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Treason, Manhood, and the English State

Shaping constitutional ideas and political subjects
through the laws of treason, 1397-1424

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Abstract

Debates about treason are inherently constitutional conflicts. By defining treason and naming the entities against which traitors offend, the state delineates the nature and limits of its own authority. By implication, treason is integral to shaping loyal political subjects. This thesis uses legal records alongside a range of other sources to examine how the relationship between the English state and its political subjects was being negotiated through the laws of treason during the politically turbulent period between 1397 and 1424.

Previous studies have asserted that between the mid-fourteenth and early sixteenth centuries, the legal scope of treason remained static and the crime continued to be viewed primarily in traditional terms as an attack on the king's person. By contrast, this thesis demonstrates that while customary and chivalric definitions remained relevant, by the early fifteenth century they were being subsumed by constructions of treason as a crime against the nation, the public good, and the English people. This had significant constitutional repercussions. It fostered the alignment of political subjecthood with ethnicised national identity; it introduced into English law the idea of treason as an insult to the abstract public authority of the state; and it enabled significant expansions in the scope of treason to encompass verbal and written expressions of political dissent, and other offences.

By considering the content of sources but also their multilingual character, this thesis illuminates rhetorical and linguistic strategies used to construct or to resist allegations of treason, and demonstrates how the vernacular functioned both to authorise and to subvert the state's prosecution narratives. This thesis also presents a new interpretation of significant changes in the treatment of treasonous speech by showing that this was facilitated by a cultural conjunction between the gendering of particular speech acts and the perceived material effects of men's words. This created the justification for men's words to be punished as treasonous deeds, but also generated means by which the accused could assert resistant identities as loyal subjects and 'trewe men'.

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Table of Contents

ABBREVIATIONS	VII
A NOTE ON TRANSLATIONS	IX
INTRODUCTION	1
1. LOCATING TREASON IN MEDIEVAL POLITICAL CULTURE	11
DIMENSIONS OF POLITICAL CULTURE: STATE AND NATION	17
DIMENSIONS OF POLITICAL CULTURE: GENDER	24
DIMENSIONS OF POLITICAL CULTURE: VERNACULARITY AND MULTILINGUALISM.....	36
DIMENSIONS OF POLITICAL CULTURE: THE POPULAR POLITICAL SPHERE.....	43
THE THEMES AND TERMINOLOGY OF POLITICAL DEBATE.....	48
DEFINING TREASON	54
LEGAL PROCEDURE AND SOURCES.....	63
METHOD AND INTERPRETIVE APPROACH	68
2. TREASON IN PARLIAMENT AND THE COURT OF CHIVALRY, 1397-1401.....	77
TREASON IN THE PARLIAMENT OF SEPTEMBER 1397.....	78
THE TRIAL OF THE EARL OF ARUNDEL	89
THE CONFESSION AND CONVICTION OF THE DUKE OF GLOUCESTER.....	99
JUDGMENT IN PARLIAMENT OF THE COUNTER-APPELLANTS	111
THE EPIPHANY RISING AND ITS AFTERMATH	133
CONCLUSION.....	139
3. NEW PRECEDENTS FOR TREASON IN KING'S BENCH, 1401-1405	142
SUBVERSIVE VISIONS: THE CASE OF THOMAS SAMFORD	152
TREASON AS A MASCULINE SPEECH ACT.....	157
TREASON AGAINST THE NATION	165

CONFESSION AND EVASION: THE ESSEX CONSPIRACY.....	174
CONCLUSIONS.....	195
4. POLITICAL AND RELIGIOUS DISSENT, 1406-1417.....	197
EXPANDING THE SCOPE OF TREASON IN PARLIAMENT AND KING'S BENCH.....	208
THE LOLLARD LAWYER AND THE BILL CASTER.....	234
TRUE MEN: LEGITIMISING DISSENT THROUGH THE LANGUAGE OF THE LAW.....	243
CONCLUSIONS.....	262
5. CONTESTED MEANINGS OF TREASON, 1403-1424.....	266
THE PERCY LORDS AND POLITICAL RESISTANCE, 1403-1408.....	269
THE TRAITOR AND HERETIC AS THREAT TO THE REALM: SIR JOHN OLDCASTLE	284
BETRAYAL OF THE NATION: THE SOUTHAMPTON PLOT	301
THE PERSECUTION OF SIR JOHN MORTIMER, 1418-1424	322
CONCLUSIONS.....	338
6. CONCLUSION	339
BIBLIOGRAPHY	359

Abbreviations

<i>Adam Usk</i>	Usk, Adam. <i>The Chronicle of Adam Usk 1377 - 1421</i> . Edited and translated by C. Given-Wilson. Oxford: Clarendon Press, 1997.
<i>AND</i>	Stone, Louise W., William Rothwell, and Thomas Bertram Wallace Reid. <i>Anglo-Norman Dictionary</i> . 7 vols. London: Modern Humanities Research Association, 1977-92. Consulted online at the <i>Anglo-Norman Online Hub</i> http://www.anglo-norman.net/gate/index.shtml?session=S3160571301181156 .
"Appendix II"	"Appendix II: The Confessions of Sir Thomas Gray of Heton, Richard, Earl of Cambridge and Henry, Lord Scrope of Masham." Translated by T. B. Pugh. In <i>Henry V and the Southampton Plot of 1415</i> , 160-77. Gloucester: Sutton, 1988.
<i>CCR</i>	<i>Calendar of the Close Rolls</i> . 47 vols. London: HM Stationery Office, 1900-63.
<i>Chronicle of John Hardyng</i>	John Hardyng, <i>The Chronicle of John Hardyng</i> . Edited by Henry Ellis. London: F. C. and J. Rivington, 1812.
<i>Chronicles of the Revolution</i>	<i>Chronicles of the Revolution, 1397-1400: The Reign of Richard II</i> . Edited and translated by Chris Given-Wilson. Manchester: Manchester University Press, 1993.
<i>CPR</i>	<i>Calendar of the Patent Rolls</i> . 53 vols. London: Public Records Office, 1891-1916.
<i>An English Chronicle</i>	<i>An English Chronicle 1377-1461: Edited from Aberystwyth, National Library of Wales Ms 21068 and Oxford Bodleian Library Ms Lyell 34</i> . Edited by William Marx. Woodbridge, Suffolk: Boydell, 2003.
<i>Eulogium</i>	"Continuatio Eulogii." In <i>Eulogium Historiarum sive Temporis</i> . Edited by F. S. Haydon. Vol. 3. London: Rolls Series, 1863.
<i>Foedera</i>	<i>Rymer's Foedera Volume 9</i> , ed. Thomas Rymer (London, 1739-1745), accessed at <i>British History Online</i> http://www.british-history.ac.uk/rymer-foedera/vol9
<i>Gesta Henrici Quinti</i>	<i>Gesta Henrici Quinti. The Deeds of Henry the Fifth</i> . Translated by Frank Taylor and John S. Roskell. Oxford: Clarendon Press, 1975.
<i>Great Chronicle</i>	Fabyan, Robert. <i>The Great Chronicle of London</i> . Edited by A. H. Thomas, and I. D. Thornley. London: Guildhall Library, 1938.

<i>HVRS</i>	<i>Historia Vitae et Regni Ricardi Secundi</i> . Edited by George B. Stow. Philadelphia, PA: University of Pennsylvania Press, 1977.
<i>MED</i>	Kurath H. et al. <i>Middle English Dictionary</i> . Ann Arbor: University of Michigan Press, 1954-2001. Consulted online at http://quod.lib.umich.edu/m/med/ .
<i>Morley v. Salisbury</i>	"A True Copy of the Roll of Proceeding in an Appeale of Treason before the Conestable and Marshall between Thomas Lord Morley, Appellant, and John De Montague, Earle of Salisbury, Defendant, Anno Primi Henrici Quarti." Edited by M. H. Keen and M. Warner. In <i>Chronology, Conquest and Conflict in Medieval England. Camden Miscellany XXXIV</i> , 169-95. London: Cambridge University Press for the Royal Historical Society, 1997.
<i>PPC</i>	<i>Proceedings and Ordinances of the Privy Council of England: Volume 1 10 Richard II. MCCCCLXXXVI to 11 Henry IV. MCCCCX</i> . Edited by N. H. Nicolas. London: Commissioners on the Public Records, 1834.
<i>PROME</i>	<i>The Parliament Rolls of Medieval England 1275-1504</i> . Edited by C. Given-Wilson et al. CD-ROM. Leicester: Scholarly Digital Editions, 2005.
	Parliaments are cited by the king and year on the first occasion, and thereafter by year. The month is included only if more than one parliament was held in the same year.
<i>Select Cases</i>	<i>Select Cases in the Court of King's Bench</i> . Edited by G. O. Sayles. Vol. 7. Selden Society 88. London: Quaritch, 1971.
<i>St Albans Chronicle II</i>	<i>The St Albans Chronicle: The Chronica Maiora of Thomas Walsingham II. 1394-1422</i> . Edited and translated by John Taylor, Wendy R. Childs, and Leslie Watkiss. Oxford: Oxford University Press, 2011.
<i>Statutes</i>	<i>The Statutes of the Realm</i> . 9 vols. London: Record Commission, 1810-25.

A Note on Translations

Translations from Latin and French sources are my own unless noted. Scribal abbreviations have been expanded. To address constraints of space, words or phrases in the original language are only included where this is important to the argument or where there may be some debate over translation. Middle English is quoted in the original, with any obscure or difficult words translated into modern English in brackets. Some of the legal records I use appear in print form as partial transcriptions or translations. Where such published versions exist, I have included these in the footnotes and have consulted them alongside my own translations, noting any significant differences.

Latin spelling has been modernised by substituting 'v' for 'u' and 'j' for 'i'. Some Middle English has also been modernised for readability with the substitution of yoghs and thorns. In general, the French of late medieval England did not use the accent marks that appear in modern French. Accents have only been used where these appear in original sources.

Dating of law terms, regnal years, and annual festivals has been determined with reference to C. R. Cheney, ed. *A Handbook of Dates for Students of British History*, revised by Michael Jones. New ed. Cambridge: Cambridge University Press, 2000.

Introduction

In 1415, the English nobleman Henry Lescrope, Lord Masham, was executed as a traitor. After being stripped of his status as a knight of the Order of the Garter, he was drawn through the town of Southampton, beheaded, and his head was sent to be posted on the gate of York. The judicial sentence of his conviction identified Lescrope as a man who had betrayed his king and in doing so, had destroyed his own honour as a knight. However, it also included a more unusual determination: that Lescrope had betrayed 'the language in which he was born'.¹ This was a legal construction that, by the early 1400s, was intended to be read as synonymous with being a traitor to the nation. In his first-person confession, composed in English and addressed directly to the king, Lescrope mounted a valiant if ultimately unsuccessful defence of his actions. Arguing that he had only become involved in a treasonous plot in order to forestall it, he repeatedly reminded Henry V of his many years of faithful knightly service and asserted that although he had been unwise for not telling Henry what he was involved in, nevertheless he remained the king's true man and loyal liege.

This study asks how the constitutional relationship between the late medieval English state and individual political subjects was being negotiated through the law of treason between 1397 and 1424. Lescrope's conviction illuminates three of the four central themes that shape the discussion. First, it highlights tensions in this period between customary perceptions of treason as a personal betrayal of masculine loyalties, and emerging definitions of treason

¹ "Henry V: Parliament of 1415" in *The Parliament Rolls of Medieval England 1275-1504*, ed. C. Given-Wilson et al. CD-ROM. (Leicester: Scholarly Digital Editions, 2005), item 6, RP iv:64-66 (hereafter cited as *PROME*). The editor has translated the Latin phrase 'lingua in qua natus est' as the 'nation in which he was born'.

as a crime against the abstract public authority of the state. The meanings of treason in late medieval political culture were notoriously ambiguous, and even after the crime was delimited in the 1352 Statute of Treasons, the statute's primary clause that treason was to 'imagine' the death of the king left great scope for interpretation.² This ambiguity meant both customary notions of treason and newer conceptual models could be deployed by the state as well as by accused men to construct or to deny charges of treason.

Related to these differing perceptions of treason, Lescrope sought to resist the charges against him by asserting his identity as a true man and loyal subject. 'Trueness' was deeply connected to masculine honour and 'worship', and it was a core value embraced by men at all social levels in late medieval England.³ Throughout, this study will consider the ways that gendered political subjecthood as a 'true' man was shaped and defended through conflicts over treason. As shall be seen, true manhood was constructed in direct relation to the person of the king but also, increasingly, in relation to more abstract entities including the crown, the *chose publique*, the 'common profit', and the national community of England.

The significance of Lescrope's vernacular confession draws attention to the third theme, which is the use of language in multilingual sources relating to treason.⁴ My interest is not only in what the records explicitly say, but also in

² 25 Edw. III, St. 5 c. 2, accessed 3 March, 2013, <http://www.legislation.gov.uk/aep/Edw3Stat5/25/2/section/II>. The statute is formally dated as 1351, but it was not enacted in parliament until January 1352. It is generally dated by historians as 1352.

³ Trueness as a gendered social and political ideal is examined in detail in Chapter One.

⁴ While recognising that in medieval England, the term 'vernacular' could also be applied to French, throughout this study the term is used to refer to oral/aural or written communication in English. For terminology, see Elaine Treharne, "The Vernaculars of Medieval England, 1170-1350," in *The Cambridge Companion to Medieval English Culture*, ed. Andrew Galloway

contested meanings that were generated through the interactions between the languages used to perform and preserve them. First-person vernacular texts produced by accused men were embedded into the judicial narratives of investigation and prosecution, and this reflected the growing status of English as a language of official record in a multilingual legal and political culture. When these islands of English were juxtaposed with formal legal rhetoric in French and Latin, the intention was to exploit the authenticating power of the vernacular to prove the traitor's crime in his own words. However, the capacity of the vernacular to endorse the veracity of a written text also opened up the potential for fractures in the state's prosecution narratives. When the first-person vernacular speech of accused men was recited in court as part of the public performance of royal justice, it could destabilise and subvert, as well as authenticate, the state's accounts of treason.

A fourth theme is the spread of debates about the nature and sources of legitimate political authority into an emerging popular public sphere characterised by vernacularity and auralty, and by such practices as the circulation of handbills and public petitions. While Lescrope's case is one of a number in this study that feature men of elevated social and political status, many others concern people much lower in the hierarchy, including urban artisans, household servants, and even vagrants. The evidence will show that these men appropriated and creatively adapted political ideas, petitionary practices, and the language of the common law to engage in political debate on their own terms and to articulate alternative visions of treason and loyal

(Cambridge: Cambridge University Press, 2011), 217–36; J. Wogan-Browne, "General Introduction: What's in a Name?: The 'French' of 'England,'" in *Language and Culture in Medieval Britain. The French of England c.1100-c.1500*, ed. Jocelyn Wogan-Browne (Woodbridge, Suffolk: York Medieval Press, 2009), 1–13.

political subjecthood.

In both medieval and modern polities, debates about treason are essentially conflicts about the nature and limits of legitimate political authority. As Alan Orr observes, 'whatever the precise nature of a regime - aristocratic, monarchic, or democratic - the claimants of sovereign power needed the law of treason in order to advance their claims to govern'.⁵ By controlling the meaning of treason and describing the entities against which the traitor offends, the state delineates and legitimises its own authority. By default, the laws of treason also determine what makes a loyal political subject, and thereby help to control access to the privileges of subjecthood. The fact that in recent years, western governments have canvassed the possibility of reviving medieval treason laws to confront the problem of twenty-first-century terrorism indicates the history of treason is not only of theoretical interest, but may have tangible effects on the citizens of modern nation-states.⁶

For eminent scholars of medieval English law such as J. G. Bellamy, J. H. Baker, and T. F. T. Plucknett, the history of treason was by definition constitutional history and they recognised that conflicts over the meaning and scope of treason were central to many major developments of the period.⁷ The 'tyranny' and deposition of Richard II and the usurpation of his throne by Henry IV raised fundamental constitutional questions that would continue to trouble

⁵ D. Alan Orr, *Treason and the State: Law, Politics and Ideology in the English Civil War* (Cambridge: Cambridge University Press, 2002), 56.

⁶ "The Guardian View on Fighting Isis: Medieval Treason Laws are the Wrong Weapon," *The Guardian*, 19 October, 2014, accessed 15 May, 2015, <http://www.theguardian.com/commentisfree/2014/oct/19/guardian-view-on-fighting-isis-trason-laws-wrong-weapon>.

⁷ For example, in J. G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970); J. H. Baker, *An Introduction to English Legal History*, 2nd ed. (London: Butterworths, 1979), 427–28; T. F. T. Plucknett, "Presidential Address: State Trials under Richard II," *Transactions of the Royal Historical Society* 2 (1952): 159–71.

the English polity throughout the fifteenth century. What or who was the source of legitimate authority in the English state? What was the relationship between the king and the law? Did sovereign power lie wholly in the king's person, or did it reside in the abstraction of the 'crown'? Was it in even shared in some unspecified way between the king and a wider representative political community, the 'estates' of the realm? In England but also across Europe, the enduring question of where legitimate political authority lies was an urgent one from the twelfth century onwards as a result of endemic power struggles between the papacy and the Holy Roman Empire, the monarchies of France and England, and amongst the urban communes of the Italian peninsula. The rediscovery of Roman civil law and Aristotelian political theory, when combined with the philosophical and juridical tradition of western Christendom, provided new ways of thinking about power and new vocabularies of the *res publica*, the 'common good', and the *popolo*.⁸ This was the broader intellectual and political field upon which late medieval conflicts over treason were taking place.

In England, many of these issues had been raised during earlier political breaches, such as the deposition of Edward II in 1327. However, 1399 was new territory in a constitutional sense, because Henry IV was the first English king in well over 200 years to take the throne in the absence of a clear dynastic title, and therefore without the quasi-divine sanction of bloodright. This created the need for novel constitutional justifications, first to divide Richard from his crown and regality, and then to bind Henry's usurping 'body natural' and that of his bloodline to the body politic of the realm. The records generated by treason

⁸ Joseph Canning, *Ideas of Power in the Late Middle Ages, 1296-1417* (New York: Cambridge University Press, 2011); Antony Black, *Political Thought in Europe, 1250-1450* (Cambridge: Cambridge University Press, 1992).

proceedings provide rich and largely neglected sources for examining in detail how this process played out in the period between Henry IV's accession and the first regnal years of his grandson, the infant Henry VI. Through detailed analysis of these sources, this study will show how the first Lancastrian kings used opportunities created by treason proceedings to reinforce their claims to embody sovereign power and how, by implication, men were constituted through the law as loyal political subjects or as traitors. While new legal constructions of treason were the response to immediate political imperatives, they had long-term constitutional repercussions. For example, from the early 1400s dissenting political speech was being punished as treason even in the absence of any overt act. This was a construction of treason that moved English common law into closer alignment with civil law ideas of treason as an insult to the public authority of the state, and not simply an attack on the person of the ruler. Precedents developed in King's Bench also expanded the scope of treason to include such nebulous offences as seeking to disinherit the king's sons, or to destroy the laws and language of England.

Paralleling the examination of the state's developing conceptions of treason, this study considers the evidence from the perspective of the accused. Reading the sources closely and with attention not only to what they say or do not say, but also to how and in what languages they were produced, it offers new insights into the rhetorical and linguistic strategies used by men accused of treason to voice and justify their political resistance, and to defend themselves as true men. The analysis is enriched by incorporating not only cases where offenders were convicted and executed, but also those where they were acquitted by juries. This outcome was significant because it suggests that the

novel constructions of treason being adopted by the king and his judicial officers were not always endorsed by the wider political community.

Given the intimate connection between treason law and constitutional change, it is surprising that since Bellamy's landmark book there has been no extended analysis of treason in the period between the 1352 statute and the early sixteenth century.⁹ There is much valuable research on treason in earlier and later periods, with approaches informed by both political and cultural history. From the perspective of legal history, there are also many important studies on specific developments in the law and on aspects of procedure.¹⁰ However, a lacuna remains, and this gap appears more glaring in light of the fact that since the 1990s, there has been a resurgence of scholarly interest in England's constitutional history more generally, and in the relationship between political thought and political action in the later medieval period. This 'new constitutional history' brings together the study of formal structures and institutions of government with research into individuals and social groups to create more sophisticated explanatory frameworks for late-fourteenth and fifteenth-century political crises that move beyond limited models of 'bad' kingship or an over-powerful and self-serving nobility. Approaching constitutional history through the lens of political culture, this work considers how constitutional ideas were expressed and shaped in the formal records and processes of law and government, but also incorporates evidence for beliefs, values, and ideals that were captured in more informal sources, including chronicles, didactic works, and imaginative literature. This has produced rich

⁹ Bellamy, *Law of Treason*.

¹⁰ The historiography of treason is detailed in Chapter One.

insights into the languages and strategies of debate, showing what it was politically possible to think and do at any particular historical juncture, and highlighting connections between political thought and individual action.

Building on this body of scholarship, this study offers another perspective on the constitutional history of the later medieval period. First, it will argue that the need to bond Henry IV to the crown he had usurped generated precedents that defined traitors as enemies of the nation as well as personal enemies of the king. This development helped to shape an emerging constitutional model in which the public authority of the state was embodied in but was greater than the person of the king, and thus created the potential for subjects to resist individual kings by claiming allegiance to the crown or community of England. It also reflected and reinforced a trend already underway from the mid-1300s for growing alignment between political subjecthood and ethnicised national identity, such that men were increasingly constituted as 'English subjects', and not simply as 'subjects of the English king'.

A related argument pursued here concerns common law interpretations of treason. Bellamy, whose conclusion has been generally accepted, asserted that the scope of treason did not change significantly between 1352 and the early Tudor period; this was still construed as a personal crime and there was no notion of treason as a crime against the state.¹¹ By contrast, this research contends that legal and cultural conceptions of treason were in significant flux in the early fifteenth century, with precedents established in case law that defined treason as a crime against the state, nation, or people of England as well

¹¹ For example, in *Law of Treason* and John G. Bellamy, *The Tudor Law of Treason: An Introduction* (London: Routledge & Kegan Paul, 1979).

as against the person of the king. These definitions were challenged by customary and chivalric perceptions of treason as a violation of personal masculine loyalty and honour, so that treason existed on a continuum. However, by the end of the period considered here, in the realm of politics and the law the idea of treason as a crime against the state had largely subsumed customary and chivalric notions.

This research examines at length a distinctive feature of early fifteenth-century treason law, the emergence of precedents for punishing verbal or written expressions of political dissent as acts of treason punishable by death. A new interpretation of this important legal development will be advanced that suggests it was rendered both possible and legally justifiable because of a broader cultural conjunction between the gendering of particular speech acts and the perceived material effects of men's words.

Finally, although most studies of treason under Richard II, Henry IV, and Henry V have tended to focus on noble plots and rebellions, this investigation also includes many examples that feature people of far humbler social status. This allows a deeper exploration of how ideas about treason and political loyalty were formed and debated in a popular public sphere encompassing urban streets, marketplaces, and taverns. The sources will show that ordinary people were proficient at adapting the rhetorical models of legal and petitionary culture to voice and authorise their resistance, and that they were able to assert their identities as true men and loyal political subjects in sophisticated terms.

This study unfolds through five chapters. Chapter One locates treason within the conceptual framework of political culture, and discusses the sources used and the approach to interpretation. Chapter Two explores the

manipulation of treason law in the king's prerogative courts of parliament and Chivalry between 1397 and 1401. Chapter Three moves into the court of King's Bench, examining precedents for treason appearing between 1401 and 1405. Chapter Four considers new definitions of treason appearing in case law and statutes between 1406 and 1417, and reflects on social and discursive intersections between political and religious dissent. Finally, Chapter Five focuses on the treatment of high-status traitors between 1403 and 1424 in order to trace changes in treason law across a range of judicial venues, and to examine the long-term implications of clashes between chivalric notions of treason and the view of treason as a crime against the public authority of the state.

Chapter One

Locating Treason in Medieval Political Culture

Any investigation into how treason shaped the constitutional relationship between the English state and its political subjects must begin by establishing what the term 'constitutional' means in the context of late medieval England. For the nineteenth-century Whig historians, the 'constitution' was an unwritten set of shared customs and values that had allowed England to make 'rational' progress towards the limited parliamentary monarchy of their own day.¹ This triumphalist interpretation was upended by investigations of the institutions of government and law, which debunked Whiggish myths of the primacy of the Commons to argue for the central role of royal legal and administrative bureaucracy in the precocious formation of an English nation-state.² However, these explanatory frameworks remained conceptually limited, especially when it came to explaining the crises of the fifteenth century. As a result, the focus shifted to individuals rather than institutions, and particularly onto the relationships between the king, nobility, and local gentry in the messy business of day-to-day politics. McFarlane's work was pivotal; he argued that in order to understand English state formation, one needed to go beyond

¹ The classic work is William Stubbs, *The Constitutional History of England in its Origin and Development*. 3 vols. 2nd ed. (Oxford: Clarendon Press, 1875-78).

² For example, Frederick Pollock and Frederic W. Maitland, *The History of English Law: Before the Time of Edward I*, 2 vols. 2nd ed. (Cambridge: Cambridge University Press, 1895-98); F. W. Maitland, *The Constitutional History Of England* (Cambridge: Cambridge University Press, 1919); T. F. Tout, *Chapters in the Administrative History of Medieval England*, 6 vols. (Manchester: Manchester University Press, 1920-33); A. F. Pollard, *The Evolution of Parliament* (New York: Longmans, 1920); S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge: Cambridge University Press, 1936). For a historiographical summary, see Christine Carpenter, "Political History and Constitutional History: Before and After McFarlane," in *The McFarlane Legacy: Studies in Late Medieval Politics and Society*, ed. R. H. Britnell and A. J. Pollard (New York: St. Martin's Press, 1995), 175-206.

institutions to analyse how the governing elite operated. This generated detailed accounts of the political and social networks of nobles and gentry, but no new conceptual framework emerged that could explain political crises in terms other than 'bad' kingship or a self-interested nobility.³ Such explanations did not account for evidence showing political actions were not driven solely by narrow personal concerns but by broad political principles and shared values concerning good governance. The focus on individual kings and noble affinities also neglected the role that institutions such as the law play in mediating the relationship between the state and political subjects.⁴

In response, a new approach to constitutional history has emerged which uses the framework of 'political culture' to bring together the public and institutional aspects of power with the private and personal in order to fully comprehend the nature of the late medieval English state. This 'new

³ Important studies include K. B. McFarlane, "Bastard Feudalism," *Historical Research* 20, (1945): 161–80; Ralph A. Griffiths, ed., *Patronage, the Crown and the Provinces in Later Medieval England* (Gloucester: Alan Sutton, 1981); J. R. Lander, *The Limitations of English Monarchy in the Later Middle Ages* (Toronto: University of Toronto Press, 1989); John Gillingham, *The Wars of the Roses: Peace and Conflict in Fifteenth-Century England* (Baton Rouge, LA: Louisiana State University Press, 1981); K. B. McFarlane, *The Nobility of Later Medieval England: The Ford Lectures for 1953 and Related Studies* (Oxford: Clarendon Press, 1973); McFarlane, *England in the Fifteenth Century* (London: Hambledon, 1981); Ralph A. Griffiths, *The Reign of King Henry VI: The Exercise of Royal Authority, 1422-1461* (Berkeley, CA: University of California Press, 1981); J. R. Lander, *Government and Community, England, 1450-1509* (Cambridge, MA: Harvard University Press, 1980); Charles D. Ross, ed., *Patronage, Pedigree, and Power in Later Medieval England* (Gloucester: Alan Sutton, 1979). Each of these historians wrote from a different perspective and the details of their arguments are beyond the scope of this study. Historiographical overviews and critique are provided in Colin Richmond, "After McFarlane," *History* 68 (1983): 46–60; Edward Powell, "After 'After McFarlane': The Poverty of Patronage and the Case for Constitutional History," in *Trade, Devotion and Governance: Papers in Later Medieval History*, ed. Dorothy Clayton, Richard Davis, and Peter McNiven (Dover, NH: Alan Sutton, 1994), 1–16; Carpenter, "Before and After McFarlane"; G. W. Bernard, "Law, Justice, and Governance: New Views on Medieval Constitutionalism," in *Law, Governance, and Justice: New Views on Medieval Constitutionalism*, ed. Richard W. Kaeuper (Leiden: Brill, 2013), 331–42.

⁴ The historiography and resulting problems are discussed in detail in Christine Carpenter, *The Wars of the Roses: Politics and the Constitution in England, C. 1437-1509* (Cambridge: Cambridge University Press, 1997), 1–25; John L. Watts, *Henry VI and the Politics of Kingship* (Cambridge: Cambridge University Press, 1996), 1–15. See also G. L. Harriss, "The Dimensions of Politics," in Britnell and Pollard, *The McFarlane Legacy*, 1–20.

constitutional history' seeks to explain political crisis and constitutional change from a systemic perspective, and as more than simply the product of weak or tyrannical kings, an over-mighty nobility, or the self-interested operations of patronage and factionalism.⁵ The 'constitution' as defined by this approach comprises the institutional and administrative structures of government and its formal body of public law, rules, and precedents, but also the customs, values, and principles that helped to maintain consensus by defining the limits of what it was politically possible to think and do. These unwritten values often remained unstated until consensus broke down, but they were then used to justify political action, either by the state or by its resistant subjects. The turn to political culture prompted scholars to engage with the political principles, arguments, and values captured not only in the formal records of government, but also in a vast corpus of sources including didactic texts such as 'mirrors for princes' and guides to chivalry, historical chronicles, imaginative literature and poetry, and the often-anonymous ephemera of public broadsides, libels, and ballads.⁶ This material is now treated as more than mere idealism and fine

⁵ For examples of this approach that have influenced this study, see Edward Powell, *Kingship, Law, and Society: Criminal Justice in the Reign of Henry V* (Oxford: Clarendon, 1989); W. M. Ormrod, *Political Life in Medieval England, 1300-1450* (New York: St. Martin's Press, 1995); Watts, *Henry VI*; Watts, *The Making of Politics: Europe, 1300-1500* (Cambridge: Cambridge University Press, 2009); M. A. Hicks, *English Political Culture in the Fifteenth Century* (London: Routledge, 2002); Carpenter, *Wars of the Roses*; A. J. Pollard, *Late Medieval England, 1399-1509* (New York: Longman, 2000); Linda Clark and Christine Carpenter, eds., *The Fifteenth Century IV: Political Culture in Late Medieval Britain* (Woodbridge, Suffolk: Boydell, 2004); Christopher Fletcher, *Richard II: Manhood, Youth, and Politics, 1377-99* (Oxford: Oxford University Press, 2008); G. L. Harriss, *Shaping the Nation: England 1360-1461* (New York: Oxford University Press, 2005); Claire Valente, *The Theory and Practice of Revolt in Medieval England* (Burlington, VT: Ashgate, 2003); Helen Lacey, *The Royal Pardon: Access to Mercy in Fourteenth-Century England* (Woodbridge, Suffolk: York Medieval Press, 2009); Richard W. Kaeuper, ed., *Law, Governance, and Justice: New Views on Medieval Constitutionalism* (Leiden: Brill, 2013).

⁶ In addition to the sources in n. 5, see for example C. D. Fletcher, "Narrative and Political Strategies at the Deposition of Richard II," *Journal of Medieval History* 30 (2004): 323-41; Wendy Scase, *Literature and Complaint in England, 1272-1553* (Oxford: Oxford University Press, 2007); Sarah L. Peverley, "Political Consciousness and the Literary Mind in Late Medieval England:

words (or catalogues of complaint) that were divorced from political reality. Instead, scholars are considering how such texts shaped and influenced real-world political action by the landed and merchant classes who formed the ruling elite, and increasingly by the lower orders who were beginning to participate in a 'popular' politics.

This study analyses how, in what terms, and to what constitutional effect these ideas were expressed in texts relating to the prosecution of treason. Why treason? The crime of treason marks the place where the relationship between the state and individual political subjects fractures in its most fundamental way and with the gravest consequences. The law is central to the way subjects experience and negotiate their relationship with the state.⁷ Laws relating to treason are critical in this regard because by defining what comprises 'treason' and what transforms a loyal political subject into a traitor, the state also delineates the nature, limits, and loci of its own power. Bellamy's still-influential study argued for the central role of treason in the development of late medieval legal and political concepts and institutions, while for Baker, 'the history of high treason, which is the most serious offence known to English law, properly belongs to constitutional history'.⁸ However, many questions remain about the place of treason in political culture and its role in constitutional change in the years around the Lancastrian usurpation. Since the 1990s, scholars working on

Men 'Brought up of Nought' in Vale, Hardyng, Mankind, and Malory," *Studies in Philology* 105 (2008): 1–29; Lynn Staley, *Languages of Power in the Age of Richard II* (University Park, PA: Pennsylvania State University Press, 2005); Anthony Pollard, "The People, Politics and the Constitution in the Fifteenth Century," in Kaueper, *Law, Governance, and Justice*, 311–29; Gwilym Dodd, "A Parliament Full of Rats? Piers Plowman and the Good Parliament of 1376," *Historical Research* 79 (2006): 21–49.

⁷ As Maitland first argued in his early works on the history of the common law, discussed in Carpenter, "Before and After McFarlane," 196–97.

⁸ Bellamy, *Law of Treason*, xv; Baker, *English Legal History*, 427–28.

treason in other temporal or geographical contexts and/or using poststructuralist and literary theory have enriched our understanding of the social and cultural dimensions of treason.⁹ Valuable historical studies have also been done on a number of late fourteenth- and early fifteenth-century trials, but these have largely been limited to debates on legal technicalities and procedure in isolated cases, or to high level summaries of charges and trial outcomes, rather than considering in detail the trial narratives themselves.¹⁰

⁹ Katherine Royer, "The Body in Parts: Reading the Execution Ritual in Late Medieval England," *Historical Reflections / Réflexions Historiques* 29 (2003): 319–39; Danielle Westerhof, "Deconstructing Identities on the Scaffold: The Execution of Hugh Despenser the Younger, 1326," *Journal of Medieval History* 33 (2007): 87–106; John Gillingham, "Killing and Mutilating Political Enemies in the British Isles from the Late Twelfth to the Early Fourteenth Century: A Comparative Study," in *Britain and Ireland, 900–1300: Insular Responses to Medieval European Change*, ed. Brendan Smith (Cambridge: Cambridge University Press, 1999), 114–34; Klaus Van Eickels, "Gendered Violence: Castration and Blinding as Punishment for Treason in Normandy and Anglo-Norman England," *Gender & History* 16 (2004): 588–602; Matthew Strickland, "A Law of Arms or a Law of Treason? Conduct in War in Edward I's Campaigns, 1296–1307," in *Violence in Medieval Society*, ed. Richard W. Kaeuper (Woodbridge, Suffolk: Boydell, 2000), 39–77; Andy King, "False Traitors or Worthy Knights? Treason and Rebellion against Edward II in the Scalacronica and the Anglo-Norman Prose Brut Chronicles," *Historical Research* 88 (2015): 34–47; E. Kay Harris, "Censoring Disobedient Subjects: Narratives of Treason and Royal Authority in Fifteenth-Century England," in *Reputation and Representation in Fifteenth-Century Europe*, ed. Douglas L. Biggs, Sharon D. Michalove, and A. Compton Reeves, (Leiden: Brill, 2004), 211–33; Jean Dunbabin, "Treason, Sodomy, and the Fate of Adenolfo IV, Count of Acerra," *Journal of Medieval History* 34 (2008): 417–32; Helen Wicker, "The Politics of Vernacular Speech: Cases of Treasonable Language, c. 1440–1453," in *Vernacularity in England and Wales, c. 1300–1550*, ed. Elizabeth Salter and Helen Wicker (Turnhout, Belgium: Brepols, 2011), 171–97; Michael Hanrahan, "Seduction and Betrayal: Treason in the Prologue to the Legend of Good Women," *The Chaucer Review* 30 (1996): 229–40; Paul Strohm, "Treason in the Household," in *Hochon's Arrow: The Social Imagination of Fourteenth-Century Texts* (Princeton, NJ: Princeton University Press, 1992), 121–44; Maité Billoré and Myriam Soria, eds., *La trahison au Moyen Âge: De la monstruosité au crime politique (Ve–XVe siècle)* (Rennes, France: Presses Universitaires de Rennes, 2009); Ardis Butterfield, "Converting Jeanne d'Arc: Trahison and Nation in the Hundred Years' War," *New Medieval Literatures* 8 (2006): 67–97; Rebecca Lemon, *Treason by Words: Literature, Law, and Rebellion in Shakespeare's England* (Ithaca, NY: Cornell University Press, 2006); Karen Cunningham, *Imaginary Betrayals: Subjectivity and the Discourses of Treason in Early Modern England* (Philadelphia, PA: University of Pennsylvania Press, 2002); David Cressy, *Dangerous Talk: Scandalous, Seditious, and Treasonable Speech in Pre-Modern England* (New York: Oxford University Press, 2010); Lisa Steffen, *Defining a British State: Treason and National Identity, 1608–1820* (New York: Palgrave, 2001); Orr, *Treason and the State*; Sharika Thiranagama and Tobias Kelly, eds., *Traitors: Suspicion, Intimacy, and the Ethics of State-Building* (Philadelphia, PA: University of Pennsylvania Press, 2011).

¹⁰ See for example, M. V. Clarke, "Forfeitures and Treason in 1388," *Transactions of the Royal Historical Society* 14 (1931): 65–94; Isobel D. Thornley, "Treason by Words in the Fifteenth Century," *The English Historical Review* 32 (1917): 556–61; I. D. Thornley, "The Act of

To begin to address this lacuna, this study analyses evidence of constitutional ideas, political principles, and shared cultural values that were captured in sources generated by and in response to the state's prosecution of treason between 1397 and 1424. Building on work that considers discourses of power and authority in conjunction with the social practices of individuals in specific political, social, and cultural circumstances, it presents a new synthesis by approaching the question of treason through four intersecting dimensions. These are the emerging identification of the state with the 'nation' of England through legal rhetoric that linked loyal political subjecthood to ethnicised national identity; the central role of gender in the formation of the state and its political subjects, represented in ideas about 'true' and 'false' manhood that influence legal narratives of treason; the complex place of vernacularity in legitimising competing claims to authority and truth within England's aural, multilingual legal culture; and finally, the emergence of a 'popular' public political sphere. The following section will briefly explore each of these

Treasons, 1352," *History* 6 (1921): 106–8; Samuel Rezneck, "Constructive Treason by Words in the Fifteenth Century," *The American Historical Review* 33 (1928): 544–52; Alan Rogers, "Parliamentary Appeals of Treason in the Reign of Richard II," *The American Journal of Legal History* 8 (1964): 95–124; C. D. Ross, "Forfeiture for Treason in the Reign of Richard II," *The English Historical Review* 71 (1956): 560–75; Edward Powell, "The Strange Death of Sir John Mortimer: Politics and the Law of Treason in Lancastrian England," in *Rulers and Ruled in Late Medieval England: Essays Presented to Gerald Harriss*, ed. Rowena E. Archer and Simon Walker (London: Hambledon Press, 1995), 83–97; Plucknett, "State Trials under Richard II"; Plucknett, "Presidential Address: Impeachment and Attainder," *Transactions of the Royal Historical Society* 3 (1953): 145–58; M. H. Keen, "Treason Trials under the Law of Arms: The Alexander Prize Essay," *Transactions of the Royal Historical Society*, Fifth Series, 12 (1962): 85–103; James Ross, "Seditious Activities: The Conspiracy of Maud de Vere, Countess of Oxford, 1403–4," in *The Fifteenth Century III: Authority and Subversion*, ed. Linda Clark (Woodbridge, Suffolk: Boydell & Brewer, 2003), 25–41; Simon Walker, "Rumour, Sedition and Popular Protest in the Reign of Henry IV," *Past & Present* 166 (2000): 31–65; M. E. Aston, "Lollardy and Sedition 1381–1431," *Past & Present* 17 (1960): 1–44; C. J. Neville, "The Law of Treason in the English Border Counties in the Later Middle Ages," *Law and History Review* 9 (1991): 1–30. The value and limitations of specific studies relevant to this thesis are addressed elsewhere. For comparative material: S. H. Cuttler, *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge: Cambridge University Press, 2003); Michael Jones, "'Bons Bretons et Bons Francoys': The Language and Meaning of Treason in Later Medieval France," *Transactions of the Royal Historical Society*, Fifth Series, 32 (1982): 91–112.

dimensions before turning specifically to the question of treason.

Dimensions of political culture: State and nation

The use of the term 'state' to describe late medieval polities is sometimes contested, but it is now generally accepted that an English state in the modern sense of that term was in existence from the later medieval period.¹¹ Although it lacked some of the features that define modern states, by the early fourteenth century, England had achieved levels of judicial, fiscal, and administrative centralisation and organisation that are considered characteristic of statehood.¹² It is true that this statehood was realised through a personal monarchy rather than through later models of representative democracy. However, in late medieval political theory and in the institutions and practices of government, the fact that the monarch combined in his person both his mortal 'body natural' and the eternal public 'body politic' (or *persona publica*) meant that kings both represented and embodied the abstract entity of the state.¹³ The king was the source of all legitimate authority and of the twin

¹¹ For important contributions to the historiography on medieval state formation, see Susan Reynolds, *Kingdoms and Communities in Western Europe, 900-1300*, 2nd ed. (Oxford: Clarendon Press, 1997); Bernard Guenée, *States and Rulers in Later Medieval Europe*, trans. Juliet Vale (Oxford, England: Basil Blackwell, 1985); Rees Davies, "The Medieval State: The Tyranny of a Concept?," *Journal of Historical Sociology* 16 (2003): 280–300; Watts, *The Making of Polities*; Jean-Philippe Genêt, "Introduction. Which State Rises?," *Historical Research* 65 (1992): 119–33; John R. Maddicott and David M. Palliser, eds., *The Medieval State: Essays Presented to James Campbell* (London: Hambledon Press, 2001); Peter Hoppenbrouwers, Antheun Janse, and Robert Stein, eds., *Power and Persuasion: Essays on the Art of State Building in Honour of W. P. Blockmans* (Turnhout, Belgium: Brepols, 2010); Jean-Philippe Genêt, *La genèse de l'État moderne: Culture et société politique en Angleterre* (Paris: Presses Universitaires de France, 2003). For a general overview of medieval ideas of the state, see Black, *Political Thought*, 186–91.

¹² Ormrod, *Political Life*, 1–17; Harriss, *Shaping the Nation*, 41–92; W. Mark Ormrod, "Parliament, Political Economy and State Formation in Later Medieval England," in Hoppenbrouwers, Janse, and Stein, *Power and Persuasion*, 123–39.

¹³ For what follows, see Watts, *Henry VI*, 16–80; Carpenter, *Wars of the Roses*, 27–46, 61–65; Powell, *Kingship, Law, and Society*, 1–20; Harriss, *Shaping the Nation*, 1–5; Black, *Political Thought*, 136–61. The classic study on the idea of the king's two bodies, the mortal body natural and

powers of grace and justice through which the state functioned; through his embodiment of law, he exercised sovereignty in his person.¹⁴ While a wise and prudent king was expected to take counsel from his nobles and representatives of the wider polity, and to balance and reconcile their individual interests for the common good of the realm, there was no alternative model for legitimate government that was not located in royal authority and in the king's sovereign and quasi-divine person. The synonymy of the king and the state was demonstrated by the interchangeable use of terms such as 'king', 'crown', and 'realm' in legal and political discourse, and in imagery that depicted the king as the head of the body politic, of which the other 'estates' formed the limbs and organs.

This is not to say that the medieval state was an immutable and clearly bounded 'body'. Although states are often perceived in terms of fixed legal and geographical jurisdictions that are realised through the concrete institutions and machinery of government, in reality they are relational, dynamic, and historically changing constructs. As such, statehood as a political, social, economic, and ideological process, along with the authority and jurisdiction of the state, is always subject to change through consensus, compromise, or outright conflict. Discussing the role of parliament as one context for debate, Ormrod argues that 'the late medieval English state emerged not solely in the image of its kings but as a participatory regime sustained by repeated negotiation and re-negotiation between crown and polity'.¹⁵ This phrasing

the eternal political body, is Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ: Princeton University Press, 1957).

¹⁴ On late medieval concepts of sovereignty and *jurisdictio*, see Canning, *Ideas of Power*, 8–10.

¹⁵ Ormrod, "Parliament, Political Economy and State Formation," 139.

emphasises perceptions of 'king' and 'crown' as synonymous concepts, but also the mutability of the state that these concepts represented. This mutability is demonstrated by repeated clashes over such issues as consent, counsel, 'common profit', and the king's 'sufficiency' to rule.¹⁶ Prominent in these debates, and reflected in discourses relating to treason, were questions of whether the king, as the source of law, could be made subject to it, and whether 'king' and 'crown' could justifiably be separated in order to address the insufficiency of an individual king.

From the later fourteenth century, 'king' and 'crown' were becoming aligned with another marker of statehood, the 'nation', and the rhetoric of nationhood began to influence treason proceedings. Amongst leading historians and theorists of nationalism, the nation has been seen as a construct deeply intertwined with modernity, against which the medieval stands as a pre-national 'other'. Influenced to varying degrees by Benedict Anderson's seminal theorisation of the nation as an 'imagined community', they have argued that nationalism - or a shared belief in communal national identity - creates nations through processes of social and cultural construction.¹⁷ From the modernist perspective, a national identity in which every political subject shares was unthinkable before capitalism, secularisation, and democratic revolution

¹⁶ Ormrod, *Political Life*, 77–82; Valente, *Theory and Practice of Revolt*, 12–32, 237–53; Watts, *Henry VI*, 16–80; Carpenter, *Wars of the Roses*, 27–46; Fletcher, *Richard II*, 151–220; W. Mark Ormrod, "The Good Parliament of 1376: Commons, Communes and 'Common Profit' in Fourteenth-Century English Politics," in *Comparative Perspectives on History and Historians: Essays in Memory of Bryce Lyon*, ed. David Nicholas, Bernard S. Bachrach, and James M. Murray (Kalamazoo, MI: Medieval Institute Publications, 2012), 169–88.

¹⁷ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (London: Verso, 1983) and see for example, E. J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990); Ernest Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983); Raphael Samuel, *Patriotism: The Making and Unmaking of British National Identity* (London: Routledge, 1989).

undermined medieval loyalties and collective identities. In contrast to modern national loyalties, these medieval identities have been characterised as either more narrowly focused on regional lords or dynastic monarchs, or as a more broadly imagined loyalty to a 'universal' Christian community. Linguistic unity is central to modernist theories of nationalism, with scholars asserting that it was the emergence of standardised vernaculars and mass print culture in the sixteenth century that created the necessary conditions for ethnicised national identities and the sovereign geopolitical entity of the nation-state to converge.¹⁸ Medievalists have convincingly challenged this view that national identity is a product of modernity. There is now a vast body of scholarship that firstly, demonstrates that to speak of national identities in the medieval period is not anachronistic; and secondly, that deconstructs seemingly homogenous and self-evident medieval identities such as 'Anglo-Saxon' and 'Norman' to understand the ways in which they were defined, defended, and contested in specific historical contexts.¹⁹ Fredrik Barth's still-influential methods drew attention to

¹⁸ In addition to sources in n. 17, see for example Stephen Barbour, "Nationalism, Language, Europe," in *Language and Nationalism in Europe*, ed. Stephen Barbour and Cathie Carmichael (Oxford: Oxford University Press, 2000), 1–17; William Safran, "Introduction: The Political Aspects of Language," in *Language, Ethnic Identity and the State*, ed. J. A. Laponce and William Safran (London: Routledge, 2005), 1–14.

¹⁹ Charles Leon Tipton, ed., *Nationalism in the Middle Ages* (New York: Holt, Rinehart and Winston, 1972); John Alexander Armstrong, *Nations before Nationalism* (Chapel Hill, NC: University of North Carolina Press, 1982); Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Basil Blackwell, 1987); Colette Beaune, *The Birth of an Ideology: Myths and Symbols of Nation in Late-Medieval France*, trans. Fredric L. Cheyette (Berkeley, CA: University of California Press, 1991); Robert Bartlett, *The Making of Europe: Conquest, Colonization, and Cultural Change, 950-1350* (Princeton, NJ: Princeton University Press, 1993); Anthony D. Smith, "National Identities: Modern and Medieval?," in *Concepts of National Identity in the Middle Ages*, ed. Simon Forde, Lesley Johnson, and Alan V. Murray (Leeds: School of English, University of Leeds, 1995), 21–46; Hagen Schulze, *States, Nations, and Nationalism: From the Middle Ages to the Present*, trans. William E. Yuill (Oxford: Blackwell, 1996); R. R. Davies, *The First English Empire: Power and Identities in the British Isles 1093-1343* (Oxford: Oxford University Press, 2000); Patrick J. Geary, *The Myth of Nations: The Medieval Origins of Europe* (Princeton, NJ: Princeton University Press, 2002); Harriss, *Shaping the Nation*; John Gillingham, *The English in the Twelfth Century: Imperialism, National Identity and Political Values* (Woodbridge, Suffolk: Boydell & Brewer, 2008); Watts, *The Making of Polities*.

the need to problematise the *boundaries* of communal identity, by recognising that national identities, whether medieval or modern, are not fixed and essential but are the result of on-going social processes of inclusion and exclusion.²⁰ In the medieval period, communal national identities were defined and defended through claims to shared language, law, blood, and belief, and these ideas were captured in terms such as *natio* or *nacioun* (derived from the Latin verb *nasci*, ‘to be born’), *gens* (people), and *lingua*.²¹ For medieval peoples, language often

²⁰ Fredrik Barth, ed., *Ethnic Groups and Boundaries: The Social Organization of Culture Difference* (London: Allen & Unwin, 1969). This approach to boundaries and difference has been widely adopted in medieval studies. See for example, Robert Bartlett and Angus MacKay, eds., *Medieval Frontier Societies* (Oxford: Oxford University Press, 1989); R. R. Davies, *The Age of Conquest: Wales 1063-1415* (Oxford: Oxford University Press, 1990); Brendan Smith, ed., *Britain and Ireland, 900-1300: Insular Responses to Medieval European Change* (Cambridge: Cambridge University Press, 1999); Anthony Goodman and Anthony Tuck, eds., *War and Border Societies in the Middle Ages* (London: Routledge, 1992); Gillingham, *The English in the Twelfth Century*; William O. Frazer, “Introduction: Identities in Early Medieval Britain,” in *Social Identity in Early Medieval Britain*, ed. William O. Frazer and Andrew Tyrrell (London: Leicester University Press, 2000), 1–22; John Moreland, “Ethnicity, Power, and the English,” in Frazer and Tyrrell, *Social Identity in Early Medieval Britain*, 23–51; Sally McKee, ed., *Crossing Boundaries: Issues of Cultural and Individual Identities in the Middle Ages and the Renaissance* (Turnhout, Belgium: Brepols, 1999); Wout J. van Bakkum and Paul M. Cobb, “Introduction: Strategies of Medieval Communal Identity,” in *Strategies of Medieval Communal Identity: Judaism, Christianity and Islam*, ed. Wout J. van Bakkum and Paul M. Cobb (Paris: Peeters, 2004), 1–10; Ardis Butterfield, *The Familiar Enemy: Chaucer, Language, and Nation in the Hundred Years War* (Oxford: Oxford University Press, 2009). For postcolonial approaches, see for example Thomas Hahn, “The Difference the Middle Ages Makes: Color and Race before the Modern World,” *Journal of Medieval & Early Modern Studies* 31 (2001): 1–37; Kathleen Davis, “National Writing in the Ninth Century: A Reminder for Postcolonial Thinking about the Nation,” *Journal of Medieval & Early Modern Studies* 28 (1998): 611–37; Kathy Lavezzo, ed., *Imagining a Medieval English Nation* (Minneapolis, MN: University of Minnesota Press, 2004); Michelle R. Warren, *History on the Edge: Excalibur and the Borders of Britain, 1100-1300* (Minneapolis, MN: University of Minnesota Press, 2000); Jeffrey Jerome Cohen, “On Saracen Enjoyment: Some Fantasies of Race in Late Medieval France and England,” *Journal of Medieval & Early Modern Studies* 31 (2001): 113–46; Cohen, *Hybridity, Identity, and Monstrosity in Medieval Britain: On Difficult Middles* (New York: Palgrave Macmillan, 2006).

²¹ Vivian H. Galbraith, “Language and Nationality,” in Tipton, *Nationalism in the Middle Ages*, 45–53; Bartlett, *Making of Europe*, 197–242; R. R. Davies, “The Peoples of Britain and Ireland 1100-1400. I. Identities,” *Transactions of the Royal Historical Society*, Sixth Series, 4 (1994): 1–20; Davies, “The Peoples of Britain and Ireland 1100-1400. II. Names, Boundaries and Regnal Solidarities,” *Transactions of the Royal Historical Society*, Sixth Series, 5 (1995): 1–20; Davies, “The Peoples of Britain and Ireland 1100-1400. III. Laws and Customs,” *Transactions of the Royal Historical Society*, Sixth Series, 6 (1996): 1–23; Davies, “The Peoples of Britain and Ireland, 1100-1400. IV. Language and Historical Mythology,” *Transactions of the Royal Historical Society*, Sixth Series, 7 (1997): 1–24; Robert Bartlett, “Medieval and Modern Concepts of Race and Ethnicity,” *Journal of Medieval and Early Modern Studies* 31 (2001): 39–56.

served as the foundational category of national identity, with the biblical story of the Tower of Babel explaining the differentiation of languages as the first step towards the division of a single humankind into divergent races or peoples.²²

For England, the mid-fourteenth century has been identified as a critical juncture for the convergence between 'state' and 'nation'. In conjunction with the internal consolidation and expansion of the state's judicial and financial machinery, Edward III's claim to the French throne and the resulting war with France, as well as border conflict with the Scots and Welsh and the colonisation of Ireland, cultivated a growing sense of England as a geographically bounded and linguistically distinct political entity.²³ Evidence for an emotional and political association being forged between speaking English and being English appears in such statements as Edward III's claim that the French intended 'to destroy our lord the king and his realm of England, and to do away with the

²² Bartlett, *Making of Europe*, 198; Galbraith, "Language and Nationality"; Davies, "Peoples I: Identities"; Davies, "Peoples IV: Language and Historical Mythology."

²³ There is a vast scholarship on the period of the Hundred Years War and the formation of an English 'nation', although scholars differ as to the importance of internal versus external factors in this process. See for example Anne Curry, *The Hundred Years War* (Houndmills, Basingstoke, Hampshire: Macmillan, 1993); Richard W. Kaeuper, *War, Justice, and Public Order: England and France in the Later Middle Ages* (Oxford: Clarendon Press, 1988); David Green, *The Hundred Years War: A People's History* (New Haven, CT: Yale University Press, 2014). This is also the implicit frame for Harriss, *Shaping the Nation*, the narrative of which is book-ended by the Treaty of Bretigny in 1360 and the final relinquishing of England's French territories and ambitions in the 1450s. For an alternative perspective that focuses more on internal administrative, financial, and judicial developments, see for example Anthony Musson and W. M. Ormrod, *The Evolution of English Justice: Law, Politics, and Society in the Fourteenth Century* (New York: St. Martin's Press, 1999). Studies of particular value for this thesis include Andrea Ruddick, "Ethnic Identity and Political Language in the King of England's Dominions: A Fourteenth-Century Perspective," in *The Fifteenth Century VI: Identity and Insurgency in the Late Middle Ages*, ed. Linda Clark (Woodbridge, Suffolk: Boydell, 2006), 15–32; Ralph Griffiths, *'This Royal Throne of Kings, This Scept'red Isle': The English Realm and Nation in the Later Middle Ages* (Swansea: University College of Swansea, 1983); Michael Bennett, "Richard II and the Wider Realm," in *Richard II: The Art of Kingship*, ed. Anthony Goodman and James L. Gillespie (Oxford: Clarendon Press, 1999), 187–204; Cynthia J. Neville, "Local Sentiment and the 'National' Enemy in Northern England in the Later Middle Ages," *Journal of British Studies* 35 (1996): 419–37; Andrea Ruddick, *English Identity and Political Culture in the Fourteenth Century* (Cambridge: Cambridge University Press, 2013). For a discussion of this late medieval coalescence of national, legal, and ethnic identities in a wider European context, see Watts, *The Making of Politics*, 141–43, 376–419.

English language entirely', a polemic aimed at garnering financial support for his military campaigns.²⁴ The growing alignment of political and ethnic identity had important implications for the way treason was defined. Traitors were traditionally viewed as personal enemies of the king, but as this study will show, through legal rhetoric that charged them with seeking to destroy the English language and law, they were also increasingly defined as enemies of the nation.

Identity as an English subject and the privileges this conferred were therefore becoming aligned, politically and legally, with a cultural conception of English national identity. As Ruddick explains, between the emergence of an identifiable English state in the thirteenth century and the middle of the fourteenth century, one could be both a subject of the English king and an 'alien' - or non-English as determined by birth, customs, and language.²⁵ However, from the 1350s, entitlement to political subjecthood and to the privileges it conferred became more tightly defined and restricted. This narrowing was characterised by measures such as the 1401 statute that forbade 'full-blooded Welshmen' from purchasing property in England, and from holding office or becoming citizens in certain English towns; and by the letters of denization introduced from the 1370s that allowed the foreign-born to share, for a fee, in the legal rights enjoyed by 'native' English.²⁶ There was therefore a growing

²⁴ *PROME*, "Edward III: Parliament of January 1377," item 12, RP ii:362. Discussed in W. M. Ormrod, "The Use of English: Language, Law, and Political Culture in Fourteenth-Century England," *Speculum* 78 (2003): 780; Christopher Fletcher, "Langue et nation en Angleterre à la fin du moyen âge," *Revue Française d'Histoire des Idées Politiques* 2 (2012): 242. For earlier examples of this rhetoric used by Edward I and Edward III, see Ruddick, *English Identity and Political Culture*, 1–2, 162–63.

²⁵ Ruddick, "Ethnic Identity and Political Language," 25–30.

²⁶ For the prohibition on the Welsh: *Statutes*, vol. 2, 128–29 (c. xvi). For this and other anti-Welsh legislation, see R. R. Davies, *The Revolt of Owain Glyn Dŵr* (New York: Oxford University Press, 1997), 284–92. In return for a fee and an oath of allegiance to the English crown, letters of denization allowed immigrants to be treated in law in the same way as native-born

perception that English subjecthood was synonymous with English nationality, and this association was established and enforced through the law. When traitors were convicted for betraying the English nation as well as their king, this reflected and reinforced a transition in the way political subjecthood was perceived, whereby the notion of identity as a 'subject of the English king' was morphing into identity as an 'English subject' of an abstract nation-state.

Dimensions of political culture: Gender

Social and cultural processes of inclusion and exclusion are central to the organisation of states and the formation of political subjects. While nationality and ethnic identity represent one axis along which these processes operate, gender is another. Joan Scott's work transformed the field of political history by incorporating gender as an analytical category alongside categories such as ethnicity and class.²⁷ She argued that the realm of high politics was particularly promising for the application of a gender framework, because claims to authority and public power have historically been established through the exclusion of women.²⁸ Gendered analyses of state formation show that processes that characterise the emergence of nation-states, such as the formation of a standing military, the emergence of centralised judicial and administrative systems, and the establishment of representative political institutions, bring with them deeper gender divisions between men and

Englishmen: Bart Lambert and W. Mark Ormrod, "Friendly Foreigners: International Warfare, Resident Aliens and the Early History of Denization in England, c.1250–c.1400," *The English Historical Review* 130 (2015): 1–24.

²⁷ Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91 (1986): 1053–75; Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1999); Scott, "Unanswered Questions," *The American Historical Review* 113 (2008): 1422–29.

²⁸ Scott, "Gender," 1068–75.

women.²⁹ Historians and theorists of nationalism working from feminist perspectives have shown that sexed bodies are significant cultural boundary markers and that gender difference works to naturalise other differences, including national difference.³⁰ A gender perspective is therefore essential to fully understand the relationship between individual subjects and the state.

Masculinity became an explicit focus for medieval historians in the early 1990s, although much of the earlier work concentrated on how masculinities were constructed against women and the feminine in ways that excluded women from political power.³¹ More recent work has stressed the need to avoid reducing all gender difference to a masculine / feminine binary, an approach that in the process treats all men as the same and elides the many ways masculinities are dynamically constructed through cultural representations, and social interactions.³² As a result, the focus has turned to understanding the

²⁹ A. Mark Liddle, "State, Masculinities and Law: Some Comments on Gender and English State-Formation," *British Journal of Criminology* 36 (1996): 361–80; Anne McClintock, "'No Longer in a Future Heaven': Gender, Race and Nationalism," in *Dangerous Liaisons: Gender, Nation, and Postcolonial Perspectives*, ed. McClintock, Aamir Mufti, and Ella Shohat (Minneapolis, MN: University of Minnesota Press, 1997), 89–112; Scott, *Gender and the Politics of History*.

³⁰ McClintock, "Gender, Race and Nationalism"; Andrew Parker et al., eds., *Nationalisms & Sexualities* (New York: Routledge, 1992); Joane Nagel, "Masculinity and Nationalism - Gender and Sexuality in the Making of Nations," in *Nations and Nationalism: A Reader*, ed. Philip Spencer and Howard Wollman (Edinburgh: Edinburgh University Press, 2005), 110–30; Aamir Mufti and Ella Shohat, "Introduction," in McClintock, Mufti, and Shohat, *Dangerous Liaisons*, 1–12. For collections that consider this dynamic in medieval societies, see Josiah Blackmore and Gregory S. Hutcheson, eds., *Queer Iberia: Sexualities, Cultures, and Crossings from the Middle Ages to the Renaissance* (Durham, NC: Duke University Press, 1999); Sharon A. Farmer and Carol Braun Pasternack, eds., *Gender and Difference in the Middle Ages* (Minneapolis, MN: University of Minnesota Press, 2003); Cordelia Beattie and Kirsten A. Fenton, eds., *Intersections of Gender, Religion and Ethnicity in the Middle Ages* (New York: Palgrave Macmillan, 2011); Elizabeth L'Estrange and Alison More, eds., *Representing Medieval Genders and Sexualities in Europe. Construction, Transformation, and Subversion, 600-1530* (Burlington, VT: Ashgate, 2011).

³¹ For example, Clare A. Lees, Thelma S. Fenster, and Jo Ann McNamara, eds., *Medieval Masculinities: Regarding Men in the Middle Ages* (Minneapolis, MN: University of Minnesota Press, 1994).

³² Jeffrey Jerome Cohen and Bonnie Wheeler, eds., *Becoming Male in the Middle Ages* (New York: Garland, 1997); D. M. Hadley, ed., *Masculinity in Medieval Europe* (London: Longman, 1999); Jacqueline Murray, ed., *Conflicted Identities and Multiple Masculinities: Men in the Medieval*

role of gender in regulating relationships between male political subjects and the state. This work has shown that gendered concepts and practices establish and reproduce differences between men and masculinities even in fields where women are absent, and it recognises that masculinities are constructed not only against women and the feminine, but also in relation to other men.³³ When certain men gain greater or lesser access to power based on qualifiers such as birth, social status, land ownership, or income, this generates and helps to police hierarchies of power between men. The historian John Tosh, who has written widely on gender and nineteenth-century British imperialism and colonialism, argues that attention to masculinity is essential for understanding political culture because in most societies, 'the political order can be seen as a reflection of the gender order in society as a whole, in which case the political virtues are best understood as the prescribed masculine virtues writ large.'³⁴

Unquestionably, the medieval body politic was imagined as a male body, with the king as its head and his greater and lesser male subjects as its working limbs. Within this system, gendered notions of power and authority could be

West (New York: Garland, 1999); Ruth Mazo Karras, *From Boys to Men: Formations of Masculinity in Late Medieval Europe* (Philadelphia, PA: University of Pennsylvania Press, 2003); Jennifer D. Thibodeaux, ed., *Negotiating Clerical Identities: Priests, Monks and Masculinity in the Middle Ages* (New York: Palgrave Macmillan, 2010); P. H. Cullum and Katherine J. Lewis, eds., *Religious Men and Masculine Identity in the Middle Ages* (Woodbridge, Suffolk: Boydell & Brewer, 2013). For a historiographical survey of approaches in medieval studies, see Dyan Elliott, "The Three Ages of Joan Scott," *The American Historical Review* 113 (2008): 1390–1403.

³³ Relevant studies on the medieval context are discussed in more detail below. For more general examples, see Michael Roper and John Tosh, *Manful Assertions: Masculinities in Britain since 1800* (New York: Routledge, 1991); Liddle, "State, Masculinities and Law"; Heather Ellis and Jessica Meyer, "Introduction," in *Masculinity and the Other: Historical Perspectives*, ed. Heather Ellis and Jessica Meyer (Newcastle upon Tyne, UK: Cambridge Scholars, 2009), 1–19; Nagel, "Masculinity and Nationalism - Gender and Sexuality in the Making of Nations"; Karen Harvey, "The History of Masculinity, circa 1650–1800," *Journal of British Studies* 44 (2005): 296–311.

³⁴ John Tosh, "Hegemonic Masculinity and the History of Gender," in *Masculinities in Politics and War: Gendering Modern History*, ed. Stefan Dudink, Karen Hagemann, and John Tosh (Manchester: Manchester University Press, 2004), 41.

explicit, such as the advice in late medieval treatises that legitimate rulers must embody the 'manly' virtues of justice, courage, and prudence. They could also be implicit, for instance, in the conviction that reason and 'good governance' were by nature masculine properties.³⁵ Such concepts shaped social practice in fields including the administration of criminal justice.³⁶ In practice, the institutions of law and government and the exercise of formal political power were the province of men, and the medieval English state functioned through the voluntary co-operation of its male subjects.³⁷ The complex web of political relationships headed by the king operated through horizontal and vertical bonds of kinship, service, and patronage, which were mediated through masculine ideals of honour, loyalty, and 'good lordship'.³⁸ What model might be used for understanding how gendered notions of power were manifested in the political and legal spheres to construct, reinforce, or subvert relationships

³⁵ These ideas were promulgated through religious and medical discourses, and they were also widely circulated via 'mirrors for princes' such as the *Secreta Secretorum* and Giles of Rome's *De Regimine Principum*, texts that were used to educate the sons of the political elite: Nicholas Orme, *From Childhood to Chivalry: The Education of the English Kings and Aristocracy, 1066-1530* (London: Methuen, 1984); Katherine J. Lewis, *Kingship and Masculinity in Late Medieval England* (New York: Routledge, 2013), 4–9; Fletcher, *Richard II*, 60–73.

³⁶ Liddle, "State, Masculinities and Law," 362. For a valuable collection that examines the relationship between gender, law, and the state across various late medieval and early modern contexts, see Anthony Musson, ed., *Boundaries of the Law: Geography, Gender, and Jurisdiction in Medieval and Early Modern Europe* (Burlington, VT: Ashgate, 2005).

³⁷ This is not to say that women could not wield power, but they generally did so by informal and indirect means rather than by holding formal judicial or administrative offices. For general discussions, in addition to the studies on queenship cited in n. 42 below, see for example Mary Erler and Maryanne Kowaleski, eds., *Women and Power in the Middle Ages* (Athens, GA: University of Georgia Press, 1988); Erler and Kowaleski, eds., *Gendering the Master Narrative: Women and Power in the Middle Ages* (Ithaca, NY: Cornell University Press, 2003); Carolyn P. Collette, *Performing Polity: Women and Agency in the Anglo-French Tradition, 1385-1620* (Turnhout, Belgium: Brepols, 2006).

³⁸ Philippa Maddern, "Honour among the Pastons: Gender and Integrity in Fifteenth-Century English Provincial Society," *Journal of Medieval History* 14 (1988): 357–71; Rosemary Horrox, "Service," in *Fifteenth-Century Attitudes: Perceptions of Society in Late Medieval England*, ed. Rosemary Horrox (Cambridge: Cambridge University Press, 1994), 61–78; Harriss, "Dimensions of Politics"; Watts, *Henry VI*, 86–90; Derek G. Neal, *The Masculine Self in Late Medieval England* (Chicago, IL: University of Chicago Press, 2008), 16–25.

between individual men and the masculine state? The analysis presented here is informed by the theoretical framework of homosociality, which can be used to understand how masculinity is related to other determinants of political subjecthood such as ethnicity and social status. By analysing relationships amongst men along gradations of dominant ('hegemonic'), complicit, and subordinate (or marginalised) masculinities, the framework of homosociality enables historians to recognise the role of gender in organising social and political hierarchies, even those that implicitly or explicitly exclude women and the feminine.³⁹ Importantly, the concept of homosociality helps to bridge the gap between cultural history, which tended to focus on the discursive construction of gender to the exclusion of embodied experience, and social history.⁴⁰ This acknowledges that manhood and masculinities are not purely

³⁹ The foundational study is Eve Kosofsky Sedgwick, *Between Men: English Literature and Male Homosocial Desire* (New York: Columbia University Press, 1985). The theory of homosociality was then adopted and further developed. See for example R. W. Connell, *Masculinities*, 2nd ed. (Berkeley, CA: University of California Press, 2005), 77–81, 109–12; Tosh, "Hegemonic Masculinity and the History of Gender"; R. W. Connell and James W. Messerschmidt, "Hegemonic Masculinity Rethinking the Concept," *Gender & Society* 19 (2005): 829–59; Stefan Dudink, "The Trouble with Men: Problems in the History of 'Masculinity,'" *European Journal of Cultural Studies* 1 (1998): 419–31. For examples of homosociality applied to medieval contexts: M. J. Ailes, "The Medieval Male Couple and the Language of Homosociality," in Hadley, *Masculinity in Medieval Europe*, 214–37; D. M. Hadley, "Introduction," in *Masculinity in Medieval Europe*, 1–18; Karras, *Boys to Men*; Mathew Kuefler, "Male Friendship and the Suspicion of Sodomy in Twelfth-Century France," in Farmer and Pasternack, *Gender and Difference*, 145–81; Kim M. Phillips, "Masculinities and the Medieval English Sumptuary Laws," *Gender & History* 19 (2007): 22–42; Stephanie Trigg, *Shame and Honor: A Vulgar History of the Order of the Garter* (Philadelphia, PA: University of Pennsylvania Press, 2012), esp. 108–16; Lewis, *Kingship and Masculinity*, esp. 3–7, 34–5; Roberto J. Gonzalez-Casanovas, "Male Bonding as Cultural Construction in Alfonso X, Ramon Llull, and Juan Manuel: Homosocial Friendship in Medieval Iberia," in Blackmore and Hutcheson, *Queer Iberia*, 157–94.

⁴⁰ For general overviews of cultural versus sociological approaches and their implications, see Karen Harvey and Alexandra Shepard, "What Have Historians Done with Masculinity? Reflections on Five Centuries of British History, circa 1500–1950," *Journal of British Studies* 44 (2005): 274–80; Derek G. Neal, "What Can Historians Do with Clerical Masculinity? Lessons from Medieval Europe," in Thibodeaux, *Negotiating Clerical Identities*, 16–36; Christopher Fletcher, "The Whig Interpretation of Masculinity? Honour and Sexuality in Late Medieval Manhood," in *What Is Masculinity?*, ed. John H. Arnold and Sean Brady (Basingstoke: Palgrave Macmillan, 2011), 57–75.

discursive abstractions, but that manhood is grounded in and performed through sexed male bodies.

Questions of how power was conceived of, legitimised, and resisted are central to the history of English state formation, but the role of cultural ideas about manhood and the masculine 'virtues' needed to wield political authority has been neglected until recently. Lewis points out that while questions of gender, agency, and power have been central to the burgeoning field of queenship studies, explicit considerations of gender were absent from investigations of medieval kingship and high politics up until the 2000s.⁴¹ To date, her own work on *Kingship and Masculinity* and Christopher Fletcher's monograph on Richard II are the only full-length studies on the English medieval monarchy. These are supplemented by a growing number of articles that, while valuable, deal with a necessarily narrow range of topics and questions.⁴² In the absence of an explicit gender framework, historians have

⁴¹ Lewis, *Kingship and Masculinity*, 3–12.

