. The advancement resulting from these Provisions was not an innovation in ideology if we consider the principles expressed in the Magna Carta, but rather an innovation in the extent to which that ideology was developed and the success of its implementation. The Provisions addressed a number of pertinent issues facing the barons, such as their concern over the growing power of foreigners in the King's court[53] and the governance of royal forests,[54] but they are most significantly remembered for establishing the first English parliament. In an augmented version of Chapter 61 in the Magna Carta, the Provisions initiated a council of fifteen nobles who would have "executive authority." The selection process for this council was intended to reflect an equally divided control of power

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[50] These men were the earls of Leicester, Gloucester, and Norfolk, as well as Peter of Savoy, John FitzGeoffrey, Hugh Bigod and Peter de Monfort (Prestwich, M., ibid. (pg. 102)

[51] Paris, M. (1852). English History; From the year 1235 to 1273. New York, NY, AMS Press. (iii, pg. 285)
Please note that this oversimplification of these formative years of Henry's rule were necessary for this work, as the document resulting from this discord was of the most significance to my topic of choice. This was not done in any way to diminish the significance of the barons' respective objections to Henry's government, which in themselves reflect the development of the England's political and social identity in the 13th century.

[52] The 'Provisions of Oxford' is put in quotations here because no singular drafted document emerged from this meeting of the barons with the King. Many negotiations in June of 1258 and the coming months resulted in a series of oaths that were to be sworn by people of various governmental positions, including an oath for the King, and another to be sworn by all English people. The Provisions however never took the form of a full, concrete charter like the Magna Carta. (Jacob, E. F. (1974). Studies in the Period of Baronial Refrm and Rebellion, 1258-1267. New York, NY, Octagon Books.)

[53] Prestwich, M., ibid. (pg. 102)

[54] Prestwich, M., ibid. (pg. 105)

between Henry and his nobles, as they were to be a chosen by a council of twenty-four men, twelve of whom were elected by the barons and twelve by the King. The council, referred to as Parliament, was to meet three times a year and would have to engage in negotiations with baronial representatives as they saw fit. [55]

The Provisions appear to have formed a system of checks and balances in which neither King nor barons would hold absolute authority, but, in effect, Henry had been completely subordinated. The 'compromise' soon led to an extreme power struggle, and, eventually, to a bloody civil war. Medieval historian, R.F. Treharne, summarized the clearly unsustainable situation:

> *Nothing could be done in affairs of state with the Council, and in all this its word was final; it controlled all officials and persons; its authority knew no limits save the terms of the Councillors' oath and the implicit responsibility to the "community" of tenants-in-chief; they fixed its size and chose its membership so that the King could not change it without their consent; they prescribed the terms of its oath and made it the supreme governing body of the realm and the master of the King himself; they gave it corporate as well as individual responsibility, ordering decision by majority and empowering the Council to fill any vacancies occurring in its own ranks; and finally, by implication, they made the Council the agent of the "community", responsible to and expressing the will of the whole body of tenants-in-chief.*[56]

The extreme situation constructed by this advancement was wrought with immediate foreboding that left both sides of the debate questioning the lasting power of their ideologies. Through the barons' attempt at incontestable political involvement, which expanded the power to protect the Crown to lower echelons of the feudal hierarchy, the barons had forced Henry III to consider how he would exert himself in his newly restricted role. In the long-term, the legitimization of the barons' representation of

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[55] Prestwich, M., ibid. (pg. 104)
[56] Treharne, R. F. (1971). The Baronial Plan of Reform, 1258-1263. Manchester, England, University of Manchester Press. (pg. 83)

feudal ideals would compel subsequent generations of kings to ask themselves same question. As we move forward to look at the evolving law of treason in England, we will see how the legislation's construction, expressed through a punishment evolving into public ritual, would soon communicate a compromise between both sides of this contention.

Chapter 2 – The Evolution of Treason Law

Just as the struggle over the appropriate scope of the English King's authority ensued in the generations preceding Edward I (b. 1239, r. 1272-1307), the kingdom's legal history took a similar path. The law of England was that of established precedent, a highly evolved form of common law that had, only on rare occasions, been formally written down and legitimized by the King in any lasting manner. Thus, common law held the cultural weight of constitution, but lacked lawful enforceability. Breach of 'the custom of the land' was frequently cited as a cause for corporal or capital punishment,[1] but for more serious crimes, common law provided limited precedent around which to structure new convictions.

Treatises on the legal customs of England that emerged in the preceding centuries point to the reason why hanging, drawing and quartering could have occurred as a punitive measure before being explicitly referenced as an appropriate punishment for treason in a legal document. Examination of these texts will help make better sense of the shift that occurred during the time of Edward I, and on. A treason conviction, the gravest of crimes, fundamentally differed from one of felony only in *who* the crime was perpetrated against. Given that this victim was a king, or sometimes the Crown he represented, however, the severity of the statute's associated application[2] and its according punishment were magnified immensely.

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[1] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (i, pg 184)

[2] Treason, unlike felony, was 'unclergyable,' meaning that no one was exempt from a full penalty for the crime. (Pollock, S. F. and F. W. Maitland, ibid. ii, pg. 501)

Legal History of Treason Leading to the Time of Edward I

The scope of treason was addressed almost immediately in the newly established Anglo-Norman England (c. 1066). *Leges Henrici Primi*, the primary treatise on the law of Henry I (r. 1100-35), fully six generations of kings before Edward I, reads:

> *If anyone kills his lord, then if in his guilt he is seized, he shall in no manner redeem himself but shall be condemned to scalping or disembowelling or to human punishment which in the end is so harsh that while enduring the dreadful agonies of his tortures and the miseries of his vile manner of death he may appear to have yielded up his wretched life before in fact he has won an end to his suffering, and so that he may declare, if it were possible, that he had found more mercy in hell than had been shown to him on earth.*[3]

The laws of Henry I became fundamentally incorporated in the legal and constitutional developments of England in generations to come, so what is most noteworthy for this enquiry about the *Leges* is the precedent it set that when one's lord was betrayed, no punishment could be considered brutal enough. Henry II's (r. 1154-89) chief justiciar Glanvill, two generations later, wrote of those convicted of lese-majesty, or *lesa maiestas*, a term for treason borrowed from the Ancient Roman Republic,[4] that not only should they be "punished by death or cutting off of limbs"[5] but "in addition, all his goods and chattels shall be confiscated and his heirs disinherited forever."[6] Glanvill did not give a thorough description of when exactly a crime should be labelled as lese-majesty, but rather applied it to any act that could be

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[3] Downer, L. J. (1972). <u>Leges Henrici Primi (The Laws of Henry the First)</u>. Oxford, Great Britain, Oxford University Press. (75: I)

[4] Note: The term "lese-majesty" most literally translates to a "violation of the sovereign." (Bellamy, J. G. (1970). <u>The Law of Treason in the Later Middle Ages</u>. Cambridge, Cambridge University Press, pg. 4)

[5] Glanvill, R. (1993). <u>The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill</u>. Oxford, Clarendon Press. (pg. 3)

[6] Glanvill, ibid. (pg. 173)

considered a crime on a private scale, and had been perpetrated against the King.[7]

While the punishment for these crimes enacted in the private sphere was loosely

defined in his text under discussions of various types of felonies, the specific form

retribution would take for lese-majesty was absent, similarly to *Leges Henrici Primi*.

Jurist Henry de Bracton finally supplied the reader with a description of the

crime as an entity in itself, clearly using Glanvill's earlier compilation as a base:[8]

> *The crime of lese-majesty takes many forms, one of which is where one*
> *rashly compasses the king's death, or does something or arranges for*
> *something to be done to the betrayal of the lord king or of his army, or*
> *gives aid and counsel or assent to those making such arrangement,*
> *even though what he has in mind is not carried into effect.[9]*

Again, we see an establishment of the difference between a felony, for which only

committing the crime leads to the perpetrator's execution, and treason, in that

intention alone is enough to merit the full force of royal wrath.[10] He prefaced this

description with a more specific intimation than we have seen thus far of what that

wrath might entail, writing:

> *[Since of those crimes that are called] capital, which lead to corporal*
> *punishment, sometimes death, sometimes dismemberment, according*
> *as they are major or minor, some are public and some private, and of*
> *the public crimes some carry a heavier punishment because of the*
> *person against whom they are directed, as the crime of lese-majesty,*
> *as where something is done against the person of the king himself, a*

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[7] For example, when discussing the crime of falsifying a charter, he continues with: "If it is a royal charter, then the convicted person shall be condemned as for the crime of lese-majesty. But if it is a private charter, then the convicted person is to be more leniently dealt with as in other minor crimes of falsifying, where punishment of the guilty involved only loss of limbs to an extent dependent on the royal will and clemency." (Glanvill, ibid. pg. 177)

[8] Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press. (pgs. 1-14)

[9] Bracton, H. d. (1968). De Legibus et Consuetudinibus Angliæ (On the Laws and Customs of England). Cambridge, Massachusetts, Belknap Press of Harvard University Press. (ii, pg. 334)

[10] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (ii, pg. 503)

crime which surpasses all others with respect to the punishment inflicted [...]

If he is convicted, he shall suffer the extreme penalty with torture, the loss of all his goods, and the perpetual disherison of his heirs, who are admitted neither to their paternal nor their maternal inheritance. For this crime is so serious that his heirs are hardly permitted their lives.[11]

Bracton's extensive compilation of English common law was completed a few decades before Edward I came to the throne, and therefore provides those examining its evolution in this historical period with a clear perspective on the kingdom's statutes at the time of his accession. What is apparent from this text specifically is the sustained hesitancy in the formation of comprehensive treason law at this time, specifically when contrasted with the clarity in addressing other types of felonies.

No crime other than treason elicits a continuously reaffirmed ambiguity throughout England's history between the Norman invasion and the rule of Edward I. This evasion is twofold – both in what constitutes a legitimate condemnation of treason, and in the specific nature of the resulting penalty. The evolution of both of these ambiguities arose from opposing forces; "the young system of English common law,"[12] formed on a case-by-case basis, was compiled by the King's justices, typically clerics, who then bridged gaps in the accruement of precedent with canon, or Roman law, which supported absolute control by a monarch.[13] This is apparent in the treatises' address of treason in the authors' use of the Roman 'lese-majesty;' Glanvill's and Bracton's exaggerated claim that the heirs of traitors heirs would be

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[11] Bracton, ibid. (ii, pg. 334-335)
[12] Bellamy, J.G., ibid. (pg. 7)
[13] Bellamy, J. G., ibid. (pgs. 3-14), Pollock, S. F. and F. W. Maitland, ibid. (pgs. 111-118)

"disinherited forever" and "hardly permitted their lives;"[14] their inclusion of "compassing" the crime as equivalent to perpetrating it; as well as the general use of the Roman notion that that an attack against the King was the most heinous of crimes, cause for the "devising of particularly gruesome modes of execution."[15] However, the ideological struggle addressed in the first chapter of this work affected the enactment of treason law that could allow for absolutism on the part of the King. As Bellamy rightfully remarked, "the full Roman law doctrine of lese-majesty was never accepted in England. Magna Carta and later on baronial cohesion effectively prevented the English kings becoming theocratic monarchs, although they made several attempts in that direction."[16]

Contradictory Theses of Government Before the Time of Edward I

The generations of sovereigns preceding Edward I maintained – or were permitted – this ambiguity in treason law as a tangible consequence of the tension manifesting itself in the feudal King. As observed in the first chapter, the generations leading up to Edward I showed a willingness to engage in rebellion when they believed their fundamental feudal rights were being infringed upon, but the English desire for a strong, authoritative king remained constant. By the time of Edward I, however, the competing ideologies of government and law had reached a head;

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[14] This exaggeration seems to have only ever been applied to innocent heirs in Davydd's case, who were stripped of their inheritances and subjected to life-long imprisonment. This unusual punishment, however, was due to Edward's concern that the Welsh people would rally around another potential sovereign, rather than his adherence to Roman principles. (Davies, R. R. (1987). Conquest, Coexistence, and Change; Wales, 1063-1415. New York, US, Oxford University Press., pg. 361)

[15] Bellamy, J. G., ibid. (pg. 9)

[16] Bellamy, J. G., ibid. (pg. 11)

previous kings had allowed the proliferation of Roman ideology among their justices hoping to validate their grasps at absolute authority, but the strong Germanic base of common law, referenced as the "ancient custom" of the reigns of the last Anglo-Saxon King, Edward the Confessor (r. 1042-66), and Henry I (r. 1100-35), a king who drew heavily on the traditions of his Anglo-Saxon predecessors,[17] incurred an expectation that a king should rule under the shared law of his people.[18] While this conflation is a common feature of English law, the relative rarity of treason cases, paired with the severity of its punishment, made this facet of their judicial system significantly more contentious.

Before considering the emerging definition of treason in the time of Edward I or the implications of the hanging, drawing and quartering ritual itself, we must first consider how the opposing ideologies we have discussed contributed to the perception of treason law in England before his rule. There is no doubt that the aforementioned descriptions of the crime of lese-majesty protect the King's person, but the question remains: did they only protect him insofar as his capacity to rule? Simply put, when Edward I ascended the throne, was treason law protecting the *King* himself, or the entity of the *Crown*? Deciphering this question will elucidate who the people expected to be responsible for punishing perpetrators of the crime, and how severely, as this would have altered public opinion of the new ritual.

