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The Ecclesiastical Roots of Representation and Consent

Abstract:

Recent attempts to explain the development of medieval representative institutions have neglected a long-standing insight of medieval and legal historians: Political representation and rule by consent were first developed within the Catholic Church following the 11th-century Gregorian Reforms and the subsequent “crisis of church and state”. These practices then migrated to secular polities in the 13th and 14th centuries. This was facilitated by the towering position of the Church in medieval society in general and the ubiquitous “areas of interaction” between religious and lay spheres in particular. This paper documents these processes by analyzing the initial adoption of proctorial representation and consent at political assemblies: first, within the Church, then in lay polities. It thereby corroborates recent insights about the importance of religious institutions and diffusion in processes of regime change, and it sheds light on the puzzling fact that representation and consent – the core principles of modern democracy – only arose and spread in the Latin west.

The Ecclesiastical Roots of Representation and Consent

Introduction

A new body of scholarship has revisited the medieval origins of representative institutions or parliaments, which have been highlighted as crucial for the later “Rise of the West.”¹ Different definitions of representative institutions have been used in this research.² However, as Boucoyannis³ and Stasavage⁴ have recently argued, the conceptual key to understanding medieval parliaments lies in the twin practices of proctorial representation and consent.⁵ These innovations were to form “the bedrock of modern democracy”⁶ and as historians have long emphasized they allow us to identify where representative institutions first arose and how they spread.⁷

The principle of *proctorial representation* entailed that a corporate group such as a town, a shire or a cathedral chapter sent one or more agents (proctors) with full (plenipotentiary) powers to an assembly, normally based on a written mandate from which these representatives could not deviate. The other side of the coin was that the decisions made in the assembly or council bound the corporate group that had appointed the representatives. The principle of *consent* entailed that corporate groups whose rights were affected by decisions made in assembly had to be consulted (though not necessarily to influence the decisions⁸). This mainly but not exclusively happened when taxation, which by definition affected the property rights of these groups, was imposed.⁹ The summons that were sent to the corporate groups clearly stated the purpose as this determined the “scope of the council’s agenda”. This information was needed to ensure that representatives came with a mandate that allowed binding decisions to be made.¹⁰

As Boucoyannis¹¹ and Stasavage¹² observe, medieval historians have shown that proctorial representation and consent were originally judicial concepts derived from the Roman Law that had been revived in the 12th century. But both Boucoyannis and Stasavage ignore another long-standing

insight of medieval and legal historians: Proctorial representation and consent were first developed within the Catholic Church following the 11th-century Gregorian Reforms and the subsequent Investiture Conflict and only then migrated to secular polities.¹³ More generally, we find no appreciation of these ecclesiastical roots of representation and consent in the burgeoning comparative politics literature on medieval representative institutions. Van Zanden, Buringh and Bosker¹⁴ list virtually all other reasons for the rise of representative institutions that historians have emphasized, including succession, coinage, warfare, strong nobilities, and vibrant towns but they do not mention the Church. Neither do Stasavage,¹⁵ Blaydes and Chaney,¹⁶ and Abramson and Boix,¹⁷ who each single out one particular explanatory factor (geographical size, strong nobilities, and vibrant urban areas).

The recent political science scholarship on medieval representative institutions has thus ignored the English medieval historian R. W. Southern's famous admonition not to separate ecclesiastical from secular history in the Middle Ages. It is quite surprising that the role of the Church has received so little attention in this literature. A focus on the ecclesiastical invention of representation and consent promises to shed light on the otherwise puzzling fact that – until their global spread in modern times – representative institutions only arose and spread within Latin Christendom or the Latin west.¹⁸ Moreover, recent scholarship in political science has confirmed the importance of religious teachings and institutions for a host of other important developments, including economic growth¹⁹ and democratization,²⁰ and Francis Fukuyama²¹ has emphasized the key importance of the medieval Catholic Church for the development of political order in Europe.²² Finally, a focus on the way the Church invented and then spread representation and consent corroborates recent insights about the pervasive effects of diffusion – in the form of learning – for processes of regime change.²³

As medievalist Brian Tierney summarizes this sequence: “The typical process that occurred was the assimilation of a text of Roman private law into church law, its adaptation and transmutation there to a principle of constitutional law, and then its reabsorption into the sphere of secular government in this new form.”²⁴ To understand these diffusion processes, it is necessary to appreciate just how towering was the presence of the Church in medieval Latin Christendom.²⁵ The medieval world was shot through with Christian values²⁶ and in a society notoriously short on public power, the Church was ubiquitous, from the papacy via bishoprics down to the parish level.²⁷ The Church had a virtual monopoly on learning, and the education systems it fostered – including most prominently the universities – did not stop at national borders.²⁸ Clerics staffed the rudimentary royal administrations, functioned as local administrators in the capacity of bishops and priests, and interacted on a regular basis with nobles.²⁹ In the absence of a regular public taxation, monarchs also relied on ecclesiastical benefices to finance administrative structures. These “areas of interaction”³⁰ eased the spread of the practices of representation and consent.³¹

The main aim of this paper is to bring these insights into political science. The Church’s pivotal role in fostering and spreading representation and consent is demonstrated by analyzing the initial adoption of these practices within the Church and the way they diffused to the lay sphere. The final section discusses the relevance of these insights for political scientists studying regime change and the “Rise of the West”.

Ecclesiastical invention

The ecclesiastical development of the practices of political representation and consent took place in the aftermath of the lay-religious conflicts of the late 11th and early 12th centuries. This “crisis of church and state”³² is normally associated with the actions of the 11th-century reform popes, who sparked the so-called Investiture Conflict. The reforms began in the 1050s under Pope Leo IX (p.