⁴² Lewis, *Kingship and Masculinity*; Fletcher, *Richard II*. Valuable short studies include W. M. Ormrod, "Knights of Venus," *Medium Aevum* 73 (2004): 290–305; Ormrod, "Monarchy, Martyrdom and Masculinity: England in the Later Middle Ages," in *Holiness and Masculinity in the Middle Ages*, ed. P. H. Cullum and Katherine J. Lewis (Toronto: University of Toronto Press, 2004), 174–91; Ormrod, "The Sexualities of Edward II," in *The Reign of Edward II: New Perspectives*, ed. Gwilym Dodd and Anthony Musson (Woodbridge, Suffolk: York Medieval Press, 2006), 22–47; Christopher Fletcher, "Manhood, Kingship and the Public in Late Medieval England," *Edad Media: revista de historia*, 13 (2012): 123–42; Fletcher, "Manhood and Politics in the Reign of Richard II," *Past & Present*, 189 (2005): 3–39; Michael Hanrahan, "Speaking of Sodomy: Gower's Advice to Princes in the *Confessio Amantis*," *Exemplaria* 14 (2002): 423–46; Katherine J. Lewis, "Becoming a Virgin King: Richard II and Edward the Confessor," in *Gender and Holiness: Men, Women, and Saints in Late Medieval Europe*, ed. Sam Riches and Sarah Salih (London: Routledge, 2002), 86–100; Ian Mortimer, "Sermons of Sodomy: A Reconsideration of Edward II's Sodomitical Reputation," in Dodd and Musson, *The Reign of Edward II*, 48–60. From a comparative perspective: Rachel Stone, *Morality and Masculinity in the Carolingian Empire* (Cambridge: Cambridge University Press, 2012). In addition, there are a number of valuable studies on queenship that also address the gendering of kings. See for example, J. L. Laynesmith, *The Last Medieval Queens: English Queenship 1445–1503* (New York: Oxford University Press, 2005); Theresa Earenfight, *The King's Other Body: María of Castile and the Crown of Aragon* (Philadelphia, PA: University of Pennsylvania Press, 2010); John Carmi Parsons, "'Loved Him—Hated Her': Honor and Shame at the Medieval Court," in Murray, *Conflicted Identities and Multiple Masculinities*, 279–98. For a useful analysis of

generally been satisfied to equate 'bad' or 'good' kingship with unquestioned assumptions that the ability to rule was dependent on such 'manly' qualities as physical strength and courage in battle. They have therefore accepted at face value medieval judgements that kings like Richard II 'failed' because of innate effeminacy and weakness.⁴³ Likewise, a gender perspective is necessary to fully comprehend how kings and their subjects were constituted in relation to the masculine state. As shall be seen, sources for treason prosecutions frequently incorporated accusations that traitors were 'false men' who had corrupted and debased 'natural' masculine bonds of love, loyalty, and service. To understand the wider implications of this legal rhetoric, one must be cognisant of the broader context in which ideas about manhood were deployed and debated, by whom, and to what ends.

As gendered critiques of kingship indicate, even in overtly masculine societies being an adult male was a prerequisite for wielding political power, but it was not the only qualifier. Through an examination of fourteenth-century didactic and literary sources, Fletcher has convincingly argued that Middle English terms such as 'manly' and 'manliness' conveyed an ideal (or hegemonic) masculinity most strongly associated with qualities seen as knightly, including strength, prowess, honour, and loyalty to one's lord.⁴⁴ In texts designed to inculcate proper masculine virtues in men of the political classes, knighthood was valorised as a superior state of manhood; knights were represented as an elite chosen by God to help princes rule by providing counsel, enforcing justice,

gender and early modern kingship, see Cynthia Herrup, "The King's Two Genders," *Journal of British Studies* 45 (2006): 493–510.

⁴³ For a discussion of earlier approaches, see Lewis, *Kingship and Masculinity*, 4–5; Fletcher, *Richard II*, 7–11.

⁴⁴ Fletcher, *Richard II*, 25–39, 50–51; Fletcher, "The Whig Interpretation of Masculinity?"

and wielding legitimate violence in defence of the realm and the Church.⁴⁵ While these qualities were most overtly identified with men of noble or knightly social status, they were also adopted by men at other social levels. By the fourteenth century, the gentry and the expanding merchant classes had embraced chivalric culture, and masculine values of honour, 'worship', and largesse were integral to the way these men performed their social identities and established their positions in gendered social and political hierarchies.⁴⁶ Chivalric ideals were even adapted to religious discourse, as clerics urged their audience to manfully fight sin and defend the honour of Christ and the Church against heretics and infidels.⁴⁷ For kings, noblemen, and knights, but also for those of more humble social status, chivalric values were central to the performance of manhood on the political stage. This deeply influenced the way that treason was constructed

⁴⁵ Maurice Keen, *Chivalry* (New Haven, CT: Yale University Press, 1984), 149–60; 224–37; Richard W. Kaeuper, *Chivalry and Violence in Medieval Europe* (Oxford: Oxford University Press, 1999); Kaeuper, *War, Justice, and Public Order*, 184–99; Ruth Mazo Karras, "Mail Bonding: Knights, Ladies, and the Proving of Manhood," in *Boys to Men*, 20–66; Philippa C. Maddern, *Violence and Social Order: East Anglia 1422-1442* (Oxford: Clarendon Press, 1992), 76–89.

⁴⁶ Watts, *Henry VI*, 31–39; Lewis, *Kingship and Masculinity*, 33–36; Phillips, "Masculinities"; Hicks, *English Political Culture in the Fifteenth Century*, 13–17, 51–62; Maddern, *Violence and Social Order*, 13–14; Maddern, "Honour among the Pastons"; Shannon McSheffrey, "Men and Masculinity in Late Medieval London Civic Culture: Governance, Patriarchy, and Reputation," in Murray, *Conflicted Identities and Multiple Masculinities*, 243–78; Fletcher, "The Whig Interpretation of Masculinity?" Although they do not explicitly address gender, Musson, Kaeuper, and Harriss all stress the primacy of honour and worship for men of the gentry and burgess classes: Anthony Musson, *Medieval Law in Context: The Growth of Legal Consciousness from Magna Carta to the Peasants' Revolt* (Manchester: Manchester University Press, 2001), 50–51; Richard W. Kaeuper, "Debating Law, Justice and Constitutionalism," in *ibid.*, *Law, Governance, and Justice*, 9–10; Harriss, "Dimensions of Politics," 5–7.

⁴⁷ See for example, Jacqueline Murray, "Masculinizing Religious Life: Sexual Prowess, the Battle for Chastity, and Monastic Identity," in Cullum and Lewis, *Holiness and Masculinity*, 24–42; Andrew Romig, "The Common Bond of Aristocratic Masculinity: Monks, Secular Men and St. Gerald of Aurillac," in Thibodeaux, *Negotiating Clerical Identities: Priests, Monks and Masculinity in the Middle Ages*, 39–56; Andrew Holt, "Between Warrior and Priest: The Creation of a New Masculine Identity during the Crusades," in *ibid.*, 185–203; Christopher Fletcher, "'Sire, uns hom sui': Transgression et inversion par rapport à quelle(s) norme(s) dans l'histoire des masculinités médiévales ?," *Micrologus: Revue de la Société internationale pour l'étude du Moyen Âge latin*, forthcoming. Pre-publication version accessed 10 February, 2015, https://www.academia.edu/8584052/Sire_uns_hom_sui_Transgression_et_inversion_par_rapport_%C3%A0_quelle_s_norme_s_dans_l_histoire_des_masculinit%C3%A9s_m%C3%A9di%C3%A9vales_.

in the state's legal rhetoric, but it also shaped the language and strategies deployed by accused men to justify their political resistance.

Despite variations in how knighthood was interpreted and performed by men of different social groups, ideals of manhood coalesced around the notion of 'trueness'. To be 'true' in the sense of loyal, honest, and keeping one's word, was central to performing masculine identity and to regulating homosocial relationships at all social levels. Trueness was connected to the ubiquitous cultural and legal value attributed to a man's sworn word, with social, legal, economic, and political relationships between men being enacted through the public performance of vows and oaths.⁴⁸ The late medieval expansion in literacy and written records meant that masculine bonds forged through verbal rituals were increasingly backed up by indentures, charters, and other documents.⁴⁹ However, men's verbal utterances remained integral to their social embodiment as 'true men', and to the recognition of their masculine honour or worship. This is indicated, for example, by the prevalent legal and social concern with defamation, which necessitated the vigorous defence of one's manly honour before the court and wider community.⁵⁰

⁴⁸ Neal, *Masculine Self*, 1–55 esp. 40–46 on oaths; Steven Justice, *Writing and Rebellion: England in 1381* (Los Angeles, CA: University of California Press, 1996), esp. chapter 4; Barbara A. Hanawalt, *Of Good and Ill Repute: Gender and Social Control in Medieval England* (New York: Oxford University Press, 1998), 1–17; Hicks, *English Political Culture in the Fifteenth Century*, 13–14; Musson, *Medieval Law in Context*, 50–51, 221; Jamie K. Taylor, *Fictions of Evidence: Witnessing, Literature, and Community in the Late Middle Ages* (Columbus, OH: Ohio State University Press, 2013), 1–23; Richard Firth Green, *A Crisis of Truth: Literature and Law in Ricardian England* (Philadelphia, PA: University of Pennsylvania Press, 1999), chapters 3 and 4. For an extended discussion of trueness in relation to chivalric manhood and the execution of noble traitors, see E. Amanda McVitty, "False Knights and True Men: Contesting Chivalric Masculinity in English Treason Trials, 1388–1415," *Journal of Medieval History* 40 (2014): 458–77.

⁴⁹ Michael T. Clanchy, *From Memory to Written Record: England 1066–1307* (London: Edward Arnold, 1979), esp. 202–26.

⁵⁰ In addition to the works cited in n. 47 see Ian Forrest, "Defamation, Heresy, and Late Medieval Social Life," in *Image, Text and Church, 1380–1600: Essays for Margaret Aston*, ed. Colin

The interdependency between male speech acts such as oaths of homage and the embodied performance of true manhood reflected a deep conviction that a man's outer performance, including his words, conveyed the truth of his inner identity.⁵¹ This meant that masculine speech acts were perceived as fully embodied and therefore as having material consequences. Austin's model of speech acts as a form of social and political action that brings about instrumental effects is particularly useful when considering the status of men's public utterances in the prosecution of treason.⁵² In legal contexts, true manhood was performed through public speech acts that effected material ends. A man's oath made a contract and his sworn verbal testimony was a form of judicial proof, while his oral 'plaint' was an accepted way to initiate legal actions.⁵³ During the routine process of gaol delivery, an offender could be released or sent to trial based on the sworn oaths of 'trustworthy men' ('fidedignes') as to his *fama* (worship) or lack of it. At trial, it was the jurors' sworn oaths that provided material proof of the defendant's innocence or guilt and decided the judicial outcome.⁵⁴ The privileging of oral oaths and testimony

Richmond, Linda Clark, and M. Jurkowski (Toronto: Pontifical Institute of Mediaeval Studies, 2009), 142–61; Thelma Fenster and Daniel Lord Smail, eds., *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca, NY: Cornell University Press, 2003); Jelle Haemers, "Filthy and Indecent Words. Insults, Defamation, and Urban Politics in the Southern Low Countries, 1300-1550," in *The Voices of the People in Late Medieval Europe. Communication and Popular Politics*, ed. Jan Dumolyn et al. (Turnhout, Belgium: Brepols, 2014), 247–67; Heather Kerr and Claire Walker, eds., *Fama and Her Sisters: Gossip and Rumour in Early Modern Europe* (Turnhout, Belgium: Brepols, 2015).

⁵¹ Neal, *Masculine Self*, 38–39; Susan Crane, *The Performance of Self: Ritual, Clothing, and Identity During the Hundred Years War* (Philadelphia, PA: University of Pennsylvania Press, 2002), 1–5.

⁵² J. L. Austin, *How to Do Things with Words* (Cambridge, MA: Harvard University Press, 1962). For a discussion of how to use this model to analyse evidence for the aural, vernacular speech of late medieval political culture, see Jan Dumolyn and Jelle Haemers, "'A Bad Chicken Was Brooding': Subversive Speech in Late Medieval Flanders," *Past & Present* 214 (2012): 45–86 (esp. 50–56).

⁵³ Musson, *Medieval Law in Context*, 50–51, 221; Neal, *Masculine Self*, 1–55; Green, *Crisis of Truth*, 90–92.

⁵⁴ Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial*

derived from a customary concept of ‘soothfastness’, which expressed an ethical sense of truth that was grounded in a man’s moral integrity and personal fidelity. In his influential study *A Crisis of Truth*, Green argued that in tandem with the expansion in written records of government over the course of the fourteenth century, the meaning of ‘truth’ also began to shift from this older customary association with ‘sooth’, meaning loyalty, honesty, and fidelity especially as this was expressed in a man’s word, to a narrower legalistic sense of ‘truth’ as being in accordance with facts as these were represented by documentary evidence.⁵⁵ However, the two meanings were still deeply intertwined so that in judicial contexts, men’s words retained enormous value as both moral sooth and legal proof.

The moral and ethical principal of ‘trueness’ that was represented by keeping one’s oath was central to performing knightly identity, and this dimension of chivalric manhood applied as much to kings as it did to the men who served them.⁵⁶ This connection between trueness and the masculine speech act of the oath was widely expressed in didactic and chivalric literature, such as in Thomas Hoccleve’s exhortation to the young Prince Henry that:

It is nat knyghtly from an oth to varie;

Jury, 1200-1800 (Chicago, IL: University of Chicago Press, 1985), 7–8, 20, 25–27; Taylor, *Fictions of Evidence*, 190–91; J. B. Post, “Jury Lists and Juries in the Late Fourteenth Century,” in *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800*, ed. J. S. Cockburn and Thomas Andrew Green (Princeton, NJ: Princeton University Press, 1988), 65–77 (esp. 73–76).

⁵⁵ Green, *Crisis of Truth*, 1-30, 37–39. See also Clanchy, *From Memory to Written Record*, 1–57.

⁵⁶ On kingship and chivalry generally, see for example Lewis, *Kingship and Masculinity*, 33–34; Craig David Taylor, “Henry V, Flower of Chivalry,” in *Henry V: New Interpretations*, ed. Gwilym Dodd (Woodbridge, Suffolk: York Medieval Press, 2013), 217–47; Anthony Tuck, “Henry IV and Chivalry,” in *Henry IV: The Establishment of the Regime, 1399-1406*, ed. Gwilym Dodd and Douglas Biggs (Woodbridge, Suffolk: York Medieval Press, 2003), 55–72; Chris Given-Wilson, *Henry IV* (New Haven, CT: Yale University Press, 2016), 394–401.

A kyng of trouth, oweth bene exemplarie.⁵⁷

This was a common trope in popular medieval romances such as *Havelok the Dane*, *Fouke le Fitz Waryn*, or the Arthurian tales, where political crises often originated in the breaking of an oath between a knight and his lord. In a personal monarchy with a small, interconnected ruling elite, political and private loyalties were deeply intertwined, so that a man who violated his bond with his king was, by definition, no knight but a traitor.⁵⁸ The necessity of keeping one's oath was also stressed in more practical guides, such as Geoffrey de Charny's mid-fourteenth century *Book of Chivalry*.⁵⁹

While knighthood is one important context for the treason cases considered in this study, they feature defendants from a range of other social groups including friars, yeomen, artisans, and servants. The association between manhood, truth, and oath keeping was equally powerful in regulating social, economic, and legal relationships at these lower levels of the political hierarchy. Examining evidence including courtesy texts and the court records of legal disputes, Neal argues that trueness 'may be one valence of masculinity not varying with social status'.⁶⁰ The corollary was that 'falseness', too, took on a gendered valence, with oath-breakers and those who had violated masculine

⁵⁷ Thomas Hoccleve, *The Regement of Princes and Fourteen Minor Poems*, ed. Frederick J. Furnivall, Early English Text Society E. S. 72 (London, 1897), 80 (lines 2197–98). The *Regement*, a 'mirror for princes', was composed in 1410–11 and dedicated to Prince Henry, the future Henry V.

⁵⁸ Kaeuper, *Chivalry and Violence*, 30–32, 185–88; Keen, *Chivalry*, 6–13, 175–78; Stephen D. White, "The Problem of Treason: The Trial of Daire Le Roux," in *Law, Laity, and Solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet L. Nelson, and Jane Martindale (Manchester: Manchester University Press, 2001), 95–115; King, "False Traitors"; McVitty, "False Knights and True Men." Valente, (*Theory and Practice of Revolt*, 21–24) discusses the influence of chivalric romance themes in justifying thirteenth and fourteenth-century baronial revolts.

⁵⁹ Geoffroi de Charny, *The Book of Chivalry of Geoffroi de Charny: Text, Context, and Translation*, ed. Richard W. Kaeuper and Elspeth Kennedy (Philadelphia, PA: University of Pennsylvania Press, 1996).

⁶⁰ Neal, *Masculine Self*, 44. See also Justice, *Writing and Rebellion*, chapter 4.

codes of loyalty routinely identified as 'false men'. Green has observed that while 'truth' conveyed the opposite of 'falseness' as this was signified by breaches of honour, by the later fourteenth century it had also developed a more specific import as the antonym of treason.⁶¹ This understanding appears prominently in the sources examined in this study, where men's false speech was portrayed as the root cause of their treasonous acts, and 'falseness' became the essential quality of the traitorous subject.⁶² As shall be seen, the connection between male speech and deeds had a pivotal role to play in new and expanded definitions of treason that were appearing in case law from the early 1400s.

Dimensions of political culture: Vernacularity and multilingualism

Connections between language, ethnicity, gender, and speech bring us to the third dimension of this study: vernacularity and the political uses of English, French, and Latin in England's multilingual legal culture. John Fisher's influential early studies posited that the Lancastrian kings had deliberately pursued a vernacular 'language policy' in the offices of state, and this fostered investigations into language use across a range of other administrative and literary contexts.⁶³ While Fisher's central argument concerning a Lancastrian English language policy was challenged by other scholars, his work raised enduring questions about the role of English in a society undergoing profound cultural and political change. Newer research has engaged more deeply with the

⁶¹ Green, *Crisis of Truth*, 1-43, 206-247.

⁶² On oath-breaking as perjury, sin, and a violation of masculine chivalric honour, see Hicks, *English Political Culture in the Fifteenth Century*, 13-14; Musson, *Medieval Law in Context*, 5-51, 221.

⁶³ John H. Fisher, "Chancery and the Emergence of Standard Written English in the Fifteenth Century," *Speculum* 52 (1977): 870-99; Fisher, "A Language Policy for Lancastrian England," *PMLA* 107, (1992): 1168-80; Thorlac Turville-Petre, *England the Nation: Language, Literature, and National Identity, 1290-1340* (Oxford: Clarendon Press, 1996). For an earlier example, Basil Cottle, *The Triumph of English, 1350-1400* (London: Blandford, 1969).

primary sources of government and law.⁶⁴ The picture that has emerged is of a complex multilingual environment where French, Latin, and English were all used and understood at the elite level of political society but where English had become the common oral vernacular, including in the royal courts and in parliament.⁶⁵ English was also gaining in status as a language of record (an important point addressed further below). Despite nationalistic associations being forged between being English and speaking English, French remained the official written language of English government and royal legal administration well into the fifteenth century. Statutes were composed in French (although they were promulgated orally in English), and French was the main language of record for the rolls of parliament. French was also the professional language of the common law. It was used in the law reports and Year Books that served as references for judges, lawyers, and law students; it was the language of legal education at the Inns of Court; and it supplied a specialised vocabulary.⁶⁶ Many

⁶⁴ Studies of particular relevance to this thesis are W. Rothwell, "English and French in England after 1362," *English Studies* 82 (2001): 539–59; Jeremy Catto, "Written English: The Making of the Language 1370–1400," *Past & Present* 179 (2003): 24–59; Ormrod, "The Use of English"; Chris Given-Wilson, "The Rolls of Parliament, 1399–1421," *Parliamentary History* 23 (2004): 57–72; W. Mark Ormrod, "The Language of Complaint: Multilingualism and Petitioning in Later Medieval England," in Wogan-Browne, *Language and Culture in Medieval Britain*, 31–43; Gwilym Dodd, "Thomas Paunfield, the 'Heye Court of Rightwysnesse' and the Language of Petitioning in the Fifteenth Century," in *Medieval Petitions: Grace and Grievance*, ed. W. M. Ormrod, Gwilym Dodd, and Anthony Musson (Woodbridge, Suffolk: York Medieval Press, 2009), 222–41; Dodd, "The Spread of English in the Records of Central Government, 1400–1430," in Salter and Wicker, *Vernacularity in England and Wales*, 225–66; Dodd, "The Rise of English, the Decline of French: Supplications to the English Crown, c. 1420–1450," *Speculum* 86 (2011): 117–50.

⁶⁵ Throughout this study, I use the term 'French' to mean 'French of England'. 'French of England' is now the preferred term for scholars of later medieval and early modern England, who wish to distinguish it from earlier Anglo-Norman variants and from the 'French of Paris': Wogan-Browne, "General Introduction: What's in a Name?," 1, 9.

⁶⁶ Paul Brand, "The Languages of the Law in Later Medieval England," in *Multilingualism in Later Medieval Britain*, ed. D. A. Trotter (Woodbridge, Suffolk: Boydell & Brewer, 2000), 63–76; J. H. Baker, "The Three Languages of the Common Law," in *The Common Law Tradition: Lawyers, Books, and the Law* (London: Hambledon Press, 2000), 225–46; Paul Brand, "Courtroom and Schoolroom: The Education of Lawyers in England prior to 1400," *Historical Research* 60 (1987): 147–65.

men working in government administration, even those who were not clerically trained, also had at least some ability to work in Latin because this was used for the bulk of Chancery documents such as the patent, fine, and close rolls. In addition, Latin remained popular for the composition of works that circulated amongst an elite secular readership, including devotional texts and the historical chronicles associated with abbeys like Westminster and St Albans.⁶⁷

This brief overview indicates that the linguistic situation in late medieval England was far from simple, and the choice of languages could carry significant social and political weight. Ormrod's landmark study has pointed to the war between England and France as an important context for understanding the selection and use of languages. Discussing the 1362 Statute of Pleading, which mandated that English should be the language used for hearing oral pleas and testimony in royal courts, he notes this 'was not solely or even principally about proper access to justice but rather about the reinforcement of a particular sense of political and cultural identity in a kingdom that had just emerged successfully from the throes of a major war with France'.⁶⁸ While the 1362 statute stated that English was to be used to make the king's justice accessible to all, English was in fact already the standard oral vernacular used in royal courts. From the early fourteenth century, reference texts owned by common lawyers were incorporating content in English, including translations of statutes.⁶⁹ Baker argues that common lawyers must always have conducted oral business in English in order to communicate with clients and witnesses, and that for

⁶⁷ Andrew Galloway, "Latin England," in Lavezzo, *Imagining a Medieval English Nation*, 41–95.

⁶⁸ Ormrod, "The Use of English," 781. The Statute was promulgated at a time when England was trying to force the French crown to fulfil the terms of the Treaty of Bretigny (1360).

⁶⁹ Brand, "Languages of the Law," 74–76; he points out these examples are rare for the earlier fourteenth century.

practical purposes, trials must have been heard primarily in English.⁷⁰ He further suggests that documents composed in Latin and French, such as writs and indictments, were probably translated into written English so they could be read out by court clerks. The use of English for oral proceedings is supported by Powell's work on trial juries. This has shown that by the early fifteenth century (if not earlier), juries were no longer self-informing - that is, they were not expected to render a verdict based on their own prior knowledge of the offence or the parties involved; instead, they relied on evidence presented to them in court.⁷¹

The significance and intended import of English, French, or Latin, whether oral or written, in any particular circumstance was therefore more complicated than it might initially appear. While language choice might be politicised, it could also simply be the by-product of training or standard practices, whether personal or institutional. For example, written petitions involved an intermediary - a professional scrivener, clerk, or lawyer - who had the knowledge and skills to produce the document in the correct form and language. These intermediaries brought their own training and preferences to this work.⁷² We must therefore ask of every document what circumstances it

⁷⁰ Baker, "Three Languages," 226. On the use of English for oral proceedings, see also Clanchy, *From Memory to Written Record*, 159–63.

⁷¹ Edward Powell, "Jury Trial at Gaol Delivery in the Late Middle Ages: The Midland Circuit, 1400–1429," in Cockburn and Green, *Twelve Good Men and True*, 78–79, 106–9, 115–16; Powell, *Kingship, Law, and Society*, 77–82. For the debate on whether or not the jury was ever fully self-informing, and if so, when this began to change, see Thomas A. Green, "Societal Concepts of Criminal Liability for Homicide in Mediaeval England," *Speculum* 47 (1972): 669–94; T. Green, "The Jury and the English Law of Homicide, 1200–1600," *Michigan Law Review* 74 (1976): 413–99; John H. Langbein, "The Origins of Public Prosecution at Common Law," *The American Journal of Legal History* 17 (1973): 313–35; Langbein, "The Criminal Trial before the Lawyers," *The University of Chicago Law Review* 45 (1978): 263–316; Daniel Klerman, "Was the Jury Ever Self-Informing?," *Southern California Law Review* 77 (2003): 123–50.

⁷² Dodd, "Rise of English," 119–120. See also Gwilym Dodd, "Trilingualism in the Medieval English Bureaucracy: The Use—and Disuse—of Languages in the Fifteenth-Century Privy Seal Office,"

was produced in, by whom, and with what audience in mind, with those questions directed not only at its vocabulary, narrative structure, and rhetorical content, but also at the language(s) chosen to create it. Discussing research into the written records of late medieval English government, Dodd recently noted that it is still the case that ‘in general, historical enquiry has tended to limit itself to an investigation into what the documents say, rather than what language they were written in, *and why*.’⁷³ By paying attention not only to the content of treason proceedings, but also to the selection and interaction of languages in which they were recorded and performed in the public sphere of royal courts, this study will shed new light on the complex relationships between vernacularity, aurality, and authority in late medieval political culture.

From the later 1300s, written English was starting to be used in official contexts to verify in writing what had been said orally, thereby authenticating a written document as a true record of and permanent witness to the original aural performance.⁷⁴ For example, endorsements to petitions recorded the literal words of the king in granting the petition, and it was these words that enacted the response and gave it the force of law. Although French was used for routine endorsements, responses requiring greater elaboration or explanation were written in English.⁷⁵ As well as demonstrating the authenticating power of

Journal of British Studies 51 (2012): 253–83; Dodd, “Kingship, Parliament and the Court: The Emergence of ‘High Style’ in Petitions to the English Crown, c.1350–1405,” *The English Historical Review* 129 (2014): 515–48.

⁷³ Dodd, “Spread of English,” 226, emphasis in original.

⁷⁴ Dodd, “Spread of English,” 255–56. See also Ormrod, “Language of Complaint,” 38–39; Dodd, “Rise of English,” 140–41; Dodd, “Thomas Paunfield and the Language of Petitioning.”

⁷⁵ Dodd, “Rise of English,” 139–42. Henry V’s response to the Commons’ petition requesting that their vernacular speech and petitions be accurately recorded was one such, with the king saying he would grant the petition, ‘Savyng alwey to our liege lord his real prerogatif, to graunte and denye what him lust of their petitions and askynges a foresaide’: *PROME*, “Henry V: Parliament of April 1414,” item 22, RP iii:590.

English, such practices recall the intimate connection between men's speech and its instrumental effects. The use of English to verify a written text as a true and accurate record is significant for this study, because in the context of treason trials at common law, English words were beginning to be transcribed into trial records as the material proof of the offender's 'false' speech. The debate over whether such words on their own could legally be punished as treason will be examined in Chapters Three and Four. At this point it suffices to say that the political potential that inhered in language choice was not a one-way street that was open only to the judicial authorities of the state. Rather, when considering the records of treason trials, with their mixture of Latin, French, and English even within the same document, it must be remembered that these languages worked in relationship to each other, and could subvert as well as authorise the truth of the narratives in which they were embedded.⁷⁶ Recent studies of vernacularity and multilingualism in late medieval culture support this observation, using evidence from a wide variety of institutional and social contexts.⁷⁷ Lacey has noted that the use of the English vernacular shaped behaviour and mentalities in distinctive ways, allowing speakers to articulate novel ideas and to negotiate new identities.⁷⁸ The status of the English vernacular as a way to authenticate truth had specific, subversive potential in

⁷⁶ A point made in a more general sense by Wogan-Browne, "General Introduction: What's in a Name?," 8.

⁷⁷ In addition to material cited above, see for example the essay collections D. A. Trotter, ed., *Multilingualism in Later Medieval Britain* (Woodbridge, Suffolk: Boydell & Brewer, 2000); Judith Anne Jefferson and Ad Putter, eds., *Multilingualism in Medieval Britain (c. 1066-1520): Sources and Analysis* (Turnhout, Belgium: Brepols, 2013).

⁷⁸ Helen Lacey, "Pragmatic Literacy and Political Consciousness in Later Medieval England," in *L'écriture pragmatique. Un concept d'histoire médiévale à l'échelle européenne*, CEHTL, 5 (Paris: LAMOP, 2012), 64–66. See also Helen Wicker, "Introduction," in Salter and Wicker, *Vernacularity in England and Wales*, 5–8; Andrew Butcher, "Textual Production and Vernacular Behaviour: Locating a Fifteenth-Century Administrative Book," in *ibid.*, 295–323.

the context of treason prosecutions. When it was the language of political speech against the Lancastrian regime, the vernacular did not just reflect political subjecthood but could actually help to constitute it through the textual performance of masculine identity as a 'trewe man' to a wrongfully deposed king or to a crown that could be separated from its usurper.

While English was increasingly linked to the interests of the English state and used to verify the records of law and government, it was also viewed as potentially dangerous to the forces of authority and orthodoxy. The circulation of English-language religious texts was associated with lollardy, which came to be perceived as a distinct religious identity from the late 1300s and was represented by ecclesiastical and secular authorities as both heretical and seditious.⁷⁹ The distribution of vernacular letters and handbills was also implicated in social and political disorder. In 1381, letters written in English, one of which purported to come from a 'Jak Trewman', were circulated by the rebel leaders to incite the populace to revolt.⁸⁰ By 1450, when the supporters of Jack Cade's rebellion produced written bills declaring themselves the king's 'trew lege mene and his best freendus' and justifying their rising on behalf of the 'comynealte of Ynglond', the public circulation of such political bills had become

⁷⁹ Anne Hudson, *The Premature Reformation: Wycliffite Texts and Lollard History* (New York: Oxford University Press, 1988), 166–68, 200–8; Nicholas Watson, "Censorship and Cultural Change in Late-Medieval England: Vernacular Theology, the Oxford Translation Debate, and Arundel's Constitutions of 1409," *Speculum* 70 (1995): 822–64; Steven Justice, "Lollardy," in *The Cambridge History of Medieval English Literature*, ed. David Wallace (New York: Cambridge University Press, 1999), 662–89; Jill C. Havens, "'As Englishe Is Comoun Langage to Oure Puple': The Lollards and Their Imagined 'English' Community," in Lavezzo, *Imagining a Medieval English Nation*, 96–128. The problematic relationships developing between language, national identity, and religious identity because of the connections (whether real or imagined) between lollardy and sedition will be explored in Chapter Four.

⁸⁰ David Aers, "Vox Populi and the Literature of 1381," in Wallace, *The Cambridge History of Medieval English Literature*, 432–53; Justice, *Writing and Rebellion*; Susan Crane, "The Writing Lesson of 1381," in *Chaucer's England: Literature in Historical Context*, ed. Barbara Hanawalt (Minneapolis, MN: University of Minnesota Press, 1992), 201–21; Richard Firth Green, "John Ball's Letters: Literary History and Historical Literature," in *ibid.*, 176–200.

ubiquitous.⁸¹ This study examines in depth the legal implications of these emerging linguistic perceptions, as from the early 1400s government anxieties about the destabilising effects of vernacular public speech were reflected in the novel prosecution of textual and verbal expressions of political dissent as material acts of treason.

Dimensions of political culture: The popular political sphere

This brings us to the fourth dimension through which to examine the relationship between the state and political subjects. This was the increasing demand for political participation at all levels of society and the related development of a popular public sphere and vernacular discourses of grievance and reform. For Whig historians, the grounds of ‘election’ on which Henry IV’s kingship was established marked a constitutional revolution, heralding England’s precocious adoption of a limited parliamentary monarchy. While this triumphalist interpretation has long been superseded, Henry’s legitimising strategies, including his promise to rule for ‘the commune profit of the Rewme’ and the wide dissemination of the official account of Richard II’s ‘resignation’, did put a number of volatile ideas into public circulation at a time when increasing vernacular literacy was opening up new sites for political debate and action that were beyond the control of the governing elite.⁸² These ideas were adapted and developed in unpredictable ways, including in the political speech of alleged traitors to the Lancastrian state.

When speaking of vernacular literacy, this does not necessarily imply or

⁸¹ I. M. W. Harvey, *Jack Cade’s Rebellion of 1450* (Oxford: Clarendon Press, 1991), 188–91. Wendy Scase, “‘Strange and Wonderful Bills’: Bill-Casting and Political Discourse in Late Medieval England,” *New Medieval Literatures* 2 (1998): 225–47.

⁸² *PROME*, “Henry IV: Parliament of 1399,” item 53, RP iii:423.

require the ability to read, although recent work suggests ‘pragmatic literacy’ was in fact more widespread even amongst those of humble social status than was once presumed by scholars working within misleading literate/illiterate or written/oral binaries. Reading was a social practice in late medieval England and the verbal performance of texts was integral to their dissemination in informal and formal contexts.⁸³ The vernacular recitation of government proclamations, statutes, and newsletters in county courts and other public venues by sheriffs, bailiffs, or ‘criers’ was a primary means by which the state exercised authority and communicated laws and policies to the wider community. The oral performance of pleas and petitions was also integral to legal procedure in the courts and to the relationship between the king and his subjects as this was enacted and negotiated in parliament and in other formal government venues.⁸⁴ In recognition of these realities, the concept of ‘aurality’, which brings together the practices of writing, reading, and the verbal performance of vernacular texts in ways that productively span the literate/illiterate and oral/written divide has emerged as a more useful way to approach the dissemination of political ideas in late medieval England.⁸⁵

⁸³ Lacey, “Pragmatic Literacy”; Clanchy, *From Memory to Written Record*, 149–50, 214–220; Joyce Coleman, *Public Reading and the Reading Public in Late Medieval England and France* (New York: Cambridge University Press, 1996).

⁸⁴ James A. Doig, “Political Propaganda and Royal Proclamations in Late Medieval England,” *Historical Research* 71 (1998): 253–80; John R. Maddicott, “The County Community and the Making of Public Opinion in Fourteenth-Century England,” *Transactions of the Royal Historical Society* 28 (1978): 27–43; Musson, *Medieval Law in Context*, 135–83; Ian Forrest, *The Detection of Heresy in Late Medieval England* (Oxford: Clarendon Press, 2005), 122–24; Charles Ross, “Rumour, Propaganda and Popular Opinion during the Wars of the Roses,” in Griffiths, *Patronage, the Crown and the Provinces*, 15–32; Jan Dumolyn, “Political Communication and Political Power in the Middle Ages: A Conceptual Journey,” *Edad Media: revista de historia* 13 (2012): 33–55; Fletcher, “Manhood, Kingship and the Public in Late Medieval England.” For useful comparative material see Élodie Lecuppre-Desjardin, “Des portes qui parlent: Placards, feuilles volantes et communication politique dans les villes des Pays-Bas à la fin du Moyen Âge,” *Bibliothèque de l’école des chartes* 168 (2010): 151–72.

⁸⁵ Joyce Coleman, “Aurality,” *Middle English* 199 (2007): 68–85; Ormrod, “The Use of English,” 753–

Two aspects of this aural vernacular culture are particularly relevant for this study. The first is the role of royal courts not only as sites for the performance of justice in individual cases, but also as public venues where the relationship between the state and subjects was experienced and negotiated through the law. As royal jurisdiction expanded, the ability to see and hear the king's justice being done was central to securing acceptance of its rules and authority, not only for those directly experiencing it as plaintiffs, defendants, witnesses, and court officials, but also for the wider public.⁸⁶ The indictments that formed the basis for treason prosecutions were discursive tools for framing and trying a particular case, but they could also serve a broader purpose by articulating the state's definition of treason and affirming its jurisdiction in the public judicial venue of King's Bench.⁸⁷ Yet, while King's Bench was nominally under the control of the state's judicial officials, in practical terms its physical and discursive boundaries were porous and it formed part of a wider urban public sphere. The court was located within Westminster Hall alongside the courts of Common Pleas and Chancery, and the Hall was in turn part of the royal palace. In addition to housing the king's highest courts, it was frequently used for sessions of parliament. As such, it was a chaotic public space open to all of the king's subjects and it was heavily trafficked by those carrying out government business, petitioners, litigants, lawyers, law students, and clerks, as

55; John L. Watts, "The Pressure of the Public on Later Medieval Politics," in Clark and Carpenter, *The Fifteenth Century IV: Political Culture in Late Medieval Britain*, 166–68.

⁸⁶ Musson, *Medieval Law in Context*, 135–83.

⁸⁷ Robert L. Storey, "Clergy and Common Law in the Reign of Henry IV," in *Medieval Legal Records: Edited in Memory of C. A. F. Meekings*, ed. R. F. Hunnisett and J. B. Post (London: Her Majesty's Stationery Office, 1978), 356. The preambles to statutes were used in a similar way: Musson, *Medieval Law in Context*, 228–32.

well as by vendors of food, drink, and other commodities.⁸⁸ Rosser emphasises the unruly nature of this venue, saying that 'the capital seat of the king's justice presented a scene which most closely resembled, not a solemn tribunal, but a bazaar'.⁸⁹ As shall be seen, when treason trials were heard publicly in King's Bench, resistant visions of treason and loyal political subjecthood were at times able to leach into the wider public sphere.

A second related factor is the late fourteenth-century development of an informal popular political discursive space that was created in part through the aural dissemination of handbills, libels, and other 'clamour texts' written in English. These were nailed to church doors and on sites representative of authority such the doors of Westminster Hall, and their contents circulated in communal spaces such as marketplaces, where they provided the raw intellectual material for discussion and debate.⁹⁰ The practice of bill casting

⁸⁸ Harriss, *Shaping the Nation*, 41, 48–50, 66–67; Gervase Rosser, *Medieval Westminster, 1200-1540* (Oxford: Clarendon Press, 1989), 164–65; J. H. Baker, "Westminster Hall, 1097-1997," in *The Common Law Tradition*, 247–62; Anthony Musson, "Legal Landmarks: The Architecture of Justice in Late Medieval England," *Australia & New Zealand Law and History E-Journal*, Paper 15, 2006, accessed 15 November, 2014, <http://www.anzlhsejournal.auckland.ac.nz/papers/papers-2006.html>.

⁸⁹ Rosser, *Medieval Westminster*, 164.

⁹⁰ Aers, "Vox Populi"; Ross, "Rumour, Propaganda and Popular Opinion during the Wars of the Roses"; I. M. W. Harvey, "Was There Popular Politics in Fifteenth-Century England?," in Britnell and Pollard, *The McFarlane Legacy*, 155–74; Scase, *Literature and Complaint*; Scase, "'Strange and Wonderful Bills'"; Watts, "The Pressure of the Public on Later Medieval Politics"; Pollard, "The People, Politics and the Constitution in the Fifteenth Century"; Clementine Oliver, *Parliament and Political Pamphleteering in Fourteenth-Century England* (Woodbridge, Suffolk: York Medieval Press, 2010), 21–27; David Rollison, *A Commonwealth of the People: Popular Politics and England's Long Social Revolution, 1066-1649* (Cambridge: Cambridge University Press, 2010), 143–48; Christopher Fletcher, "Rumour, Clamour, Murmur and Rebellion: Public Opinion and Its Uses before and after the Peasants' Revolt (1381)," in *La comunidad medieval como esfera publica*, ed. Hipólito Rafael Oliva Herrero et al. (Seville: Universidad de Sevilla, 2014), 193–210; Michael Sizer, "Murmur, Clamor, and Tumult The Soundscape of Revolt and Oral Culture in the Middle Ages," *Radical History Review* 121 (2015): 9–31; Christian D. Liddy and Jelle Haemers, "Popular Politics in the Late Medieval City: York and Bruges," *The English Historical Review* 128 (2013): 771–805. For useful comparative material, see for example Jan Dumolyn and Jelle Haemers, "Political Poems and Subversive Songs. The Circulation of 'Public Poetry' in the Later Medieval Low Countries," *Journal of Dutch Literature* 5 (2015): 1–22; Dumolyn and Haemers, "'A Bad Chicken Was Brooding.'"

played a significant role in late medieval political culture by empowering people previously excluded from any formal voice in government with a public discursive space and a language of legitimacy through which to assert agency as political subjects. Scase argues that the act of posting bills at sites of authority like the St Paul's or Westminster Hall was an expression of frustration by people of lower status at their lack of access to formal venues of power such as parliament.⁹¹ At the same time, by appropriating and subverting official state mechanisms for communicating royal mandates and proclamations, she notes that bill casting created an alternative, public source of authority for articulating grievances and asking for redress. Posting in places of communal significance ensured the message reached a wide audience, so that bill casting 'did not merely achieve the dissemination of its contents - writings so displayed attained the status of publication'.⁹²

Connections can be traced between public bill casting and the pervasive petitioning culture of late medieval England. Influenced by the discursive practices of the common law as well as by the learned tradition of the *ars dictaminis*, the political classes had developed the practice of presenting petitions to the king - either publicly in parliament or through Chancery - as a legitimate channel for airing grievances and 'righting wrongs'.⁹³ However, while the written petitions presented in parliament were composed and recorded almost entirely in French well into the fifteenth century (although they were

⁹¹ Scase, "Strange and Wonderful Bills," 236–42.

⁹² *Ibid.*, 240.

⁹³ Dodd, "A Parliament Full of Rats?"; Oliver, *Parliament and Political Pamphleteering*, 83–91, 171–76; Gwilym Dodd, "Writing Wrongs: The Drafting of Supplications to the Crown in Later Fourteenth-Century England," *Medium Aevum* 80 (2011): 217–46; Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (New York: Oxford University Press, 2007); Ormrod, Dodd, and Musson, eds., *Medieval Petitions: Grace and Grievance*.

probably being verbally presented in English by the late 1300s), clamour texts and handbills, which explicitly set out to engage a much wider audience, adopted English far earlier.⁹⁴ For example, in the aftermath of the Good Parliament of 1376, vernacular libels were nailed up at St Paul's and Westminster by 'the commons of London' that denied the political authority claimed by John of Gaunt, the duke of Lancaster, partly on the grounds that he was not the king's son but the son of a Ghent butcher.⁹⁵ As will be seen in Chapter Three, this same libel was recycled for use against Gaunt's son Henry IV, indicating the long life such seemingly transient vernacular utterances could enjoy.

The themes and terminology of political debate

In the formal petitions of the governing classes, and from the 1300s in vernacular public bills, persistent tropes that structured the language of complaint included the failure of kings to take appropriate counsel; the corruption of royal justice; over-taxation and financial mismanagement; and the co-option of public power for private ends by the king's 'wicked counsellors'.⁹⁶

⁹⁴ In 1425, almost all formal petitions were in Anglo-French; by 1450 almost all were in English: Dodd, "Rise of English," 118. On the language of formal petitions versus unofficial complaints and bills see also Dodd, "A Parliament Full of Rats?," 40–46; Scase, *Literature and Complaint*, 91, 171–76. On English as the verbal mode of delivery in parliament, see Dodd's case study on Paunfield's petition (1414): "Thomas Paunfield and the Language of Petitioning." A short formal version of Paunfield's petition was recorded in the parliament roll in French but a longer text in English is also attached; Dodd argues this was used as 'speech notes' for delivering the petition orally in parliament.

⁹⁵ *The Anonimale Chronicle, 1333 to 1381: From a MS Written at St Mary's*, ed. V. H. Galbraith (Manchester: Manchester University Press, 1970), 104: 'Et ficherent sur mesmes les huses escrowes en quels fuerount escriptez qe le dit duc de Loncastre ne fuist my Engleis mes Flemmyng et ne my fitz al roy ne al roigne mes fitz a une bowcher de Gaunt'. The incident is discussed in Scase, "'Strange and Wonderful Bills,'" 240.

⁹⁶ Harriss ("Dimensions of Politics", 14–16) discusses common concerns of different groupings in the polity, including nobles, local gentry, the Commons in parliament, and the labouring classes. See also: Ormrod, "Commons, Communes and 'Common Profit'"; Joel T. Rosenthal, "The King's 'Wicked Advisers' and Medieval Baronial Rebellions," *Political Science Quarterly* 82

With Richard II's deposition and the Lancastrian usurpation, these traditional themes were joined by new concerns about the king's legitimacy and therefore his claim to embody sovereign political authority. Although the specific language and strategies used by opposing sides in political crises varied, each clash highlighted a fundamental constitutional weakness at the heart of the English system. This was the vexed question of the relationship between the king, the 'community of the realm', and the law, and the extent to which the political community could reign in, reform, or even remove a tyrannical or inept king for the 'common good'.

The English state operated through a model of power in which the king, as God's representative on earth, was the fount of justice but in which he was also expected to administer the law equitably and to govern in the best interests of all his subjects. However, England's constitutional model had evolved reactively through compromise and negotiation in times of crisis, rather than through reasoning from first principles. Although by the later fourteenth century the general expectation was that the king would rule with the counsel and consent of his nobles and the political community represented in parliament, he also retained prerogative rights of justice and mercy that could not be touched.⁹⁷ The coronation rite endowed the English king with sacral power, and as God's divine representative on earth there was ultimately no way to check him if he ruled unjustly or arbitrarily. While the concept of the 'crown' in theory conceived of the kingdom as a perpetual body that comprised the king

(1967): 595–618; Valente, *Theory and Practice of Revolt*, 25–32, 237–38; Watts, *Henry VI*, 18–29; Harriss, *Shaping the Nation*, 6–31; Musson and Ormrod, *Evolution of English Justice*, 78–111; Kaeuper, *War, Justice, and Public Order*, 269–315.

⁹⁷ Harriss, *Shaping the Nation*, 3–5; Carpenter, *Wars of the Roses*, 33–44; Watts, *Henry VI*, 18–29, 79–80; Ormrod, *Political Life*, 72–82; Lacey, *Royal Pardon*.

as its head and the political classes as its members, there was no formal legal process by which the political 'body' could legitimately remove a 'head' that was failing at the fundamental duties of rulership, nor could the 'body natural' of an individual king be easily divided from the body politic of the crown.⁹⁸ The systemic problems inherent in this model of statehood that had evolved through episodic conflict, pragmatic compromise, and appeals to custom became apparent in times of political crisis when extreme remedies, such as armed rebellion or royal deposition, were resorted to and then had to be constitutionally justified after the fact. For example, the deposition of Edward II was justified by the barons on the grounds that they owed their loyalty to the 'crown' but not necessarily to the man wearing it, particularly once he had perjured himself by breaking his coronation oath.⁹⁹ In 1321, their Articles of Deposition were condemned as unlawful, but the idea that the king as an individual man could be separated from the office of kingship later provided ammunition for the usurping Henry IV as well as for those who opposed him.

From the twelfth century, the rediscovery of Aristotelian political philosophy and Roman civil law meant that the customary language of counsel and consent was enriched by a new political vocabulary and new ways of thinking about power, authority, and sovereignty.¹⁰⁰ On the one hand, the

⁹⁸ On late medieval attempts to use the idea of the king's two bodies to address the relationship between the king and the law in England, see Watts, *Henry VI*, 16–31; Powell, *Kingship, Law, and Society*, 23–44; William Huse Dunham Jr. and Charles T. Wood, "The Right to Rule in England: Depositions and the Kingdom's Authority, 1327-1485," *The American Historical Review* 81 (1976): 738–61. For a consideration of the ideological, moral, and religious dimensions of this dilemma, see A. J. Gross, "K. B. McFarlane and the Determinists: The Fallibilities of the English Kings, c. 1399-1520," in Britnell and Pollard, *The McFarlane Legacy*, 59–66.

⁹⁹ Valente, *Theory and Practice of Revolt*, 30.

¹⁰⁰ For what follows, see in general Canning, *Ideas of Power*; James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages* (Princeton, NJ: Princeton University Press, 2014),

Roman law principle that ‘what pleases the prince has the force of law’ supported the view that as God’s representative on earth, the king was above the law and could not be made subject to it; he embodied sovereignty in his person. Attacking, resisting, or insulting the king was therefore an act of *lèse-majesté* against the sovereign public authority of the state.¹⁰¹ On the other hand, many (although not all) civil law commentators and political theorists agreed that while the king could not be restrained by the law, monarchs who failed to rule justly and for the common good were not kings but tyrants, so their subjects could legitimately withdraw obedience from them. In theory, the civil law argument that tyrants should be resisted for the good of the state complemented the chivalric notion of *diffidatio*, which allowed knights to withdraw their fealty from an unjust or inept lord, but in practice late medieval kings were increasingly inclined to punish such resistance as treason.¹⁰²

By the later fourteenth century, concepts like ‘common profit’, ‘common weal’, *bonum commune*, and the *res publica* had all become familiar as part of a language of good governance. They were present in vernacular translations and adaptations of texts like Giles of Rome’s *De Regimine Principum* and the anonymous *Secreta Secretorum*, which were in wide circulation amongst the political classes; they also appeared in petitions of grievance and requests for reform, and so helped to structure political debate between kings, their counsellors and nobility, and representative assemblies such as parliament.

3–12, 161–240; Watts, *The Making of Politics*, 131–41, 254–63; Valente, *Theory and Practice of Revolt*, 12–18; Watts, *Henry VI*, 15–30, 79–80; T. F. T. Plucknett, “The Relations between Roman Law and English Common Law down to the Sixteenth Century: A General Survey,” *The University of Toronto Law Journal* 3 (1939): 24–50.

¹⁰¹ Maïté Billoré, “Introduction,” in Billoré and Soria, *La trahison au Moyen Âge*, 17–18; Cuttler, *Treason Trials in Later Medieval France*, 2, 15–17.

¹⁰² Bellamy, *Law of Treason*, 9–13. For a nuanced discussion of the debated knightly right to *diffidatio* under Edward I and Edward II, see King, “False Traitors.”

With the growth of vernacular literacy and the related expansion of the public sphere in which political issues and ideas were debated, these concepts were also becoming familiar to a much wider cross-section of society.¹⁰³ This offered fertile soil in which those outside the traditional ruling elite could establish their own claims to political agency, give voice to dissent, and justify acts of resistance. As Watts concludes, ‘a world in which subaltern groups had access to the same sets of ideas and principles as their rulers, and where traditions of public speech and public writing were coming to be well-established, was a world where authorities could expect to face articulate resistance, and in which they would need to be prepared to negotiate their power’.¹⁰⁴

These debates played out across a range of discursive and social fields, including formal petitioning; noble protests and ‘defiances’; advice literature; religious preaching; and clamour texts and vernacular handbills. When resistance or critique went far enough to generate accusations of treason, the conflict took place in the realm of the law. The law is interpreted here as more

¹⁰³ Watts, *The Making of Politics*, 109–15, 131–48, 233–63, 384–86; Ormrod, “Commons, Communes and ‘Common Profit’”; Christopher Fletcher, “Are There ‘Constitutional’ Ideas in the Rolls of the English Parliament, C. 1340–1422?,” in *Des chartes aux constitutions: Autour de l’idée constitutionnelle en Europe (XIIe–XVIIe siècle)*, ed. François Foronda and Jean-Philippe Genêt (Paris: Publications de la Sorbonne, forthcoming), prepublication version accessed 30 June, 2016, https://www.academia.edu/12042003/Are_there_constitutional_ideas_in_the_rolls_of_the_English_Parliament_c._1340-1422; Fletcher, “What Makes a Political Language? Key Terms, Profit and Damage in the Common Petitions of the English Parliament, 1343–1422,” in Dumolyn et al., *The Voices of the People in Late Medieval Europe*, 91–106; John Watts, “Public or Plebs: The Changing Meaning of ‘The Commons’, 1381–1549,” in *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies*, ed. Huw Pryce and John Watts (Oxford: Oxford University Press, 2007), 242–60; Judith Ferster, *Fictions of Advice: The Literature and Politics of Counsel in Late Medieval England* (Philadelphia, PA: University of Pennsylvania Press, 1996); Harvey, “Was There Popular Politics in Fifteenth-Century England?,” 155–60; Pollard, “The People, Politics and the Constitution in the Fifteenth Century”; Rollison, *A Commonwealth of the People*, 143–47, 236–51; Watts, “The Pressure of the Public on Later Medieval Politics”; Fletcher, “‘Rumour, Clamour, Murmur and Rebellion’”; Liddy and Haemers, “Popular Politics in the Late Medieval City.” For a general discussion of terminology, see Black, *Political Thought*, 24–8, 186–91.

¹⁰⁴ Watts, *The Making of Politics*, 153.

than its formal institutions, codes, and procedures but also as a critical intellectual, political, and social domain through which the relationship between the state and individual subjects was experienced, negotiated, and contested as theory was transformed into action.¹⁰⁵ In England, the public nature of royal justice meant that legal knowledge was widespread even at the humblest levels of society.¹⁰⁶ As the state expanded, people from all walks of life became familiar with legal language and practices as litigants and defendants, as witnesses and jurors, and as local officials and functionaries. These people did not simply submit to the law, but were fully capable of manipulating it and adapting its language and practices to their own ends.¹⁰⁷ For example, those in prison awaiting trial may not have had access to legal counsel but they shared amongst themselves their knowledge and experience of defensive strategies, and most people knew of technicalities that could be used to delay or annul proceedings.¹⁰⁸ Juries, too, did not simply apply the law as directed but used the processes of presentment and indictment to impose their own, more merciful, interpretations of homicide or larceny to spare offenders from capital

¹⁰⁵ This approach is guided by recent research on the law in its broader social context. Examples that have been of particular value for this study include Musson and Ormrod, *Evolution of English Justice*; Musson, *Medieval Law in Context*; Powell, *Kingship, Law, and Society*; Musson, *Boundaries of the Law*; Kaeuper, *Law, Governance, and Justice*; Maddern, *Violence and Social Order*. Works such as Baker, *The Common Law Tradition* and Paul Brand, *The Making of the Common Law* (London: Hambledon Press, 1992) may also be considered as reflecting this approach for their focus on the social and intellectual history of the legal profession in England.

¹⁰⁶ C. J. Neville, "Common Knowledge of the Common Law in Later Medieval England," *Canadian Journal of History* 29 (1994): 462–78; Musson, *Medieval Law in Context*, 2–3, 84–134, 242–53; Kaeuper, "Debating Law, Justice and Constitutionalism."

¹⁰⁷ As has been shown in many studies of how local gentry used the law for personal gain. For a historiographical summary, see Kaeuper, "Debating Law, Justice and Constitutionalism," 7–9.

¹⁰⁸ Neville, "Common Knowledge of the Common Law"; Musson, *Medieval Law in Context*, 97–98; A. J. Musson, "Turning King's Evidence: The Prosecution of Crime in Late Medieval England," *Oxford Journal of Legal Studies* 19 (1999): 467–79.

punishment.¹⁰⁹

This is a reminder that the law is an ‘organic form of social organisation’ that evolves and adapts in response to political, social, and cultural influences and to the expectations of those who use it and experience its authority.¹¹⁰ The constitutional relationship between the state and its subjects, as this was negotiated through the law of treason, must therefore be considered against a wider background that acknowledges the values, principles, and beliefs shaping political culture at all social levels. When viewed from this perspective, legal records can reveal much about the discursive and social practices that helped to define the sources and limits of legitimate power, and to form the political subjects over which it was exercised. They can also reveal, if sometimes unintentionally, the many ways individual political subjects could resist that power or challenge its legitimacy by adapting the discourses and practices of the law.

Defining treason

Throughout the period under consideration here, legal and cultural perceptions of treason existed along a continuum, so that conflicts over the meaning and scope of treason were never a matter of clear-cut definitions. From a customary perspective and in chivalric culture, treason was perceived as a personal betrayal of one’s lord or fellow knight, and therefore as a violation of masculine honour.¹¹¹ As the familiar tropes of chivalric romance indicate, such

¹⁰⁹ Green, “Societal Concepts of Criminal Liability for Homicide in Mediaeval England”; James Masschaele, *Jury, State, and Society in Medieval England* (New York: Palgrave Macmillan, 2008), 84–85.

¹¹⁰ Musson and Ormrod, *Evolution of English Justice*, 75–76, quote at 75.

¹¹¹ McVitty, “False Knights and True Men.” For general discussions of the traitor as the inversion of

betrayals included cowardice in battle or committing adultery with another knight's wife, as well as plotting to kill one's lord or giving military support to his enemies. From the later thirteenth century onwards, while a man could still behave 'treasonously' towards a lord or fellow knight, the crime of treason against the king was being categorised in law as a different class of offence, one that attacked the monarch's public political person as well as his honour as a feudal lord. The increasing brutality of punishments for treason in late medieval England reflected this shift in perceptions, with older penalties such as fines and/or exile that offered the possibility of eventual reconciliation between lord and liegeman being supplanted by public spectacles of execution that included drawing, hanging, disembowelling, quartering, and the display of body parts. Such spectacles were intended not only to deter others, but also to reinforce the authority of the state and its agents as royal judicial power increasingly penetrated at all levels of English society.¹¹² During the same period, emerging constructions influenced by Roman civil law portrayed treason as a crime against the abstract public authority of the state.¹¹³ As shall be seen, in some formulations, this public authority was represented by the person of the king, but in others it began to float free of the king's body and appear in abstract concepts like the *res publica*, the *majestas* of the state, the *chose publique*, or the

the knight, although without an overt gender perspective, see King, "False Traitors"; Keen, *Chivalry*, 175–78; Kaeuper, *Chivalry and Violence*, 185–88; White, "The Problem of Treason: The Trial of Daire Le Roux."

¹¹² On late medieval England: Royer, "The Body in Parts"; James Bothwell, *Falling from Grace: Reversal of Fortune and the English Nobility 1075-1455* (Manchester: Manchester University Press, 2008), 55–86; Keen, "Treason Trials"; Gillingham, "Killing and Mutilating Political Enemies." On European practices more generally: Esther Cohen, "Symbols of Culpability and the Universal Language of Justice: The Ritual of Public Executions in Late Medieval Europe," *History of European Ideas* 11 (1989): 407–16.

¹¹³ Bellamy, *Law of Treason*, 1–14; Cuttler, *Treason Trials in Later Medieval France*, 8–15; Billoré, "Introduction," 15–20.

nation. This study will argue that these flexible notions of treason were used by the king and his justices to address constitutional problems raised by the Lancastrian usurpation: by treating those who challenged the legitimacy of Henry's rule as enemies of the state or nation, treason prosecutions worked to bind the king's problematic (because usurping) body natural more firmly to the abstract political body of the crown.¹¹⁴ The immediate objective was to legitimise Lancastrian rule and to shut down dangerous questions about Henry's title, but by expanding the scope of treason, the legal rhetoric was also redefining the nature and limits of the state. At the same time, those charged with treason drew creatively on customary, chivalric, and civil law concepts to undermine Lancastrian claims to sovereign authority and to perform resistant identities as true men and loyal subjects, not traitors.

The 1352 Statute of Treasons was England's first statutory definition and this remained a conceptual touchstone for trying treason well into the early modern period.¹¹⁵ The statute's main clauses defined treason as 'compassing or imagining the death of the king, his consort, or his eldest son'; 'violating' his wife, his eldest unmarried daughter or the wife of his eldest son; making war on the king or adhering to his enemies within his realm; or killing his treasurer, chancellor, or chief justices while they were sitting in royal courts.¹¹⁶ Bellamy's

¹¹⁴ As shall be seen, the king was frequently actively involved in the prosecution of treason, questioning offenders personally and shaping the charges in consultation with his justices.

¹¹⁵ Orr, *Treason and the State*, 1–27; Bellamy, *Tudor Law of Treason*.

¹¹⁶ Stat. 25 Edw. III, st. 5, c. 2; Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th ed. (London: Butterworth, 1956), 443–44. Orr (*Treason and the State*, 12–13) notes that technically, the clause against levying war did not define private war between noblemen as treason. On this point, see also Bellamy, *Law of Treason*, 62–3, 94–95; Keen, "Treason Trials," 101. The Anglo-Norman term 'violast' used in the statute meant 'to rape' but also 'to deflower', so it could conceivably cover a consensual sexual relationship: *AND*, <http://www.anglo-norman.net/gate/index.shtml?session=S33531365994052>. For a discussion of the ambiguous legal vocabulary, see Caroline Dunn, "The Language of Ravishment in

view, which remains influential, was that the statute was essentially conservative, being enacted after several decades in which kings had used (according to some, arbitrarily abused) their prerogative powers to convict subjects as traitors for an ever-widening array of offences that had not customarily been considered treason.¹¹⁷ The concern of the political community was therefore to clarify and limit the scope of treason. The statute features elements of the chivalric notion of treason in condemning as treason adultery with the king's wife, oldest daughter, or the wife of his eldest son, as well as straightforward attempts on the king's life. By defining as treason violence against the king's senior officials or counterfeiting his seal, the statute also reflects to some degree the Roman law interpretation of treason as acts against the offices or symbols of public authority. Yet, this definition was equally attuned to the customary idea of treason, because the king's officers and his seal were extensions of his royal person and allowed him to exercise his personal authority at a distance.

Customary ideas of treason could work in harmony with civil law notions, but the separate evolution of the two traditions also created enduring tensions and ambiguities. Analysing the conflict of 1386-88 between Richard II and the Lords Appellant, Hanrahan has convincingly argued that this struggle for political power was rooted in a contest to control the meaning of treason.¹¹⁸ This problem was not resolved in the 1380s and the battle to define what

Medieval England," *Speculum* 86 (2011): 79–116.

¹¹⁷ Bellamy, *Law of Treason*, 102–37. See for example Musson and Ormrod, *Evolution of English Justice*, 102–3; Cuttler, *Treason Trials in Later Medieval France*, 4–9; Baker, *English Legal History*, 427–28; Bothwell, *Falling from Grace*, 42–43. For examples of conviction without trial 'on the king's record': Keen, "Treason Trials"; King, "False Traitors."

¹¹⁸ Hanrahan, "Seduction and Betrayal," 229. See also Musson and Ormrod, *Evolution of English Justice*, 106–9;

treason meant and to control how and against whom the charge was used continued to fuel conflicts between the English state and its subjects. This dynamic underpins the cases discussed in Chapters Two and Five, which involve traitors of noble status. For these men, legal conflicts over treason were influenced by a political imaginary in which knightly values and chivalric discourses were central to the performance of manhood and therefore integral to shaping relationships between the king and the men of England's governing elite.

An example of the blurring of customary and civil law concepts of treason can be seen in the charge of 'accroaching', which features in Chapter Two. In one sense, accroaching - or manipulating the king and using his power for one's own ends - is a classic construction of treason in civil law terms because it captures the idea of individuals usurping public power for private benefit.¹¹⁹ However, this same charge also embraces the customary idea of treason as a personal betrayal, and therefore as a violation of the masculine bonds forged through the ideals of chivalry. The accusation of accroaching often appeared in allegations of treason against men who were, or were perceived to be, close to the king and who could therefore exploit the benefits of physical and emotional intimacy with the royal person. Used in this way, the charge targeted men who were seen to upset the homosocial balance of power by excluding other men from the king's inner circle and therefore from political influence and the material rewards of royal service.¹²⁰ As Keen has pointed out, the charge of

¹¹⁹ Bellamy, *Law of Treason*, 11–12; Keen, "Treason Trials," 96.

¹²⁰ For example, it was used against Edward II's favourite Piers de Gaveston, and against Richard II's chamberlain and close friend Robert de Vere in 1388. For discussion of this usage in relation to homosocial intimacy, see McVitty, "False Knights and True Men," 461, 464, 472.

accroaching was ambiguous and difficult to contest, rendering it an extremely flexible and effective political weapon. Indeed, he argues that accroachment 'widened the scope of treason to the point where intimacy with the king might in itself be grounds for an accusation'.¹²¹

The notion of *diffidatio* is another example of the political opportunities created by ambiguous conceptions of treason. *Diffidatio*, or the formal renunciation of liege homage, was the customary right of a knight or nobleman to renounce his fealty to a king who failed to fulfil his obligations of good lordship, and this right extended to seeking justice through rebellion if necessary.¹²² *Diffidatio* turned on the oath of liege homage, which forged a bond of reciprocal trust, service, and fidelity between lord and knight. By the reign of Edward I, the right to *diffidatio* was disappearing in practice if it was not yet codified in law, and Edward I is well-known for the harsh punishments he inflicted on those nobles who tried to exercise it.¹²³ Nevertheless, although the treason statute of 1352 specified that it was an act of treason to levy war against the king in his own realm, it was not until Richard II's extensions to treason law in 1397 that the ritual gesture of renouncing liege homage was explicitly named as an act of treason punishable by a traitor's death. Even then, these extensions were seen as manifestations of Richard's tyranny and one of Henry IV's first acts as king was to promise to revoke them.¹²⁴

Many of the cases examined in this study deal at least in part with the

¹²¹ Maurice Keen, *England in the Later Middle Ages: A Political History*, 2nd ed. (London: Routledge, 2003), 72.

¹²² Valente, *Theory and Practice of Revolt*, 21–25; Bellamy, *Law of Treason*, 10.

¹²³ See the examples discussed in Keen, "Treason Trials"; Bellamy, *Law of Treason*, 10–11, 23–30; King, "False Traitors."

¹²⁴ Richard II's extensions and Henry IV's response in 1399 are considered in detail in Chapter Two.

status of words as treason, an issue that directly engages with questions of gender, speech, vernacularity, and political agency. After Henry IV usurped the throne, he and his successors had to deal with persistent challenges to their right to rule that circulated in the form of verbal rumours and vernacular handbills.¹²⁵ While treason prosecutions arising from such incidents are fully explored in Chapters Three and Four, here it is necessary to point out one feature common to all of them: the weight given to the traitor's sworn words in combination with their public performance. Several of these cases have provided the fuel for a long-running debate in the field of legal history over whether 'treason by words' (a phrase used by twentieth-century scholars but which does not appear in the original trial records) was an offence that fell within the terms of the 1352 statute or, alternatively, whether the common law scope of treason was being stretched to new limits through ad hoc construction in individual cases.¹²⁶ The discussion has hinged on the question of whether the statutory definition of treason required evidence of an overt deed, or whether words alone were enough to constitute 'compassing or imagining' and could therefore be punished as an act of treason. Useful as this debate has been from the perspective of legal history, these studies supply only a partial picture. They have focused on the wording of the 1352 statute and on the procedural

¹²⁵ Many of these rumours centred around claims that the rightful king, Richard II, was about to return from exile to reclaim his throne. General discussion is provided in Peter McNiven, "Rebellion, Sedition and the Legend of Richard II's Survival in the Reigns of Henry IV and Henry IV," *Bulletin of the John Rylands Library* 76 (1994): 93–117; Philip Morgan, "Henry IV and the Shadow of Richard II," in *Crown, Government and People in the Fifteenth Century*, ed. Rowena E. Archer (New York: St. Martin's Press, 1995), 1–31; Paul Strohm, "The Trouble with Richard: The Reburial of Richard II and Lancastrian Symbolic Strategy," *Speculum* 71 (1996): 87–111; Walker, "Rumour, Sedition and Popular Protest."

¹²⁶ Key contributions to the debate on legal developments concerning treasonous speech are Thornley, "Treason by Words"; Rezneck, "Constructive Treason by Words"; Bellamy, *Law of Treason*, 102–37; C. A. F. Meekings, "Thomas Kerver's Case, 1444," *The English Historical Review* 90 (1975): 331–46. A useful summary of the various positions is provided by Powell, "The Strange Death of Sir John Mortimer," 93–94.

technicalities surrounding its interpretation and application, but they have not contextualised the shift in the interpretation of treason within a wider cultural milieu in which speech was an integral component of masculine social embodiment. The distinction between ‘words’ and ‘acts’ begins to appear too narrow, if not anachronistic, when allegations of treasonous speech are placed into a contemporary context in which a man’s words *were*, in themselves, acts.

The belief that words alone could do tangible harm was central to theological doctrine concerning blasphemy, and canon law held that blasphemous speech harmed the physical body of Christ.¹²⁷ Blasphemy and other ‘sins of the tongue’ were popular topics of preaching in later medieval England, so the idea that blasphemous words were physical acts was no doubt familiar to people who were regularly enjoined to reflect upon their sins as part of the practice of confession.¹²⁸ In continental treason laws deriving from Roman civil law, discussing or predicting the king’s death was also considered blasphemous because it subverted divine order, and such words were in turn construed as material *acts* of treason. This equation of treason with blasphemy was present in thirteenth-century English legal treatises such as *Bracton* and *Glanvill*, but it was not explicitly reflected in the 1352 statute.¹²⁹

For clerical and secular authorities concerned about swearing,

¹²⁷ Sandy Bardsley, *Venomous Tongues: Speech and Gender in Late Medieval England* (Philadelphia, PA: University of Pennsylvania Press, 2006), 95–99; Neal, *Masculine Self*, 175. For an extended examination of the intersections between blasphemy, treason, and heresy in medieval theology and political theory, see Leonard W. Levy, *Treason against God: A History of the Offense of Blasphemy* (New York: Schocken Books, 1981).

¹²⁸ Bardsley, *Venomous Tongues*, 26–27; Edwin D. Craun, *Lies, Slander, and Obscenity in Medieval English Literature: Pastoral Rhetoric and the Deviant Speaker* (Cambridge: Cambridge University Press, 1997), 1–9. On the culture of religious confession generally, see Peter Biller and A. J. Minnis, eds., *Handling Sin: Confession in the Middle Ages* (Woodbridge, Suffolk: York Medieval Press, 1998); Katherine C. Little, *Confession and Resistance: Defining the Self in Late Medieval England* (Notre Dame, IN: University of Notre Dame Press, 2006).

¹²⁹ Billoré, “Introduction,” 17–21.

blasphemy, defamation, and lying, 'speech and its instrument the tongue were powerful agents'.¹³⁰ As sins of the tongue became a source of spiritual and social anxiety in the later medieval period, gender became key to whether certain speech acts were considered harmful deeds rather than mere words. Earlier, it was noted that men's words could have positive instrumental effects, such as forging a bond of loyalty or making a contract. The embodied nature of masculine speech also had negative consequences, and men's words were increasingly seen as capable of causing tangible harm. While women's speech was dismissed or punished relatively lightly as gossip or 'scolding', men's deviant speech was more severely punished as blasphemy or defamation and therefore as an action that caused physical injury, particularly when their words were directed against other men.¹³¹ Neal's research into legal cases involving defamation, slander, and accusations of theft has shown that a man's words could be perceived literally as weapons, with the capacity to damage another's masculine *fama* or worship.¹³² The belief that dangerous speech was an integral component of masculine embodiment has significant implications for interpreting the treatment of men's words in treason trials. The legal nuances surrounding treasonous speech cannot be fully appreciated without recognising that trials took place in a culture in which 'the distinction between words-as-words and words-as-deeds was heavily gendered, especially from the late

¹³⁰ Craun, *Lies, Slander, and Obscenity*, 1.

¹³¹ Bardsley, *Venomous Tongues*, 1–34, 90–105; Sandy Bardsley, "Sin, Speech, and Scolding in Late Medieval England," in Fenster and Smail, *Fama*, 145–64; Neal, *Masculine Self*, 175–82; Taylor, *Fictions of Evidence*, 21–22; Forrest, "Defamation, Heresy," 146–47.

¹³² Neal, *Masculine Self*, 175–82. For comparative material see Dianne Hall, "Words as Weapons: Speech, Violence, and Gender in Late Medieval Ireland," *Éire-Ireland* 41 (2006): 122–41; Haemers, "Filthy and Indecent Words." Although Haemers does not explicitly consider gender in this analysis, his examples show that insults, defamation, and other 'speech crimes' were seen as particularly problematic when they damaged the reputations of men higher social status.

fourteenth century onward'.¹³³

Legal procedure and sources

To date, studies on treason in late medieval England have tended to endorse Bellamy's argument that prior to a series of expansive statutes enacted by the Tudor monarchs, in English law there was no developed idea of treason as a crime against the state.¹³⁴ By focusing on technical terminology and procedure, this work has tended to portray treason in the late fourteenth and early fifteenth centuries as a more static and unified judicial and cultural category than it was.¹³⁵ Statutes, though, cannot tell the whole story. A close reading of trial records, in conjunction with the accounts of chroniclers and other commentators, reveals that the meanings of treason were constantly being reshaped through the fluid rhetorical formulae and flexible narratives of indictment and conviction. Both the deeds this crime entailed, and the targets of the traitor's 'false' and evil intentions, were being described in progressively more expansive terms. However, although the king and his justices were often successful in stretching the scope of treason through precedents established in individual cases, at other times novel constructions were stoutly resisted by defendants, juries, and by the wider political community.¹³⁶ Trial narratives therefore reflect the resort to ad hoc legal solutions in response to immediate political imperatives, but they also reveal deeper shifts in thinking about where

¹³³ Bardsley, *Venomous Tongues*, 99.