The answer to the question is complex because both responses can be

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[17] As addressed in Chapter 1, King John's (r. 1199-1216) barons modernized the customs of these honoured kings and used them as the basis of their negotiations leading up to the Magna Carta. The Magna Carta, including these modified customs, was then extended to all future provisions and charters produced from negotiations between the King and his barons in the coming centuries. (Holt, J. C. (1992). <u>Magna Carta</u>. Cambridge, England, Cambridge University Press., pg. 20)

[18] Bellamy, J. G., ibid. (pg. 9)

simultaneously true, especially if we consider both the perceptions of the King and of his people as genuine representations of the situation. If we accept that the feudal King was caught in a constant struggle to reinforce the theocratic origin of his power without damaging the tenuous relationship he had to his people through their feudal social contract, then the complications of treason law can be considered as an ideal representation of this contest. At the heart of medieval England's treason law before the time of Edward I, the King's material body was protected as it represented the position of authority he held. However, for the King, this reinforced that his people had a vested interest in his personal well being, thus legitimizing him personally as the current seat of this significant authority and commanding control of the sentencing of traitors. Through this analysis, it is easy to see why treason, from which the punishment extended, became such a contentious issue leading up to the Statute of Treasons of 1352, which will be later addressed; an apprehensive king such as Edward II (b. 1284, r. 1307-27) would feel that he should control this ritual of execution to reinforce his personal significance in his position, while the people felt that magnates, representatives of their interests, should control the ritual, as it was their shared responsibility to protect the integrity of the Crown.

An unsuccessful use of the execution ritual was observed even before the time of Edward I, during the reign of his father, Henry III, and will serve to contrast with its palpable later acceptance. The rise of the hanging, drawing and quartering as a legitimate sentence is unequivocally attributed to Edward I,[19] but the execution of a

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[19] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. Royer, K. (2003). "The Body in Parts: Reading the Execution Ritual in Late Medieval England." Historical Reflections/Réflexions historiques **29**: 319-339. Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages.

traitor ordered in the generation before by Henry would seem to contradict this. In 1242, before the Provisions of Oxford tangibly destabilised the King's ability to outwardly manifest his theocratic authority, a knight named William Marsh,[20] accused of piracy, killing the King's messenger, and commissioning a failed assassination attempt on Henry III, was executed in a manner with striking similarities to the accounts presented in the Introduction of this work. The chronicler Matthew Paris wrote of the event:

> *[...] by the king's order, the said William, [...] was tried and condemned, and by the king's order, was sentenced to an ignominious death. He was, therefore, first dragged from Westminster to the Tower of London, and from thence to that instrument of punishment called a gibbet,[21] suspended on which he breathed forth his miserable life. After he had grown stiff in death, his body was let down and disembowelled; his entrails were immediately burnt on the spot, and his wretched body divided into four parts, which were sent to the four principal cities of the kingdom, that the sight of them might strike terror into all beholders.[22]*

It is at this point that we must remind ourselves that the chronicles at hand are not unwavering fact themselves, but rather representations of various perceptions of fact at different points of time in England. Unlike the executions of Davydd and Wallace, mention of which can be found in any contemporary chronicle, the public display of Marsh's death in London, one of England's most populous cities, is only

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Cambridge, Cambridge University Press. Finucane, R. C. (1981). <u>Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages</u>. New York, St. Martin's Press.

[20] Please note that William Marsh is also commonly referred to in other historical works as William de Marisco/de Mariscis. I chose to use the name given by the single source of his execution.

[21] While the term "gibbet" usually refers to a structure on which men would be hung for their bodies to rot in public display, my sense through reading Matthew Paris' records is that his use of term in this case is simply a synonym for "raised scaffold," designed to make the execution more easily viewable for spectators.

[22] Paris, M. (1852). <u>English History; From the year 1235 to 1273</u>. New York, NY, AMS Press. (i, pg 408-409)

recorded in one chronicle. The question of why the event, shockingly novel as it was, was only mentioned by Paris leads to a number of hypotheses. The potential of Matthew Paris being an illegitimate witness may be the easiest conclusion to come to, but given his general acceptance as a historical source, this seems extremely unlikely.[23] Paris met Henry III, but would in no way be considered a court chronicler, thus we know that he was not biased by direct influence in court affairs.[24] Those who cite him have occasionally accused him of being "gossipy and prejudiced,"[25] so at most, we can conclude that he represents an exaggerated version of the truth as considered by an educated subsection of the English upper classes. It must also be noted that this period of time generally had less chroniclers, at least those producing surviving works, than the later 13th and 14th centuries. Therefore, perhaps what is most interesting is that the transgressions that led to Marsh's conviction appear in numerous governmental texts,[26] but while Matthew Paris repeatedly states that the execution was done "at the king's orders," it appears nowhere in the same texts, save for mention of the criminal being relinquished to the constable of the Tower of London right before the execution occurred, with information on a trial or his conviction conspicuously absent.[27]

Matthew Paris's account paints a picture of a king very different from what we see in Edward I. Unlike his son, Henry III made no pretence of calling together a

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[23] Paris is referenced by nearly all English medieval historians, such as Prestwich, Bellamy, Stubbs and Ullman.
[24] Prestwich, M. (2005). Plantagenet England; 1225-1360. Oxford, England, Clarendon Press. (pg. 53)
[25] Prestwich, M., ibid. (pg. 81)
[26] Examples can be found in Powicke, F. M. (1941). "The Murder of Henry Clement and the Pirates of Lundy Island." History **XXV**(100): 285-310.
[27] (1906). Calendar of the Patent Rolls; Henry III, AD 1232-1247. London, Mackie and Co. Ld. (pg. 300)

council or parliament to convict his perceived threat,[28] and requested no public legitimization for his choice. The probability that the people of England, especially those more educated, with a greater understanding of common law, perceived this to be a serious problem in his rule is extremely high, as this excessive control over judicial power actually reflected quite negatively on Henry III. In a time leading up to such intense baronial opposition as Henry faced by those led by Simon de Montfort, 6th Earl of Leicester, it seems that that chronicler felt responsible to portray the King as the people saw him; as a man grasping, obviously and illegitimately, at absolute authority.

Paris finished his description by stating that Marsh's body parts were distributed across the land in order to "strike terror into all beholders." This was also explicitly connected with the repeated assertion that all features of the execution occurred "*by* the King's pleasure." Whether or not the leaders of the Second Barons' War (c. 1264-67) later cited this as another expression of Henry's oppressive regime, it is clear that the image of him as an singular cultivator of that oppression had been initiated at least twenty years prior. I believe the most appropriate reason that this account does not appear in any other chronicle is that most historians of the day would have been extremely reticent to paint Henry in such a negative light. Matthew Paris's descriptions of Henry III seem to suggest that he did not share this hesitation.

There were a number of differences in the physical acts inflicted on William Marsh by Henry III and Davydd by Edward I that could be dissected ad nauseam, but the truth is that most readers would still consider the executions of these men, a

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[28] Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press. (pg. 26)

generation apart, to be incredibly similar. However, so as not to ignore what is clearly the most significant of these differences in execution accounts, it must be noted that should we take our one account as fact, Marsh was actually killed by simple hanging. This will be an important fact to keep in mind as we begin to look at differences in the execution events themselves, as the chronicler's tone is just as significant as frequency in which they appears in their works, indicating incredibly different intentions on the part of both of these Kings, and therefore the reception of the events by the English people. Given all of this, the only clear cause I can determine that indicates Edward I should have been labelled as the originator of this specific form retribution given Marsh's similar execution during the reign of his father, is the stark differences in their literary representations and the chronological development of common law that accompanied this behaviour, which changed public reception of nearly identical events.

Edward I and the "New Treason"

The struggle of *King* vs. *Crown* therefore came to a head in the development of the crime of treason, and consequently, its punishment became a locus of this conflation. In the examples previously mentioned, it became apparent that Henry III attempted to use hanging, drawing and quartering solely as a means to incite public fear of his capacity as an absolute power. While that this strategy may have succeeded in the short term, the execution of William Marsh has been nearly totally

disregarded historically[29] because a king cannot establish pure theocratic power through fear, at least not through the device of execution. Fear is a powerful emotion, but through the development of this specific portion of history, we see that it was not powerful enough to suppress the entitlement the English people knew they possessed to their customary rights within the system, given their subsequent rebellion leading to the Provisions of Oxford. In considering the history as it converged during the time of Edward I, we can see how he understood this fact, used it to his advantage, manipulated an execution practice that was by no means original, and transformed it into a ritual that could serve as a communicative tool of shared feudal principles between a monarch and his people for as long as feudalism remained in England.

By the time Edward I came to power, he had been personally involved in more intense rebellion than any other Plantagenet prince before his accession. Consequently, through his exposure to the events preceding the Provisions of Oxford and later the Second Barons' War, he had been forced to face the hostility of nobility over the limits his father, Henry III, had directly imposed on their feudal rights.

Prestwich describes Henry III's regime as "highly unpopular" and explains the various political clashes that Edward I experienced with him.[30] While the details of these clashes are largely unimportant to the issue addressed for this thesis, they pertain mostly to Henry III's severe attempts to expand his authority in the increasingly dependent Wales and in England, and the series of difficult positions he placed Edward in as an extension of his own will, while granting him very little of his

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[29] Aside from Powicke, who wrote an entire article on William Marsh's involvement in the murder of the King's messenger (Henry Clement), only two of the authors used as secondary sources used for this work even make mention of him: Royer and Bellamy.
[30] Prestwich, M. (1988). Edward I. California, US, University of California Press. (pg. 21)

own authority. While Prestwich warns the reader not to overestimate the discord between father and son, it is clear that once the rebellion succeeded in establishing the Provisions of Oxford, Edward aligned himself with the barons who had actively diminished the overreaching authority of his father. In the short period of time following the establishment of both the Provisions of Oxford (c. 1258) and Westminster (c. 1259), before Henry III obtained a papal bull to have them overthrown in 1263, "attention had turned to the question of maladministration in the counties [and] a full-scale process of inquiry was begun."[31] At this point, Edward I was aligned with the reformers, which seems only to have been allowed because Henry III had been obliged to accept their demands, thereby publicly legitimizing their priorities. Once the papal bull negated the King's submission, Edward was forced to accept that the sole source of his power was his future succession to the throne, and he led the royalist army against those he had once been aligned with in the Second Barons' War.

The baronial opposition lost almost all hope of regaining the control they had once held over Henry III during the implementation of the Provisions of Oxford and Westminster after the loss of their leader, Simon de Montfort in 1265. The Statute of Marlborough was established in 1267 as an attempt to pacify the disenfranchised nobles and their defensive king. While the Statutes initiated a period of peace in England, it is evident from Edward's behaviour that he was dissatisfied with the conclusions that had been reached. Frustrated with his lack of power and the politics

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[31] Prestwich, M., ibid. (pg. 29)

of his father, Edward, still an "irresponsible, arrogant and headstrong boy,"[32] spent the last years of Henry III's rule attempting to establish himself away from his perceived subordination in England. From 1268 to Henry's death in 1272, Edward travelled to Jerusalem for the Ninth Crusade (c. 1271-1272). After hearing of his father's death, Edward made his way home to claim the throne, and fundamentally reform England's politics as he had attempted nearly a decade ago.[33]

The coronation oath required of new English kings had been standardized by the time Edward I came to power, and it involved three promises, summarized by Bracton in the earlier generation. The first promise, reminiscent of the first Magna Carta, was "that true peace shall be maintained for the church of God and all Christian people." The second vow was that the King would "forbid rapacity to his subjects of all degrees." The usual oath was then finished by the assurance that that the King would also cause all judgements to be given with equity and mercy […] in order that by his justice all men may enjoy unbroken peace."[34] While Edward II, Edward I's son, is largely credited with fundamentally altering this standard oath to add a fourth clause,[35] H.G. Richardson makes an extremely compelling argument in his article, *The English Coronation Oath*, that it was in fact Edward I who originally made this amendment to the standard oath of English Kings.[36] Perhaps Edward II

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[32] Treharne, R. F. (1932). <u>The Baronial Plan of Reform, 1258-63</u>. Manchester, UK, Manchester University Press. (pg. 163)
[33] Prestwich, M., ibid. (ch. 2-3)
[34] Bracton, H. d. (1968). <u>De Legibus et Consuetudinibus Angliæ (On the Laws and Customs of England)</u>. Cambridge, Massachusetts, Belknap Press of Harvard University Press. (ii, pg. 304)
[35] Prestwich, M. (2005). <u>Plantagenet England; 1225-1360</u>. Oxford, England, Clarendon Press. (pg. 29)
[36] Prestwich corroborates this argument in his biography of Edward I. (Prestwich, M., ibid. pgs. 90-91)

was given the credit simply because there are significantly more detailed records of his coronation than that of his father, but letters of correspondence between Edward I and other sovereigns and papal leaders display that he both made the promise and aligned himself with it throughout his regime.[37]

The addition by Edward I can be summarized as a promise to uphold the liberty and dignity of the Crown, in which he, in effect, publicly submitted himself to the feudal order to a hitherto unseen extent. The amendment is the King's acknowledgement that the position of Crown has greater significance than he, a man who should foremost to swear to defend it.

Edward I began his regime unlike any past king, certainly behaving as though he had this promise in mind. He immediately initiated a large-scale and exceedingly detailed inquiry into the state of its judicial proceedings in the realm in an attempt to snuff out abuses that had been permitted and standardized through the reign of his father. While the scale of the inquiries seemed drastic, Edward actually used nearly identical methods and questions that the baronial reformers had used against Henry III during their implementation of the Provisions of Oxford. Throughout the land, Edward replaced vast amounts of sheriffs and bailiffs, and instituted a new oath for their positions, first to uphold the rights of the Crown, and secondly, to "treat people loyally," regardless of their class or wealth.[38]

I do not want to over-exaggerate Edward's commitment to anything akin to democracy. It is clear that Edward had an investment in ensuring the positions of trustworthy bailiffs and sheriffs because they were the means through which he

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[37] Richardson, H. G. (Jan 1949). "The English Coronation Oath." Speculum **24**(1): 44-75.
[38] Prestwich, M., ibid. (pg. 92-93)

extracted debt owed to the Crown. It also took him a full three years after his

succession to assemble a parliament.[39] However, the lack of internal rebellion – that

is to say, excluding the constant push and pull with Scotland and Wales – during

these years and throughout his rule show that there was a general sense of satisfaction

among the English people regarding both his intentions and his actions.