1049-1054). Leo had been appointed by emperor Henry III (r. 1046-1056) to reform the corrupt Roman Church and among other things he battled simony (clerical corruption) and promoted clerical celibacy. However, the reformers soon turned against secular influence on ecclesiastical matters. A papal decree in 1059 established that the cardinals, not the German Emperor or the Roman citizens, would henceforth elect the pope. The real rupture came with Gregory VII (p. 1073-1085), who in 1075 threw down the gauntlet to Henry III's son, Henry IV (r. 1056-1105). That year Gregory published the *Dictatus Papae*, buttressed in 1079 by the bull *Libertas ecclesiae*, two documents that, *inter alia*, established the ecclesiastical right of investiture of bishops and the pope's right to depose monarchs who did not observe this. Acting on these doctrines, Gregory in 1076 excommunicated and deposed Henry, thereby triggering the Investiture Conflict.

These lay-religious conflicts did not appear out of the blue.³³ The Gregorian reformers framed their reforms as an attempt to return to good old ways of the early Church – as R. W. Southern once put it, it would be truer to call them the “Restoring Party” than the “Reforming Party”³⁴ – and their reforms drew on the preceding reforms of monastic and conciliar institutions, most notably the Cluniac reforms.³⁵ But what the American legal scholar Harold J. Berman calls the “Papal Revolution of 1075-1122”³⁶ was indeed a revolution in the sense that it created a great upheaval in the political structure of the Latin west.³⁷

In the 9th, 10th and early 11th centuries, European monarchs in general and Roman Emperors (Carolingian, Saxon, and Salian) in particular had religious legitimacy as rulers anointed by God and they governed the churches in their realms with little interference from the very weak popes in Rome.³⁸ Indeed, in the period 955-1057, the strong German emperors directly appointed twelve out of 25 popes.³⁹ Some scholars argue that the regime form characterizing Western kingdoms in this period bears close similarity with the *caesaropapism* or *Rex-Sacerdos* model, where religious and lay authority is joined rather than divided, that has been used to describe the Byzantine Empire.⁴⁰

The Gregorian Reforms changed this by stealing lay rulers' religious splendor and their right to govern the churches in their realms, including most importantly the right to invest bishops, who were a crucial part of medieval government.

Though a partial settlement between the pope and the German emperor was reached in 1122, two centuries of protracted political conflicts ensued.⁴¹ These conflicts provided an impetus to constitutionalist doctrines and the use of law to regulate conflict.⁴² Law and litigation were needed to adjudicate between the rights of the Church and the rights of lay rulers, especially with respect to jurisdiction and investiture.⁴³ Most importantly for our purposes, the Gregorian Reforms initiated a flood of litigation into the ecclesiastical system in general and the papal court in Rome in particular.⁴⁴

Both representation and consent were originally judicial concepts that were developed in the 12th century to handle this torrent of litigation into ecclesiastical courts of law.⁴⁵ This occurred as part of a process that involved two crucial innovations, triggered by the Gregorian Reforms: the systematization of Canon law and the revival of Roman law.⁴⁶ The first systematic compilation of Canon law—that is, the law of the Church—was done by Gratian⁴⁷ in Bologna around 1140 (to be known as the *Decretum*). The study of Roman law was begun by the Bolognese scholar Iheronimus early in the 12th century, following the discovery of a copy of 6th-century emperor Justinian's Law Code (to be known as the *Digest*) in Italy around 1070.

These two bodies of law constantly cross-fertilized each other. The notions of representation and consent were developed by lawyers and theologians at the universities in Bologna and Paris via an extremely flexible interpretation of Roman law that served to solve the practical problems of ecclesiastical litigation based on Canon law.⁴⁸ Proctorial representation was found in Roman private law, more particularly in the principle that a corporation (*universitas*) could organize itself as a judicial personality and appoint a proctor (*procurator*) with full power (*plena potestas*) as an agent.

Consent was based on the adage *quod omnes tangit ab omnibus approbetur* (“that which affects all people must be approved by all people”), henceforth q.o.t.⁴⁹ This dictum was found in an even more remote corner of Roman private law that dealt with co-guardianship or co-tutorship.

The private law practices of representation and consent were gradually interpreted as applying to broader political communities, to be used in this new way within the Church around 1200.⁵⁰ That is, the “analogy to private law was to provide the model for the subsequent development of representative assemblies”.⁵¹ The use of proctorial representation and political consent at assemblies seems to have been a consequence of attempts within the reformed Church in the 12th century to find ways of handling the challenges of the administrative centralization and expansion sparked by the 11th-century declaration of independence from secular rulers.⁵² The response of 12th- and 13th-century theologians was to construe the Christian community, and hence the Catholic Church, as a corporation (*universitas*).⁵³

This was buttressed with tenets from Canon law. The notions of consent and of conciliar government were present in the early Christian Church,⁵⁴ and Gratian’s *Decretum* included a clause to the effect that a heretical pope could be deposed.⁵⁵ When these clauses from Canon law were fused with the new notions of proctorial representation and q.o.t. from revived Roman law, it was a small step to institutions that formalized rule by consent. More particularly, a number of canonists argued that Church councils, attended by representatives of the Christian community, could make decisions that bound everyone, including the pope.⁵⁶ Church councils were, in this sense, the first medieval representative institutions.⁵⁷