¹³⁴ Bellamy, *Law of Treason*, 137. See also, Bellamy, *Tudor Law of Treason*, 1–13.

¹³⁵ Cunningham (*Imaginary Betrayals*, 3, 10) makes a similar point regarding the limitations of strictly legalistic interpretations of Tudor treason laws.

¹³⁶ According to Bellamy (*Law of Treason*, 137): 'It is obvious that it was not the scope of the law of treason which restricted any despotic tendencies in this field.... It was the courts, particularly the juries which restricted autocratic practice'.

sovereign power lay and the nature of the constitutional relationship between the king, the crown, and individual subjects.

Many of the treason proceedings discussed in this study took place in the court of King's Bench, so it is important to understand how its criminal jurisdiction operated and the records it produced.¹³⁷ While King's Bench dealt with actions between private litigants (the 'plea' side of the court), the bulk of its business was concerned with criminal actions prosecuted at the suit of the king. These crimes were considered breaches of the king's peace and included larceny and murder. King's Bench was also the only common law court with the authority to prosecute treason, and cases initiated in lower jurisdictions were transferred there for trial and sentencing. Crown-side criminal cases generated the Rex portion of the plea roll, which includes details from the original indictment or appeal, how the defendant pled, the names of jurors if the case went to trial, and the final verdict and sentence. As noted earlier, by the early fifteenth century trial juries were no longer self-informing, so the records of treason cases often include rich detail of the evidence presented before the court.¹³⁸

Treason prosecutions were usually initiated by indictment before a jury

¹³⁷ The following summary is based on Plucknett, *Concise History of the Common Law*, 442–54; Powell, *Kingship, Law, and Society*, 47–114; Musson and Ormrod, *Evolution of English Justice*, 17–20, 42–74; John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London: Routledge and Kegan Paul, 1973), 121–61; Langbein, "The Criminal Trial before the Lawyers"; Masschaele, *Jury, State, and Society in Medieval England*, 46–50, 79–85, 91–93; C. A. F. Meekings, "King's Bench Files," in *Legal Records and the Historian*, ed. John H. Baker (London: Royal Historical Society, 1978), 97–139; Anthony Musson, "Twelve Good Men and True? The Character of Early Fourteenth-Century Juries," *Law and History Review* 15 (1997): 115–44.

¹³⁸ Given that treason trials at common law were heard in King's Bench rather than in county courts, the jurors would normally have been drawn from the local community in and around Westminster, so they were unlikely to have had personal knowledge of any offender who had originally been indicted at a county court elsewhere (although King's Bench also served as the county court for Middlesex).

of presentment, although they could also be initiated through an approver's appeal.¹³⁹ Approvers were men already imprisoned on criminal charges who turned state's evidence, and this process was often used to break up criminal gangs. Approvers' appeals were tried not by jury but by battle, in which divine judgement confirmed or disproved the truth of the approver's sworn word as set down in his written appeal.¹⁴⁰ For treason proceedings brought by indictment, the defendant appeared in court when the evidence was presented before the judges, but he was not allowed to present testimony or to call witnesses in his own defence, nor was he allowed legal counsel.¹⁴¹ He could only plead. If the defendant pled not guilty, he would be imprisoned to await a jury trial; a guilty plea resulted in almost immediate execution. A third possible outcome was that the offender could produce a royal pardon. The large number of general pardons issued by Henry IV, which helped to reconcile the political community to his rule and also raised much-needed revenue, meant that at some periods during his reign a surprising number of men charged with treason ended up walking free.¹⁴²

¹³⁹ The jury of presentment sitting at the level of the county court decided whether there was a case to answer; if so, they swore the indictment was 'true' and the case would be transferred to King's Bench for further proceedings.

¹⁴⁰ Musson, "Turning King's Evidence"; Powell, *Kingship, Law, and Society*, 72–77; Musson and Ormrod, *Evolution of English Justice*, 137–38. On the procedure of trial by battle, see Robert Bartlett, "Trial by Battle," chapter 6 in *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986); M. J. Russell, "Trial by Battle in the Court of Chivalry," *Journal of Legal History* 29 (2008): 335–57; Malcolm Vale, "Aristocratic Violence: Trial by Battle in the Later Middle Ages," in Kaeuper, *Violence in Medieval Society*, 159–81; White, "The Problem of Treason: The Trial of Daire Le Roux," 107–8; Richard Firth Green, "Palamon's Appeal of Treason in the 'Knight's Tale,'" in *The Letter of the Law: Legal Practice and Literary Production in Medieval England*, ed. Emily Steiner and Candace Barrington (Ithaca, NY: Cornell University Press, 2002), 105–14.

¹⁴¹ Langbein ("The Criminal Trial before the Lawyers," 267) notes it was not until 1696 that defence counsel was allowed in English treason trials.

¹⁴² Pardons could be petitioned for and purchased immediately after an individual was indicted, thus avoiding the next step in the legal process of having to appear in court to answer formal charges; or they could be sought after arraignment to secure acquittal or remission of

Other venues and procedures could also be used. The king's council had the power to investigate allegations of treason, although cases were normally referred to King's Bench for determination. If treason was linked to widespread disorder or insurrection, special commissions of oyer and terminer could be issued to launch investigations over a wide geographical area, with writs returnable to King's Bench for further action if necessary. As the highest royal court and a venue that was part of the king's prerogative jurisdiction, parliament also had a role to play. It could review or overturn decisions made in lower courts, including King's Bench, on technical grounds; at times it was also used as a venue for 'state trials' of noble offenders or high-ranking royal officials.¹⁴³ Impeachment in parliament was viewed by many as a dangerous novelty that was open to abuse, and on his accession Henry IV had promised that in future, no trials would take place in parliament but instead would be carried out according to long-standing custom (the implication being that King's Bench would be used).¹⁴⁴ However, this promise was not enacted in statute, so that parliament remained available as a venue to pursue offenders who could

conviction: Lacey, *Royal Pardon*, 19–27. General pardons could cover crimes including murder, felony, trespass, and treason. They were made available for a fixed time period and could be sued out of Chancery by any one of the king's subjects upon payment of the set fee. For a general overview of the origins and use of general pardons: Lacey, *Royal Pardon*, chapters 6 through 10. On the frequent use of general pardons by Henry IV and Henry V, see Powell, *Kingship, Law, and Society*, 82–85; Edward Powell, "The Restoration of Law and Order," in *Henry V: The Practice of Kingship*, ed. G. L. Harriss (New York: Oxford University Press, 1985), 53–74; A. H. Dunn, "Henry IV and the Politics of Resistance in Early Lancastrian England, 1399–1413," in Clark, *The Fifteenth Century III: Authority and Subversion*, 16–21.

¹⁴³ On parliament's function as the king's highest court: Powell, *Kingship, Law, and Society*, 53; Musson, *Medieval Law in Context*, 184–202; Musson and Ormrod, *Evolution of English Justice*, 25–27; Dodd, *Justice and Grace*, 5–11. On the development of the process of parliamentary impeachment and its controversial use in the Good Parliament of 1376 and then under Richard II, see T. F. T. Plucknett, "The Origin of Impeachment," *Transactions of the Royal Historical Society* 24 (1942): 47–71; Plucknett, "Impeachment and Attainder"; Plucknett, "State Trials under Richard II"; Ross, "Forfeiture for Treason in the Reign of Richard II"; Rogers, "Parliamentary Appeals of Treason."

¹⁴⁴ *PROME*, "Parliament of 1399," item 144, RP iii:442 for the petition from the Commons and the response from the king. This example is discussed in more detail in Chapter Two.

not be convicted by other means. In addition, noblemen retained a customary right to trial by their peers, and this could take place in the Court of Chivalry or before an ad hoc council.¹⁴⁵ Sentences reached in these venues were usually confirmed by parliament, with records of the proceedings being preserved in the parliament roll.

Ambiguities continued to surround treason as a cultural and legal category, even after the 1352 statute sought to delimit and clarify the offence. As the above summary of trial venues suggests, this ambiguity extends also to the procedures by which treason could be investigated and tried, especially since the statute itself had nothing to say on this score other than a vague undertaking that doubtful cases should be referred to the king in parliament.¹⁴⁶ While King's Bench used common law procedure, parliament and the king's council were prerogative courts, while the Court of Chivalry operated according to the law of arms, which used civil law procedure.¹⁴⁷ Although civil, canon, and common law (or 'ancient custom', as it was normally referred to in petitions and statutes) have often been treated as three quite distinct and separate spheres, there was a good deal of overlap in legal thinking and this could influence the way the law was applied across these venues.¹⁴⁸ As a result, customary,

¹⁴⁵ For trials in the Court of Chivalry, see G. D. Squibb, *The High Court of Chivalry: A Study of the Civil Law in England* (New York: Oxford University Press, 1959), 191–224, esp. 219–20 for appeals of treason; Keen, "Treason Trials"; Bellamy, *Law of Treason*, 159, 180, 182–83.

¹⁴⁶ The statute stated that if a future case involved a crime that was not specifically covered by the statute but that seemed treasonous, it should be referred to the king in parliament: Bellamy, *Law of Treason*, 87–89, 180; Keen, "Treason Trials," 101–3.

¹⁴⁷ On common law and prerogative (or equity) jurisdiction: Musson and Ormrod, *Evolution of English Justice*, 17–26; Carpenter, *Wars of the Roses*, 33–34; Baker, *English Legal History*, 15–71, 83–89, 106–9. On the mixing of civil and common law procedures and concepts (including the civil law concept of 'notoriety') in the novel resort to parliamentary appeals of treason in 1388 and 1397, see Rogers, "Parliamentary Appeals of Treason," 95–102.

¹⁴⁸ Musson, *Medieval Law in Context*, 9–18; Plucknett, "The Relations between Roman Law and English Common Law down to the Sixteenth Century"; Charles Donahue, Jr., "The Hypostasis

chivalric, and civil law concepts were all available to the state's judicial officers and to political subjects, and were drawn on by both sides to advance or to defend against charges of treason.

Method and interpretive approach

The terms in which accusations of treason were expressed or resisted, and the underlying constitutional conflicts that they reveal, can only be grasped through detailed analysis of the sources for individual cases. This approach can reveal much more about the role played by treason in late medieval constitutional change than can be discovered simply by analysing the terminology of statutes, or by quantifying verdicts across a large number of cases. By considering not only 'successful' cases (from the state's point of view, those that resulted in conviction) but also those that ended in acquittal or annulment, one can see how people expected the law to work and get a sense of the legal definitions they accepted or rejected.¹⁴⁹ This is critical for understanding how the law functioned as a site of negotiation between the state and political subjects because of the primacy of precedent. Although from Edward II's time, it was generally accepted that statutes overruled common law (or 'custom'), regardless of the technical wording of statutes it was the way that charges were framed and the arguments applied in court that became the law.¹⁵⁰ Precedent was established formally through the verdicts recorded in the

of a Prophecy': Legal Realism and Legal History," in *Law and Legal Process: Substantive Law and Procedure in English Legal History*, ed. Matthew Dyson and D. J. Ibbetson (Cambridge: Cambridge University Press, 2013), 11–13.

¹⁴⁹ Donahue, "'The Hypostasis of a Prophecy,'" 5–6

¹⁵⁰ Musson, *Medieval Law in Context*, 204–11; J. H. Baker, "Case-Law in Medieval England," in *The Common Law Tradition*, 133–64; Baker, *The Law's Two Bodies: Some Evidential Problems in English Legal History* (Oxford: Oxford University Press, 2001), 1–31, 67–81.

plea rolls, and there is evidence that judges carried copies of these rolls with them to refer to in court.¹⁵¹ Informal commentaries in the form of law reports and Year Books were also being kept for reference and educational purposes from the mid-thirteenth century.¹⁵² Unfortunately for the purposes of this study, in the late fourteenth and early fifteenth centuries it was civil rather than criminal cases that seem to have provided the bulk of the fodder for the Year Books.¹⁵³ Nevertheless, such reports demonstrate the principle ‘that what was said and done in court was evidence of the common law’.¹⁵⁴

By focusing on a limited number of cases, this study addresses a number of the methodological and interpretive problems raised by the use of legal records. From a practical perspective, the records of the secular courts including King’s Bench are often incomplete and their original storage method (whereby writs and other documents were held loosely in sacks rather than bound in any way) means series are frequently fragmented and individual records damaged. This makes it difficult to conduct statistical or quantitative analysis with any degree of reliability.¹⁵⁵ A more significant problem is that

¹⁵¹ Musson, *Medieval Law in Context*, 42–43.

¹⁵² Baker, “Case-Law in Medieval England”; Brand, *The Making of the Common Law*, 57–75.

¹⁵³ For example, the year book abridgement covering the reigns of Henry IV and Henry V features only three cases touching on treason. One of these debates whether using a forged copy of the king’s seal to acquire property is trespass or treason; another concerns the fate of lands forfeited by a traitor and now in dispute by his heirs; the third discusses whether treason is triable by justices of the peace. See Anthony Fitzherbert and Nicholas Statham, *Les Reports del Cases en Ley Que Furent Argues en le Temps de Tres Haut & Puissant Princes les Roys Henry le IV & Henry le V* (London, 1679): 2 Henry IV, 25 9.B; 7 Henry IV, 32 4.B; 9 Henry IV, 1 5.B. Baker (*The Law’s Two Bodies*, 10–12, 76) notes that only a small proportion of cases heard in court were recorded in the Year Books, and the authors were interested primarily in processes and tactics in civil cases and private prosecutions, rather than in criminal cases brought by the crown.

¹⁵⁴ Baker, “Case-Law in Medieval England,” 139. For an extended discussion of the relationship between statutes, common law, and case law, and of the emergence of the Year Books, see Baker, *The Law’s Two Bodies*, 1–31.

¹⁵⁵ The problems with survival and organisation of records are discussed in Hudson, *Premature Reformation*, 41–42; Kaeuper, “Debating Law, Justice and Constitutionalism,” 1–2, 6;

while this study considers both the ways the state constructed treason and the ways accused traitors articulated their own identities as political subjects, there is no escaping the fact that in almost all cases, the only direct evidence we have for the latter was produced by the authorities of the state. This appears in several forms. The first is the oral witness testimony of what the accused said and did, which is translated from verbal English into the written French of official legal record in third-person reported speech. The second is the direct first-person evidence of alleged traitors themselves, which in turn appears in two forms: statements of confession, which are recorded in English and endorsed by the accused as ‘written by my own hand’; and copies of handbills, letters, or proclamations alleged traitors were circulating to justify their resistance to the Lancastrian regime.

The historiography of inquisition provides cautionary lessons in using this type of legal testimony. Both the positivist focus on determining its factual accuracy and its use by cultural historians to excavate the mentalities and beliefs of peasant societies have proved fraught with difficulties.¹⁵⁶ Similar interpretive problems apply to reading the evidence of treason cases. Prior to the Tudor period, the English common law system did not use torture as a judicial means of proof. However, there is no doubt that mental and physical coercion played a part in extracting testimony and confessions, and these often

Meekings, “King’s Bench Files.”

¹⁵⁶ Valuable summaries of the issues historians face with such sources and of the various interpretive approaches used may be found in Edward Muir and Guido Ruggiero, “Introduction,” in *History from Crime*, ed. Edward Muir and Guido Ruggiero (Baltimore, MD: Johns Hopkins University Press, 1994), vii–xviii; John H. Arnold, “The Historian as Inquisitor: The Ethics of Interrogating Subaltern Voices,” *Rethinking History* 2 (1998): 379–86; Michael Goodich, “Introduction,” in *Voices from the Bench: The Narratives of Lesser Folk in Medieval Trials*, ed. Michael Goodich (New York: Palgrave Macmillan, 2006), 1–13; Wicker, “The Politics of Vernacular Speech,” 178–80.

bear traces of intense question-and-answer interrogation.¹⁵⁷ *Peine forte et dure*, which involved extreme physical privation along with penalties such as being piled with heavy weights, could be used to force people to plead and be punished (if they pled guilty) or to go to trial.¹⁵⁸ The use of approvers created strong incentives for making false allegations, while a confession of guilt was also integral to the process of petitioning for pardon, so that those hoping to save their skins by an appeal to royal mercy had every reason to shape their supplications to the state's expectations.¹⁵⁹

Bearing in mind these issues of coercion, mediation, and translation, the legal records used in this study are approached as 'cultural scripts' that were not created in a vacuum of judicial neutrality but were the discursive product of specific political and social circumstances.¹⁶⁰ These are not straightforward accounts of legal fact, but narratives that have been shaped by and that also influence wider cultural beliefs and values. This approach has proven fruitful for examining judicial narratives produced in other circumstances. For example, Fletcher has shown that tropes of wrongful disinheritance, exile, and heroic return that were familiar from chivalric literature played a role in shaping the official rhetoric that sought to legitimise Henry of Bolingbroke's claim to the throne as Henry IV.¹⁶¹ In a more common context of law suits over rape,

¹⁵⁷ The classic study on the divergent development of systems of trial and punishment in Europe and England is John H. Langbein, *Torture and the Law of Proof: Europe and England in the Ancien Régime* (Chicago, IL: University of Chicago Press, 1977).

¹⁵⁸ Musson, "Turning King's Evidence," 469–70; Masschaele, *Jury, State, and Society in Medieval England*, 79–82; Langbein, *Torture and the Law of Proof*, 74–76; R. B. Pugh, *Imprisonment in Medieval England* (London: Cambridge University Press, 1968), 25.

¹⁵⁹ Lacey, *Royal Pardon*, 19–36.

¹⁶⁰ Muir and Ruggiero, "Introduction," xiv. The classic example of this approach is Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and Their Tellers in Sixteenth-Century France* (Stanford, CA: Stanford University Press, 1987).

¹⁶¹ Fletcher, "Narrative and Political Strategies."

abduction, and ‘ravishment’, in the indictments and other legal documents presented in court, ‘the meanings of ravishment were not confined to the letter of the law; they also derived from cultural understandings of ravishment in the world of chivalry and romance’.¹⁶² Likewise, the records of treason trials were shaped by the legitimising political rhetoric of the Lancastrian state, but also by themes of chivalric virtue and masculine trueness.¹⁶³

The recognition that judicial texts are cultural productions means historians must consider not only what the records say or do not say, but how they are constructed in discursive and linguistic terms. The records that form the core of this study use a mixture of English, French, and Latin. At certain points, the language chosen reflects the technical vocabulary of the law and the requirement to include specific terminology in order to prosecute cases under particular statutes.¹⁶⁴ Elsewhere, language choice was integral to the relationships of power constructed through legal discourse, such as those between interrogator and interrogated, judge and jury, or witness and accused. To date, historians who have studied late medieval treason cases from a legal or political perspective have given little consideration to the possible purposes and meanings that lie behind the interplay of languages in these records, focusing

¹⁶² Shannon McSheffrey and Julia Pope, “Ravishment, Legal Narratives, and Chivalric Culture in Fifteenth-Century England,” *Journal of British Studies* 48 (2009): 818–36, quote at 819.

¹⁶³ For examples of this approach in other contexts, see King, “False Traitors”; White, “The Problem of Treason: The Trial of Daire Le Roux,” although neither of these deals explicitly with gender or masculinity.

¹⁶⁴ By the years around 1400, indictments were required to be technically precise and to include correct details of presenting jurors’ names and other identifying information in order to be valid in royal courts: Powell, *Kingship, Law, and Society*, 66–69. Legal fictions were used to bring cases within the purview of particular statutory jurisdiction. For example, the technical phrase ‘vi et armis’ was used in bills of trespass in order to make them actionable at common law, even if no violence was involved. The phrase ‘and treasons’ was included as standard in indictments arising from special commissions of oyer and terminer to prevent people avoiding punishment in secular courts by pleading benefit of clergy (treason not being a beneficable offence): John G. Bellamy, *Criminal Law and Society in Late Medieval and Tudor England* (Gloucester: Alan Sutton, 1984), 116–17; Baker, *The Law’s Two Bodies*, 33–35, 53–54.

instead on the evidentiary facts and on the legal terminology in which prosecutions were advanced and convictions secured. However, Wicker's recent study of the use of English in trials for seditious speech in the 1440s demonstrates there is much more to learn about how language itself - whether English, French, or Latin - functioned in legal records both to authorise and to subvert the state's prosecution narratives.¹⁶⁵

The primary clause in the 1352 statute defined treason as 'compassing or imagining' the death of the king, a phrase that left a great deal of room for interpretation. When did criticism cross the line to become treason? How did the rhetoric of prosecution narratives transform mere dissenting speech into treasonable deeds? The ambiguities in the law itself, as well as potentially conflicting beliefs and values held by the king and by the political community, meant that treason was a discursive category rather than an objective crime. It did not come into being until it was named and defined through the textual processes of investigation, indictment, and conviction. These processes fixed the crime into the official record through the Latin rhetoric of indictments and sentencing clauses and the third-person French of witness testimony, but also in the form of the English-language confessions and bills, composed in the first person by accused men and endorsed by them as 'written by my own hand'.

Arnold's work on inquisition offers a valuable model for interpreting these types of first-person texts by interrogating the power relationships that inhere in the legal discourses within which they are embedded.¹⁶⁶ He points out

¹⁶⁵ Wicker, "The Politics of Vernacular Speech."

¹⁶⁶ John Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc* (Philadelphia, PA: University of Pennsylvania Press, 2001), esp. 1–15, 98–102; Arnold, "The Historian as Inquisitor." For studies that consider confession through a broadly Foucauldian model of power and guilt, see Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and*

that the ‘confessing subject’ does not exist until he or she is enticed or coerced into the linguistic context of confession and thereby made to participate in performing a particular identity. This performance incorporates not only what is said and the terms in which it is expressed, but also the languages and forms in which it is recorded. Although his work has engaged primarily with ecclesiastical sources and contexts, the legal narratives generated by treason prosecutions bear certain similarities to those produced in inquisitorial settings and can be interpreted using a similar method.¹⁶⁷ As with the textual processes involved in inquisition, the process surrounding the investigation and prosecution of treason gained authority through the production of written records that claimed to capture definitive legal truths, including those ‘voluntarily’ revealed through interrogation and confession. In parallel with ecclesiastical records, the authorities prosecuting treason took particular care to bolster their textual truth claims with vernacular endorsements, the evidentiary value of which was verified by the accused having written them in their own hands.

The complex relationship between Latin and vernacular modes of speech in judicial narratives of treason also created the potential for the authority of these texts to be subverted. By bringing the political subject into discourse, by

Literature (Chicago, IL: University of Chicago Press, 2000); Chloë Taylor, *The Culture of Confession from Augustine to Foucault: A Genealogy of the ‘Confessing Animal’* (New York: Routledge, 2009); Ian Bryan, *Interrogation and Confession: A Study of Progress, Process, and Practice* (Aldershot, Hants: Ashgate, 1997). Bryan (1–60) contextualises modern judicial and police practices against the *longue durée* of medieval and early modern *inquisitio*.

¹⁶⁷ This supports Arnold’s observation that in fifteenth-century England, the boundaries between common law and canon or civil law discourses and practices were far more porous than legal scholars have frequently assumed: John H. Arnold, “Lollard Trials and Inquisitorial Discourse,” in *Fourteenth Century England II*, ed. Chris Given-Wilson (Woodbridge, Suffolk: Boydell, 2004), 81–94. For a general overview of the relationship between civil, canon, and common law in late medieval England, see Musson, *Medieval Law in Context*, 9–18. Donahue (“‘The Hypostasis of a Prophecy,’” 12) notes that Romano-canonical procedure was also used in customary jurisdictions not subject to codified civil law.

inviting or coercing him to give an account of his intentions and actions, and by authenticating his words as 'proof' through a first-person vernacular endorsement, the authorities compiling legal texts for their own purposes unwittingly conferred some agency on those they interrogated by calling them into speech in the first place.¹⁶⁸ This prompts recognition of the fact that while judicial narratives may privilege the voice of the state, such narratives are always multi-vocal. The textual productions of legal investigation and prosecution can therefore be read strategically to look for places where the interaction between languages and voices creates fractures in the state's authoritative narratives, and thereby offers possibilities for evasion or resistance on the part of those accused.¹⁶⁹

In the context of treason, such possibilities were no doubt enhanced by one important difference between ecclesiastical and royal justice. This was that the institutional and procedural framework of England's common law mandated that cases of treason be heard and determined in the public arena of King's Bench, where proceedings were conducted in English. This generated distinctive tensions between orality, aurality, and textuality, and between Latin and vernacular modes of speech. Although the only direct evidence in treason prosecutions is that which was embedded within the official legal narratives,

¹⁶⁸ Indeed, recent research has demonstrated the amount of agency that witnesses and deponents could exert in crafting judicial narratives, even within institutional constraints. See for example Tom Johnson, "The Preconstruction of Witness Testimony: Law and Social Discourse in England before the Reformation," *Law and History Review* 32 (2014): 127–47; Steven Justice, "Inquisition, Speech, and Writing: A Case from Late-Medieval Norwich," *Representations* 48 (1994): 1–29; Megan Cassidy-Welch, "Testimonies from a Fourteenth-Century Prison: Rumour, Evidence and Truth in the Midi," *French History* 16 (2002): 3–27.

¹⁶⁹ Arnold, *Inquisition and Power*, 12–14; Muir and Ruggiero, "Introduction," ix. For a valuable study that engages with these issues of textuality, aurality, and authorisation in the context of the English parliament, see Matthew Giancarlo, "Murder, Lies, and Storytelling: The Manipulation of Justice(s) in the Parliaments of 1397 and 1399," *Speculum* 77 (2002): 76–112.

when English appears in those records, the twin functions it had as authenticating truth and facilitating the aural public performance of royal justice opened up spaces for those named as traitors to inhabit resistant identities as true men and loyal political subjects.

Royal courts were public theatres in which sovereign authority was defined and exercised through the law, and in the case of treason this extended to public rituals of execution that were designed to be witnessed by the wider political community. Yet, the investment made in ensuring royal justice was visible and accessible to all subjects meant that courts were not theatres in which the action and dialogue could be wholly controlled by the state. Despite the enactment of statutes that sought to define treason in more specific terms, by the later fourteenth century both narrower legal interpretations and broader cultural perceptions reflected the reality that treason was a continuum of shades of grey, rather than a matter of black-and-white determination. As shall be seen, customary ideas, chivalric discourses, and the rhetoric of civil law were all deployed in flexible and sometimes conflicting ways to support or to evade accusations of treason. Through the narratives of trial and punishment, the nature of loyal political subjecthood was contested and renegotiated, as were the limits and loci of sovereign authority, whether embodied in the king or in more abstract concepts of the crown, the *chose publique*, the common good, or increasingly, the nation of England.

Chapter Two

Treason in Parliament and the Court of Chivalry, 1397-1401

Between 1397 and 1401, a series of treason cases involving England's highest-ranking noblemen produced rich evidence for the ways constitutional relationships were being reshaped during a period of profound political change. The cases took place in an environment where Richard II's so-called 'tyranny', his deposition, and the usurpation of his throne by Henry of Lancaster created conditions in which the nature and limits of legitimate authority were explicitly tested. Because the offenders were of noble status, proceedings against them took place in parliament and in the Court of Chivalry rather than in King's Bench. Guilt or innocence in these prerogative jurisdictions was not determined by a jury; instead, verdicts were heavily influenced by kings and their inner circle of senior officials. Both Richard II and Henry IV were able to exploit treason's ambiguities in order to address their immediate political imperatives, but the precedents set had longer-term consequences for the way the state was imagined and political subjecthood defined.

In 1397, Richard II's condemnation of his uncle Thomas of Woodstock, the duke of Gloucester and of Richard Fitzalan, earl of Arundel allowed him to reverse the dangerous precedent set in 1388, when the success of these Lords Appellant had suggested that kings could be restrained, or even deposed, by nobles claiming to act for the common good of the realm. The conviction of Arundel and Gloucester as traitors may have given Richard the satisfaction of personal revenge, but it also had ideological implications, as the king exercised the 'plenitude of his royal power' in terms influenced by the civil law construct

of *lèse-majesté*.¹ A new constitutional breach was opened in 1399, when Richard was separated from the crown and the usurper Henry of Lancaster was joined to it. As Henry IV, he used his newly seized authority to exercise royal justice in several cases that had their roots in the 1397 'Revenge Parliament', in the process giving him opportunities to legitimise his own claim to kingship. Through these proceedings, treason was being redefined in new, more expansive terms as a crime against the state, represented in abstract concepts such as the *chose publique* and the nation of England. Yet in spite of these novel constructions, the perception of treason as a personal betrayal of masculine loyalties remained relevant, so that cultural values of chivalry, honour, and true manhood were also central to the way charges of treason were deployed and resisted.

Treason in the parliament of September 1397

In September 1397, Richard Beauchamp, the earl of Arundel and Thomas Woodstock, the duke of Gloucester, the two leading Lords Appellant of 1388, were condemned as traitors.² Arundel was tried in person and executed during the course of the parliament. Gloucester had been imprisoned at Calais in July, and he was murdered there in early September, probably on the king's orders.³

¹ Quote from the Chancellor's opening speech to parliament: *PROME*, "Richard II: Parliament of September 1397," item 28, RP iii:343.

² The earl of Warwick had also been charged, but his confession and remorse, his claim (supported by other nobles) that he had been coerced by Gloucester and Arundel, and his advanced age convinced the king to spare him and he was exiled to the Isle of Man for the rest of his life. See *PROME*, "Parliament of September 1397," Pleas, item 8, RP iii:379. Warwick's case will not be considered further in this study.

³ James Tait, "Did Richard II Murder the Duke of Gloucester?," in *Historical Essays by Members of the Owens College, Manchester*, ed. T. F. Tout and James Tait (London: Longmans, Green, 1902), 193–216; A. E. Stamp, "Richard II and the Death of the Duke of Gloucester," *The English Historical Review* 38 (1923): 249–51; H. G. Wright, "Richard II and the Death of the Duke of Gloucester," *The English Historical Review* 47 (1932): 276–80.

His posthumous conviction was secured through the production in parliament of his letter of confession. The convictions have been viewed as an example of Richard II's tyranny, and linked to his increasingly imperial view of kingship and of his own exalted majesty.⁴ This interpretation can be supported by evidence in the trial records that Richard was drawing on the model of *lèse-majesté* to secure convictions. However, this construction existed in tension with the chivalric concept of treason as a violation of masculine honour. As a result, the judicial narratives were also shaped by customary themes of personal betrayal, false speech, and knighthood performed or undermined through the keeping and breaking of oaths.⁵ The trials provided the opportunity to re-cast treason law in more expansive civil law terms, but the king's hatred and desire to avenge what he considered personal injuries to his honour were also significant factors. Faced with charges of treason, Arundel and Gloucester in their turn drew on notions of masculine truth and knightly honour, as well as on political discourses of the common good, to defend themselves.

The sources for the 1397 trials include the parliament roll and a number of contemporary chronicle accounts. The most detailed of these, *The Chronicle of Adam Usk* and the *Historia Vitae et Regni Ricardi Secundi* by an anonymous monk of Evesham, were based on an account of the parliament compiled by a royal Chancery clerk, which appears to have been widely circulated. Other commentaries can be found in the *St Albans Chronicle* and in the "Continuation"

⁴ The standard account of Richard's actions and motivations in 1397 remains May McKisack, *The Fourteenth Century: 1307-1399* (Oxford: Clarendon Press, 1959), 462–98. See also Michael J. Bennett, *Richard II and the Revolution of 1399* (Stroud: Sutton, 1999), 90–123; Nigel Saul, *Richard II* (New Haven, CT: Yale University Press, 1997), 366–404; Fletcher, *Richard II*, 251–58.

⁵ In his brief discussion of the 1397 trials, Green notes the central theme of oaths and the revocation of royal pardons. However, he does not consider the gendered dimension of oath-keeping, or the importance of chivalric values and knightly honour in governing relationships between kings and their noble subjects: Green, *Crisis of Truth*, 221–30.

to the *Eulogium Historiarum*.⁶ The chronicles are helpful for clarifying the chronology of events, but their greater value lies in the window they open onto contemporary perceptions of treason as a legal and cultural phenomenon. Together with the official account, they show that chivalric and civil law perceptions of treason were held in tension by the political community, and were used both to construct and to refute the allegations. An examination of the rhetoric deployed and the ways Latin, French, and English interacted to authorise the judicial narratives further reveals that men's words were central to how treason was represented by all parties to the conflict. The novel statutory interpretation of political speech against the king as an act of *lèse-majesté* was used to help justify the convictions. At the same time, the performance of knightly manhood emerged as a key theme for both prosecution and defence, especially as this was publicly validated by speaking true and keeping one's oaths.

To understand the strategic use of concepts of treason in 1397, the trials must be viewed in context with Richard II's performance of kingship. By the mid-1390s, he had built a formidable power base by creating a royal affinity, extending the reach of his royal household into the provinces, and surrounding himself with a large personal bodyguard.⁷ According to contemporary

⁶ On these and other sources for the parliament, see C. Given-Wilson, introduction to "Parliament of September 1397" in *PROME*; Given-Wilson, "Adam Usk, the Monk of Evesham and the Parliament of 1397–8," *Historical Research* 66 (1993): 329–35; *Chronicles of the Revolution*, 1–53. On chronicle dating and authorship: G. B. Stow, "The Continuation of the Eulogium Historiarum: Some Revisionist Perspectives," *The English Historical Review* 119 (2004): 667–81; V. H. Galbraith, "Thomas Walsingham and the Saint Albans Chronicle, 1272–1422," *The English Historical Review* 47 (1932): 12–30. Throughout, this study refers to the author of the St Albans Chronicle as Thomas Walsingham, although recognising that there is continued debate as to whether or not he wrote all the chronicle material with which he has been credited: James G. Clark, "Thomas Walsingham Reconsidered: Books and Learning at Late-Medieval St. Albans," *Speculum* 77 (2002): 832–60.

⁷ On these and other practical measures that extended the reach of royal power centred on the

chroniclers and to many modern historians, the king used these administrative and military resources to exercise an increasingly autocratic form of rule, one that by 1397 was crossing the line into tyranny.⁸ This development has been seen by some scholars as the result of Richard's embrace of continental political theories affirming that kings were wholly sovereign in their person and that, as the source of law, they could not be made subject to it.⁹ Saul has argued that the extravagant and 'obsequious' manner in which Richard's subjects were expected to address him provides evidence for this exalted view of kingship. To a degree, changes to the address style of petitions may be seen simply to reflect changing scribal conventions.¹⁰ Nevertheless, there are other indications that Richard was using his royal prerogative in arbitrary ways, while dismissing any balancing obligations to rule according to the law and with the benefit of noble counsel. In his chronicle entry for 1397, Thomas Walsingham asserted that

household, see for example Chris Given-Wilson, *The Royal Household and the King's Affinity: Service, Politics, and Finance in England, 1360-1413* (New Haven, CT: Yale University Press, 1986), 211–26, 245–51; C. M. Barron, "The Tyranny of Richard II," *Bulletin of the Institute for Historical Research* 41 (1968): 1–18; Nigel Saul, "The Kingship of Richard II," in Goodman and Gillespie, *Richard II: The Art of Kingship*, 50–56.

⁸ In addition to sources in n. 7, see Valente, *Theory and Practice of Revolt*, 195–207; Caroline Barron, "The Deposition of Richard II," in *Politics and Crisis in Fourteenth-Century England*, ed. John Taylor and Wendy R. Childs (Gloucester: Alan Sutton, 1990), 132–49. On the chroniclers' views of Richard II, see G. B. Stow, "Richard II in Thomas Walsingham's Chronicles," *Speculum* 59 (1984): 68–102; Fletcher, "Manhood and Politics in the Reign of Richard II"; John Taylor, *English Historical Literature in the Fourteenth Century* (Oxford: Clarendon Press, 1987), 175–94; Taylor, "Richard II in the Chronicles," in Goodman and Gillespie, *Richard II: The Art of Kingship*, 15–35. Barron ("The Deposition of Richard II," 133–35) notes that not all the chronicles had an unfavourable view of Richard, and those that were most critical tended to be written from a strongly pro-Lancastrian perspective.

⁹ This interpretation of Richard's kingship has been most extensively developed by Richard H. Jones, *The Royal Policy of Richard II: Absolutism in the Later Middle Ages* (Oxford: Basil Blackwell, 1968); Saul, *Richard II*, 459–64; Nigel Saul, "Richard II and the Vocabulary of Kingship," *The English Historical Review* 110 (1995): 854–77; Saul, "The Kingship of Richard II," esp. 43–49; Simon Walker, "Richard II's Views on Kingship," in Archer and Walker, *Rulers and Ruled in Late Medieval England*, 49–63. On the tensions between divine right theories of kingship and expectations that the exercise of the royal prerogative must be balanced by the requirement for the king to take appropriate counsel and rule for the common good: Ormrod, *Political Life*, 64–67; Valente, *Theory and Practice of Revolt*, 12–18.

¹⁰ Saul, "Richard II and the Vocabulary of Kingship." For a valuable counter-argument, see Dodd, "Kingship, Parliament and the Court." Cf. Fletcher, *Richard II*, 204–7.

‘from that time the king began to tyrannise the people’, while the *Eulogium* chronicler gave us the well-known image of Richard as an imperious and aloof king who sat on his throne ‘from dinner till vespers, talking to no one but watching everyone, and when his eye fell on anyone, regardless of rank, that person had to bend the knee’.¹¹ In the articles of his deposition, Richard was portrayed as a tyrant for abusing the royal judicial prerogative, having said that ‘his laws were in his mouth, or sometimes in his breast: and that he alone could alter and create the laws of his realm’.¹² These criticisms were shaped by Lancastrian political rhetoric justifying the deposition and usurpation, and Richard’s actions in 1397 were more likely to have been the result of political expedience than the considered application of political theory.¹³ Regardless of the immediate motivations, the manipulation of treason in the 1397 parliament paved the way for more enduring changes in the constitutional relationship between the king and his subjects. The events of 1386-88 had shown that nobles could use the law to constrain the king, and possibly even to separate an intransigent ruler from his crown.¹⁴ In 1397, Richard used his judicial prerogative to assert the indivisibility of king and crown in his own person. This

¹¹ *St Albans Chronicle II*, 61; *Eulogium*, 378.

¹² *PROME*, “Parliament of 1399,” item 33, RP iii:419. Richard’s abuse of the prerogative Court of Chivalry to dispatch his opponents for allegedly having ‘said something publicly or secretly which could lead to the disparagement, scandal or disgrace of the person of the said king’ was seen as another example of this tyrannical and arbitrary rule: item 44, RP iii:420-1.

¹³ For this perspective, see for example Anthony Tuck, *Richard II and the English Nobility* (London: Edward Arnold, 1973), 187–97, 203–4; Barron, “The Deposition of Richard II,” 132–36; C. Given-Wilson, “Richard II and the Higher Nobility,” in Goodman and Gillespie, *Richard II: The Art of Kingship*, 108–10. Fletcher (*Richard II*, 249–74) provides an important alternative analysis by analysing Richard’s actions with reference to fourteenth-century secular values of knighthood; he argues the king’s deposition was precipitated by his excessive and uncompromising pursuit of vengeance for perceived slights to his manly honour.

¹⁴ During this period, Richard’s personal authority was constrained by a Commission of government, and a group including his highest officials and closest friends were impeached, exiled, or executed. The events of 1386-88 are discussed in Saul, *Richard II*, 148–204; Fletcher, *Richard II*, 151–91; Anthony Goodman, *The Loyal Conspiracy: The Lords Appellant under Richard II* (Coral Gables, FL: University of Miami Press, 1971).

was achieved by portraying attempts to limit his personal power as treasonous attacks on the public authority of the state.

In the parliament of January 1397, there were already signs of how Richard II was coming to view his position when the Chancellor described the king as ‘complete emperor in his realm of England’ and therefore as acting in the ‘plenitude of his royal power’.¹⁵ A second parliament was called for September, and the events leading up to it show that it was intended primarily to serve as a legal theatre in which Richard could enact his personal vengeance on the Lords Appellant, and at the same time reverse the dangerous constitutional precedent they had set. In July, Richard had Gloucester and Arundel arrested and on 5 August, eight of the king’s closest supporters presented an Appeal of treason against the two noblemen. These ‘Counter-Appellants’ included the king’s half-brothers the earls of Kent and Huntingdon, his cousins the earls of Rutland and Somerset, and the earls of Nottingham and Salisbury.¹⁶ In a move stage-managed by Richard, they asked that their Appeal be heard in the September parliament.¹⁷

The Lords and Commons assembled on 17 September and on the opening day, the king extended a general pardon to all his subjects for past offences, including those relating to the crisis of 1386-88.¹⁸ This was not the

¹⁵ *PROME*, “Richard II: Parliament of January 1397,” item 28, RP iii:343.

¹⁶ The term ‘Counter-Appellants’ is the invention of later historians but for clarity and brevity, it is used here to refer to this group. John Beaufort, the earl of Somerset, was the bastard son of John of Gaunt the duke of Lancaster; Beaufort had been legitimised and elevated to his earldom in the January parliament: *PROME*, “Parliament of January 1397,” items 28–32, RP iii:343.

¹⁷ During this parliament the Counter-Appellants were rewarded with elevations to dukedoms or marquises. Rutland, Kent, Huntingdon, and Nottingham were awarded the dukedoms of Aumale, Surrey, Exeter, and Norfolk; Somerset was made marquis of Dorset: *PROME*, “Parliament of September 1397,” item 35, RP iii:355.

¹⁸ *PROME*, “Parliament of September 1397,” Roll, item 3, RP iii:347. The pardon required payment

generous act of royal grace that it may initially appear, for the pardon excluded certain unspecified offences as well as 50 individuals whom the king refused to name. These people would only be identified when they were brought before parliament to answer for their crimes.¹⁹ Then on 18 September, parliament revoked a 1388 pardon that had been granted specifically to Gloucester, Arundel, and Warwick.²⁰ In Arundel's case, a second pardon granted by the king in 1394 was also revoked.²¹ This issue of royal pardons and whether or not they could honourably be revoked became a central theme in the trials that followed.

Another critical step was the enactment of a new statute of treasons.²² This extended the provisions of the 1352 statute, for alongside the act of 'compassing or imagining' the king's death, the new statute identified as a traitor anyone who plotted or planned ('compasse et purpose') to depose the king or to renounce their liege homage.²³ As will be seen, the nobles' activities on this score never advanced beyond verbal discussion, but by framing such thoughts and words as material acts of treason, the statute reflected the notion of *lèse-majesté*, wherein insulting or denigrating the king's person was interpreted as treason against the public authority he embodied. The new provision also explicitly categorised noble *diffidatio* as treason, slamming the door on the kinds of forceful remedial action used in 1386-88 to restore good

and was to be sued out of chancery. On the use and revocation of pardons in the 1397 parliament, see Lacey, *Royal Pardon*, 169–75.

¹⁹ The pardon created fear rather than relief amongst the political classes because in order to sue for it, anyone who had been involved in earlier episodes of resistance to the king would first need to admit their guilt, but without knowing whether they were on the list of persons the king would not pardon: Fletcher, *Richard II*, 268–9; Barron, "Tyranny of Richard II," 7–9.

²⁰ *PROME*, "Parliament of September 1397," Roll, item 12, RP iii:350.

²¹ *Ibid.*, item 13, RP iii:351.

²² *Statutes*, vol. 2, 98–99 (c. iii); *PROME*, "Parliament of September 1397," Roll, item 18, RP iii: 351. Item 32, RP iii:354 further states that all ordinances, declarations and decrees of the September 1397 parliament were to be held as statutes.

²³ Bellamy, *Law of Treason*, 114.

governance. It is generally argued that these extensions were not intended to address treason at a broad policy level, but were narrowly designed to give judicial legitimacy to the convictions of Arundel and Gloucester.²⁴ Most scholars agree that Richard's motivations were two-fold: to avenge the death of his favourites at the hands of the Lords Appellant in 1388 and to pre-empt a new plot he feared was being hatched against him.²⁵ However, given the way Richard's ideas about kingship and majesty were being expressed in the 1390s, it is plausible to envisage the expanded definition of treason remaining on the books had it not been for his deposition.

The Appeal of treason was positioned from the beginning to invoke the model of *lèse-majesté* but it was also shaped by masculine values of honour and loyalty. The Counter-Appellants described themselves as Richard's 'humble foster-children and lieges' ('voz humblez nurriz et lieges'), a self-representation that alluded to literal kinship connections between the king and several of the Counter-Appellants, as well as to a figurative knightly brotherhood with others such as Salisbury and Nottingham, who were members of the royal Order of the Garter headed by the king.²⁶ The allegations against Arundel and Gloucester modelled the language of the 1352 statute by accusing them of having

²⁴ For example, Rogers, "Parliamentary Appeals of Treason," 117–19. Bellamy, *Law of Treason*, 114; Musson and Ormrod, *Evolution of English Justice*, 106–9; Bennett, *Richard II*, 100–2.

²⁵ Saul, *Richard II*, 366–68; Bennett, *Richard II*, pp. 92–95; Fletcher, *Richard II*, 250–54. Fletcher argues that vengeance for the dishonour of 1386–88, rather than fears of a new plot, was Richard's primary motivation.

²⁶ *PROME*, "Parliament of September 1397," Pleas, item 2, RP iii:374. The term 'nurriz' could also mean 'retainer' or 'follower': AND, <http://www.anglo-norman.net/gate/index.shtml?session=S33531365994052>. However, in the 1399 parliament that followed Richard's deposition, when the Counter-Appellants were accused of enabling and enforcing Richard's tyranny, they were described as having presented themselves on multiple occasions as the king's 'foster-children' and so as embodying the faults of their 'foster-father'. See for example *St Albans Chronicle II*, 253–54: 'nurres a le Roy', 'alumpnos regis'. This suggests that the more intimate familial relationship was invoked by the Counter-Appellants in 1397 and then used against them in 1399. Given-Wilson translates the term 'nurriz' as 'nephews': *Chronicles of the Revolution*, 204, n. 1.

‘assembled... with a great number of men armed and arrayed, forcibly to wage war’.²⁷ However, specific charges that they had ‘usurped, perpetrated, imagined, and done things against and upon your high and royal majesty, crown, and estate, as traitors to you and your kingdom’ and that they were ‘intending to accroach and take to themselves the governance of your royal person, your realm, your laws and liberties, and all your dignity’ pushed the interpretation further.²⁸ The references to Richard’s majesty, crown, and estate drew on civil law concepts and this is redolent in the charge that the accused had usurped the king’s role as the source of law by accroaching Richard’s ‘laws and liberties’. The argument that Richard indivisibly united the king’s private and public powers in his person was given rhetorical weight by having the charges lodged by subjects who described themselves as acting simultaneously in a personal capacity, as ‘foster-children’ of the king, and in a public capacity as his ‘humble lieges’. Richard’s embodiment of sovereign majesty was further reinforced by the description of the Counter-Appellants delivering their Appeal to ‘your royal person...you, most redoubtable lord, being seated in your royal state, the crown upon your head’.²⁹

While the charges drew power from the interpretation of treason as *lèse-majesté*, they simultaneously portrayed the accused as men who had violated chivalric honour and the values of true manhood. This is seen in items five and six of the Appeal, which centred on the events of 1387-88.³⁰ Item five describes Richard being forced to swear an oath of surety to allow Arundel and Gloucester

²⁷ *PROME*, “Parliament of September 1397,” Pleas, item 5, RP iii:376.

²⁸ *Ibid.*, items 2 and 3, RP iii:374.

²⁹ *Ibid.*, item 2, RP iii:374.

³⁰ The nobles had marched in arms to London as a last resort, after trying and failing to get Richard to act according to the terms of the Commission of government imposed on him in 1386.

to come and go from his presence safely. Notwithstanding this oath, the Appeal alleged, the noblemen then entered 'your royal palace at Westminster with a great force of armed men and forced you and treacherously caused you to take them into your safe protection, against your will'.³¹ Entering the king's presence in arms and with such a threatening attitude fell within the 1352 statute's terms as riding in arms against the king and it also echoed standard common law rhetoric of acting 'by force and arms'. However, the greater harm lay in coercing Richard to swear an oath of surety for fear of 'their force and wickedness', and then in refusing to accept that this oath offered any real protection. These actions implicitly insulted Richard's manhood, as he was first made to swear a false oath and was then faced with the refusal to accept that his word, as a man and as king, was his bond. Item six concerned the 1388 execution of Richard's vice-chamberlain and dear friend Sir Simon Burley. Arundel and Gloucester were charged with having brought Burley before parliament to accuse him of 'various acts of crime and *lèse-majesté*'.³² Having failed to get Richard to endorse these charges in parliament, they applied more devious measures by causing the king:

To come to a secret place at Westminster, [where] they expounded to you the points of the aforesaid crime: to which you answered then that the said Simon was guilty on none of the said points. And there they took it upon themselves treacherously to constrain you to give your assent to the judgment which they had planned.³³

³¹ *PROME*, "Parliament of September 1397," Pleas, item 5, RP iii:376.

³² *Ibid.*, item 6, RP iii:376.

³³ *Ibid.* Burley had subsequently been executed as a traitor.

This charge, together with item five, portrayed Arundel and Gloucester as purveyors of false speech who exploited their personal access to the king in order to draw him into a 'secret place' where they verbally coerced him into endorsing their allegations against Burley. False speech was also the fundamental issue raised in item seven, which charged the nobles with planning to withdraw their liege homage and then depose Richard. 'By common agreement amongst them', they had searched the records for precedents and 'said falsely and treacherously that they had adequate reason to depose you'.³⁴

Debating the events of 1388 and their subsequent punishment in 1397, legal and constitutional historians have analysed the nobles' actions in terms of the technical terms of the 1352 statute. From this perspective, discussion has centred on whether or not the nobles' most obvious physical actions of gathering their troops and riding to London constituted treason when measured against the statute's proscription of riding in arms with banners raised against the king. However, issues of false speech and of oaths and their breaking were equally important to the treason cases established against Arundel and Gloucester. Repeated references to speech acts that violated the norms of manly trueness indicate that the customary concept of treason as a personal betrayal of knighthood was as important as the statutory definitions of either 1352 or 1397. In their explanations of their own actions, Arundel and Gloucester drew on discourses of knightly honour and true manhood to represent themselves as loyal political subjects. In turn, it was Richard's deceptive and dishonourable

³⁴ Ibid., item 7, RP iii:376. It appears that records relating to the deposition of Edward II had been consulted. Here, the Appeal says that the nobles stopped short of proceeding with the deposition 'out of reverence' for Richard's grandfather, Edward III, and for his father. However, elsewhere in the records of the 1397 parliament there is a suggestion that Richard was indeed deposed for a few days. Historians continue to debate this point: Bennett, *Richard II*, 30; Saul, *Richard II*, 188–90; Dunham and Wood, "The Right to Rule in England," 743–44.

behaviour and his failure to keep his oaths that attracted the strongest criticism from contemporaries.

The trial of the earl of Arundel

The significance of discourses of knightly manhood to conflicts over treason becomes clear in the trial of Arundel, which followed immediately on the reading out of the Appeal of treason in parliament. The official version of the trial preserved in the parliament roll was heavily edited and it eschews the richer details preserved in the *Historia Vitae et Regni Ricardi Secundi* and in *The Chronicle of Adam Usk*.³⁵ As noted, the chroniclers' narratives present a largely accurate chronology of events that corroborates the official record. However, the authors framed their interpretations through the lens of chivalric culture and expectations of masculine honour, presenting Arundel's defence as a dramatic performance of knighthood that called upon the king to honour his oaths as a true man.

Reading across the official and unofficial accounts, the strategies used by the king and his supporters to cloak their actions in legality can be discerned, but the sources also indicate how the wider political community perceived these actions: as unjust in a legal sense, but also as dishonourable and unmanly. The parliament roll offers a rather bland and seemingly neutral account of the trial that was carefully structured to suggest that proceedings were conducted strictly within legal limits, with the prosecution being conducted by the king's

³⁵ Given-Wilson, introduction to "Parliament of September 1397" in *PROME*. See also Given-Wilson, "Adam Usk, the Monk of Evesham and the Parliament of 1397–8"; *Chronicles of the Revolution*, 55.

uncle John of Gaunt, duke of Lancaster and Steward of England.³⁶ It opens with Arundel being brought into parliament at the request of the Counter-Appellants, where their Appeal was read out to him and he was told to answer the charges. Arundel's first defensive move was to claim the protection of the pardons issued to him in 1388 and 1394, only to find that those pardons had just been revoked at the order of the king. This had been justified on the grounds that they had been extracted 'to the deceit of the king' and had been cancelled 'by the assent of the king and of all the estates of parliament'.³⁷ This extraordinary act of undoing the king's grace was given the stamp of judicial validity through reference to the statute in which it was formalised. There was then an attempt to use the threat of a traitor's death to coerce a confession as 'the king ordered Sir Walter Clopton, his chief justice, to say and declare to the said earl of Arundel the law, and the penalty he would suffer, if he did not say anything else'.³⁸ By this point, Arundel was no doubt aware there was no way to escape a guilty verdict; the only power he retained was the power of silence as he refused to give Richard the satisfaction of a verbal admission of guilt. Their personal confrontation over Arundel's refusal to submit to the king's attempts to force him into speech was elided in a curt statement that the earl,

³⁶ *PROME*, "Concerning Richard earl of Arundel" in "Parliament of September 1397," Pleas, RP iii:377. The extent and nature of the judicial power of the Steward was ambiguous in the fourteenth century. Bellamy (*Law of Treason*, 169) suggests Lancaster sat in judgment in his formal capacity as Steward, with this office having delegated powers in parliament as the king's highest judge. However, Sherborne says Lancaster's possession of the stewardship was incidental and it was in his personal, rather than official, capacity that he was appointed by Richard to act as judge in Arundel's trial: James Sherborne, "Perjury and the Lancastrian Revolution of 1399," *Welsh History Review* 14 (1988): 222, 233. Walsingham was probably reflecting an informal understanding of the Steward's judicial authority when he says Lancaster was 'acting in accordance with the responsibility of his office': *St Albans Chronicle II*, 87.

³⁷ *PROME*, "Concerning Richard earl of Arundel" in "Parliament of September 1397," Pleas, RP iii:377.

³⁸ *Ibid.*

‘notwithstanding the repeal of the aforesaid pardon and charter, did not speak, nor did he wish to say anything else, unless it was to ask for allowance of the aforesaid charter and pardon’.³⁹ The record continues by saying that the Counter-Appellants then entreated Richard to give immediate judgment against Arundel ‘as convicted of all of the points’.⁴⁰ The king assented to this and the earl was sentenced to be drawn, hanged, beheaded, and quartered, with all his lands, titles, and other property to be forfeited in perpetuity. The drawing, hanging, and quartering were remitted because Arundel was of noble blood, but he was taken immediately to the Tower and beheaded the same day.⁴¹

The chronicle accounts of the trial provide a rather different impression of how the wider political community may have interpreted these events.⁴² The monk of Evesham uses dialogue and reported speech to create a sense of veracity, an approach that makes this account read like an eyewitness statement and so heightens its purported truth value.⁴³ The narrative draws on the language of chivalric manhood to contrast the knightly Arundel with the dishonourable king and the sycophantic officials who did his dirty work. However, it also suggests the influence of a popular language of complaint by introducing (in Arundel’s mouth) the idea of the ‘true commons’ as a wider representative political community that was deliberately excluded from the parliament but that acted as an external witness to its illegitimate actions. In

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² *HVRS*, 142–44. Translations from this text are my own. See also *Chronicles of the Revolution*, 58–60. The account in the *St Albans Chronicle* has many similarities, including the use of dialogue and reported speech: *St Albans Chronicle II*, 86–95.

⁴³ On the use of these rhetorical strategies to craft persuasive legal narratives, see for example McSheffrey and Pope, “Ravishment, Legal Narratives, and Chivalric Culture in Fifteenth-Century England,” 820–21; Arnold, *Inquisition and Power*, 74–76; Wicker, “The Politics of Vernacular Speech,” 159–85.

place of this true commons and colluding in Arundel's wrongful conviction was a pliant and submissive Commons led by the royal favourite Sir John Bussy as speaker. The account in the *Historia Vitae et Regni Ricardi Secundi* begins with the dramatic image of Arundel appearing in parliament clad in the scarlet robe and hood that visually communicated his status as an earl. Gaunt immediately ordered that he be stripped of his hood and swordbelt, a ritual of inversion that was intended to mark publicly and with maximum humiliation Arundel's fall from an identity as nobleman and knight to an identity as traitor.⁴⁴ The articles of Appeal were then read out to him and he 'vehemently denied he was a traitor', claiming the benefit of his pardons.⁴⁵ A verbal conflict ensued, first between Arundel and Gaunt, but soon with the addition of other voices including that of the king himself, whose voice had been occluded in the official parliamentary narrative because Justice Clopton served as his mouthpiece. At the heart of this argument was the issue of true and false speech, and therefore of the performance of true manhood. When he was told by Gaunt that his pardon had been revoked, Arundel responded that Gaunt was a liar and that he had never been a traitor. Gaunt countered that Arundel must have been guilty of treason to have requested a pardon in the first place, to which Arundel responded by saying he only sought the first (1388) pardon 'to silence the tongues of my enemies, of whom you are one'.⁴⁶ He further claimed that when it came to treason, Gaunt was in bigger need of a pardon than he was, phrasing

⁴⁴ *HVRS*, 142. On such rituals of inversion, see Westerhof, "Deconstructing Identities on the Scaffold," 91–92; Royer, "The Body in Parts," 330–31; Fionn Pilbrow, "The Knights of the Bath: Dubbing to Knighthood in Lancastrian and Yorkist England," in *Heraldry, Pageantry and Social Display in Medieval England*, ed. Peter R. Coss and Maurice Keen (Woodbridge, Suffolk: Boydell, 2002), 195–96.

⁴⁵ *HVRS*, 142.

⁴⁶ *Ibid.*

that suggests his understanding of treason was shaped primarily by chivalric values rather than by more proscriptive statutory definitions.

At this point, the king intervened directly, demanding that Arundel answer the Appeal. In the *Historia Vitae et Regni Ricardi Secundi*, Justice Clopton is nowhere to be seen and the veneer of judicial neutrality his voice added to the measured account of the trial in the parliament roll is missing. Arundel, speaking directly to Richard, asserted he could still claim the second (1394) pardon, 'which you, within the last six years when you were of full age and free to act as you wished, granted to me of your own will'.⁴⁷ To this, Richard replied that he had only granted the pardon 'provided that it were not to my prejudice', with the implication being that it was extracted dishonestly and under duress.⁴⁸ Gaunt then claimed that this made the pardon worthless, but Arundel denied having anything to do with extracting it and said he had known nothing of it until it had already been 'willingly granted' by the king.⁴⁹ Underlying this debate about the pardon is a dense network of assumptions about the king's manhood and his ability to fully embody the sovereign powers of justice and mercy. By 1394, Richard had freed himself of commissions of government. He had declared his majority and asserted that he was now acting in the fullness of his authority as a mature king, exemplified in his unique power to pardon through the sacral act of royal grace. Gaunt's suggestion that Arundel had manipulated or coerced Richard into granting a pardon had dangerous implications, for it suggested that Richard was not fully embodying royal power or, as Arundel put

⁴⁷ Ibid. The reference to 'within the last six years' refers to Richard's formal declaration of his majority in May 1389, which was followed by attempts to resume his personal authority in the early 1390s.

⁴⁸ Ibid.: 'Ita concessi, si non contra me esset'.

⁴⁹ Ibid., 142–43.

it, 'of full age and free to act as you wished'.⁵⁰ By questioning the king's ability to confer grace of his own royal will, this line of debate between Gaunt and Arundel threatened to undermine Richard's performance of kingship and his claim to be fully sovereign in his person. The *St Albans Chronicle* pursues this theme in greater depth, and Walsingham may have been informed by an eyewitness for he described the king, 'by his head-shaking and bodily gestures... show[ing] that he had little regard' for Arundel's argument.⁵¹ Adding that it was contrary to God and unlawful for Richard to revoke the pardons, Walsingham maintained that these actions 'had very great repercussions against the person of the king, since showing mercy confirms the authority to the royal throne and he who removes from the king the opportunity for showing mercy removes the foundation for royal authority'.⁵²

This perception that revoking the pardons weakened royal authority had the potential to jeopardise the careful work Richard had done to build the image of himself as a mature sovereign, rather than a boy incapable of independent rule.⁵³ Gaunt's line of attack therefore risked voicing in parliament awkward questions about Richard's manhood and his kingship. The *Historia Vitae et Regni Ricardi Secundi* implies that Richard was aware of this risk and this may explain

⁵⁰ Ibid., 142.

⁵¹ *St Albans Chronicle II*, 83. Walsingham's detailed account of the 1399 parliament was probably based in part on information from the bishop of Carlisle, who stayed at St Albans before and after the session: *Chronicles of the Revolution*, 200. Given the prominent role of St Albans in providing hospitality, Walsingham may have had a similar episcopal informer in 1397.

⁵² *St Albans Chronicle II*, 83.

⁵³ The image of Richard as never reaching full adult manhood and as therefore incapable of true kingship was a persistent thread in criticisms of his rule from the initial crisis of 1386, when he was portrayed as being youthful and therefore easily manipulated by 'wicked advisors', through to his deposition when he was described as 'a boy not a man' in unfavourable contrast with Henry IV. For a detailed exploration of these themes in relation to fourteenth-century gender norms and political expectations, see Fletcher, *Richard II*, esp. 151–75, 249–80; Fletcher, "Manhood and Politics in the Reign of Richard II".

an abrupt change of tack as another voice entered the debate, that of Sir John Bussy. Bussy added the weight of parliamentary legitimacy to the cancelling of the 1394 pardon, saying that it had been revoked 'by the king, the lords, and us, the true commons'.⁵⁴ However, the concept of the true commons also provided Arundel with an interpretive tool to criticise the king's actions, one that drew on the language of popular political complaint as well as on the significance of true manhood in the legal arena. In royal courts, it was juries of 'true men' who were called upon to determine the guilt or innocence of those indicted. Faced with a rigged trial in parliament, Arundel protested the absence of a similar community of true men, who had been excluded in order to ensure his unjust conviction based on the testimony of false men and liars. We can assume that proceedings in parliament were being conducted orally in English.⁵⁵ The *Historia Vitae et Regni Ricardi Secundi's* account of this verbal duel imbues Arundel's words with the authenticating power of first-person vernacular speech as he challenged Bussy:

"Where are those true commons [*plebei fideles*]? I know all about you and those about you, and how you have come to be gathered here - not to act honestly, but to shed my blood. The true commons of the realm are not here; if they were, it may be that they would take my side in this struggle, to stop me from falling into your hands. They, I know, are grieving greatly for me; while I know well that you have always been false." Then this Bussy and his supporters shouted, "Look, lord king, at how this traitor is trying to stir up distrust between us and the commons who have stayed at home." To which the earl replied, "You are all liars. I am no traitor."⁵⁶

⁵⁴ *HVRS*, 143.

⁵⁵ As noted in Chapter One, it is generally agreed that by the later 1300s, the language used for aural/oral business in parliament was English.

⁵⁶ *HVRS*, 143. While 'fideles' can be translated as 'faithful', 'fidelis' and analogues like 'fidedignes'

This passage posits a deep division between the ‘true commons of the realm’ who were absent and the corrupt and false Commons doing the king’s bidding by having Arundel unjustly condemned as a traitor. Whereas the legalistic account in the parliament roll sought to constrain the trial within the framework of parliamentary judicial process and the new statute of treason, the *Historia Vitae et Regni Ricardi Secundi* represented it as a battle over personal honour and the trueness of individual men. By speaking falsely, Bussy and his backers – who included the noble Counter-Appellants as well as the Commons – colluded with Richard in perpetrating a dishonourable and unknighly act of violence against Arundel.

When Bussy called Richard into the conversation, it is a reminder that the king’s desire for vengeance lay behind Arundel’s trial. Judicial execution embodied the monarch’s right and duty to ‘do justice’, and this right worked in harmony with chivalric values that endorsed the rational exercise of just violence for legitimate ends. The idea that a good lord would take violent, even vengeful, action when necessary was integral to cultural expectations about manhood generally and about kingship specifically. The *Historia Vitae et Regni Ricardi Secundi* offers an interpretation of Richard’s actions in which he was motivated not by his duty as a king or his honour as a knight, but by personal hatred and wilful desire that had led to his corruption of royal justice.⁵⁷ This is made apparent in the next passage, where the king directly challenged Arundel about the 1388 execution of Simon Burley. According to the chronicler, Richard

were generally rendered in English as ‘true’ or ‘trustworthy’ in other legal contexts involving proof; for example, the ‘true men’ that made up juries were routinely described as ‘fidedignes’ in Latin records.

⁵⁷ It was this interpretation of Richard’s motivations that later appeared in the articles of deposition: *PROME*, “Parliament of 1399,” Roll, item 21, RP iii:418.

accused Arundel of telling him ‘in the bathhouse behind White Hall, that Simon Burley was for various reasons worthy of death,’ and that this sentence was carried out despite the king’s protestations.⁵⁸ By first asserting that Arundel and his fellow Lords Appellant had ‘traitorously put [Burley] to death’ and then immediately demanding that sentence be passed on Arundel, the account made clear that as far as Richard was concerned, this was the main offence for which Arundel was being punished.⁵⁹ This implied the falseness of the king’s own speech as he was seen to go back on his performative acts of royal grace in the pardons of 1388 and 1394. The reasons for Arundel’s conviction given in the official sentence were:

Because the said treasons were so high; and they would have surrendered their liege homage and deposed the king from his crown, regality, estate, and dignity, and because the act of war was so notorious.⁶⁰

Of these three offences, two - planning to withdraw liege homage or to depose the king - had only just been statutorily defined as acts of treason. The decision made by the author of the *Historia Vitae et Regni Ricardi Secundi* to centre his account of the trial on the personal enmity between Richard and Arundel rather than on technical arguments conditioned by the new statute indicates that Richard may have been widely perceived even at that time as using legal fictions to cloak a wilful act of injustice. Certainly, by the time of Richard’s deposition the methods employed to secure Arundel’s death were seen as clear examples of

⁵⁸ *HVRS*, 143: ‘Tui, in balneo retro albam aulam, quod Symon de Burlei reus erat mortis propter plures causas... Pro quo etiam ego et uxor mea regina obnixe rogauimus, et tamen tu et socii tui, spretis precibus nostris’. This mirrors the charge in item 6 of the Appeal, although with the additional lurid detail that the ‘secret place’ to where Richard was lured was a Westminster bathhouse.

⁵⁹ *Ibid.*: “...ipsum proditorie interfecistis”. Et dixit rex senescallo: “Da sibi iudicium suum”.

⁶⁰ *PROME*, “Concerning Richard earl of Arundel” in “Parliament of September 1397,” Pleas, RP iii:377.

the king's tyranny and falseness, as he was accused of 'showing a cheerful and kindly face' to Arundel while 'nourish[ing] hatred in his heart', and of 'damnably' causing Arundel's wrongful execution against justice and the laws of the realm.⁶¹

The central role that ideas about true and false manhood played in shaping contemporary responses to the 1397 treason trials can also be seen to influence Walsingham's account. Here, the conflict between Arundel and the king reflects the oppositional relationship between treason and knighthood in chivalric culture rather than legalistic interpretations. Walsingham described the Counter-Appellants throwing down their gloves and offering to fight a duel to prove their charges.⁶² This ritualised gesture placed their Appeal within the chivalric context of trial by battle, a judicial ordeal designed to reveal the truth or falseness of a man's verbal or written accusations. However, for Walsingham the Counter-Appellants' knighthood was utterly false, and he depicted their performance as mere outward acting as, 'with their bodily gestures and ignominious leaping about they made themselves look more like theatrical executioners than knights'.⁶³ By contrast, Arundel's true knighthood was validated by his refusal to speak falsely even when facing death. Urged to confess and so beg another pardon, 'he openly refused to do this and said: "I never was a traitor to the king, either in word or deed"'.⁶⁴ In fact, it was Arundel's innate inability to be false - his embodiment of true manhood - that proved his undoing as he asserted, 'this alone I confess, that by reason of my

⁶¹ *PROME*, "Parliament of 1399," Roll, item 21, RP iii:418.

⁶² *St Albans Chronicle II*, 89.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, 93.

artlessness I did not know how, or was unable, to please the king as he desired'.⁶⁵ Arundel's 'artlessness' provided a powerful contrast with the false speech of a king who would unjustly and dishonourably revoke his promises of grace, and the dishonest words of his royal favourites, which Walsingham characterised as at best obsequious flattery ('*verbis adulacionis*') and at worst as malicious lies.⁶⁶

The confession and conviction of the duke of Gloucester

On 21 September, the same day that Arundel was executed, Richard II initiated the post-mortem conviction of the duke of Gloucester. The duke's absence made this a document-centred performance in which the outcome was achieved through the manipulation of writs, of Gloucester's letter of confession, and of the parliament roll itself, which was edited to create the narrative the king desired.⁶⁷ These evidentiary texts use a mixture of Latin, French, and English and so they provide a detailed insight into how language choice itself could work to authenticate, but also to subvert, the state's narratives of treason.

Proceedings began with the production of a writ commanding Thomas Mowbray, Marshal of England and captain of Calais, to bring Gloucester into parliament to answer the Appeal of treason against him.⁶⁸ It is generally agreed

⁶⁵ Ibid.

⁶⁶ Ibid., 82 (Latin), 83, 89.

⁶⁷ Giancarlo lays out the manipulations of the parliament roll and other documents in detail: "Murder, Lies, and Storytelling," 79–92. Richard's deliberate falsification of the record of this parliament was one of the charges brought against him at his deposition: *PROME*, "Parliament of 1399," Roll, item 25, RP iii:418: 'And so that they should be seen to have some pretext and authority for their deeds of this sort, the king caused the rolls of parliament to be altered and erased, by his own will'.

⁶⁸ Mowbray, the earl of Nottingham, was one of the nobles Richard rewarded with dukedoms in this parliament; he was given the title duke of Norfolk.

that by this time, Richard must have known that Gloucester was dead.⁶⁹

Nevertheless, the writ made full use of the linguistic and judicial authority of Latin to construct the image of a just king giving an accused subject his rights under the law to hear and answer the charges against him. The writ said that the case was 'to be prosecuted according to the law and custom practised in our kingdom of England', and Gloucester was to be brought 'safely and securely before us and our council in our aforesaid parliament... to answer the aforesaid appellants'.⁷⁰

Three days later Mowbray returned the writ with news that Gloucester was dead, and the Counter-Appellants requested that he be declared a traitor and subjected to the penalty of total forfeiture. At this point, the Counter-Appellants took up the role of active speakers and the language of the roll changes to French, mirroring the practice for recording pleas and testimony in common law courts. They accused Gloucester and his men of having assembled 'armed and arrayed to wage war against the king' and of having appeared before Richard in force, asserting that this amounted to levying war against the king.⁷¹ There is then a reference to the notoriety of Gloucester's treason, for 'all the lords temporal of the said parliament... said that the said crime and treason were well known to them, and to all the realm'.⁷² There are several interesting features in these charges. Firstly, they all relate to the events of 1387-88, for which Gloucester had already been pardoned in 1388. Moreover, in that same

⁶⁹ Tait, "Did Richard II Murder the Duke of Gloucester?"; Stamp, "Richard II and the Death of the Duke of Gloucester"; Wright, "Richard II and the Death of Gloucester"; Giancarlo, "Murder, Lies, and Storytelling," 85–86.

⁷⁰ *PROME*, "Concerning Thomas duke of Gloucester" in "Parliament of September 1397," Pleas, RP iii:378.

⁷¹ *Ibid.*

⁷² *Ibid.*

year at Langley chapel, this pardon had been given augmented sacral value when Richard and his uncle swore reciprocal oaths on the Host pledging mutual forgiveness and reconciling the two men as king and subject and as nephew and uncle.⁷³ Secondly, as shall be seen, Gloucester positioned his own actions in 1387-88 as an act of knightly *diffidatio* intended to rid Richard of 'wicked advisors' and restore just rule for the common good. This was re-framed in the Appeal as levying war against the king, reflecting the 1352 statute. Thirdly, the allegation of notoriety was deployed to justify summary conviction. Notoriety drew on the deep cultural well of ideas relating to a man's *fama*, and to what was said about him by true men of good repute. It therefore acted as a communal form of witness testimony. According to the influential legal treatise *The Mirror of Justices*, if a man's treason was 'notoriously' known, there was no need for a trial and the king could move straight to conviction and execution.⁷⁴

The sentence of perpetual forfeiture for Gloucester and his heirs follows. The duke's kinship to the king was recalled through the inclusion of a provision that not only should his heirs lose their noble titles and lands but they should never 'bear the royal arms of England whole or with difference... nor should they inherit the crown'.⁷⁵ Then, with no break in the record, we are alerted to

⁷³ Saul, *Richard II*, 235–36. The breaking of this sacred oath was one of the charges against Richard in the articles of deposition: *PROME*, "Parliament of 1399," Roll, item 49, RP iii:421: 'Also, in the eleventh year of the said King Richard, the same king, personally present in the chapel of his manor of Langley ... willingly swore on the holy sacrament of the Lord's body, placed on the altar there, that he would henceforth never condemn or harm the same duke of Gloucester for any deeds of his which he might be said to have committed against the person of the king himself, but would willingly and entirely pardon him every offence of his, if there were any. Afterwards however, notwithstanding this oath, the said king caused the aforesaid duke to be horribly and cruelly murdered for offences thus alleged'.