Coming back to treason law, the effect that his regime had on the centuries of

ambiguous precedent before it is tangible, and now, understanding his style of

governance, much easier to recognize. Two treatises akin to *Leges Henrici Primi* and

the compilations of Glanvill and Bracton emerged during the time of Edward I, both

of undetermined authorship but held in equal esteem. The first, *Fleta*, actually

contains no original material compared to the previously discussed treatises other

than some information regarding the organization of the royal household.[40] Thus, it

offered no greater clarity into the cause for an accusation of lese-majesty or its

punishment than did Bracton's work.[41]

The second, *Britton*, was written in a very different tone than *Fleta*. Simeon

Baldwin, a former professor of law at Yale University, composed an introduction to

the treatise in which he provides evidence that Edward I was displeased with the

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[39] It should be noted that Edward spent nearly two full years returning home from crusade after the death of his father, and was king in name but had not yet been crowned. He therefore would not have had much personal involvement in daily affairs in England until 1274. (Prestwich, M., ibid. pg. 89)

[40] Baldwin, S. E. (1901). Britton; Introduction. Washington, DC, John Byrne & Co.

[41] It reads: "Should a man rashly attempt to devise the king's death or procure or incite or give aid or assent to the king's betrayal or the betrayal of the king's army […] and if he is found guilty he shall suffer the extreme penalty, with an intensification of bodily pain, the loss of all his goods and the perpetual disherison of heirs, and hardly indeed shall his heirs be permitted to live." (Richardson, H. G. and G. O. Sayles (1955). Fleta. London, England, Bernard Quaritch., pg. 56) This paragraph echoes the ambiguous punishment of "extreme penalty, with an intensification of bodily pain" as seen in Bracton, and the hyperbolic threat to heirs of the traitor seen in Glanvill. Again, the door was left open to any punishment invented by the King, or the magnates on his behalf.

disconnect between his people and the established common law. Given that all of these aforementioned texts, including *Fleta*, were written in Latin, very few people would have been able to read the texts in England, if they were fortunate enough to even have access to them. Other than the clergy, jurists, and lawyers, those who were literate would have been far more likely to be so in Old French, which was passed down from their Norman ancestors and was spoken in court.[42]

Despite debate over the book's authorship, every viable suggestion is that of a man who would have been fairly close to the King. More importantly, as Baldwin points out, the treatise bears the stamp of royal approval. He claims no doubt that *Britton* was "prepared with the special view of familiarizing the people with the idea that the administration of justice belonged only to the crown and to those whom the crown had committed it [… thereby] curtail[ing] […] the jurisdiction of the local courts."[43]

Suffice it to say, *Britton* was not compiled like the other treatises as a means to assemble precedent, thereby compelling the authors to fill its gaps with Roman law, but was designed with the purpose of affecting it. Here, we see an entirely different and detailed definition of treason. It reads:

> *Treason consists of any mischief, which a man knowingly does, or procures to be done, to one whom he pretends to be a friend. And treasons may be either great or little,[44] of which some require judgment of death, some loss of limb, pillory, or imprisonment, and others lighter punishment, according to the nature of the case.*
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> *Great or high treason is to compass our death or to disinherit us of our kingdom, or to falsify our seal, or to counterfeit our coin, or to clip*

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[42] Baldwin, S. E. (1901). <u>Britton; Introduction</u>. Washington, DC, John Byrne & Co. (pg. viii)
[43] Baldwin, ibid. (pg. xi)
[44] The distinction between "great or little" treason is equivalent to that of "high or petty" treason as used in this thesis.

it. A person may likewise commit great treason against others in several ways, as by procuring the death of anyone who trusts him; as for instance those who poison their lords or others, and those who lead persons into such perils, that they lose life and member or chattels.

The judgment in high treason is to be drawn and to suffer death for the felony. The same judgement is incurred by those, who in appeals of felony are attainted of having counterfeited or otherwise falsified the seal of their lord, of those whose dependence or homage they are, or of adultery with the wives of their lords, or of violation of the daughters of their lords or the nurses of their children. And if a woman be attainted of any treason, let her be burnt.[45]

If *Britton* was truly representative of Edward I's intentions regarding the propagation of treason law and its specific retribution as Baldwin suggested, and as use of the word "us" in the work implies, a number of conclusions can be drawn about the King that would differentiate him from his predecessors. Firstly, Edward I made a significant leap through his validation of "petty" or "little" treason, legitimizing the application of the statute of treason down throughout the socio-political pyramid to every man or woman who defies those who they are either dependent on, or have paid homage to, in a way that he would constitute as treason were it done to him as King.[46] This extended treason as a crime defending both the entire feudal hierarchy, and the paternal, or autocratic hierarchy, that is implied in the word "dependence." In the latter we see where Edward's definition of treason may have been overextended, as his successors would soon be forced to reconcile.

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[45] Nichols, F. M. (1901). Britton; An English Translation and Notes. Washington DC, John Byrne & Co. (pg. 34)

[46] Evidence points to the fact petty treason convictions were already occurring in local courts, (Post, J. B. (1983). Local Jurisdictions and Judgment of Death in Later Medieval England. Criminal Justice History. Westport, CT, Meckler Publishing. **IV:** 1-21., Summerson, H. (1997). Attitudes to Capital Punishment in England, 1200-1350. Thirteenth century England VII: Proceedings of the Durham conference 1997, Woodbridge: Boydell Press.) but *Britton* implies that this was now a crime in royal courts as well.

Secondly, it should be noted that an echo of Roman law was still apparent in *Britton* in the inclusion of "compassing" a death as meriting a treason conviction. However, this inclusion seems to have been representative of the common law perception of treason at this point, as no other dramatizations of precedent with supplementation of canon law are apparent, at least as pertaining to treason law.

Finally, Edward had at last allowed specifics about the punitive measures of breaching the law to be written down and proliferated. *Britton*'s wording explicitly states that not all treason would exact the harshest extent of punishment, which, based on the history of his rule, is clearly the full gamut of hanging, drawing, disembowelling, burning and quartering. Furthermore, our evidence from this period proved that this full ritual was enacted on only the 'worst' traitors, so to speak: Davydd and William Wallace. Thus, severity was contrasted with well-defined leniency.

In Edward's attempt to codify treason law and its associated retributive penalty, we observe a genuine attempt at clarity. Even though future events may indicate also that this some of these definitions for treason law overreached themselves, allowing for abuse by a less principled ruler, Edward I respected his people enough to extend the statute downwards to protect the hierarchy that English society was built on, thereby recognizing the source of his own power.

Legitimizing Spectacular Justice; Personal vs. Political

Despite the clarifications made to treason law during the time of Edward I and his apparent commitment to preserving the rights of the Crown, the ambiguity

remains over whether treason law was truly perceived as protecting the King or the Crown. The answer to this question is not static, but rather a reflection on the subjective interpretations of the King and his subjects on the fluctuating law, and the temporal willingness of the King to respect it.

While recording subjectivity – other than the author's perhaps – was clearly not a desired trait for a chronicler at the time, it is a less difficult task to consider that of the King given the attention paid to royal affairs and the manner in which they are discussed. The account of the execution of William Marsh shows that Henry III treated the ritual as his personal form of retribution, and this was reflected in the negative tone Paris used to record the event, and in the English people's subsequent disinterest in the event. The 1238 execution of the man William Marsh allegedly hired to assassinate Henry III, only a few years before his own execution, is also retold in a similar tone: "**the king ordered him**, as guilty of an attempt to murder the king's majesty, to be torn limb from limb by horses, at Coventry, **a terrible example**, and lamentable sight to all who dared to plot such crimes."[47] Thus we can conclude that even before Henry III invented the hanging, drawing and quartering ritual to be enacted on William Marsh, he had already been considered as a king who did not hesitate to use violence creatively and without approval from his magnates.

However, even before the time of Henry III, it is clear that Edward I came from a long line of kings who used retributive violence freely in ways that usually went unchecked. Through even a superficial examination of the reigns of his forbears, Edward I emerges as a ruler of extremely limited personal use of violence – or the threat of it – specifically when contrasted to his Anglo-Norman and Angevin

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[47] Paris, M., ibid. pg. 139

ancestors. In 1125, Henry I, infamous for being "an implacable enemy to the disloyal, scarcely ever pardoning those who were proved guilty without punishment in body, in honour or in cash,"[48] "ordered that all the moneyers who were in England should be mutilated – i.e. that each should lose the right hand and be castrated, […] because the man who had a pound could not get a pennyworth at the market."[49] In 1165, King Henry II (r. 1154-89) ordered that the Welsh hostages he held, many of them children, "should be blinded and castrated" if they were males, and "have their noses and ears cut off" if they were female.[50] During English hostilities with the Welsh from 1211-12, King John ordered all of the royal hostages he held from them, many of whom were very young children, to be hanged. John, among other English kings before and after him, also frequently took the children of their own nobles hostage as collateral for certain promises. While these occurrences did not usually result in the deaths of the children, the threat of their demise was made very clear.[51]

This controlled use of violence by previous kings displayed their common belief that even though they may have had responsibilities to their kingdom, that corporal and capital punishment was within their absolute power to harness, to be delegated at their own discretion. This meant that much of the royal retributive practices were of interest to the common Englishmen only insofar as a story, as they

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[48] Bartlett, R. (2000). England Under the Norman and Angevin Kings; 1075-1225. Oxford, England, Clarendon Press. (pg. 48, as quoted from the chronicle *Orderic Vitalits* II. 2 (6, pg. 18)) For a more extensive list of the mutilations ordered by Henry I, see Hollister, C. W. (1978). "Royal Acts of Mutilation: The Case Against Henry I." Albion: A Quarterly Journal Concerned with British Studies **10**(4): 330-340.

[49] Whitelock, D., D. C. Douglas, et al. (1961). The Anglo-Saxon Chronicle. London, England, Eyre and Spottiswoode. (pg. 191)

[50] *Melrose Chronicle*, pg. 79; *Brut (RBH)*, pg. 147 as cited by Prestwich, M. (2005). Plantagenet England; 1225-1360. Oxford, England, Clarendon Press. (pg. 49)

[51] *Barnwell Chronicle*, pg. 207 as cited by Prestwich, M., ibid. (pg. 49)

were usually disassociated from royal affairs and therefore the intended meaning of their King behind this behaviour. While these acts of violence had deep personal meaning to the King, spectator experience of the justice behind these earlier executions could only have been purely performative, as the only significance a spectator could draw from the event was that their King had been personally offended. But a performance ungrounded in meaning is not an adequate condition for its retainment in a realm such as late medieval England, whose political structure, as we have seen, consistently demanded that its King protect the sanctity of the Crown above his own individual rights. Thus, the execution of William Marsh was not protested, but it was largely ignored in chronicles, and, most tellingly, throughout the rest of Henry III's rule – extending another thirty years – he did not make another attempt at the ritual. Given the multitude of traitors involved in the rebellions leading to the Provisions of Oxford and the Second Baron's War, which culminated in a royal victory, he certainly would have had no shortage of opportunities to do so. Under the reign of his son however, the emerging political and legal ideals that have just been addressed would converge opportunistically with the establishment of historical precedent, bringing an entirely new meaning to the ritual. Edward I capitalized on this convergence and was able to politicize, rather than personalize, this royal exercise of violence.

Allowing the judgement behind the conviction of traitors to be shared by the magnates, Edward followed his people's desire to have their king be limited judicially, as reflected in the country's constitutional development.[52] In doing so, he

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[52] Bellamy affirms this judicial process from Davydd's and Wallace's executions. While he contends that it was a "cleverly disguised" ploy of the King, this does not take away from the

was able to put the political power of sentencing into the hands of his people, while leaving the allocation of 'appropriate' punishment in his own hands. As the justice behind the punitive retribution of traitors was shared, Edward personally chose to have collection of familiar acts his subjects would finding meaning in inflicted on the convicted traitors, thereby compelling his audience to truly care about their executions. The public's investment therefore shifted from a fleeting one of pure fascination in the spectacle to – more significantly in terms of ritualization – an expression of their shared interest with the King in the implementation of justice that protected the sanctity of the entire realm.

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fact that it occurred, and that Edward, at the very least, respected the constitutional hierarchy established by his people. (Bellamy, J. G., ibid, pg. 26, 38)

Part 2

Ritual and Performance

Chapter 3 – Punishment and the Creation of Ritual

As observers of the pre-modern history, which involved a shift away from spectacular justice, our view of the late Middle Ages is biased by historians who have labelled this change as part of our "humanizing process." Foucault disagreed with the contention that this shift occurred as a result of our humanization,[1] but he was compelled to do so because it is undeniable that the reapportioning of grand, singular expressions of state violence into many smaller, uniform, applications of violence in the prison system offers us, as modern citizens, no opportunities to revel in the blood-soaked bodies of our criminals. Therefore our naturalization of the impression that the common response to spectacular justice in the Middle Ages was inherently one of enjoyment is based on the contrasts we draw between our repulsion with 'violent capital punishment' – if such distinctions between methods of execution exist – and the image medieval history provides us from centuries of such public executions depicted as popular attractions. Our repulsion, this consistent point of contrast, is assumed based on our lack of exposure to the ritual rather than our experience. This assumption is equivalent to our conjecture that past exposure to the ritual consistently resulted in a viewer's appreciation of it. Therefore, while we may consider what could have initiated this punishment in medieval England, we simultaneously take for granted that public executions were consistently enjoyed and approved by spectators. However, if we do not assume that public displays of violence were unquestionably appreciated during this time, our analysis of the initiation of this specific practice must change.