To see how revolutionary these inventions were, we can compare with Byzantium, where we find broadly similar Christian doctrines and where Roman law had not been forlorn in the first place.⁵⁸ No similar ideas about representation and consent developed from this combination because the context was starkly different. It is not that there were no conflicts between emperor and

clergy in Byzantium. On the contrary, there are numerous examples of how emperors' attempts to lay down religious doctrine sparked vehement opposition from the clergy. The most famous example is the 8th and 9th century iconoclast conflicts, which centered on whether religious icons or images should be banned. The emperors, who wanted to ban images, lost this conflict and down to its end in the 15th century, the Byzantine church model remained fundamentally conciliarist. However, the emperor retained the power to organize and govern the church: "His it was to appoint and depose patriarchs, to change the boundaries of dioceses, to legislate on matters ecclesiastical, to convoke general councils, to validate their enactments, and so on."⁵⁹

The manifestation was "a fundamental *symphonia* between the imperial authority and the clerical priesthood."⁶⁰ The Byzantine Empire thus took the form of a theocracy where we do not find the kind of corporate rights for e.g. the nobility and clergy that came to characterize Western Christendom.⁶¹ Though reality on the ground was often acrimonious, in this absence of a normative and organizational divide between religious and secular spheres, the clauses from private Roman law concerning q.o.t. and proctors never developed into political norms and institutions. This also places in relief just how fundamental were the reinterpretations of proctorial representation and q.o.t. by Western medieval lawyers. As Berman puts it, these lawyers did not simply revive Roman law, they "produced something quite new".⁶²

Representation and consent at church councils

The first genuine use of political representation at a council, based on Roman law, seems to have occurred when Pope Innocent III (p. 1198-1216) called proctors from six cities in the Papal States to his curia in 1200 with full powers.⁶³ Innocent III, who had studied Roman Law at Bologna before becoming pope, subsequently used the notion of proctorial representation in summons for several other councils, including Fourth Lateran 1215.⁶⁴ Proctors were summoned for this great council in

April 1213, and the council, comprising more than 1,500 prelates from across the Latin west, convened in Rome in November 1215.⁶⁵

It is unclear whether Innocent called representatives to the Fourth Lateran with reference to q.o.t. The problem is that we have little or no evidence of the deliberations of the council. But there are some indications that Innocent's purpose was to impose a tax on prebendal income (that is, income from benefices) of cathedral chapters to finance the papal court, and that this was the reason that he called proctors from these institutions – which would fit with the logic of q.o.t.⁶⁶

However, the first definitive documentation of the use of q.o.t. at an assembly dates to the French church council of Bourges, which met on November 29, 1225, and which with almost 1,000 attendees, including archbishops, bishops, abbots, deans, and proctors for cathedral chapters, was the second largest church council in the Latin West, next only to the Fourth Lateran.⁶⁷ In the 1217 decretal *Etsi membra corporis*, Innocent III's successor, Honorius III (p. 1216-1227), had recognized that Canon law demanded that proctors for cathedral chapters had a right to be consulted if a decision affected their property rights (as taxation did).⁶⁸ The gloss to this decision by canon lawyers in the *Glossa ordinaria* pointed out that this was based on q.o.t. Next, in the bull *Super Muros Jerusalem*, Honorius revived Innocent III's idea of imposing a tax on prebendal incomes to finance papal government. With reference to q.o.t., the papal legate in France, Romanus, called proctors of cathedral chapters – whose property rights would be violated by this proposal – to Bourges to discuss this.⁶⁹

The main purpose of Bourges was to commit the French church to finance a royal French crusade (via a ten-percent tax on clerical incomes for five years) against the heretical Albigensians in Southern France and Romanus secured this. But he backed down with respect to the prebendal tax “in view of the overwhelming negative response”⁷⁰ of especially proctors of cathedral chapters. More precisely, Romanus accepted to await the outcome of a similar English church council.

An English council was accordingly called by the papal nuncio Otto in January 1226 (without proctors from cathedral chapters) but this council refused to discuss the prebendal tax due to the absence of king Henry III and affected prelates. A second council was called by Archbishop Langton (Otto had been recalled to Rome) in May 1226, which included “proctors for the ecclesiastical corporations affected by the proposal.”⁷¹ Here, too, the tax was rejected, leading Honorius to shelve the idea. Just as Bourges had been the first French representative assembly, the London council was the first English representative assembly – both of an ecclesiastical rather than a lay character.⁷²

We here have very clear evidence of diffusion within the ecclesiastical sphere.⁷³ One of the French proctors of cathedral chapters, who had successfully defeated the prebendal tax at Bourges, wrote a full report of the happenings, the so-called *Relatio de concilio Bituricensi*, “which was sent to their counterparts in England.”⁷⁴ The explicit purpose of the *Relatio* seems to have been to strengthen the resolve of the English cathedral chapters to oppose the prebendal tax, which had been left pending at Bourges until similar councils in other realms had considered the matter.⁷⁵

Secular spread

How could these church practices leap to the secular sphere? The main reason is the aforementioned ecclesiastical institutional penetration of royal administrations in the high middle ages. But this was underpinned by what Berman terms the “transnational character of Western legal science,”⁷⁶ which basically meant that (revived) Roman law and Canon law were seen as “applicable at all times and in all places.”⁷⁷

Let us try to see how these diffusion processes worked in practice. Proctorial representation at lay assemblies obtained the moment townsmen or knights of the shire were expressly summoned as genuine representatives (proctors) of town councils or localities with full powers based on

Roman law.⁷⁸ Representatives were normally not elected but directly appointed by the corporation in question, e.g. town councils.⁷⁹