⁷⁴ Bellamy, *Law of Treason*, 19–20, 29, 31. On the resort to notoriety to convict Gloucester *in absentia*: Rogers, "Parliamentary Appeals of Treason," 120–21. Notoriety had been used by Edward I and Edward II expeditiously to rid themselves of troublemakers: Keen, "Treason Trials," 85; King, "False Traitors," 38.

⁷⁵ *PROME*, "Concerning Thomas duke of Gloucester" in "Parliament of September 1397," Pleas, RP

the next act in the drama when we are told that on 25 September, the Counter-Appellants asked Richard ‘that if anything was on record, be it by confession of any of the persons thus accused, or of any other person’ regarding their Appeal, that it should be declared.⁷⁶ This cues the introduction of Gloucester’s confession, written in the first-person vernacular and witnessed at Calais by the royal justice Sir William Rickhill.⁷⁷ The confession represents one of the rare examples of English in the parliament roll prior to the mid-fifteenth century, and it is not simply due to convenience that it was preserved in the vernacular. The duke’s voice was heard from beyond the grave as it was read out by Rickhill, with the intent clearly being that through this verbal performance Gloucester would condemn himself in his own sworn words. Richard used Rickhill’s unblemished judicial reputation to give the confession its legal veracity, although the judge was himself a victim of trickery and documentary falsifications in the process of its production.⁷⁸ The version of the confession that appears in the parliament roll was edited to exclude several mitigating factors raised by Gloucester in his own defence, but Rickhill kept a second, complete copy as became clear after Richard’s deposition.⁷⁹

iii:378.

⁷⁶ Ibid.

⁷⁷ Rickhill was Chief Justice of the Common Bench.

⁷⁸ As traced in detail by Giancarlo, “Murder, Lies, and Storytelling,” 84–92. Rickhill was provided with writs that were deliberately left un-dated or were post-dated to fit the king’s falsified timeline, and he was initially not told why he was being sent to Calais.

⁷⁹ *PROME*, “Concerning Thomas duke of Gloucester” in “Parliament of September 1397,” Pleas, RP iii:378-9 for the version of the confession read to parliament. There are at least two other official versions of the document. Wright (“Richard II and the Death of Gloucester”) notes that a full copy of the confession is attached as a separate document to the parliament roll for 1397, but he argues this was done after 1399 when Richard’s tampering with the roll had been revealed. It is generally agreed that the edited version from the 1397 parliament was the version that was publicly circulated to justify Gloucester’s condemnation as a traitor. See Giancarlo, “Murder, Lies, and Storytelling,” 82 n. 15. Cf. Tait, “Did Richard II Murder the Duke of Gloucester?”; Stamp, “Richard II and the Death of the Duke of Gloucester”; Wright, “Richard II and the Death of Gloucester.”

Chapter One noted the growing status of English as a language of record. In legal contexts, it fixed in textual form the proof of a man's sworn word, allowing documents to represent men's verbal testimony under oath in a court of law. When the vernacular was used to embed Gloucester's edited confession within the parliament roll, the intent was to imbue the record with the same judicial truth-value, and this became a doubled process of authentication when Justice Rickhill spoke with Gloucester's voice. Giancarlo notes that in the legal arena 'a written instrument or record implied a certain legitimacy and authenticity, but its oral recitation (unavoidably recorded in the written record) was necessary for its felicitous performance'.⁸⁰ There is no doubt this performance was stage-managed by Richard to give legal legitimacy to Gloucester's conviction, for it represented the duke before the political community as a self-confessed traitor. However, by allowing Gloucester's own voice into parliament, it inadvertently created space for an alternative narrative to be preserved. This was one in which Gloucester defended himself through the vocabulary of knighthood and noble duty, and in which he represented himself as a true man and loyal subject. While some of his most compelling mitigations were edited out of the confession read before parliament, even those elements that formed part of the official record highlighted the problems caused by fundamental conflicts over the meaning of treason.

The confession in the parliament roll is undated and it excludes three major clauses and one significant phrase that appear in the other copies of the text.⁸¹ These more complete copies are dated 8 September, one day prior to the

⁸⁰ Giancarlo, "Murder, Lies, and Storytelling," 91–92.

⁸¹ I use Giancarlo's transcription of the full confession, in which he has numbered the clauses for

day on which Gloucester was most likely murdered. By erasing the date, Richard deliberately created uncertainty about the circumstances of the duke's death and cloaked his own role in it. In the form it was read out to parliament, the confession opens with the endorsement that everything to follow was 'iknowe [acknowledged] and confessid be ...the forssaide Duk be his owne honde, fully and pleynly iwrite'.⁸² Gloucester then admitted a string of offences relating to the events of 1386-88, although he never explicitly named any of these actions as treason. The first was:

The makynge of a Commission; In the which... I amonges other restreyned my Lord of his fredom, and toke upon me amonge other Power Reall, trewly nagth knowyng ne wygtyng [realising] that tyme that I dede ageyns his Estate ne his Realte, as I dede after, and do now.⁸³

This amounted to accroaching, or manipulating the king and using his power for one's own ends. This was a classic construction of treason under civil law as it encapsulated the idea of individuals usurping public power for private benefit rather than for the common good. However, Gloucester did not refer to his usurpation of royal power as treason or *lèse-majesté*. He also immediately referenced the 1388 pardon, saying that as soon as he saw the wrongness of his actions, he had submitted himself to Richard's mercy.

Gloucester admitted coming armed into the king's presence, but presented a knightly defence of *diffidatio* when he said that 'I dede it for drede

ease of reference: "Murder, Lies, and Storytelling," 81–82. Tait ("Did Richard II Murder the Duke of Gloucester?") analyses in detail the relationships between the different versions of the confession letter, as well as evidence for dating and other matter excised from the official version on the parliament roll.

⁸² Giancarlo, "Murder, Lies, and Storytelling," 81, clause 1.

⁸³ Ibid., clause 2.

of my lyfe'.⁸⁴ In a subsequent clause, he expanded on the claim that he was being threatened by the king when he admitted that he had consulted with other men, including certain clerks, 'whethir we miyght gyve up our homage for drede of our lyves or non'.⁸⁵ This clause features the first significant omission from the parliament roll version, with an excised phrase in which Gloucester claimed that the discussion about renouncing homage to Richard had been forced on him by exigency as 'for feer of my lyf to yyve up myn hommage to my Lord, I knowlech wel, that for certain that I among other communed'.⁸⁶ The implication was that Richard's bad lordship had driven the duke to contemplate extreme measures in self-defence. In the next clause, Gloucester made the damning admission that he had 'communed and spoken in manere of deposal of my liege Loord' and that he and his allies had been agreed on this course 'for two dayes or three'.⁸⁷ However, before taking any action, they had reconsidered and had 'done our homage and our oothes, and putt [Richard] as heyly in hys estate as ever he was'.⁸⁸

While Gloucester confessed to having considered renouncing his homage and even deposing Richard, his own words verified that this was never more than talk. His detailed description of this discussion drew on the power of first-person English to validate his testimony as truth, as he admitted dangerous speech but denied this ever led to action. Technically, such speech would not have amounted to treason at the time Gloucester confessed, for it was not until

⁸⁴ Ibid., clause 3.

⁸⁵ Ibid., clause 6. The reference to clerks suggests the nobles were not acting rashly but with the benefit of legal counsel.

⁸⁶ Giancarlo, "Murder, Lies, and Storytelling," 81, clause 6.

⁸⁷ Ibid., clause 7.

⁸⁸ Ibid.

the new statute of treasons was passed on 18 September that merely verbalising the possibility of renouncing homage or deposing the king was defined as treason. Damaging speech was also a factor in Gloucester's admission that he had 'sclaundred my Loord' to his face and in front of other people.⁸⁹ Gloucester confessed this was something he had done 'unkunnyngelych' (unwisely) but he did not name it as treason.⁹⁰ The 1352 statute did not define slandering the king as treason, although under civil law it could be interpreted as insulting public authority and therefore as *lèse-majesté*. However, Gloucester did not defend himself in legalistic terms. Instead, he represented his verbal wrongdoing as an injury to Richard's manhood. This might be a violation of masculine honour that could conceivably be punished as defamation, but in Gloucester's worldview it was not treason. Elsewhere, too, he eschewed any attempt to excuse his actions by referencing statutory definitions of treason, but framed his confession through the language of true manhood and bonds of knighthood.

This becomes clear in the last three clauses of the confession, which amount to one-third of the text. These sections were omitted from the version read out in parliament, an act of silencing that by their very omission infers how potent the rhetoric of true manhood was for the political community, especially when the truth value of a man's speech was authenticated by his sworn verbal testimony in English. In the confession presented to parliament, Gloucester had described himself as having done 'untrewly and unkyndely as to hym that is my lyege Loord', with the terms 'untruly' and 'unkindly' positioning the duke's

⁸⁹ Ibid., clause 5: 'I spake it unto hym in sclaunderouse wyse in audience of other folk'.

⁹⁰ Ibid.

offences as violations of trueness and masculine fidelity.⁹¹ In the omitted sections, the duke expanded on this theme to mitigate his actions and to infer a reciprocal knightly obligation on Richard, as his king and nephew, to honour his pardon and oath of forgiveness as well as to consider a renewed plea for mercy.

In order to justify Gloucester's arrest, Richard had claimed that his uncle was hatching a new plot against him. In the first omitted clause of his confession, Gloucester vigorously denied being involved in any such plot, swearing that he had been loyal 'syth that day that I swore unto hym at Langeley on Goddys body trewly. And be that ooth that I ther made, I never knew of gaderyng ageyns hym'.⁹² This was dangerous for Richard, for it challenged his own integrity as a king and a man. By revoking the duke's pardon, Richard had violated his sacred oath, and the duke implied the king had also lied about a new plot. It is unsurprising that this clause was suppressed, for it called attention to the false words, deceit, and violations of royal grace that lay behind Richard's actions. As first-person testimony in English, recorded in perilous circumstances in which Gloucester must have known his life was on the line, the duke's words carried the evidentiary weight to contest the version of events Richard presented in parliament to justify his conviction.

Gloucester went on to defend his activities in 1387-88 by balancing his admission of acting 'unkyndely and untrewly' with an assertion that his *intentions* had been true. Though he had offended the king, Gloucester claimed that:

⁹¹ The *Middle English Dictionary* defines 'unkinde' as behaviour against filial affection, or as a violation of natural loyalties: MED, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED49020>.

⁹² Giancarlo, "Murder, Lies, and Storytelling," 82, clause 8.

Trewly, and as I wyll answeze befor Godd, it was my menyng and my wenyng [intention] for to have do the best for his persone and for his estate. Nevertheles I wote [understand] wel, and know wel nowe, that my dedes and my werchynges were ayeyns myn entente. Bot, be the way that my sowle schall to, of this pyntes, and of all othir the which that I have done of neclygence and of unkunnyng, It was never myn entent, ne my wyll, ne my thoght, fo to do thyng that schuld have bene distresse or harmyng ayeyns the salvation of my lyege Loordys persone.⁹³

By focusing on the disjuncture between intentions and material outcomes, Gloucester alluded to the statutory definition of treason as ‘compassing or imagining’ the king’s death, but he exploited the space between thought and deed to resist being named as a traitor. The phrase ‘compassing or imagining’ has been a topic of debate for legal scholars from the fifteenth century onwards, with opinions varying as to whether treason required a physical action, or whether thinking treasonous thoughts was enough.⁹⁴ Gloucester’s confession reflected cultural beliefs that if a man’s intentions and his thoughts were true, this inner trueness carried greater weight than any outer, tangible results. This was evinced, for example, in jury verdicts on unlawful killings, with acquittals being the norm unless a pre-meditated intent to murder could be proved.⁹⁵ Gloucester argued that he had done everything in the sincere belief that it was best for the king’s person and for the realm. His ‘deeds and workings’ contradicted this true intention, but this was evidence of negligence and stupidity, not treason. In essence, Gloucester claimed to remain a loyal subject

⁹³ Ibid., clause 9.

⁹⁴ Bellamy, *Law of Treason*, 102–3, 121–23; *Tudor Law of Treason*, 10–11; Rezneck, “Constructive Treason by Words.”

⁹⁵ As discussed in Chapter One.

because his purpose had not been to harm the king or his royal estate, but to urge him to rule for the common good of the realm.

Gloucester concluded with a plea for mercy that portrayed abject submission while also deploying rhetorical flourishes to appeal to Richard's sense of majesty. Addressing the king as 'my lyege and souverayn Loord' and as 'his heygh Lordeschipp', he asked that Richard 'of his heygh grace and benyngnytee accept me to his mercy and grace'.⁹⁶ This called on the king's unique power to pardon, derived from his sovereign embodiment of justice and mercy. The emotive content of this plea - and the attraction it was no doubt intended to hold for Richard - was heightened when Gloucester drew an analogy between the suffering of Christ on the cross and the compassion and pity of the Virgin Mary and Mary Magdalene, and Richard's own 'compassion and pytee'.⁹⁷ By aligning himself with the two Marys, Gloucester may have been deliberately trying to feminise himself and thereby stress his own abjection.⁹⁸ However, the image of the crucifixion also invoked Christ as redeemer and saviour and by creating this image as an analogue for his relationship with Richard, Gloucester appealed to Richard's exalted views of kingship. At the same time, Gloucester recalled reciprocal chivalric obligations between the king and his noble subjects by swearing to put his life, body, and goods at his lord's will and then begging for Richard's pardon 'as he that hathe ever bene ful of mercy and of grace to all his lyeges, and to all other that have naght bene so neygh unto hym as I have bene, thogh I be unworthy'.⁹⁹ By mentioning his familial relationship to the king,

⁹⁶ Giancarlo, "Murder, Lies, and Storytelling," 82, clause 10.

⁹⁷ Ibid.

⁹⁸ As Giancarlo has suggested: "Murder, Lies, and Storytelling," 83.

⁹⁹ Giancarlo, "Murder, Lies, and Storytelling," 82, clause 10.

Gloucester sought to strengthen his plea through reference to bonds of blood, but considered in the context of the masculine performance of lordship and oaths, this phrasing appealed equally to the knightly values that helped condition relations between kings and their greater subjects.

It is telling that Gloucester did not structure his confession through the discourse of treason law. He must have had a good deal of familiarity with how treason was legally defined, having led the prosecution of Richard's favourites in 1388, but he did not explicitly use the language of the 1352 statute or exploit loopholes left by its ambiguities to resist the Appeal.¹⁰⁰ Instead, his defence was voiced through the language of chivalry and manhood shared by his peers, and it suggests that this rhetorical strategy would have been convincing for an audience he most likely envisaged as the king and political community in parliament. His admission that he had contemplated withdrawing homage implied the knight's right to *diffidatio* when faced with bad lordship, and reminded his audience that the reciprocal relationship between the king and the men who helped him govern required loyalty and service from the political classes, but it also entailed prudent and just kingship. While Gloucester admitted offending the king, he described himself as acting 'untruly' and 'unkindly', terms that conjured up personal, homosocial bonds of knighthood and kinship rather than a more abstract constitutional relationship between state and subject. In his final supplication and plea for mercy, Gloucester argued that his intentions remained true, and this inner trueness made him a loyal man, not a traitor. These arguments proved useless, for by the time Gloucester's confession was presented in parliament the duke was already dead. However,

¹⁰⁰ Rogers, "Parliamentary Appeals of Treason," 100, 106.

the fact that his most compelling words in his own defence were not allowed to be voiced before the political community makes a powerful statement about the capacity of the vernacular to authenticate masculine speech in a legal and ethical sense as the words of a 'true man'.

The 1397 statute had created a definition of treason that was closer to the civil law concept of *lèse-majesté* than to the customary notions embedded in the 1352 statute, and it reinforced Richard's other attempts to recast English kingship along more imperial lines. Nevertheless, as the trials of Arundel and Gloucester show, this constitutional shift could be resisted by deploying chivalric and customary ideas, including the belief that it was the duty of loyal noblemen and knights to reform or even remove a bad king for the common good of the realm. In this constitutional model, sovereignty did not reside inalienably in an individual king's person but in the office of kingship; the two entities, the body natural of the king and the political body of the crown, could in extreme circumstances legitimately be separated. It was this argument that Henry of Lancaster used in 1399 to justify Richard's deposition, and he would go on to exploit ambiguities in the law of treason to legitimise his own kingship.

Judgment in parliament of the Counter-Appellants

The fall-out from the treason trials of 1397 began within days of Richard's deposition as, in Henry IV's first parliament, the Counter-Appellants were in their turn accused of treason and murder.¹⁰¹ The parliament roll

¹⁰¹ *PROME*, "Parliament of 1399," Pleas, items 1–16, RP iii:449–53 records the charges and judgment against the Counter-Appellants and the confession of John Halle, which implicated them in the murder of Gloucester. Those named were Edward duke of Aumale (formerly Rutland), Thomas duke of Surrey (formerly earl of Kent), John duke of Exeter (formerly earl of Huntingdon), John marquis of Dorset (formerly earl of Somerset), John earl of Salisbury, and Thomas earl of Gloucester (formerly Lord Despenser). For a useful précis of these complex

presents a full but neutral and legalistic account of events, giving little indication of the frenetic recriminations that disrupted proceedings. The *St Albans Chronicle* and *The Great Chronicle of London* supply many of the deficiencies and were based on inside knowledge.¹⁰² The treason trials of the 1399 parliament have attracted less interest from historians than the accounts of Henry's accession that preceded them. However, from a constitutional perspective the two events are closely related, because the exercise of royal justice in parliament gave Henry IV an immediate opportunity to perform legitimate kingship and to assert his right to supreme judicial authority. The trial narratives show that Henry enacted his new constitutional relationship with his subjects through the language of the law, but also through the performance of knightly manhood.

At the start of the session, the Commons petitioned the king to reconfirm the acts of the 1388 parliament, reverse the convictions of Gloucester and Arundel, and restore the nobles' heirs.¹⁰³ The king agreed to these requests, and he also made an undertaking that suggested he would revoke the expanded 1397 statute of treasons:

The king, rehearsing of his own will how in the said [1397] parliament ... several penalties of treason had been ordained by statute, with the result that there was no man there who knew how he ought to act, speak, or talk, for fear of such penalties, said that he wished to act in a quite different manner, and that at no time in the future would any treason be adjudged otherwise than had been ordained by statute in the time of his noble

events, based on contemporary chronicle accounts and on the parliament roll: *Chronicles of the Revolution*, 202–19.

¹⁰² Given-Wilson, introduction to "Parliament of 1399" in *PROME*. Walsingham's detailed account of the 1399 parliament was probably based in part on information from the bishop of Carlisle, who stayed at St Albans before and after the session: *Chronicles of the Revolution*, 200.

¹⁰³ *PROME*, "Parliament of 1399," Roll, items 66–68, RP iii:425.

grandfather King Edward the third.¹⁰⁴

It is clear from this wording that the ability of men to speak openly was at the heart of concerns about Richard's unjust rule. The implication was that Richard had acted above the law to punish the verbal discussion of renouncing homage or deposing the king as material acts of treason. Walsingham adds that the king 'said that it was entirely unreasonable for those men who spoke against the evil governance of the king or his irregular actions to be called or adjudged traitors'.¹⁰⁵ This interpretation locates Henry's promises regarding the 1397 treason statute within a broader context in which the noblemen of England's political elite believed they had a duty to counsel the king to rule justly, and also that in dire circumstances where the good of the realm was in jeopardy, they could exercise this obligation through *diffidatio*.

According to Walsingham, Henry promised that in future, men would not be called traitors unless they had 'been previously adjudged so by the ancient law of their virtuous ancestors'.¹⁰⁶ The slight difference in emphasis between the official account, which specifies that the 1352 statute of Edward III is the authoritative source of treason law, and the more generalised authority of the 'ancient law of virtuous ancestors' referred to by the chronicler is significant. Historians have tended to locate Henry's promise to reverse the 1397 expansions within the history of statute law, debating its role in establishing a common law doctrine of treason by words.¹⁰⁷ However, Walsingham's account indicates that for the political community of 1399, customary meanings of

¹⁰⁴ *PROME*, "Parliament of 1399," Roll, item 70, RP iii:426.

¹⁰⁵ *St Albans Chronicle II*, 247.

¹⁰⁶ *Ibid.*

¹⁰⁷ Thornley, "Treason by Words"; "The Act of Treasons, 1352," 108; Rezneck, "Constructive Treason by Words"; Bellamy, *Law of Treason*, 114, 122–23.

treason were equally significant. This locates changes to the legal definition of treason not simply within the narrow technical limits of statute law, but within the context of noble self-identity as inheritors of the values of knighthood. The chronicler's reference to the 'ancient law' as being that of 'ancestors' more generally, rather than just of Edward III, is grounded in expectations of a reciprocal relationship between the king and his nobility as his natural counsellors. It is a reminder that the 1352 statute had itself been the result of a compromise forced on Edward III by his noble subjects, who were reacting against his increasingly arbitrary findings of treason. Having witnessed Richard II behaving in the same arbitrary way in 1397, the political community in Henry IV's first parliament would doubtless have recognised the appeal to custom as a powerful tool for negotiating their relationship with their new king. However, the implicit conflict between the 'statute' of the official record and the 'ancient law' of noble progenitors in Walsingham's account exposes potential conflicts between legal and cultural interpretations of treason. This created possibilities for men to use the latter to deny or deflect allegations brought under the former.

It is important to note that while Henry's response to parliament had implied Richard's extensions to treason law would be revoked, there was no specific statutory confirmation of this. New legislation simply stated in general terms that treason would be adjudged by the terms of 1352.¹⁰⁸ This removed none of the ambiguities surrounding either the scope of treason, or the procedures by which it could be tried, and so left the new king considerable

¹⁰⁸ *Statutes*, vol. 2, 114 (c. x), 116 (c. xiv).

room to manoeuvre.¹⁰⁹ The Commons had also petitioned the king that in future, no one accused of treason should be deprived of a defence or an opportunity to speak on his own behalf. Henry's enactments ignored this request altogether.¹¹⁰

The tensions over the meaning of treason were not an abstract problem for debate amongst legal theorists, but were immediately confronted as the Counter-Appellants and other ringleaders of 1397 were accused of treason.¹¹¹ On 16 October, Sir William Bagot, a close associate of Richard II, was brought before parliament to answer questions about a document in which he had accused the duke of Aumale (formerly the earl of Rutland) and others of 'evil counsel' and of conspiring in the murder of Gloucester.¹¹² The text is in first-person English and in it, Bagot represented himself as an eyewitness to Richard's tyranny, with the king violently forcing those about him to do his bidding.¹¹³ Bagot's accusations included that he:

Hadde herde the kyng sey in diverse parliamentes and to diverse knyghtes that he wolde have his purpos and his luste [desire] of diverse maters ... or ellis he wolde dissolvyn his parliament And when it were dissolyd he made stryke of here hedes that were letters of his parliament and of is

¹⁰⁹ As shall be seen in Chapter Three, Henry was soon using the charge of verbally inciting the withdrawal of liege homage against men who questioned his legitimacy.

¹¹⁰ *PROME*, "Parliament of 1399," item 144, RP: iii, 425 (petition and response). Cf. Rogers, "Parliamentary Appeals of Treason," 123.

¹¹¹ The new legislation had prohibited the specific procedure of Appeal in parliament (the method used by the Counter-Appellants in 1397), but this still left scope for other procedures to be used: *Statutes*, vol. 2, 116 (c. xiv).

¹¹² Given-Wilson, introduction to "Parliament of 1399" in *PROME*; *Ibid.*, *Henry IV*, 157–59. The editors of the *St Albans Chronicle* note that Bagot's trial does not appear in the surviving rolls of parliament and that the chronicle is the best source for it: *St Albans Chronicle II*, 246, n. 342. The text of Bagot's bill was preserved in *Great Chronicle*, 76–77.

¹¹³ Upon Richard's fall, Bagot had escaped to Ireland but was captured and returned to London. He was in prison in the Tower when his testimony was produced. The description of the text as a 'bille' and Bagot's position as a man already under arrest for his actions during Richard's reign places it within the legal context of an approver's appeal.

purpos [he would behead anyone who opposed his parliament and his will]].¹¹⁴

Bagot portrayed Richard's actions in 1397 as a constitutional corrective to 1386-88, as he described Richard saying that he desired to see the crown of England held in the highest reverence and humbly obeyed by all his lieges, 'so that it myght be Cronycled perpetuelly that with witte and wysdome and Manhode he hadde recovered his dignyte Regalye and his honourable astate'.¹¹⁵ He then recounted a scene in which the duke of Norfolk (Mowbray) asked him about the fate of Gloucester. Bagot said he knew nothing 'by my trouthe But the peple saithe ye have murdered hym'.¹¹⁶ According to Bagot, Norfolk denied this, claiming that when he presented himself in the 1397 parliament in response to Richard's writ, he had been in fear of his life because Gloucester was not yet dead.¹¹⁷ Bagot continued by saying Norfolk had pointed the finger at Aumale and 'men of othir certein lordes', implying they had murdered Gloucester on Richard's orders, and that Norfolk had told him:

Ther was no man in the Reaume of Englund that the kyng was somuch holde to as to the Duke of Aumarle[,] For he sette hym on the first purpos of takyng of the lordes and of the parliament and all the forfeitures and of alle other thinges.¹¹⁸

Unsurprisingly, Bagot's sensational allegations provoked a storm of protest from Aumale and the other Counter-Appellants, which was dramatically

¹¹⁴ *Great Chronicle*, 76.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ This was almost certainly a lie on Norfolk's part, because as discussed in reference to Gloucester's condemnation, the evidence points to the duke already being dead a week or more by the time Norfolk arrived from Calais.

¹¹⁸ *Great Chronicle*, 76–77.

expressed through chivalric ritual. Aumale refused to accept Bagot's charges 'but rose to his feet and threw his hood into the middle, challenging him to a combat, saying that he would prove his innocence in a duel'.¹¹⁹ This gesture was followed by similar challenges from the dukes of Surrey and Exeter, who offered bodily combat against anyone who accused them of conspiring in Gloucester's murder or of giving 'evil counsel' to Richard.¹²⁰ The parliament roll was less dramatic in its narrative than the chroniclers, but it records the lords' defensive postures, including that Surrey 'was ready to defend himself and to acquit himself as a loyal knight'.¹²¹ The throwing of hoods and the challenge to battle anchored the lords' words and gestures within the performative sphere of knightly trial by combat.

Henry IV was able to calm the waters as he made the lords withdraw their challenges by retrieving their hoods. However, almost immediately, Walter, Lord FitzWalter and Thomas Lord Morley then 'offered to fight a duel with anyone who wished to declare that the duke [of Gloucester] had been a traitor'.¹²² FitzWalter and Morley had both served under Gloucester and had been knighted by him in 1380.¹²³ Their challenges were still standing when John Halle, a valet serving Norfolk, was brought into parliament to stand trial for his part in the murder of Gloucester. Halle's confession was recorded in third-person French and features the question-and-answer pattern of an

¹¹⁹ *St Albans Chronicle II*, 249.

¹²⁰ *Ibid.*, 250–51.

¹²¹ *PROME*, "Parliament of 1399," Pleas, item 4, RP iii:450.

¹²² *St Albans Chronicle II*, 255. The chronology is rather confused in both the parliament roll and the chronicle accounts, but the challenge of Fitzwalter and Morley occurred soon after Bagot's bill had been read and the first group of challenges had been made and withdrawn.

¹²³ *St Albans Chronicle II*, 254, n. 353; Goodman, *Loyal Conspiracy*, 124. As shall be seen, Morley maintained a fierce loyalty to the dead duke.

interrogation.¹²⁴ It confirmed the grim details of the duke's death, revealing that Halle and several other men had smothered him with a featherbed.¹²⁵ Halle said the deed had been done on the orders of Norfolk and Aumale, and that Norfolk had told him 'the said former king [Richard] had commanded him [Norfolk] to murder the said duke of Gloucester'.¹²⁶ Halle added that he had initially refused to have any part in the deed, but Norfolk 'gave him a great blow on the head' and threatened his life if he did not do as commanded.¹²⁷ Having confessed, Halle was immediately executed and the exemplary punishment inflicted on him marked him out before the political community as a traitor, and not simply as a murderer. He was dragged from the Tower to Tyburn where he was disembowelled and his entrails burned before him. He was then hanged, beheaded, and quartered, and his head sent for display at Calais.¹²⁸

The parliament roll provides only the details of Halle's confession and death sentence, but Walsingham also gives us the reactions of the nobles.¹²⁹ Again, accusations of treason flew, with FitzWalter, Morley and 'almost all the earls and barons' throwing down their hoods in challenge to Aumale.¹³⁰ Once more, Henry restored order, insisting that all the charges must be addressed with proper deliberation. Accordingly, on 29 October formal charges against Aumale, Surrey, Exeter, the marquis of Dorset, and the earls of Salisbury and

¹²⁴ Halle had been questioned while being held in the Constable's chamber within the palace of Westminster. The record says he confessed before James Billingford, clerk of the crown, and Henry Percy, earl of Northumberland and the new Constable of England.

¹²⁵ For the record of Halle's trial: *PROME*, "Parliament of 1399," Pleas, items 11–16, RP iii:452–3. Also implicated in the murder were William Serle, a valet of King Richard's chamber, and one Frauncis, valet of the chamber to Aumale.

¹²⁶ *PROME*, "Parliament of 1399," Pleas, item 11, RP iii:452.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*, item 16, RP iii:453.

¹²⁹ *St Albans Chronicle II*, 258–61.

¹³⁰ *Ibid.*, 261

Gloucester were read out in parliament.¹³¹ FitzWalter then repeated his challenge to Aumale, and this was followed by a challenge from Lord Morley against the earl of Salisbury. According to Walsingham, Morley accused Salisbury of having ‘acted falsely and equivocally, and so betrayed the confidences of [Gloucester] to the king, and the king’s confidences to the duke. Although the duke had great trust in your loyalty, you cunningly arranged for him to be indicted’.¹³² This description captures in vivid terms the chivalric interpretation of treason as a personal betrayal of masculine bonds. Morley’s challenge was not withdrawn on this occasion, and instead the case was referred to the Court of Chivalry.

The following section will examine this action between Morley and Salisbury in the Court of Chivalry but first, we turn to the closing acts in the 1399 parliament. Judgment against Aumale and the other lords was given on 3 November, and it obliquely confirmed Walsingham’s account of the knightly challenges when it noted that no one said anything in reply, ‘except Lord Morley to the earl of Salisbury, and Lord FitzWalter to the duke of Aumale’.¹³³ The judgment, read out by Chief Justice Sir William Thirning, is highly unusual for it is written not in Latin or French, but in English. According to later fourteenth-century norms, formal judgments were recorded in the authoritative Latin, with witness testimony and confessions usually recorded in third-person French.¹³⁴ English appears very rarely, such as in the cases of the duke of Gloucester’s

¹³¹ Norfolk had died in exile in September 1399.

¹³² *St Albans Chronicle II*, 267.

¹³³ *PROME*, “Parliament of 1399,” Pleas, item 9, RP iii:451. The full text of the judgment comprises items 9 and 10.

¹³⁴ It is interesting that Walsingham translated the text into Latin when he recorded it in his chronicle. This may reflect general expectations concerning linguistic authority in the context of legal judgments: *St Albans Chronicle II*, 268–77.

confession or in Bagot's bill. In those examples, the vernacular worked to authenticate the veracity of the textual record by mimicking the linguistic authority of oral English in common law courts. Commenting on the use of English in the parliament roll to record Gloucester's confession and the renunciation of homage delivered to Richard II in 1399, Giancarlo has noted that these texts 'stand out in the record as small islands of the vernacular in a specific linguistic environment that was itself something of an island. Thus we might fairly ask what they are doing there and what purposes they serve'.¹³⁵ The judgment against the Counter-Appellants represents another such island. It is unlikely that the use of English for this document was mere linguistic pragmatism, for it is bracketed on either side in the roll by the charges against the lords and by Halle's trial, both of which are in French. When Justice Thirning of the Common Bench recited this text before the political community in the aural vernacular of royal courts, and English was used to authenticate the written record of his oral performance, it placed the judgment and therefore the king's actions in rendering it within the framework of common law. Thus it actively helped to negotiate Henry's delicate relationship with his new subjects. On the one hand, it presented him as a king who would rule according to law rather than considering himself above it, as Richard had allegedly done. On the other hand, it took great care to delineate and preserve his prerogative powers.

In this regard it is significant that Henry engaged directly in the judicial process by personally questioning each of the Counter-Appellants and ordering them, 'on the faith and the allegiance that they owed to him, to tell him the truth'

¹³⁵ Giancarlo, "Murder, Lies, and Storytelling," 79.

about 1397.¹³⁶ Having conducted these inquiries, Henry said he would take counsel with his lords and senior officials, and would then 'proceed as he thought best, according to their advice'.¹³⁷ At this point, Henry had been king for just over two weeks and he was no doubt sensitive to his still-tenuous position. The judgment exploited the rhetorical and linguistic authority of the common law to construct him as a king who accepted the expectations of the political community that he would be limited by law and guided by counsel. However, in practice it left Henry considerable freedom of action by also stressing his sovereign embodiment of justice and grace. The text states that because the Counter-Appellants' actions had been 'contrary to the course of the common law', they could not be punished through the common law 'but only by the king and his lords, peers of his realm, in the high court of parliament'.¹³⁸ Then, although he said he would take the advice of his lords, Henry asserted his prerogative by saying he would make his final judgments by his own discretion. Further, he reserved 'always to himself the dignity of his grace and mercy as it belongs to his royal estate, and to which no man gives him the title', stressing that the power to pardon belonged 'only to himself, above all other estates, on account of his regality'.¹³⁹

Therefore while the judgment carried a constitutional gloss of counsel and consent, Henry essentially used it to claim the power to convict 'on the king's record'. The parliament of 1399 had undone the events of 1397 and restored the judgments of 1388. Legislation passed in 1388 had declared that

¹³⁶ *PROME*, "Parliament of 1399," Pleas, item 9, RP iii:451.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*, RP iii:452.

anyone who tried to reverse those convictions should themselves be executed as traitors, leaving the Counter-Appellants in a very exposed position.¹⁴⁰ The judgment of 1399 argued that if the 1388 legislation were to be applied, not only the Counter-Appellants but also many others could be branded as traitors. Therefore, Henry declared that the fate of the Counter-Appellants should not be decided by trial but that he would exercise his royal prerogative to judge them 'with mercy and grace, according to his discretion'.¹⁴¹ He then decreed that Aumale and the others would not at that time be executed as traitors but instead be degraded from the titles bestowed by Richard in 1397 and would forfeit all the possessions they had thereby gained. If in future they were found to be 'adherents of Richard who was king and is deposed', they would be summarily executed as traitors.¹⁴²

The sentence passed against the lords has been seen as a practical tactic, providing Henry with a way to end the bloodletting of the final years of Richard's reign. From a pragmatic perspective, the end to violent division amongst the political elite was an essential prerequisite to enable Henry to secure the throne. This was acknowledged in the judgment, which stressed that the sentence against the lords had to 'guarantee safety and security primarily to the king's high estate'.¹⁴³ However, the text also did strategic political work to negotiate the relationship between the new king and his political subjects. It made direct rhetorical and linguistic connections between Henry's 'challenge' for the throne and his promise to rule according to law and for the common

¹⁴⁰ *PROME*, "Richard II: Parliament of February 1388," Roll, item 40, RP iii:250.

¹⁴¹ *PROME*, "Parliament of 1399," Pleas, Item 9, RP iii:452.

¹⁴² *Ibid.*, item 10, RP iii:452.

¹⁴³ *Ibid.*, item 9, RP iii:451.

profit of the realm, and his first judicial acts as a crowned king. In doing so, it legitimised the union between his usurping body and the body politic of the crown. While it positioned Henry as a king who ruled according to law, it also articulated his embodiment of the prerogative powers of justice and mercy, giving him the freedom to intervene in future cases of treason in ways that redefined the law and the nature of loyal political subjecthood.

The challenge between Morley and Salisbury, which the king had assigned to his prerogative Court of Chivalry, provides further evidence for how Henry was exploiting the opportunities afforded him by noble conflicts over treason to reinforce his claim to kingship.¹⁴⁴ In parliament, Morley had accused Salisbury of betraying the duke of Gloucester by revealing his secret counsel to Richard II and then by falsely appealing him of treason, thereby contributing to Gloucester's wrongful death. This understanding of treason was shaped by customary ideas about knightly loyalty, which were epitomised in Morley's repeated allegation that Salisbury was a '*faux chivaler*'.¹⁴⁵ However, when the Court of Chivalry was called into session on 11 November, Morley introduced an *addicion* that transformed the nature of Salisbury's crime by incorporating new charges: that Salisbury had advised and assisted Richard II to destroy 'the lords

¹⁴⁴ This was possible because the challenge was personally offered and accepted, and because it involved specific allegations, in contrast to the generalised nature of the other challenges in the 1399 parliament.

¹⁴⁵ This terminology appears throughout the trial record: "A True Copy of the Roll of Proceeding in an Appeale of Treason before the Conestable and Marshall between Thomas Lord Morley, Appellant, and John De Montague, Earle of Salisbury, Defendant, Anno Primi Henrici Quarti," ed. M. H. Keen and M. Warner, in *Chronology, Conquest and Conflict in Medieval England. Camden Miscellany XXXIV* (London: Cambridge University Press for the Royal Historical Society, 1997), 169–95 (hereafter cited as *Morley v. Salisbury*, translations are my own). The record is transcribed and edited from TNA (PRO) State Papers Miscellaneous 9/10. For the manuscript history and background to the case, see M. H. Keen and M. Warner, "Introduction. Morley vs. Montagu (1399): A Case in the Court of Chivalry," in *Chronology, Conquest and Conflict*, 147–68. This aspect of the case is discussed in McVitty, "False Knights and True Men," 473–74.

and the *communalte* of the realm' and had engaged in other actions 'against the *chose publique* and common profit of the realm'.¹⁴⁶ The term *chose publique* is a direct translation of the Latin term *res publica* and it expressed an abstract notion of statehood and public authority. In the early fifteenth century, the term *communalte* likewise invoked ideas of an inclusive and broadly representative national political community.¹⁴⁷

The Court's treatment of these additional charges provides important insights into how constitutional issues were being negotiated through the laws of treason in the period immediately following the Lancastrian usurpation, with interpretations of treason covering the spectrum from a personal knightly betrayal to a crime against the state.¹⁴⁸ At the same time, it illuminates the way allegations of treason mounted under one construction could be evaded or contested by appealing to the other. Throughout the proceedings, both parties engaged in elaborate textual and gestural performances of knighthood that framed treason as a violation of masculine trueness, characterised by false speech and oath-breaking.¹⁴⁹ However, this customary construction of treason was complicated when Morley's *addicion* defined Salisbury's activities as treasonous acts against the public authority of the state.

On 11 November, proceedings opened with the formal presentation of

¹⁴⁶ *Morley v. Salisbury*, 173: 'C'est assavoir conseilant, pursuivant et consentant a dit roy a destruire les seigneurs et la comunalte de roialme ... et autrement encontre chose public [sic] et commune profit del roialme'.

¹⁴⁷ Watts, "Public or Plebs: The Changing Meaning of 'The Commons,'" 244–45.

¹⁴⁸ An argument presented in E. Amanda McVitty, "Traitor to the *Chose Publique*: Negotiating Constitutional Conflict through the Law of Treason, 1399–1402", in *Fourteenth Century England IX*, ed. James Bothwell and Gwilym Dodd (Woodbridge, Suffolk: Boydell Press, 2016), 149–67.

¹⁴⁹ The perception of treason as a personal betrayal and violation of knighthood is also reflected in other cases from the Court. See the examples discussed in Keen, "Treason Trials" and Russell, "Trial by Battle in the Court of Chivalry." The role of gender and notions of manly honour in the construction of treason is examined in detail in McVitty, "False Knights and True Men."

Morley's original appeal, which alleged that Salisbury:

Was of the counsel of Thomas, duke of Gloucester, and rode between Richard, late king of England, and the said duke as a spy and knew the plans of both parties, and then as a false knight, revealed his [Gloucester's] plans and traitorously deceived the duke.¹⁵⁰

The record then describes Morley repeating his knightly performance in parliament by throwing down his gauntlet to back his words, and Salisbury's denial and gauntlet-throwing in response. After legal counsel had been assigned to both parties, Morley had then placed before the Court a second written testimony detailing new allegations he wished to make relating to his appeal.¹⁵¹ The text of this *addicion* is written in the first person, and this usage along with the term *dire* places its contents into the context of spoken testimony in a royal court, and thus pre-emptively authorised Morley's words as truth spoken under oath. Although the written record is in French, it is plausible to assume oral proceedings were heard in English, given the aural use of the vernacular in other royal courts including parliament.¹⁵² In his opening statement, Morley positioned himself as a loyal knight acting on behalf of the dead duke by describing himself as 'I, Thomas lord Morley, ally to Thomas, duke of Gloucester'.¹⁵³ He repeated his original charge against Salisbury but then expanded on the nature of Salisbury's alleged treasons beyond the immediate

¹⁵⁰ *Morley v. Salisbury*, 170: 'De ceo q'il fuist del counsaill de Thomas, duc de Goucestre, et chivacha parentre Richard, nadgairs roy d'Engleterre, et le dit duc come une espie, et conust le counseill d'ambideux parties, et puis come un faux chivaler discovera son counsaill et traierousement disceyva le dit duc'.

¹⁵¹ *Ibid.*, 171.

¹⁵² Although the nobles present, such as the king's presiding officers Henry Percy, the Constable of England, and the Marshall, Ralph, earl of Westmorland, were likely able to speak French, a number of other, more minor functionaries and clerks were named in the record. It is likely that for these non-noble men, English rather than French served as their working language.

¹⁵³ *Morley v. Salisbury*, 173.

context of personal betrayal of his lord by adding that Salisbury, having been of the secret counsel ('conseil covigne') of Richard II in 1397-8, had supported the former king in many evil and false plans against the *chose publique* and common profit of the realm.¹⁵⁴ For these reasons, Salisbury 'was and is false and a traitor and has done falsely and traitorously'.¹⁵⁵ After this new set of charges was read to the court, Morley threw down his glove as endorsement of the truth of his words. To this, Salisbury replied in his own voice ('par parole de sa bouche propre') that Morley lied falsely.¹⁵⁶ He, too, then threw down his glove and declared he was ready to defend his words according to the law and custom of arms.

Between this initial hearing on 11 November and the case's denouement in early December, the court met several more times to debate the admissibility of Morley's new charges. Salisbury argued repeatedly that the matter in the *addicion* must be considered null and void, because it was unrelated to Morley's original challenge in parliament and because it lacked required detail of times and places. Salisbury also argued that Morley had failed to show his interest, in a legal sense, in an appeal of treason that did not involve him personally (the original allegation having comprised only Salisbury's betrayal of Gloucester).¹⁵⁷ Salisbury concluded by demanding that the case be thrown out on the grounds that it was not legally compliant. While the influence of lawyers can be

¹⁵⁴ Ibid.: 'estoiez le dit aan et l'aan adunqe prochein ensuant de conseil covigne, et consent en plusours purpos malveis et fauces ovesque le dit roi [Richard II] encontre le roialme et commune profit d'ycelle.... c'est assavoir conseillant, pursuiant et consentant a dit roy a destrurier les seigneurs et la comunalté de roialme ... et autrement encontre chose public et commune profit del roialme'.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Salisbury's objections were repeated multiple times throughout the record. The clearest and most complete statement of the points at issue was presented in court on 20 November: *Morley v. Salisbury*, 176–79.

discerned in this debate over technicalities, these advocates were named only once.¹⁵⁸ By contrast, the trial record privileges the voices of Morley and Salisbury, describing in detail their verbal and gestural performances, and repeatedly using the phrase ‘par parole de sa propre bouche’ to stress that what was at issue was the veracity of their own words, and therefore their masculine honour and status as true men.

For Morley’s appeal to progress despite Salisbury’s objections, he had to show why his original allegations regarding the betrayal of Gloucester should be considered treason, and how the charges in the *addicion* related to that original crime. By examining his strategy, we see how ideas about treason as chivalric betrayal could complement more abstract conceptions of treason as a crime against the state. Morley began by drawing the Court’s attention to values of service and honour that were fundamental to the performance of knighthood. As evidence for how Salisbury was ‘of the counsel’ of Gloucester, he described how in a previous action in the Court of Chivalry involving Salisbury’s father, Salisbury had gone to Gloucester for help and support, and had offered Gloucester his service in gratitude.¹⁵⁹ His service then moved from the social to the military sphere when, as a knight, he was formally retained by Gloucester and went with him on campaign to Prussia and from then on, became part of the duke’s inner circle (‘et allors and après privé de son conseil’).¹⁶⁰ Morley continued by describing how Salisbury, having become of the loyal counsel of

¹⁵⁸ Thomas Stokes acting for the appellant and Laurence de Stapilton for the defence: *ibid.*, 172.

¹⁵⁹ *Ibid.*, 182. This had been a dispute over armorial bearings.

¹⁶⁰ *Ibid.*, 182, 186. This most likely refers to the duke of Gloucester’s participation in a crusade of 1390-91 in support of the marshal of Prussia against Poland-Lithuania, parts of which were still pagan at that time. See *The Westminster Chronicle, 1381-1394*, ed. and trans. L. C. Hector and Barbara F. Harvey (New York: Oxford University Press, 1982), 444–45 at n. 1, 478–84.

Gloucester, abused his trusted role as a member of Gloucester's knightly retinue to spy on him for Richard II, ultimately becoming party to the false appeal of treason of 1397. Finally, Morley countered Salisbury's objection that the matters in the *addicion* were unrelated to the original appeal and therefore inadmissible by arguing that it was precisely because Salisbury was of the trusted counsel of both parties (Gloucester and Richard II) that he had been able to advise and incite the former king to destroy the leading nobles of the realm on false grounds, and to take other actions against the *communalte, chose publique*, and common profit.¹⁶¹

Morley's initial challenge in parliament had depicted Salisbury's treason in chivalric terms and by claiming to speak on behalf of Gloucester, he represented himself as a loyal knight who was willing to put his own body on the line to defend the honour of the dead duke. This was eminently appropriate considering that it was Gloucester who had elevated Morley to the status of knighthood in 1380, and Morley had been part of his affinity from that time onwards.¹⁶² Morley had reinforced this narrative by pointing out Salisbury's own violations of knightly fidelity. However, in the *addicion* he sought to redefine the terms of engagement by introducing a potentially more potent construction of treason as a crime against the public authority of the state. Why this change in tactics? Firstly, Morley had his own reasons to deflect the Court from focusing too intently on matters of chivalric betrayal. Although he was closely allied with Gloucester and seemed genuinely horrified at his murder, his

¹⁶¹ *Morley v. Salisbury*, 183: 'Coment la dicte addicion et emergeent, incident, dependant ou connexé a la matier principall, le dit Thomas dist et declare qe come en la matier principall est contenuz qe le dit [Salisbury] conust le conseil d'ambez deux parties... il conseila et consenta au dit Richard a destruire fausement les seigneurs et la comunalté du dit roialme... et autrement encontre chose public et comune profit de la dite roialme'.

¹⁶² *St Albans Chronicle II*, 254, n. 353; Goodman, *Loyal Conspiracy*, 124.

hands were not clean because in 1397, as lieutenant to the Marshal of England he had carried out the execution of the earl of Arundel.¹⁶³ Accounts of Arundel's death suggest he was widely seen as a martyr to Richard II's tyranny, and a short-lived saint's cult had even sprung up around the dead earl.¹⁶⁴ The Court of Chivalry no doubt took a more pragmatic view of Morley's duties as lieutenant. Nevertheless, considering the prominent place given to Arundel's unjust trial and wrongful execution in the articles of Richard II's deposition, it is plausible to assume that anyone who had so directly participated in those events might be considered already tainted when it came to their own claims to knightly honour. Secondly, by seeking to connect an individual act of betrayal to the more abstract idea of treason as attacks on the *chose publique* and the community of the realm, Morley's *addicion* elevated this case from a personal matter of honour between two noblemen to the status of a crime that directly impacted the king himself as the embodiment of sovereign authority. If Morley's motivation in pursuing this case was personal revenge (as seems likely given its roots in the 1397 and 1399 parliaments), then he had a better chance of achieving his aim if he could convince Henry that as king, he had a vested interest in the outcome.¹⁶⁵ It is surely no accident that, just weeks after Richard II's deposition and Henry IV's coronation, the language of the *addicion* mirrors both the articles of deposition and Henry's words to parliament on claiming the throne. This can be

¹⁶³ PROME, "Concerning Richard earl of Arundel" in "Parliament of September 1397," RP iii:377.

¹⁶⁴ The most detailed and dramatic account is that of Walsingham: *St Albans Chronicle II*, 91–97. On the cult, see Adam Usk, 30–31; John M. Theilmann, "Political Canonization and Political Symbolism in Medieval England," *The Journal of British Studies* 29 (1990): 261–63; Simon Walker, "Political Saints in Later Medieval England," in Britnell and Pollard, *The McFarlane Legacy*, 81.

¹⁶⁵ Henry may also have had personal motives for supporting Morley against Salisbury, given Salisbury's role in his banishment in 1398: Keen and Warner, "Introduction. Morley vs. Montagu," 158–59.

seen in Morley's description of Salisbury aiding and abetting Richard's tyranny by helping him to destroy the community of the realm by extracting enormous ransoms and extorting his subjects in other ways (a reference to the charters of pardon and forced loans of 1397-98).¹⁶⁶ The construction of Salisbury's treason as an attack on the common profit of the realm also echoed Henry's promise that he would not disinherit or otherwise judicially punish any of his subjects, excepting those persons who had acted against 'the gude purpose and the commune profyt of the rewme'.¹⁶⁷ By portraying Salisbury's actions as a crime against the community of the realm and not simply a crime against the duke as an individual, Morley was offering his new monarch the ideal opportunity to perform legitimate kingship before his leading political subjects, with the public authority he claimed to embody most clearly represented by his sovereign power to execute justice.

Salisbury was given several days to respond to Morley's new allegations and on 2 December, he presented the court with a bill in which he mounted a vigorous defence on all points. He began by once again seeking to have the case thrown out based on technicalities.¹⁶⁸ He then moved to a more personal defence on specific points. Amongst other objections, he declared that Morley had failed to show how Gloucester had been falsely appealed of treason, before what judge or in what court, or how this had been the cause of his death.¹⁶⁹

¹⁶⁶ *Morley v. Salisbury*, 173. Compare these charges to the articles of Richard II's deposition: *PROME*, "Parliament of 1399," Roll, articles 24, 31, 38, RP iii:418-20. For the pardons and loans: Helen Lacey, "'Mercy and Truth Preserve the King': Richard II's Use of the Royal Pardon in 1397 and 1398," in *Fourteenth-Century England IV*, ed. J. S. Hamilton (Woodbridge, Suffolk: Boydell & Brewer, 2006), 124-35.

¹⁶⁷ *PROME*, "Parliament of 1399," Roll, item 56, RP iii:423.

¹⁶⁸ *Morley v. Salisbury*, 184-85.

¹⁶⁹ *Ibid.*, 185.

(This was clearly obfuscation, given that everyone present knew the circumstances of Gloucester's murder and his post-mortem conviction as a traitor.) As to the additional charges regarding Salisbury's military service with Gloucester, his betrayal of the duke to Richard II, and his false appeal of treason, Salisbury baldly denied each of these and without attempting to offer explanations or excuses, he declared simply 'ne confesse mye, mais outrement disconfesse'.¹⁷⁰ He then made a striking strategic move by concluding:

And since the matter of the first appeal concerns the claim of an injury inflicted on an individual person, [and] the matter claimed in the *addicion* concerns allegations about the destruction of the *communalté* against the *chose public* [*sic*], the said two matters cannot by any law be assumed to be related or brought together as they are in the *addicion*, nor are they able to be so conjoined, but are at all times separate.¹⁷¹

Salisbury's defence rested on an argument that there were two types of treason - against 'un singuler persone' and against the *chose publique* - that could not be treated as the same category of offence. This approach sought to exploit ambiguities in the definition of treason by driving a wedge between customary perceptions of treason and newer political imperatives to construct treason as a crime against the state. However, his strategy failed and a shift towards the more expansive definition of treason was made clear in the Court's final decision, which came on 5 December. The parties had assembled in the king's private chamber ('au cost du lit du roy') at the royal manor of Kennington, spatial symbolism that expressed Henry's ultimate personal authority in this

¹⁷⁰ Ibid., 186–87.

¹⁷¹ Ibid., 188: 'Et depuis qe la matier del principall appell est concernant l'enjurie pretense fait a un singuler persone, [et] la matier pretense en la pretence addicion est pretense en destruccion del comunalte encontre chose public, des ditz deux matiers ne puist par null loy estre supposé conjunccion n'ensemble par voie d'addicion, ne purrount conjoynre, mais sont tout foitz separetez'.

court of prerogative justice.¹⁷² After re-reading all the evidence, the Constable declared that the parties should engage in a trial by combat to prove the central charge that Salisbury had conspired to destroy the ‘chose publique et comune profit du roialme’.¹⁷³ All lesser matters were to be held in abeyance.

At this point, the case had been distilled down to two competing verbal testimonies, contained in the bills that were now formally signed by the appellant and defendant. These signed bills were then inserted into the two lords’ respective gauntlets, and the gauntlets were twisted together as the Constable declared that the case would be decided by battle.¹⁷⁴ This element of the ritual signified that it was the truth of the first-person testimonies contained in these bills that God would ultimately judge.¹⁷⁵ This implicitly supported the continuing validity of a judicial construction of treason shaped by the values of chivalry and masculine honour (the ‘corage et honesté de chivalrie’ as the Constable had put it).¹⁷⁶ However, the combat was to be fought not over an insult to or attack on an individual nobleman, or even an attack on the person of the king, but over injuries to the *chose publique*. Henry’s direct influence on this decision can be inferred from his personal presence and it served more than one purpose for a usurping king eager to validate his legitimacy. Certainly, it marked a formal recognition of his right to the final adjudication in disputes concerning his most powerful subjects. Perhaps more important, though, were

¹⁷² Ibid., 189.

¹⁷³ Ibid., 190.

¹⁷⁴ Ibid., 191.

¹⁷⁵ As is made clear in the Constable’s formal declaration that he admitted the cause to God to judge by battle, ‘as vicar in his [God’s] stead, on the crime contained in the second part of the said bill of addition and the response made to it’: *ibid.*, 191.

¹⁷⁶ Ibid., 180: ‘Sicome il semble a mon dit seigneur le Conestable plus tost de corage et honesté de chivalrie que par autre due deliberacion’.

the constitutional implications of a construction of treason that invoked the civil law notion of *lèse-majesté* through references to actions against the *chose publique* and the *communalité*. In the short term, this helped to bolster Henry's claim to exercise sovereign power as the embodiment of public authority. However, by refiguring treason as a crime against the public authority of the state and the national community of the realm, and not simply against the individual person of the king, it also signalled a more enduring shift in the relationship between the English state and its political subjects.

The Epiphany Rising and its aftermath

The day and place for the combat between Morley and Salisbury was set down as 14 February, 1400 at Newcastle-on-Tyne in the presence of the king.¹⁷⁷ However, the battle was never fought because Salisbury was killed in early January during the Epiphany Rising. This was organised by Salisbury, the earl of Kent, the earl of Huntingdon, Thomas Lord Despenser and other disaffected members of Richard II's inner circle, with the intention of freeing Richard from prison and restoring him to the throne.¹⁷⁸ With Henry forewarned of the plot against him, the rising was stillborn and the main conspirators were forced to flee. On or about 8 January, Salisbury and Kent were captured and killed by the

¹⁷⁷ Ibid., 192.

¹⁷⁸ After being deposed, Richard II had been held for a time in the Tower. After this rising on his behalf, he was moved to more secure custody at Pontefract. It was there that he died, probably murdered on Henry IV's orders, sometime in February. For general accounts of the rising and Richard's death, see Given-Wilson, *Henry IV*, 160–65; John Lavan Kirby, *Henry IV of England* (London: Constable, 1970), 86–90; James Hamilton Wylie, *History of England under Henry the Fourth. Vol. I, 1399-1404* (London: Longmans, 1884), 92–111. The most detailed chronicle accounts, shaped by the authors' opposing political perspectives, are provided in *St Albans Chronicle II*, 282–301; *Chronique de la Traïson et Mort de Richart Deux Roy Dengleterre*, ed. Benjamin Williams (London: The English Historical Society, 1846), 229–51 (hereafter cited as *Traïson et Mort*). See also Adam Usk, 88–91.

locals of Cirencester.¹⁷⁹ Despite the arrival of Lord Berkeley, who had been sent to arrest the nobles and take them to the king for judgment, they were 'beheaded at the hands of the common people'.¹⁸⁰

Henry's swift and repressive response to this act of mob justice is revealing. Although Salisbury's participation in an armed rising now unquestionably marked him as a traitor, the actions of the Cirencester locals might themselves be perceived as treason for usurping the king's power. Not only did they appropriate Henry's prerogative right to execute judgment on his subjects, they also threatened to execute his judicial representative, Lord Berkeley, 'if he prevented them from being taken to the men who were traitors to the king of England'.¹⁸¹ Their attitude reflected a customary interpretation of treason that saw it as limited to direct attacks on the king's person, rather than as a crime against the public authority of the state. According to Walsingham (whose account is broadly corroborated by the other chronicle and record accounts), the Epiphany rebels were planning:

to make a sudden attack upon the king at Windsor Castle, under the pretext of taking part in the Christmas games and tournaments, and to kill him cruelly with all his children.¹⁸²

This narrative portrays the traitors abusing the king's trust and exploiting their access to his personal presence in order to murder him in his own home. The locals of Cirencester seem to have defined the crime of treason through this

¹⁷⁹ *St Albans Chronicle II*, 290, n. 400.

¹⁸⁰ *Ibid.*, 288-91, quote at 291. The executions probably took place on 7 or 8 January: *Adam Usk*, 88-89, n. 3. Richard II's half-brother John Holland (then the earl of Huntingdon) and Thomas Lord Despenser were also captured, in Essex and Bristol respectively. They were summarily executed at the behest of crowds of local people over the objections of the king's officers, who had been sent to bring them into custody: *ibid.*, 290-97.

¹⁸¹ *Ibid.*, 291.

¹⁸² *Ibid.*, 285.

customary lens of personal betrayal, for they did not consider their threats against Berkeley or their extrajudicial murder of the king's enemies as falling into the same category of offence as the actions of Salisbury and Kent. Nevertheless, when these events are considered in light of statutory definitions of treason, the townspeople's actions could certainly qualify as treason because they prevented Lord Berkeley from carrying out the king's commands. Moreover, their temerity in appropriating royal judicial power could be interpreted as a form of accroachment. Henry had only recently usurped the throne of the still-living Richard, so it was essential to ensure that the political community accepted him as the legitimate embodiment of sovereignty and public authority in the realm. Henry therefore needed to swiftly re-assert his control over events and decisively define treason on his own terms rather than on those of his subjects.

The king achieved this with a series of measures by which he exercised his royal prerogatives to pardon or to condemn. On 9 February, Henry summoned his leading subjects, including over 200 knights and esquires, to a Great Council designed to restore peace and secure his rule.¹⁸³ Amongst the steps taken was the establishment of commissions staffed by sheriffs and justices of the peace, which were tasked with rounding up and punishing any malefactors still at large. However, in recognition of the potential for such proceedings to get out of hand as neighbours used them 'per malice' to falsely accuse each other, the commissions were paired with a general pardon that excluded only 'certain principal persons according to the good and gracious

¹⁸³ "Minutes of Council, February, 1 Henry IV," in *PPC*, 107–13. Translations are my own.

discretion of the king'.¹⁸⁴ It is interesting that the peace commissions and general pardon were described as being 'for the quiet and tranquillity of the realm and the security of the people likewise *in this new world*' ('en ceste nouvelle monde'), an oblique reference to Henry's need to rapidly secure recognition of his regnal authority in the wake of his unprecedented seizure of power.¹⁸⁵ Like the chroniclers, the king and his officials were deeply perturbed by the way ordinary people had so violently appropriated royal judicial authority during the rising. While noting that the commons had executed known traitors, the king's council described these subjects as having 'become so wild that they cruelly and wilfully destroy many liegemen of the king with no process of law'; this was a dangerous precedent that, if allowed to go unpunished, threatened peril to the realm by derogating from the estate of the king.¹⁸⁶ Henry therefore commanded that in future, anyone who presumed to behead, kill, or destroy his lieges should be adjudged as traitors themselves and punished as an example to others.¹⁸⁷ These measures stressed that it was the king, acting through the processes and institutions of royal justice, who had the sole authority to determine an alleged traitor's guilt or innocence; by their violent and illegitimate interference in this process, the commons had demonstrated a defiant resistance to being governed.¹⁸⁸ The implications were clear: even if his subjects claimed to be protecting their king from known traitors, their appropriation of his prerogative to punish would not be tolerated for this undermined rather than strengthened Henry's claim to be their lawful king and

¹⁸⁴ *PPC*, 107, 109, quote at 107.

¹⁸⁵ *Ibid.*, 107. Emphasis added.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*, 107–8, 113.

¹⁸⁸ *Ibid.*, 108.

source of justice.

The Privy Council minutes for February 1400 reveal one final measure by which Henry reinscribed his own authority over that of his wayward subjects in the matter of the earls' executions: he took into his own hands the lands and revenues of the dead traitors.¹⁸⁹ This, it was said, would enable him to better defend himself and his realm from enemies and to 'honourably sustain his estate' without burdening his people.¹⁹⁰ In other words, forfeitures from treason would provide the wherewithal for Henry to keep his promises to his new subjects to live of his own and to avoid excessive taxation.

The following parliament, held in January and February of 1401, offered Henry another opportunity to stamp the deaths of the rebel earls with his own judicial authority by formally re-enacting their convictions and forfeitures before the assembled political community. One might wonder why Henry found it necessary to revisit the events of the previous year, given that the suppression of the Epiphany Rising, the deaths of the main conspirators, and the subsequent death in captivity of Richard II might appear to have neutralised any remaining opposition to his rule. However, Henry's first year in power had been unsettled. Questions were already being asked about his ability to defend the realm, or his willingness to keep his promises to manage the royal household responsibly and thus relieve his subjects of the burden of taxation.¹⁹¹ Moreover, although

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ On the military front, Henry had led a large but fruitless expedition into Scotland that had succeeded only in provoking a Scottish raid into Northumberland; England had also experienced the first stirrings of revolt in Wales. Meanwhile, a combination of falling revenues, household extravagance, and general mismanagement saw royal finances increasingly strained, and by later 1400 complaints were circulating about the tax burden: Given-Wilson, introduction to "Henry IV: Parliament of 1401" in *PROME*; Given-Wilson, *Henry IV*, 174–88; Bennett, *Richard II*, 202–4.

the Epiphany Rising had been suppressed, open challenges to Henry's kingship had emerged from other quarters. The most pressing problem was the outbreak of the Welsh rebellion, led by Owain Glyn Dŵr who claimed to be the legitimate prince of Wales.¹⁹² This war would sap Henry's military and financial resources until at least 1408 and it was a persistent source of grievance for his subjects. Meanwhile, the Scots and French refused to recognise Henry as anything more than the duke of Lancaster. For example, while Henry had been preparing his army in York in July 1400, he was challenged to combat by a French knight and an esquire who sought to disprove his claim to the royal title in a trial by battle. Henry's champion won on this occasion, but subsequent French challenges were linked to repeated accusations that Henry had murdered Richard and was an illegitimate ruler.¹⁹³ It seems that such challenges were being lodged at the time of the 1401 parliament, for the roll records that 'the said commons told our lord the king that they had heard that certain lords ...of this kingdom had been challenged by the French'.¹⁹⁴ The Commons were careful to avoid specifying any reasons given by the French for these challenges, and simply requested that the king avert them.

It is plausible that given this tense political climate, Henry would be sensitive to any criticism of his kingship and would make the most of any

¹⁹² As part of his own strategy of legitimation, Henry IV had had his eldest son, Henry, formally invested as Prince of Wales shortly after his own coronation. The political implications of this move are discussed further in Chapter Four. Any detailed consideration of the war with Wales is beyond the scope of this study, but the claims of Owain Glyn Dŵr and the presence of rebel forces in the Welsh marches do have some connections to cases discussed elsewhere in this thesis. For general studies of the rebellion, see Davies, *The Revolt of Owain Glyn Dŵr*; Idem., *The Age of Conquest*, 443–60.

¹⁹³ Anthony Tuck, "Henry IV and Europe: A Dynasty's Search for Recognition," in Britnell and Pollard, *The McFarlane Legacy*, 107–11; Morgan, "Henry IV and the Shadow of Richard II," 16–18; Given-Wilson, *Henry IV*, 202–4; Simon Walker, "Janico Dartasso: Chivalry, Nationality and the Man-at-Arms," *History* 84 (1999): 41–42 (on the challenge at York).

¹⁹⁴ *PROME*, "Parliament of 1401," item 12, RP iii:456.

opportunity to reiterate his legitimacy. The post-mortem condemnation of Salisbury and his fellow conspirators in parliament achieved this through several rhetorical steps. First, their plot on behalf of Richard was brought within the 1352 statutory definition of treason with the description that they ‘rode in warlike manner, treacherously, against our lord the king, contrary to their allegiance’.¹⁹⁵ The record then acknowledged that they were ‘seized and beheaded in their armed uprising by the loyal lieges of our said lord the king’, but while it was admitted that this was done without due process of law, nevertheless ‘the lords temporal present in parliament, by the assent of the king’ declared them traitors and confirmed the forfeiture of their lands.¹⁹⁶ In this way, Henry legitimised the murders and brought them within the scope of his own royal judicial authority. The sentence made one other significant rhetorical move when it asserted that not only were the conspirators planning to kill the king, but that they planned to destroy ‘other great men of the realm, and to populate the said realm with people of another tongue’ (‘et le dit roialme de gentz d'autre lange enhabiter’).¹⁹⁷ This expanded the scope of treason to encompass actions against the English political community as well as against the abstract entity of the nation, represented here in the idea of language.

Conclusion

Between Richard II’s final parliament in September 1397 and the post-mortem conviction of the Epiphany rebels in 1401, a number of constitutional issues relating to the balance of power between the king, the law, and the

¹⁹⁵ Ibid., item 30, RP iii:459.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

political community (particularly the king's greatest subjects) were being negotiated through the law of treason. At the height of his power in 1397, Richard was asserting a view of kingship that demanded total obedience from his subjects while placing himself above the law, and this was accompanied by a new definition of treason far closer to the civil law concept of *lèse-majesté*. In the wake of Richard's deposition, Henry used the opportunities created by treason proceedings to legitimise his own claim to embody sovereign political authority by exercising the royal prerogatives of justice and mercy. Although he had promised to reject Richard's expansions to treason law, this promise was never confirmed by specific statutory enactment. In practice, Henry's endorsement of interpretations of treason that included attacks on the *chose publique*, the *communalte* of the realm, and the nation were redefining treason in more expansive terms as a crime against the public authority of the state. This served immediate political ends by associating threats against Henry's person with attacks on the realm, thus offering a means by which his usurping body could be joined more securely to the political body of the crown. However, they also had longer-term consequences. As has been seen, chivalric notions of treason remained powerful, with the customary perception of treason as a personal betrayal of masculine loyalties having a significant influence on the way the crime was constructed and in the defensive strategies of the accused. Nevertheless, Henry's early deployment of more expansive definitions of treason in his prerogative courts in order to solve short-term problems with a small group of nobles soon began to influence interpretations in the court of King's Bench, and so to have much wider impact. As the following chapter will show, emerging common law precedents that defined treason as an insult to

public authority and a crime against the nation had profound implications for the constitutional relationship between the English state and its political subjects.

Chapter Three

New Precedents for Treason in King's Bench, 1401-1405

In his account for the year 1401, Adam Usk reported on the death at Shrovetide of a scribe:

Condemned by judgment of the court of chivalry firstly to have his tongue cut out, because he had spoken disrespectfully of the king ... secondly, to have his right hand cut off, because he had written these things down, and thirdly, by penalty of *talion*, to be beheaded at the Tower, because he had not been able to prove his false allegations.¹

Usk's use of the civil law term *talion* to describe the punishment strongly suggests the offender was executed as a traitor, and that his treason lay in insulting Henry verbally and in writing.² His death illustrates growing concern with dissenting political speech that was reflected in a series of King's Bench treason proceedings between 1400 and 1405, all of which featured the circulation of verbal rumours and vernacular texts that challenged the legitimacy of Henry's kingship.

By considering some of the general themes and issues uniting these cases, the historiography to date has revealed much about the sources and channels for political dissent and the ways in which the Lancastrian government responded to it.³ However, there has been little extended analysis of the richly detailed records generated through the processes of investigation, indictment,

¹ Adam Usk, 123. No official account of this case has survived in the records of the Court (although such records are meagre for late 1300s and early 1400s).

² Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Transactions of the American Philosophical Society (Philadelphia, PA: American Philosophical Society, 1953), 730.

³ The main studies, covering a period between 1400 and the 1420s, are McNiven, "Rebellion, Sedition"; Morgan, "Henry IV and the Shadow of Richard II"; Walker, "Rumour, Sedition and Popular Protest"; Ross, "Seditious Activities"; Dunn, "Henry IV and the Politics of Resistance."

confession, and sentencing. The concern of scholars has been primarily to use these documents to identify those involved and trace their networks of association; to uncover the 'facts' or clarify a sequence of events; or to try to determine the actual level of threat posed to the king.⁴ As discussed in Chapter One, some of these cases have also featured in a debate amongst legal historians over the treatment of speech deemed treasonous. This chapter builds substantially on that earlier work by analysing the legal texts in detail, paying close attention to their rhetorical, linguistic, and narrative features. The investigation shows that despite Henry IV's promise to restore the 1352 statute, in practice the Lancastrian state was using prosecutions in King's Bench to expand the scope of treason. This helped to reinforce Henry's legitimacy by uniting him as king with the crown and realm of England, but it also had more enduring consequences by creating common law precedents that defined treason as a crime not only against the king's person but also against the people and nation of England. Close examination of the way languages and discourses interacted to authorise or subvert the state's legal narratives will also reveal how those termed traitors could resist or evade the charges against them. The trial records preserve (even if inadvertently) sophisticated assertions of political agency validated through alternative visions of loyal subjecthood and true manhood.

These justifications for political resistance were all the more remarkable because they came from ordinary people, including artisans, vagrants, and servants, as well as those of higher social status who might be expected to have

⁴ For example, Ross ("Seditious Activities") traces networks of patronage and service amongst those implicated in the Essex conspiracy; McNiven declares himself most interested in uncovering the 'true' motivations of instigators: "Rebellion, Sedition," 106.

a greater investment in national politics.⁵ Their rejection of Henry's kingship was framed through three interconnecting narratives. The most prominent was the rumour that the 'rightful' king was still alive in exile and would soon return to reclaim his throne.⁶ Richard had perished in captivity within a few weeks of the Epiphany Rising, having most likely been killed because of the danger he posed as a rallying point for political opposition.⁷ Henry declined to bury Richard at Westminster Abbey, but his body was ritually processed from Pontefract to London with the face uncovered so that everyone could see he was dead.⁸ Despite this public display, the rumour of Richard's survival continued even into the first years of Henry V's reign and it surfaced in many otherwise unconnected incidents.⁹ A second justification for challenging Henry's rule was that if Richard was dead, then the young earl of March, Edmund Mortimer, was

⁵ A number of rebellions during this period were also led by 'insiders', noblemen such as the Percies who had initially been supportive of Henry's kingship and instrumental to him successfully securing the throne. Noble rebellions are investigated in Chapter Five.

⁶ This rumour was fostered by the Scots duke of Albany, who harboured a pretender at his court who apparently bore a striking physical resemblance to Richard II. This doppelganger, Thomas Warde of Trumpington, was generally described as a simpleton and as a kitchen boy or servant: Walker, "Rumour, Sedition and Popular Protest," 39–40.