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[1] Foucault, M., ibid. (ch. 2)

The ritual's failure as enacted on William Marsh proves this assumption to be incorrect, and therefore that an appreciation for violence did not drive public interest in execution, otherwise this comparatively gruesomely novel execution would have been celebrated during the time of Henry III and quickly proliferated, which we know was not the case. In fact, a very interesting article by Henry Summerson uncovered a multitude of accounts from common executions in the 13th century, which serve to prove the extent to which the peasantry's appreciation for public executions cannot be assumed. His review of the general attitude towards capital punishment in England in the 13th century shows that a significant distancing had emerged between the population and the executions of the common condemned. Attendance at most local executions dwindled, and they were frequently carried out "well outside the towns and cities" so only those who sought them out would be forced to acknowledge them.[2] The role of executioner was one of the least coveted and respected jobs, often forced upon many men by order of their lords.[3] Due to this lack-lustre attitude towards capital punishment, the surprisingly common post-hanging revival of the condemned was frequently attributed to the executioner's intentional use of frayed rope or a diminutive waiting period during the unrefined method of slow strangulation.[4] The number of people who recovered after being hanged was high

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[2] Summerson, H. (1997). Attitudes to Capital Punishment in England, 1200-1350. Thirteenth century England VII: Proceedings of the Durham conference 1997, Woodbridge: Boydell Press (pg. 126)

[3] Summerson goes as far as to say that "the executioner's office was in itself clearly regarded as repulsive and demeaning. (Summerson, H., ibid, pg. 128)

[4] Summerson, H., ibid. (pg. 130). Finucane, R. C. (1981). Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages. New York, St. Martin's Press. (pg. 49)

enough that it became customary for a royal pardon to be granted to those who survived it, as it was considered a divine, "miraculous exoneration."[5]

Summerson hypothesized that lack of interest in common executions in 13th century England was due to the frequency and general misuse of capital punishment – specifically by certain local offices – which overwhelmed townspeople. This excessive use of capital punishment by local jurisdictions is corroborated by Pollock & Maitland, who, in summarizing justice in the King's court in the 13th century, wrote that though "the royal judges [did] not much like it, [local jurisdictions were] ridding England of more malefactors than the king's court [could] hang."[6] Thus a clear distinction emerged between royal and local judicial systems: as Summerson remarked, "there is no reason to suppose that the judicial system was regarded as an impersonal manifestation of royal authority. Its workings were wholeheartedly exploited by those who made or inspired malicious accusations or indictments."[7] The overuse of, and subsequent disinterest in, executions that Summerson demonstrated seems to be correlated with the clear disorganization of feuding local courts, which made it "[im]possible to get a detailed impression of the part then played by local and private jurisdictions in the trial and execution of felons."[8] Therefore, the issue was not

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[5] Hurnard, N. D. (1969). The King's Pardon For Homicide Before A.D. 1307. Oxford, UK, Oxford University Press. (pgs. 176, 247 – quotation from pg. 247)
[6] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (pg. 579)
[7] Summerson, H., ibid. (pg. 125)
[8] Post, J. B. (1983). Local Jurisdictions and Judgment of Death in Later Medieval England. Criminal Justice History. Westport, CT, Meckler Publishing. **IV:** 1-21

just the overall frequency of capital punishment use;[9] it was that various offices used it with ambiguous authority and intentions. The audience therefore correctly perceived that many executions were lacking in judicial basis, and at times worked to impede them. In the execution of William Marsh, this manifested only in the audience's disinterest in the event, however, on a more local scale, the commoners' disassociation from the meaning of the event sometimes even led to an active obstruction of justice.

Given the lack of spectators and willing participants at these executions, it is even more telling that the same period in history spurred an interest in an undoubtedly more gruesome practice – hanging, drawing, disembowelling and quartering – permutations of which became the standardized retributive ritual for treason for centuries. This begs the question of how public enjoyment of it arose. In considering this question, we would usually distinguish between two categories of public, or 'spectator' experience: those viewing the events at the scaffold, and then the greater contemporary English society. However, in this case, we must reassess our use of these categories. Due to the similarities in the accounts of different chronicles – variations are interpretative rather than factual – it can be assumed that the latter category had adequate knowledge of the events, and we have no evidence of the reactions of first-hand observers. Knowing this, as we are so historically removed from the difference in both categories of spectators, we can conflate them into a singular 'audience.'

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[9] It has been observed that conviction rates in this period were actually quite low given that "the penalty was of its nature irrevocable, and that it was carried out at once." (Summerson, H., ibid, pg. 126)

Popular support for the ritual itself from this expanded 'audience' during the time of Edward I was deeply correlated with his people's vested interest in treason law, as communicated through the body of the condemned and their reflected appreciation of it. Once the practice was accepted, however, this interest was concretized in their retainment of the ritual, as there are many reasons to believe that this specific manner of punitive retribution for traitors was supported by the people. Firstly, the referencing of an execution in any chronicle represented an interest in the event from the perspective of the class and geographical region in which the chronicler was writing. Therefore, the more chronicles in which an execution appears, the greater we can suppose public knowledge of that episode to have been, although we must also judge the audience's appreciation of it by considering the tone in which it is described.[10] To contrast the era of Edward I with his predecessor's, the execution of William Marsh appears in only Matthew Paris's chronicle, while the executions of Davydd of Wales in 1283 and William Wallace in 1305 appears in all the chronicles that span their respective dates of death. Secondly, the mimicry of the high treason execution ritual applied as a punitive measure in local manifestations of petty treason validated its use on a local scale.[11] Thirdly, we must consider that the

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[10] Disapproval, at the very least, is clear in the tone of most chroniclers, such as Matthew Paris in the previously mentioned discussion of William Marsh's execution and Simon de Montfort's dismemberment. (Paris, M. (1852). English History; From the year 1235 to 1273. New York, NY, AMS Press. i, pgs. 408-409 & iii, pg. 356) This fact makes a lack of written disapproval even more powerful.

[11] Petty, or "lesser" treason, as briefly addressed in the last chapter, generally included any crime that constituted high treason, but was directed instead towards one's immediate superior, both in the feudal hierarchy (ie. counterfeiting the seal of one's lord, committing adultery with his wife) and in domestic relationships (ie. servant killing master, wife killing husband). This definition held in common law until the Statutes of Treasons of 1352, which more clearly defined the boundaries of "lesser" (or petty) treason as a violation only of the latter – domestic hierarchies. (Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press., Appendix II, pgs 225-231)

occurrences of these executions in England's most populous cities suggests that the King who engineered them was hoping for validation from a large number of his people.[12] Their central setting in a large city is sharply contrasted with Summerson's description of local hangings occurring on the outskirts of small towns, where people could avoid them. Given that we know that considerable audiences would have therefore witnessed the executions of high traitors in this manner, their lack of recorded dissent and the recurrence of large cities being used for identical executions indicate the ritual's approval by many people. Finally, the stipulations of the carefully orchestrated Statutes of Treason passed in 1352,[13] soon to be addressed, indicates that a lengthy debate between the King and his people on the topic of treason, which emerged after multiple generations had experienced the ritual, led to its legitimization by its audience.

Considering that we now know that the common medieval Englishman did not attend executions purely for the pleasure of watching someone die, or to experience extended torture, the true question at hand is how Edward I uncovered a means to share his interest in exacting justice so successfully with his audience, allowing the ritual to proliferate during his reign. The answer to this question is rooted in our earlier exploration of the constitutional and legal developments in England, the association Edward's audience specifically had with the collection of violent acts in

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[12]Among the most prominent examples in this text, Marsh's execution was carried out in London, (Paris, M., ibid. i, pgs. 408-409) as were Davydd's and Wallace's (Maxwell, H. (1913). The Chronicle of Lanercost; 1272-1346. Glasgow, James Maclehouse and Sons, pg. 34, 175)
[13] Adams, G. B. and H. M. Stephens (1908). Select Documents of English Constitutional History. New York, New York, The Macmillan Company. (pg.121-122)

this ritual, and a greater understanding of how a performance can function efficaciously in society.

Considering Ritualization

While Foucault labelled spectacular justice as "the ceremony of punishment" that functioned as "an exercise of terror,"[14] Part 1 serves to prove that any drastic attempt at this type of governance was not sustained in 13th century England. The constant public reassertion of feudal ideology we observed indicates that the English desire for the King in the late Middle Ages existed only insofar as he was able to appropriately fill the role of the Crown; that is to say, the King had to display a primary interest in protecting the feudal hierarchy to be respected and supported by his people. Therefore, for the execution ritual to have been propagated as successfully as it was, the English people would have to have viewed it as a defence of public interest, rather than simply a defence of the King's body natural.

As we are considering the cause for the ritualization of hanging, drawing, disembowelling and quartering that emerged from individual occurrences of the event, Richard Schechner's framework may help us comprehend how and why such a process occurs. In his *Performance Theory*, Schechner drew cross-cultural and cross-periodic conclusions on how a collection of individual events can be established into a ritual, which is then capable of carrying the weight of its own meaning to those who experience it in the future.

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[14] Foucault, M. (1977). <u>Discipline & Punish; The Birth of the Prison</u>. New York, Pantheon Books. (pg. 49)

While Part 1 addressed factual evidence of government and judicial proceedings of the era to explain why the new execution ritual emerged from the highest level of authority, what follows is a theory of how English public perception of the spectacularization of justice could have supported its process of ritualization. Schechner's framework is particularly valuable, as it will allow us to consider this execution ritual for what it truly was: a joining of function and entertainment. By examining first the ritual and then its performative nature, we will elucidate how Edward I maximized the conflation of efficacy and theatre in order to best engage his people with this new form of capital punishment, and by extension, how he actively fostered their own personal investment in opposing high treason.

Actuals

To discuss the efficacy of a ritual, Schechner coined the term "actuals." "Efficacy" is the capacity of rituals to bring about a tangible change in society, instigating its immutable transition from one state to another (from disorder to order, for example, or from conflict to harmony). The "actuals" themselves are the moments within the event that initiate such a progression. Actuals are thus opposed to pure theatrical performance, which are theoretically wholly mimetic in nature, and are therefore simply *representative* of this transformation. In the legend Oedipus Rex for example, both Thebes and Oedipus are irrevocably changed through Oedipus's self-sacrifice, but in its theatrical representation spectators experience only the depiction of these changes rather than the "actualization" that would have been felt by the Thebans. It should be noted that this is only a *theoretically* pure performance, as

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Schechner believes that performance can never be completely separated from function – or efficacy – because a secondary, albeit less momentous, change occurs in its spectators simply from viewing this mimesis.[15] In a similar manner, any ritual has a mimetic element, which functions to express an attempted actual. At the core of a ritual, however, is efficacy. Therefore, I will address it first.

In Schechner's framework, all actuals share five basic qualities: "1) *process*, something happens *here and now*; 2) *consequential, irremediable* and *irrevocable* acts, exchanges, or situations; 3) *contest*, something is *at stake* for the performers and often for the spectators; 4) initiation, a *change in status* for participants; 5) space is used *concretely* and *organically*."[16] In an execution, the event, or actual, is the enactment of justice, whereby both convict and spectators are irrevocably altered through that enactment. This alteration, if completed successfully, restores the social order that has been disturbed by a malefactor, both in the offender's death and in the communal spectator experience of his condemnation. With this in mind, we must first and foremost prove that the potential for a true actual was present in this specific execution ritual, using Schechner's ordered qualifications. In doing so, we will see that this structure is potentially applicable to any execution.

The first, *process*, as Schechner writes, is truly "two processes unfold[ing] simultaneously."[17] The first process, the script (or score), is the exact series of steps needed for the ritual to be identified as such; it is the heart of the actual, what drives it. In addition to this process, there is a secondary associated process, also central but with distinct implications: the particular enactment of the script as it is performed by

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[15] Schechner, R. (2009). <u>Performance Theory</u>. New York, NY, Routledge Classics. (pg. 10)
[16] Schechner, R., ibid. (pg. 46)
[17] Schechner, R., ibid. (pg. 46)

those involved at a given moment in time. Unless all the steps of the script are correctly performed for the audience to recognize, usually in a specific order, the enactment fails. Thus although they are differentiated, they are also coordinated.