The first documented instances of lay representative institutions are found in Leon-Castile, the Crown of Aragon, and England.⁸⁰ As the Italian medievalist Antonio Marongiu long ago observed, these cases are therefore particularly relevant for those interested in the origins of representative institutions.⁸¹ Van Zanden, Buringh and Bosker concede as much when noting that it is unclear whether the spread of representative institutions from the Iberian Peninsula to the rest of the Latin west is the result of the “copying of this institution, or of parallel evolution under similar circumstances”.⁸²

By focusing on these first documented instances we avoid developments confounded by demonstration effects from other lay assemblies. However, whereas the *curia regis* rolls of England and the royal archives of the Crown of Aragon have survived intact, those of Leon-Castile have not.⁸³ Analyzing the advent of proctorial representation and q.o.t. in the first two cases allows us, first, to isolate the initial ecclesiastical influence, if any, and, second, to carry out an in-depth qualitative examination that identifies the “fingerprints” of such ecclesiastical diffusion all the way down to the actor level.⁸⁴

The Crown of Aragon

The Crown of Aragon was a composite realm, which had come into existence in 1137 when the kingdom of Aragon and the county of Catalonia was united under one ruler. Henceforth, Aragonese count-kings (counts of Catalonia, kings of Aragon) would regularly call assemblies of notables (*curia*) in both Aragon and Catalonia. These assemblies were to develop into representative institutions (called *cortes* in Aragon, *corts* in Catalonia) in the course of the 13th century.⁸⁵

The first genuine use of proctorial representation of townsmen at a lay assembly anywhere in Europe seems to have occurred at a joint Aragonese-Catalonian assembly in Lérida in 1214.⁸⁶ The background is quite dramatic. Aragonese count-king Peter II (r. 1196-1213) had fallen in a battle against Simon de Montfort's crusader army at Muret in September 1213. His son James (the later James I, r. 1213-1276) was a minor and in Montfort's custody. Peter had made the Crown of Aragon a papal fief in 1204, and Pope Innocent III, who was formally lord of the Crown of Aragon, sent Cardinal Peter of Benevento as his legate to sort things out. Peter proceeded to summon an assembly to Lerida in August of 1214 to have James, whose release the legate first secured, acclaimed. Townsmen from both Catalonia and Aragon were summoned "with authority from the rest to approve what was done by all."⁸⁷

Towns accordingly chose representatives and agreed to be bound by the decisions of the assembly. These proctorial terms of representation "can largely be attributed to the influence of the Papal Legate", and they marked a "clear injection of Roman law into the public assemblies."⁸⁸ Even Gaines Post, whose general conclusion is that a genuine proctorial representation in summons was not used in the Iberian Peninsula until the second half of the 13th century, concedes that Innocent III's legate may have called genuine proctors at Lerida.⁸⁹

Recall here that Innocent III was the very pope who, fourteen years earlier, had first summoned townsmen to a Church council as proctorial representatives, and who in April 1213, a bit more than a year before the Lerida assembly, had called proctors on a large scale to the Fourth Lateran. Innocent's legate, Cardinal Peter, turned to these new practices, recently developed at the papal curia in Rome, when facing the practical problem of convening the secular Lerida assembly.

We here have very clear "fingerprint" evidence of the diffusion from ecclesiastical to lay practices. More generally, the Lerida episode demonstrates just how quickly such notions could

diffuse in the High Middle Ages due to the ubiquitous presence of the Catholic Church and the ways clergymen partook in the exercise of secular power.

England

In England, proctorial representation has traditionally been dated to the parliaments Simon de Montfort⁹⁰ summoned to London on June 24, 1264 and January 20, 1265, in the name of his captive, King Henry III (r. 1216-1272). However, recent historical research has uncovered several earlier instances of lay proctorial representation.⁹¹

We have already seen how proctorial representation and q.o.t. was first used at the May 1226 church council in London. The 1226 summoning created a precedent, as proctorial representation based on q.o.t. was used in a number of English church councils in the subsequent decades.⁹² These ecclesiastical precedents then served as a blueprint to call knights in the counties to lay assemblies (parliaments) as representatives of the shires.⁹³ To quote Maddicott at some length:

The proctors of the lower clergy had on several occasions been summoned to central councils of the church to discuss taxation; in 1247 they had been summoned to parliament; and the undertaking of the bishops in the January parliament to do what they could to ensure that the lower clergy granted a tax was matched and followed by the regents' instructions to the sheriffs to apply the same pressure to the men of the counties. The two clerical principles of 'Quod omnes tangit' and proctorial representation had merged to bring the knights of the shire to parliament for the first time.⁹⁴

This first clearly occurred in the April Parliament of 1254, where knights were summoned as county representatives rather than (as had occasionally occurred earlier) as lesser tenants-in-chief. The very letter sent to King Henry III (who was absent in Gascony) in 1254 by the regency to explain the summoning of representatives “suggests that it was from the church that both the principle and the practice derived.”⁹⁵ More generally, “as laymen noted the tax-granting power of the lower clergy, they copied the church’s practice of having elected representatives of other groups than magnates.”⁹⁶ This brings us back to the parliaments called by Simon de Montfort a decade later. De Montfort had been present at the April 1254 parliament, and he explicitly used the 1254 model to call first knights and then also townsmen (burgesses) as representatives to the parliaments summoned to London on June 24, 1264 and January 20, 1265.⁹⁷

The English case can be used to further illustrate the pervasiveness of the religious-lay interactions in this period by focusing on the process that led to the summoning of de Montfort’s parliaments. De Montfort called the 1265 parliaments in the name of King Henry III who he had defeated and captured the year before at the battle of Lewes. The confrontation at Lewes was the culmination of seven years of protracted conflict between a coalition of magnates, churchmen and commercial towns, headed by de Montfort, and the English king and his allies. De Montfort’s political program centered on the so-called Provisions of Oxford, which the English magnates had forced upon Henry III in 1258, and which “was the most fundamental attempt to redistribute power within the English state before the seventeenth century”,⁹⁸ much more radical in limiting the power of the king than Magna Carta.