⁷ Contemporary sources differed as to whether Richard was murdered on Henry's orders or pined away. For a summary of the views of various chroniclers: *Chronicles of the Revolution*, 47–51.

⁸ After being displayed openly to the people, he was taken from London and buried at Langley abbey with little of the ceremony or symbolism customary for a royal interment. On the funeral arrangements, see Strohm, "The Trouble with Richard," 90–93; Joel Burden, "How Do You Bury a Deposed King? The Funeral of Richard II and the Establishment of Lancastrian Authority in 1400," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 35–54.

⁹ Morgan sees the survival story as one example of a widespread European 'returning king' mythology that supported a conservative tradition of loyalist rebellion: "Henry IV and the Shadow of Richard II." McNiven views the survival story in functional terms, serving as a general cover and justification for various unconnected protest movements, either specifically against Henry as king or against authority in general: "Rebellion, Sedition." Walker was the first historian to fully document the provenance, chronology, and extent of the spread of the Ricardian survival story; he interprets it as part of a popular tradition of resistance driven in part by the increasing involvement of even relatively low-status men in the administration of royal government at the village level: "Rumour, Sedition and Popular Protest." Strohm's work on the myth takes a different tack, drawing on psychoanalytical theory and the Lacanian concept of 'absence': "The Trouble with Richard"; *England's Empty Throne: Usurpation and the Language of Legitimation, 1399–1422* (New Haven, CT: Yale University Press, 1998), 101–27.

the rightful king by blood.¹⁰ Denials of Henry's legitimacy on these dynastic grounds were often accompanied by a third strand of criticism: by imposing heavy taxes and then failing to use these effectively to defend the realm, Henry had broken solemn promises made at his accession to live of his own and to rule for the common good.

Turning from the ways accused traitors articulated their opposition to consider the ways Henry and his justices constructed and punished the crime of treason, some significant changes can be discerned. The trial records reveal that Henry was often personally involved in the legal process; as a result of his influence, the indictments and verdicts took great pains to unite him to the crown and realm of England by explicitly identifying traitors as enemies of both. A variety of discursive strategies were deployed to achieve this end. One of the most interesting, although it has not been examined to date, is the connection being made between language, nation, and loyalty to the king. When the Epiphany rebels were condemned as traitors in the 1401 parliament, their alleged crimes included planning to destroy the realm of England 'by populating the said realm with people of another tongue'.¹¹ In the early 1400s, this

¹⁰ March was eight years old at the time of Richard's deposition. Both Henry IV and Mortimer could claim descent from Henry III, but Mortimer had the superior link to Edward III through Lionel, duke of Clarence, an older brother of Henry's father John of Gaunt: McNiven, "Rebellion, Sedition", 100 n. 28. Gaunt may have tried to avoid the issue by petitioning Richard II to formally name Henry as his heir in a parliament during the 1390s: *Chronicles of the Revolution*, 18. On the issues surrounding Henry IV's dynastic claim: Peter McNiven, "Legitimacy and Consent: Henry IV and the Lancastrian Title, 1399-1406," *Mediaeval Studies* 44 (1982): 476-79; Michael Bennett, "Edward III's Entail and the Succession to the Crown, 1376-1471," *The English Historical Review* 113 (1998): 580-609; Bennett, "Henry IV, the Royal Succession and the Crisis of 1406," in *The Reign of Henry IV: Rebellion and Survival, 1403-1413*, ed. Gwilym Dodd and Douglas Biggs (Woodbridge, Suffolk: York Medieval Press, 2008), 9-27. More generally: Chris Given-Wilson, "Legitimation, Designation and Succession to the Throne in Fourteenth-Century England," in *Building Legitimacy: Political Discourses and Forms of Legitimacy in Medieval Societies*, ed. Isabel Alfonso, Hugh Kennedy, and Julio Escalona (Leiden: Brill, 2004), 89-105.

¹¹ *PROME*, "Parliament of 1401," item 30, RP iii:459.

parliamentary rhetoric was also seeping into common law indictments. For example, in October 1400, a group of men were charged with ‘plotting, conspiring, and intending’ the death of the king and his sons, but also with planning ‘the death, destruction and everlasting obliteration of the whole English language’.¹² Likewise, the charges against a number of friars executed for treason in 1402 included planning to bring in ‘the alien tongue of a new people to the final destruction of the whole realm of England’.¹³ Alongside this cultural threat of conquest by an ‘alien tongue’, there were increasingly detailed accusations that traitors were materially aiding and collaborating with foreign enemies to destroy the magnates and people of England, wording that suggests treason was a crime against the entire national political community, and not simply an attack on the king.

Faced with the knowledge that his dynastic claim was problematic, Henry had been left with legitimising his succession on the mixed grounds of conquest and ‘acclaim’ by the people, factors that created potentially dangerous precedents for the ruler and for his subjects. Any claim by conquest had to be carefully positioned, lest it be seen to threaten the property rights of all the king’s subjects.¹⁴ In his account of the events of late 1399, Walsingham included a passage (possibly apocryphal) claiming that Chief Justice Sir William Thirning had ‘utterly forbidden’ Henry from making a claim by conquest because ‘if he claimed the kingdom on those grounds, he could have disinherited anyone he

¹² The National Archives (hereafter TNA), KB 27/560 Rex m. 18; *Select Cases*, 114–15.

¹³ TNA KB 27/565 Rex m. 11. This case is discussed in detail later in this chapter.

¹⁴ The popular romance theme of exiled heirs returning to claim rightful inheritances was one strand in the Lancastrian strategy to reassure the nobility about property rights: Fletcher, “Narrative and Political Strategies,” 328–29, 335–36 Henry also reassured the 1399 parliament on this score: *PROME*, “Parliament of 1399,” Roll, item 56, RP iii:423.

liked'.¹⁵ This statement does not appear in the version of events recorded on the parliament roll and that Walsingham otherwise followed closely, but it does concisely capture the perceived difficulties.¹⁶ This left Henry with 'acclaim', a notion that is critical to the discussion that follows because it put into wide circulation a language and vernacular vocabulary of rule not by inalienable, quasi-sacral dynastic right, but by 'the assent of the commonalty'.¹⁷ Moreover, the official statements that were publicly disseminated to justify Richard's deposition implied that kings could legally be separated from their crowns and deposed by their subjects for incompetence and 'bad governance of the realm'.¹⁸ While many of the articles of deposition dealt with specific instances of Richard's misgovernance, the overarching theme was that this was a king who was being justly deposed because he was a useless ruler who had corrupted the law, oppressed his subjects with heavy taxes and other burdens, and had served his own interests and those of his favourites ahead of those of the realm.¹⁹ These were justifications for deposition that would return to haunt Henry.

Had these ideas been expressed only in the elite languages of Latin or French, and had their circulation been restricted to the ruling parliamentary classes, arguably they would not have created such a volatile environment for the political dissent that soon began to disrupt Henry's reign. However, Henry's unexpected seizure of the throne meant he had to move rapidly to establish his authority, not only amongst the nobility and the Commons in parliament, but

¹⁵ *St Albans Chronicle II*, 209.

¹⁶ *Chronicles of the Revolution*, 169, 187 n. 17.

¹⁷ *St Albans Chronicle II*, 207.

¹⁸ *Ibid.*, 171.

¹⁹ *PROME*, "Parliament of 1399," Roll, Articles 18–50, RP iii: 415–21. On the notion of the *rex inutilis*: Dunham and Wood, "The Right to Rule in England."

more widely throughout England.²⁰ As a result, the Lancastrian government embarked on a publicity programme whereby texts in Latin, French, and English narrating Richard's 'voluntary' abdication and resignation from the throne and detailing the reasons for it - a collection of texts known as the *Record and Process* and considered to be overtly Lancastrian - were distributed throughout England.²¹ These were 'read out publicly and ...declared to the people in articles put in writing' so that 'every concern and adverse suspicion' about the legality of the deposition and Henry's accession should be snuffed out before they could endanger the new king.²²

The role of the English vernacular in the political and textual processes surrounding the deposition and usurpation is significant. Richard's statement of abdication and the reasons for it was represented by a Latin document to which he had 'subscribed his name in his own hand'.²³ When a national assembly convened in Westminster Hall on 30 September, 1399, Walsingham confirms that not only were the Lords and Commons in attendance but 'also the people of the realm, who had gathered in a very large number'.²⁴ Richard's statement of abdication was read out in Latin and then in English, an act of translation that ensured the 'estates and the people' of the realm understood exactly why the

²⁰ Given-Wilson (*Chronicles of the Revolution*, 30–41) discusses the rapid progress of Henry's military campaign and the fact that his full intentions - that is, to take the throne as well as to recover his ducal inheritance - were not known until quite late.

²¹ *Chronicles of the Revolution*, 5–11, 168–9; G. O. Sayles, "The Deposition of Richard II: Three Lancastrian Narratives," *Historical Research* 54 (1981): 257–70; Given-Wilson, *Henry IV*, 138–45.

²² *St Albans Chronicle II*, 171.

²³ *Ibid.*, 165.

²⁴ *Ibid.*, 169. There is some debate over whether this was technically a parliament, because it was summoned by Richard II but by the time it met, he had 'resigned': B. Wilkinson, "The Deposition of Richard II and the Accession of Henry IV," *The English Historical Review* 54 (1939): 220–23; McNiven, "Legitimacy and Consent," 472–73. A new parliament was quickly summoned in Henry's name and it met from 6 October.

king was being deposed - at least, from the Lancastrian standpoint.²⁵ Richard's formal deposition and the symbolic renunciation of the allegiance of his subjects was followed by Henry's claim to the throne and his promise to rule justly and for the common profit of the realm, and his words mark one of the rare occasions on which English was used in the parliament roll before the 1450s. This was no mere act of linguistic pragmatism. By drawing on the cultural and political associations between language, law, and national identity, the use of the vernacular implicitly identified Henry as the saviour of the English nation when he claimed to have been sent by God to rescue the realm, 'the whiche rewme was in point to be undone, for defaut of Governance and undoing of the gode Lawes'.²⁶ Alluding to the problems of making a claim by conquest, Henry then promised that none of his subjects should be deprived of their inheritance, franchise, or other rights held by law or custom, 'except thos persons that has ben agan the gude purpose and the commune profit of the Rewme'.²⁷ When Henry's direct first-person speech in English was preserved in the parliament roll, as well as in other variant texts of the *Record and Process* that were put into circulation by the Lancastrian government, this imbued Henry's speech acts with veracity and authenticity as the words of a true man - and a true king.²⁸

Richard's statement of abdication (to which he was likely coerced to put his name) had carefully separated him as an individual man from 'his royal

²⁵ *St Albans Chronicle II*, 169.

²⁶ *PROME*, "Parliament of 1399," Roll, item 53, RP iii:423

²⁷ *Ibid.*, item 56, RP iii:423.

²⁸ Sayles provides a transcript of a Latin document describing Richard's resignation and subsequent events where Henry's speech to parliament appears in the text in English: "The Deposition of Richard II." This text is extant in two manuscripts and Sayles argues it was clearly widely circulated, because it formed the basis for several of the key chronicle accounts of the deposition and usurpation.

status and majesty, and ...the crown' as well as from his 'name, honour, regalia, and royal supremacy'.²⁹ Richard's 'deficiencies hav[ing] first been... made known and exposed to all in the common language [*notificata et exposita in vulgari*]', the sentence of deposition was then 'put in writing on behalf of the said estates, in their name, and with their authority'.³⁰ This official narrative elides the underlying constitutional conundrum posed by dividing an anointed king from his crown. However, contemporary commentators recognised the difficulties and a number reported that Richard had said that even had he wanted to, he could not renounce or resign the sacral nature of his kingship.³¹ Even the *Manner of King Richard's Renunciation*, a document that has been characterised as Lancastrian propaganda, included a passage in which Richard initially refused to sign the bill of resignation 'under any circumstances; and he was greatly incensed, and declared that he would like to have it explained to him how it was that he could resign the crown'.³²

To argue that an anointed king with an uncontested dynastic title could be separated from his crown for the good of the realm was a necessary but dangerous move for Henry. For McNiven, 'the truly radical aspect of Henry's kingship was that his claim to the throne rested, in practice, on the argument -

²⁹ *PROME*, "Parliament of 1399," Roll, item 13, RP iii:416-17, presented in parliament on 30 September, 1399.

³⁰ *St Albans Chronicle II*, 203. Dunham and Wood ("The Right to Rule in England," 746-48) note that who comprised the 'estates' lacked precise legal definition, but the term was assumed to signify 'the people of the realm' as they were represented by the Lords and Commons in parliament.

³¹ *St Albans Chronicle II*, 217 and n. 297. The *Dieulacres Chronicle* and a number of French chronicles included similar versions of the story.

³² *Chronicles of the Revolution*, 162-67, quote at 163. The document is printed from Corpus Christi College, Cambridge, MS.59, ff. 230v-231 in Sayles, "The Deposition of Richard II," 266-70. Sayles characterised the text as Lancastrian propaganda, but Given-Wilson has questioned this: C. Given-Wilson, "The Manner of King Richard's Renunciation: A 'Lancastrian Narrative'?", *The English Historical Review* 108 (1993): 365-70.

his own argument - that he would make a far better king than Richard....He was the “best all round candidate”, but he lacked a sound hereditary title’.³³ The idea of ‘election’ or consent had long been present, at least in a nominal sense, in England’s model of monarchy but there had been no need for previous kings to rely upon it because male primogeniture had been unproblematic and uncontested.³⁴ In reality if not in theory, the idea of kingship by ‘acclaim’ was peripheral to legitimising English kingship until Henry had had to rely so heavily upon it. However, by uniting this notion to an assertion Henry should legitimately be king because his rule was best for the realm, the Lancastrian government was publicly endorsing a constitutional idea with unpredictable political potential. By implying that his kingship was in a sense contractual and based primarily not on blood right but on the ‘acclaim’ of the people, Henry left himself vulnerable when he was perceived to transgress against the common good.

Although Lancastrian propaganda had painted a picture of near-universal approbation for Henry’s accession to the throne, initial expectations for the restoration of good governance were soon seen as unfulfilled. As early as 1401, Henry found himself under pressure from the political community over his need to impose taxes, in part to fund military campaigns against the Welsh rebels and against the Scots, who were raiding across the northern border. Disillusion with Henry’s kingship was fuelled by perceptions that taxes were being misspent on the royal household in violation of his promise to ‘live of his

³³ McNiven, “Rebellion, Sedition”, 98–99, quote at 98.

³⁴ *Ibid.*, and for an expanded discussion see McNiven, “Legitimacy and Consent.” The nearest precedent for Richard’s deposition was that of his great-grandfather Edward II in 1327, but Edward had been succeeded by his eldest son, thus preserving a direct and unquestioned dynastic title.

own', and that financial exactions were not producing any military gains.³⁵

Although questions about Henry's dynastic title were not being voiced openly in parliament, in the popular public sphere of taverns, streets, and marketplaces, the king's perceived failures were frequently linked to the underlying problem of his right to rule. The records of King's Bench show that this form of popular political critique drew from, adapted, and expanded upon the legitimising discourses Henry had used to authorise his own seizure of power.

Subversive visions: The case of Thomas Samford

Consider as a starting point a case involving Thomas Samford and Thomas Yokflete, whom Samford had implicated in a treasonous plot, which was heard before the court of King's Bench in the Easter term of 1401.³⁶ The Latin text that opens the indictment states that Samford had already been in custody 'for certain reasons touching the king's estate' when he appeared before the king at Westminster.³⁷ He had been questioned while in prison, and this had resulted in 'a certain confession from the said Thomas Samford under arrest', which was then produced in evidence when Samford was brought before the court.³⁸ The Latin narrative that opens the record is not simply a neutral description of the events that preceded the court hearing but provides the interpretive context and framework for what follows. The specific reason for

³⁵ Bennett, *Richard II*, 202–4; M. J. Bennett, "Henry of Bolingbroke and the Revolution of 1399," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 9–33. Bennett ("Henry of Bolingbroke," 29) discusses for example Philip Repington's public letter of critique to Henry in 1401, which stated that the people's exaltation of 1399 had 'given way to desolation, and that "in the place of the law, tyrannica voluntas now suffices"'. On early popular criticism of Henry IV, see also Given-Wilson, *Henry IV*, 205–9.

³⁶ TNA KB 27/560 Rex m. 9. *Select Cases*, 111–14 provides a transcription and translation; however, there are some problems with this version, such as the rendering of the Middle English term 'soth' as 'so' (112).

³⁷ TNA KB 27/560 Rex m. 9.

³⁸ Ibid.

Samford's arrest is not given, but the reference to it 'touching the king's estate' was enough to bring it to the notice of the royal council, which at that time was preoccupied with threats of treason and was still mopping up in the wake of the Epiphany Rising.³⁹ The royal clerks who questioned Samford were identified by name, with this practice helping to authorise the confessional process by demonstrating it was conducted by those vested with the legal authority of the state.

The confession that follows represents Samford's oral testimony, which was most likely given in first-person English but was translated into the written French of formal record as third-person reported speech. Although on the date of his confession (24 November, 1400) Samford was a prisoner in the Fleet, his statement was framed as entirely voluntary in its assertion that the king's clerks were sent 'to hear what he wished to say, and he was sworn on a book to speak the truth in all he would say'.⁴⁰ The act of swearing truth places Samford's 'voluntary' speech within the wider context of men's oaths as proof, eliding the power differential involved in eliciting his verbal narrative and then transforming it into authoritative and legally admissible written evidence. Under questioning, Samford presented a detailed story in which he said that in the previous January (i.e. January 1400) he had carried letters between his master John Inglewood, a clerk, and several other people who were collecting money to fund a rising against Henry. Inglewood was said to be plotting with Robert Marner, a canon, and with a friar, 'late confessor to King Richard so he

³⁹ Powell (*Kingship, Law, and Society*, 52–55) notes the records of the royal council indicate it became involved in judicial matters primarily when these concerned treason, or riot and disorder involving magnates. If it found a criminal case to answer, the council referred the case to King's Bench.

⁴⁰ Ibid.

said', to make an ointment that would kill the king 'by necromancy and spell' and that they had met at Langley to advance their plans.⁴¹ Samford admitted to having witnessed clandestine meetings at various locations and to assisting the conspirators by carrying letters between them. Several times, the record includes the detail that Samford had been made to 'be sworn on a book that he would be loyal to them' and he described other conspirators being made to swear likewise. The impression given in the record (and no doubt intended for a potential trial jury) was of a network of men bound by perverse oaths to violate their most fundamental moral and legal obligations as loyal subjects.

Although the references to necromancy and poison were dramatic, at first glance this plan appears to be an exemplar of treason in the customary sense, with the alleged intent being to target Henry's physical person. From the timing and the supposed involvement of Richard's former confessor, it could be assumed that it was directly related to the suppression of the Epiphany Rising and was perhaps one of the first cases in King's Bench that featured the 'returning king' theme. However, a closer look reveals that the conspirators had something far more radical in mind. In a scheme that seems inspired by Henry's own forceful usurpation of power and the textual processes used to legitimise it, their plan was that when the king had been killed, they would use armed force to establish a regime of their own. According to Samford, Sir Thomas West would capture the Isle of Wight and its royal castle with the help of men gathered by the rector of Ashridge and 'the men called Thorns'.⁴² Eschewing any reference to restoring Richard, Samford claimed they would then bring Sir

⁴¹ Ibid.

⁴² Ibid.

Edmund Mortimer to the Isle of Wight by force, 'and there they would cause him to take an oath that he would be ruled by them and, if he refused, they would put him to death'.⁴³ With Mortimer in their grasp, they would 'take his seal from him and send letters under his name' to raise men in Chester and elsewhere who would fight for their cause.⁴⁴ This was a vision for a political and military coup in which no king's authority would be recognised or sought as a superior or more legitimate alternative to their own power by conquest.

Samford concluded his confession by saying that his master Inglewood had told him that a clerk called Thomas Yokflete had consented to this plan and it was because of this final allegation that the contents of Samford's confession were being heard before the court. The next part of the record, which returns to the formal Latin of legal rhetoric, reports that Yokflete voluntarily 'came in his own person before the king at Westminster' with the intention of clearing himself and was committed to the custody of the Marshal to await a hearing on 12 March, 1401.⁴⁵ Interestingly, Yokflete's defence rested in the fact that Samford's 'appeal' (this term, and the fact Samford was already in prison for other offences, suggests the production of his confession may have been an example of approving) 'establishes nothing in fact against the aforesaid Thomas Yokflete with respect to the aforesaid acts of treason but only the verbal statement of the said Thomas Samford of what John Inglewood said'.⁴⁶ In other words, the only evidence of treason against Yokflete was a story told at second

⁴³ Ibid. Sir Edmund Mortimer was uncle to the young earl of March. Walker ("Rumour, Sedition and Popular Protest") suggests that the Mortimer claim did not feature in treason cases until after the Percy lords rebelled in 1403, but this example indicates it was part of the popular political imaginary within months of Richard's deposition.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

hand, a verbal rumour. This was deemed insufficient proof to take action against Yokflete and he was not put to trial.⁴⁷ However, given the government's growing anxieties about such treasonous speech, the record closes by putting forward a different reason for Yokflete's discharge. This was that Samford had already confessed 'at another time' to various felonies and had abjured the realm, 'as fully appears on record by the said abjuration which the present king for certain reasons caused to come before him for determination'.⁴⁸ Therefore, the court declared that Samford's evidence against Yokflete was technically inadmissible.

From these legal machinations, it appears that Samford's case, in which Henry took a personal interest, caused him a dilemma. As noted in the previous chapter, Henry had backed up his verbal undertakings to restore royal justice and rule according to law by promising to repeal the 1397 extensions to the 1352 statute.⁴⁹ These had been viewed as symptoms of Richard's tyranny because they made mere talk against the king grounds for a treason prosecution even in the absence of any overt acts. However, by the time Samford's case was heard in King's Bench, dissatisfaction with Henry's rule was already being voiced in public and his government was highly sensitive to the role of dissenting speech in the incitement and organisation of anti-Lancastrian (or pro-Ricardian) plots. An ordinance of the following year was typical of how these concerns were expressed. It commanded that:

As some of the king's subjects intending to subvert the laws and customs

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ *PROME*, "Parliament of 1399," Roll, item 70, RP iii:426. Although as noted in Chapter Two, Henry IV's new statutory enactments incorporated only a general undertaking to adjudge treason by the terms of 1352, leaving considerable ambiguity as to the scope of treason and the procedures by which it could be prosecuted: *Statutes*, vol. 2, 114 (c. x), 116 (c. xiv).

and good government of the realm ... tell many lies ... in taverns and other congregations of the people... that the king has not kept the promises he made at his advent into the realm and at his coronation... that the laws and laudable customs of the realm should be conserved ... [royal officials should] bring to the notice of all the king's lieges... that it always has been and will be the king's intention that the common wealth and laws and customs of the realm shall be observed'.⁵⁰

The problem, though, was that when Samford made his accusations against Yokflete, no definitive legal formula existed in common law to treat a verbal statement alone as sufficient proof of treason. Yokflete was therefore allowed to 'go quit' of the charges. Yet by stating that this was because Samford was not able to bring a legal case against anyone (because he had already been outlawed), rather than by declaring his evidence inadmissible because it comprised only hearsay, the government left itself a loophole for treating such hearsay as tantamount to proof of treason through the explicit interpretation in case law of words as deeds.

Treason as a masculine speech act

This development can be seen first in the case of John Sperhauk, which came before King's Bench in April 1402. Chapter One discussed the significance of gender in the emergence of a late medieval distinction between words-as-words and words-as-deeds, with men's deviant speech being treated as doing material harm while women's speech was generally dismissed as gossip. John Sperhauk's case presents a classic example of this gendering, and this broader cultural context is vital for understanding important changes in the way treason was being defined and prosecuted in the early years of Henry IV's reign. The

⁵⁰ Commission dated 11 May, Westminster: *CPR, 1401-1405*, 126.

case against Sperhauk, who was described in the initial indictment against him as a wandering or travelling man ('vagrant home'), opens with a passage in French stating that what follows is his confession taken 'by authority and command of the said king' on 13 April, 1402 before the king, constable, marshal, and coroner of King's Bench.⁵¹ As with Samford's confession, it represents a first-person oral confession most likely made in English that has been translated into third-person French. Characteristic of the records in treason cases, it is richly informative about names, dates, times and places and it also appears to accurately convey the colloquial language and rhythms of informal speech. Capturing this level of detail is a practice that met (indeed, at times appears to far exceed) the requirements for legal evidence, but it also served a more subtle purpose by authenticating the text as an unmediated written representation of the confessant's oral speech.⁵² This obscures the state's power to force Sperhauk to speak in the first place and masks the dominant role of the king's officials in transforming his speech into a formal legal narrative that could be used to prosecute him.

The confession begins with a statement that while passing through a village near Baldock after breakfast on Palm Sunday 1402, Sperhauk 'came to the house there of a tailor unknown to him'.⁵³ Sperhauk then described an extraordinary diatribe against the king that was addressed to Sperhauk by the tailor's un-named wife. Amongst other things, she stated:

That the present king was not the rightful king but that the earl of March is

⁵¹ TNA KB 9/189/27 (indictment); KB 27/564 Rex m. 12 (plea roll record). For the latter, see also *Select Cases*, 123–24.

⁵² Arnold, *Inquisition and Power*, 74–76; Wicker, "The Politics of Vernacular Speech," 179–85.

⁵³ TNA KB 27/564 Rex m. 12.

king by right, and that the present king was not son to the very noble prince John, duke of Lancaster... but that he was born son to a butcher of Ghent, and that Owain Glyn Dŵr is the legal prince of Wales and of Cornwall, and that the pope sent a bull ... to the effect that all who are willing to help the said earl and Owain to obtain their aforesaid rights are to have full indulgence and remission of all their sins.... And she further said that the king had not kept his covenant with his commons, for at his entry into England he promised them that they would be discharged and quit of all kinds of payments and customs save for his wars overseas, but in the meanwhile he has collected much wealth from his commons and did nothing with it to the profit of the realm but only of all his lords and many other gentlemen.⁵⁴

This outburst was more than generalised grumbling and it contained a series of specific, pointed political criticisms. First, the woman brought up the issue of dynastic legitimacy by saying that the earl of March was the true king, providing another early example of attacks on Henry's legitimacy that did not rely on the rumour of the returning Richard. Then, she undermined Henry's legitimacy from another angle, saying that he was not his father's son but a bastard. The reference to the butcher of Ghent is more than a random titbit of salacious gossip, for it directly recalled the vernacular libels circulated against Henry's father by the commons of London after the Good Parliament.⁵⁵ At that time, criticism of Gaunt had centred on his perceived position as an over-mighty noble who had usurped the king's power for his own personal gain and that of his cronies.⁵⁶ Given the circumstances of Henry's accession it is plausible to posit a direct link to perceptions of Henry's own seizure of power, particularly as the woman went on to attribute to him the same faults of financial self-

⁵⁴ Ibid.

⁵⁵ Chapter One, 48, n. 95.

⁵⁶ Anthony Goodman, *John of Gaunt: The Exercise of Princely Power in Fourteenth-Century Europe* (New York: St. Martin's Press, 1992), 55–58; Dodd, "A Parliament Full of Rats?," 27–29.

interest and favouritism as supposedly characterised his father. The reference is significant because it indicates the long life the political ideas circulated in vernacular public bills could have in the minds of the populace, despite the ephemeral nature of the written bills themselves. It also alerts us to the porous boundaries between written and oral/aural forms of political speech.

The woman's statement that Owain Glyn Dŵr was the legal prince of Wales and Cornwall directly attacked Henry's title from another angle, and one that reflects a degree of political sophistication. On 15 October, 1399, just two days after Henry's own coronation, those assembled in his first parliament were asked to assent to Henry's son (the future Henry V) being invested with the titles of prince of Wales and duke of Cornwall and to recognise Prince Henry's right as his eldest son to succeed him as king of England.⁵⁷ These proceedings suggest the king was already uneasy about the weakness of his dynastic title and by extension, anxious about the long-term future of Lancastrian succession.⁵⁸ The purported papal bull in support of Glyn Dŵr's title as the legal prince of these territories must have raised further anxieties for the king. Such a bull, if it existed or even if it was simply believed to exist, would give valuable moral and legal justification to the Welsh rebellion, which by 1402 was absorbing a great deal of the king's energies and resources.⁵⁹ Finally, by complaining about Henry's burdensome taxation, Sperhauk's female interlocutor directly tapped into the potent vein of discontent that was already

⁵⁷ *PROME*, "Parliament of 1399," Roll, item 71, RP iii:426. Henry's strategy with regards to his eldest son is discussed further in Chapters Four and Five.

⁵⁸ McNiven, "Legitimacy and Consent," 481–82.

⁵⁹ I have been unable to trace the bull, although it is possible it was suppressed. This was the strategy used by Henry to defuse a bull of excommunication issued in 1405 after his execution of Richard Scrope, the archbishop of York: R. G. Davies, "After the Execution of Archbishop Scrope: Henry IV, the Papacy and the English Episcopate, 1405-8," *Bulletin of the John Rylands University Library of Manchester* 59 (1976): 40–74.

brewing in elite political circles by 1401. This took the form of suggestions that by breaking the promises made at his accession, Henry had breached the implicit agreement with the 'estates and commons' that had secured their support to his accession to the throne. Such an idea was dangerous given that when Henry had stressed the role of consent in legitimising his kingship, he had left himself vulnerable to the possibility that consent could also be withdrawn.⁶⁰

There is no evidence that the tailor's wife was herself particularly politically astute in constructing her critique, and in fact Sperhauk claimed that she told him she had heard everything she repeated to him from another man, a friar or hermit, who had recently been imprisoned at Westminster. Yet, despite the serious nature of her allegations against Henry, it was not she who was arrested and charged with treason for spreading these ideas, but Sperhauk. In his confession, he admitted:

That on the Monday following the said Sunday after breakfast he openly recounted all the aforesaid matters of his own accord, knowledge and will [*de sa propre test, science et volunte*] at the village of Morden in the county of Cambridge to one John Taylor and to a poor beggar and his wife and to many others of the said village, affirming and avowing the said words as true with the intention of inciting and arousing the people ... against their aforesaid liege lord.⁶¹

There are several points of note in this passage. Firstly, we do not have even the reported speech of Sperhauk's actual 'treasonous' words, only the admission that he had repeated the woman's words. This was enough, though, to get him hanged, drawn and quartered as a traitor. The woman's (reported) speech, which contained much more evidence of specific criticisms of the king, appears

⁶⁰ McNiven, "Rebellion, Sedition," 99–100.

⁶¹ TNA KB 27/564 Rex m. 12.

to have been dismissed as inconsequential, perhaps as mere ‘women’s gossip’. In the record, she seems to act as nothing more than a conduit for the much more damaging verbal performances of two men - the imprisoned friar or hermit and Sperhauk. It was Sperhauk’s act of publicly spreading this speech and of authenticating it by swearing to its truth that transformed deviant words into a material deed.

This becomes clear in the last passage, where Sperhauk’s speech was characterised as ‘intent’ to incite others to rise against the king. Lemon has argued that under Tudor law, seditious speech in the absence of overt acts could be punished as treason because in sixteenth-century jurisprudence, the term ‘imagine’ in the 1352 statute was interpreted as ‘intention’, with intention in its turn then taking on the status of a corporeal action.⁶² Sperhauk’s case and others that soon followed it suggest that this legal development was underway as early as Henry IV’s reign and that it was closely connected to changing cultural perceptions of the material consequences of politically damaging male speech.⁶³ As far as is known, Sperhauk’s conviction marks the first time this interpretation of men’s words alone as ‘intention’, and therefore as an *act* of treason, was canvassed by the king and his justices and formed the justification for imposing the death penalty.⁶⁴

⁶² Lemon, *Treason by Words*, 6–10. See also Cunningham, *Imaginary Betrayals*, 7–12; Albert Kiralfy, “Taking the Will for the Deed: The Mediaeval Criminal Attempt,” *The Journal of Legal History* 13 (1992): 95–100; Roger B. Manning, “The Origins of the Doctrine of Sedition,” *Albion* 12 (1980): 99–121.

⁶³ See Chapter One, 59–63.

⁶⁴ Thornley and Bellamy see Sperhauk’s case as a watershed in the legal development of a common law doctrine of treason by words, although they do not consider the wider cultural context to the legal argument: Thornley, “Treason by Words,” 556–57; Bellamy, *Law of Treason*, 116–17. Wicker’s valuable work on cases from the late 1440s and 1450s has pointed to intersections between popular political discourse and allegations of treasonous speech, but she does not consider the role of gender in this development: Wicker, “The Politics of Vernacular Speech.”

The evidence for this transformation lies in the traces left in the record at the point where it reverts to Latin, with the change in language anchoring Sperhauk's confession within the discursive framework of legal evidence, judicial reasoning, and the determination of guilt. After his confession was presented on 13 April, Sperhauk was kept in custody until he was brought back into court on 20 April. In the intervening period, the coroner's record of his confession had been 'inspected' by his judges, who appear to have been unsure how to treat his case.⁶⁵ When they asked Sperhauk if he could say anything in his own defence why he should not be convicted and condemned to death as a traitor, he replied that he could not. His confession, in effect, stood in the record as a full admission of guilt. Not only that, but the separate indictment states that Sperhauk had repeated his allegations openly when he was questioned in person by the king.⁶⁶ Yet despite this seemingly incontrovertible evidence, the judges spent some time deliberating with the king's council before pronouncing sentence. When they did, they emphasised several factors that transformed Sperhauk's words into treasonous acts according to common law: he had said them in public and of his own accord, knowledge, and will; he had spoken, affirmed, and avowed them as true; and he had said these things 'with the will and intention of inciting the said king's lieges to depart from the love and good will owed to their liege lord by the law of nature'.⁶⁷

This last phrase was rendered in Latin in the record as 'ad intencionem et voluntatem excitandi ligeos ipsius regis de eorum bono zelo et voluntate

⁶⁵ TNA KB 27/564 Rex m. 12. By the later fourteenth century, part of a coroner's standard duties was to hear and record confessions and approvers' appeals: Powell, *Kingship, Law, and Society*, 60.

⁶⁶ TNA KB 9/189/27.

⁶⁷ TNA KB 27/564 Rex m. 12.

contra dominum suum ligeum naturaliter debitis,' and it marks the first time this legal interpretation of treason as speaking with the intention to incite others against the king appeared in cases prosecuted under the common law in King's Bench.⁶⁸ This slippage from men's words to intention to act of treason reinforces what Scase has described as the 'political agency of verbal acts' in the aural political culture of late medieval England.⁶⁹ However, given the very different treatment of the tailor's wife and of Sperhauk, it is clear that what was particularly at issue with regards to treason was the political agency of *men's* verbal acts. Arguably, because of her sex the tailor's wife was believed to lack political agency by definition and therefore she was not considered as any kind of real threat. It was only when her words were repeated by a man that they were put into public circulation as an act of deviant political speech. Further, when Sperhauk avowed his words as true, a speech act that drew on the legal and moral force of men's verbal oaths, he imbued them with the power to do material harm. The judgment makes clear that it was not only Henry as an individual man that Sperhauk was damaging with his words - for example, by questioning his parentage and his dynastic title to the throne - but the realm of England. Henry's body natural and the body politic of the realm were conjoined as one political body through the repeated assertion that Sperhauk was 'a traitor to the king and his realm of England in speaking and avowing such enormously wicked things', and the damage his words did to one were therefore to be interpreted as inflicting damage on the other.

⁶⁸ TNA KB 27/564 Rex m. 12; Storey, "Clergy and Common Law," 355.

⁶⁹ Scase, "'Strange and Wonderful Bills,'" 234.

Treason against the nation

It was this insecure juncture between Henry as a usurping king and the realm that he claimed that those accused of treason continually troubled by arguing in various ways that their words and actions against Henry were the very factors that made them loyal subjects to the crown and nation of England. This can be observed in the 1402 trial of Nicholas Louthe. Louthe's case represents one of those rare examples where the extant evidence includes a third-person confession recorded by a court official, but also the first-person English words of the accused himself. These were transcribed into the King's Bench indictment from a letter Louthe confessed to writing and which the prosecution alleged he was circulating in Norfolk, Suffolk, and other counties.⁷⁰ Chapter One noted the potential the vernacular held to shape political identities in ways that could challenge and subvert the authorising discourses and practices of the state. Louthe's letter provides a compelling example of this potential when he used vernacular speech to constitute a gendered subject position as a loyal and loving liege man to Richard II, his rightful king.

Louthe was one of a group of 14 friars and other clerics executed for treason in June of 1402 for allegedly conspiring to restore Richard to the throne.⁷¹ It is not clear when Louthe was arrested but he was being held in the Tower at the time of his confession to the coroner of King's Bench. The charges

⁷⁰ TNA KB 27/565 Rex m. 4d.

⁷¹ A total of 20 clerics were charged. In at least one case the charges were dismissed at the king's behest because the accused was said to be too young and ignorant of what he was doing. A number of other men were acquitted by juries. Storey ("Clergy and Common Law," 353–61) provides the most detailed account. Most other accounts have focused on the more prominent clerics amongst those charged, such as Master Roger Frisby of the Grey Friars in Leicester, and on chronicle interpretations of the events rather than the original trial records. See for example McNiven, "Rebellion, Sedition," 100–2; Morgan, "Henry IV and the Shadow of Richard II," 14–15;

against him, supported by this confession and the evidence of his letter, were presented in court on 9 June and the sentence of execution pronounced. Louthe was to be hanged, drawn, and quartered and he was dead by 18 June.⁷² When the document that condemned Louthe to a traitor's death is inspected, it becomes apparent that the seemingly neutral Latin formula opening the text in fact actively frames the confession that follows. Louthe's identity as traitor was in a sense prejudged even prior to his examination and confession, as the court was told that he was already in the Tower for 'diverse treasons' and it was because of these 'aforesaid treasons' that he was questioned. The coercive question-and-answer interrogation that produced Louthe's confession is indicated by the statement that when placed under examination, he had given up what he knew 'in these words' ('in hec verba').⁷³ At this point, the text changes to French, transforming the English-language oral interrogation into the third person of legal testimony, and this judicial narrative was then authenticated by its rich detail of names, dates, times, and places.

Louthe admitted that while in the village of Walkern, a barber unknown to him had asked him for news and Louthe had replied that Richard was still alive. Moreover, Louthe said, Richard had recently been seen in Westminster by some women who had recognised him by a mark on his face ('un signe dune werte en sa fauce') and by his distinctive livery ('une blank drap de livere').⁷⁴ Initially it seems that Louthe, like Sperhauk, was being charged with treason for transforming the women's gossip into the dangerous act of male political

⁷² Storey, "Clergy and Common Law," 356.

⁷³ TNA KB 27/565 Rex m. 4d. A partial transcript is provided in Storey, "Clergy and Common Law," 358.

⁷⁴ TNA KB 27/565 Rex m. 4d.

speech. However, Louthe then compounded the women's story about sighting Richard in Westminster with his own trenchant political critique of Henry. He confessed that he had told the barber that 'the duke of Lancaster who named himself king of England [*qui soi nomma roy Dengleterre*] was nothing more than the provost and bailiff for the said king Richard', to whom he would soon have to give an accounting for his (i.e. Richard's) realm.⁷⁵ By specifically identifying the realm as Richard's with the use of the possessive *son realme* rather than the neutral *le realme*, Louthe went straight to the heart of Henry's problems in legally dividing the deposed king from his regality and realm, and his subsequent difficulties in joining himself to the latter. Henry's inability as usurper to forge a true union between his natural body and the body politic of the realm was also inferred by Louthe's claim that Henry had merely named himself as king rather than being born into the legitimate line of royal blood. This criticism was reinforced by the dismissal of the 'duke of Lancaster' as a mere bailiff for the real king. This comment neatly appropriated and turned against Henry the king's own claim to have been acting within his authority as (then)-Steward of England when he invaded the country in 1399.⁷⁶ It also incorporated into the discourse of popular political dissent the alarming reproaches emanating from the French and Scottish courts, whose diplomatic representatives continued to refer to Henry disparagingly as 'Henry of Lancaster, who calls himself king of England'.⁷⁷

⁷⁵ Ibid.

⁷⁶ Walker, "Rumour, Sedition and Popular Protest," 55. On Henry's exploitation of the Lancastrian claim to the Steward's office and its customary judicial powers, cf. Sherborne, "Perjury and the Lancastrian Revolution," 221–23, 233.

⁷⁷ Tuck, "Henry IV and Europe," 107–11. For example, instructions from the court of Charles VI to a French envoy being sent to England in September 1400 referred to 'celui qui se dit roy d'Engleterre' (quoted in Tuck, 107).

As noted in Chapter One, by bringing confessing subjects into discourse, legal records can inadvertently confer textual authority on their speech by giving it evidentiary status and moral weight as a ‘truth’ voluntarily revealed. In the record of Louthe’s confession, the reference to *son realme* rather than *le realme* inadvertently allowed a disturbing critique of Henry’s legitimacy to escape into the official narrative and then to be publicly voiced in King’s Bench, which was the symbolic and material nexus of Henry’s claimed but disputed power to dispense the royal justice that was the very essence of legitimate kingship. The potential for Louthe’s words to undermine the official narrative was increased by the inclusion at this point in the text of a direct transcript, rather than a French translation, of the letter in English that Louthe was carrying. While the letter was seen as damning evidence against Louthe, the very act of embedding it virtually unmediated within the official narrative gave Louthe a voice to express his own subversive vision of subjecthood. In it, Louthe’s identity as a loyal political subject was constituted through his vernacular self-representation as a true liege man of the deposed king. Referring to Richard as ‘the most frend that we loved’, he promised ‘we shul come so stronge’ in the deposed king’s cause that Henry, ‘the erl of Darby that now is the kyng’ would not know where or how he should defend himself.⁷⁸ This was an exemplary masculine performance of love and loyalty to one’s lord, and one that Louthe reinforced in his next statement that his readers (or listeners, assuming aural transmission of the text) should ‘pray for yowre leeth [liege]

⁷⁸ TNA KB 27/565 Rex m. 4d. Henry was the earl of Derby before succeeding his father as duke of Lancaster.

lord kyng Rychard and for al his men'.⁷⁹

What is intriguing about Louthe's letter is not simply what he said but what he refused to say. The text in fact reveals virtually nothing about any actual plans or plots, the most direct reference being the generalised promise that Richard's 'friends' would 'come so strong' against Henry. However, it is what was left unsaid that hints at the political potential of the words of a true man. Louthe closed by saying he had no more to tell at that time, but nevertheless 'Yhesu kepe wel yowre tonge and be styлле'.⁸⁰ This phrasing appears to acknowledge that even this vague account could have serious repercussions were it to be repeated in public to others. Louthe also actively refused to reveal his name, signing off his missive by promising that 'A nother day I schal telle yow my name for I was dredand to tel them what I was'.⁸¹ Louthe did not specify who he meant by 'them', although it seems logical that he feared the agents of the usurping king whose authority he was undermining. However, in the act of refusing to name himself immediately but of promising to do so in future, Louthe implicitly invoked the material, moral, and legal weight that inhered in a man's 'name', the guarantor that his speech was the performative embodiment of true manhood.

At the conclusion of this transcript, the record shifts back to the third-person French of Louthe's coerced confession, which concludes rather abruptly by stating that Louthe said it was for 'the cause he talked about in his letter' that he had been travelling through various counties.⁸² There seems little hard

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

evidence in Louthe's vaguely worded text for the authorities to use. However, by embedding it between the two parts of the much more damning political criticisms made by Louthe under examination, the record was carefully constructed so that his first-person vernacular speech mimicked an oral plea in open court and thus could offer seemingly incontrovertible and concrete validation of the much more dangerous deviant speech reported in the French of the third-person confession.

It was this validation the king and his justices needed to turn the *extempore* verdict in the Sperhauk case into a firm precedent for punishing deviant political speech as treasonous acts. This becomes evident when the record changes back to Latin to give the verdict and sentence. First, the coercive role of the state in securing Louthe's speech and turning it into an evidentiary legal narrative that could be used against him was elided in the statement that 'the abovesaid information' having been given freely, Louthe from his own testimony was declared a traitor to the king and realm of England.⁸³ Then, the judgment continues in a formula that follows that of the verdict against Sperhauk: by saying these words, Louthe intended to incite the king's people against the love and allegiance they owed him by natural law, to the final destruction of the realm of England.⁸⁴ The wording in Louthe's case is very similar to that in Sperhauk's, but with one significant difference: in the sentencing clause, the 'realm of England' was now explicitly incorporated alongside the person of the king in the category of things damaged by the

⁸³ Ibid.

⁸⁴ Ibid: 'Et quiquidem verba per eundem Nicholaum ut evidenter apparet dicta fuerunt ad intencionem et finem excitandi populum domini regis contra dominum suum ligeum de eorum bono zelo ei naturaliter debito et econtra, et quod verisimile est finalis destructio regni Anglie in hac parte consequeretur, quod ipse distrahatur a Turri London per medium civitatis London usque Tyburne et ibidem suspendatur et decapitetur.'

deviant speech acts of traitorous men. This was achieved through the legal formula of condemnation that says Louthe intended not only to disrupt the natural bonds of love and loyalty between the people and their king, but also to destroy the realm of England itself.

Louthe's vernacular identity as a loving liege man of the real king seems awkwardly juxtaposed in this record to the state's claims that he was an enemy not only of the king but of the realm of England. The nexus between loyal subjecthood, language, and political identity as true man or traitor is further problematised when Louthe's case is read alongside the case against 20 of his fellow clerics, who were arraigned in King's Bench a few days later on 14 June.⁸⁵ Those accused were charged with spreading 'false words' and 'murmurings' both in public and in private; 'conspiring and imagining' the death of king; and with seeking to obliterate the language and the law of England 'to the final and total destruction of the whole realm'.⁸⁶ When the charges were repeated throughout the indictment, it was the intent to harm the nation, rather than to harm the person of the king, that was emphasised. The threat was amplified by vague assertions that those accused planned to ally with Wales and Scotland, and they were portrayed as enemies of an English nation conceived of as a people united by a common tongue and common law: the '*lingue regni et legis Anglicane*'.⁸⁷ The reiteration of this idea throughout the prosecution record enabled the Lancastrian state to achieve two ends with the indictment. First, it presented the king and nation of England as coterminous and interdependent, thus conjoining Henry's person and the abstraction of the body politic through

⁸⁵ TNA KB 27/565 Rex m. 11. For a transcript, see Storey, "Clergy and Common Law," 359–61.

⁸⁶ Ibid.

⁸⁷ Ibid.

the rhetorical unity of 'our king Henry and his realm of England'. Secondly, by emphasising the threat to the nation through multiple references to destroying England's language and law, the record elided the real threat the accused men posed. This was that their words, spread publicly and 'in diverse places', drew unwanted attention to the significant issues Henry continued to have with legitimising his title and securing the succession.⁸⁸ Evidence that this, rather than any genuine threat from Wales or Scotland, was the king's chief concern in prosecuting the case (in which he took an active personal interest and role) is provided by the investment the record makes in retelling once again the official narrative of Richard's 'voluntary' resignation and of his deposition, on the grounds of his inept and evil rule, for the common good of the realm.⁸⁹ Thus while the record was forcefully reiterating the conjunction between Henry as king and the realm of England - imagined as a national community united by a common language and law - it simultaneously re-enacted the legal division of Richard from his crown. This was accomplished by re-telling the narrative of his deposition and, elsewhere in the same passage, by pointing out that the former king was long dead and had been seen dead by thousands in the city of London and elsewhere.

Storey has noted that by charging all 20 men under this single indictment, the prosecution created the impression that the accused were fomenting a widespread and well-organised conspiracy.⁹⁰ The long list of names

⁸⁸ Henry's awareness of the insecurity of his position was demonstrated by the multiple occasions between 1399 and 1406 on which he restated his claim in parliament and the Great Council, and demanded new oaths of allegiance from his leading subjects: McNiven, "Legitimacy and Consent," 481–85. The king's activities on this score are explored in depth in Chapter Four.

⁸⁹ TNA KB 27/565 Rex m. 11, where this narrative begins approximately one-quarter of the way down the recto membrane.

⁹⁰ Storey, "Clergy and Common Law," 356.

and occupations (friar, prior, priest and so on) of the accused, along with the list of 18 different counties in which they were said to have been operating, met the administrative requirements of a correctly prepared indictment but when it was read out in court it would also have had the effect of multiplying the perceived threat. Combined with the way the charges were framed, this multiplier effect was no doubt intended to convince the trial jury that the accused threatened not only the king but also their language and laws - in other words, their very identities as English political subjects. By portraying the accused in this way, 'the indictment was so designed that a jury would be faced with the responsibility of defending the national interest'.⁹¹

Despite this careful preparation, it seems that the state had some difficulty convincing the wider political community of the threat. According to the *Eulogium* chronicler, there were problems empanelling a jury to try the case, with men of London and Holborn refusing to serve, while the jurors from Islington who eventually condemned the clerics later claimed they had only done so under threats of death from the king.⁹² Even in the face of this royal pressure, when 14 of those indicted stood trial on 20 June, three of them were acquitted.⁹³ Juries also acquitted three men who stood trial at a later date.⁹⁴

⁹¹ Storey, "Clergy and Common Law," 356.

⁹² *Eulogium*, 383–84. On the *Eulogium* as an accurate account written at the time of the 1402 trials and corroborated by the record sources: Storey, "Clergy and Common Law," 353, 357. An English language version that follows the *Eulogium* virtually word for word also appears in *An English Chronicle*, 29–32.

⁹³ TNA KB 27/565 Rex m. 11, where the acquittals are noted by the word 'quietus' in the margin. The verdicts appear as interlined additions of 'cul[pabalis]' or 'non cul[pabilis]' in the original indictment: TNA KB 9/190/36. From my inspection of a representative selection of records in the KB 9 series from this period, the addition of such notations appears to be unusual and may indicate a heightened interest in this case given that the death sentences were handed down to clerics, something that was technically legal (treason not being subject to benefit of clergy) but up until 1402, extremely rare. Dunn ("Henry IV and the Politics of Resistance," 13) notes that the execution of priests and friars was a particular feature of Henry's reign.

Acquittals were not all that unusual for offences carrying a death penalty and a number of legal historians have noted the general reluctance of medieval juries to impose capital sentences.⁹⁵ However, the *Eulogium*'s detailed narrative of the king coercing reluctant jurors in order to secure convictions suggests a more specific unease with the nature of Henry's justice and with his expanding interpretation of treason. This impression was heightened by the chronicler's description of the clerics' executions. The sentence of drawing, hanging, beheading, and public display of their heads, which remained on show until November 1404, was intended to communicate the message that the destruction and division of their bodies was a fitting punishment for men who had tried to divide and destroy the nation.⁹⁶ However, this symbolic act of state power appeared to backfire when their deaths were instead interpreted by at least some observers as a political martyrdom.⁹⁷

Confession and evasion: The Essex conspiracy

In the 1402 indictments, Henry and his legal officials had gone to new lengths to secure convictions by asserting that the men they named as traitors intended to destroy not only the king but the nation, language, law, and people of England. The prosecution had sought to make this claim more tangible by incorporating allegations of Welsh and Scots involvement in an invasion plot. However, the six acquittals reached by jurors, in concert with the broader public

⁹⁴ Storey, "Clergy and Common Law," 357.

⁹⁵ See Chapter One, 53–54, n. 109.

⁹⁶ *CCR, 1402-1405*, 388–89 records the grant of permission to remove the heads.

⁹⁷ *Eulogium*, 391–93. Usk's account is more circumspect, but he portrays the clerics as victims who had been 'betrayed to the king' and subsequently 'cruelly hanged': *Adam Usk*, 175. Dunn discusses this and a number of similar cases where Henry IV's brutal executions succeeded in making martyrs of convicted traitors: "Henry IV and the Politics of Resistance," 13–14.

condemnation of the prosecutions that can be inferred from the chronicle accounts, shows that the state could at times encounter stiff resistance to its attempts to expand the scope of treason.

This experience in 1402 may have had some influence on the prosecution strategy deployed in response to a conspiracy instigated in late 1403 by Maud de Vere, the countess of Oxford.⁹⁸ Other prime movers were Geoffrey Storey, the abbot of St. John's Colchester, and the abbot of St. Osyth's, Thomas de London, with a more minor role being played by Thomas Cokke, the abbot of Beeleigh. They were allegedly aided by 20 or so other men, many of them servants or associates of these ringleaders. In the trial records, the threat the traitors' posed to the nation and people of England, as well as to the person of the king, was presented in clear terms. The sense of a national community in danger was augmented when a complex and meticulously detailed story about plans to bring about a French invasion was added to more generalised allegations about allying with the Welsh and Scots. According to the prosecution case presented in King's Bench in February 1405, in December 1403 the countess sent her servant John Staunton to meet one William Blythe, who claimed to have been previously involved in a separate rising led by Sir Henry Percy and his father the earl of Northumberland during the summer of 1403.⁹⁹

⁹⁸ Although Maud de Vere was named as the plot's ringleader in writs and other records relating to the case, there is no evidence she was formally questioned or arraigned, and she escaped with a fairly minor penalty of temporary confiscation of her estates: Ross, "Seditious Activities," 34; Given-Wilson, *Henry IV*, 262, 448. This may have been because she was seen as too powerful and influential. However, it may also reflect a gendered view of treason as a political crime that women, who lacked any formally recognised political agency or role, were inherently unable to directly commit. The perplexing treatment of women implicated in treason cases is beyond the scope of this study, but it is a topic I intend to pursue in future research.

⁹⁹ The main records in the case are TNA KB 27/575 Rex ms. 3, 4d, 5, and 5d; and TNA E 163/6/28 ms. 1–16. The latter is an Exchequer Miscellanea file containing confessions, writs, and other documents relating to the case. A partial transcription and translation of TNA KB 27/575, Rex

(The Percy rising is discussed in Chapter Five.) Together, Staunton and Blythe were to ride along the coast and extinguish the warning beacons, enabling a French invasion force to land at Ipswich and Orwell on 28 December. They were then to guide the French army, headed by Richard II's former queen Isabelle, her cousin the duc d'Orléans, and the comte de St Pol, towards Northampton. There, they would meet up with a force led by the returned Richard, supported by the Scots and by a Welsh force under Owain Glyn Dŵr.

Ross, whose 2003 article represents the only extended investigation of this conspiracy since Wylie's account in the 1880s, argues that it was a more significant threat to the king than has generally been acknowledged.¹⁰⁰ This was because it coincided with the circulation of letters purporting to be from Richard and authenticated by the king's signet, and it thus represented a high profile manifestation of the Ricardian survival story that could be associated with military activity by England's foreign enemies. Richard's seal had been stolen by William Serle, his former gentleman of the bedchamber, possibly around the time the king had surrendered himself into Henry's custody in 1399.¹⁰¹ Serle was using it to produce forged letters from the king until he was caught and executed in July 1404 and, as shall be seen below, confessions from some of those involved in the Essex conspiracy showed they were aware of the existence of these letters although they did not necessarily know they were

m. 5 is provided in *Select Cases*, 151–55. Partial transcriptions of some of the documents from the Exchequer Miscellanea file E 163/6/28 were included in *Traïson et Mort*, 267–77.

¹⁰⁰ Ross, "Seditious Activities"; Wylie, *Henry IV. Vol. 1, 1399-1404*, 417–28. Ross' analysis covers the timing of events, who was involved, and their possible motivations, including networks of patronage and service linking the countess, the abbots, and the other men implicated. He does not, however, examine the rhetorical or linguistic features of the case records themselves.

¹⁰¹ McNiven, "Rebellion, Sedition," 103, 106–8; Walker, "Rumour, Sedition and Popular Protest," 38–39.

forgeries. The royal seal was a powerful authenticating device and it convinced at least some of the conspirators that Richard was indeed still alive, for they sent one of their number to Scotland to meet with him and get his instructions.¹⁰² Even if Richard was dead by this point, the circulation of letters in his name calling on his loyal subjects to rally against the usurper and presented in a form that carried his political body in the potent symbolic form of the king's signet would have added considerable fuel to the fire of damning public allegations already in circulation that Henry had murdered Richard.¹⁰³

McNiven and Ross agree that there is no substantive evidence for French involvement and that the account of a planned invasion in the indictments was primarily a smokescreen, 'intended to distract those who heard it from the more important, and dangerous, issue, as far as the Lancastrians were concerned, [of] the restoration of Richard' and, by implication, Henry's questionable legitimacy.¹⁰⁴ The indictments and related documents reveal that the traitors' collaboration with the French and Scots was stressed repeatedly and in a manner that helped to bond Henry to the crown. This was achieved by portraying the accused not only as personal enemies of Henry and his sons, but also as enemies of a nation conceived of as the collective realm and people of England. The conspirators were described as 'public enemies' ('inimicis

¹⁰² The abbot of Beeleigh admitted that Abbot Geoffrey of St John's told him he had sent a man to Scotland to confer with Richard: TNA E 163/6/28 m. 15.

¹⁰³ Accusations along these lines were made by Sir Henry Percy, as well as by the comte de St Pol and the duc d'Orléans: McNiven, "Rebellion, Sedition," 104–5. In the extended account of the 1402 case against the friars provided in the *Eulogium* chronicle, Roger Frisby, the friar of Aylesbury supposedly said to Henry that if Richard was still alive, then he was the true king but if he was dead, then Henry was his murderer: *Eulogium*, 391–92.

¹⁰⁴ Ross, "Seditious Activities," 31. See also McNiven, "Rebellion Sedition," 103–5. This view is indirectly supported by Tuck ("Henry IV and Europe," 110–12), who shows that by 1403 Orléans was far more interested in pressuring England's interests in Guyenne. The threat from the Scots had been largely defused by a decisive English victory at Homildon Hill in late 1402.

publicis') who had plotted together to 'destroy and annihilate our king and his people [*populum*]'.¹⁰⁵ This is a construction that recalls notions of the *res publica* and the *communalité*, and by appealing to a communal national interest it depicted the accused men as enemies of the English nation. Given Henry's continued insecurity over his title, this legal gambit was less risky than a prosecution argument that relied too heavily on the customary sense of treason as a personal betrayal. By representing the alleged crimes in this manner, the prosecution managed to manoeuvre around the problematic issue of whether Henry really was the legitimate lord and king of his English subjects, especially if Richard were still alive. This legal discourse worked in a reverse direction, too. By repeatedly and directly connecting the destruction of Henry and his sons with the destruction of the realm, the indictments joined the Lancastrian bloodline to the royal body politic, thus reinforcing the succession claim Henry had been anxiously trying to shore up ever since his questionable seizure of the throne.

It is uncertain exactly how or when Henry came to hear about the plot being hatched against him, but in April 1404, he issued a commission to Sir William Coggeshale of Essex (a justice of the peace who also served several terms as sheriff) to inquire into treasons committed by Maud de Vere and the other named conspirators.¹⁰⁶ The ensuing legal process was unusual, although not unique, in producing English-language first-person written confessions from a number of the men involved, endorsed by them as 'written by my own hand'.

¹⁰⁵ TNA KB 27/575 Rex m. 5.

¹⁰⁶ TNA E 163/6/28 m. 1. For Coggeshale's career: *The History of Parliament Online*, accessed 21 March, 2014, <http://www.historyofparliamentonline.org/volume/1386-1421/member/coggeshall-sir-william-1358-1426>.

There are a number of possible reasons for the evidence being produced in this form. It could simply have been a matter of pragmatism in that those confessing were of higher social status than the likes of Sperhauk and Samford and may therefore have possessed the skills and knowledge to write on their own behalf. However, this seems unlikely given that even amongst the literate elite, the common practice was to dictate letters and other documents to scribes because writing with fifteenth-century technology still required a good deal of specialist skill.¹⁰⁷ One might also ask why the writers would choose English rather than Latin or French as their language of composition, given that during this period French was still the dominant language used for royal letters, as well as for private and Commons' petitions and similar supplicatory texts.¹⁰⁸ A plausible explanation is that given the elevated social status of the leaders of the conspiracy, who included not only the countess but the abbots of three Essex religious houses, the king's justices had to be very sure of their evidence before moving to trial and conviction. Although the process of legal confession is coercive by nature and the texts discussed here were produced in an atmosphere of psychological duress and veiled threat, the authorities had a vested interest in making them appear to be entirely voluntary revelations of truth. The use of English and the first person may therefore be seen as part of a deliberate prosecutorial strategy to ensure these confessions mimicked and in a sense stood in for oral pleas in court. They were intended to carry all the evidentiary weight and proof value of a man's words spoken on oath. As shall be seen, they were central to establishing the prosecution's case because there was

¹⁰⁷ On writing and dictation practices generally: Clanchy, *From Memory to Written Record*, 88–115.

¹⁰⁸ In addition to material cited in Chapter One, see Ormrod, "The Use of English," 775–76, 785–86 on the use of French for royal correspondence.

precious little other hard evidence - as opposed to rumour and suspicion - to bring against the conspirators. However, the direct first-person vernacular and the personal endorsements that gave these texts their evidentiary value as legal proof of treason were the same elements that enabled the confessants' to defend themselves through textual performances of true manhood.

John Staunton was the first of the conspirators to be taken into custody and questioned. The warrant for his arrest was issued on 17 April and his confession, dated 31 May, appears to have provided the information on which others were charged because further arrest warrants were issued on 6 June.¹⁰⁹ As a result, Abbot Thomas of Beeleigh presented himself before Coggeshale and on 22 June he wrote out a full confession before Coggeshale and Thomas Makwillem, the coroner of Essex.¹¹⁰ This document is in English and Abbot Thomas endorsed it as 'wrot with my owyn hand'.¹¹¹ Written confessions were also secured from Sir John Pritewell and William Blythe, although the circumstances of their production are not as clear as in Abbot Thomas' case.¹¹² Pritewell no doubt had more cause than the others to worry about his fate: he had previously been implicated in the 1400 Epiphany Rising when one of its ringleaders, Richard's half-brother John Holand (then the earl of Huntingdon), had been arrested while sheltering in his home.¹¹³ Blythe, meanwhile, was named as a key actor in the drama by all three of the others, with Staunton asserting that he had been tasked with riding to Ipswich with Blythe to

¹⁰⁹ Ross, "Seditious Activities," 34.

¹¹⁰ "House of Premonstratensian Canons: Abbey of Beeleigh by Maldon," in *A History of the County of Essex: Volume 2* (1907), 172–76, accessed 28 February, 2014 at *British History Online* <http://www.british-history.ac.uk/report.aspx?compid=39853>.

¹¹¹ TNA E 163/6/28 m. 15.

¹¹² *Ibid.*, ms. 12 and 16.

¹¹³ Ross, "Seditious Activities," 33, n. 53.

‘schewyn hym the countre and the coost’ preparatory to the destruction of the warning beacons.¹¹⁴

Staunton’s confession appears within the King’s Bench record directly after an exhaustive report of the charges, the names of the accused, and repeated assertions that they were conspiring with the French and Scots to ‘destroy and annihilate our lord the king and his people’.¹¹⁵ The formulaic Latin of this legal narrative painted a frightening picture of secret meetings and of preparations being made by the traitors ‘with armed forces of diverse enemies’.¹¹⁶ The plotters were also charged with:

Stating, publishing and announcing ... that Richard ...was still alive and would come back from northern parts into England with a very great host of French, Scots, and Welsh people to regain his royal estate...

and with spreading rumours that:

Our present lord the king was not the true king but nevertheless, so they said, he had made himself king and falsely and wickedly obtained the realm and crown of England.¹¹⁷

Another charge was that the accused men had commissioned the production of livery badges featuring Richard’s device of the white hart, which were to be distributed ‘to apparel various persons of their covein’ with the intention of turning Henry’s loyal lieges against him.¹¹⁸

This part of the prosecution’s narrative is long on hyperbole but short on specifics. Staunton’s confession (*cognicio*) was copied in immediately

¹¹⁴ TNA KB 27/575 Rex m. 5. The record of Staunton’s arraignment and confession appears in *Select Cases*, 151–55.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

afterwards and it was here that the generalised accusations of the Latin indictment were anchored by the clarity and precision of Staunton's description of specific activities. It is this testimony, straightforward in its first-person English and replete with details of times, days, and places, that grounds the Latin indictment with proof that is further verified through its characterisation as *cognicio* - that is, facts rather than speculation or hearsay. The impression that Staunton's confession was a statement of fact is enhanced by the concision of its language and the absence of any embellishment with emotive excuses or appeals for mercy. In these rhetorical qualities, it is quite different from the other confessions produced in the case. Staunton described how:

On Seterdaye to fore Crystemasse Boloigne cam to me in the halle of Benteleyghe and seyde that the countesse of Oxenford wolde that I schulde rydyn whit William Blythe to Gyppewych [Ipswich] to schewyn hym the countre and the coost. And I the forsayde Staunton went to my lady to wytyn [know] if hit were here wylle and sche seid ye and prayud for here love that he schulde goune whit hym and schewe hym the countre ... and schewyd hym qwat brygges [bridges] weren' in the wey and ledde hym to Caldewelle Hyll and schewyd hym the comynge [route] from Harwich for rydyng and coming of Frenchmen and wen thys was do [done] we rydyn to Colchestre on the nexte day ... and on the Mondaye Crystmasse evyn ... we comyn ageyn to Benteleyghe to evensong qwat William Blythe telde my lady aftur I can nought seyn and as touching the commynge by the wey [it] was for to kepyn [prepare for] Frenchemennes aryvyng and for to sawe the bekenes be the coost [e.g. saw down the coastal beacons] that the countre schulde not bewar of here aryvyng, for Isabelle that was qwene schulde aryven at Harwich.¹¹⁹

¹¹⁹ Ibid. Ross ("Seditious Activities", 31 n. 38) identifies Boloigne (or Boleyne) as a feoffee and old associate of the countess.

In the midst of this logistical report of the planned invasion, Staunton abruptly changed tack to name the countess as the individual responsible for having the Ricardian livery badges manufactured:

And overmore I knewe of hertys weren made for qwyche the countesse
leyde a sensure of selver and gylt to wedde [in pledge] to Neel Goldsmyth
to qwyten ount [account for] the hertes that weren of kyng Richard
lyvere.¹²⁰

After this juicy morsel suggesting there may be physical evidence in the form of the livery badges to be recovered, Staunton returned to his story of his ‘riding’ with William Blythe, saying they continued to St. John’s abbey where the abbot welcomed them warmly and expressed his support for their plans. Finally, Staunton validated his confession with the endorsement: ‘that this bylle is soth I have wrytyn hit whit my owyn hand’.¹²¹ The term ‘soth’ directly taps into the potent notion of soothfastness, the idea of words as true in an objective, factual sense but also in the sense of a true man’s spoken words as a form of legal and ethical proof. This mode of giving textual and evidentiary authority to a suspect or coerced confession bears strong likeness to the inquisitorial practice Arnold has noted of authenticating confessions by registering the deponents’ vernacular endorsement of ‘all they had caused to be written’.

However, closer reading reveals that Staunton’s confession was not in fact freely revealed truth but rather a carefully constructed narrative that the king’s justices had played no small part in fashioning. The written text is presented as a direct reproduction of Staunton’s verbal speech in its opening

¹²⁰ Ibid.

¹²¹ Ibid. “Soth” has been mistranslated by Sayles, who renders the phrase as ‘this bill is so’: *Select Cases*, 154.

line 'I, John Staunton, knowleche and saye' but it has been manipulated to fit into and support the damning narrative that immediately precedes it in the Latin charges of the indictment.¹²² The phrase 'I the forsayde Staunton' inserted before each substantial allegation or piece of information was a formal legal construction that points towards an intensive question-and-answer interrogation. As a man already under arrest for treason, Staunton was probably coerced by threats or leading questions into naming the ringleaders and providing specific details that lent credibility to the indictment's dramatic account of England's three greatest foreign enemies uniting for an imminent invasion. This impression is enhanced by the fact that unlike the other confessants in this case, Staunton apparently made no attempt to explain, excuse, or deny his actions nor did he make a plea for mercy. Instead, his statement is unemotive and matter-of-fact, making it appear a dispassionate and objective report rather than a document produced under considerable duress. Certain references also betray the hand of the prosecution in shaping Staunton's confession. For example, he said that he and Blythe were to guide the French to Northampton 'to meten there whyt Richard that was kynge the wyche *we seyde* had be on lyffe' ('who we said was still alive').¹²³ In effect, this was an admission from Staunton that he and his co-conspirators knew Richard was dead but had wilfully lied about his survival. As mentioned earlier, the conspiracy erupted while Henry was still struggling to assert the legitimacy of his succession and it had coincided with the circulation of letters sealed with Richard's signet. Given these circumstances, the king's justices could not risk

¹²² Ibid. The *MED* gives 'confession' as one definition for 'knowleche': *MED*, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED24483>.

¹²³ TNA KB 27/575 Rex m. 5, emphasis added.

allowing into the official record any authenticated statement that Richard really was still alive. If, as Ross convincingly argues, the allegations of a military alliance with the French, Scots and Welsh were incorporated into the charges to distract from this more pressing question of Richard's survival, then Staunton's confession as it was read out in court could not be allowed to compromise this prosecutorial tactic.¹²⁴

Overall, in its narrative structure, wording, and content Staunton's confession looks more like a coerced approver's appeal that was manipulated by the king's judicial officers to take on the appearance of a voluntary revelation. This would make sense if, as Musson contends, the wider political community was becoming increasingly suspicious about approvers' appeals and juries were often reluctant to convict on their evidence alone.¹²⁵ Close examination of the role this confession plays within the larger textual frame of the legal record and the relationship between its Latin and English elements makes it clear that it was Staunton's statement, authenticated by his direct first-person vernacular endorsement, that provided the ammunition to enable the king's justices to pursue the conspiracy's more powerful ringleaders, who were likely their main targets. Yet, in his own 'bille' as it was copied into the record, Staunton was able to evade responsibility and to minimise his own role by positioning himself as a loyal and loving servant who was simply carrying out his noble mistress's bidding. In other words, he was performing as a true man to his (female) lord. It may have been in return for his damning testimony that Staunton was pardoned on 7 December, 1404, a trade-off that would be

¹²⁴ Ross, "Seditious Activities," 31.

¹²⁵ Disapproval was demonstrated by petitions to parliament that advocated against the process and complained about the abuses it encouraged: Musson, "Turning King's Evidence," 470–71.

consistent with Staunton being coerced to turn approver.¹²⁶

Musson has pointed to a distinction between what he characterises as judicial confessions, made in person during a trial and ‘which appear to have been entirely voluntary’, and extra-judicial confessions made to officials prior to charges being laid and offenders being brought into court, with the latter type of confession being characteristic of the approver’s appeal.¹²⁷ Broadly following this distinction, Ross characterises all the confessions secured during the investigation of the De Vere conspiracy as examples of turning king’s evidence.¹²⁸ However, comparison between Staunton’s confession, as it was embedded within the King’s Bench record and used to validate the claims in the indictment, and the other confessions that were filed in the Exchequer accounts but not incorporated into the formal record of proceedings in King’s Bench reveals some significant differences in structure, tone, and subject position. As will be seen below, the confessions of Abbot Thomas and Sir John Pritewell follow a supplicatory pattern much closer to that seen in petitions, with the confessants focused on denying or excusing their own involvement and on soliciting the king’s grace rather than on presenting a coherent legalistic account of events.

Abbot Thomas and Sir John Pritewell each offered oblique but compelling evidence for thinking that Richard was alive, thereby allowing them to position themselves as loyal subjects of the rightful king. As part of their supplicatory performance of petitioning for mercy they first had to admit some

¹²⁶ *CPR, 1401-1405*, 473.

¹²⁷ Musson, “Turning King’s Evidence,” 469. Musson notes some overlap between the two forms, especially in the case of someone named by an approver who then turned king’s evidence himself.

¹²⁸ Ross, “Seditious Activities,” 35.

level of guilt but they never explicitly denied this belief. Their confessions, which were given textual authority by the use of first-person English and the endorsement of being written by their own hands, positioned them as true men and loyal subjects, but it is not always entirely clear whether their loyalties lay with Richard or with Henry. They demonstrate the subversive potential for self-claimed vernacular identity as a true man to legitimise resistance to the Lancastrian regime.