Describing the relationship between the score and its performance, the actor Ryszard Cieslak used the analogy of a candle, in which

> *the score is like the glass inside which a candle is burning. The glass is solid, it is there, you can depend on it. It contains and guides the flame. But it is not the flame. The flame is [the actor's] process each night. The flame is what illuminates the score, what the spectators see through the score.*[18]

In a medieval execution, the primary process, the score, was largely ingrained for any type of execution. This script entailed a criminal being brought to the scaffold, his final words spoken as the instruments of his demise were arranged, the initiation of a process inflicting various levels of pain, and the final culmination of these actions in his death. Any individual execution was structured around this process, and the script of a traitor's death specifically was distinct enough that "quite often the only indication for the historian that a man was found guilty of the lesser species of treason lies in the sentence of drawing and hanging or in the case of a woman, burning," as these cases were usually poorly documented.[19]

Even if completed successfully, however, all the elements of this script would still produce an execution with its own novelties and particularities, which were encompassed in its "enactment." The primary process was essentially unchanging in a ritualized execution, as a script that functions successfully is never greatly altered. The secondary process, however, was re-expressed every time the ritual was

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[18] Schechner, R., ibid. (pg. 47)
[19] Bellamy, J. G. (1970). <u>The Law of Treason in the Later Middle Ages</u>. Cambridge, Cambridge University Press. (pg. 227)

performed, the tortured body becoming, unintentionally, an "actor." Unfortunately, the latter process is not something we have access to because the chronicles from this period make no reference to the response of the victim in their final moments. This omission is significant in itself, however, and should not lead us to an assumption that such distinctions between executions did not exist. Katherine Royer hypothesized that "through their silence about the traitor's suffering, late medieval texts dehumanized the condemned, reducing him to a body that served simply as a symbol of his crime."[20] Thus, even if we don't have descriptions of this secondary process in the ritual (its enactment), this does not mean that it did not take place, or that it did not have great importance. On the contrary, if Royer's hypothesis is correct, we can argue that this method of recounting the executions in the chronicles actually served to emphasize the performative aspect of the ritual by silencing the reaction of the victim. This "silence" reinforces the expected outcome of the ritual for a reader, the traitor's total dehumanization. What is important to note here then is the fact that this secondary process, the performance, – the significance of which will be addressed later – was also considered crucial by contemporary chroniclers.

The second quality of an actual, *irremediable consequence*, manifests in the death of the criminal in any form of execution. Most additions to the method of execution could also be included in this category as an extension to the imposed progression of dying; disembowelling, decapitation, burning, and post-mortem dismemberment are all irreversible changes to a body, some contributing to the

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[20] Royer, K. (2003). "The Body in Parts: Reading the Execution Ritual in Late Medieval England." Historical Reflections/Réflexions historiques **29**: 331

inevitable death of a man, some permanently altering the status of his corpse.[21]

Drawing a criminal to the scaffold could also cause extreme physical damage in itself,

even death, proved by the use of hurdles; a device used to stabilize the prisoner as

they were drawn, it was introduced to secure a live body to the executioner.[22] Thus

the retainment of the act of drawing in the ritual without affecting permanent physical

damage to the traitor displays another category of irremediable act; this is a change in

their public perception, as being drawn through a village permanently established him

as a convict forever.

In the case of execution, the next two qualities of an actual, *contest* – or the

stake those involved hold in the event – and a *change in status for participants*, can

be explained together, specifically in the augmented execution ritual under

examination in this work. As Katherine Royer summed up the practice, "these

traitors were dragged to their execution like dumb beasts, butchered on the scaffold

like animals, and left to rot like carrion."[23] Each practice added to the execution

ritual served to further distinguish the criminal from their spectator counterparts,

degrading them in a way that reciprocally explained the necessity for their

punishment. This process of differentiation was a change in status for both the victim

and the spectators; they began the event with equal status of body and mind, and this

equality was then systematically broken down until only fragments of resemblance

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[21] This change in status was physical but also altered how the corpse would be treated after the execution. Quartering enables body parts to be spread across the kingdom, and the fragmentation of any remaining parts served as a reminder that those who have committed heinous crimes were to be denied burial in sacred Church grounds. (Finucane, R. C. (1981). Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages. New York, St. Martin's Press. pgs. 54-58)

[22] Blackstone, Comment. iv. 92 as cited by Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (ii, pg. 500)

[23] Royer, K., ibid. (pg. 331)

remained between the two. What was at stake, *the contest*, was therefore the totality of this differentiating process. If at the end of the process, familiarity between spectator and criminal remained significant, the validity of the entire execution could be called into question. This was the problem that emerged with the overuse of hanging in the 13th century as unknowingly summarized by Henry Summerson. Hanging, if done properly, disfigures a man immensely by breaking his neck. However, the frequency and lack of professionalism reported in these common executions in late medieval England resulted in slow strangulation, leading to increased public empathy for the executed. This empathy is apparent in the emerging frequency of peasants attempting to rescue their convicted peers.[24] While hanging, drawing, disembowelling and quartering is undeniably more grotesque than a simple hanging, the less the spectators could physically identify with the criminal, the less likely they were to perceive of him as a victim to be pitied. By extension, the less the criminals were pitied, the less public disapproval would be incurred from their deaths. As Schechner wrote, "when [the events] are over initiates have been initiated and everyone is together";[25] whereas everyone attended the event for various personal reasons, there is a shared experience between witnesses that is binding.

Finally, the *use of space* both concretely and organically was harnessed. Scaffolds were set up to denote the place of execution and arose as a subset of space hitherto utilized for completely different purposes. The scaffold was produced for a single function, and was raised to facilitate viewing of the event. The significance of

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[24] Summerson, H., ibid. (pg. 126)
[25] Schechner, R., ibid. (pg. 56)

the actual that could occur in this space was therefore unmistakable, whether a body was present on it or not.

In this qualifying process, we observe that any execution has the potential to incur a true actual should these five aspects be present. However, Schechner's more specific definition of an actual as "the making present of a past time or event"[26] demonstrates that any execution functioning as such should bring the kingdom back to the theoretical state of peace which existed before the corrupting force of a criminal emerged. This must be accomplished both through the extermination of the offender, but also, in the subsequent commonality between spectators who have shared in their differentiation from his damaged or fragmented body. Thus, there are two distinct efficacious moments occurring simultaneously in an execution, which must be synchronized if the ritual is to succeed.

While we see that any execution has the potential to instigate an actual in its viewers, performance theory dictates that that the efficacy of a ritual is not dictated by the qualifications of an actual alone. In an execution, the performance of the actual instigates the secondary actual within the audience, their internalization of justice's enactment, and therefore performance and efficacy are bound if the ritual will flourish. William Marsh's execution, as well as the many cases presented by Summerson, all express only one of two efficacious results of a ritual: the death of the criminal. However, none of these rituals were efficacious; they did not create a feeling of justice. Because the observers were never made to understand that a disturbance to the peace had occurred through constitutionally defended justice, they did not see the value in its hypothetical restoration through an execution. In the

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[26] Schechner, R., ibid. (pg. 37)

absence of value, the sovereign becomes the opposite of a force of justice: he becomes the source of oppression, because his violent enactments appear arbitrary. Therefore, the actualization of the ritual is complete *only* if justice has been demonstrated through the death of the criminal, and has instigated an understanding of this shift in its audience for a lasting period of time.

The late medieval English people saw no enduring value in a performance that originally communicated a meaning its spectators could not personally identify with, and were therefore unchanged or 'unactualized' by these earlier executions. In the particularities of the accounts emerging from the reign of Edward I, however, we will see that he had the ability to also act as a performer in the ritual in a way that his predecessors inhibited themselves from doing. If we want to understand the success of his rituals, we need to move, with Schechner, from the sphere of pure actuals to their enactments: the sphere of performance.

Performance

Edward I was a king who fell into an opportune moment of history. His people had very recently accomplished a version of their desired political equilibrium during the fleeting establishment of the Provisions of Oxford, only to have the power of an absolutist king, Henry III, re-exerted over them through the royal victory in the Second Baron's War and the papal bull which subsequently nullified their advancements. When Edward ascended the throne, they were seeking a king who would support the realm by rebalancing the forces inherent in the feudal hierarchy – a king who would put the dignity of the Crown, the *body politic*, above his own *body*

natural. As we saw in Part 1, Edward I made a number of changes to law and government that demonstrated his commitment to the same goal, even if this was not his consistent intention. More specifically for this ritual, as addressed at the end of Chapter 2, while he left the selection of their punishment to himself, Edward actively included Parliament in the sentencing of England's traitors. This allowed him to become another actor in a spectacle justified by Parliament, a separate entity ideally representative of the ideology of the Crown, and the realm. By presenting himself in this matter, he juxtaposed himself starkly against the inflexibility of his father, and primed his audience to perceive the identical ritual utilized by Henry III in a completely different way.

If the actual – that is to say, the efficacious portion of the ritual – is the enactment of justice, then the performance is the symbolic representation of that actual, necessarily ensuring actualization in the audience. We will soon also see that Edward, unknowingly or not, capitalized on the accruement of the very recent precedents of specific acts of violence to performatively communicate his intention in the total destruction of a traitor. The public reception of this intention was then communicated back to him through their support of the ritual, reflected in their enjoyment of its spectacle.

In an execution, both actualization and its performance unfold simultaneously, and are mutually dependent if the event is to be 'successful,' or enduring. Schechner identifies a wide range of activities that are included under the umbrella of "performance," encompassing play, games, sports, theatre and ritual. These activities, though very different in manifestation, share the power to satiate our

natural human desire for entertainment grounded in meaning, although each achieve this to varying extents. Similar to actuals, performances have their own shared qualities: "1) a special ordering of time; 2) a special value attached to objects; 3) non-productivity in terms of goods; 4) rules."[27] By examining this specific ritual through the second set of qualifications, we will elucidate not only the performative aspect of execution, but also its specific augmentation in this case.

The first quality, a special ordering of time, has three components, which sometimes exist simultaneously and sometimes act in opposition to one another. *Event time* occurs by a clock, and is reflected in the script of the event, as earlier discussed. In the hanging, drawing and quartering ritual, there is an allocation of time for each act, constituting the appropriate period of time for the entire execution to last. This is the ritual's script, or "score," as addressed in our discussion of actuals. Often staggered with event time however is *set time*, which is ordered arbitrarily during each individual enactment of the ritual, at points even acting antagonistically to the former category. In this subset, arbitrary timing can fluctuate in length. Performance is magnified if the execution is drawn out in time, which if extended too greatly, could cause spectator discomfort and eventual contention from the audience. Set time can also be limited by the skill of the executioner and the ordering of events, which elicit different effects on the specific body of the victim, the *locus* of the performance. If we refer back to the account of Marsh's execution, it was made expressly clear that only "*after* he had grown stiff in death [was] his body let down and disembowelled; his entrails immediately burnt on the spot, and his wretched body

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[27] Schechner, R., ibid. (pg. 8)

divided into four parts."[28]   Therefore, in his execution, Marsh's actual death was mediated by nature; the executioner waited for his victim's body to "stiffen in death" in the noose before continuing with his task.   In contrast, during Davydd's execution, he was "hanged as a thief," and then "he was beheaded alive" before "his entrails [were] burnt as an incendiary and homicide."[29]   This means that in Davydd's case, the executioner cut his live – albeit clearly damaged – body down from the noose, only to then exert complete control over his death by immediately beheading him. While the details of Wallace's and Fraser's executions twenty years later are not as specific as that of Davydd's, the order of events and the inclusion of their beheading leads us to the assumption that their executions were nearly identical.   Thus, we see the execution as ordered by Henry III had a very different manifestation of set time than those ordered by Edward I, the former expressing significantly less intentionality.

The final structure of time in a performance is that of *symbolic time* and demands the most of our attention, because it extends long before and after the clock or set time that occurs during the event itself.   Every action within this execution ritual carries its own symbolic time, drawing from individual precedent. Understanding the effect of each of these precedents individually is essential to understanding their amplified effect as a consequence of their amalgamation, because, as Schechner notes, "once action is framed 'as theatre' spectators read meanings into whatever they witness."[30]   Let us move briefly then to a discussion of precedent, which will focus on what would have been in the minds of both the King and his

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[28] Paris, M. (1852). <u>English History; From the year 1235 to 1273</u>. New York, NY, AMS Press. (i, pg 408-409)
[29] Maxwell, H. (1913). <u>The Chronicle of Lanercost; 1272-1346</u>. Glasgow, James Maclehouse and Sons. (pg. 35)
[30] Schechner, R., ibid. (pg. 10)

equally distinct subjects based on chronology, as the specific meaning intended by the commander of the punishment and the subsequent response it invoked in witnesses are the basis of symbolic time.

Firstly, drawing, the act of dragging the criminal to the place of execution, most commonly attached to the tail of a horse, had been well utilized in the English system of justice before the time of Edward I, specifically against traitors. Pollock and Maitland suggest that this practice originated as early as during the rule of Henry I (r. 1100-35), fully six generations of sovereigns before the time of Edward I, as "it had indeed long been felt that hanging was too good a death for one who killed his lord. He should perish in torments to which hell-fire will seem a relief."[31] Therefore, the act made clear to a spectator from the onset of the ritual that they were witnessing the execution of the most odious type of criminal: a traitor. From Davydd's execution onwards, we also see the practice's sudden enactment on such highborn perpetrators, immediately degrading their noble status.

Hanging had been a long-held execution method for common felons,[32] regardless of their method of transportation to the scaffold, while beheading, a relatively 'easier' death, was a punishment more often reserved for the upper class.[33] Given the intended multiplicity of a traitor's death,[34] we can see how this

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[31] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (pg. 500)

[32] Summerson, H. (1997). Attitudes to Capital Punishment in England, 1200-1350. Thirteenth century England VII: Proceedings of the Durham conference 1997, Woodbridge: Boydell Press.