Simon de Montfort is one of the individuals of the High Middle Ages we know most about because so many of the letters he sent and received have survived. On the basis of these, historians such as David Carpenter and John Maddicott have concluded that his political views were strongly influenced by a group of ecclesiastical confidants, most importantly Robert Grosseteste, Adam

Marsh, and Thomas de Cantilupe. These men all shared political views that we would today call constitutionalist, and they seem to have had a huge influence on Montfort's political leanings. According to the chronicler Matthew Paris, Grosseteste – the greatest English theologian of the age, stern defender of the Magna Carta, and revival and translator of Aristotle from whom he derived a distinction between (lawful) kingship and (unlawful) tyranny – was Montfort's "father confessor".⁹⁹

Maddicott concludes that the origins of the reform program centered upon the Provisions of Oxford "lie more generally with the Church, with the bishops in particular, and with the teaching of the schools [at Oxford and Cambridge]".¹⁰⁰ Via Montfort's letters to and from Grosseteste, Marsh, and de Cantilupe, we can directly trace these interactions, which seem to be the source of Montfort's view of political reform and constitutionalism as a great moral cause. This is a good illustration of the way constitutionalist principles developed by churchmen influenced the political thinking of laymen – and hence political developments – in medieval Europe.

Conclusions

The practices of proctorial representation and rule by consent via councils were developed within the Catholic Church in the 12th and 13th centuries. They were quickly transferred to secular assemblies. All the important steps in this process were downstream consequences of the 11th century "crisis of church and state". This has important implications for the study of regime change in general and for the literature on the rise of parliaments in particular.

The first implication concerns the diffusion of ideas and institutions. In the period analyzed, "the whole of educated Europe formed a single and undifferentiated unit"¹⁰¹ and diffusion was therefore pervasive. As Weyland has argued, such diffusion processes are crucial if we wish to grasp processes of secular political change.¹⁰² This paper shows that we can trace and document the ways in which representation and consent diffused first within ecclesiastical circles and then to lay

circles. Indeed, we can identify the specific vessels, in the form of individual actors, who carried them. This is possible because representative institutions have attracted “perhaps more scholarly attention than any other subject within the institutional history of medieval Europe.”¹⁰³ It is paradoxical that the unit of analysis of the new social science research on this topic has remained wedded to a polity level where most of this fine-grained historical research cannot be used in empirical analysis, though it occasionally informs the theoretical expectations.

The second implication concerns the extent to which ideas and institutions developed within religious organizations can influence secular political developments. The investigated episodes show that those who ignore the political or economic effects of religious teachings or ecclesiastical structures do so at their own peril. This is a point that has recently been made for other historical contexts¹⁰⁴ but it holds *a fortiori* for the study of the early development of representative institutions due to the ubiquitous presence and ideological dominance of the Catholic Church in medieval society.¹⁰⁵

Third, by focusing on the role of the Church, we get a more satisfactory answer to the puzzling question about why representation and consent solely arose and spread in the Latin west. It is only here that we find the Catholic Church in general and – as the comparison with the Byzantine Empire shows – the medieval “crisis of church and state” in particular. The empirical analysis above focused on the advent of proctorial representation, but as the appended example of de Montfort and the Provisions of Oxford demonstrates, the political and administrative ideas and institutions emanating from the Church in the 12th and 13th centuries had a much broader influence in medieval society. Western medieval society was shot through with the institutions and culture of the Roman Church, and future research on the medieval origins of the “Rise of the West” would do well to pursue the “migration” of political tenets and administrative techniques from the ecclesiastical to the lay sphere.

Notes

¹ E.g., Stasavage 2010; 2016; Van Zanden, Buringh and Bosker 2012; Blaydes and Chaney 2013; Boucoyannis 2015; Abramson and Boix 2017.

² Cf. Stasavage 2010, 630; Van Zanden, Buringh and Bosker 2012, 837; Boix and Abramson 2017, 9-10.

³ Boucoyannis 2015.

⁴ Stasavage 2016.

⁵ Boucoyannis (2015) and Stasavage (2016) here build on the seminal work of the American medievalist Gaines Post (1964).

⁶ Stasavage 2016, 145; Manin 1997. As Pitkin 1967 show in her seminal *The Concept of Representation*, there is an unbroken tradition that connects modern political representation with medieval proctorial representation.

⁷ Post 1964, 61-63; Monahan 1987, 111-126; O'Callaghan 1989, 14-15; Kay 2002; Oakley 2012, 155.

⁸ As Kay (2002, 101) puts it, proctors “had a voice in the proceedings but not a vote”. On the distinction between involuntary and voluntary consent, see the seminal work of Post (1964) and the recent work of Oakley (2012, 152-158).

⁹ Post 1964; Kay 2002, 95-101.

¹⁰ Kay 2002, 82.

¹¹ Boucoyannis 2015.

¹² Stasavage 2016.