Abbot Thomas began his confession by denying that he had ever ‘comunyd in this mater that I schal sey’ except with Abbot Geoffrey of St. John’s and with William Blythe.¹²⁹ He then told a convoluted story about how he was tricked into engaging with the conspirators, having been summoned to St. John’s by Abbot Geoffrey to, as he thought, sing a mass ‘and for this cause and for none othir I came thedir’.¹³⁰ When Thomas arrived at the abbey, Abbot Geoffrey drew him into conversation with Blythe by asking the latter for news. Thomas claimed Blythe promptly offered to read the two abbots a prophecy that was about to ‘falle hastily, and with that he toke oute a litil quayer [out] of his bosim of papere and red theron diverse thyngis of the wich I have no meynde [memory] of’.¹³¹ This prophecy was no doubt the widely circulated political prophecy of Richard’s return and, consequently, Henry of Lancaster’s fall and the dismantling of his illegitimate regime.¹³² However, despite its dramatic import, Thomas was quick to deny he could even recall what it was about. As his

¹²⁹ TNA E 163/6/28 m. 15. Abbot Thomas’ confession is transcribed in *Traïson et Mort*, 273–77.

¹³⁰ TNA E 163/6/28 m. 15.

¹³¹ Ibid.

¹³² ‘Falle’ communicates the idea of something happening or coming about by fate, but also refers to people being brought to decline and ruin: MED, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED15195>. Such political prophecies had been circulating since Henry’s usurpation: Morgan, “Henry IV and the Shadow of Richard II,” 28–31.

narrative developed, Thomas painted Blythe as the active conspirator while portraying himself as an unwilling victim of Blythe's deceptions. He described how some days after his unexpected encounter at St. John's, Blythe turned up at his own abbey and proceeded to discuss a plan for a rising on behalf of Richard. According to Thomas, Blythe then claimed to have 'a patent of King Richard ceele encelið to proclame as sone as yis pepil weryn come to knowyn that wich party wold hold with King Richard and wech nowt'.¹³³ Whether or not Thomas believed the letter was really from Richard (and as mentioned earlier, this belief was certainly plausible given the symbolic authority of the signet seal), Blythe's last phrase worked in Thomas' account as a means of mitigation, for if the letter proved Richard was alive then Thomas' actions could be excused on the grounds he thought he was acting as a true liege man should. However, it was also as a subtle indicator of threat. Placed immediately after the description of a planned armed rebellion, the phrase describing the letter being used to find out who would be loyal and hold with Richard and who would abandon him could be read to imply reprisals against the latter.

Thomas' confession continued in a blend of justifications and excuses as he alternated between providing evidence that his belief in Richard's survival seemed reasonable at the time, and claiming that he had been physically threatened to participate in the conspiracy. First he said Blythe had asked him for a horse, spear, and other arms, which Thomas did not have and would not lend to Blythe in any case. He then said Blythe sent him letters asking for money, and 'swere so hindirly grete that al the maters afornsaide weryn

¹³³ TNA E 163/6/28 m. 15.

soth'.¹³⁴ Williams glossed the term 'hinderly' as 'vulgarly' and interpreted this to mean that Blythe shouted profanities at Thomas.¹³⁵ However, given the fact that Thomas made clear he was referring to letters (at one point he explicitly says that Blythe 'swere inderly in his letter'), it seems more plausible that 'h/inderly' in this phrase means 'in the vulgar tongue' or vernacular English. This would be consistent with the notion of 'soth' as a man's spoken word in English proving the truth of his speech. Thomas's explanation of his actions on the grounds that he was given convincing evidence of Richard's imminent return was further strengthened when he went on to confess that Abbot Geoffrey had told him he had sent a man to Scotland to confirm the story, and on his return the man 'kame to him [Geoffrey] and browgt him word that King Richard was on lyve'.¹³⁶ On the one hand, Abbot Thomas's confession constructed a narrative that deflected allegations he was a traitor by showing his own fundamental loyalty: he had only acted as he had because several people, including another abbot, had given him convincing proof of Richard's survival and imminent return. On the other hand, Thomas suggested he had been forced to participate by threats of violence. Describing Blythe as a 'perilouse' man, he claimed to fear 'he meygth have desesid [physically harmed] me and oure place' if Thomas did not send him the money he demanded.¹³⁷ Further, he described being hauled from his bed at midnight by a servant and fleeing his abbey because an armed group was outside, 'and for drede that I was ferid to have be take and desesid bodeli I

¹³⁴ Ibid.

¹³⁵ *Traïson et Mort*, 275 n. 2.

¹³⁶ TNA E 163/6/28 m. 15.

¹³⁷ Ibid.

voidede [fled his abbey]'.¹³⁸

Abbot Thomas concluded his confession by asserting the full, voluntary, and truthful nature of his speech, eliding the psychological duress implicit in its being articulated only after he had been named in an arrest warrant. He said he had presented himself willingly to the justices and swore before God 'I mente none evill in no wise ne non untrowth to my lege Lord'.¹³⁹ He then authenticated his text as the words of a true man by confirming 'this same bille with all the entirlinyg I Thomas Abbot of Bile wrot with my owyn hand'.¹⁴⁰ Finally, and in contrast to Staunton's confession, he admitted to being guilty of not speaking sooner and asked for mercy: 'for the conselment of this articlis beforsaide aske mercye grace and pardon, ywrete with myne owyn hand'.¹⁴¹ This final phrase restored right order, at least as the Lancastrian state would see it, because by admitting his guilt and begging for pardon Thomas recognised and accepted the legitimate authority of Henry as king by invoking his royal prerogative of mercy. This passage underscores the tensions that inhered in vernacular first-person confessions, even when these appeared at first glance to be coherent, monologic texts. It served the prosecution's purpose to coerce or entice Thomas into admitting his own guilt, as this provided sworn testimony that could be used against the other conspirators while also reinforcing Henry's royal authority. Yet, while Thomas participated in this process, he simultaneously subverted it by authenticating 'with his own hand' his claims to

¹³⁸ Ibid. Abbot Thomas's claim that he had only 'voided' his abbey because of his fear of violence may have been intended as an excuse for initially hiding from the authorities, as some two weeks elapsed between the publication of his arrest warrant and his turning himself in to Coggeshale.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid. The abbot was eventually pardoned after intercession by the queen: *CPR, 1401-1405*, 472.

be a loyal subject and true man, rather than a traitor.

The confession of Sir John Pritewell features some similarities to that of Abbot Thomas, particularly in the use of petitionary language to appeal for the king's grace. However, Pritewell engaged in a more overt textual performance of true manhood that was grounded in his masculine identity as a knight.

Pritewell's confession opened by positioning his actions as those of a loyal knight called upon to serve his lord. He claimed that Blythe, posing as a knight himself, had sent for him in the name of their 'rightful' king, conveying a message purportedly from Richard that thanked Pritewell for his continued loyalty:

Ther was on [i.e. Blythe] at Bylee in gyse of a knyghte and sente for me John Pritewelle to come to hym thyder and seyde to me John Sire youre mayster and myn and oure alder mayster our right ligelord Kyng Richard greteht you often tyme and derelithe [affectionately] wel and thanketh you hyeliche of youre grete trouthe that ye have contened you inne to hym ward sithen he parted fro you and sori is and often hath been for the defese [disadvantage] that ye have so ofte tyme suffred for hym and for his brother of Huntyngdon that was taken at your hous.¹⁴²

Pritewell added that Blythe claimed 'he hadde ihad thre lettres to hym self fro Kyng Richard fro the Cristemasse in to that Sonday' that provided what seemed to be very recent proof of the king's survival. Further, Blythe told him that in these letters Richard:

Prayeth ful hertely for you to God that he wil kepe you fro alle manner defeses [harm] and that so specially that I trow that ye and alle that langeth to you faren right moche the betere for his prayere. And of that he [Blythe]

¹⁴² TNA E 163/6/28 m. 12. Pritewell's confession is transcribed in *Traison et Mort*, 269–73.

sayde & swor ... by the sacrament of bothe masses.¹⁴³

Pritewell's confession positioned him as a man confronted by a deeply personal appeal to his masculine 'trouthe' and the enduring love and knightly loyalty he owed to his 'right' liege lord, Richard. The message was made more compelling by the reference to Pritewell's previous service in sheltering the king's half-brother Huntingdon during the Epiphany Rising. The repetition of Blythe's words in direct speech rendered them more urgent and authentic, with their truth value augmented by being sworn by the sacrament of not one but two masses. Pritewell went on to repeat a story that Blythe had told him of how he had helped to spirit Richard out of prison at Pontefract and into safe exile in Scotland, from whence the king was about to return. Recalling the contemporaneous circulation of the forged letters under Richard's signet, Blythe's claim, as repeated by Pritewell, that he had recently received three letters from the king would have been another element that supported the veracity of Blythe's assertion that Richard was alive.

By retelling this extraordinary story, Pritewell obliquely explained his involvement in the plot and sought to mitigate his guilt by emphasising his own identity as a loyal knight and true man. There is no way to ascertain whether Pritewell genuinely believed Blythe's story about Richard's survival, although his reference to the king's letters and to Blythe swearing 'trowe' on the sacraments certainly presents plausible rationale for such a belief. Once caught in the net of a royal judicial inquiry, Pritewell tried to take a line that allowed him to defend himself by performing an identity as a loyal knight and subject of Richard, while not going quite so far as to openly state Henry's illegitimacy. This

¹⁴³ TNA E 163/6/28 m. 12.

was one aspect of the Ricardian survival story that proved particularly useful to those dissatisfied with the Lancastrian regime, because it allowed them to represent their criticism of and resistance to Henry in terms of political loyalty to the rightful king or to the crown.

For example, early in his confession Pritewell claimed he told Blythe he did not believe that Richard was still alive and it was this denial that had prompted Blythe to tell him about Richard's escape from Pontefract. However, later in the text, Pritewell admitted that when Blythe offered him a horse and armour to ride in Richard's defence, he did not decline outright on the grounds Richard was dead, but instead pleaded illness: 'Ich answerede that Ich was impotent by syknesse and by poverty bothe that though he were on lyve [even if he were alive] Ich ne myghte do no servise to hym'.¹⁴⁴ Towards the end of his confession, Pritewell again swore it was illness, rather than any unwillingness to serve Henry, that prevented him from arresting Blythe or informing the king of the plot against him, saying that when Blythe came to him, 'in sothenesse Ich was syk at that tyme'.¹⁴⁵

Although it was in the prosecution's interests to get a definitive and damning confession out of Pritewell to back up the evidence already secured from Staunton, Pritewell's evasive tactics made this difficult as he repeatedly offered up plausible proofs for Richard's survival and then carefully distanced himself from them by putting them into someone else's mouth. The ambiguous nature of his confession, with its repeated suggestions that Richard may well be alive and, if so, that it was the duty of true knights to serve him as their 'right

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

liege lord', may be one reason this text never became part of the official legal record of King's Bench in the way that Staunton's confession had. Blythe's account of the rescue of Richard from Pontefract, as it was retold in Pritewell's confession, is the earliest known written account of Richard's rumoured escape to Scotland.¹⁴⁶ Given its plausibility at the time, especially when taken together with the circulation of the letters under Richard's seal, putting it into wider circulation by introducing it into the public arena of King's Bench may have been seen as far too risky.

Running throughout Pritewell's confession is an undercurrent that juxtaposed his own true, if gullible, knighthood with the false knighthood of Blythe. When Pritewell opened his confession by describing how Blythe had come to him 'in gyse of a knyghte', the term 'gyse' could be read to mean 'clothed' or 'in the fashion of', a meaning that embraces both physical appearance and behaviour. In the context of the explanations and mitigations that follow, it also suggests deliberate deception. Pritewell repeatedly accused Blythe of being a false man who had taken advantage of Pritewell's knightly 'trouthe' and sense of honour, as well as his self-confessed 'unredy wyt'.¹⁴⁷ This impression is reinforced towards the end of the confession, where Pritewell denied Blythe's accusation that he had agreed to help the countess and the other conspirators, asserting that 'ffor by the feyth that I owe to God and to the Kyng ... Ich ne herde haver this matere imoved but hit were of him so feyned hym knyght'.¹⁴⁸ He then reinforced his own claim to be the true man by saying he would prove all that he had said in court. He put himself in the king's grace for

¹⁴⁶ McNiven, "Rebellion, Sedition," 107.

¹⁴⁷ TNA E 163/6/28 m. 12.

¹⁴⁸ *Ibid.*

the single act of failing to arrest Blythe or inform the king about his activities, but as to everything else he had been accused of, he asserted several times that he 'shal quite me in the country'; in other words, he would acquit himself by jury trial ('put himself on the country').

Conclusions

Faced with the urgent constitutional questions raised by Henry's seizure of the throne, the new Lancastrian government sought to restore political stability through measures such as general pardons for previous offences, and the public circulation of vernacular justifications for Richard's removal. Treason trials offered another means by which Henry's usurping body could be joined more securely to the political body of the realm. By endorsing interpretations of treason that extended beyond threats or injury to the king's person to attacks on the more abstract entities of the *populum* and the nation, Henry bolstered his claims to embody sovereign political authority. At the same time, the definition of treason was being stretched beyond its traditional meaning of a personal crime against the king to an interpretation more aligned to civil law views of treason as an attack on or insult to the public authority of the state. It is not suggested that the precedents being established in King's Bench between 1401 and 1405 were the product of any systematic policy of reform or the broad application of jurisprudential principles. Rather, they reflect the altogether more pragmatic aim of decisively asserting Henry's regality and the legitimacy of his title. Arguably, it was as an unintended consequence of this short-term political agenda that a more fundamental change in the relationship between English subjects and the state was taking place through case law in treason

trials, even if this was not yet reflected in statutes. Most significant in this regard were precedents for punishing words alone, whether in the form of written texts or verbal rumours, as acts of treason. As has been seen, this shift in legal argument was predicated upon a deeper cultural transformation that gendered some forms of public speech, so that in certain circumstances men's words could logically be regarded as having the capacity to inflict material harm.¹⁴⁹

However, the cultural and legal relationship between men's words, particularly when verified by avowals and oaths, and the performance of true manhood meant that these masculine speech acts could also survive as resistant voices within the authorising texts of the state. As has been seen, judicial officers took great care to bolster Latin indictment formulae and the evidence of coerced French-language confessions with the 'proof' of treason in traitors' own words, but the authenticating power of the vernacular could also work in the reverse direction. When the speech of accused traitors was presented as evidentiary truth that was voluntarily revealed and given the status of legal proof, this inadvertently created the potential for this same speech to subvert the prosecution narratives within which it was embedded. The challenge was being articulated in terms of customary notions of masculine loyalty and honour, but also through reference to newer ideas about the common profit and community of the realm that were shaping the language and themes of popular political discourse.

¹⁴⁹ This argument is presented in E. Amanda McVitty, "'My name of a trewe man': Gender, vernacularity, and treasonous speech in late medieval England," *Parergon* 33.1 (2016, forthcoming).

Chapter Four

Political and Religious Dissent, 1406-1417

From 1406, there was a distinctive shift in the way the Lancastrian regime viewed public challenges to its legitimacy, as new statutes and other measures began to posit a causal relationship between heterodox religious belief and traitorous intent. This chapter examines a series of treason cases that were prosecuted in King's Bench between 1407 and 1417 in light of this shift, as the government's repression of political dissent periodically became entangled with wider campaigns against the lollard heresy.¹ In 1406, heterodox religious beliefs were implicitly linked to political dissent in a statute aimed at rooting out and punishing those who preached lollard theological doctrine but also at those who continued to circulate rumours that Richard II was still alive. The connection between heresy and treason was later made explicit in legislation and prosecutions that followed a 1414 armed rising by the alleged lollard sympathiser Sir John Oldcastle, Lord Cobham. In a new statute enacted in April 1414, lollards were defined as traitors by definition, regardless of their activities, political views, or any actual threat they posed to the government.

¹ Lollardy is sometimes called Wycliffism, for its founder the Oxford theologian John Wyclif (Wycliffe). 'Lollard' seems originally to have been a term of abuse but it is now generally accepted by scholars as a non-pejorative identifier. On naming, see Hudson, *Premature Reformation*, 2–4; Little, *Confession and Resistance*, 133. Throughout this study, I use the uncapitalised lollard/lollardy rather than the capitalised form. This reflects recent scholarship that sees 'lollardy' as a group of social and cultural practices and beliefs that have a certain coherence and consistency, but which also feature enough variation to resist identification as a sect united by a single explicit ideology or doctrine. For a discussion of various approaches and the implications thereof: Mishtooni Bose and J. Patrick Hornbeck II, "Introduction," in ed. Mishtooni Bose and J. Patrick Hornbeck II, *Wycliffite Controversies* (Turnhout, Belgium: Brepols, 2011), 1–12; J. Patrick Hornbeck II, *What Is a Lollard? Dissent and Belief in Late Medieval England* (Oxford: Clarendon Press, 2010), 1–10; Forrest, *Detection of Heresy*, 11–27; Fiona Somerset, "Introduction," in *Lollards and Their Influence in Late Medieval England*, ed. Fiona Somerset, Jill C. Havens, and Derrick G. Pitard (Woodbridge, Suffolk: Boydell, 2003), 9–16.

With the new legislation in 1406, the Lancastrian state began to portray those spreading lollard ideas and those challenging Henry IV's legitimacy as part of a single amorphous yet linked and organised group. Although tangible social and political connections between individual offenders were often tenuous at best, in the legal rhetoric of treason prosecutions, common themes were emerging that reflected wider orthodox and official fears about the intimate relationship between religious and political dissent. Both treason and heresy were associated with the production and circulation of subversive texts in English, and new legal measures against these 'evils' that imperilled the unity of church and state gave secular officials a mandate to find and suppress such texts and their producers. This judicial programme was marked by intensified government concerns with offenders who used vernacular public speech and publication, including the posting of bills and the circulation of pamphlets and letters, to challenge and destabilise the political order.

A number of scholars have asserted that any links between lollards and political dissenters were entirely the product of Lancastrian fear-mongering, and that associative connections between heresy and treason were deliberately 'manufactured' in order to expand the government's power.² Others find this viewpoint somewhat condescending, and argue that to approach dissent (whether religious or political) as largely the product of the prosecutorial imagination robs individuals of the potential to have an intellectual history of their own or to exercise independent political agency.³ The analysis presented

² See for example, Strohm, *England's Empty Throne*, 60–71; Richard Rex, *The Lollards* (New York: Palgrave, 2002), 50–51, 82–83.

³ See for example Ian Forrest, "Lollardy and Late Medieval History," in Bose and Hornbeck, *Wycliffite Controversies*, 128–29; Arnold, "The Historian as Inquisitor."

here aligns with this latter view. That is, while acknowledging that prosecution records were shaped to a large degree by the government's agenda and by the proscriptive language and ideas of new legislation, it also accepts that these records could inadvertently capture resistant claims to political agency.

Throughout, this chapter will examine the sources from both perspectives. From the government's side, it will consider how the increasing conflation of political and religious dissent influenced legal precedents and case law in ways that helped to support expansions in the scope of treason. The precedents against masculine political speech established by the treason convictions of men like John Sperhawk and Nicholas Louthe were given added impetus by statutes and resulting prosecutions that connected verbal challenges to Lancastrian legitimacy with expressions of heretical dissent. By implication, this helped to construct accused traitors as enemies of the king, but also as enemies of the Christian people and national community of England.

Turning to how those accused sought to evade or resist their accusers, the evidence preserved in trial records will be examined for what it can reveal about alternative ideas of loyal political subjecthood. In the process, this investigation will also consider traces left in the sources that suggest cross-fertilisation between the language, strategies, and social networks of lollards and accused traitors. Religious dissenters and political dissenters were certainly not the single, homogenous group the government tried to portray. Nevertheless, at times the records do point to concrete social and professional connections between the two communities, particularly for those living and working in Westminster and London. Moreover, and of greater interest for the purposes of this study, certain commonalities can be discerned in the ways that

lollards and accused traitors expressed and justified their resistance to authority. Both groups tapped into the political potential of urban public space to communicate their ideas and beliefs to a wide audience that included, but was not limited to, the ruling elite of Lords and Commons in parliament. In their pamphlets, letters, and bills, critics of the church establishment and of the Lancastrian regime exploited petitionary forms and the rhetoric of 'law' to legitimise their complaints, and claimed representation as members of a universal 'commons'.⁴ In addition, both groups drew on the power of English to authenticate the truth and proof value of their words. As the author of an early fifteenth-century lollard tract advocating vernacular translation of scripture explained: 'Trouthe schuld be openly knowen to alle manere of folke, trowthe moveth mony men to speke sentencis in Yngelysche'.⁵

Finally, lollards and those challenging the legitimacy of the Lancastrian regime expressed themselves through vernacular discourses of true manhood. Lollard texts deployed a distinctive rhetoric in which they described themselves as 'trewe Christian men' or 'trewe men' of the church, visualised by lollard believers not as the orthodox, hierarchical institution of the earthly church but as a universal and eternal community of the pre-destined.⁶ It is important to

⁴ The best-known example of this strategy is the vernacular petition known as the "Twelve Conclusions of the Lollards", which was posted at Westminster Hall during the parliament of 1395: H. S. Cronin, "The Twelve Conclusions of the Lollards," *The English Historical Review* 22 (1907): 292–304; Wendy Scase, "The Audience and Framers of the Twelve Conclusions," in *Text and Controversy from Wyclif to Bale. Essays in Honour of Anne Hudson*, ed. Helen Barr and Ann M. Hutchison (Turnhout, Belgium: Brepols, 2005), 283–301. For a detailed discussion of discourses of trueness and the 'true commons' in lollard complaint literature and petitions, see Scase, *Literature and Complaint*, 87–112.

⁵ "Tractatus de Regibus," in *Selections from English Wycliffite Writings*, ed. Anne Hudson (Cambridge: Cambridge University Press, 1978), 127–31 (127, lines 3–5).

⁶ Anne Hudson, "A Lollard Sect Vocabulary?," in *Lollards and Their Books* (London: Hambledon Press, 1981), 164–80; Elizabeth Schirmer, "'Trewe Men': Pastoral Masculinity in Lollard Polemic," in *Masculinities and Femininities in the Middle Ages and Renaissance*, ed. Frederick Kiefer (Turnhout, Belgium: Brepols, 2009), 117–29; Havens, "'As Englishe Is Comoun Langage to

note that these individuals were not using the term ‘man’ in a gender-neutral sense to represent the category ‘human’. As Schirmer convincingly argues, ‘[l]ollards represent themselves not only as “trewe men” but as “trewe *men*”, their fidelity to the Word bound up with an oppositional model of masculinity’.⁷ The previous chapters have demonstrated that discourses of true manhood also played a central role in conflicts over treason. This chapter explores the development of this defensive strategy, with accused traitors positioning themselves as true men of the commons, whose opposition to the Lancastrian usurpers was proof of their masculine loyalty to the rightful king or to the crown. Watts has shown that between the 1380s and later 1400s, the term ‘commons’ did not carry the specific meaning of lower social status that it came to have by the early sixteenth century, but was instead used to perform communal identity as part of an inclusive body politic and to assert a claim to political agency and collective action for the common good.⁸ In the religious sphere, lollards grounded their claims to be ‘trewe men’ in the eternal power of ‘God’s law’, that is, the Word and scriptural truths unmediated by priests; in the political sphere, those charged with treason grounded their claims to be true men and loyal political subjects in the authorising language and practices of the common law. By performing a gendered vernacular identity as ‘trewe men’ and invoking the authority of law - whether common law or God’s law - political and

Oure Puple””; Shannon McSheffrey, *Gender and Heresy: Women and Men in Lollard Communities, 1420-1530* (Philadelphia, PA: University of Pennsylvania Press, 1995), 145–56; Jennifer Kolpacoff Deane, *A History of Medieval Heresy and Inquisition* (Lanham, MD: Rowman & Littlefield, 2011), 225–26.

⁷ Shirmer, “Pastoral Masculinity in Lollard Polemic,” 129, emphasis in original. Shirmer’s argument places competing gender systems – specifically the conflict between orthodox clerical and lollard lay masculinities – at the centre of conflicts over theology, Wyclif’s theory of ‘dominion’, and the relationship between lay and ecclesiastical authorities.

⁸ Watts, “Public or Plebs: The Changing Meaning of ‘The Commons,’” 244–49.

religious dissenters positioned themselves as legitimate representatives of a universal political or spiritual community. The similarities suggest both groups may have been drawing from a common discursive well, pointing to an intriguing nexus that calls for further exploration.

There is a vast scholarship on lollardy's theological foundations and academic roots, as well as on lollard lay communities, beliefs and practices.⁹ The argument presented below does not address lollard theology or scholarly debates, nor will it consider cases of heresy pursued through ecclesiastical courts; instead, the focus is on places where lollardy intersects with the prosecution of treason in statutes and in the secular judicial context of King's Bench. Recent scholarship offers nuanced readings of trial narratives and witness testimony from heresy inquisitions in ecclesiastical courts, but it is important to remember that these investigations took place using procedures that differed from those used under common law.¹⁰ The influence of anti-lollard

⁹ Important early studies, although limited by their focus on the official records of repression, are K. B. McFarlane, *John Wycliffe and the Beginnings of English Nonconformity*. (London: English Universities Press, 1952); McFarlane, *Lancastrian Kings and Lollard Knights* (Oxford: Clarendon Press, 1972); John A. F. Thomson, *The Later Lollards, 1414-1520* (London: Oxford University Press, 1965). Thomson focused almost exclusively on the geographical distribution of lollard communities, rather than on questions of theology or practice. Anne Hudson's research into and translation of John Wyclif's writings and a vast number of other lollard texts such as sermons and tracts has opened up the field to new approaches and interpretations from perspectives including intellectual history and literary studies. More recently, methods grounded in social and cultural history have further expanded the study of lollard communities and identities. The main general works consulted for this study include Hudson, *Lollards and Their Books*; Hudson, *Premature Reformation*; Margaret Aston, *Lollards and Reformers: Images and Literacy in Late Medieval Religion* (London: Hambledon Press, 1984); Margaret Aston and Colin Richmond, eds., *Lollardy and the Gentry in the Later Middle Ages* (New York: St. Martin's Press, 1997); McSheffrey, *Gender and Heresy*; Forrest, *Detection of Heresy*; Hornbeck, *What Is a Lollard?*; Somerset, Havens, and Pitard, *Lollards and Their Influence in Late Medieval England*; Rex, *The Lollards*; Bose and Hornbeck, *Wycliffite Controversies*. Forrest ("Lollardy and Late Medieval History") summarises the key works and trends since the early records-based research of McFarlane and Thomson.

¹⁰ For examples of the use of ecclesiastical records to analyse lollard networks, beliefs and practices: McSheffrey, *Gender and Heresy*; Forrest, "Defamation, Heresy"; Justice, "Inquisition, Speech, and Writing"; Arnold, "Lollard Trials and Inquisitorial Discourse"; Maureen Jurkowski, "The Arrest of William Thorpe in Shrewsbury and the Anti-Lollard Statute of 1406," *Historical*

campaigns on the construction of treason in King's Bench, and potential commonalities between lollards and the political dissenters caught up in the machinery of royal justice, are issues that remain to be fully explored.¹¹

Any detailed consideration of lollardy is beyond the scope of this study, but an overview of its origins, spread, and its theological and political content will contextualise the legal records.¹² Lollardy had its roots in orthodox debates taking place at Oxford during the 1370s and its scholarly pedigree is most strongly associated with the Master of Theology John Wyclif, who initially enjoyed the support of some of England's leading secular nobles. By the early 1380s, Wyclif's radical calls for church reform and his questioning of core doctrine such as the 'real presence' in the Eucharist led to his works being condemned as heretical. Briefly, lollardy's main theological content included a rejection of orthodox Eucharistic doctrine; rejection of the salvific value of pilgrimages, relics, and devotion to images; rejection of the need for auricular confession; and an assertion that oaths had no validity, and moreover that oaths

Research 75 (2002): 273–95; Jurkowski, "New Light on John Purvey," *The English Historical Review* 110 (1995): 1180–90; Taylor, *Fictions of Evidence*, 151–88; Ian Forrest, "The Dangers of Diversity: Heresy and Authority in the 1405 Case of John Edward," *Studies in Church History* 43 (2007): 230–40.

¹¹ Jurkowski recently noted that King's Bench indictments offer 'promising sources not yet fully exploited': Maureen Jurkowski, "Lollard Networks," in Bose and Hornbeck, *Wycliffite Controversies*, 277–78, quote at 278. This is particularly so for the period prior to the 1414 statute, which gave secular officials an overt mandate to pursue lollards. (The implications of this statute are discussed in detail below.) Forrest, *Detection of Heresy* is valuable for addressing intersections between ecclesiastical and lay jurisdictions, but the author's main focus is on the construction of the crime of heresy in ecclesiastical records; he discusses connections to treason only briefly and in the context of orthodox polemic rather than through the analysis of specific treason cases. Brief discussions of some of the King's Bench prosecutions discussed in this chapter can be found in Aston, "Lollardy and Sedition," 22; Walker, "Rumour, Sedition and Popular Protest," 41, 43–44, 61–62; Strohm, "The Trouble with Richard," 106–8; Strohm, *England's Empty Throne*, 114–15, 119–21.

¹² For what follows, see the main general studies cited above. For valuable brief overviews of the origins, key beliefs and spread of lollardy, with particular attention to the importance of vernacular texts and translation in the diffusion from academic to lay communities, see Justice, "Lollardy"; Deane, "Wyclif, the Word of God, and Inquisition in England," chapter 7 in *Heresy and Inquisition*.

sworn in saints' names or 'oaths by creatures' (that is, on books made of animal skins) were a form of idolatry.¹³ Lollards also believed that true Christians enjoyed a personal relationship with God that did not require the mediation of priests, and a central tenet was that the scriptures should be translated into English and made available to all lay people so that they could have direct access to the divine Word.¹⁴

One feature of lollardy that distinguished it from many continental heresies was that it seemed to appeal primarily to men rather than to women, with most women involved in the movement by virtue of their family relationships with lollard men.¹⁵ This is not to say that women were never accused of heresy or identified as lollards, and to a degree the perceived masculinist character of lollardy may reflect a more general tendency for women's voices to be occluded in legal records.¹⁶ Regardless, lollard communities and social practices were strongly patriarchal, and their doctrines advocated a traditional gender hierarchy. One factor that may help to explain

¹³ For detailed analysis of Wyclif's theology and lollard doctrinal variations: Hudson, *Premature Reformation*, chapters 6, 7, and 8. On Wyclif's theological and political thought: Ian Christopher Levy, ed., *A Companion to John Wyclif: Late Medieval Theologian* (Leiden: Brill, 2006). The lollard resistance to oaths was based on the biblical story of Jesus saying his 'yay was yay, and his nay was nay', implying that the word of a true man was enough without an oath. Lollards did, however, accept that in certain circumstances such as a trial it was acceptable to swear in the name of God if one was compelled to do so by a judge, and as long as the oath was sworn in truth of conscience: Hudson, *Premature Reformation*, 371–74.

¹⁴ There is a growing body of research from literary scholars and intellectual historians focused on theological and philosophical debates over translation and authority, and on connections to late medieval literacy and pedagogy. See for example: Kantik Ghosh, *The Wycliffite Heresy: Authority and the Interpretation of Texts* (Cambridge: Cambridge University Press, 2002); Watson, "Censorship and Cultural Change"; Rita Copeland, *Pedagogy, Intellectuals, and Dissent in the Later Middle Ages: Lollardy and Ideas of Learning* (New York: Cambridge University Press, 2001); Peter Biller and Anne Hudson, eds., *Heresy and Literacy, 1000-1530* (Cambridge: Cambridge University Press, 1994).

¹⁵ This is a central argument pursued in McSheffrey, *Gender and Heresy*.

¹⁶ Fiona Somerset, "Eciam Mulier: Women in Lollardy and the Problem of Sources," in *Voices in Dialogue: Reading Women in the Middle Ages*, ed. Linda Olson and Kathryn Kerby-Fulton (Notre Dame, IN: University of Notre Dame Press, 2005), 245–60.

the attraction lollardy held for laymen is that it was overtly political from its beginnings. Wyclif had initially been supported by some of England's lay nobility because he argued against attempts by the Papacy to expand its powers in England, and in addition advocated that the church should practice apostolic poverty and turn over its landed property and wealth to lay authorities.¹⁷

Lollard doctrine asserted the superiority of secular over ecclesiastical authorities in temporal affairs, and argued that in certain circumstances, the lay power could disendow the church by force. In addition, lollards argued that no churchman should hold any office in secular government.

While lollardy was certainly perceived and portrayed by the Lancastrian government as a significant threat to England's political stability as well as its religious unity, there is continued debate about how widespread and well-organised this form of religious dissent actually was, and therefore how much of a danger it posed.¹⁸ Although it had emerged from the world of orthodox, academic theology, support for its programme of political and religious reform quickly spread beyond the walls of the university, and it attracted a wider following, first amongst the gentry and knightly classes (who stood to gain from any redistribution of church property) and later amongst artisans and

¹⁷ In this, Wyclif was taking part in a long-running European-wide debate over the nature and extent of lay versus ecclesiastical (particularly papal) power, and the need for the church and its representatives to practice apostolic poverty. Peter McNiven, *Heresy and Politics in the Reign of Henry IV: The Burning of John Badby* (Woodbridge, Suffolk: Boydell, 1987), 11–17; Takashi Shogimen, "Wyclif's Ecclesiology and Political Thought," in Levy, *A Companion to John Wyclif*, 199–240.

¹⁸ In general, earlier studies such as those of McFarlane and Thomson considered lollardy to be more marginal and less socially coherent than more recent scholarship such as that of Hudson, Aston, McSheffrey, and Somerset. This reflects to a degree the different source materials used. Most recent work stresses the blurred lines between orthodox and heterodox beliefs and practices, making heresy something that existed 'in the eye of the beholder'.

tradesmen in urban centres like London, Norwich, Coventry, and Bristol.¹⁹ It is generally agreed that elite support for the movement declined in the face of the new statutes of 1401 and 1406, and collapsed altogether after Oldcastle's rebellion in 1414.²⁰ However, by the first decade of the 1400s, artisans, tradesmen, lawyers, clerks, and other men of moderate socioeconomic status were more frequently identified as lollards.²¹

Vernacular translation and publication played an important part in enabling this spread from academia to lay society, and orthodox anti-heresy campaigns led by Thomas Arundel, archbishop of Canterbury, repeatedly targeted unauthorised translation of the scriptures.²² Such campaigns became increasingly bound up with secular politics from the time of Henry IV's accession thanks to the close relationship between the king and Arundel, who in addition to his ecclesiastical office served four terms as England's Chancellor.²³

¹⁹ On the early support of the duke of Lancaster and other nobles and gentry, see McNiven, *Heresy and Politics*, 19–21; McFarlane, *Lancastrian Kings*; Aston and Richmond, eds. *Lollardy and the Gentry*. On artisan, trade, and merchant support: Rex, *The Lollards*, 71–72; McSheffrey, *Gender and Heresy*, 1–10, 37–45; Jurkowski, "Lollard Networks."

²⁰ Although a recent study of an East Anglian lollard community in the 1420s has complicated this picture by using manorial estate records to show that at the village level, local elites continued to actively support lollardy in some places: Maureen Jurkowski, "Lollardy and Social Status in East Anglia," *Speculum* 82, (2007): 120–52.

²¹ Justice, "Lollardy," 668–75; McSheffrey, *Gender and Heresy*, 37–45. Jurkowski's detailed studies have shown lollards clustering in the legal and scribal professions, various aspects of the book trade, and light leather and metalworking trades such as shoemakers and goldsmiths: Jurkowski, "Lawyers and Lollardy in the Early Fifteenth Century," in Aston and Richmond, *Lollardy and the Gentry*, 155–82; Jurkowski, "Lollardy in Oxfordshire and Northamptonshire: The Two Thomas Compworths," in Somerset, Havens, and Pitard, *Lollards and Their Influence in Late Medieval England*, 9–16; Jurkowski, "Lollard Book Producers in London in 1414," in Barr and Hutchison, *Text and Controversy from Wyclif to Bale*, 201–26.

²² For general discussion of anti-translation campaigns and measures, see Hudson, *Premature Reformation*, 200–8; Watson, "Censorship and Cultural Change."

²³ Arundel held the office of Chancellor in 1386–89, 1391–96, 1407–9 and 1411–12. He became archbishop of Canterbury in 1396, was banished by Richard II in 1397 during the Revenge Parliament, and returned to England with Henry in 1399. On Arundel's career: Margaret Aston, *Thomas Arundel: A Study of Church Life in the Reign of Richard II* (Oxford: Clarendon Press, 1967); Richard G. Davies, "Thomas Arundel as Archbishop of Canterbury, 1396–1414," *The Journal of Ecclesiastical History* 24 (1973): 9–21.

Arundel had returned from exile with Henry in 1399 and his endorsement had been crucial to Henry's ability to claim the throne because it gave his kingship sacral sanction. In turn, the archbishop was able to use his position at the centre of royal government to pursue his long-standing agenda of religious reform, and his support for Henry's kingship was repaid in 1401 with the enactment of England's first statute mandating the death penalty for relapsed heretics.²⁴ With measures such as the 1406 statute, Arundel used the influence he wielded through England's highest ecclesiastical and secular offices to bring the forces of royal justice to bear to root out suspected heretics, as well as political enemies of the Lancastrian regime.

In the legal records discussed below, the assumed links between these religious dissenters and accused traitors were occasionally made quite explicit by the prosecution, particularly after 1414. In other cases, the connections are less overt or even absent in the surface narratives, but the prosecution of both groups under the same legislation and enforcement measures implied guilt by association. When treasonous intent was linked, even implicitly, with heretical beliefs and practices, it helped to reinforce the image of the traitor as a personal enemy of the king but more so as an enemy of the realm and Christian community of England. Turning to the perspective of those accused, their resistance to the Lancastrian regime was articulated through a judicial discourse and petitionary language of law and 'right', and of 'trueness' to the deposed king, to the legitimate heir, or to the crown. A close examination of trial

²⁴ McNiven, *Heresy and Politics*, 79–81; Rex, *The Lollards*, 83–84; A. K. McHardy, "De Heretico Comburendo, 1401," in Aston and Richmond, *Lollardy and the Gentry*, 112–26. Arnold ("Lollard Trials and Inquisitorial Discourse," 92–93) argues that Henry's support for the new statute should not be read only as a personal *quid pro quo*, but should be seen in a broader European context as part of a longer-term pattern of governments legislating against heresy and pursuing it through secular justice systems.

records shows that strategies of political dissent bore distinct similarities to the methods of religious dissenters; in places, social and professional links can also be traced between the two groups.

Expanding the scope of treason in parliament and King's Bench

The investigation begins by considering the political context surrounding a series of cases heard in King's Bench between 1407 and 1410, wherein the accused were charged with circulating treasonous handbills in Westminster and London, as well as with sending petitions to foreign courts. The prosecutions appear to have been triggered by new legislation enacted in the 1406 parliament that called for the arrest and imprisonment of lollard heretics and of men publicising the story of Richard II's survival. At the same time, parliament enacted England's first formal statute of succession, which enshrined in law the shaky Lancastrian claim to the throne. These two pieces of legislation have not previously been considered in relation to each other.²⁵ However, as the evidence from treason prosecutions shows, the two statutes were in fact intimately connected in their ideological content and in the types of activities - particularly false and 'evil' speech and publication - they sought to proscribe.

The Long Parliament of 1406, which sat in three sessions between March and December, proved to be particularly contentious.²⁶ 1406 marked the first of

²⁵ For example, Bennett ("Henry IV, the Royal Succession and the Crisis of 1406", "Edward III's Entail") and McNiven ("Legitimacy and Consent") address the implications of the statute of succession but omit any mention of the statute against lollards. Jurkowski, ("Anti-Lollard Statute of 1406," 282 n. 51) notes that McNiven is the only scholar to have dealt with the anti-lollard statute at any length. However, he does not address the statute of succession in his analysis: McNiven, *Heresy and Politics*, 100–5.

²⁶ For what follows on the 1406 parliament see A. L. Brown, "The Commons and the Council in the Reign of Henry IV," *The English Historical Review* 79 (1964): 12–26; J. L. Kirby, "Councils and Councillors of Henry IV, 1399–1413," *Transactions of the Royal Historical Society*, Fifth Series, 14 (1964): 54–56; A. J. Pollard, "The Lancastrian Constitutional Experiment Revisited: Henry

Henry IV's extended bouts of illness and he was unable to attend in person, so it was left to Archbishop Arundel, who was soon to begin his third term as Chancellor, to manage parliament in the king's interests.²⁷ There were clashes between the temporal and ecclesiastical Lords, between the Lords and Commons, and within the Commons itself over numerous issues, most of which had the government's perceived financial and military mismanagement at their root. The king asked for more taxes to fight the Welsh and Scots and to increase defences against the French, demands that many amongst the Commons were reluctant to accede to in light of their belief that subsidies agreed to in the 1402 and 1404 parliaments had been squandered by a profligate royal household.²⁸ In return for agreeing to new taxes, the Commons insisted on having greater oversight of the membership and activities of the royal council. As a result of the king's poor health, parliament concluded with the appointment of a continual council to govern on his behalf.²⁹ The disputes over finances had provoked

IV, Sir John Tiptoft and the Parliament of 1406," *Parliamentary History* 14 (1995): 103–19; Bennett, "Henry IV, the Royal Succession and the Crisis of 1406"; McNiven, *Heresy and Politics*, 100–4, 126–28, 133–36, 168–71; Edmund Wright, "Henry IV, the Commons and the Recovery of Royal Finance in 1407," in Archer and Walker, *Rulers and Ruled in Late Medieval England*, 70–71; Douglas Biggs, "The Politics of Health: Henry IV and the Long Parliament of 1406," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 185–203; Given-Wilson, *Henry IV*, 281–301.

²⁷ Arundel formally took office as Chancellor in January 1407, but he managed the 1406 parliament as though he already held that position: McNiven, *Heresy and Politics*, 100–5; Pollard, "Lancastrian Constitutional Experiment."

²⁸ On conflict between the king and Commons in 1402 and 1404, see McNiven, *Heresy and Politics*, 158–69. Pollard ("Lancastrian Constitutional Experiment," 110–12) argues the burgesses and independent gentry amongst the Commons were the main opposition in 1406, with purveyance for the royal Household and complaints about French piracy being significant bones of contention.

²⁹ McNiven, *Heresy and Politics*, 126–28. The continual council was headed by Chancellor Arundel and contained a number of nobles loyal to the house of Lancaster. In April 1406 the king suffered the first bout of what would become an intermittent but debilitating illness that plagued him until his death in 1413: Peter McNiven, "The Problem of Henry IV's Health, 1405–1413," *The English Historical Review* 100 (1985): 747–72; Biggs, "Politics of Health"; Biggs, "An Ill and Infirm King: Henry IV, Health, and the Gloucester Parliament of 1407," in Dodd and Biggs, *The Reign of Henry IV: Rebellion and Survival*, 180–209. McNiven and Biggs differ as to the gravity of Henry IV's illness in 1406–7. McNiven says it was temporary and that Henry soon

accusations that the church was failing to pay its fair share toward the expenses of war and the ecclesiastical Lords faced calls to accept reduced exemptions. More radically, there were some amongst the secular Lords and the Commons who advocated taking the church's temporal wealth into government hands, raising the spectre of the lollard doctrine of disendowment.

At the same time, Henry was facing ongoing problems with political dissenters who denied his legitimacy and title to the throne. Between 1403 and 1406, in addition to the Essex conspiracy and other outbreaks of dissent discussed in Chapter Three, the king countered serious armed rebellions led by the Percies, the hereditary earls of Northumberland who had been amongst Henry's most prominent noble supporters in 1399 when he seized the throne. One important act of the 1406 parliament was to convict Henry Percy, the earl of Northumberland, and his ally Thomas Lord Bardolf as traitors.³⁰ These noble rebellions will be discussed in greater detail in the following chapter, but here it is sufficient to note that when the Percies rose against Henry, they declared their support for Edmund Mortimer, the young earl of March, whom they now claimed was the true heir by blood to Richard's throne. In the 1406 parliament, Henry responded to these challenges to his legitimacy by enacting two statutes of succession, the first in England's history, which set out in detail the line of inheritance from Henry IV to Prince Henry and his heirs, or in the event of the prince's death without issue, to his younger brothers.³¹ The statutes were

returned to his full role in government, while Biggs argues the king was forced to withdraw almost entirely from affairs of state for most of 1406 and the whole of 1407.

³⁰ *PROME*, "Henry IV: Parliament of 1406," Pleas, items 1–15, RP iii:604–7.

³¹ *PROME*, "Parliament of 1406," Roll, item 38, RP iii:574–76 (7 June) and item 60, RP iii:580–83, (22 December). The statute enacted in June specified that succession should only be via male heirs. This was cancelled and replaced by the new statute of December, which was identical in all details except that it also included descent in the female line. For the implications of this

reinforced by a series of elaborate rituals during which Henry's greatest subjects were compelled to swear oaths of loyalty to him and his heirs, and the text of both statutes included a detailed description of three previous ceremonies of oath-taking, held in 1403 and 1404.³² In addition, the final version of the statute enacted on 22 December added that at the oath-swearing ceremony of Christmas 1405, 'the heralds of France had been present to remove all doubts'.³³

Immediately after the description of these ceremonial performances of fidelity, the parliament roll states that:

Notwithstanding all the said oaths...certain people with a wicked purpose and evil thoughts, imagining your destruction [*ymaginantz la destruccioun*], most sovereign lord, and the disinheritance of your heirs, have swayed the hearts of your loyal lieges by their false information [*par leurs fauxes informacions*] ...and much wicked information [*plusours sinistres informacions*] has been reported to many parties overseas, to the great pleasure of your enemies.³⁴

Coming as it did in the same parliament as the conviction of Northumberland and Bardolf as traitors, this passage has been interpreted as a direct response to their betrayal.³⁵ However, while the Percies supported the Mortimer claim to

change: McNiven, "Legitimacy and Consent," 485–87. McNiven argues the new terminology was most likely a result of the negotiations then in train for Prince Henry's marriage to a French princess, and the desire to protect Anglo-French dynastic interests in the event the marriage produced only daughters. Cf. Bennett, "Henry IV, the Royal Succession and the Crisis of 1406"; Given-Wilson, "Legitimation, Designation and Succession to the Throne in Fourteenth-Century England," 102–4.

³² At Great Councils held in Worcester and Westminster in the wake of the 1403 rebellion, and then in parliament in February 1404. These ceremonies will be discussed in more detail in Chapter Five, in the context of the Percy rebellions.

³³ *PROME*, "Parliament of 1406," Roll, item 60, RP iii:580.

³⁴ *Ibid.*

³⁵ This aspect of the statute has been little considered, but Bennett ("Henry IV, the Royal Succession and the Crisis of 1406," 18) and McNiven ("Legitimacy and Consent," 484) view it as a direct response to the Percy rebellion and their advocacy for the Mortimer claim.

the throne, the reference here to ‘false information’ being spread in England and sent overseas also touches on a second group of political trouble-makers: those who continued to spread stories about Richard II’s survival. It is in the context of these tensions surrounding the 1406 parliament that persistent questions about Henry’s legitimacy and dissatisfaction with his rule came together with lollard calls for radical reform to create an atmosphere in which religious dissenters and those promoting the Ricardian survival story might be treated by the Lancastrian authorities as two facets of the same threat. The result was that immediately after the new succession statute was enacted on 22 December, another statute was enacted ‘concerning the lollards and other spreaders and contrivers of news and falsities’.³⁶ This was to be enforced from 7 January 1407. The petition from the Commons requesting this second statute stated that:

Some of these evil men and women say, and by false oaths and evidence, wickedly publish and cause it to be falsely broadcast [*publient et fount publier mauveisement, fauxement*] amongst the people of your realm, that Richard, formerly king of England... is still alive ... causing widespread unrest amongst your faithful lieges and subjects ...; to the probable destruction of your aforesaid kingdom, and consequently of you, your sons, and all the aforesaid lords spiritual and temporal.³⁷

The statute in response stated that if anyone, of whatever status:

Should preach, publish or openly maintain or hold, use or run any schools of any sect or doctrine from now on contrary to the aforesaid Catholic faith ... or preaches, publishes or openly maintains, or writes or publishes any tract which incites people to remove or seize the temporal possessions of

³⁶ *PROME*, “Parliament of 1406,” Roll, item 62, RP iii:583-84. Item 61 on the roll, which came between the succession statute (item 60) and this new statute against lollards (item 62) clarified the succession to the duchy of Lancaster in light of the new arrangements for the Lancastrian inheritance of the throne.

³⁷ *Ibid.*

the aforesaid prelates and ministers of holy church ... or preaches, publishes or openly maintains that Richard, formerly king, who is dead, lives... each and every one of them should be arrested, captured and thrown into prison.³⁸

The legislation gave lay authorities a mandate to root out both religious and political offenders. This responsibility was reinforced over the following years in a series of writs to ecclesiastical and lay officials of towns including London, Coventry, Shrewsbury, and Norwich, commanding that they arrest and imprison suspects in accordance with the statute.³⁹

The concern with public speech and with vernacular publication is central to the statute and to the petition that gave rise to it. This can be seen in the repetition of the phrase ‘preaches, publishes or openly maintains’ to describe the proscribed activities of lollards and those spreading Ricardian rumours, thus conflating the two groups as purveyors of the same types of ‘false’ speech and writing. The Commons’ petition describes itself as being ‘about lollards and other spreaders and contrivers of news and falsities’ (‘un peticion touchant les lollardes, et autres parlours et controours des novelx et des mensonges’).⁴⁰ The intent is explicitly to condemn the spreading of ‘news’ in the textual form of handbills, public letters or petitions, as well as oral preaching and verbal rumours.⁴¹

The new statute was not enacted for an indefinite period but was to

³⁸ Ibid.

³⁹ See for example, *CPR, 1405-1408*, 352 (1407), 476 (1408).

⁴⁰ *PROME*, “Parliament of 1406,” Roll, item 62, RP iii:583.

⁴¹ The term ‘novelx’ can refer to ‘novelties’ but given the context, it seems more likely the reference is to ‘news’, an equally common translation for the French ‘novel’ or ‘novelx’: *AND*, <http://www.anglo-norman.net/gate/index.shtml?session=S3160571301181156>. The *PROME* editor translates it as ‘novelties’ but ‘news’ appears more accurate given the intended targets and the kinds of activities, including the posting of bills, prosecuted as a result of the statute.

remain in force only until the next parliament. This qualifier is unusual, and it was inserted as a result of the tense negotiations between Arundel in his role as the king's representative, the Lords ecclesiastical and temporal, and the Commons. The king's relative weakness in 1406 had allowed the Commons (backed by certain supporters amongst the Lords temporal) to gain concessions on a number of issues including management of the royal finances and the composition and role of the king's council. In addition, the ecclesiastical Lords had been induced to accept some reductions in the tax exemptions granted to the church. As a *quid pro quo*, the Commons were pressured to support the new statute but they did so reluctantly.⁴² Although the statute was only supposed to be in force until the next parliament, held in October 1407, there is no reference to it being revoked and other evidence shows that the Lancastrian government continued to enforce its terms.⁴³ As one example, in May and August of 1408 Chancellor Arundel sent out writs to the mayors, sheriffs, bailiffs and ecclesiastical officials of places including London and Coventry calling for the arrest of anyone preaching or teaching 'opinions contrary to the Catholic faith'.⁴⁴ Arundel's main concern in this period was to halt the spread of lollardy. However, as shall be seen below, in a series of treason cases heard between 1407 and 1410, the King's Bench indictments were also framed in terms of the 1406 statute, with those accused being charged with spreading verbal rumours

⁴² McNiven, *Heresy and Politics*, 100–4; Jurkowski, "Anti-Lollard Statute of 1406," 281–85. Pollard ("Lancastrian Constitutional Experiment") reviews concessions such as parliamentary oversight of the king's council and royal finances, but does not discuss the statutes of succession or against lollardy. Pollard argues that there was in fact more consensus in this parliament than has previously been suggested by scholars such as Brown and Kirby, with the Commons being skillfully managed by influential politicians favorable to the interests of the king and Arundel.

⁴³ As shall be seen, the statute against lollardy and treason enacted in 1414 reflected an understanding that the 1406 statute was still in force at that time.

⁴⁴ *CPR, 1405-1408*, 476.

and publishing bills saying that Richard II was still alive.

The grudging support of the Commons for this new legislation may be seen as symptomatic of more general resistance to the Lancastrian government's attempts to repress verbal and textual expressions of religious and political dissent. A sense of this resistance is conveyed by an incident that took place a few weeks before the new statute was enacted. On 21 November, Master William Taylor of Oxford University preached a public sermon at Charing Cross during which he advocated lollard doctrines including disendowment of the church and the denial of the need for priesthood.⁴⁵ The following day a rebuttal was offered in the same place by Master Richard Alkerton, a fellow of Merton College. By the early 1400s, this type of public sparring between preachers was not uncommon in London and other large cities, and there are clues in the account in the *St Albans Chronicle* that dissenting discourse was reaching well beyond an audience learned in theology. Walsingham describes Taylor as a 'men-pleaser... who preached the accursed opinions, or conclusions, of John Wyclif ... in order to curry favour with temporal lords', with the term 'men-pleaser' implying broad lay support for Taylor's views.⁴⁶ This impression is strengthened by the actions of Robert Waterton, a long-time Lancastrian retainer who insulted the orthodox preacher by having him publicly presented with a curry comb, implying that it was Alkerton who had been 'currying favour' with the ecclesiastical lords.⁴⁷ Alkerton

⁴⁵ *St Albans Chronicle II*, 480 n. 676. Discussed in Hudson, *Premature Reformation*, 13–14, 24. For the full text of the sermon, see *Two Wycliffite Texts*, ed. Anne Hudson, Early English Text Society. O. S. 301 (Oxford: Oxford University Press, 1993), 3–23.

⁴⁶ *St Albans Chronicle II*, 479–81, quote at 479.

⁴⁷ As constable of Pontefract castle, Waterton had had custody of the deposed Richard II so was evidently trusted by Henry IV: *St Albans Chronicle II*, 376, n. 545. For the friction briefly caused between Arundel and Henry by this incident: McNiven, *Heresy and Politics*, 102.

complained to Arundel, who ordered Waterton to ask for pardon in parliament and to promise to observe an earlier oath to 'obey the commands of the church'.⁴⁸ Henry IV initially tried to brush off this incident as a joke and thanks to his intervention, Waterton was able to avoid the humiliation of a parliamentary apology. However, he was eventually compelled by Arundel to perform a public penance, 'ordered to carry the comb in one hand and a candle in the other, and to precede a procession on certain days barebacked'.⁴⁹

Neither the statute of succession nor the statute against lollards and those spreading Ricardian rumours specifically stated that people contravening these laws should be condemned as traitors. The legislation against lollards and rumour-mongers says only that offenders should be arrested and 'brought in person into the next parliament to await, receive and answer such judgments as they have deserved', to be passed on them by Henry and the peers of the kingdom.⁵⁰ The succession statute does not stipulate how people should be treated if they challenged its terms, but the inclusion of the paragraph regarding those who broke their oaths and rebelled, taken together with the conviction of Northumberland and Bardolf as traitors soon after the first version of the succession statute was enacted on 7 June, certainly implies that anyone else trying to undermine it should also be viewed as traitors.⁵¹ However, the state

⁴⁸ *St Albans Chronicle II*, 481.

⁴⁹ *Ibid.*

⁵⁰ *PROME*, "Parliament of 1406," Roll, item 62, RP iii:584. In 1399, the Commons had petitioned the new king that any matters triable at common law would not in future be brought into parliament for judgment. Henry IV's new legislation had prohibited the specific procedure of parliamentary Appeal, but the statute did not make any other statements about bring cases into parliament: *Statutes*, vol. 2, 116 (c. xiv). The provision for offenders to be judged in parliament may help to explain the Commons' reluctance to endorse the 1406 statute.

⁵¹ The situation with Northumberland and Bardolf, who had both fled into exile, was discussed in the Lords on 19 June, and a proclamation was issued which said that if the two men did not submit themselves by 8 July, they would be attainted and convicted by their peers as traitors.

went on to define and punish such false speech, ‘wicked purpose and evil thoughts’ as treason through case law, in a series of prosecutions pursued in King’s Bench between 1407 and 1410.⁵²

Reports in the months following the 1406 parliament indicate that in defiance of the new statutes, the Lancastrian government was still being confronted by bold public statements of political resistance. Typical of these was an outbreak of bill casting that coincided with a Great Council held at Westminster between 11 April and 11 June, 1407.⁵³ The *St Albans Chronicle* reports that in early May, ‘proclamations were displayed in many places in London as well as on the doors of St Paul’s’ stating that Richard II was alive in exile and would soon return in glory to reclaim his kingdom.⁵⁴ Walsingham hints at a certain amount of popular support for this message because he says that when the offender was caught and punished, ‘this moderated the joy which that fictitious story had inspired in many’.⁵⁵ This episode is corroborated by an indictment from the Hilary term (January-February) of 1408 naming Benedict Wolman, John Tange, ‘Coleyn the fishmonger’, and Walter Denyol, and alleging that in early May 1407, in the days prior to the Feast of the Ascension, they had been using the sanctuary of Westminster as cover from which to circulate bills telling of Richard II’s survival and imminent return.⁵⁶ Through this ‘false, felonious, and traitorous scheming’, they had plotted to destroy the king, the

⁵² The quote is from the statute of succession: *PROME*, “Parliament of 1406,” Roll, item 60, RP iii:580.

⁵³ On the Great Council: Wright, “Henry IV, the Commons and the Recovery of Royal Finance in 1407,” 78.

⁵⁴ *St Albans Chronicle II*, 499.

⁵⁵ *Ibid.* The chronicler describes this incident as occurring at about the same time as the death of Richard Mitford, Bishop of Salisbury, who died on 3 May.

⁵⁶ TNA KB 9/196/1 m. 13. In 1407, Ascension Day fell on 5 May. The character and geopolitical significance of the Westminster sanctuary is addressed in further detail below.

prince of Wales, and the loyal peers and magnates of the realm. The timing and location of the offence strongly suggests that the target audience for these bills was the political community who had gathered in London for a Great Council. Great Councils were summoned at the king's will and served as a venue for monarchs to take formal counsel with their greatest lay and clerical subjects. Great Councils could not enact statutes or grant subsidies, but they could wield considerable influence in determining diplomatic and military strategy or in resolving pressing issues of domestic governance.⁵⁷ That of 1407 may have been seen as particularly significant in terms of its capacity to address the grievances of subjects because of the new arrangements for a continual council of government that were one outcome of the 1406 parliament. Bennett asserts that these arrangements had important constitutional implications, as the establishment of the continual council under parliamentary oversight, along with the explicit and novel incorporation of Prince Henry into his father's government through the statute of succession, created a more public and 'corporate' form of kingship that persisted for the rest of the reign.⁵⁸ Henry IV was in a position of relative physical and political weakness in the early months of 1407, due to his failing health and also to a ban of excommunication he was

⁵⁷ Anthony Goodman, "Richard II's Councils," in Goodman and Gillespie, *Richard II: The Art of Kingship*, 76–78. Great Councils were called at the king's pleasure and were made up of the king's greatest subjects, royal officials, and household officers, all of whom were personally invited to attend. There was considerable overlap with the membership of the temporal and ecclesiastical Lords summoned to parliament, and the Great Council also generally included the members of the royal council. The royal council was a much smaller body of men who took an oath of office, served for a set period of time, and were paid for their services. Per the terms of the settlement in the 1406 parliament, the membership and activities of the royal council were subjected to oversight by the Commons, although in practice the royal council continued to feature a large number of the king's loyal supporters. In 1407, it was headed by Chancellor Arundel.

⁵⁸ Bennett, "Henry IV, the Royal Succession and the Crisis of 1406," 10, 24–27.

still under for his execution of Archbishop Scrope in 1405.⁵⁹ Henry's illness was seen by many, including possibly the king himself, as a divine punishment for the archbishop's death and even for his usurpation of the throne.⁶⁰ It seems likely that it was these circumstances surrounding the Great Council that emboldened Wolman and his fellows to publicise their claims that Henry was not the legitimate king and to express their support for Richard, to whom they swore to remain 'true in their hearts and works' ('eorum esset fidelis corde et opere').⁶¹

The case against Wolman and Tange came to court in the Trinity term of 1409 (June-July). The trial record states that in addition to posting their bills in London, they had also sent letters to the court of the 'emperor of the Germans' and after that, to Isabella, daughter of the king of France (Richard II's former queen), declaring that Richard was alive in exile and asking for help to restore him.⁶² The writers were alleged to have petitioned these foreign courts to the effect that if Richard indeed proved to be dead, then the earl of March was king by hereditary right. Either way, Henry IV should be removed from the throne as an illegitimate usurper. Wolman was to be executed as a traitor in 1416 for

⁵⁹ Ibid., 15–17. According to Biggs ("An Ill and Infirm King," 181–82), Henry IV was so ill in 1407, he was forced to withdraw almost entirely from matters of government.

⁶⁰ McNiven, "The Problem of Henry IV's Health"; Davies, "After the Execution of Archbishop Scrope"; Bennett, "Henry IV, the Royal Succession and the Crisis of 1406," 22–24; Biggs, "An Ill and Infirm King," 184–86. Over 1406 and 1407, the king visited a number of shrines including that of the martyr St Thomas Becket, undertaking what appeared to be penitential pilgrimages in search of a cure.

⁶¹ TNA KB 27/593 Rex m. 13d.

⁶² Ibid. Wenceslaus IV, king of Bohemia, had succeeded his father Charles IV as Holy Roman Emperor (also known as the king of Germany) but he was deposed in 1400 and replaced by Count Rupert of the Palatinate. Wenceslaus' half-brother Sigismund, king of Hungary, became Holy Roman Emperor in 1411 and was named as the recipient of a later letter sent by Wolman on Richard II's behalf (discussed below). In the early fifteenth century, Bohemia was the centre of the heretical movement known as Hussitism, which had close contacts with lollard reformers in England: Deane, *Heresy and Inquisition*, 247–70.

again writing to the emperor on behalf of Richard II but the evidence of the 1409 record shows that, contrary to previous scholarly discussion of these cases, 1416 was not the first time the strategy of petitioning foreign rulers was deployed by political dissenters operating out of the Westminster sanctuary.⁶³ This was exactly the type of 'sinistres informacions' the government had been so anxious to suppress when it was referred to in the 1406 statute of succession.⁶⁴ As noted earlier, this clause in the statute has yet to be subject to detailed analysis and where it has been discussed it has been interpreted as being directly aimed at Northumberland and his allies.⁶⁵ However, the evidence in the 1409 case shows that while armed rebellions such as those led by the Percies were clearly to be treated as acts of treason, verbal challenges to Lancastrian legitimacy were also being constructed as treasonous acts. Wolman and Tange's letter to France may have been viewed as particularly threatening on this score because during 1406 and 1407, when they were allegedly sending out their letters, the opposing French factions led by the dukes of Burgundy and Orléans had temporarily suspended their internecine quarrels to unite in plans for a campaign against English lands in Calais and Guyenne.⁶⁶ The statute of

⁶³ Walker, "Rumour, Sedition and Popular Protest," 60; Aston, "Lollardy and Sedition," 22 for brief mentions of the 1416 incident.

⁶⁴ *PROME*, "Parliament of 1406," Roll, item 60, RP iii:580.

⁶⁵ McNiven, "Legitimacy and Consent," 482–83. Bennett ("Henry IV, the Royal Succession and the Crisis of 1406," 19–20) offers an alternative explanation, saying that it may refer to a temporary rift between Henry IV and Prince Henry that generated rumours the prince was about to be cut from the line of succession in favour of the king's younger son, Thomas. However, the hyperbolic language of the statute, which refers to 'commotions and riots' caused by the spread of rumours and false information, does not entirely support Bennett's interpretation.

⁶⁶ Pollard, "Lancastrian Constitutional Experiment," 104–5. The imminent threat had been a major concern for the 1406 parliament. The duc d'Orléans besieged Bourq for a time but was unable to make any advantage from it. The *détente* between the houses of Burgundy and Orléans (Armagnac) ended with the factional murder of the duc d'Orléans in Paris in 1407, which triggered a civil war that continued until the 1430s. On the French campaign of 1406–7, see M. G. A. Vale, *English Gascony, 1399–1453: A Study of War, Government and Politics During*

succession had put particular emphasis on the representatives of the French crown recognising its terms and also on the fact that, in the wake of the Percy rebellions, the political community of England had repeatedly sworn their loyalty to Henry and his heirs as dynastic monarchs. In the atmosphere of renewed aggression by France, it appears that the judicial officers crafting the indictment against Wolman and his colleagues took the opportunity to portray the letters as a direct attack on Henry's person, presumably because they gave encouragement and moral justification to the military actions of the king's foreign enemies. Augmenting this more traditional interpretation of treason, the charges that the accused had sought to disinherit the Prince of Wales, now formally incorporated into the government of his father, directly invoked the new statute of succession and identified as traitors those who sought to deny its terms. This was a novel and more expansive construction of treason that the king's justices would make increasingly explicit in a series of related cases over the following years.

The mention of the Mortimer succession in the letters circulated in London and sent abroad suggests some convergence between the political strategies of the Westminster group, whom scholars have tended to characterise as exclusively pro-Ricardian loyalists, and of the Percy rebels and others who advocated the Mortimer succession.⁶⁷ As will be seen in the following chapter, the earl of Northumberland, Lord Bardolf, and their allies had recognised the reality of Richard's death since at least 1403 and instead

the Later Stages of the Hundred Years' War (London: Oxford University Press, 1970), 52–53; Margaret Wade Labarge, *Gascony, England's First Colony, 1204–1453* (London: H. Hamilton, 1980), 188–90; Given-Wilson, *Henry IV*, 257–61.

⁶⁷ Walker, "Rumour, Sedition and Popular Protest," 43–44; McNiven, "Rebellion, Sedition," 109–10.

asserted the alternative claim of the earl of March.⁶⁸ Despite Wolman and Tange's promotion of the Ricardian survival story, one charge against them in the 1408 indictment was that they had travelled to Scotland to meet with Northumberland and Bardolf, who fled into exile there after being convicted as traitors in 1406. Certainly, the prosecution appears to have viewed the offenders as part of a single group, at least in 1408 and 1409. However, this early case against Wolman and Tange is the only example relating to bill casting in London that includes any reference to Northumberland's rebellion or to the Mortimer claim. This may simply be a matter of coincidental timing and a resulting assumption by the prosecuting authorities that the two groups of political malcontents must be in league. Nevertheless, it provides evidence for ideological linkages between the 1406 statute of succession, and the statute against lollards and spreaders of the Ricardian survival story.

The 1409 case against Wolman and Tange ended in something of an anti-climax for the state, for the two men were able to produce pardons and so were freed without trial. Wolman's pardon was issued at Westminster on 27 January, 1409, taking advantage of a general pardon issued by Henry IV just days earlier.⁶⁹ This was said to be 'in order that our subjects may bear more cheerful hearts towards us and our heirs, more truly to remain in faith and love',

⁶⁸ For example, in early 1406 the earl of Northumberland was circulating a manifesto claiming that Archbishop Scrope had been executed because he had called for Henry IV to do penance for Richard II's death: Bennett, "Henry IV, the Royal Succession and the Crisis of 1406," 17.

⁶⁹ Pardon 'for all treasons, insurrections and felonies committed by him against the king's majesty' issued 27 January, 1409 at Westminster: *CPR, 1408-1413*, 46. See also *CCR, 1405-1409*, 510, which records the availability of the general pardon until the quinzaine after the feast of St John the Baptist (that is, mid-July), and good for any crime except murders and rapes that had been committed before the Conversion of St Paul (25 January, 1409). This was one of several general pardons in operation in early 1409: Susanne Jenks, "Exceptions in General Pardons, 1399-1450," in *The Fifteenth Century XIII: Exploring the Evidence. Commemoration, Administration and the Economy*, ed. Linda Clark (Woodbridge, Suffolk: Boydell, 2014), 154-57.

wording that echoed the oaths of loyalty and the statutes of succession.⁷⁰

However, Wolman soon appeared again, along with a number of other men, in several cases that were pursued in King's Bench during the Hilary term of 1410. In the first of these, John Honchton and John Hewet were charged with distributing 'certain false letters' in the parish of St. Clement's 'outside the bars called the Temple of London'.⁷¹ In a second case from this same term Wolman, along with the goldsmith John Whirewel and a Simon Warde, were charged with making bills and letters in 'the parish of St. Margaret's in Westminster'.⁷² Both cases originated from a series of Middlesex indictments dating from Michaelmas 1409 (October-November).⁷³ Once again, the indictments charged Wolman and his fellows with circulating their texts in Westminster as well as sending them to the courts of France, Flanders, Wales and Scotland. A third case involved two men, John Longe the shoemaker ('sowter') and John Longe the younger, who were publicly spreading the story of Richard's survival in Westminster and Holborn.⁷⁴ This last case exemplifies the authorities' conflation of oral and textual speech acts in the 1406 statutes that formalised the Lancastrian succession and that criminalised lollards and others who spread false news. While the indictment does not explicitly mention the making of bills or letters, it characterises the offenders' crime as spreading false and treasonous words in

⁷⁰ Powell, *Kingship, Law, and Society*, 125 (quoting the terms of the pardon in TNA C67/34 m. 11). For Henry IV's use of general pardons balanced with harsher punishments as a strategy to restore order after rebellions: Dunn, "Henry IV and the Politics of Resistance," 16–21.

⁷¹ TNA KB 27/595 Rex m. 1d.

⁷² TNA KB 27/595 Rex m. 3d

⁷³ TNA JUST 1/554 m. 8 and 8d. I am indebted to Walker ("Rumour, Sedition and Popular Protest," 61–62, n. 93 and 94) for untangling the confused dating of some of the records in these cases. Walker does not, however, address in any detail the charges or their implications.

⁷⁴ TNA KB 27/595 Rex m. 8. The men were most likely father and son. The shoemaker is further identified as 'son of Henry'. The term 'sowter' or 'souter', along with 'cordwainer' or 'corviser', was commonly used to identify those involved in shoemaking and allied light-leatherworking trades: Jurkowski, "Lollard Networks," 272–73.

public ('dixerunt tam pupliore'), activities constructed in the statutes and prosecuted here as tantamount to publication.⁷⁵

When the new statutes are considered in relation to the expanding scope of treason, it can be seen that the Latin prosecution narratives in the 1410 cases present a universalising schema in which a series of almost identical charges asserted coherent and causal connections between dissenting speech and treasonous acts. Each indictment begins with allegations that through their acts of public political speech, the accused had falsely, feloniously and traitorously plotted the destruction of Henry IV and the prince of Wales. This was a straightforward depiction of treason as 'compassing and imagining' the death of the king or his heirs, and it sits comfortably within the terms of the 1352 statute. However, the limits of treason were then stretched in allegations that this public speech was also intended to disinherit the king and his eldest son; to destroy the peers and magnates of England; and that it was circulated (either verbally or in the form of bills) with the intent of inciting subjects against the love and allegiance they owed to the realm. The previous chapter showed how the charge of inciting subjects against their love and allegiance, which began to appear in prosecutions from 1402, expanded the scope of treason through precedents established in case law. Here, the state sought to extend the limits of treason even further by constructing as treasonous verbal or textual speech acts that targeted the wider political community of magnates and peers, or that challenged the terms of the statute of succession, represented in the charge of plotting to disinherit the king and his eldest son. This marks a subtle but distinctive shift in the definition of treason: here, the offence encompassed

⁷⁵ TNA KB 27/595 Rex m. 8.

attempts to use vernacular public petitions to ‘destroy’ men other than the king, and to undermine the authority of parliament to enact and enforce statutes that shaped constitutional arrangements and the governance of the realm.

Those few scholars who have studied the 1406 statute against lollards and those spreading Ricardian rumours in any detail have characterised it as being aimed primarily at the first group - that is, heretics - and see this as a logical result of Arundel’s interests and influence in the 1406 parliament.⁷⁶ McNiven argues the statute’s focus on ‘clergy’ spreading rumours about Richard II was unnecessary as this had not been a problem since the trials of the friars in 1402, and he therefore views the statute as ‘uncertain in its purpose, contrived and disjointed’.⁷⁷ There are two issues with this interpretation. First, he presents the statute as having two distinct clauses - ‘clause one’ against lollards and ‘clause two’ against the spreaders of rumours about Richard’s survival. However, the Commons’ petition and the resulting statute recorded in the parliament roll made no such clear distinctions between the two types of offender, but presented them as part of a single group whose crimes were rooted in deviant speech acts and publication. Secondly, McNiven’s argument that the clause against Ricardian rumour-spreaders was targeted (unnecessarily) at clergy appears to be a misreading of the statute’s text, which does not specify any particular class of offender, either cleric or layman. From the perspective of McNiven and those who have followed his interpretation, the 1406 statute was an exercise in stereotyping and paranoia on the part of the

⁷⁶ McNiven, *Heresy and Politics*, 100–4; Jurkowski, “Anti-Lollard Statute of 1406.”