[33] Maxwell, ibid. pg. 252 contains two examples among many in the chronicles

[34] Note: *The Chronicle of Lanercost*, after describing Davydd's execution, continues with a Welsh elegy to their fallen prince, which reads: "David of Wales, a thief and traitor,/Slayer of men, of Church a hater,/A fourfold criminal in life/Now dies by hose, fire, rope and

contradiction was designed to reflect analogous contradictions in his crimes and its manifestation in his public image. In Davydd's execution, as well as the Earl of Athol's and that of the brothers to the Scottish king, being hanged *and* beheaded, they were executed as both the highborn nobles that they were, and as common felons. This intentional expression of paradox is explicitly articulated in a second account of William Wallace's execution, which reads:

> *in planning the king's death,* **the annihilation and weakening of the crown and his honourable house** *by bearing a flag against his own master's standard in mortal battle, [for all these things] he will be dragged from Westminster Palace to the Tower of London […] and for robberies and homicides and felonies, which he committed in England and in Scotland, he will be hung and afterwards disembowelled.* **And because he was an outlaw, neither standing for the peace of his lord the King, he will be beheaded and decapitated.***"*[35]

The burning of body parts, entrails in this specific case, is doubly rooted, both in history and in Christian dogma. Burning appears as a penalty for arson as early as the time of the Twelve Tables, the centrepiece of the Roman Republican constitution, and had become a prominent punishment in the early Germanic law for a number of crimes, such as sorcery, adultery, arson, poisoning and theft.[36] The popularity of reviving Roman law in the late Middle Ages would have made this practice well known.[37]

In reality, it is perhaps the most controversial of all the acts included in the

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knife./The ruffian thus deprived of breath/Most meetly dies by fourfold death." (Maxwell, ibid.)

[35] Stubbs, W. (1882). <u>Chronicles of the Reigns of Edward I and Edward II</u>. London, England, Longman & Co, Parker & Co., A&C. Black. (i, pg. 140-142, as translated by Nora Hoover, Wesleyan undergraduate student)

[36] Finucane also asserts that death by burning can be found in Emperor Diocletian's decree against the Manichaeans in AD 296 and in Justinian I's imperial code during the sixth century. (Finucane, R. C. (1981). Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages. New York, St. Martin's Press, pg. 57)

[37] Pollock, S. F. and F. W. Maitland, ibid. (pg. 477)

execution ritual; because it was frequently used for such a variety of purposes, its meaning in this specific case is difficult to discern. While the intended significance of burning certainly varies across different cultures, it can be appropriately determined that in this case, the act had primarily religious significance. Firstly, in comparing the detailed descriptions of both Davydd's and Wallace's executions, the relationship between the burning of entrails and religious transgressions is the only constant association between crime and punishment that they share. *The Chronicle of Bury St. Edmunds*, in a more extensive address of Davydd's execution than *The Chronicle of Lanercost*, reads, "his bowels were condemned to the flames to punish his crimes of sacrilege, for he had often set fire to churches."[38] *Annales Monastici* confirms his religious deviation and its connection to burning, well summarized by Bellamy[39] as, "because he had committed the murders at Easter he was to be disembowelled and his entrails burned."[40] The *Chronicles of Edward I & Edward II* explicitly state a similar connection in Wallace's execution, and reads,

> *And afterwards, for the immense villainy which he made to God and the sacred churches by burning the churches, the utensils and the biers, in which the body of Christ and the bodies of saints and relics of them were collected; the heart and the liver and lungs and all the insides of William, from which so many perverse ideas had proceeded, will be thrown into the fire and burned.*[41]

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[38] Gransden, A. (1964). Chronica Buriensis (The Chronicle of Bury St. Edmunds); 1212-1301. (pg. 79)

[39] Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press. (pg. 26) Please note that in some cases, I preferred to use Bellamy's summary of the records of *Annales Monastici* and the *Chronicles of Edward I & Edward II* when my obtained translations of these previously untranslated texts seemed too ambiguous to be appropriately cited.

[40] Luard, H. R. (1864). Annales Monastici. London, England, Longman, Green, Longman, Roberts & Green. (ii, pg. 400). Bellamy, J. G. (1970). The Law of Treason in the Later Middle Ages. Cambridge, Cambridge University Press. (pg. 26)

[41] Stubbs, W., ibid. (i, pg. 140-142, as translated by Nora Hoover, Wesleyan undergraduate student)

In this more extensive explication of Wallace's sentence, we are elucidated to the specific connection made during this time period between certain organs and their role in the corruption of a man's thoughts, and consequently, his behaviour. While an extensive mapping of these correlations could be made using the particular organs singled out by contemporary chroniclers, the enquiry as made for this thesis will suffice to note that these connections are notable, and that the mentioning of specific organs in the burning process[42] should therefore not be disregarded, as they would have had particular meaning for spectators.

The connection of burning to religious deviation had therefore been established, demonstrating to a spectator that the traitor had also perpetrated a grave religious transgression. There still remains the questions however of why this connection exists, an important factor in considering the symbolism of the action. There are a number of hypotheses that have circulated in response to this question, and all may be equally correct in the sense that each has been often-cited and accepted, both at the time of the executions themselves and in analysis by modern historians. One somewhat contentious hypothesis is rooted in Christian dogma as it relates to beliefs about the resurrection of the righteous during the Second Coming.[43]

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[42] Another example of this specification appears in *Annales monastici*. In describing Davydd's execution, it reads that after "he was beheaded and divided, they then lit his heart on fire with his intestines." Luard, H. R. (1864). Annales Monastici. London, England, Longman, Green, Longman, Roberts & Green. (ii, pg. 400, as translated by Christopher Kaltsas, undergraduate Wesleyan student)

[43] 1 Thessalonians 4:14-17: "Since we believe that Jesus died and rose again, so God will bring with Jesus those who have fallen asleep in his faith. We say this on the authority of the Lord: we who are alive, who survive until the coming of the Lord, shall not take precedence over those who have fallen asleep. At the given signal, at the summons of the archangel, at the blast of God's trumpter, the Lord in person will coming down from heaven and the dead who are in Christ will rise first. […] and so we shall continue in the Lord's company

The burning of heretics and convicted practitioners of witchcraft had become customary by this time. Burning – what Caroline Walker Bynum, modern medievalist, refers to as "reduction to the smallest possible particles"[44] – symbolized the "destruction of the soul"[45] and therefore, of the impossibility of the sacrilegious offender's future opportunity for resurrection, which they had destroyed themselves with their religious transgressions.

However, the aforementioned contention of this argument is apparent both in modern analysis of this behaviour, as well as in contradictory religious practices during the time. Bodily partition of the most venerated religious and political figures, specifically to service the extremely popular distribution of relics, had long been common practice, and continued to be in the upcoming centuries. This behaviour was legitimized because the common devout Christian was fascinated with the correlation between the physical and spiritual bodies of their religious icons.[46] Also, in a complete reversal of the resurrection theory, it is fairly apparent that suggesting Jesus could ever be impeded from performing the miracle of resurrection as a consequence of human manipulation of the material body borders critically on blasphemy. The tension between these opposing beliefs remained, perhaps because of the fear that challenging these long-held customs could lead to that exact accusation, and the contradiction between the burning of heretics and the bodily partition of saints seems

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forever." (Kleist, J. A. and J. L. Lilly (1956). The New Testament. Milwaukee, The Bruce Publishing Company.)

[44] Bynum, C. W. (1996). Resurrection of the Body in Western Christianity, 200-1336. New York, Columbia University Press. (pg. 324)

[45] Finucane, R. C. (1981). Sacred Corpse, Profane Carrion: Social Ideals and Death Rituals in the Later Middle Ages. New York, St. Martin's Press. (pg. 58)

[46] Bynum, C. W., ibid, Camporesi, P. (1983). The Incorruptible Flesh; Bodily Mutation and Mortification in Religion and Folklore. New York, US, Cambridge University Press.

to have been very infrequently acknowledged at the time. [47]

Of course, a lack of acknowledgement of this contradiction does not establish a lack of its recognition, and given that the theory on the symbolic destruction of resurrection theory was in conflict with so many other religiously justified practices, two other causes have commonly recurred in various forms of explanation. The first acts under the presumption that the criminal's soul will be delegated immediately to Hell, and that the punishment is merely a modified corporeal symbol of the eternal form of retribution that their soul will inevitably face, as Pollock and Maitland wrote that the traitor should "perish in torments to which hell-fire will seem a relief."[48] Secondly, in the most practical explanation of this behaviour, we see the manifestation of the justice's very legitimate fear that the criminal will be martyred, and therefore revered for the crimes for which they were once condemned.[49] The posthumous idolization of traitors was an obvious threat to the power of the monarch, as their glorification directly correlated to faulting the commander of punishment, in this case, the King. Adding a religious lens to this issue only intensified its fervour, because if the King were later accused of being unable to recognize a spiritual hero, the only source for his theocratic authority – being divinely selected and therefore in a special relationship with God – would be significantly undermined. Therefore, it can be easily understood why having the least amount of remains available for the common Christian to congregate around would be beneficial for a king wishing to maintain his influence. Before Davydd's and Wallace's execution, Edward I had

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[47] Bynum, ibid. (pg. 328), Finucane, ibid (pg. 58).
[48] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (pg. 500)
[49] Bynum, ibid. (pg. 328), Finucane, ibid (pg. 58).

been personally confronted with this issue after the death of Simon de Montfort, the 6th Earl of Leicester. De Montfort was killed in 1265 rebellion of nobles against Henry III now referred to as the Second Barons' War, which came after the annulment of the Provisions of Oxford. Despite the man's severe post-mortem dismemberment – as will be next discussed –, his posthumous excommunication and the widespread suppression of all those who had supported him, the alleged site of his burial (or the greatest collection of his remaining parts) became an extremely popular pilgrimage destination, as it was said that "the body of Simon, earl of Leicester, worked many miracles," to Henry's great aggravation.[50]

Considering the topic of bodily partition, the transition of the victim from *person* to a collection of *parts* representing their crimes against the King and the realm, we find significant precedent both independent from and deeply connected to the aforementioned basis for burning. The correlated precedent having been sufficiently discussed, we must consider the independent origin of the practice, which arises not from legal proceedings or theology but from military exploits. The history of English campaigns leading up to the time of Edward I indicates that, whether publicly accepted or not, or even legitimized by the King, the vanquished leaders of war were occasionally dismembered post-mortem. In the previously mentioned example of Simon de Montfort, Matthew Paris's *Chronica Majora* records that, "after he was killed, [his enemies] cut off his head, feet, and hands, contrary to all the laws of knightly order"[51]. This event could only have been fresh in Edward's mind; as the

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[50] Gransden, A. (1964). Chronica Buriensis (The Chronicle of Bury St. Edmunds); 1212-1301. (pg. 33)
[51] Paris, M. (1852). English History; From the year 1235 to 1273. New York, NY, AMS Press. (iii, pg. 356)

King's first-born son and heir at the time, he led the English army against de Montfort's opposition. We also have an indication that this event made an impression on Edward's subjects before his accession because the description of his dismemberment is prefaced by the well-known chronicler, Matthew Paris, pointedly stating that "after gaining this lamentable victory, Edward, after the battle, gave orders to the monks of that place to bury the bodies of the dead, especially those of higher orders, with decency."[52] In this account, the chronicler places Edward I above the unseemly acts that occurred on this battlefield, which contrasts starkly with his less chivalrous descriptions of Henry III.

What is very clear from the text however is that post-mortem dismemberment, despite being distasteful and "contrary to all the laws of knightly orders" was perpetrated by a number of de Montfort's enemies, who are unnamed. Thus, it would be a reasonable inference that the legitimacy of post-mortem dismemberment was considered not only by the occurrence of the act, but more importantly, by *who* it was being done to. Simon de Montfort had been a valiant opponent of Edward's father, a champion behind the Provisions of Oxford, and Edward himself had even joined his cause for a short period of time before his accession.[53] Needless to say, he respected his enemy, and despite understanding the need for de Montfort's death due to the sustained threat to England, his birthright, Edward did not support the violation of his body. A similar situation occurred after the murder of Llewellyn ap Gruffydd, Davydd's brother, in 1282. While Davydd was the only remaining adult member of the Welsh monarchy's bloodline, Llewellyn had been the last true independent

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[52] Paris, ibid (iii, pg. 357)
[53] Prestwich, M. (1988). Edward I. California, US, University of California Press. (ch. 2)

sovereign of the kingdom as it fought bitterly to retain some independence from their increasingly powerful English neighbours. The attempts at resolution between the two rulers had been quite frequent, even interspersed with times of true peace, but eventually, it became clear that Edward wanted greater submission from his fellow monarch than Llewellyn was willing to grant.[54] In his final stand against unrelenting English oppression, Llewellyn was separated from his army and killed. *The Chronicle of Lanercost* then retells, "the head of Llewellyn […] was sent to the King, although he would not have approved of this being done."[55]

From these two significant accounts, two conclusions can be drawn. The first is that culturally, dismemberment was permissible, but only endorsed when inflicted on an enemy who had acted unvaliantly. The men who carried out these two dismemberments were not prosecuted as it was within their rights to do so, but because Edward believed the victims to be honourable, his displeasure with this behaviour was made well known. Therefore, the second conclusion we can draw is that, as postulated at the end of the second chapter, Edward I was not a man who inflicted violence for its own sake or to incite fear, but rather used violence selectively when his adversary had acted in a manner he deemed to be ignoble. This judgement, for Edward, was based not necessarily on the cause the opponent was fighting for, but rather the strength of their conviction in fighting for it, and the loyalty and honour they maintained while doing so.

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[54] Davies, R. R. (1987). Conquest, Coexistence, and Change; Wales, 1063-1415. New York, US, Oxford University Press.
[55] Maxwell, H. (1913). The Chronicle of Lanercost; 1272-1346. Glasgow, James Maclehouse and Sons. (pg. 33)

Edward had been personally disappointed by some of the victims of this ritual; Davydd had continuously engaged in pledges with Edward, and had broken them,[56] and Simon Fraser had been a knight in Edward's household.[57] Given that Edward was publicly represented as only endorsing dismemberment on a dishonourable enemy, his inclusion of it in the treason execution ritual conveys his personal disdain for whomever it was inflicted upon, inciting those who observed it to consider the victim in the same way. This is of course dependent on the public respect held for Edward's opinion, but in the chronicle's discussion of his actions, this certainly seems to be the case. As one may have noticed in the Introduction however, quartering was the only aspect of the ritual that was not consistently applied, indicating that frequently, Edward was more sensitive to the customs of chivalry than he was to expressing his personal disdain for a traitor.