¹³ Post 1964, 66, 124; Southern 1970; Tierney 1982; Berman 1983; Monahan 1987; Black 1992; 1998; Bisson 2009, 8-9; Bradford and McHardy 2017, xv-xvii; cf. Finer 1997, 1029-1032; Oakley 2003; 2012, 138-159. The use of representation and consent within the Church is mentioned very briefly by Boucoyannis (2015, 316) and by Stasavage (2016, 150-152) but only when introducing the legal origins of proctorial representation. In both cases, the proposed reasons for representative institutions therefore lie elsewhere, namely in state capacity (Boucoyannis 2015) and the chaos wrought by the Germanic invasions in the early Middle Ages (Stasavage 2016).

¹⁴ Van Zanden, Buringh and Bosker 2012.

¹⁵ Stasavage 2010.

¹⁶ Blaydes and Chaney 2013.

¹⁷ Abramson and Boix 2017.

¹⁸ Stasavage 2016, 148.

¹⁹ Kuran 2004.

²⁰ Woodberry 2012.

²¹ Fukuyama 2011.

²² However, Fukuyama (2011) does not discuss how the church affected the development of representation and consent.

²³ Weyland 2014; 2016.

²⁴ Tierney 1982, 25.

²⁵ Southern 1970; Berman 1983; Mann 1986, Chapter 12; Monahan 1987; Black 1992; Oakley 2003; 2010; 2012.

²⁶ Mann 1986, Chapter 12; Finer 1997, 957; Southern 1970, 15-24; Monahan 1987, 133-134.

²⁷ Monahan 1987, 130.

²⁸ Berman 1983, 161-163; Howe 2016, 206-209.

²⁹ Southern 1970, 130; Monahan 1987, 43.

³⁰ Tierney 1982, 13.

³¹ Southern 1970; Tierney 1982; 1988; Berman 1983; Monahan 1987; Bisson 2009, 8-9; Oakley 2012, 155.

³² Tierney 1988; Bisson 2009, 8. The expression is of course anachronistic as there were no genuine states in the medieval world and as medieval men of letters for centuries henceforth remained loyal to the notion of a universal Christendom, headed by pope and emperor in unison.

³³ See Ullmann 1970[1955]; Oakley 2010; Møller 2017a.

³⁴ Southern 1956, 141.

³⁵ Howe 2016, 5-9.

³⁶ Berman 1983, 15-19.

- ³⁷ Oakley 2010: 220-1; 2012, 17-39.
- ³⁸ Southern 1970, 96; Oakley 2010.
- ³⁹ Oakley 2010, 218.
- ⁴⁰ E.g. Berman 1983, 88-91; Oakley 2010, 165-173; 2012, 1.
- ⁴¹ Oakley 2012, 39.
- ⁴² Southern 1970, 203; Tierney 1982; 1988, 197; Berman 1983, 111; Bisson 2009, 8-9; Oakley 2012, 41.
- ⁴³ Ullmann 1970[1955], 367-368; Tierney 1982; Berman 1983.
- ⁴⁴ Bradford and McHardy 2017, xv; Oakley 2012, 148-149.
- ⁴⁵ Oakley 2012, 148-153.
- ⁴⁶ Tierney 1982; Oakley 2012, 68-69. The reform popes actively promoted law schools such as that of Bologna in order to project Canon law into society. See also Southern 1970, 203; Berman 1983, 115-162.
- ⁴⁷ At least, the *Decretum* is attributed to Gratian.
- ⁴⁸ Berman 1983, 161-162.
- ⁴⁹ Cf. Post 1964; Monahan 1987.
- ⁵⁰ Tierney 1982, 21-28; Monahan 1987, 99-100, 109; Oakley 2012, 153-154.
- ⁵¹ Kay 2002, 103. Tellingly, dispensation of justice in the form of petition-and-response was to remain one of the linchpins of medieval representative institutions, where monarchs had to answer grievances before they were able to receive a grant of taxation (see Kagay 1981; Procter 1980; O'Callaghan 1989; Dodd 2007; Maddicott 2010).
- ⁵² Monahan 1987, 112-113, 116; Oakley 2012, 148-149, 152-153.
- ⁵³ Oakley 2012, 153-164.
- ⁵⁴ Ullmann 1970[1955]; Monahan 1987, 43-47; Bisson 2009, 11; Black 1992, 165; Oakley 2003, 8, 106-107.
- ⁵⁵ Oakley 2003, 110.
- ⁵⁶ Tierney 1982, 14-18; Monahan 1987, 256; Oakley 2003; 2012, 158.
- ⁵⁷ Berman 1983, 208. These conciliar ideas and institutional practices culminated in the early 15th century, where a strong movement within the church “developed a theory of the intrinsic supremacy of a representative assembly” and tried to implement this at e.g. the Council of Constance 1414-18 and the

Council of Basle 1431-49. This is also where we find the first systematic formulation of the theory of representative government. However, the notion of papal supremacy ultimately prevailed within the Church (Black 1992, 169-178; 1998, 78, 82-83; Oakley 2003; 2012).

⁵⁸ Finer 1997, 629, 649-655.

⁵⁹ Oakley 2010, 103.

⁶⁰ Ibid., 105.

⁶¹ Runciman 1977; Laiou 2000, 804-806.

⁶² Berman 1983, 149; see also Oakley 2012, 149; Stasavage 2016, 150-152.

⁶³ Post 1964, 108-109; Tierney 1982, 24.

⁶⁴ Post 1964, 88-89; Monahan 1987, 103; Carpenter 1996, 400; Oakley 2012, 154.