⁷⁷ McNiven, *Heresy and Politics*, 104. Jurkowski (“Anti-Lollard Statute of 1406”) does not address the parts of the statute focused on Ricardian rumour-spreaders, as her primary interest is in the connection between the statute and the 1407 arrest and questioning of the notorious lollard William Wyche.

Lancastrian government. Walker, for example, asserts that by 1406 the Ricardian rumour was already marginalised and limited to a small group working from the Westminster sanctuary, and argues that it 'owed much of its continuing public prominence to its growing association with a lollard activism that, as a shrill but isolated voice against a widely held orthodoxy, it came increasingly to resemble'.⁷⁸ This appears to underestimate both the extent of religious dissent in the early 1400s (as uncovered in recent research by scholars of lollardy), and the continued problem of Ricardian bill casters in London as demonstrated by the cases discussed above. These problems were compounding rather than receding in the years immediately after 1406, as Henry IV's personal rule was undermined by his illness and by continuing challenges to the legitimacy of the regime. As McNiven has conceded, 'The combination of inconvenient constitutional opinions with even the most tenuous suggestions of Richard's survival was capable of posing a fundamental threat to the Lancastrian monarchy'.⁷⁹

Given the combined weight of the 1406 statutes against speaking or publishing dissenting opinions, and the precedents established in King's Bench from 1402 onwards to punish this type of political speech as acts of treason, it may seem surprising that none of the men arraigned in 1410 was convicted or subjected to a traitor's punishment. Like Wolman and Tange in 1409, the two John Longes were freed on the strength of pardons they produced in court.⁸⁰

⁷⁸ Walker, "Rumour, Sedition and Popular Protest," 44. Cf. McNiven's argument that the Ricardian rumour was viewed by the Lancastrian government as posing no serious threat after the failure of the Essex plot in 1405: McNiven, "Rebellion, Sedition," 109–11.

⁷⁹ McNiven, *Heresy and Politics*, 72.

⁸⁰ TNA KB 27/595 Rex m. 8. The pardons were dated 26 December, 1409, at the king's palace of Eltham: *CPR, 1408-1413*, 231. For the Longes' petition for pardon, which was addressed directly to the king: TNA SC 8/310/15453.

Honchton and Hewet were able to find mainpernors, including two men from London and one from Coventry, to provide security for a future court appearance and were released, but there is no record of their returning to stand trial.⁸¹ Wolman, Whirewel, and Warde elected a jury trial but before this could take place, they were freed thanks to an unusual intervention by the Commons in parliament. As the highest judicial tribunal in the kingdom, parliament could be appealed to regarding points of law in lower courts including King's Bench. On this occasion, the indictments taken before the sheriff of Middlesex at Michaelmas 1409 were found by parliament to have been incorrectly prepared and were missing the names of presenting jurors.⁸² As a result, they were cancelled and the legal process annulled. The Commons further petitioned the king that 'the procurers, supporters, and abettors of the indictments recently wrongfully brought in your bench' should themselves 'be punished and chastised'.⁸³ It can plausibly be inferred that the cancellation of proceedings was achieved thanks to a private petition to the Commons on behalf of the individuals indicted.⁸⁴ It is possible that it was Wolman who instigated this defensive move, because the Commons had intervened on his behalf in previous

⁸¹ TNA KB 27/595 Rex m. 1d and KB 29/50 m. 13. Mainpernors acted as guarantors for the offender's good behaviour and provided security for his future appearance in court: Bellamy, *Crime and Public Order*, 90–91. For further consideration of the role of mainprise in the common law justice system and the processes and networks by which guarantors were secured: Dorothy J. Clayton, "Peace Bonds and the Maintenance of Law and Order in Late Medieval England: The Example of Cheshire," *Historical Research* 58 (1985): 133–48; Maddicott, "The County Community and the Making of Public Opinion," 32–33.

⁸² Walker, "Rumour, Sedition and Popular Protest," 61.

⁸³ *PROME*, "Henry IV: Parliament of 1410," item 15, RP iii:624. The dorse of the original indictments is annotated with a memorandum that they had been cancelled by order of the king in parliament: TNA JUST 1/554 m. 8d.

⁸⁴ There is no record of such a petition in the TNA SC 8 series of files, but Dodd notes that in the late fourteenth and early fifteenth centuries, private petitions were only occasionally preserved in the records of parliament: *Justice and Grace*, 6–7, 156–67.

legal proceedings.⁸⁵

Shifting from the perspective of the accusers to that of the accused, what can the sources reveal about the strategies they used to express dissent while evading condemnation as traitors? The evidence is oblique, but certain details suggest that London-based bill casters like Wolman, the Longes, Honchton, and Hewet knowingly drew on the geopolitical potential of their urban surroundings to communicate and legitimise their challenges to the Lancastrian state. A number of the trial records note that the bill casters were operating in or around the sanctuary of Westminster Abbey, a space that symbolised a certain defiance of (or at least independence from) royal authority. The Westminster sanctuary and the associated parish of St Margaret's comprised a large, partly walled precinct within just 100 metres of the centre of royal government at Westminster Hall.⁸⁶ It was also within walking distance of the first Inns of Court, which had become established as the country's hub for training and practice in the common law.⁸⁷ As the most highly privileged sanctuary in England, Westminster offered permanent protection from prosecution at common law for those within its walls, as well as allowing numerous exemptions from financial and trading regulations. By the later 1300s, these extensive financial and judicial privileges saw the sanctuary playing host to a thriving residential lay community that included people evading criminal justice or private lawsuits, as well as merchants, artisans, and tradesmen exploiting its commercial and tax

⁸⁵ Wolman had first been imprisoned for suspicious activities in late 1404 but the Commons had successfully petitioned for his release: Walker, "Rumour, Sedition and Popular Protest," 61, n. 93.

⁸⁶ Rosser, *Medieval Westminster*, 66–69; Baker, "Westminster Hall, 1097-1997."

⁸⁷ Baker, *The Common Law Tradition* especially chapters 1 through 6 on the origins, structure, and functions of the Inns; Brand, "Courtroom and Schoolroom."

benefits.⁸⁸

The unique social, jurisdictional, and spatial characteristics of the sanctuary precinct may be seen as particularly conducive to the bill casters' purposes. Its physical proximity to Westminster Hall and the legal community of the Inns of Court gave its residents easy access to a large and politically astute audience while offering immunity from prosecution. Residents of the sanctuary and surrounding neighbourhood included lawyers, clerks, and professional scribes, as well as skimmers, parchment makers, and others involved in the book trade, all of whom found a ready market for their goods and services at the central courts and offices of royal government.⁸⁹ This urban community of men with training in the common law and in the *ars dictaminis* could provide the material and intellectual resources that were the tools of the bill caster's trade. Their knowledge of petitionary practices would have been particularly valuable to anyone who wanted his message to penetrate the urban political sphere of London, but who also wanted to send persuasive appeals to foreign courts. In the years after 1406, Wolman and his fellow bill casters were drawing on these legal resources, in combination with the geopolitical potential of particular sites in the urban landscape, to voice their resistance to a usurping king.⁹⁰

⁸⁸ Isobel Thornley, "Sanctuary in Medieval London," *Journal of the British Archaeological Association* 38 (1932): 293–315; Shannon McSheffrey, "Sanctuary and the Legal Topography of Pre-Reformation London," *Law and History Review* 27 (2009): 483–514; Rosser, *Medieval Westminster*, 66–69, 122–44, 155–58, 217–21. On the sanctuary of Westminster Abbey in relation to common law jurisdiction: Lacey, *Royal Pardon*, 12–15.

⁸⁹ Rosser, *Medieval Westminster*, 209–15. On Westminster and London as home to a community of professional scribes with legal knowledge, training in the rhetorical arts, and the practical writing skills needed to draft petitions: Dodd, *Justice and Grace*, 302–12; Sheila Lindenbaum, "London Texts and Literate Practice," in Wallace, *The Cambridge History of Medieval English Literature*, 288–300.

⁹⁰ I discuss this in E. Amanda McVitty, "Prosecuting Treason in Lancastrian London: The Language and Landscape of Political Dissent," in *Urban Cultures and Ideologies in Europe c.1100-1500*, eds. Andrew Brown and Jan Dumolyn (Turnhout, Belgium: Brepols, 2017 forthcoming).

This may be seen in cases such as that of Honchton and Hewet, the two men who appeared in King's Bench for distributing their bills 'at the bar called the Temple'.⁹¹ As noted in Chapter One, prosecutions for bill casting most commonly cited this activity occurring at known hotspots such as St Paul's and Westminster Hall, places which had deep political and symbolic import within the urban public sphere of London. Temple Bar was also significant in this regard, and the cancelled indictments from Michaelmas of 1409 show that it was used by a number of other bill casters.⁹² The bar was the main entry point by road into the city of London from Westminster, and it served physically and symbolically to mark the transition between the two jurisdictions.⁹³ However, its spatial and social relationship to the machinery of royal justice likely held greater import for bill casters who sought to legitimise their resistance to the Lancastrian regime through a judicial rhetoric of 'truth' and 'right'. In 1410, the Temple Bar area was already home to two of the principal Inns of Court, the Inner and Middle Temple. The Inns formed an intellectual hub for legal education and debate, as well as being a central place where petitioners and litigants could access legal expertise.⁹⁴ They provided hostel accommodation for clerks and apprentices-at-law, and they served as urban residences for judges and sergeants-at-law while they were working at the central courts.⁹⁵ Posting bills in this area can therefore plausibly be interpreted as a deliberate attempt

⁹¹ TNA KB 27/595 Rex m. 1d.

⁹² TNA JUST 1/554 m. 7.

⁹³ The bar was most likely a chain barrier or similar obstruction at this time, although there is some archaeological evidence pointing to the possibility of a stone-built medieval gate tower: John Schofield, *Medieval London Houses* (New Haven, CT: Yale University Press, 1994), 11–12.

⁹⁴ Apprentices-at-law and other legal professionals were in the habit of consulting their clients in the public areas around the Inns: Jurkowski, "Lawyers and Lollardy," 156.

⁹⁵ Baker, *English Legal History*, 138–40. Serjeants-at-law formed the senior ranks of the legal profession from which judges were selected: *Ibid.*, 135–36.

to engage the attention and support of influential practitioners of the common law.⁹⁶

The incidental details of the trial records are also suggestive of other social and professional connections between the bill casters operating around Westminster Palace and the Inns of Court, and a London community of religious dissenters. It was here, in the streets, taverns, and markets of Westminster, that members of these communities might well meet, and where their rhetorical practices and practical publication strategies might cross-fertilise. While the evidence is circumstantial and the links tenuous, the trial outcomes suggest that the bill casters were able to draw on a certain level of local support for their activities, either from fellow guild members or amongst a wider group of dissenters with links to informal lollard networks. Pardons did not come cheap – in the early fifteenth century, the standard fee for suing out a general pardon from Chancery was 16s 4d to the clerk of the hanaper plus 2s to the Chancellor – and there is evidence that common lawyers sympathetic to lollard views regularly assisted with their purchase.⁹⁷ The annulment of the 1409 proceedings against Wolman, Whirewel, and Warde indicates that the accused men were assisted by a lawyer knowledgeable about the technical requirements of criminal indictments and skilled in the rhetorical formalities needed to draft a persuasive petition to the Commons in parliament. The nullified indictment

⁹⁶ Musson (*Medieval Law in Context*, 50) notes that by 1380s, the Inner and Middle Temple, along with Gray's Inn, 'had gained a superior status as they were the sole source of the upper echelons of the bar'.

⁹⁷ On the process and costs for suing out a general pardon: Bellamy, *Crime and Public Order*, 193–94. Jurkowski has traced links between a number of common lawyers working at the central courts of Common Pleas and King's Bench and men known to be part of lollard networks in London and other centres: Jurkowski, "Lollard Networks," 271; Jurkowski, "Lollard Book Producers," 201–26; Jurkowski, "Lawyers and Lollardy." She notes ("Lawyers and Lollardy," 155) that 'many of the gentry supporters of the lollard heresy in the early fifteenth century were in fact common lawyers'.

against Wolman and his colleagues also named a John Wyghtlok; in a 1417 treason indictment, he and Wolman were both identified as associates of a lollard lawyer called Thomas Lucas.⁹⁸ Meanwhile, the mainpernors who provided surety for an offender's good behaviour and his future court appearance were also likely to be drawn from this same circle of common lawyers working in and around Westminster, as well as from a network of business associates that could include fellow guild members. In the case of Honchton and Hewet, two of their mainpernors were from London and one came from Coventry. Both cities were known hotbeds of lollardy by 1407 and the target of repeated writs from Arundel commanding local officials to enforce the 1406 statute against lollards and those spreading Ricardian rumours.⁹⁹

Historians of lollardy have noted that by the early 1400s, certain urban crafts were particularly associated with religious dissent. These included shoemakers and those in related light leather-working trades; and men involved in various aspects of the book trade, including skimmers, parchment-makers, book-binders and goldsmiths (who supplied gold leaf for illuminated manuscripts), as well as the scribes who copied lollard texts.¹⁰⁰ The cases tried between 1407 and 1410 point to several potential points of overlap between London's lollard networks and the bill casters operating from the vicinity of the Westminster sanctuary. First, amongst the accused we find at least two trades - John Longe the shoemaker and John Whirewel the goldsmith - known to attract lollard sympathisers. Second, as noted earlier the community in and around the

⁹⁸ TNA JUST 1/554 m. 8d. Wyghtlok's 1409 indictment was one of those annulled through the intervention of the Commons in the 1410 parliament. The 1417 indictment of Thomas Lucas, naming Wolman and Wyghtlok, is discussed in further detail below.

⁹⁹ For example, *CPR, 1405-1408*, 352 (28 April, 1407), 476 (22 May, 1408).

¹⁰⁰ Jurkowski, "Lollard Networks," 268-73; Jurkowski, "Lollard Book Producers."

sanctuary of Westminster included many men with the material resources and rhetorical skills needed to produce lollard religious tracts as well as dissenting political bills. The hospitality trade was also present in the sanctuary and surrounding liberty of Westminster, where numerous inns and taverns served the needs of locals and of visitors to the Abbey and royal courts.¹⁰¹ Here, Wolman provides another connection. When in 1417 he was named as an associate of the lollard lawyer Thomas Lucas, he was also described in the indictment on that occasion as a 'hostiller' (tavern-keeper).¹⁰² We need to be cautious about accepting at face value the charge that Wolman was a lollard; the only direct evidence for this comes from the state's prosecution narrative and a comment in the *St Albans Chronicle* that he was as 'a citizen of London and a lollard'.¹⁰³ However, Wolman was known to have possessed a psalter glossed in English, confiscated with other goods when he was arrested in 1416.¹⁰⁴ Owning a religious work written in English was not necessarily definitive proof of active religious dissent, but it was certainly far more risky after a crackdown by Arundel in 1409 on unlicensed English translations of religious works and on the related circulation of suspect vernacular texts.¹⁰⁵

¹⁰¹ Rosser, *Medieval Westminster*, 122, 143. Rosser (122) notes the number of taverns increased sharply from c. 1400.

¹⁰² *Calendar of Letter-Books of the City of London: I, 1400-1422*, ed. Reginald R. Sharpe (London: His Majesty's Stationery Office, 1909), 165, accessed 16 January, 2014 at *British History Online* <http://www.british-history.ac.uk/london-letter-books/voli> (hereafter cited as *Calendar of Letter-Books*); TNA KB 27/624 Rex m. 9. This later case will be discussed in detail below.

¹⁰³ *St Albans Chronicle II*, 697.

¹⁰⁴ TNA E 136/108/13 (Exchequer, King's Remembrancer, Escheators' Particulars of Account. London, Nicholas Wootton): 'i parcell psalterii glosed cum Anglic,' discussed in Jurkowski, "New Light on John Purvey," 1188 n. 1. Jurkowski accepts at face value the Crown's allegation that Wolman was a lollard and a supporter of Sir John Oldcastle, but Aston ("Lollardy and Sedition," 22) notes that there is no record of Wolman ever being officially questioned on suspicion of heresy.

¹⁰⁵ McSheffrey (*Gender and Heresy*, 41–43) points out that owning books in English was not necessarily proof of heresy; there were approved vernacular texts accessible to lay readers. From the legal description, Wolman's psalter may have been an example of what Justice

The lollard lawyer and the bill caster

In a recent review article, Forrest argued that there is great value to be gained by moving away from studying lollard communities in isolation and instead studying them in relation to wider social, occupational, class, and geographical networks. As he puts it, ‘the history of lollardy could benefit from assuming greater commonality between lollards and non-lollards’.¹⁰⁶ The examples above indicate that there may well have been social and professional ties between anti-Lancastrian bill casters and lollard sympathisers amongst the craft guilds and the common lawyers operating at the central courts. It is plausible that the men operating from the Westminster sanctuary and lollard critics of religious orthodoxy formed overlapping communities of interest and dissent, characterised by vernacular publishing, knowledge of and contact with the law, and self-authorisation as ‘true men’ who were articulating legitimate grievances before the political community of the realm. Although tracing these connections is often difficult due to the lack of surviving sources, positive evidence for them can be found in the person of Benedict Wolman. Wolman was a persistent offender who appeared multiple times in legal records between 1404 and 1417. The spatial and occupational details of his life locate him within a wider urban network characterised by vernacular literacy, heterodox religious beliefs, knowledge of the common law and of processes of petitioning, and popular political dissent.

(“Lollardy,” 682) calls ‘interpolation’. These were approved orthodox texts, such as the *Lay Folk’s Catechism* and Richard Rolle’s popular Psalter commentary, in which passages were erased or edited by lay readers to conform to lollard teachings. Such texts would have fallen afoul of Arundel’s ban on unauthorised translations but may have been more difficult for judicial officers to identify.

¹⁰⁶ Forrest, “Lollardy and Late Medieval History,” 126.

This is detailed most extensively in a case from 1416-17, when Wolman was named as co-conspirator with the lollard lawyer Thomas Lucas in a case involving letters sent to Sigismund the Holy Roman Emperor and public bills spread on the roads between Canterbury and London. Lucas' activities, along with details of his long legal career, provide important clues for the connections between political agitators like Wolman and a Westminster-based network of lollard sympathisers.¹⁰⁷ Lucas was a fellow at Merton College in the 1390s and was a Master of Arts by 1403. He was active in Oxford's Wycliffite circles and, along with three other Merton fellows, he was imprisoned between 1395 and 1399 for his heterodox religious views; he was first explicitly named as a 'lollard' in records relating to that incident. Lucas' responsibilities as a Merton fellow saw him travelling around the College's extensive estates and tenancies on legal and administrative business. He was also a periodic visitor to the central law courts before and after his imprisonment, where he acted in various lawsuits involving the College or individual fellows. He was still at Merton College in 1408 but he was expelled some time in 1409, possibly as a result of Arundel's renewed campaign against heretical teaching and thought at Oxford.¹⁰⁸ In 1409, Lucas began to establish a new career for himself in London as a common lawyer and from 1410, he appears regularly in the records of Common Pleas and King's Bench as a mainpernor and providing bail or other

¹⁰⁷ For what follows on Lucas' career, see Jurkowski, "Lawyers and Lollardy," 164–166; Jurkowski, "Heresy and Factionalism at Merton College in the Early Fifteenth Century," *The Journal of Ecclesiastical History* 48, (1997): 662, 673–81.

¹⁰⁸ The exact date of Lucas' expulsion is not known; his departure from the College can only be discerned by his disappearance from the official list of fellows: Jurkowski, "Heresy and Factionalism," 673. From 1407, Arundel's anti-heresy campaign included requirements for Oxford scholars to be questioned monthly about their beliefs: Hudson, *Premature Reformation*, 82–85.

forms of security for defendants.¹⁰⁹ He was amongst the common lawyers who regularly served as mainpernors for known lollards in the years from 1410, and in 1413 he also began to represent clients in actions in King's Bench. According to Jurkowski, in at least three civil actions, he appeared as an attorney acting for men who were part of lollard networks, one of these being a trespass suit involving the London goldsmith Robert Cringleford.¹¹⁰

It is not known how the lollard lawyer and academic Thomas Lucas originally established a relationship with the tavern-keeper Benedict Wolman, but given the spatial juxtaposition of the law courts and the Westminster sanctuary precinct, it is not entirely surprising that the two should come into contact in the streets and inns of Westminster. Wolman's multiple appearances in court from 1404 no doubt put him in touch with members of the local legal profession, while Lucas' contacts with men like Cringleford, who had connections to the book trade, may well have brought him into the same circles of parchment-makers and professional scribes whose skills were needed to make the bills and public letters that Wolman and his colleagues were prosecuted for distributing. Certainly by 1416, if not earlier, Lucas and Wolman had joined forces.

After many years of chronic illness, Henry IV had died in 1413 and been succeeded by Henry V. Although the dynastic transfer of power from father to son was uncontested it was not wholly unproblematic, and early in the new king's reign the issue of Lancastrian legitimacy still lingered.¹¹¹ This was

¹⁰⁹ Acting as a mainpernor or bail bondsman in King's Bench was a common way for new attorneys to establish their careers: Jurkowski, "Heresy and Factionalism," 675.

¹¹⁰ Jurkowski, "Lawyers and Lollardy," 166; "Lollard Book Producers," 210, 213.

¹¹¹ Henry V's concerns to assert his title were demonstrated by actions such as his ceremonial reburial of Richard II in Westminster Abbey, and by the law and order programme he

demonstrated when, in 1416, Wolman and Lucas were jointly charged with treason. The principal charge against them was that they had been spreading vernacular handbills on the roads between Canterbury and London that appealed to 'Sigismund, king of the Romans' to depose Henry V, disinherit him and his heirs, and restore Richard II.¹¹²

Sigismund, the king of Hungary and Holy Roman Emperor since 1411, visited England between May and August of 1416 to negotiate a treaty with Henry V, who had succeeded his father in March 1413.¹¹³ The emperor had arrived at Dover on May Day and several chronicle accounts describe an elaborate 'challenge' taking place there during which Sigismund demanded to know by what title Henry V held his lands. In at least one version of this story, the king replied that he held of no man or prince except by his sword alone, suggesting a potentially dangerous idea of rule by conquest rather than by 'right'.¹¹⁴ In other versions, the story incorporated a description of the king's brother Humphrey, duke of Gloucester, wading into the sea with his sword drawn and asserting that Sigismund would not be allowed to land until he disclaimed any right, as Holy Roman Emperor, to exercise sovereignty in England.¹¹⁵ By implication, this statement suggested that the right to imperial

embarked on to appease the political community: Strohm, "The Trouble with Richard"; Powell, "The Restoration of Law and Order."

¹¹² TNA KB 27/625 Rex m. 9.

¹¹³ Norman Simms, "The Visit of King Sigismund to England, 1416," *Hungarian Studies Review* 17 (1990): 21–29; C. T. Allmand, *Henry V*, new ed. (New Haven, CT: Yale University Press, 1997), 233–56; James Hamilton Wylie and W. T. Waugh, *The Reign of Henry V*, vol. 3 (Cambridge: Cambridge University Press, 1929), 9–35.

¹¹⁴ C. L. Kingsford, "A Legend of Sigismund's Visit to England," *The English Historical Review* 26 (1911): 750–51.

¹¹⁵ Simms, "Visit of King Sigismund," 22–23. Wylie and Waugh (*Henry V*, vol. 3, 9–11 and n. 10) argue that although a number of these accounts have been discredited as products of sixteenth-century imagination, there are earlier versions that can be largely corroborated from other contemporary sources.

overlordship existed in the first place. Simms notes that elaborate chivalric displays were put on by both kings at the time of Sigismund's arrival and he argues that any challenge, if it took place, should be seen as purely ceremonial and as part of the theatrics of a state visit.¹¹⁶ However, the fact that these tales circulated at all forms a suggestive backdrop to the allegations in the related treason cases, and the large numbers of spectators who gathered to witness the emperor's arrival and progress to London may have been inclined to take the challenge more seriously than the royal and imperial entourages.

Wolman, along with a Lincoln man called Thomas Bekeryng, were brought to justice first, as is recorded in an inquisition taken in August 1416 before Nicholas Wottone, Mayor of the City of London, and justices of the King's Bench.¹¹⁷ The record states that in April of 1416 in the London parish of St. Dunstan West, Fleetstreet, the accused had 'falsely and traitorously' compassed and imagined the death of the king by 'confederat[ing] together' to depose Henry V and to disinherit him and his heirs. To accomplish their purpose, they 'falsely and traitorously did make and write a certain petition' addressed to Sigismund stating that Richard II was still alive and asking 'the king of the Romans with a strong hand and powerful arm' to depose Henry V and to restore Richard to his throne.¹¹⁸ Wolman and Bekeryng had arranged to have this petition presented to Sigismund through one of his servants, but Sigismund sent

¹¹⁶ Simms, "Visit of King Sigismund," 21.

¹¹⁷ Summary of proceedings: "Folios clxxi - clxxxi: Aug 1416," in *Calendar of Letter-Books*, 157–66, accessed 16 January, 2015, <http://www.british-history.ac.uk/london-letter-books/voli/pp157-166>. For a full copy of the record: "Memorials: 1416," in *Memorials of London and London Life in the 13th, 14th and 15th Centuries*, ed. H. T. Riley (London: Longmans, Green, 1868), 624–44, accessed 16 January, 2015, <http://www.british-history.ac.uk/no-series/memorials-london-life/pp624-644> (hereafter cited as "Memorials"). There is a brief discussion of the incident in Aston, "Lollardy and Sedition," 21–22.

¹¹⁸ "Memorials."

it on to Henry and the two men were arrested. Ordered to plead, they claimed innocence and were sent back to prison to await a jury trial. Bekeryng died in custody but Wolman was found guilty and condemned to death. He was taken from prison at Newgate to the Tower and from there, 'drawn through the middle of the city, in the high streets of Cornhille and Westchepe, to the gallows at Tyburne', where he was hanged and beheaded, and his head was then posted on London Bridge.¹¹⁹

The trial of Thomas Lucas took place the following year. The indictment against him names Wolman as well as John Wyghtlok (first indicted with Wolman in Michaelmas 1409) amongst his co-conspirators. It mentions the direct petition to the emperor and adds that the group had also been spreading their bills publicly on the roads between Canterbury and London. Lucas was further charged with asking the emperor to endorse disendowment of the clergy - a central tenet of lollard doctrine - and with 'counselling, aiding and abetting the evil opinions and deeds' of the lollard rebel Sir John Oldcastle.¹²⁰ While there is no direct evidence that Lucas actively participated in Oldcastle's 1414 revolt, in the months following the revolt he had acted as mainpernor for a number of men indicted in King's Bench or helped them to petition for and purchase pardons.¹²¹ The Lucas indictment shows that his bill casting was done at the same time as Sigismund and his entourage were making their formal progress from Dover to London, via Canterbury, Rochester, Dartford and Blackheath.¹²² Henry V, along with a large escort of nobles and knights, had then

¹¹⁹ "Memorials."

¹²⁰ TNA KB 27/624 Rex m. 9.

¹²¹ Jurkowski, "Lollard Networks," 271.

¹²² Simms, "Visit of King Sigismund."

ridden out to meet Sigismund and escort him to Westminster where the emperor formally addressed the parliament that was then in session.¹²³

Sigismund's appearance before parliament highlights the political importance of the imperial visit, not only for the king but also for England's ruling elite. It was no doubt an embarrassment to the Lancastrian government that on such a grand state occasion, the spectre of Richard II's deposition and Henry's questionable title to the throne had once again been raised, and had even reached the imperial ear itself. By spreading the bills on the roads between Canterbury and London, Wolman and Lucas had certainly found an effective way to publicise their political grievances for a large popular audience. It seems that the emperor was sensitive to the political awkwardness the whole affair caused for Henry, for at the end of Sigismund's visit, his entourage conducted their own billing campaign, 'let[ting] fall along the streets and thoroughfares' broadsides with verses praising England and Henry V.¹²⁴

Why would Wolman and Lucas have chosen Sigismund as the recipient of their bills? As Holy Roman Emperor, he styled himself as the supreme temporal power of Christendom. While rulers beyond the immediate orbit of imperial power in central Europe rejected the emperor's historic claims to overlordship, Sigismund's role in initiating the Council of Constance in 1414 had enhanced his moral authority as an arbiter of disputes between western Europe's leading temporal and spiritual powers. The Council had been called primarily to resolve the Great Schism, which by 1414 saw the unity of the Catholic Church splintered

¹²³ *St Albans Chronicle II*, 688–91. The emperor was lodged in the palace of Westminster.

¹²⁴ *Gesta Henrici Quinti*, 157.

by three rival popes.¹²⁵ Sigismund also saw the Council as an opportunity to secure peace between England and France, a prerequisite to his goal of a new crusade, and it was in pursuit of this objective that he visited England in 1416.¹²⁶ Given Sigismund's imperial authority and his prominent role at this time as an arbiter of international disputes, Lucas and Wolman may very well have seen his visit to England as the perfect opportunity to petition for his intervention on behalf of Richard II. By 1416, the Council of Constance engineered by Sigismund had already secured the removal of two rival popes.¹²⁷ It is not hard to imagine Lucas and Wolman believing that the emperor would be receptive to their petition asking him to depose a usurping and therefore illegitimate king. Lucas' additional request that clergy be stripped of their temporal wealth and offices is more puzzling. One of Sigismund's most prominent acts at the Council of Constance had been to secure the conviction and burning of the Bohemian heretic Jan Hus, who had exchanged supportive letters with various prominent English lollards.¹²⁸ It therefore seems highly unlikely that Sigismund would have had any sympathy for Lucas' proposition.¹²⁹ Moreover, the emperor's relationship with Henry V seems to have been quite cordial; he was awarded the Order of the Garter during his English visit, and

¹²⁵ Canning, *Ideas of Power*, 165–91; Watts, *The Making of Politics*, 59–66.

¹²⁶ Simms, "Visit of King Sigismund," 21–32; Wylie and Waugh, *Henry V*, vol. 3, 1–21.

¹²⁷ John XXIII and Gregory XII were induced to resign in 1415, and the Council excommunicated the third pope, Benedict XIII, for refusing to take the same route: Canning, *Ideas of Power*, 180–81.

¹²⁸ The first extended study of connections between Bohemian Hussites and English lollards is Michael Van Dussen, *From England to Bohemia: Heresy and Communication in the Later Middle Ages* (Cambridge: Cambridge University Press, 2012). Van Dussen discusses Lucas' petition to Sigismund on 84–85, 105.

¹²⁹ Having said this, although Sigismund remained fiercely orthodox, he was a supporter of reform and critical of the clerical abuses that some considered plagued the Catholic Church by the early fifteenth century. It was not until 1418 that Sigismund was granted papal authority to launch a crusade against the Hussite heretics in Bohemia: Deane, *Heresy and Inquisition*, 253–75.

Henry also presented him with a gift of the Lancastrian 'SS' collar, an item Sigismund thenceforth wore on all public ceremonial occasions.¹³⁰

The attempt by Wolman and Lucas to engage the visiting emperor in their political cause may therefore be considered as doomed from the beginning. Nevertheless, the petition and public bills they circulated represented a more direct and arguably more sophisticated challenge to the Lancastrian regime than the earlier episodes of bill casting in London and Westminster. Even so, the state's attempt to punish such forthright and public expressions of political dissent as treason was evidently not always accepted by the political community. Although Wolman was found guilty and executed, Lucas was acquitted by a jury and released to continue his legal career.¹³¹

There is only the indirect evidence in the trial records to give any indication of the contents of the bills that Wolman and Lucas were charged with distributing. However, the fact that the records describe a specific 'petition' addressed to the emperor as well as public handbills suggests a certain continuity with the treasonous bills and letters Wolman and his associates had been charged with circulating in London and sending to the emperor and Isabella of France, as well as to Flanders, Wales and Scotland, in the cases pursued between 1407 and 1410. Although there is no way of proving Lucas' involvement in the drafting of these earlier texts, his regular presence in Westminster on legal business from the early 1400s may well have brought him into Wolman's orbit. As an Oxford academic and lawyer, Lucas' training in the *ars dictaminis* and in the language and style of formal petitioning would have

¹³⁰ Wylie and Waugh, *Henry V*, vol. 3, 12–14; Given-Wilson, *Henry IV*, 335.

¹³¹ TNA KB 27/624 Rex m. 9, where the verdict appears in the last line of the record.

served the bill casters well in crafting persuasive appeals to foreign courts and to the political elite who gathered regularly in London and Westminster for sessions of parliament and the royal council. These skills would also have been needed to petition the Commons to annul the 1410 proceedings, and to petition the king for pardons on other occasions.

True men: Legitimising dissent through the language of the law

How is it possible to understand the terms in which men like Wolman and Lucas articulated their aims and authorised their political speech when the only surviving sources are the mediated narratives of legal records? One clue survives when the original vernacular text of bills and letters was copied into the record as evidence, serving as the means by which the accused would condemn themselves out of their own mouths. In many cases, no such direct evidence exists and the political speech of the accused appears only as traces, referred to in but external to the official record. However, the content of political bills and the grounds on which they constructed their claims to authority can be inferred from the rare exemplars that were preserved, such as the letter being circulated by Nicholas Louthe in 1402. As discussed in Chapter Three, Louthe's identity as a loyal political subject was constituted through vernacular self-representation as a true liege man of the deposed king. According to Wolman's indictment and trial record of 1408, the bills he posted in London expressed their loyalties in similar terms, including the vow to remain 'true [to Richard II] in their hearts and works'.¹³²

A more detailed model for such political bills is offered by the 1413

¹³² TNA KB 9/196/1 m. 13 (indictment); KB 27/593 Rex m. 13d (plea roll record).

prosecution of John Wyghtlok, another of the bill casters operating from the Westminster sanctuary. As noted above, Wyghtlok was named along with Wolman in the cancelled indictments of Michaelmas 1409, and named again in Lucas' 1417 trial. His 1409 case never came to court and in 1417, he was at large so there is no further information on his whereabouts or political activities.¹³³ In July 1413, shortly after the death of Henry IV and the accession of Henry V, he appeared in King's Bench to answer an indictment for treason. The series of charges against him on that occasion included the by now familiar series of plotting to destroy and disinherit the king and his heirs, adhering to the king's enemies, and seeking the destruction of the realm.¹³⁴ However, the crux of the case against Wyghtlok was that he had been posting bills in Bermondsey, London, Westminster and other places in which he swore that Richard II was still alive. Unusually, in this case the evidence includes not only the state's version of the accused's speech and actions as these were preserved within the Latin legal record, but also a rare survival in the form of Wyghtlok's own handwritten bill, which was composed in first-person English.¹³⁵ In this vernacular text, connections between common law, true manhood, and self-

¹³³ Wyghtlok escaped the Tower during his trial in King's Bench in 1413, and was still at large in 1416-17.

¹³⁴ TNA KB 27/609 Rex m. 14 and 14d. This record includes a separate pardon for Simon Kampe, deputy constable of the Tower of London, sewn onto the back of the membrane. *Select Cases*, 212-15 is a partial transcription and translation of the King's Bench record, covering the first recto membrane of the record and concluding part-way through the first paragraph on the first dorse page. An early eighteenth-century transcription that preserves the Latin shorthand notations of the original court record is also preserved in BL Additional MS 38525, ff. 12-22. This latter text has been consulted for comparative purposes and to supplement damaged portions of the King's Bench original.

¹³⁵ Original copies of these types of dissenting texts rarely survive as they were usually destroyed by the authorities. Most of the evidence for their contents is therefore found only in the often-hostile accounts of chroniclers or in the biased and heavily mediated context of official prosecution records. For a valuable discussion of how to navigate this problem in order to use these types of ephemeral sources to understand the political motivations of their authors, see Dumolyn and Haemers, "Political Poems and Subversive Songs."

authorisation through membership of a representative 'community of the realm' were articulated in much more explicit and detailed terms. Like Wolman and Lucas, Wyghtlok justified his resistance in terms of the Ricardian survival story, but he also voiced a sophisticated vision of political subjecthood in which he claimed vernacular identity as a 'trewe man' to a crown conceived of as separable from its illegitimate and usurping king. Drawing on the language and forms of the common law, he addressed his appeal to a universal community of the realm, identified as the knights and burgesses of the Commons and the 'true lords' spiritual and temporal, but also as broader body politic encompassing 'alle other that herith or seth this bill'.¹³⁶

The extant records relating to Wyghtlok's case are unusually rich, and they provide detailed evidence for how the state was using opportunities presented by treason prosecutions to bolster Lancastrian legitimacy in the period immediately following Henry V's accession. As part of the judicial process, the state also took care to preserve Wyghtlok's offending bill in full, and this survival affords deeper understanding of how political resistance could be justified through a vernacular rhetoric of law and true manhood. The way the record is structured and the interplay of languages within it presents a fascinating example of the ways Latin and vernacular modes of speech and discourses of political subjecthood could interact in the public space of King's

¹³⁶ TNA KB 9/203, m. 1. The original bill, along with writs relating to the arrest of Wyghtlok and two accomplices, Thomas Clerk and Sir Elias Lynet, was misfiled separately from the other records of the case in the indictment file for 2 Henry VI, Hilary 1424: Powell, *Kingship, Law, and Society*, 137, n. 102. Brief discussions of Wyghtlok's case, treated primarily as an example of the longevity of the Ricardian rumour, appear in *ibid.*, 137–38; Walker, "Rumour, Sedition and Popular Protest," 40, 44, 61; McNiven, "Rebellion, Sedition," 111; Strohm, "The Trouble with Richard," 101–2; Aston, "Lollardy and Sedition," 22; Scase, *Literature and Complaint*, 105–8. However, none of these studies has analysed the construction of treason in Wyghtlok's case or considered in detail the political content of his bill.

Bench to assert but also to question and resist the authority of the state as it was embodied by the king. Finally, there are elements in this case that point to discursive and social connections between the political dissenter Wyghtlok and London's lollard community, particularly those involved in the legal and scribal professions.

The timing of Wyghtlok's public bill casting was critical to the way the charges against him were constructed. Wyghtlok had started his pro-Ricardian campaign in London and surrounds in February of 1413, coinciding with Henry IV's summons to the Lords and Commons for a session of parliament. However, the king was too ill to attend and he died on 20 March. Those summoned remained in London anticipating the first parliament of Henry V. Writs for this parliament were issued on 22 March and it opened on 15 May.¹³⁷ In the period between the two parliamentary summons, Wyghtlok was alleged to have initiated a second round of bill-posting, thus disrupting 'the parliaments of both the present king and of his said father... in contempt of the said kings and of their whole parliament there'.¹³⁸ Scase speculates that the parliamentary community of Lords and Commons, temporarily resident *en masse* in London and Westminster, were intended as Wyghtlok's primary audience.¹³⁹ The wording of his bill indicates he also claimed the political agency, as a true man, to engage a much broader public in resisting the rule of an illegitimate king. The illness that killed Henry IV in 1413 had incapacitated him intermittently for years and it led to speculation that he was suffering from leprosy inflicted as

¹³⁷ Given-Wilson, introduction to "Henry V: Parliament of 1413" in *PROME*.

¹³⁸ TNA KB 27/609, Rex m. 14. See *Select Cases*, 213–14 for a transcription and translation of this membrane.

¹³⁹ Scase, *Literature and Complaint*, 108.

divine punishment for his misdeeds, including the deposition of Richard II.¹⁴⁰

Wyghtlok's vigorous public revival of the Ricardian survival story, coinciding as it did with Henry IV's final decline and death, created an immediate problem for the new king. It reminded the parliamentary community and those who had been intimately involved in the transfer of power at Richard II's deposition of the conditional nature of Henry IV's claim to the throne, and it tapped into lingering doubts about the dynastic legitimacy of the Lancastrian line.¹⁴¹

It was therefore during this sensitive period bridging his father's final illness and death, his own coronation, and his first parliament that Henry V was faced with a highly visible and public challenge to the legitimacy of his rule directed to the parliamentary community and to the wider 'commons' of England. That he saw the need to respond by actively reasserting the validity of his claim is indicated in the textual evidence of Wyghtlok's case and in this regard, it is significant that Henry V was himself present in King's Bench for Wyghtlok's arraignment. In language redolent of that which appeared in the trial of the friars and other clerics in 1402, the formal indictment against Wyghtlok opens with a long and detailed passage in Latin reiterating the official account of Richard's resignation of the crown 'freely, willingly and absolutely... in ... full parliament' and his subsequent death, which had been attested to 'by thousands upon thousands within the city of London and elsewhere' who had seen his corpse.¹⁴² It then encapsulated and restated Henry V's dynastic claim,

¹⁴⁰ McNiven, "The Problem of Henry IV's Health"; Powell, *Kingship, Law, and Society*, 125.

¹⁴¹ At his succession, Henry V faced serious problems with finances and public order, and consequent dissatisfaction on the part of his subjects, but his main advantage was that no credible alternative claimant came forward to challenge him: Powell, "The Restoration of Law and Order"; McNiven, "Rebellion, Sedition," 111–17; Allmand, *Henry V*, xi–xii.

¹⁴² TNA KB 27/609 Rex m. 14. Wyghtlok's case may have been one factor prompting Henry V to have Richard II's body removed from Langley to Westminster Abbey, where he was reburied with

through his father, to the throne:

The aforesaid realm... the crown, the rule and the dominion of the realm of England with all that pertains to it having devolved and descended legitimately, of right and by inheritance to our present king Henry, fifth after the Conquest, as true king and our liege lord of England [*vero regi et domino nostro ligo Anglie juste, jure et hereditarie devenerunt et descenderunt*] ...to whom as our liege lord and sovereign [*superiori*] everyone born within his territory is bound of right and by the law of nature [*de jure et naturaliter*] to serve, honour and obey.¹⁴³

As has been noted, unlike previous generations of English kings, Henry's father had been obliged by his usurpation of the throne to make a series of proclamations in his parliaments between 1399 and 1406 that culminated in the 1406 statute of succession. While these proclamations and the accompanying oaths of loyalty demanded of the political community had been intended to secure the throne for Henry IV and his heirs once and for all, they instead effectively reinforced an underlying awareness that in 1399, the success of the Lancastrian dynastic claim had ultimately rested on consent from the estates of the realm assembled in parliament.¹⁴⁴ When Henry IV died, no credible alternative claimant had come forward but one still existed in the Mortimer heir and it is easy to forget that prior to the divine endorsement of Henry V's rule provided by his victories at Harfleur and Agincourt in late 1415, his kingship was still fragile.¹⁴⁵ Anxieties on this score may be deduced from the investment the indictment against Wyghtlok made in reiterating the

full royal obsequies in late December 1413: Powell, *Kingship, Law, and Society*, 137; Strohm, *England's Empty Throne*, 114–15; Strohm, "The Trouble with Richard," 102.

¹⁴³ TNA KB 27/609 Rex m. 14.

¹⁴⁴ McNiven, "Legitimacy and Consent," 487.

¹⁴⁵ See n. 141 above.

circumstances of Richard's deposition and death (at least as the Lancastrians would have it) and in providing multiple 'proofs' for the legitimacy of Henry V's succession: Richard's voluntary resignation, natural law, the patrilineal right of inheritance, and the statutory sanction of common law. Although the 1406 statute of succession was not mentioned by name, it seems likely that the references to *juste* and *jure* were intended to invoke it, as well as to remind the political community of the oaths of loyalty they had sworn.

Only after this long opening passage did the state arrive at the charges against Wyghtlok. With his fellow 'liars and speakers of falsehoods' [*mendaces et falsi loquaces*], he had gone 'around the land ... everywhere announcing in public and asserting as true that the said late king Richard was still alive in Scotland and would return in a short while to the land of England'.¹⁴⁶ This 'murmuring and dissension' was then joined to allegations that Wyghtlok and his confederates had plotted the 'death and destruction' of the king and his father and were in league with the Scots, 'enemies of the king and realm of England', with the intention that 'the subversion of the realm would thus ensue'.¹⁴⁷

As the charges progressed from spreading verbal rumours of a king-in-exile, to plotting to kill the current king and his father, to allying with England's enemies, to the subversion of the realm, the prosecution narrative rendered public speech acts that may have amounted to no more than wishful thinking on the part of a lingering group of Ricardian loyalists as crimes against the state. This construction was augmented in a further charge that Wyghtlok had helped

¹⁴⁶ TNA KB 27/609 Rex m. 14.

¹⁴⁷ *Ibid.*

a certain knight, described as a 'native Scot', and other 'enemies of the king and the realm of England... to spy out the state and secrets of the king and the kingdom and to inflict all possible harm upon the king and his realm'.¹⁴⁸ The overall effect was to cast Wyghtlok in the classic image of the traitor as one who tears apart the body politic from within by destroying the constitutional whole represented by the union of the king with the realm of England.

These charges are followed by an allegation that Wyghtlok had undermined Lancastrian legitimacy from another angle, for he had rejected pardons issued by Henry IV and Henry V and thereby 'utterly repudiated the grace of God and the king'.¹⁴⁹ This passage probably refers to general pardons for treasons, rebellions, and felonies issued by Henry IV in 1409 and by Henry V on his accession in April 1413.¹⁵⁰ Such general pardons had been used since Edward III's time to reconcile the political community after a period of strife or rebellion, and they emphasised the king's position as the sole source and ultimate arbiter of justice and mercy in the realm. As prerogative powers, justice and mercy devolved to the king directly from God, and the king's grace was integral to his *potentia* and royal authority. The pardoning process was a reciprocal relationship between the king and individual subjects, but one in which the power relations were dramatically lopsided. To receive mercy *de gracia* for a serious crime, petitioners had first to admit their guilt, demonstrate penitence, and humbly submit themselves to the king's unique power to pardon or to punish. By definition, seeking a royal pardon acknowledged the man who

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Powell, *Kingship, Law, and Society*, 125, 134–35. For a full list of general pardons that covered treason between 1399 to 1509, see Susanne Jenks, "General Pardons," accessed 10 October, 2015 http://www.uh.edu/waalt/index.php/General_Pardons.

conferred that pardon was the legitimate king.¹⁵¹ The indictment against Wyghtlok states that he knew he had been previously convicted and sentenced to death. Thus the charge that he had repudiated the royal and divine grace represented by a pardon seems clearly intended to emphasise the heinous and now-unforgivable nature of his crimes.

However, this version of events deliberately obscured the fact that while Wyghtlok had indeed been indicted for treason in Michaelmas 1409, as noted above that indictment had been annulled at the behest of parliament. Therefore, technically speaking, at the time he was indicted in 1413, Wyghtlok had yet to be charged with, let alone convicted of, any offence requiring a pardon. It seems likely that given the state's failure to secure any convictions in the cases of 1407-1410, the prosecution may have been trying to pre-empt any possibility of an acquittal in Wyghtlok's case. By collapsing the two incidents of bill casting and rumour-spreading (1409 and 1413) and saying that these activities had been adjudged as treasonous in 1409 and Wyghtlok had already been convicted for them, the prosecution appears to have been attempting to create a (false) precedent to mitigate the risk that a jury in 1413 would acquit Wyghtlok of treason. This impression is strengthened by the structure of the indictment, because it moves directly from this claim about the supposed past (1409) conviction for treason to the present (1413) charges of bill casting.

It was only after this passage, which conditioned a jury's potential reception of the charges that follow, that the state arrived at the meat of the case against Wyghtlok. He had:

¹⁵¹ Lacey, *Royal Pardon*, 34–36. On the strategic use of royal pardons for political purposes by Henry IV and Henry V: Powell, *Kingship, Law, and Society*, 82–85; Powell, "Restoration of Law and Order," 68–71; Dunn, "Henry IV and the Politics of Resistance," 16–21.

Falsely, treasonably and wrongfully affixed a certain document, in contempt of the said kings [Henry IV and Henry V] and of their whole parliament there, to the doors of the church of Westminster and elsewhere in various places in London and at Bermondsey and in various other places in the realm where people gathered together.¹⁵²

The proof of this treason was then provided in the form of Wyghtlok's bill, copied into the record at this point word-for-word in its original English. Like John Staunton's confession and Nicholas Louthe's letter, the first-person representation of Wyghtlok's English words embedded into the Latin legal narrative was intended to serve as irrefutable proof of his treason in his own words. It is likely that the original bill was submitted as material evidence at the arraignment and read out to the court, for the text is introduced by the phrase 'this bill [*cedula*] is attached to these presents and follows in these words [*in hec verba*]'.¹⁵³

As was the standard legal procedure in cases of felony or treason, Wyghtlok was not allowed to call witnesses in his own defence or to have legal counsel present to speak on his behalf. Instead, his written words in English stood in for his oral testimony and the intention of the prosecution was clearly that his bill should be seen as proof of and equivalent to a verbal admission of guilt. However, despite the prosecution's attempt to control the narrative, tensions were created through the textual interaction of the formal Latin charges and Wyghtlok's own words in English. These tensions allowed resistant notions of loyal political subjecthood to escape into the official record and,

¹⁵² TNA KB 27/609 Rex m. 14.

¹⁵³ *Ibid.* As noted earlier the original bill is not in fact attached and instead was misfiled with another set of King's Bench documents relating to Wyghtlok's case. The attachment sewn into the record at KB 27/609 Rex m. 14d is a copy of a royal pardon issued to Simon Kampe, deputy constable of the Tower of London, who was implicated in Wyghtlok's subsequent escape from custody.

through the aural performance of legal proceedings in King's Bench, into the wider public arena.

By alleging that Wyghtlok's activities were aimed equally at the king and his parliament, the indictment portrayed Wyghtlok as an enemy not only of the king as an individual man, but of the political body of the crown and of the wider national community. The significance of this legal strategy becomes clear when we turn to the specifics of Wyghtlok's bill, which appropriated the legitimate forms and language of petitioning and of the common law to appeal to this same national political community to restore the realm to right order by returning its legitimate king, Richard II, to the throne.

As was typical of the structure of parliamentary petitions, Wyghtlok opened his bill with a formal salutation clause:

To yow alle reverent and wurshepful Knyghtes of the Shires of Englund and burgeys of the burghs communes and all othir trowe liege men to the coroune of Englund, and to all other yat herith or seth this bille, in defaute of a bettir man I, John Wyghtlok...do yow alle to wite [witness]...¹⁵⁴

The formal and correct rhetoric of this *salutatio* indicates the hand of a trained lawyer at work in its drafting (and as shall be seen below, there was such a person indicted in relation to Wyghtlok's case). First to be named are the shire knights and town burgesses elected as members of parliament's Commons, who are addressed in the deferential and self-deprecating style ('reverent and worshipful', 'in defaute of a bettir man') that was characteristic of supplications purportedly addressed by humble petitioners to those who had the ability to

¹⁵⁴ TNA KB 9/203 m. 1.

resolve their complaints.¹⁵⁵ Wyghtlok then immediately expanded his appeal to ‘all other true liege men to the crown’ and, in a phrase that highlights the emergence of a popular political sphere characterised by auralty and vernacularity, to ‘all others that hear or see’ his bill. It is interesting that Wyghtlok made no mention of King Henry as part of the political community to which he delivered his complaint. By the early-fifteenth century, the salutation clauses of petitions sometimes appealed to the Lords and/or the Commons in parliament rather than addressing the king directly and the text of Wyghtlok’s petition indicates familiarity with this convention.¹⁵⁶ However, the phrasing may also have been designed to convey a more deliberate contrast between the legitimate authority wielded by a universal political community of lords, commons, and ‘true men’ and the illegitimate power of the Lancastrian usurper.

Wyghtlok’s bill went on to separate the natural body of the illegitimate king from the political body of the crown by asserting that Richard II, ‘youre liege lord and myn’, was alive and would return to be ‘amonge his trewe peple’.¹⁵⁷ He called on the ‘trewe lords’ and commons to use their authority to bring Richard into England and return to him the royal *dignitas* stripped at his deposition, and ‘to ordeine for hym als swiche a lord shuld be ordeyned for to the plesance of God and saluacioun of the wurship of Englund’.¹⁵⁸ The prosecution portrayed Wyghtlok as having treasonously compassed both the death of the king and the destruction of the realm, but Wyghtlok’s own words

¹⁵⁵ For a general overview of standard petitionary forms and supplicatory language see Dodd, “Writing Wrongs”; “Kingship, Parliament and the Court.”

¹⁵⁶ I am grateful to Dr Gwilym Dodd for his advice on this point. On changing practices in salutation clauses in this period: Dodd, *Justice and Grace*, 156–57, 166–67; Dodd, “Kingship, Parliament and the Court.”

¹⁵⁷ TNA KB 9/203 m. 1.

¹⁵⁸ Ibid.

expressed a loyal Christian subject's desire to restore divinely ordained right order by re-joining the body natural of the real, surviving king to the body politic of his 'true people' and realm of England.

Wyghtlok's bill appropriated the rhetorical structure and format of a parliamentary petition, and in its use of first-person English, it also appropriated and subverted the state's judicial authority as this was exercised through the standard practices and language of the common law.¹⁵⁹ By calling his text a 'bille' and swearing to its truth, Wyghtlok modelled the method of submitting a written bill as a way to initiate a legal action. The status of his text as a form of legal proof was further emphasised when he asked his audience to bear 'witness' to the veracity of his testimony:

For as moche as ye be in doute of his lif, I, forseid John Wyghtlok, do yow alle to wite [witness] yat yat same persone kyng Richard yat ocupied the corone of Englonde... is in warde and kepyng of the duk of Albanie in Scotland. To preve this sooth, I, forseid John Wyghtlok, wil swere before yow alle up on a book.¹⁶⁰

The repeated use of the phrase 'I, forseid John Wyghtlok' before each of his claims reinforced the status of Wyghtlok's words as an authentic and unmediated oral plea, for it mimicked the wording of legal confessions and witness testimony taken by coroners and other crown officials. He modelled the common law practice of swearing an oath 'upon a book' that his testimony was true, and augmented this form of proof with a deeper and more emotive appeal

¹⁵⁹ Petitions directed to the king and/or Lords and/or Commons in parliament were almost all composed in third-person French up until the 1420s: Dodd, *Justice and Grace*, 290–93. There are some isolated earlier examples of English being used for petitions to parliament, such as the petition from the Mercers' Company dated to 1387–88, although this was still composed in the formal third person: TNA SC 8/20/997.

¹⁶⁰ TNA KB 9/203, m. 1.

to the ethical truth value of men's words that was conveyed by the customary notion of sooth.

Wyghtlok then drew on his agency as a true man in an attempt to preempt the state's processes of investigation and punishment. First he offered to entrust himself to the keeping of 'certeine trewe lordis espirituels and temporels, knyghtis, esquiers, burgeys' while his claim was investigated and verified.¹⁶¹ In a telling reference to the use of *peine forte et dure* to extract legal pleas, he then asked that he be 'with duresse of prisone en no wise empeired to the tyme it be knowyn whetthir my relacioun [account] be trewe or fals with the lordis espirituels and temporels and communes'.¹⁶² Finally, he demanded of this political community that:

If [his bill] be foundyn trothe I axe fre issue oute of prisone and my name of a trewe man, and if it be beffoundyn fals then takis me out owte of prisone and lede me to the kyng Herry ...and the vilest deth that may be ordeined for me lete me have it.¹⁶³

The sequence of these requests implies that Wyghtlok saw the political community represented by parliament, rather than the king, as the institution most qualified to determine the veracity of his claims and judge his case. Such a request was not entirely in vain, for the annulment of the 1409 treason proceedings had demonstrated that the Commons in parliament could on occasion resist the royal judicial apparatus.

What of Wyghtlok's lollard connections? As mentioned earlier, the only

¹⁶¹ Ibid. Scase (*Literature and Complaint*, 106) believes Wyghtlok arranged for the bill to be written while he was in prison. However, the phrasing here counters this view, with Wyghtlok portraying himself as anticipating prison and offering himself up to captivity as part of a performance of loyal true manhood.

¹⁶² TNA KB 9/203, m. 1.

¹⁶³ Ibid.

place Wyghtlok was ever identified as a lollard sympathiser was in the 1417 indictment of Thomas Lucas, but are there any signs in his 1413 bill that point to dissenting religious, as well as political, beliefs? Following his offer to turn himself over to Henry and his sons, there is one brief passage in which he imagined himself being:

Take to the devil evir to lie in helle body and soule with outyn departyng
and nevir to have mercy of god ne parte of no priere [prayer] in holichirche
fro this day in to the day of doome [if his words should prove to be false].¹⁶⁴

This image of hell without purgatory may allude to some personal accord with lollard doctrine concerning death and judgment. Wyghtlok's willingness to 'swear upon a book', which he undertook to do several times, may seem to contradict the general lollard reluctance to swear oaths. However, lollard doctrine did accept the use of oaths when necessary as a form of proof in judicial contexts, as long as the oath reflected the true conscience of the man swearing it.¹⁶⁵ More interesting is Wyghtlok's deployment of the distinctive vernacular appellation 'trewe man' and his claim to agency as part of a broadly representative 'commons'. This language of subjecthood suggests a certain synergy with lollard discourses.

There is another possible connection between Wyghtlok and London's lollard community, and the evidence for this can be found in the physical features of the bill as well as in the way it was produced and circulated. The bill is on parchment and, as discussed above, it features the rhetorical structure and physical format of a formal parliamentary petition. The hand is *Anglicana*,

¹⁶⁴ Ibid.

¹⁶⁵ Hudson, *Premature Reformation*, 371–74.

widely used in the day-to-day scribal culture and book trade of late medieval England.¹⁶⁶ As is typical for petitions from this period, while it was composed in the first person and purports to be an unmediated representation of Wyghtlok's own speech, it was physically written by a 'Thomas Clerk'. Clerk was indicted in Southwark for treason for posting these 'bullas et cedulas' in Bermondsey and at 'St Thomas Spytall' (presumably, St Thomas's Hospital in Southwark).¹⁶⁷ He was tried in the same term as Wyghtlok and acquitted of treason, but convicted of having 'written and made' the bill.¹⁶⁸ In the early 1400s, the term 'clerk' was widely used as a catchall for apprentices-at-law, lawyers, attorneys, and other legal professionals.¹⁶⁹ Given the connections described earlier between the lollard lawyer Thomas Lucas and the bill casters operating out of the Westminster sanctuary, as well as linguistic and rhetorical evidence that Wyghtlok's bill was drafted by someone with expert knowledge of the common law and of petitioning practices, could 'Thomas Clerk' and Thomas Lucas have been one and the same man? Although this conjecture cannot be proved one way or the other at this point, as noted earlier Lucas was working in the legal profession in Westminster in the early 1400s and he was taking cases in King's Bench by 1413. It is plausible that given his association with Wolman, he had also made contact with Wyghtlok, who was part of the same sanctuary group.¹⁷⁰

¹⁶⁶ Michelle Brown, *A Guide to Western Historical Scripts from Antiquity to 1600* (Toronto: University of Toronto Press, 1990), 100–1. Scase (*Literature and Complaint*, 106) suggests that based on the hand, the scribe was involved in London's literary *demi-monde* although she does not identify him.

¹⁶⁷ TNA KB 27/609 Rex m. 17.

¹⁶⁸ *Ibid.*

¹⁶⁹ Jurkowski, "Lawyers and Lollardy," 155–57. On the fluid terminology used to identify members of the legal profession in the era before modern qualification regimes: Baker, *The Common Law Tradition*, especially "The Third University of England" (chapter 1) and "The Degree of Barrister" (chapter 5).

¹⁷⁰ Tracing such a link would require further archival research, an investigation that was not feasible

Another link in this network was Sir Elias Lynet, who was indicted alongside Thomas Clerk in 1413 and who in 1409 had been indicted alongside Wyghtlok and Wolman.¹⁷¹ Lynet seems to have had lollard connections, and perhaps lollard sympathies, for in December 1413 the king commanded him to use his contacts to spy on certain people involved in Oldcastle's rebellion.¹⁷² Taking these factors into consideration, Wyghtlok's case points to social and discursive commonalities between political bill casters and London's community of lollard lawyers and scribes.

The involvement of Thomas Clerk demonstrates that Wyghtlok was not simply a lone malcontent spouting forth unfocused, incoherent complaints. Rather, he was someone with enough knowledge of political processes to understand what was required to craft a sophisticated public statement of political grievances that conformed to legal and petitionary conventions. Moreover, he had the contacts and resources to find an amanuensis with the right skills and training to aid him in this task. Not only that, but the scribe's indictment as a traitor for making and circulating the bill shows that, whoever Thomas Clerk was, he was not only willing to produce Wyghtlok's petitionary text but was also willing to risk his own neck to help publicise its contents.

The transcription of Wyghtlok's bill in the King's Bench indictment copies the original exactly. At its conclusion, the prosecution immediately sought to reassert control of the narrative. Changing back to Latin, the text

within the scope of this thesis but which presents a promising avenue for future research.

¹⁷¹ TNA KB 27/609 Rex m. 17 (1413); TNA JUST 1/554 m. 8 (1409).

¹⁷² On 5 December 1413, Lynet was instructed by royal writ to arrest certain suspect persons, probably lollards, associated with Oldcastle's plot: W. T. Waugh, "Sir John Oldcastle (Continued)," *The English Historical Review* 20 (1905): 639. The writ's emphasis on the need for secrecy may indicate Lynet was seen as an insider, trusted enough by the plotters to lure them into the open.

definitively states:

This bill [*cedula*] and all the aforesaid things are and were falsely, treasonably and wickedly done and imagined [*facta et ymaginata*] by the aforesaid John Wyghtlok...with the purpose and intention of causing rebellion, murmuring and dissension in the realm and to stir up the people of the present king against their allegiance and to bring the Scots, Welsh and other enemies of the king and realm into the land of England to the perpetual subversion and destruction of the said realm.¹⁷³

The record continues by stating that on the following Wednesday (5 July), Wyghtlok was brought back into court in the presence of the king, and ordered to plead. He vigorously denied any of the acts of treason imputed to him and all the other charges alleged by the prosecution. However, when it came to his bill, 'as well as all the matters included therein, he openly avows it'.¹⁷⁴ This response implies that Wyghtlok recognised that allying with foreign enemies of the realm or plotting to kill the king would indeed have been treasonous acts had he been partaking in them. However, it seems he saw the activities he readily owned up to - that is, his public campaigning on behalf of the deposed king - as the actions of an obedient subject and loyal 'true liege man', not as the activities of a traitor. By sticking firmly to his narrative of Richard II's survival, Wyghtlok asserted the authority of the 'real' king in order to contest the state's definition of him as a traitor. And, in the end, Wyghtlok did manage to evade punishment as a traitor. On pleading not guilty, Wyghtlok was returned to the Tower to await a jury trial. With the aid of Richard Bache, a guard working in the Tower, he escaped and as far as the records show, was never recaptured. In what was probably an expression of the king's outrage at this outcome, Bache was hanged, drawn and

¹⁷³ TNA KB 27/609 Rex m. 14.

¹⁷⁴ *Ibid.*

decapitated, and his head spiked above the gate of the Tower of which he had been 'custos et janitor'.¹⁷⁵

By blending the language and structures of common law pleas and parliamentary petitions with his claim to loyal subjecthood as a true liege of the crown, Wyghtlok claimed the political agency to speak and it was that speech that then authenticated the contents of his bill. When he repeatedly swore to the 'sooth' and 'trothe' of his narrative, he was tapping into the potent nexus of beliefs and values relating to true manhood. These ideas imbued his political speech acts with the legal and moral authority of men's words in English, delivered under oath and witnessed as an oral plea in a court of law. The language of Wyghtlok's bill erased almost entirely the role of Thomas Clerk in its production and allowed it to appear as Wyghtlok's unmediated speech. This gave added weight to the claims he made, while also exploiting the linguistic authority of English to verify his words. When the bill was then copied word-for-word into the legal indictment as evidence against Wyghtlok, the credibility conferred by its status as sworn vernacular first-person testimony from a true man unwittingly opened up spaces for Wyghtlok to undermine the troubled intersection between the person of Henry V and the political body of the crown.

While Wyghtlok's speech was proscribed and punished by the judicial officers of the state, the legal imperative for these officials to faithfully record his speech in writing and to perform it aurally in the court of King's Bench in order to prosecute their case created a linguistic and discursive context in which Wyghtlok's own speech might act as sufficient proof to enable him to

¹⁷⁵ TNA KB 27/609 Rex m. 14d. This portion of the manuscript is badly stained and barely legible, so the translation here is supplemented by the transcription in BL Additional MS 38525 f. 20v.

resist or evade the state's charges against him. Embedded at the heart of the official record and read out in the public space of King's Bench, the contents of the bill introduced a dissident voice into the state's prosecution narrative, a voice whose authority was derived from its adaptation of the forms and the language of petitioning and of the common law as state-authorised modes for complaint and redress. At the same time, Wyghtlok's use of the first-person vernacular, twinned with his forthright claims to agency as the representative of a community of 'trewe men', had parallels with lollard strategies and rhetoric. This indicates that there were social and discursive affinities between London's loose networks of political and religious dissenters that were not always simply the product of prosecutorial imagination.

Conclusions

Within a year of Wyghtlok's appearance in King's Bench and his subsequent escape from the Tower, parliament enacted a new statute that ordered secular authorities 'to apply all their diligence and endeavour to eradicating, and causing to be eradicated, terminated and destroyed, all kinds of heresies and errors commonly called lollardy'.¹⁷⁶ The statute was passed in the wake of the December 1413 rebellion led by Sir John Oldcastle, who had been on trial for heresy earlier the same year.¹⁷⁷ It targeted 'both those belonging to the heretical sect called lollardy as well as others of their confederacy, persuasion and leaning', thus causally connecting heresy and the treasonous act

¹⁷⁶ *PROME*, "Henry V: Parliament of April 1414," item 14, RP iv:24-25; *Statutes*, vol. 2, 181–84 (c. vii).

¹⁷⁷ Oldcastle had been convicted of heresy by Convocation and handed over to the secular arm, but was granted a 40-day stay of execution by the king. Under mysterious circumstances, he was broken out of the Tower in October 1413, preparatory to the rising in early January: W. T. Waugh, "Sir John Oldcastle," *The English Historical Review* 20 (1905): 445–55; Waugh, "Sir John Oldcastle (Continued)," 639–42. Oldcastle's case is considered at length in the following chapter.

of armed rebellion aimed at ‘destroying our most sovereign lord the king himself and all the various estates...both spiritual as well as temporal’.¹⁷⁸ The direct relationship between lollardy and treason was further reinforced in the punishments to be imposed on the guilty: they were to forfeit their goods, chattels, and all lands and tenements held in fee simple, the same terms of forfeiture as defined in the 1352 treason statute. A number of the ringleaders of Oldcastle’s revolt were also subjected to the traitor’s death of hanging, drawing, and beheading. The statute went on to target anyone who aided, sheltered, or supported heretics, and it is interesting to note that it specifically named amongst these offenders ‘common scribes of their books’. In addition, it declared that any previous statutes ‘for the correction and punishment of heretics and lollards, made in the past and not repealed’ should also remain in force.¹⁷⁹ This is no doubt a reference to the un-repealed 1406 statute against the publishers of lollard tracts but also of ‘news’ saying Richard II was still alive.

When the statute of 1414 is not viewed specifically as a response to the threat of overt armed rebellion, it is usually interpreted as an example of a broader trend for governments across Europe explicitly to connect heresy and treason in new and increasingly expansive secular laws.¹⁸⁰ This is accurate in a general sense, but although the statute reflects typical authoritarian paranoia on the part of emerging nation-states about the threat of internal division generated by dissenting religious and political beliefs, it also betrays a more specific concern with the types of vernacular publication common to lollards

¹⁷⁸ *PROME*, “Parliament of April 1414,” item 14, RP iv:24.

¹⁷⁹ *Ibid.*

¹⁸⁰ On the link to Oldcastle: McNiven, *Heresy and Politics*, 225–26; Forrest, *Detection of Heresy*, 43–47; Rex, *The Lollards*, 84–87; Thomson, *Later Lollards*, 8–9.

and to the political bill casters who continued to challenge the legitimacy of the Lancastrian regime. The statute's concern with 'common scribes', considered together with the evidence of treason prosecutions presented in this chapter, shows the state perceived dangerous connections between the two groups of dissenters. These connections were characterised by vernacular publication and by the use of public speech and writing in ways that threatened to tear apart the Christian body politic of England from within.

The state's concerns converged in the 1417 indictment of Thomas Lucas for treason, which appears to be predicated directly on the 1414 statute. Here, the bill casters Wyghtlok and Wolman were for the first time explicitly named as lollards in addition to being identified as traitors. However, while this was the first of the prosecutions between 1407 and 1417 to refer directly to lollardy, the indictment illustrates continuity with the 1406 statute and with a broader strategy to establish increasingly expansive precedents in King's Bench that defined public political speech as treason. In the state's prosecution narratives, the speech represented by written bills and verbal rumours was constructed as treasonous for denying Lancastrian legitimacy in general but also for seeking to subvert the 1406 succession statute. This is seen in charges that accused traitors had 'compassed and imagined' the death of the king and his sons, but that they also sought to depose him, to disinherit him and his heirs, and that they had spoken with the intent to persuade other subjects against their allegiance.

The prosecutions pursued between 1407 and 1417 provide valuable insight into how the Lancastrian regime was using treason law to address immediate political imperatives and, as a consequence, was also reshaping the

relationship between the state and its subjects by defining treason in novel and increasingly expansive terms. At the same time, even through the mediating language of the prosecuting authorities, there are hints in the legal sources that lollards and accused traitors were drawing on shared ideas, language, and publication strategies to articulate and justify their dissent. This is not to argue that the two communities were homogenous or that they always expressed their dissent in the same ways and using the same means. Nevertheless, the sources indicate that in the literate and legally aware political culture of Westminster and London, the discursive strategies of religious and political dissenters may well have been cross-fertilising through overlapping social networks of scribes, lawyers, artisans, and tradesmen. Common to both groups, and typified by the triumvirate of Wolman, Wyghtlok and Lucas, was a sophisticated knowledge of petitionary practices and of the authorising language and rhetoric of the common law. In Wyghtlok's bill, we also find dissent explicitly legitimised through claims to vernacular identity as a 'trewe man' to the crown, and an appeal to the collective political authority of the 'commons'.

Chapter Five

Contested Meanings of Treason, 1403-1424

This chapter returns to where this study began, with incidents of treason involving men of elevated social status. Because the accused were nobles or knights, their prosecutions were pursued in a range of judicial venues that included parliament, the Court of Chivalry, and the royal council, as well as the court of King's Bench. A comparative examination of these cases therefore affords the opportunity to trace changes in the meaning and scope of treason in both prerogative and common law courts across the first two decades of Lancastrian rule. In addition, the high profile of the offenders means that accounts of their alleged treasons were preserved not only in trial records, but also in chronicle accounts and literary sources. By considering these sources in conjunction with the legal evidence, insight can be gained into how treason was perceived by the wider political community. In some respects, these broader cultural perceptions were in harmony with the Lancastrian regime's expanding judicial constructions, but they could also diverge from or directly challenge the official view. This reflected continuing tensions between customary conceptions of treason as an inversion of knighthood and emerging definitions of treason as a crime against the state.

The episodes covered are the rebellions instigated by the Percy lords between 1403 and 1408; the rising headed by Sir John Oldcastle, Lord Cobham, in 1413-14; the 1415 Southampton plot, which involved Lord Lescrope of Masham, the earl of March, the earl of Cambridge, and the knight Sir Thomas Grey; and the case of Sir John Mortimer, which began in 1418 and ended with

his execution during Henry VI's second parliament of 1423-4. To date, scholars have tended to consider each of these episodes in isolation from the others, with their goals being to determine the sequence of events, identify the participants and their networks and, to the extent that the records allow, assess their guilt or innocence in a factual, legal sense.¹ A partial exception is Paul Strohm, who addressed all but the Mortimer case in his 1998 study *England's Empty Throne*. Strohm's attention to the role of discourses of absence and desire in shaping the chronicle and record sources provided many valuable insights, but his use of the theoretical framework of Lacanian psychoanalysis tended to unmoor the texts from the specific circumstances of their production.²

The goal here is to examine the competing rhetorical strategies of the Lancastrian regime and its opponents to understand how the customary idea of treason as a violation of chivalric loyalties was interacting with newer and more expansive interpretations of treason, and the implications this had for how the traitor was constituted in relation to the state. The Lancastrian government drew on both discursive registers to secure convictions and justify executions, but in the indictments and trial records, customary definitions were being subsumed by more abstract constructions of treason as an attack on public

¹ Key studies include J. M. W. Bean, "Henry IV and the Percies," *History* 44 (1959): 212–27; Simon Walker, "The Yorkshire Risings of 1405: Texts and Contexts," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 161–84; Peter McNiven, "The Scottish Policy of the Percies and the Strategy of the Rebellion of 1403," *Bulletin of the John Rylands Library* 62 (1980): 498–530; Andy King, "'They Have the Hertes of the People by North': Northumberland, the Percies and Henry IV, 1399-1408," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 139–59; Maureen Jurkowski, "Henry V's Suppression of the Oldcastle Revolt," in Dodd, *Henry V: New Interpretations*, 103–29; Powell, *Kingship, Law, and Society*, 141–67 (on Oldcastle); Waugh, "Sir John Oldcastle"; Waugh, "Sir John Oldcastle (Continued)"; T. B. Pugh, *Henry V and the Southampton Plot of 1415* (Gloucester: Sutton, 1988); Powell, "The Strange Death of Sir John Mortimer." Given-Wilson (*Henry IV*, 442–49) discusses the Percies and other noble rebels primarily in relation to the legal treatment of their property and heirs.