Amalgamating these hitherto separate practices, the ritual harnesses their once separate effects into a single performance of shared intention. This intention is purely symbolic; each act inflicted on the traitor is only representative or mimetic of the multitude crimes they have committed, apparent in all the individual significances inherent in these historical practices. Their meanings were combined into a single performative ritual during a time when the law was "trying to punish one man for many capital crimes." "It demanded drawing, hanging, disembowelling, burning, beheading, quartering"[58] which directly represented, respectively, their treachery, felony, sacrilege, the degradation of noble blood, and their dishonour, all displayed

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[56] Prestwich, M. (1988). Edward I. California, US, University of California Press. (pgs. 170-201)
[57] Prestwich, M., ibid. (pg. 508)
[58] Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (pg. 501)

for the audience to internalize. Symbolic time was therefore derived from the past, but extended long after the execution itself, in the connotations about the traitor derived by the audience from the execution, and the way in which they applied that meaning to their perception of their ruler, the society beneath him, and their place within that order.

The three other qualities of performance were also apparent in this ritual. The "special value attached to objects" is true of any execution, but was augmented in a drawn out process for which many varied objects were needed to carry out the task. A level of "non-productivity" was also heightened in the ritual; if we consider that the "productive" work done in an execution was the death of the criminal, the more drawn out the process of their dying was, the more time was spent on non-productive work, an indicator of increased spectacle. Finally, we see the importance of "rules" in the consistent ordering of acts within the execution, designed to display the traitor's crimes to the audience individually and clearly.

Considering Ritualization, continued

Thus, while the actual alone lacked the power to affect the second part of the efficacious process – that of impressing its value on its audience – its the highly augmented performance, which occurred simultaneously and emphasized its mimetic aspect, filled this necessary gap. The audience, given the very recent examples of violence discussed above, had distinct meaning attached to some aspects within the ritual that would not have been as tangible to other generations. Executions such as those addressed by Summerson and that of William Marsh were performative

expressions of ungrounded meaning for the common observer, and were therefore lacking in efficacy.

The actual is the essence of ritual, which is defined as "a serious, efficacious, result-oriented performance." These results can be difficult for an outside observer to identify, such as in Schechner's examples of rituals "to ensure fertility, to placate the powers who control the hunt, to maintain a balance between male and female, to initiate."[59]   In these "failed" executions however, the substance of an actual was present in each example, but was not applicable to observers of their performances. A successful ritual must not only contain the actual within the performance, but the performance must also serve to properly communicate the actual. This is necessary because, as we have seen, a purely efficacious event of an actual within society is not enough to capture a sustained audience, but performance can be only be transiently appreciated, and is by nature fleeting. This tight, interweaving bond between actual and performance is what changed a collection of precedent into an established ritual during the time of Edward I, proving that ritual and performance are mutually dependent if they will succeed.

Schechner's collection of essays constructed an extremely compelling argument for this theory, with one significant conclusion that "when efficacy dominates, performances are universalistic, allegorical, ritualized, tied to a stable established order; this kind of theatre persists for a relatively long time." Our desire for this type of entertainment, allowing it to endure, hinges on the contrast between efficacy and entertainment, rather than between ritual and theatre.[60] On both sides of

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[59] Schechner, R., ibid. (pg. 154)
[60] Schechner, R., ibid. (pg. 130)

this spectrum, the relationship between the audience and the performance is quite different:

> *"[in entertainment] the audience is free to come or stay away – and if they stay away it is the theatre that suffers, not its would-be audience. In ritual, staying away means rejecting the congregation, or being rejected by it, as in schism, excommunication, or exile.*[61]

In Schechner's analysis, ritual is solidified by the shared experience of congregants as they interpret, together, the intended meaning of the performers. Many late medieval activities, such as "church services, court ceremonies, moralities, cycle plays, carnivals, fairs, pageants"[62] were also extremely efficacious performances, centred on community. This collective experience was significant enough that it was sometimes necessary to share in it to be considered a member of the community, such as attending Mass. The precedent for the enjoyment of these "efficacious performances" was therefore already rooted in late medieval England. Edward I drew on the ritualistic nature of his society, unknowingly or not, adding another necessary communal activity to this list: an interest in displays of spectacular justice.

Of the four qualities in performance, it is clear that time, specifically symbolic time, was the aspect of performance best maximized in the hanging, drawing and quartering ritual. While this was true even during the ritual as enacted on William Marsh and Henry III, Edward I had the opportunity to draw on very recent precedents for specific violent acts from the last rebellion, in which he also escaped being labelled as the oppositional force of absolutism. Thus, he benefited from a precise moment in time in which his place in the kingdom's political advancement allowed him to disassociate from the control over justice, while also emphasizing the

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[61] Schechner, R., ibid. (pg. 137)
[62] Schechner, R., ibid. (pg. 134)

significance of certain types of violence that had new meaning to his specific audience. Through both of these means, he was able to capitalize on this critical period in a way that his father could not. Therefore, while we saw earlier the basic actual remained constant in this conglomeration of judicial penalties enacted on a traitor's body, it is truly the performative aspect of the event that was significantly amplified during the time of Edward I, prompting a secondary re-actualization in his spectators. Suddenly, the ritual was no longer a source of oppression, but rather a locus of discourse through with the efficacious aspect of the execution – the common stake in the execution of justice – could be communicated between the King and his subjects.

Epilogue – Beyond Ritualization

By the time Edward I's reign was coming to a close, the ritualization process of hanging, drawing and quartering was complete; it had become the standard practice for dealing with traitors, high or petty. In the generations following Edward I however, an issue surfaced which was analogous to that of English common law, addressed in Part 1. Without proper legislation defining the terms of treason, a less proficient ruler was able to abuse standard practice for his own benefit. While Edward I's rule suffered from bitter wars with the surrounding Scotland, Wales and France, he maintained internal stability in his own realm throughout his thirty-five years as king – a feat that many of his predecessors were unable to accomplish. At the time of his death however, Edward left behind a very difficult legacy, as he had been balancing a number of different issues that a less skilful ruler could not have managed as well.[1] These proved too overwhelming for Edward I's son, Edward II (b. 1284, r. 1307-27), who was a less capable king than anyone had anticipated.

Edward II's shortcomings as king were numerous, as is clear from the rebellions throughout his reign and his eventual deposition in 1327. It will suffice to say for this enquiry that aside from failing to successfully proceed with the extensive military exploits of his father, he was also well-known for abusing his royal authority in expressions of extreme favouritism among his nobles, most notably with Piers Gaveston, and Hugh Despenser the younger. Throughout his regime, his widespread unpopularity provided him no shortage of traitors, but he began by punitively erring

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[1] Prestwich, M. (1988). <u>Edward I</u>. California, US, University of California Press. (Epilogue, pgs. 556-567)

on the side of clemency. His barons repeatedly and openly opposed his authority, but for nearly a decade, Edward made very few attempts at anything but arbitration.[2]

While it may have been his intention to negotiate peacefully with his people, their lack of respect for him as a man and ruler made this effort largely futile. Chronicles are littered with slights against the King, such as when *The Chronicle of Lanercost* addressed the emergence of a common man named John of Powderham in 1318, claiming to be the true heir to the throne. The chronicle retells that

> *when this was reported the whole community became excited and greatly wondered, certain foolish persons yielding adherence to this fellow, all the more readily because the said lord Edward [II] resembled the elder lord Edward [III] in none of his virtues. For it was commonly reported that he [Edward II] had devoted himself privately from his youth to the arts of rowing and driving chariots, digging pits and roofing houses; also that he wrought as a craftsman with his boon companions by night, and at other mechanical arts, besides other vanities and frivolities wherein it doth not become a king's son to busy himself.*[3]

Powderham was called before the King, but it is remarked that "even when brought face to face with [him], he did not deny what he had already said, but stated firmly that he was the true heir to the kingdom, and that the king had no right to reign." Edward is said to have laughed at the claim, but, his reign being as tenuous as it was, his wife, Isabella, was said to have been "annoyed beyond all words" while others recognized it as being "dangerous in the delicate political situation." The man was subsequently killed according to "the punishment of traitors"; he was drawn,

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[2] Phillips, S. (2010). <u>Edward II</u>. New Haven, CT and London, England, Yale University Press. (ch. 4, pgs. 125-191)

[3] Maxwell, H. (1913). <u>The Chronicle of Lanercost; 1272-1346</u>. Glasgow, James Maclehouse and Sons. (pgs. 221-222)

hung and burned.[4] Edward however had to be strongly advised to make an example

of this man, and this was made clear throughout all of England.[5]

Edward was confronted with a significantly more serious form of treachery

four years later, in 1322, when Thomas Plantagenet, the 2nd Earl of Lancaster, led the

baronial opposition against the King, in clear defiance of the previously established

custom that levying war against a king be considered treason. After he and a number

of his collaborators were taken into royal custody, upon which it was said that

Edward was "greatly delighted by the capture of these persons" and "without holding

a parliament or taking the advice of the majority, caused sentence to be pronounced

that he should be drawn, hanged and beheaded […] in revenge for the death of Piers

de Gaveston." Because he was a close relative to both the King and Queen however,

"the first two penalties were commuted, so that he was neither drawn nor hanged,

only beheaded."[6]

There are a number of significant conclusions we can draw from this record of

events. Firstly, like his grandfather, Henry III (r. 1216-72), it is clear that Edward II

saw the ritual as his royal right to personal retribution. Piers Gaveston had been his

closest friend and the original favourite resented by the barons, who captured him in

1312 and beheaded him without consulting with the King.[7] While this specific

transgression was certainly a felony, seeing as Lancaster had been involved in a

murder, it was in no way treason by common law as it had not damaged the integrity

[4] Maxwell, H., ibid. (pg. 223)
[5] Childs, W. R. (2005). Vita Edwardi Secundi; The Life of Edward the Second. Oxford, England, Clarendon Press.(pg. 148-149)
[6] Maxwell, H. (1913). The Chronicle of Lanercost; 1272-1346. Glasgow, James Maclehouse and Sons. (pg. 234)
[7] Maxwell, H. ibid. (pg. 198)

of the Crown and Gaveston did not hold a governmental position (such as chancellor, treasurer or justice) protected by treason statute in common law. Being guilty of his murder, therefore, did not demand full retributive penalty for treason. Consequently, Edward's lack of respect for the customs of England was apparent his desire to apply this punishment to Lancaster, especially as it was noted that he pronounced the sentence "without holding a parliament or taking the advice of the majority," an expression of England's emerging perception of him as an absolutist ruler. Secondly, it is clear that Edward's authority was beginning to be undermined by his wife, the Queen, and the barons, who would soon lead the movement of his deposition. The remarkable aspect of this account is that Lancaster was indeed a traitor by statute for levying war against the King as a leader of the baronial rebellion, but neither sides of the debate recognized him as such. Edward's lack of competence as a ruler and his government and people's identification of this deficiency had begun to detract from the power of treason law, and the ritual that had been designed to protect it.

Edward II lashed out in the wake of his forced leniency towards Lancaster, attempting to reassert his control over ritual, or muddled variations of it, and utilizing it excessively towards the end of his rule. An unnamed baron and three of his knights were drawn and hanged after Lancaster's execution in 1322. Later in the year, "eight English barons, belonging to the party and policy of the earl and his friends, were afterwards drawn and hanged," along with another fifteen knights. In *The Chronicle of Lanercost*, this slew of executions is followed by the phrase: "O the excessive cruelty of the king and his friends!"[8] Again in the same year, "Sir John de Mowbray and Sir Roger Clifford, were drawn and hanged at York with Sir Jocelyn de Dayvile,

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[8] Maxwell, H. ibid. (pg. 235)

a knight notorious for his misdeeds; but Sir Bartholomew de Badlesmere was taken near Canterbury, and was there drawn, hanged and beheaded."[9]   The culmination of Edward's misappropriation of the ritual occurred in 1323, when Andrew Harclay, 1st Earl of Carlisle, "perceived that the King of England neither knew how to rule his realm nor was able to defend it against the Scots, who year by year laid it more and more waste, he feared lest at last [the King] should lose the entire kingdom; so he chose the less of two evils."   This resulted in his negotiating with the contemporary Scottish king, Robert the Bruce, without Edward's knowledge, for an agreement that would leave both kingdoms under the control of their respective kings.   Given the current military initiatives of England to retain dominion over Scotland, Harclay had basically negotiated the terms of their forfeiture because of his extreme doubt in Edward's judgement. The judge at his trial:

> *pronounced sentence upon the earl as if from the mouth and in the words of the king, condemning him first to be degraded and stripped of the dignity of earldom by being deprived of the sword given him by the king, [...] and thereafter to be drawn by horses from the castle through the town to the gallows of Harraby and there to be handed and afterwards beheaded; to be disembowelled and his entrails burnt, his head taken and suspended on the Tower of London; his body to be divided into four parts, one part to be suspended on the tower of Carlisle, another at Newcastle-on-Tyne, a third at Bristol and a fourth at Dover.[10]*

Thus Harclay, whose description by the same chronicle as a "valiant and famous knight"[11] contrasts starkly with its insults against Edward II, received the full force of the ritual as the King made desperate attempts to exert his authority.   Unfortunately for Edward, the number of people questioning his capacity to rule was becoming too

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[9] Maxwell, H., ibid. (pg. 234-235)
[10] Maxwell, H., ibid. (pg. 241-245)
[11] Maxwell, H., ibid. (pg. 231)

great, and the ritual lost the validity of its efficacy because the side communicating the traitor's crime was losing authority. No longer was it a uniting experience between the King and his people, performing a shared actualization of justice on the body of a traitor, because the perception of "justice" had become so convoluted with questioning over who should hold the seat of authority.