⁶⁵ Bradford and McHardy 2017, xv.

⁶⁶ Kay 2002, 190-191.

⁶⁷ Tierney 1982, 25; Kay 2002.

⁶⁸ Kay 2002, 84, 101. The backdrop was clearly the Fourth Lateran. "Innocent had provided the chapters with a precedent that they soon claimed as their right" (Kay 2002, 98).

⁶⁹ Ibid., 201.

⁷⁰ Ibid., 175.

⁷¹ Ibid., 224.

⁷² Ibid., 231; Bradford and McHardy 2017, xi-xxxiv.

⁷³ Maddicott 2010, 209.

⁷⁴ Kay 2002, ix-x; Bradford and McHardy 2017, xvi.

⁷⁵ Kay 2002, 205-225.

⁷⁶ Berman 1983, 161.

⁷⁷ Ibid., 122; Black 1992, 87-89.

⁷⁸ E.g. Post 1964, 61-63; Monahan 1987, 111-126; O'Callaghan 1989, 14-15; Oakley 2012, 155.

⁷⁹ See Proctor 1980.

⁸⁰ Marongiu 1968; Van Zanden, Buringh and Bosker 2012; Stasavage 2010.

⁸¹ Marongiu 1968, 86; see also Møller 2017b.

⁸² Van Zanden, Buringh and Bosker 2012, 839. See also Møller 2017b, 194.

⁸³ Procter 1980, 2; Kagay 1981, 1.

⁸⁴ See Weyland 2014; 2016.

⁸⁵ See Møller 2017b. The representative institution identified in Aragon in 1164 by Møller was not based on Roman law practice of proctorial representation (see fn. 87 below).

⁸⁶ Kagay 1981, 67-71; Procter 1980, 255. A number of scholars identify the *cortes* called by king Alfonso IX in the realm of Leon in 1188 as the first secular representative institution (e.g. Marongiu 1968, 61-62; Van Zanden, Buringh and Bosker 2012, 838; Boucoyannis 2015, 315, fn. 86). But there is no evidence that townsmen appeared as genuine proctors at this occasion (Post 1964, 62-79; Kagay 1981, 42, fn. 2; Procter 1980, 107-108; Reynolds 2012[2000], 108). Furthermore, townsmen had already been summoned by king Alfonso II of Aragon to an assembly at Zaragoza on November 11, 1164. Here, too, there is no evidence of a genuine use of proctorial representation based on Roman law (Post 1964, 71-73; Kagay 1981, 41-42).

⁸⁷ Kagay 1981, 70.

⁸⁸ Ibid., 70.

⁸⁹ Post 1964, 88-89.

⁹⁰ The son of the Simon de Montfort mentioned in the Aragonese episode.

⁹¹ Carpenter 1996, 390-391, 400-402; Kay 2002; Maddicott 2010, 208-217; Bradford and McHardy 2017.

⁹² "Subsequent church councils in England cemented the connection between the presence of proctors and the voting of papal taxation" (Bradford & McHardy 2017, xvi).

⁹³ Carpenter 1996, 401-402; Maddicott 2010, 209-210; Bradford and McHardy 2017, xv-xvii.

⁹⁴ Maddicott 2010, 215-216.

⁹⁵ Carpenter 1996, 401.

⁹⁶ Bradford and McHardy 2017, xvii.

⁹⁷ Maddicott 2010, 210, 253.

⁹⁸ Maddicott 1996, 352.

⁹⁹ Carpenter 1991, 14.

¹⁰⁰ Maddicott 1996, 354.

¹⁰¹ Berman 1983, 161.

¹⁰² Weyland 2014; 2016.

¹⁰³ Cerda 2011, 62.

¹⁰⁴ E.g., Kuran 2004; Woodberry 2012.

¹⁰⁵ See also Fukuyama 2011.

References

Abramson, Scott and Carles Boix. 2017. “Endogenous Parliaments: Urban Agglomeration, Technological Accumulation, and the Deep Roots of Executive Constraints in Europe.”

Working paper. http://cpd.berkeley.edu/wp-content/uploads/2017/01/abramson_boix_v17_sfa.pdf

Berman, Harold J. 1983. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press.

Bisson, Thomas N. 2009. *The Crisis of the Twelfth Century: Power, Lordship, and the Origins of European Government*. Princeton: Princeton University Press.

Black, Antony 1992. *Political Thought in Europe 1250-1450*. Cambridge: Cambridge University Press.

Black, Antony 1998. “Popes and Councils.” In *The New Cambridge Medieval History, c. 1415–c. 1500*, Vol. VII, ed. Christopher Allmand. Cambridge: Cambridge University Press, 65-86.

Blaydes, Lisa and Eric Chaney. 2013. “The Feudal Revolution and Europe’s Rise: Political Divergence of the Christian West and the Muslim World before 1500 CE.” *American Political Science Review* 107(1): 16-34.

- Boucoyannis, Deborah. 2015. "No Taxation of Elites, No Representation: State Capacity and the Origins of Representation." *Politics and Society* 43: 303–332.
- Bradford, Phil and Alison K. McHardy. 2017. *Proctors for Parliament: Clergy, Community and Politics, c. 1248-1539*. The Boydell Press: The Canterbury and York Society.
- Carpenter, David A. 1991. "Simon de Montfort: The First Leader of a Political Movement in English History", *History*, 76(246): 3-23.
- Carpenter, David A. 1996. "The Beginnings of Parliament." In *The Reign of Henry III*, ed. David A. Carpenter. London: The Hambledon Press, 381-408.
- Cerda, José M. 2011. "The Assemblies of Alfonso VIII of Castile: Burgos (1169) to Carrión (1188)". *Journal of Medieval Iberian Studies* 3(1): 61-77.
- Dodd, Gwilym 2007. *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages*. Oxford: Oxford University Press.
- Finer, Samuel E. 1997. *The History of Government II: The Intermediate Ages*. Oxford: Oxford University Press.
- Fukuyama, Francis 2011. *The Origins of Political Order: From Prehuman Times to the French Revolution*. London: Profile Books.
- Howe, John 2016. *Before the Gregorian Reform: The Latin Church as the Turn of the First Millennium*. London: Cornell University Press.
- Kagay, Donald J. 1981. *The Development of the Cortes in the Crown of Aragon, 1064-1327*. ETD Collection for Fordham University.
- Kay, Richard. 2002. *The Council of Bourges, 1225: A Documentary History*. Aldershot: Ashgate.
- Kuran, Timor. 2004. *Islam and Mammon: The Economic Predicaments of Islamism*. Princeton: Princeton University Press.

- Laiou, Angeliki E. 2000. "The Byzantine Empire in the Fourteenth Century." In *The New Cambridge Medieval History, c. 1300–c. 1415*, Vol. VI, ed. Michael Jones. Cambridge: Cambridge University Press, 795-824.
- Maddicott, John R. 1996. *Simon de Montfort*. Cambridge: Cambridge University Press.
- Maddicott, John R. 2010. *The Origins of the English Parliament, 924–1327*. Oxford: Oxford University Press.
- Manin, Bernard. (1997). *The Principles of Representative Government*. Cambridge: Cambridge University Press.
- Mann, Michael. 1986. *The Sources of Social Power: A History of Power from the Beginning to AD 1760*. Cambridge: Cambridge University Press.
- Marongiu, Antonio. 1968. *Medieval Parliaments: A Comparative Study*, Vol. 32. London: Eyre & Spottiswoode.
- Møller, Jørgen. 2017a. "Medieval Origins of the Rule of Law: The Gregorian Reforms as Critical Juncture?" *Hague Journal on the Rule of Law* 9(2): 265-282.
- Møller, Jørgen. 2017b. "The Birth of Representative Institutions: The Case of the Crown of Aragon". *Social Science History* 41(2): 175-200.
- Monahan, Arthur P. 1987. *Consent, Coercion, and Limit: The Medieval Origins of Parliamentary Democracy*. Leiden: E.J. Brill.
- O'Callaghan, J.F. 1989. *The Cortes of Castile-Léon 1188-1350*. Philadelphia: University of Pennsylvania Press.
- Oakley, Francis. 2003. *The Conciliarist Tradition: Constitutionalism in the Catholic Church 1300-1870*. Oxford: Oxford University Press.
- Oakley, Francis. 2010. *Empty Bottles of Gentilism: Kingship and the Divine in Late Antiquity and the Early Middle Ages (to 1050)*. New Haven and London: Yale University Press.

- Oakley, Francis. 2012. *The Mortgage of the Past: Reshaping the Ancient Political Inheritance (1050-1300)*. New Haven and London: Yale University Press.
- Pitkin, Hanna F. 1967. *The Concept of Representation*. Berkeley: University of California Press.
- Post, Gaines. 1964. *Studies in Medieval Legal Thought: Public Law and the State 1100-1322*. Princeton: Princeton University Press.
- Procter, Evelyn S. 1980. *Curia and Cortes in León and Castile 1072-1295*. Cambridge: Cambridge University Press.
- Reynolds, Susan. 2012 (2000). "Government and Community." In *The Middle Ages without Feudalism: Essays in Criticism and Comparison on the Medieval West*, ed. Susan Reynolds. London: Ashgate, 86-112.
- Runciman, Steven. 1977. *The Byzantine Theocracy*. Cambridge: Cambridge University Press.
- Southern, Richard W. 1956. *The Making of the Middle Ages*. London: Hutchinson & Co.
- Southern, Richard W. 1970. *Western Society and the Church in the Middle Ages*. New York: Penguin Books.
- Stasavage, David. 2010. "When Distance Mattered: Geographic Scale and the Development of European Representative Assemblies." *American Political Science Review* 104(4): 625-643.
- Stasavage, David. 2016. "Representation and Consent: Why They Arose in Europe and Not Elsewhere." *Annual Review of Political Science* 19: 145-162.
- Tierney, Brian. 1982. *Religion, Law, and the Growth of Constitutional Thought, 1150-1650*. Cambridge: Cambridge University Press.
- Tierney, Brian. 1988. *The Crisis of Church and State, 1050-1300*. Toronto: University of Toronto Press.
- Ullmann, Walter. 1970 (1955). *The Growth of Papal Government in the Middle Ages*. London: Methuen & Co. Ltd.

- van Zanden, Jan L., Eltjo Buringh and Maarten Bosker. 2012. "The Rise and Decline of European Parliaments, 1188-1789." *The Economic History Review* 65(3): 835-861.
- Weyland, Kurt. 2014. *Making Waves: Democratic Contention in Europe and Latin America since the Revolutions of 1848*. Cambridge: Cambridge University Press.
- Weyland, Kurt. 2016. "Crafting Counterrevolution: How Reactionaries Learned to Combat Change in 1848." *American Political Science Review* 110(2): 215-231.
- Woodberry, Robert. 2012. "The Missionary Roots of Liberal Democracy." *American Political Science Review* 106(2): 244-274.