What is perhaps most interesting when considering the ritual however is that this account was written in the same chronicle as the accounts previously addressed on Davydd's and Wallace's executions. Both of those accounts, as in most chronicles, contain a detailed explanation of *why* each act was inflicted on the traitor,[12] an aspect conspicuously lacking from the discussion of Harclay's execution. What is stressed instead is that the judge "pronounced the sentence upon the earl as if from the mouth and in the words of the king," as though the author of the chronicle wanted to dissociate himself, on behalf of the English people, from this inappropriate sentence. This is reminiscent of Paris's account of William Marsh's execution, displaying that, like Henry III, Edward II was perceived as attempting to re-personalize the ritual, and therefore the ritual itself was beginning to be rejected again.

Edward II might have succeeded in wholly destroying the value of the ritual had he not been deposed so soon. In September of 1326, Isabella and her alleged lover, the influential Roger Mortimer, 1st Earl of March, invaded England supported by French forces. By January of 1327, they had coerced Edward to abdicate the throne to his young son, Edward III. Isabella was installed as his regent, and she and

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[12] I did not include this description in Wallace's execution in my introduction, but it can be found in the next paragraph of *The Chronicle of Lanercost*. (Maxwell, ibid, pg. 176)

Roger Mortimer became England's *de facto* rulers. Before Isabella and Mortimer succeeded in officially removing Edward from power, however, the ultimate performance of the hanging, drawing and quartering ritual took place in England. Following in Piers Gaveston's steps as the King's favourite, Hugh Despenser the younger, 1st Lord Despenser, was publicly executed so gruesomely that it was made perfectly clear that the royal usurpers felt no fear over any vestiges of Edward's authority. Hugh had been the leader of a small group of barons supporting Edward's extreme retributive efforts in the last years of his rule, which explains the deposers desire to publicly express their distance from him through his execution.[13] Froissart recounted:

> *When the feast was over, sir Hugh, who was not beloved in those parts, was brought before the queen and knights assembled; the charges were read to him – to which he made no reply; [...] first, that he should be drawn on a hurdle, attended by trumpets and clarions, through all the streets in the city of Hereford, and then conducted to the market-place, where all the people were assembled; at that place he was to be bound upon a high scaffold, in order that he might be more easily seen by the people. First, his private parts were cut off, because he was deemed a heretic, and guilty of unnatural practices, even with the king, whose affections he had alienated from the queen by his wicked suggestions.[14] His private parts were then cast into a large fire kindled close to him; afterwards, his heart was thrown into the same fire, because it had been false and traitorous, since he had by his treasonable counsels so advised the king, as to bring shame and mischief on the land, and had caused some of the greatest lords to be beheaded, by whom the kingdom ought to have supported and defended; and had so seduced the king, that he could not nor would not see the queen, or his eldest son, who was to be their future sovereign, both of whom had, to preserve their lives, been forced to quit the kingdom. The other parts of sir Hugh thus disposed of, his head was cut off and sent to London.[15]*

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[13] Phillips, S., ibid. (pg. 502-519)

[14] Froissart includes this because the accusation that Edward II was a homosexual was made during his deposition and had been intimated throughout his regime, however this was never proved as he references it. (Phillips, S., ibid, pg. 518)

[15] Froissart, S. J. (1889). Chronicles of England, France, Spain and the Adjoining Countries. London, England, William Smith. (i, pg. 13)

Hugh Despenser's execution the greatest spectacle we have seen yet. Most significantly to those observing the execution, unlike the traitors subjected to the ritual before him, we can see that Despenser was forced to experience the majority of his bodily mutilations while he was still alive. While his agony was not recorded, the enactment of these actions on a live body rather than a corpse is undoubtedly a more powerful image.

The execution was also a celebratory event, beginning as entertainment after a large feast, it was attended by trumpets and clarions, and was followed by the procession of "the queen and all the lords, with a great number of common people" to London. Upon their arrival, it is said that "great crowds came out to meet them, and received both her and her son, as well as those who accompanied her, with great reverence." According to Froissart, this reception was followed by "fifteen days passed in feasts and rejoicing."[16] The detailed description offered by Froissart shows that not only had the ritual been reassigned its performative symbolism, but new acts and specificities had been added, and were assigned their own meaning. While the execution was ordered by the Queen and her lords, the actions of the general English population was included into the description of the event more than ever before seen, indicating the extent to which the ritual had been incorporated into the general society's self-definition. As Seymour Phillips wrote in his biography of Edward II, "all the good people of the realm, great and small, rich and poor, regarded Despenser as a traitor and a robber,"[17] and an exaggerated enactment of the ritual established in the previous generation was their communal chosen mode of retribution. As a greater

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[16] Froissart, S. J., ibid. (i, pg. 13)
[17] Phillips, S., ibid. (pg. 518)

English community, they reappropriated the ritual from their lacklustre king who had abused it. At the height of its gruesomeness, it seems to have also reached the height of its glory.

After a couple years of Isabella and Mortimer's *de facto* reign, however, it was already written that "Sir Roger de Mortimer, Earl of March, [was] at that time was more than king in the kingdom, forasmuch as the queen-mother and he ruled the whole realm." In a very short period of time, he was established as a man of "cruelty and tyranny" given the number of executions he ordered, clearly fearing a threat to his newfound authority. The most significant of these executions was that of Edmund, Earl of Kent, and half brother to Edward II, in 1330. Edmund supported Edward II's reinstatement as king as the senior claimant to the throne, and the Earl of March ordered him beheaded.[18] This execution was the initiation of Mortimer's rapid downfall. Later that year, the matured Edward III regained control of the Crown by calling together Parliament, whom together, "condemned [Mortimer] to death, and on the evening of the same day was drawn and hanged on the gallows, where he hung for three days."[19]

Oddly enough, Froissart provides a different account of Mortimer's execution, recording that Parliament had ordered that he "ought to suffer the same death as Hugh Spencer, which sentence had neither delay of execution or mercy." It continues by retelling that "he was immediately drawn upon a hurdle through the city of London, and placed on a ladder in the midst of the mark-place; when he had his private parts cut off, and cast into a fire, because he had thought and acted treasonably. His body

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[18] Maxwell, ibid. (pg. 265)
[19] Maxwell, ibid. (pg. 266)

was then quartered, and sent to the four principal cities in England, his head remained in London."[20]   The editor of *Froissart's Chronicles* explains that Froissart was actually mistaken in his account by quoting the antiquarian, Sir William Dugdale, thereby corroborating the former account from *The Chronicle of Lanercost*, save for its omission of Mortimer being drawn to the gallows.[21] However, given Froissart's usual reliability, it is fair to deduce that he represented a portion of the English and French "audience" who associated Mortimer's treason conviction with the full ritualized penalty, thereby proving its establishment as the appropriate punishment for the crime at this time. They were correct in a sense, as parliamentary rolls indicate that the modified ritual exacted on Mortimer was indeed intended to reflect the crime of treason, which is absent in *The Chronicle of Lanercost*. It is written in the rolls that the "judges of the parliament, by the assent of the king in the same parliament, awarded and adjudged that the said Roger be drawn and hanged as a traitor and an enemy of the king and of the realm."[22] Regardless of the semantics, it is clear that though Edward III had been king in name for three years, it was through his controlled used of the ritual, and his inclusion of Parliament to represent the desire for the ritual on behalf of the English people, that he had demonstrated his unquestionable, but tempered, authority.

After a generation of misuse of the ritual that had been established during the time of Edward I, it was clear that its potential future utilization needed to be

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[20] Froissart, S. J., ibid. (i, pg. 31)

[21] The footnote reads: "This is not correct. – His body, after hanging for two days and two nights by the king's special command, through his favour, was granted to the Friars Minor, or Grey Friars, in London, who buried him in their church, now called Christ Church; whence many years afterwards it was translated to wigmore. – *Dugdale*"

[22] Phillips, S. and M. Ormrod (2005). <u>The Parliament Rolls of Medieval England; 1275-1504</u>. London, England, The Boydell Press. (iv, pg. 105-106)

confirmed in legislation that no future king would be able to breech. In 1352, the entirely novel Statute of Treasons was passed. This was a momentous event in England's constitutional history, and as a law, despite significant modernizing amendments, it has lasted in England's legislation well into the modern era.[23] The 1352 Statute will serve as a conclusion for this thesis, as it closed a lengthy historical period of sustained ambiguity in conventions for treason convictions. In doing so, it also made a compelling statement about the ritual we have been addressing.

The primary hypothesis for the establishment of this statute was derived from Edward III's excessive use of treason convictions during the first half of his rule. However, unlike Henry III, his great-grandfather, and Edward II, his father, this overuse was never perceived as resulting from an exercise of personal retribution, which is likely why it didn't undermine the value of the ritual itself. As previously mentioned, a treason conviction led to the escheatment of the traitor's land to the King, rather than to one's immediate lord.[24] It seems that Edward III, attempting to increase the wealth of the Crown, pushed the customary definition of treason "to a range of cases which involved the ambiguous crime of accroaching the king's power." J.G. Bellamy interpreted the statute as "a declaration by the king's council that such a strategy would cease."[25]

Parliament defined treason as:

The event that any man plots or plans the death of our lord the king, my lady his consort or their first son or heir; if any man rapes the king's

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[23] Longman, W. (1869). The Life and Times of Edward the Third. London, England, Longmans, Green and Co. (ii, pg. 343)
[24] Bellamy, J.G., ibid. (pg. 227), Pollock, S. F. and F. W. Maitland (1968). The History of English Law. Cambridge, England, Cambridge University Press. (ii, pg. 500)
[25] Bellamy, J.G., ibid. (pgs. 51, 55, 62-74, 80-85) as cited by Phillips, S. and M. Ormrod, ibid. (v, pg. 35)

spouse, the king's eldest daughter when unmarried or the spouse of the king's eldest son and hair; if any man wages war against our lord the king in his realm, or shall be a supporter of the enemies of our lord the king in the realm, giving them aid and comfort in his realm or anywhere else [...]; if any man counterfeits the king's great seal or his money; [...] if any man kills the chancellor, treasurer or justices of our lord the king of either bench, the justices in eyre, of assizes and all other justices assigned to hear and determine when they are in their places performing their offices. And it is understood that in the aforenamed cases it must be adjudged that this was treason to our lord the king and to his royal majesty.[26]

In comparing the Statute with the previously accrued precedent, especially as defined by various treatises such as *Britton* and *Fleta*, this description of treason was reduced. The editors of England's parliamentary rolls from the debate wrote that the narrow definition of treason defined in the statute "affirmed the bond of trust established in recent years between Edward III and the group most susceptible to charges of high treason – the English nobility."[27]

Most significant to this enquiry, however, is a notable absence in the Statute of the means of punishment that would be accorded to those convicted of treason. Given the extent to which this issue was discussed in Parliament, one can see that the ritual was accepted by omission – nobody saw fit to question it. Given the multitude of examples in which contention or ambiguity provided momentum enough for legislation, its omission and subsequent use proves that the ritualized punishment was not the point of contention at hand.

As shown in Part 1, the 1352 Statute and the lengthy ambiguous period of treason's legal history that preceded it were deeply correlated with the fluctuating theses of government prevailing in late medieval England. This fluctuation can also

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[26] Phillips, S. and M. Ormrod, ibid. (v, pg. 44)
[27] M. Ormrod, ibid. (v, pg. 36)

be read in the use and frequent abuse of ritual hitherto referred to as "spectacular" justice. By examining the ritual at its starting point, we saw that during the reign of Henry III, its failure was an indication of the people's view that their king displayed true absolutist tendencies, the ritual only reflecting his personal sense of justice rather than the realm's. During the time of Edward I, however, he fell into a particularly opportune moment in history for him to utilize the ritual as a means of contact between himself and his people, communicating their shared perception of the purpose of treason law through the tortured body of a traitor. This shared perception was that treason was a crime against the Crown, and that its punishment served first and foremost to protect its dignity. In his subject's enjoyment and support of the spectacle, however, Edward's personal fulfilment of this role was validated. The consistent success of the ritual during his reign therefore established it as the expected and enjoyed method of punishment for traitors from then on in the minds of his subjects.

The same issue as occurred during the time of Henry III was repeated during of Edward II. Henry III's incompetence as a ruler caused his grasp of justice to be disrespected by his people, who then began to disapprove of his misappropriation of a ritual they now felt was partially their own. They therefore reclaimed it during the execution of Hugh Despenser. The reigns of these two rulers indicate that pure spectacle was not enough to sustain public support for the ritual. An actualization of sustained meaning needed to occur in its spectators.

Social laws on the appropriate use of violence abounded in medieval England as we have seen, making the contention that the common Englishman at this time

consistently appreciated violence for its own sake an inappropriate explanation as to how such a practice could have been persisted. Therefore, even after the ritual had been standardized during Edward I's reign, the cause for its attraction was only uniform so long as people perceived the justice it expressed as being applicable to their own political and legal ideals. There are no value judgements to be made on the use of a practice so greatly misunderstood by the modern observer of history. The ritual was gruesome, but not barbaric. It was useful, but this does not necessarily excuse it. For nearly five hundred years, however, the ritual was sustained, and at its origin, the uniting effect it had between its audience and on the King who commanded it is undeniable.

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