² See for example his rather cavalier dismissal of Maureen Jurkowski's sensible pragmatic explanation for scribal alterations and erasures in court records: *England's Empty Throne*, 236, n. 54.

authority and the English nation. This transition was signaled through the legal rhetoric and conceptual categories that were being incorporated into treason indictments and new statutes, and it was reinforced through the public spectacle of the traitor's execution.

Although those accused occasionally represented themselves as acting for the public good, to a large degree they continued to frame their political resistance through a personalised discourse of true manhood. For these men of elevated social status, 'true manhood' in the sense of loyal political subjecthood took on a specific chivalric inflection, as they articulated their resistance to the Lancastrian state by appealing to the values and obligations of knighthood and 'good lordship'. The rhetoric surrounding masculine bonds and oaths of loyalty was central to the ways charges of treason were constructed and resisted in these cases. On one side, noble resistance to the Lancastrian regime was justified through the idea that oath-keeping and 'trothe' were fundamental to legitimate kingship, so that a king who broke his sworn oath fatally undermined his manhood and his right to regnal authority.³ On the regime's part, persistent fears were expressed that sworn bonds between men were vulnerable to corruption, a fear that was represented by accusations that traitors were guilty of 'oaths of confederacy' and 'false covigne' against the king.⁴

³ As discussed in Chapter One, 34–36.

⁴ Anxieties about such improper masculine bonds were widely expressed in the late medieval period, when so-called 'bastard feudalism' saw the customary practice of lifelong service linked to land tenure being replaced by short-term indentures where service was exchanged for money and a single man might serve multiple masters. Concerns about the destabilising potential of such arrangements were regularly voiced in Commons' petitions calling for the enforcement of statutes of liveries and restrictions on the distribution of badges. The concern with corrupted bonds was also a common theme in late medieval literature. For general studies, see McFarlane, "Bastard Feudalism"; P. R. Coss, "Bastard Feudalism Revised," *Past & Present* (1989): 27–64; John G. Bellamy, *Bastard Feudalism and the Law* (London: Routledge, 1989); Michael A. Hicks, *Bastard Feudalism* (London: Longman, 1995); Given-Wilson, "Richard II and the Higher Nobility," 123–28; *Ibid*, *Henry IV*, 393–95. For representative discussions of this

The Percy lords and political resistance, 1403-1408

Themes of knighthood and its inversion as treason appear prominently in the narratives relating to the risings headed by the Percies between 1403 and 1408. Henry Percy, the earl of Northumberland, his son Sir Henry 'Hotspur' Percy, and the earl's brother Thomas Percy, earl of Worcester, had been amongst Henry of Lancaster's most powerful allies when he invaded England in 1399, and their military and political support played no small part in helping him acquire the throne.⁵ By the middle of 1403, the relationship had soured and a rising led by Hotspur and Worcester ended in their deaths as traitors at the battle of Shrewsbury on 21 July.⁶ Northumberland was able to secure a pardon in early 1404, but he rebelled again in 1405 along with Lord Bardolf. After they fled into exile, Northumberland and Bardolf were convicted as traitors in the 1406 parliament. They returned to England for a final battle in 1408, where they were killed.⁷

The Percies have attracted a good deal of scholarly interest, primarily with the goal of determining why they turned against the Lancastrian regime. Some have argued for the accuracy of chronicle accounts alleging that although

theme in literature, see for example Tison Pugh, "'For to Be Sworne Bretheren Til They Deye': Satirizing Queer Brotherhood in the Chaucerian Corpus," *The Chaucer Review* 43 (2009): 282–310; Strohm, "The Textual Environment of Chaucer's 'Lak of Stedfastnesse'" (chapter 3) and "Appendix 2: The Literature of Livery," in *Hochon's Arrow*.

⁵ Bean, "Henry IV and the Percies"; Sherborne, "Perjury and the Lancastrian Revolution"; Michael Hicks, "The Yorkshire Perjuries of Henry Bolingbroke in 1399 Revisited," *Northern History* 46 (2009): 31–41; Bennett, *Richard II*, chapters 6 and 7; Mark Arvanigian, "Henry IV, the Northern Nobility and the Consolidation of the Regime," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 117–37.

⁶ Hotspur died from an arrow wound and Worcester was captured and executed. Hotspur's status as a traitor was conveyed by the degrading treatment of his corpse, which was mutilated and put on public display in Shrewsbury's marketplace: Bothwell, *Falling from Grace*, 76.

⁷ For general accounts, see Kirby, *Henry IV*, 152–58, 185–88, 218–19; Pugh, *Southampton Plot*, 14–21; Bean, "Henry IV and the Percies"; McNiven, "Scottish Policy of the Percies"; King, "Northumberland, the Percies and Henry IV, 1399-1408."

the Percies supported Henry's invasion to restore his ducal inheritance in 1399, they never approved of Richard's deposition and Northumberland had extracted a sacred oath from Henry that he would not try to take the throne. Others contend that it was only as a result of the king's inability to meet Percy expectations for rewards in the early 1400s that they began publicly to question Henry's legitimacy for their own political and territorial ends.⁸ The discussion below does not seek to add to this debate, as these questions have been well traversed in previous accounts. Instead, the focus is on how the Percies tapped into the cultural expectations about knighthood to justify their resistance to the king. From the state's perspective, these chivalric discourses could challenge, but also sometimes complement and validate, more expansive definitions of treason as a crime against the people and nation of England.

When the author of *An English Chronicle* reported the devastating collapse of relations between Henry IV and Hotspur, he provided a striking image of customary perceptions of treason. Accused by Henry of having betrayed him, Hotspur denied he had been disloyal and demanded the right to defend his honour in a personal combat with the king, declaring, 'Traytour am I non, but a true man and as a true mon I speke'.⁹ The chronicle redaction post-dates events and it reflects the political biases of the writer's patrons, so this cannot be accepted as a verbatim report.¹⁰ Nevertheless, the words put into

⁸ For key arguments in this debate from both sides: Bean, "Henry IV and the Percies," 215–21; Bennett, *Richard II*, 155; Sherborne, "Perjury and the Lancastrian Revolution"; McNiven, "The Problem of Henry IV's Health," 766–67. A useful summary of the historiography is provided in Hicks, "Yorkshire Perjuries," 32–34.

⁹ *An English Chronicle*, 32–34, quote at 33. This chronicle portrayal is discussed in greater detail with reference to the construction of chivalric masculinity in McVitty, "False Knights and True Men," 474–75.

¹⁰ The Aberystwyth manuscript dates to the mid-1400s, but Stow argues that for the period 1399–1413, it relied on a mixture of Latin and English texts composed c. 1400–20. On dating and

Hotspur's mouth denote enduring beliefs and values that influenced political culture. The fundamental opposition between treason and true manhood is succinctly captured, as is the connection between performing knighthood and publicly speaking truth.

Similar ideas can be found in more direct contemporary sources, which describe the ways the Percies justified their resistance to Henry IV while simultaneously positioning themselves as loyal knights and true liege men. Most telling is a source known as the 'Percy manifesto', which was circulating throughout England by the middle of 1403. Its purported content survived in the single chronicle account of John Hardyng, which for reasons of dating and variant manuscript redactions must be considered somewhat problematic.¹¹ However, the evidence of royal letters, writs, and legal records shows that such a text was indeed being circulated, and these sources also enable us to induce the nature of its contents.

The manifesto adopted the Latin of a formal proclamation, and it mirrored the structure and rhetoric of political communications from the government to its subjects. It was addressed from 'We, Henry Percy, earl of Northumberland, Constable of England, and Warden of the West March ..., Henry Percy, his firstborn son and Warden of the East March..., and Thomas Percy earl

manuscript history, Stow, "The Continuation of the Eulogium Historiarum"; Marx, "Introduction," in *An English Chronicle*, xi–xiv.

¹¹ *Chronicle of John Hardyng*, 351–54. Hardyng produced two versions of his chronicle. The first, a pro-Lancastrian recension, in the 1450s, and a second pro-Yorkist recension, which was dedicated to Edward IV, in 1463. The text of the manifesto was added to the second version. In 1403 Hardyng was a Percy retainer and served under Hotspur at Shrewsbury, but after the battle he changed sides and became a retainer of the earl of Westmorland. For Hardyng's chronicle and his career: C. L. Kingsford, "The First Version of Hardyng's Chronicle," *The English Historical Review* 27 (1912): 462–66; Peverley, "Political Consciousness and the Literary Mind in Late Medieval England," 11–13; Hicks, "Yorkshire Perjuries," 332–34; Bean, "Henry IV and the Percies," 216–18; Walker, "The Yorkshire Risings of 1405: Texts and Contexts," 169–71.

of Worcester', who declared themselves to be acting as 'procuratores et protectores rei publice' against 'you Henry duke of Lancaster and your accomplices and favourites' ('complices tuos et fautores').¹² The text goes on to itemise the Percies' grievances. These were that in 1399, Henry IV had broken a sacred oath sworn on the Host not to seize the throne but only to reclaim his legitimate inheritance as the duke of Lancaster; that he had broken further oaths not to impose unjust taxes and to rule for the common good; that contrary to his word, he had stripped Richard of his royal prerogative and had then 'treasonously' ('proditorie') imprisoned and murdered him; that he had usurped the kingdom of England ('usurpasti ... regnum Anglie'), depriving the true heir Edmund Mortimer, the earl of March, of his right and keeping him a prisoner; and finally, that he had refused requests to ransom the young earl's uncle, Sir Edmund Mortimer, from his Welsh captivity.¹³ For these reasons, the Percies declared that Henry and his 'complices... et fautores' were 'traitors and destroyers of the *res publica* of the realm' ('proditores et rei publice regni destructores').¹⁴

Res publica can be read as analogous to late medieval political concepts such as the *chose publique* or the *bone commune*, and its use suggests the Percies were positioning themselves as acting for the public good. Equally powerful, though, is their invocation of the customary idea of knightly *diffidatio* to justify

¹² *Chronicle of John Hardyng*, 352. Translations are my own. For the Percies' offices and authority in the Scottish marches, see Cynthia J. Neville, "Scotland, the Percies and the Law in 1400," in Dodd and Biggs, *Henry IV: The Establishment of the Regime, 1399-1406*, 73–93.

¹³ *Chronicle of John Hardyng*, 352–53. Given-Wilson (*Chronicles of the Revolution*, 192) points out that while Hardyng's account has been questioned, there are other independent sources indicating Henry swore some sort of oath regarding his intentions. Cf. Sherborne, "Perjury and the Lancastrian Revolution"; Hicks, "Yorkshire Perjuries." The Mortimers were related to the Percies by marriage, Hotspur having married the sister of Sir Edmund Mortimer: Kirby, *Henry IV*, 134.

¹⁴ *Chronicle of John Hardyng*, 353.

an individual nobleman's resistance to an illegitimate or tyrannical lord. The reference to *complices et fautores* is particularly resonant in this regard, recalling as it did the articles of deposition that repeatedly stated Richard had put the private interests of favourites above the good of the realm.¹⁵ By deploying this charge against Henry, the Percies could justify their actions as a defence of their customary noble obligation of giving counsel to the king in order to reform royal government. In political critique, the trope of 'wicked counsellors' often covered up more specific grievances and divisions over policy, but it nevertheless offered a powerful and instantly recognisable model for interpreting the breakdown in relations between kings and their greatest subjects.¹⁶ The Percies repeatedly implied that Henry's illegitimate kingship was causally derived from his failures of chivalry. This was most vividly represented by his breaking of oaths, and by deceiving and murdering his king. These breaches of knightly fidelity and honour rendered Henry a traitor. Finally, the complaint that Henry had not ransomed Sir Edmund Mortimer alluded to another violation of chivalry, as he refused to use his resources and influence - his knightly largesse - to aid his military retainers. A letter to the king from the earl of Northumberland, dated 26 June 1403, gives some further evidence for how this particular failing might be deployed as political critique. According to the earl, Henry had been refusing for some time to honour promises to pay the Percies for military expenses they had incurred defending the Scottish marches,

¹⁵ Arnold has discussed the specific late medieval use in inquisitorial discourse of the term *fautores* to identify supporters of heretics; this example supports his suggestion that the term also infiltrated, or perhaps was drawn from, secular judicial discourse: "Lollard Trials and Inquisitorial Discourse," 84–85.

¹⁶ Rosenthal, "The King's 'Wicked Advisers' and Medieval Baronial Rebellions"; Valente, *Theory and Practice of Revolt*, 25–32; Fletcher, *Richard II*, 75–76, 171–74.

in turn leaving them unable to pay their own men.¹⁷ Northumberland asked that the promised payments be made urgently, warning that if the money was not forthcoming, 'the good name of the chivalry of your realm will no longer be preserved... and above all [cause] dishonour and distress' to the earl and his son, 'who are your loyal lieges'.¹⁸

Although Hardyng documented the Percy manifesto in Latin, it is apparent that versions were also circulating in English. This would be consistent with the practice used to publicise a set of articles demanding political reform that were produced in 1405 by Thomas Mowbray, the earl of Norfolk, and Richard Scrope, the archbishop of York.¹⁹ Their text, composed in English, was 'published in the highways and byways of the city of York, and publicly fastened to the doors of monasteries, so that any person who wished could ascertain the nature' of their complaints.²⁰ As for the Percy manifesto, a

¹⁷ For the background and a tally of payments owed, see Bean, "Henry IV and the Percies," 221–24.

¹⁸ *PPC*, 204–5, quote at 205: 'Si le paiement ne soit breifment ordenez, il est bien semblable que le bone renome du chivalerie de votre roialme ne serra gardez en celles endroit et outreement deshonor et desesance a moy et mon dit filz qi sumes voz loialx lieges'. King ("Northumberland, the Percies and Henry IV, 1399–1408," 154) suggests the reference to 'dishonouring chivalry' was included primarily to put pressure on Henry IV, and not out of any real financial exigency.

¹⁹ The political actions of Mowbray and Scrope have often been conflated with a second rebellion led by Henry Percy, earl of Northumberland, in 1405. For the standard interpretation, see Peter McNiven, "The Betrayal of Archbishop Scrope," *Bulletin of the John Rylands Library* 54 (1971): 173–213. However, the political aims of the two groups differed and Walker has recently shown that their activities were only coincidentally related: Walker, "The Yorkshire Risings of 1405: Texts and Contexts." The political protest of Scrope and Mowbray will not be addressed in this study but for detailed analysis, see W. M. Ormrod, "The Rebellion of Archbishop Scrope and the Tradition of Opposition to Royal Taxation," in Dodd and Biggs, *Henry IV: The Establishment of the Regime*, 162–79; Ormrod, "An Archbishop in Revolt: Richard Scrope and the Yorkshire Rising of 1405," in *Richard Scrope: Archbishop, Rebel, Martyr*, ed. P. J. P. Goldberg (Donington, Lincolnshire: Shaun Tyas, 2007), 28–44; Douglas Biggs, "Archbishop Scrope's Manifesto of 1405: 'Naïve Nonsense' or Reflections of Political Reality?," *Journal of Medieval History* 33 (2007): 358–71.

²⁰ *St Albans Chronicle II*, 443. The full text of the manifesto circulated by Mowbray and Scrope and preserved in the chronicle (442–45) shows that they sought to reform Lancastrian government rather than replace it, and they did not question Henry IV's legitimacy. It is interesting that Walsingham chose to translate the manifesto from its original English into Latin, stating this 'seemed necessary to me because of the plainness and inelegance of the

letter from Henry IV to the Privy Council, dated 17 July 1403, complained that Henry Percy 'who has risen against us and our regality' had been referring to the king as 'nothing more than Henry of Lancaster', and that Percy had made and circulated proclamations claiming that Richard was still alive 'with the intent of inciting our people to rise with him in strengthening of his false purpose'.²¹ The following day, writs were issued to the sheriffs of London and various other places ordering that they issue proclamations that no one should be 'afraid for report of any news' but stay obedient and loyal, 'resisting all them that presume to rise... by reason of some evil information given them by colour of such news'.²² The king's claim that the Percies were saying Richard was still alive was almost certainly false or at the least misguided. It is possible that Henry was killing two birds with one stone by targeting as a single group the Percy rebels and malcontents like the bill casters discussed in previous chapters. However, it is more likely that by including the reference to the Ricardian survival story, Henry was deflecting attention from the more damaging of the Percies' claims: that Henry had broken a sacred oath not to seize the throne and had then broken further promises not to burden his subjects unduly with taxes; that he had murdered Richard; and that he had deprived the earl of March of his dynastic right to the throne. By referring to the king as 'Henry of Lancaster', the Percies also recalled Henry's claim, on arriving under arms in England in 1399, that his goal was only to seek restoration of his ducal inheritance. McNiven has argued that the most serious consequence of the

[English] language': 445.

²¹ BL Cotton Cleopatra F III, f. 145r. See also *PPC*, 207–9 (where the text is listed under an older BL catalogue identifier as f. 112).

²² *CCR, 1402-1405*, 181.

manifesto and subsequent rising was to promote the cause of Edmund Mortimer as Richard's true heir.²³ However, Henry's failures of chivalric manhood, especially his oath-breaking, represented an equally devastating critique for a king who had relied on his reputation as a knight and as a 'man not a boy' to strengthen his claim to the throne.²⁴

The idea that the Percies' actions were justified by Henry's betrayal of the values of knighthood surfaced in various legal proceedings against alleged traitors in the years following the risings in 1403 and 1405. For example, in the Trinity term of 1409, John Ffreston, a tailor of London, was finally pardoned in King's Bench in a case that had been initiated by the general commissions of inquiry that were issued immediately after the battle of Shrewsbury.²⁵ Witness testimony recorded in French asserted that while Ffreston was residing in the sanctuary of St Martin Le Grand in London, he had made various treasonous allegations including that Henry IV had robbed his loyal liege people; by these words, Ffreston had shown himself to be a 'false traitor to our lord the king and to the crown'.²⁶ The Latin indictment expanded on these charges: Ffreston had helped to incite the people to treasonous rebellion by saying that Henry Percy had come to save them from the burden of taxes ('tallagia'); by claiming that

²³ McNiven, "Legitimacy and Consent," 483.

²⁴ For the discourse of Richard's 'youth' versus Henry's manhood in the official sources justifying Richard's deposition, see Fletcher, *Richard II*, 270–89; Fletcher, "Manhood and Politics in the Reign of Richard II." For Henry IV's exploitation of chivalric ideals and institutions to validate and reinforce his kingship: Tuck, "Henry IV and Chivalry"; Hugh E. L. Collins, *The Order of the Garter, 1348-1461: Chivalry and Politics in Late Medieval England* (Oxford: Clarendon Press, 2000), 76–78, 109–14; Pilbrow, "Knights of the Bath," 208–18; Given-Wilson, *Henry IV*, 394–401.

²⁵ See for example *CCR, 1402-1405*, 181 for the commission dated 23 July to the justices appointed for Hertfordshire and Buckinghamshire.

²⁶ TNA KB 27/593 Rex m. 13 and 13d, quote on m. 13. It was probably Ffreston's residence in the sanctuary that accounts for the time between his alleged offences and his appearance in court. On the St Martins sanctuary: McSheffrey, "Sanctuary and the Legal Topography of Pre-Reformation London," 484–85.

Percy's goal was only to restore good governance; and by falsely claiming that Percy was acting with true intentions for the benefit of the realm.²⁷ Henry's failures of chivalric lordship were also highlighted in the case of John Kynggeslay, a Percy retainer who had been imprisoned at Norwich in late 1405 after making treasonous comments to two esquires he met on the road.²⁸ Asked for news by the two men, Kynggeslay had told them that following a battle, the earl of Northumberland had taken the earl of Westmoreland (a leading supporter of the king against the Percies) prisoner.²⁹ Kynggeslay went on to urge the esquires to join with Northumberland and Owain Glyn Dŵr in Wales, saying that Glyn Dŵr's forces were growing stronger by the day because he was able to pay his men. This echoed the Percies' repeated complaints that the king had failed to follow through on promises of money and arms, and had left them unable to meet their own knightly obligations to pay their retainers.

In the Lancastrian government's response to these acts of noble resistance and rebellion, the Percies' crimes were delineated through chivalric notions of treason as a personal betrayal, but augmenting this customary definition were more abstract conceptions of treason as a crime against the nation. Prosecution narratives reflected fears that improper alliances between men were subverting their loyalties to the king as an individual, but they also charged traitors with usurping the sovereign public authority of the state and

²⁷ TNA KB 27/593 Rex m. 13.

²⁸ TNA C 49/48/6. Kyngesslay was questioned by the royal council but later released. For details of his career, see Walker, "Rumour, Sedition and Popular Protest," 31–32.

²⁹ Unusually, the testimony of the two esquires was recorded in English rather than French. Kyngesslay had fought with the Percies at Shrewsbury in 1403 but was pardoned on that occasion. The battle he referred to would have been that of mid-1405 involving Northumberland, Lord Bardolf, and possibly men associated with Lord Mowbray and Archbishop Scrope. The Percy forces had in fact been defeated by Westmorland and forces loyal to Henry IV. Northumberland and Bardolf had fled into Scotland: Kirby, *Henry IV*, 185–87.

seeking to destroy the national community of England.

The perception of treason as a betrayal of manly fidelity was vividly captured in Henry's belief that the Percies had formed 'bonds of confederacy' against him. This notion appears to have gained widespread credence from 1403, and it reflected deep-seated cultural anxieties that the idealised chivalric relationship between kings and their noblemen could be destroyed by debased attachments that undermined proper masculine loyalties and seduced 'true men' into treason. Hardyng made the most explicit reference to the existence of bonds of confederacy. After fighting with Hotspur at Shrewsbury, Hardyng had changed sides and by 1405, he was serving the king. In the Yorkist redaction of his chronicle, he claimed that when he was appointed as constable of the former Percy castle of Warkworth, he had uncovered there a collection of sealed agreements, signed by all the English nobles except for the earl of Stafford and swearing to an alliance against Henry. Just prior to his account of the Percy manifesto, Hardyng talked of 'dyvers other lordes' who had allied with the Percies 'and wer bounde to hym be theire lettres and sealles which I sawe and hade in kepyng'.³⁰ Whether these secret documents really existed or not, the story of their existence quickly gained credence at all levels of political society.³¹ This development is suggested by sources such as a writ to the bailiffs of Worcester dated 7 September 1403, ordering a proclamation to be made that:

Whereas it is notorious, and by many reports has newly come to the king's ears, that a number of the children of iniquity, striving to sow discord between the king and the lords spiritual and temporal, and between the

³⁰ *Chronicle of John Hardyng*, 351.

³¹ Dunn, "Henry IV and the Politics of Resistance," 7–8. Dunn discusses the problems with Hardyng's account, but also points to corroborative sources that pre-date Hardyng's version of events.

said lords, have wickedly published and do daily publish it, that great number of such lords consented in the evil designs and imaginings of [the Percies] and other traitors... the king has caused the said lords to be assembled at this council and to be examined, and has found that they consented not... but were true to him.³²

The bonds were alluded to again in the parliament of January 1404. After the earl of Northumberland had appeared before the king and was pardoned (discussed below), the Commons petitioned the king asking him:

To make a declaration on behalf of the archbishop of Canterbury, the duke of York, and the other lords spiritual and temporal ... slandered by certain malevolent persons to the effect that they were in collusion, agreement and conspiracy with Sir Henry Percy and Sir Thomas Percy...; and that the same archbishop, duke and earl, and the lords and others mentioned above, should be declared and considered in full parliament to be loyal lieges to you.³³

The belief that individual noblemen had bound themselves together against the king reflected the cultural understanding of treason as the inverse of knightly manhood. However, the political community also embraced more abstract notions of treason as a crime against the nation. The influence of both these models can be seen in Northumberland's plea for mercy. This was recorded in the parliament roll in the first-person English in which it was delivered, with the intent of accurately preserving Northumberland's confession of guilt and his words of contrition. After reminding Henry that he had voluntarily submitted himself at York, Northumberland threw himself on the king's mercy 'as I that naghte have kept yowre lawys et statutys [statutes]... and specially of gederyng

³² *CCR, 1402-1405*, 187. The reference to the lords being examined at a royal council refers to the first of several occasions on which Henry's nobles were made to swear new oaths of loyalty to him and to the succession.

³³ *PROME*, "Henry IV: Parliament of January 1404," item 21, RP iii:525-26.

of power and gevyng of liveries'.³⁴ The earl's admission that he had given liveries to augment his military strength tapped into Henry's concerns about dangerous allegiances being formed amongst men whose first loyalties should have been to him. At the same time, by breaking laws and statutes, Northumberland's petition suggested he had infringed upon the more abstract collective public power represented by parliament, particularly in its enactment of new Statutes of Liveries in 1399 and 1401. The statute of 1399 in fact represented one of the main concessions Henry had made to the Commons in parliament after he took the throne.³⁵

Tensions between the customary view of treason and more expansive constructions were also apparent in the 1406 parliament, when Northumberland and his ally Lord Bardolf were convicted as traitors *in absentia*. Their involvement in the 1405 rebellion had first been raised on 12 June, when the Lords temporal had asserted their right, as peers of the realm, to hear the case before the Court of Chivalry.³⁶ The Record and Process of this deliberation and the final judgment against the two noblemen were then presented and confirmed in parliament on 19 June. Amongst the charges was that Northumberland and Bardolf had 'traitorously usurped and accroached royal power'.³⁷ The term accroaching in this context was drawn from the rhetoric of *lèse-majesté* in civil law, through which treason was defined not only

³⁴ Ibid., item 11, RP iii:524. Dodd briefly discusses this text as an example of English in the parliament roll of the early 1400, but he does not discuss its contents: Dodd, "Spread of English," 255.

³⁵ Given-Wilson calls the 1399 Statute of Liveries, enacted on 10 November, 'the most important legislative act of the parliament': Introduction to "Parliament of 1399" in *PROME*. The statute of 1401 expanded the terms of the 1399 statute, with the Commons petitioning for the abolition of all types of livery or badges, except in certain limited circumstances: *PROME*, "Parliament of 1401," item 10, RP iii:477-78. See also Given-Wilson, *The Royal Household and the King's Affinity*, 240; Given-Wilson, *Henry IV*, 393.

³⁶ *PROME*, "Parliament of 1406," item 1, RP iii:604.

³⁷ Ibid., item 5.

as an attack on the person of the king but as a crime against the public authority he embodied. The definition of treason as accroaching state power was also present in charges that, acting on his own authority, Northumberland had been treating with the king of Scotland and with ambassadors from France, 'to bring about the ruin of our lord the king... in relation to his power and his kingdom of England'.³⁸ As proof of this, two warrants dated 11 June 1405 and endorsed with Northumberland's seal were presented. These stated that the earl had appointed attorneys on his behalf to 'accomplish and bring about any kind of agreements which may be made' with King Robert of Scotland and with several named ambassadors of France, as if they were 'doun and accorded by oure self in our owne propre persone'.³⁹ By negotiating on independent terms with these foreign governments, Northumberland was usurping the sovereign diplomatic authority of the English state. Northumberland was also condemned for having turned on his own countrymen by attacking the town of Berwick and capturing its mayor and burgesses, and by 'causing' the Scots to pillage and burn the town.⁴⁰ These crimes were described multiple times as 'treasons committed against the person of... the king'.⁴¹ However, Northumberland was also depicted as an enemy of the nation for 'communing' with England's enemies and waging war against his fellow Englishmen at Berwick and elsewhere.

The rhetoric of the Record and Process achieved two constitutional ends. The first was to reinforce the validity of Henry's claims to embody royal authority. When Northumberland had urged the duke of Orléans to join him in a

³⁸ Ibid., item 7, RP iii:605.

³⁹ Ibid., items 8 and 9. The quote is from item 8, being the warrant in English that confirmed the authority granted by the earl to his attorneys to treat with King Robert on his behalf.

⁴⁰ Ibid., item 10.

⁴¹ Ibid., item 15, RP iii:607.

war against 'Henry of Lancaster, at present regent of England', it raised once again the issue of Henry's title. The previous chapter noted that shortly before hearing the case against Northumberland and Bardolf, the parliament of 1406 had enacted England's first formal succession statute. While Henry used this statute and accompanying oaths of loyalty to tackle from one angle the question of his legitimacy, the Record and Process tackled it from another. By repeatedly defining Northumberland's activities as seeking 'to bring about the ruin of our lord the king... with regard to his power and his kingdom of England,' the text reinforced the conceptual bond between Henry's person and the regality and realm of England, validating his claim to embody sovereign power.⁴² Secondly, the Record and Process helped to bolster the conception of treason as a crime against the state. Northumberland and his supporters were accused of having taken the field armed for war and with 'with pennons unfurled', and with having arrayed men in battle and held the king's castles against him.⁴³ These charges reflected the conventional terms of the 1352 statute, but in the legal context of the Court of Chivalry, they also drew on the civil law doctrine of *lèse-majesté* and its assertion that only the king, as the sovereign embodiment of state power, had the authority to wage just and legal war.⁴⁴ This drove home the distinction between illegitimate private war waged by nobles and wars waged under the auspices of the public power of the crown.⁴⁵ These charges were twinned with descriptions of the nobles circulating proclamations that 'seditiously and treacherously' claimed they were only trying to 'redress certain

⁴² Ibid., item 13, RP iii:606.

⁴³ For example, items 4 and 11, RP iii:604-5.

⁴⁴ Black, *Political Thought*, 90; and more generally, Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975).

⁴⁵ Keen, "Treason Trials," 95-96; Bellamy, *Law of Treason*, 62-63, 95.

fictitious troubles and failings' in the kingdom and to 'remove... certain alleged malefactors surrounding... the king'.⁴⁶ This eliminated any possibility that Northumberland, Bardolf and their allies could justify their actions as knightly *diffidatio*, done with the intention of reforming royal government.

The tensions between the chivalric idea of treason as a personal betrayal and constructions of treason as a crime against the nation can also be discerned in the most detailed account of Northumberland's death in 1408. The *St Albans Chronicle* explains that Northumberland and Lord Bardolf had crossed back into England in February and 'had a public proclamation made that they had come to bring about the consolation of the people of England... They therefore urged the people to follow them if they had any desire at all for liberty [*libertatem*]'.⁴⁷ The references to 'consolation of the people' and 'liberty' are strongly suggestive of nobles exercising their traditional right to rein in a bad lord. At Bramham Moor, Northumberland and Bardolf were challenged by the sheriff of York 'displaying the standard of St George', an emblem which by this time had become strongly associated with English national identity.⁴⁸ While on one level, Walsingham was portraying this encounter as a knightly trial by combat through which Northumberland intended to prove the truth of his cause with his body, the idea that he was attacking the nation of England was also present, represented by the sheriff with his St George banner. Northumberland was killed in the battle and the treatment of his corpse marked him as a traitor to knighthood, but also

⁴⁶ *PROME*, "Parliament of 1406," items 3 and 5, RP iii:604.

⁴⁷ *St Albans Chronicle II*, 530–35, quote at 531. The chronicle account of events is generally accepted as accurate, although the writer embellishes his narrative with various prophecies concerning the fall of the Percy family: Kirby, *Henry IV*, 219.

⁴⁸ Jonathan Bengtson, "Saint George and the Formation of English Nationalism," *Journal of Medieval & Early Modern Studies* 27 (1997): 317–40.

as an enemy of the nation. He was 'stripped of his armour and beheaded' then his head was placed on a spike and 'carried in public display through the city of London, and placed high upon the bridge.'⁴⁹ The stripping of armour was a ritual that typically accompanied treason convictions in the case of high status men, and it symbolised the offender's fall from knighthood.⁵⁰ However, by the later fourteenth century noblemen were generally not subjected to the more degrading treatments such as public display of body parts, and the sentence involving hanging, drawing and quartering was frequently commuted to simple beheading.⁵¹ When their bodies were used in humiliating spectacles like the parading of Northumberland's head, this stripped them of their personal identity as knights but also of their political identity as English subjects.⁵²

The traitor and heretic as threat to the realm: Sir John Oldcastle

Like the Percies, Sir John Oldcastle had initially been a loyal supporter of the Lancastrian regime. He came from a relatively obscure knightly family but his martial abilities caught Henry IV's eye during the campaign against the Scots in 1400, and from that time onwards he was regularly in royal service in military and judicial capacities.⁵³ From the early 1400s, he was a 'trusted lieutenant' of the Prince of Wales in the Welsh rebellion, and as Lord Cobham,

⁴⁹ *St Albans Chronicle II*, 533, 535.

⁵⁰ McVitty, "False Knights and True Men," 458–59. For general descriptions of these rituals: Keen, "Treason Trials," 88–91; Danielle Westerhof, *Death and the Noble Body in Medieval England* (Woodbridge, Suffolk: Boydell & Brewer, 2008), 121–23; Royer, "The Body in Parts."

⁵¹ As seen for example in the case of the earl of Arundel, discussed in Chapter Two. See also Bothwell, *Falling from Grace*, 64–66; Gillingham, "Killing and Mutilating Political Enemies."

⁵² Royer, "The Body in Parts," 327–28.

⁵³ Oldcastle's judicial offices included those of justice of the peace and sheriff, and he also served as shire knight for Herefordshire in the January 1404 parliament. For his background and career: Waugh, "Sir John Oldcastle," 435–39; Jurkowski, "Henry V's Suppression of the Oldcastle Revolt," 104–5.

he was summoned to attend parliament as a peer between 1410 and 1413.⁵⁴ These brief details present a picture of Oldcastle as the ideal knight, one who consistently performed loyal military service to his king and helped him to enforce royal justice. Just prior to his first attendance at parliament as Lord Cobham, he was even engaged in a chivalric tournament at Lille, where he and two other English knights fought three French opponents.⁵⁵ Yet in January 1414, this once-exemplary knight was indicted as a traitor for organising an armed rebellion against Henry V. After escaping from the Tower, Oldcastle was on the run for three years but in 1417, he was finally re-captured and executed.⁵⁶ The sentence left no ambiguities about his identity: he was drawn and hanged as a traitor and also 'burned hanging', marking him as a heretic.⁵⁷ The ritual conveyed the message that Oldcastle's treason was causally linked to his heresy. He sympathised with lollard views about religious reform and may have used his presence at the 1410 parliament to support a petition from the Commons that urged the government to confiscate church lands.⁵⁸ He had also harboured lollard priests on his estates and, in 1410 and 1411, he had written supportive

⁵⁴ Powell, *Kingship, Law, and Society*, 145. Oldcastle gained his noble title through his marriage in 1408 to Joan, heir to the third Lord Cobham. Waugh ("Sir John Oldcastle," 439) points out that in the early 1400s, the right to a seat in parliament amongst the temporal Lords was not automatic and was therefore likely a sign of royal favour and recognition of Oldcastle's abilities.

⁵⁵ Waugh, "Sir John Oldcastle," 439.

⁵⁶ The most detailed published account of Oldcastle's trial and excommunication for heresy, his imprisonment and escape from the Tower, his involvement in the 1414 rising, and his life as an outlaw between his indictment in January 1414 and his final conviction in parliament in 1417 is Waugh, "Sir John Oldcastle"; Waugh, "Sir John Oldcastle (Continued)." See also Thomson, *Later Lollards*, 4–17; Forrest, *Detection of Heresy*, 43–46, 194–95.

⁵⁷ *PROME*, "Henry V: Parliament of 1417," item 11, RP iv:108.

⁵⁸ McNiven (*Heresy and Politics*, 189–92) suggests Oldcastle was amongst the noble supporters of a Commons' petition advocating clerical disendowment that was allegedly presented (and then rapidly withdrawn) during the 1410 parliament. See also Given-Wilson, *Henry IV*, 370–72. There is no trace of this petition on the parliament roll, but all the main chronicle accounts describe its contents. For a copy of the text: *Selections from English Wycliffite Writings*, 135–37.

letters to leaders of the heretical Bohemian Hussite movement.⁵⁹ In 1413, Archbishop Arundel formally charged Oldcastle with heresy and on 25 September he was duly convicted, excommunicated, and handed over to officers of the secular arm for burning. Oldcastle's close friendship with Henry V led the king to delay his execution and to try personally to convince him to recant; it was during this delay that Oldcastle was able to escape the Tower and set his plans in motion.

To date, the most detailed studies of Oldcastle's rising are those of Waugh, Powell, Jurkowski, and Strohm.⁶⁰ Waugh and Powell were principally concerned to establish the facts relating to Oldcastle's heresy trial and the subsequent armed rising, with Powell using the King's Bench indictments to provide a valuable numerical analysis of the participants and judicial outcomes. Jurkowski's recent reassessment considers Henry V's reputation as an exemplary king in light of the measures he used to address this significant domestic threat. Strohm's study has contributed immensely by disentangling the complex relationships between the various legal records, and he also offers a compelling argument for active Lancastrian sponsorship of 'providential history' in his analysis of fifteenth- and sixteenth-century chronicle accounts of the rising. However, his argument that the entire plot was essentially a fabrication used by the Lancastrian regime to consolidate its power tends to underestimate Oldcastle's political agency and resources, and does not

⁵⁹ Powell, *Kingship, Law, and Society*, 146–47; Jurkowski, "Anti-Lollard Statute of 1406," 289–90; Jurkowski, "New Light on John Purvey," 1181, 1189–90; Jurkowski, "Lollard Networks," 265–66, 270; Jurkowski, "Henry V's Suppression of the Oldcastle Revolt," 105–8; Waugh, "Sir John Oldcastle," 443–45; Jeremy Catto, "Religious Change under Henry V," in Harriss, *Henry V: The Practice of Kingship*, 97–98, 100.

⁶⁰ Waugh, "Sir John Oldcastle"; Waugh, "Sir John Oldcastle (Continued)"; Powell, *Kingship, Law, and Society*, 141–67; Strohm, *England's Empty Throne*, 65–86; Jurkowski, "Henry V's Suppression of the Oldcastle Revolt."

adequately address the evidence for his heterodox religious beliefs.⁶¹ Strohm also suggests that the king's ability to pre-empt the plot and almost immediately to set a commission of inquiry in motion was evidence the regime deliberately produced the event in order to create scapegoats, and he argues that this is attested by documents and judicial records that pre-date the rising. Yet, there is evidence to show that Henry had spies within lollard circles who gave him ample information to prepare in advance.⁶² Certainly it is fair to say that in general, late medieval secular governments often aligned themselves with ecclesiastical campaigns against heresy in order to extend their own authority by representing themselves as protectors of the church and the orthodox Christian community. Nevertheless, to conclude that Henry and his officials wholly invented their enemies in order to amplify Lancastrian power oversimplifies the situation.

While each of these studies usefully adds to knowledge of Oldcastle's rising, none of them examines the narratives of prosecution and repression in order to explore the wider implications of this case for the laws of treason. By contrast, the central question pursued here is how the indictments against Oldcastle and his allies, in combination with the new anti-lollard statute of April 1414, capitalised on fears aroused by the potent cultural image of the heretic-as-traitor in order to extend the scope of treason as a crime against the state. Although the near-contemporary chronicle accounts read Oldcastle's fall in terms of the customary trope of the traitor as a violator of knighthood, a second

⁶¹ For example, at 68.

⁶² For example, Sir Elias Lynet as discussed in Chapter Four, 259. It is possible that given Lynet's previous indictment, pressure was brought to bear on him to turn informer to avoid further prosecution. See other examples in Jurkowski, "Henry V's Suppression of the Oldcastle Revolt," 107–9.

and much more prominent theme emerges in the official records.⁶³ The authorising legal rhetoric of these sources exploited conceptual linkages between heretics and traitors to portray them as a single group of ‘enemies of the state’. When heresy was described as the prototypical thought crime, located in perverse beliefs, and this was then connected either directly or indirectly to material acts of treason, it strengthened emerging common law precedents that thoughts, intentions, or words alone could be enough to render one a traitor. Moreover, these ‘imaginings’ were constructed as treasonous deeds against the person of the king, but also and more emphatically as attacks on the abstract collective of the Christian people, ‘estate’, and nation of England.

In many ways, Oldcastle fulfils the customary idea of the traitor as a man who violated his loyalty to his lord and thus undid his own manly knighthood. It was through this lens of chivalry that a number of contemporary observers interpreted his actions. For example, in a 1415 poem addressed to Sir John Oldcastle, the Lancastrian court poet Thomas Hoccleve excoriated Oldcastle as someone who had once been ‘a manly knyght’ but who had ‘lost the style of cristenly [Christian] prowessse’, and admonished him to ‘ryse up a manly knyght out of the slow [slough] of heresie’.⁶⁴ For Hoccleve, Oldcastle’s heresy and his resulting betrayal of ‘our feithful cristen Prince and King’ were the inevitable result of his fall from chivalry. Hoccleve even implied that Oldcastle might yet be redeemed if he were to ‘clymbe no more in holy writ so hie’ and instead return to reading more conventional chivalric literature such as ‘Lancelot de lake, or

⁶³ The story of Oldcastle’s ‘martyrdom’ was also popular with sixteenth-century Protestant writers such as John Bale and John Foxe. However, this study confines itself to chronicles produced within a few years of these events.

⁶⁴ Thomas Hoccleve, “To Sir John Oldcastle,” in *Hoccleve’s Works: I. The Minor Poems*, ed. Frederick J. Furnivall, Early English Text Society E. S. 61 (London, 1892), 8, 11–12 (stanzas 2 and 14).

Vegece of the art of Chivalrie' (that is, Flavius Vegetius Renatus, author of the popular military manual *De re militari*).⁶⁵

The *Gesta Henrici Quinti* and the *St Albans Chronicle* incorporated similar interpretations. The *Gesta* focused on Oldcastle's violation of knightly fidelity, describing him as 'one of the most beloved and greatest members of [Henry's] household' ('unum de precarissimis et magis domesticis suis'), who was 'strong of body but weak in virtue' ('fortis viribus set virtute debilis').⁶⁶ The concern that chivalric bonds between men and their lords could become debased was present in Walsingham's assertion that while some of Oldcastle's followers were motivated by their lollard beliefs, which for this monastic chronicler were perverse by definition, others were driven by avarice and he described 'crowds of men hastening along together', having been 'enticed by promises of large rewards'.⁶⁷ Oldcastle's abuse of chivalric values was made explicit in Walsingham's claim that in the case of one participant, a wealthy brewer who 'had, more than all others of his sect, treacherously disturbed many of orthodox belief', an arrangement had been made that in return for his support, 'he should receive from the hands of John Oldcastle the order of knighthood'.⁶⁸ To this end, the brewer had brought with him 'two war-horses...harnessed with gold' and a pair of gilt spurs.⁶⁹ This story may well have been invented.⁷⁰ Nevertheless, the evocative image of Oldcastle degrading the order of knighthood by promising it

⁶⁵ Ibid., 14, stanza 25.

⁶⁶ *Gesta Henrici Quinti*, 2–3, my translation. In this context, the term *viribus* conveys the idea of a body that was sexed male but that lacked inner manly virtue. Cf. Lewis, *Kingship and Masculinity*, 95–96.

⁶⁷ *St Albans Chronicle II*, 637.

⁶⁸ *St Albans Chronicle II*, 641.

⁶⁹ Ibid.

⁷⁰ Walsingham names the brewer as William Murley of Dunstable, but there is no evidence of this person being amongst those indicted or executed after the rising: *St Albans Chronicle II*, 640, n. 912.

as a reward to traitors and heretics reflects a broad cultural understanding of treason as the corrupt inversion of chivalric manhood.⁷¹

There is no direct evidence for how Oldcastle explained his decision to turn against Henry. The lack of surviving first-hand accounts means the only evidence for Oldcastle's self-justification has been filtered through the chronicles, with the most prominent of these being by Tudor writers whose interpretations were heavily influenced by Reformation politics.⁷² However, Powell has argued that Oldcastle's rebellion can be interpreted as a performance of knightly *diffidatio* in response to Henry's failure to protect him from Archbishop Arundel's ecclesiastical prosecution, and 'as the rising of an injured vassal against the lord who had forsworn him'.⁷³ From this perspective, the break between Henry and Oldcastle appears to be the result of a conflict between a Christian king's duty to defend the church and his lordly obligation to protect and support his loyal retainers. If there is any veracity in John Bale's account, then the discourse of knighthood also shaped Oldcastle's confession of faith, which was purportedly written out by him and delivered to the king after an ecclesiastical tribunal finally excommunicated him in September 1413. According to Bale, Oldcastle told the king that 100 knights and esquires would stand as purgators for him, and offered to submit himself to trial by battle.⁷⁴ By

⁷¹ Strohm briefly discusses Walsingham's portrayal of the lollards as basely motivated by money, but without reference to the discourse or values of chivalry: *England's Empty Throne*, 77.

⁷² After departing court without leave to avoid facing the ecclesiastical tribunal, Oldcastle was said to have delivered a confession of his faith to the king, and later to have circulated vernacular bills in London defending himself. However, none of these documents survive in their original form and are only known from later Protestant martyrology. Details of his noble defiance feature in John Bale's *A Breffe Chronycle* (1544) and John Foxe's *Acts and Monuments*. For these sources and the manuscript history: Waugh, "Sir John Oldcastle," 434–35, 451–56; Strohm, *England's Empty Throne*, 66–67, 70, 230 n. 10.

⁷³ Powell, *Kingship, Law, and Society*, 148–49, 156 (quote at 149).

⁷⁴ Waugh, "Sir John Oldcastle," 450.

portraying Oldcastle as willing to prove the 'truth' of his faith through a physical trial, Bale was no doubt trying to engage the sentiments of the Reformation readership for which he was writing; however, Waugh points to certain details in the text that suggest that in doing so, he may have been working from another older source, now lost, in which the chivalric right to trial by combat would not have appeared at all anachronistic.⁷⁵

The government's account of Oldcastle's trial reflected the customary perception of treason, but to a large degree this was subsumed by legal descriptions of treason as a crime against the people and nation of England. As with the Percies, the notion of treason as a personal betrayal was represented by fears that improper bonds between men held the potential to corrupt their loyalty to the king. For example, in the indictment which arose from theoyer and terminer commission of 10 January 1414, Oldcastle, the lollard chaplain Walter Blake, and Sir John Acton were charged with planning a *privatim insurgerent* to advance their *nephando propositio*.⁷⁶ The term 'private insurgency' (or rebellion) distinguished unsanctioned private war from the 'just war' over which governments increasingly claimed to have the monopoly, thus pre-empting any defence that Oldcastle's actions were a legitimate form of noble *diffidatio*. The term *privatim*, when linked to the term *nephando*, implies that Oldcastle and his followers had formed a secret confederacy against the king. *Nephando* is particularly suggestive in this regard, because it invoked the most extreme form of perverse male attachment, the sin of sodomy, which was

⁷⁵ Ibid., 451 n. 85. Interestingly, Strohm's view that the 1414 rising was to a large degree a Lancastrian fabrication, and that Oldcastle may not even have been involved, leads him to argue that Foxe's polemic alleging a government set-up 'seems to me so persuasive as to be very nearly definitive': *England's Empty Throne*, 70–71 (quote at 70).

⁷⁶ TNA KB/27/611 Rex m. 7. A transcription and translation is provided in *Select Cases*, 217–20.

characteristically referred to in late medieval theological tracts and legal texts as *nephandum peccatum* or 'unspeakable sin'.⁷⁷ In canon and civil law, sodomy was associated with *lèse-majesté* and heresy in a triumvirate of 'hidden' crimes that threatened to destroy both church and state from within. The belief that treason, heresy, and sodomy were all rooted in a fundamental wilful rebellion against God's design for natural political and social order on earth further strengthened the rhetorical and discursive associations between these three crimes that were epitomised by sinful deviance.⁷⁸ Fears of corrupt masculine bonds also appeared in the language of the April 1414 statute, which targeted 'those belonging to the heretical sect called lollardy as well as others of their confederacy'.⁷⁹ The discursive connection made between lollardy as a sect and the forming of dangerous confederacies deliberately seeded the idea that the enemies to be rooted out were not lone malcontents, but were members of a

⁷⁷ Jacques Chiffolleau, "Dire l'indicible. Remarques sur la catégorie du nefandum du XIIe au XVe siècle," *Annales. Histoire, Sciences Sociales* 45 (1990): 289–324; Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, Science, and Culture* (Cambridge: Cambridge University Press, 1993), 218–25; Ruth Mazo Karras, "The Lechery That Dare Not Speak Its Name: Sodomy and the Vices in Medieval England," in *In the Garden of Evil: The Vices and Culture in the Middle Ages*, ed. Richard Newhauser (Toronto: Pontifical Institute of Mediaeval Studies, 2005), 193–205; Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1998); Michael Goodich, *The Unmentionable Vice: Homosexuality in the Later Medieval Period* (Santa Barbara, CA: ABC-CLIO, 1979).

⁷⁸ These associations are discussed in McVitty, "False Knights and True Men," 465–66. On the English context, see also Mortimer, "Sermons of Sodomy"; Ormrod, "The Sexualities of Edward II"; Hanrahan, "Speaking of Sodomy"; Forrest, *Detection of Heresy*, 150–51; William E. Burgwinkle, *Sodomy, Masculinity, and Law in Medieval Literature: France and England, 1050–1230* (New York: Cambridge University Press, 2004), 48–68. More generally: Gregory S. Hutcheson, "Desperately Seeking Sodom: Queerness in the Chronicles of Alvaro de Luna," in Blackmore and Hutcheson, *Queer Iberia*, 227–29; Steven F. Kruger, "Conversion and Medieval Sexual, Religious, and Racial Categories," in *Constructing Medieval Sexuality*, ed. Karma Lochrie, Peggy McCracken, and James A. Schultz (Minneapolis, MN: University of Minnesota Press, 1998), 158–79; Ruth Mazo Karras, "Knighthood, Compulsory Heterosexuality, and Sodomy," in *The Boswell Thesis: Essays on Christianity, Social Tolerance, and Homosexuality*, ed. Mathew Kuefler (Chicago, IL: University of Chicago Press, 2006), 273–86; R. I. Moore, *The Formation of a Persecuting Society: Power and Deviance in Western Europe, 950–1250* (New York: Basil Blackwell, 1987); Jeffrey Richards, *Sex, Dissidence, and Damnation: Minority Groups in the Middle Ages* (London: Routledge, 1991), 136–48.

⁷⁹ *PROME*, "Parliament of April 1414," item 24, RP iv:24.

well-organised but hidden group.⁸⁰ For the Lancastrian regime, it must have seemed that Henry IV's anxieties about perverse and secretive alliances amongst his subjects had been fully realised in Oldcastle's conspiracy.

Although this theme of treason as the inverse of chivalry influences the prosecution records, the elements that portrayed Oldcastle's resistance as a violation of manly knighthood were outweighed by rhetorical constructions that framed his beliefs and actions, and those of his accomplices, as crimes against the state. Theoyer and terminer commission of 10 January, which covered London and Middlesex, authorised the king's officers to inquire into 'all treasons and insurrections committed by lollards and all treasons, insurrections, rebellions and felonies', wording that implied two different groups and sets of crimes were being investigated. However, this distinction was almost immediately blurred when the terms of the commission were copied into the resulting indictments and trial records. These empowered the commissioners to look into 'treasons, insurrections, rebellions and felonies' committed by 'the king's subjects, commonly called lollards, and others'.⁸¹ This was to be done 'according to the law and custom of our lord the king's realm of England', wording that suggests the judicial proceedings were to be undertaken at common law and according to the terms of the 1352 statute. The commission did not specify that lollardy was one of the specific acts judicial officers were to investigate, but instead it connected the crime of treason with being (or being called) a lollard. By tacking on 'and others' to this group, and associating acts of treason with identity as a lollard, this rhetorical move implied that all those

⁸⁰ On the meaning of 'sect' in this regard, see Hudson, "A Lollard Sect Vocabulary?"

⁸¹ *CPR, 1413-1417*, 175. Forrest (*Detection of Heresy*, 194-95) discusses the implications of this wording for the way heresy was being defined in this period.

involved in the rising were betrayers of the king but also of the church and Christian community of England.

The indictments arising from this commission feature explicit constructions of treason as a crime against the nation as well as against the person of the king.⁸² The accused were first charged with having ‘falsely and treasonably proposed and imagined’ (‘falso et proditorie proposuerunt et imaginauerunt’) to kill the king and his brothers, and to ‘deprive the ... king and his heirs of the inheritance of his aforesaid realm’.⁸³ ‘Proposing and imagining’ the murder of the king aligned with the 1352 statute, and this customary understanding could plausibly be stretched to include the murder of the king's brothers, who had been recognised as his heirs should he die childless. However, by augmenting this charge with the allegation that the plotters intended to disinherit the king and his heirs, this rhetorical sequence helped to cement new precedents that treated challenges to the terms of the 1406 succession statute as acts of treason. This was a subtle but significant extension in scope, because it suggested that any questioning of Lancastrian dynastic legitimacy, such as the use of the title ‘Henry of Lancaster’ instead of Henry V, was a treasonable offence. The accused were further charged with having ‘falsely and treasonably plotted’ against the estate of the realm (‘falso et proditorie machinando tam statum regium’) as well as the church and faith ‘within the said realm of England’.⁸⁴ The term *statum regium* functioned to construct treason as acts against the ‘royal estate’ of the king and his heirs but

⁸² Powell (*Kingship, Law, and Society*, 152–53) points out that the formulaic language of 16 additional provincial commissions issued on 11 January, and of their resulting indictments, follows that of the London and Middlesex commission and indictments.

⁸³ TNA KB 27/611 Rex m. 7.

⁸⁴ Ibid.

when twinned with accusations that the plotters intended to destroy and despoil the Christian community, it also implied a more general threat to all the 'estates' of the realm. This threat was made explicit in the charge that the accused:

Have falsely and treasonably plotted ... to constitute John Oldcastle as regent of the said realm [of England], and to establish many more regimes [*quamplura regimina*] according to their wishes within the aforesaid realm like a people without a head [*quasi gens sine capite*], to the ultimate destruction of the catholic faith and clergy as well as of the estate and majesty of the royal dignity [*status et majestatis dignitatis*] within the said realm.⁸⁵

This passage incorporated definitions of treason that were strongly reminiscent of the civil law concept of *lèse-majesté*. First, building on the earlier charges of plotting to kill and disinherit the king and his heirs, the focus moved from acts directly against the king's person to acts against the Christian faith, through which temporal polities were ordered within the divinely ordained universal Christian community. The charge that the plotters intended to destroy the 'estate and majesty of the royal dignity of the realm' reflected a conception of treason in which royal power was abstracted from the person of the king and reified in the notion of *majestatis*, or the public authority of the state. Finally, the record presents a graphic image of Oldcastle as a traitor who threatened to dismember the English nation from within by rendering it a body politic without a head.

There is no surviving evidence from Oldcastle's perspective to show

⁸⁵ TNA KB 27/611 Rex m. 7.

whether or not he intended to make himself regent.⁸⁶ Regardless of the veracity or otherwise of this allegation, it was incorporated into the indictment to do important political and ideological work. By representing Oldcastle's resistance as an attempt to tear apart the social and political order of the nation of England, it foreclosed any possibility that his actions might be perceived either as knightly *diffidatio* against a negligent lord, or as a just challenge to an (arguably) illegitimate ruler. Moreover, by portraying Oldcastle's actions as an attack on Lancastrian legitimacy through the charge that Oldcastle intended to make himself regent of England, the prosecution narrative drew into its associative net other troublemakers who had not taken part in the armed rising; these included people circulating bills promoting the story of Richard II's survival, or those who persisted in championing the Mortimer claim while defiantly addressing the king as 'Henry of Lancaster'. The evidence for this can be seen in another indictment arising from the oyer and terminer commission, which named the persistent Ricardian bill caster Benedict Wolman amongst a group charged with 'treasons and felonies' in support of Oldcastle.⁸⁷ The belief that Oldcastle was promoting the cause of the deposed king also surfaced in the *St Albans Chronicle*, in an account of Oldcastle's final appearance before the king and lords in parliament in 1417. According to Walsingham, when Oldcastle was ordered to reply to the charges against him, he responded 'that he had no judge

⁸⁶ Strohm considers the allegation part and parcel of the Lancastrian regime's 'fabrication' of the entire plot: *England's Empty Throne*, 74–75, 82. Waugh is more inclined to accept the official view, and suggests Oldcastle's ambition for regency may have been a sign of mental instability: Waugh, "Sir John Oldcastle (Continued)," 648–49. Powell (*Kingship, Law, and Society*, 161) itemises several of the charges in the indictment but does not analyse them.

⁸⁷ TNA KB 27/611 Rex m. 13. Once again, Wolman was able to produce a pardon and was freed without trial.

amongst them while his liege lord, King Richard, was still living'.⁸⁸

The legal position that lollards 'as well as others of their confederacy' were traitors to the nation as well as enemies of the king was cemented in the April 1414 statute.⁸⁹ This drew on the language of the January indictments and on the precedents established by the conviction and mass execution of 38 men as traitors.⁹⁰ Its opening clause states that the law was being enacted because of 'great uprisings... and insurrections', immediately framing all the activities it went on to describe as treason through the suggestion that those involved had 'arrayed ... in warlike fashion in form of rebellion'.⁹¹ Like the January indictments, the new legislation targeted those identified by their heretical religious beliefs but also others with unspecified deviant 'urges' by stating that it was aimed at 'those belonging to the heretical sect called lollardy as well as others of their confederacy, instigation, and urging'.⁹² By making a repeated rhetorical connection between 'heretics and lollards' and 'ollards *and others*', as well as criminalising beliefs in 'heresies *and other errors*', the overall effect of the statute was to mark anyone with suspect religious *or* political beliefs as both traitors *and* heretics.⁹³

The terms 'treason' or 'traitor' are never directly used in the 1414 statute, although *prodicionibus* and *proditorie* appear throughout the related

⁸⁸ *St Albans Chronicle II*, 729.

⁸⁹ *PROME*, "Parliament of April 1414," item 24, RP iv:24-25; *Statutes*, vol. 2, 181-84 (c. vii).

⁹⁰ These 38 men were executed at St Giles' Fields, on the outskirts of London, on 12 January; 7 of them were burned as heretics as well as hanged as traitors: Powell, *Kingship, Law, and Society*, 151.

⁹¹ TNA KB 27/611 Rex m. 7.

⁹² *PROME*, "Parliament of April 1414," item 24, RP iv:24-25.

⁹³ *Ibid.*, emphasis added.

indictments.⁹⁴ Instead, the statute obliquely and repeatedly refers to ‘all kinds of heresies and errors’. The fact that the people guilty of these ‘errors’ were traitors by definition was established by the actions they were said to be guilty of perpetrating or inciting. These are itemised in a sequence that starts with ‘abolishing and subverting the Christian faith and the law of God’; moves on to destroying the king and ‘various estates of the same kingdom’ as well as ‘all manner of governance’; and culminates with intentions to ‘utterly [destroy] the laws of the land’ (‘et les leies de la terre finalment’).⁹⁵ This depicts a smooth progression from heresy, to the customary idea of treason as an act against the king’s person, to the most expansive conception of treason as a crime against the nation, which was represented by the ‘estates’ of the realm and the laws of England. Each criminal action or belief in the sequence built cumulatively upon the previous one, creating a searing image of transgressors as traitors to God, the king, divine and common law, and the English nation.

The statute empowered the king’s justices ‘to make enquiries concerning all those who uphold any errors or heresies *such as* lollardy, or who are their aiders, shelterers, supporters, or sustainers’ (‘et queux sont lour maintenours, recettours, fautours, susteignours’).⁹⁶ Arnold notes that the vocabulary terms *recettor*, *fautour*, and *susteignour* were typically found in records produced through inquisitorial proceedings into heresy in an ecclesiastical context.⁹⁷

⁹⁴ Both those leading up to the statute such as TNA KB 27/611 Rex m. 7 and Rex m. 13, and later indictments resulting from it. For an example of the latter, see KB 27/634 Rex m. 11 and 11d (7 Henry V, Michaelmas, October–November 1419), transcribed in H. G. Richardson, “John Oldcastle in Hiding, August–October 1417,” *The English Historical Review* 55 (1940): 434–38.

⁹⁵ *PROME*, “Parliament of April 1414,” item 24, RP iv:24.

⁹⁶ *Ibid.*, emphasis added. Forrest (*Detection of Heresy*, 43–46) discusses the implications of the new statute for expanding secular jurisdiction in matters of heresy.

⁹⁷ Arnold, “Lollard Trials and Inquisitorial Discourse,” 84–85 and for terminology; see also Anne Hudson, “The Examination of Lollards,” *Historical Research* 46 (1973): 145–59.

However, the wording of the statute implied that there was a range of other 'errors' besides lollardy to be rooted out, along with their 'supporters or sustainers'. This is reinforced in the statement that all previous statutes 'for the correction and punishment of heretics and lollards, made in the past and not repealed, are to remain in force'.⁹⁸ This clause appears to confirm that the government expected the 1406 statute against 'lollards and other spreaders and contrivers of news and falsities' to continue in use alongside the new legislation.⁹⁹ As demonstrated in Chapter Four, the 1406 statute had been used against lollards but also against those circulating the story of Richard II's survival or otherwise challenging the legitimacy of the Lancastrian regime. While the 1414 statute made no explicit reference to the need to repress political speech, it left plenty of scope for such speech to be prosecuted as treason.

Forrest has argued that the lollards and 'others' who were implicated in Oldcastle's rising were regarded by the government as the same class of offender, so that 'for a time, in the royal courts at least, lollardy came to be understood as meaning treason rather than heresy'.¹⁰⁰ This interpretation has been challenged by Jurkowski, who argues that according to Powell's detailed analysis of the trial records, only one-third of those indicted in 1414 were actually charged with heresy as well as with treasonous rebellion.¹⁰¹ However,

⁹⁸ *PROME*, "Parliament of April 1414," item 24, RP iv:24.

⁹⁹ *PROME*, "Parliament of 1406," Roll, item 62, RP iii:583. As discussed earlier, there is no evidence that the 1406 statute was revoked; prosecutions from 1407 onwards indicate it was still in force.

¹⁰⁰ Forrest, *Detection of Heresy*, 194–95, quote at 195.

¹⁰¹ Maureen Jurkowski, "Review: *The Detection of Heresy in Late Medieval England*," *The English Historical Review* 122 (2007): 175. Powell's numbers are tabulated in *Kingship, Law, and Society*, 155.

the statute states that suspects should only be handed over to the ecclesiastical jurisdiction for questioning on suspicion of heresy if they 'are not indicted of anything of which the cognisance pertains to secular judges and officers'.¹⁰² This clause, which follows the pattern of the indictments, indicates that the government was prioritising the prosecution of offences it considered amounted to treason. As discussed earlier, the state's legal rhetoric subsumed the crime of heresy within the greater crime of treason, at the same time eroding any distinctions between those holding lollard opinions and those committing treasonous acts. This may explain why a minority of those indicted were also charged with or convicted of heresy. The message that lollard beliefs were tantamount to treason was also embedded in the general pardons issued by the king and directed at 'diverse subjects of the king... holding, teaching and preaching opinions contrary to the Catholic faith' who had 'planned the death of the king and divers lords spiritual and temporal', phrasing that causally connected deviant beliefs and speech to treasonous actions, while at the same time absorbing the former into the latter.¹⁰³

By associating treason with heresy in the commissions and indictments relating to the Oldcastle rising, and then reinforcing this association in the 1414 statute, the Lancastrian regime achieved several ends. The statute systematised the state's direct involvement in the investigation and suppression of heresy and, by prioritising the interests of secular rather than ecclesiastical justice, it helped to extend royal jurisdiction. Forrest contends that by 'eliding the

¹⁰² *PROME*, "Parliament of April 1414," item 24, RP iv:24.

¹⁰³ *CPR, 1413-1416*, 261–62. The pardon was issued on 28 March and was available to anyone who took it up by mid-summer, apart from Oldcastle and certain other named exceptions: Powell, *Kingship, Law, and Society*, 157.

distinction between heresy and treason', the statute redefined heresy as armed rebellion and therefore enabled its pursuit through the secular courts.¹⁰⁴ However, the official response to Oldcastle's rebellion also had significant long-term consequences for the way treason was conceptualised. By explicitly defining offenders as enemies of God as well as of the king, and then extending the threat they posed to encompass the English church and Christian body politic, the indictments and resulting statute expanded the scope of treason well beyond personal attacks on or rebellion against the king. Indictment charges relating to riding in arms fit the traditional definition of treason as it was set down in the 1352 statute, but the conceptual and rhetorical links that were being created between heresy and treason in the secular judicial sphere opened up an associative network of other, more indirect, crimes that could be punished as treason. By implication, these included holding or expressing opinions that were considered 'heresies' in religious terms, but also those that were viewed as 'errors' from the political perspective of the regime. This was consistent with civil law jurisprudence that considered treason to include not only direct acts against the king, but also attacks on or insults to the *royaume*, in the sense of the public authority vested in the state and its officers as well as in the instruments and symbols of its sovereign power.¹⁰⁵

Betrayal of the nation: The Southampton plot

Henry V's problems with men close to him turning traitor did not end with Sir John Oldcastle. On 5 August 1415, the nobleman Henry Lescrope (Lord Masham), who had served as one of the king's trusted senior judicial officers on

¹⁰⁴ *Detection of Heresy*, 43–46, quote at 45.

¹⁰⁵ Billoré, "Introduction," 17–18.

the January 1414oyer and terminer commission, was himself tried and executed for treason. Lescrope's conviction provides perhaps the most well-developed and explicit articulation yet of treason as a crime against the nation. In the Record and Process of his trial, he was condemned for transgressing against the king but also against 'the tongue in which he was born' ('linguam in qua natus est').¹⁰⁶ However, the government's attempts to equate acts against the person of the king with a betrayal of the nation, represented here in the idea of *lingua*, were complicated by Lescrope's own use of English to defend himself. In vernacular first-person letters of confession written directly to the king, Lescrope and two co-conspirators drew on the customary idea of treason as a violation of knighthood, coupled with the ethical and legal proof value of men's words in English, to try to mitigate their actions and to solicit the king's mercy as his true, if misguided, liege men.

The Southampton plot involved Lescrope, the king's cousin Richard earl of Cambridge, the Northumbrian knight Sir Thomas Grey of Heton, and Edmund Mortimer the earl of March in an alleged conspiracy to kill Henry V and restore Richard II or, if he should prove to be dead, to place Mortimer on the throne as his rightful heir.¹⁰⁷ The details of this conspiracy and the possible familial, political, and financial motivations of the participants were examined in depth in Pugh's 1988 study, which remains the generally accepted interpretation of events.¹⁰⁸ Although opinions differ as to the extent of the conspirators' belief in

¹⁰⁶ *PROME*, "Henry V: Parliament of 1415," item 6, RP iv:66. My translation. The *PROME* editor translates *linguam* as 'nation', emphasising the relationship between language and national identity by the early fifteenth century.

¹⁰⁷ The affair has come to be known as the Southampton plot because it was exposed while Henry V was at Portchester Castle preparing to depart for France.

¹⁰⁸ Pugh, *Southampton Plot*. See also brief summaries in McNiven, "Rebellion, Sedition," 112–14; Keen, *England in the Later Middle Ages*, 258–59. The conspirators were interconnected by

Richard II's survival or exactly what they hoped to achieve, scholars agree that some sort of rising was being discussed, possibly involving support from the Scots.¹⁰⁹ Strohm recently re-examined the incident through a psychoanalytical model of guilt and self-accusation, and of a lingering desire for the 'phantasm' of Richard II.¹¹⁰ As with Oldcastle's rising, his study of the trial records and chronicle accounts is invaluable for drawing attention to questions of how these narratives were constructed and whose purposes they served. However, he concludes the plot was a Lancastrian "'mock-up", invented so that its supposed principals would have *something* to which they might confess'.¹¹¹ This is an argument that tends to minimise the political agency and resources of those involved, and that does not adequately explain the contradictions and at times glaring discrepancies in the confessions of Grey, Lescrope, and Cambridge.¹¹² This study presents an alternative analysis that considers the significance of this episode in the context of the wider history of treason. The sources show that the Lancastrian state responded to yet another challenge to its legitimacy by punishing the offenders as enemies of the English nation and its collective interests, as well as personal enemies of Henry V. Through the judicial processes of confession, trial, and execution, customary notions of treason as

marriage; Lescrope and Grey were also related to Archbishop Scrope and Thomas Mowbray (respectively), who had been executed as traitors in 1405.

¹⁰⁹ Pugh focuses on the conspirators' support for the Mortimer claim, while McNiven suggests that Cambridge and Grey, at least, intended to raise a northern rebellion in Richard's name and that they saw Mortimer as an inferior alternative.

¹¹⁰ *England's Empty Throne*, 86–99; "The Trouble with Richard," 98–101.

¹¹¹ *England's Empty Throne*, 89, emphasis in original. Strohm suggests the appearance of the Ricardian survival story in the conspirators' confessions was the product of prosecutorial pressure and textual manipulation, a reading somewhat at odds with his arguments elsewhere that these plots can be understood as an expression of repressed desire for an absent king.

¹¹² Had these confessional texts been subject to the level of intentional manipulation Strohm suggests, one would expect to see more agreement between them and greater overall clarity in their narratives.

the inverse of knighthood came into conflict with ideas of treason as a crime against the state, with the latter finally subsuming the former and neutralising the offenders' defensive claims.

As with Oldcastle's treason, contemporary observers were inclined to interpret the Southampton plot through the lens of chivalry, portraying the conspirators' treachery as the result of their corruption of knightly bonds of masculine loyalty.¹¹³ The account in the *Gesta Henrici Quinti* opens with a description of the king at Portchester Castle making final preparations to sail for France to reclaim his 'right' that 'the French, by their blameworthy and unjust violence, have for so long... striven to usurp and withhold'.¹¹⁴ This image of Henry V's military invasion as a just war to recover a rightful inheritance echoed the chivalric narratives used to justify his father's invasion of England in 1399. It was at this critical moment that Henry discovered he had been betrayed by 'Richard, earl of Cambridge, his cousin by blood [*consanguineum suum germanum*], Henry, lord Scrope, an intimate member of his own household and one who was almost second to none...among those in the king's confidence', and by Thomas Grey, 'a renowned and noble knight if only he had not been dishonoured by the stain of treason'.¹¹⁵ The *St Albans Chronicle* says these 'three powerful men in whom [the king] had the greatest confidence conspired to assassinate him' and describes them as 'parricides', a term that framed the conspirators' actions in the most intimate terms of family betrayal.¹¹⁶

Walsingham went on to accuse the men of using flattery and deception to

¹¹³ For an analysis of Lescrope's conviction and the ritual of his execution in relation to constructions of chivalric masculinity, see McVitty, "False Knights and True Men," 475–76.

¹¹⁴ *Gesta Henrici Quinti*, 15.

¹¹⁵ *Ibid.*, 19, Latin on 18. My translation.

¹¹⁶ *St Albans Chronicle II*, 659.

involve the earl of March, with March 'swearing a bodily oath' ('corporali prestito juramento, firmaret') to join their secret scheme.¹¹⁷ This description of a corporeal ritual being performed to seal these 'parricides' together in an unnatural alliance against their king evoked in negative terms the bodily performances involved in the ritual of knighting.¹¹⁸ In doing so, it captured cultural anxieties that close bonds between men were vulnerable to corruption.

Arguably, Cambridge and Grey were the conspiracy's ringleaders and Cambridge at least had good reason to be angry with the king.¹¹⁹ Lescrope, by contrast, had long been a loyal retainer in Lancastrian service. It was his close personal relationship with Henry V that influenced his elevation to the office of Treasurer in 1410-11, when Prince Henry had been in control of the royal council, and Lescrope's election to the Order of the Garter in 1410 was likewise probably due to the prince's favour.¹²⁰ He was a senior member of the January 1414oyer and terminer commission into Oldcastle's activities and in February 1414, he was one of three royal envoys sent to France to negotiate Henry V's marriage.¹²¹ As late as June 1414, he was being entrusted with sensitive

¹¹⁷ Ibid., 661, Latin on 660. My translation. Whatever the actual scheme was, it was undone when March lost his nerve and told the king of the conspiracy against him. The earl went on to serve on the council of peers that decided the fate of his former co-conspirators.

¹¹⁸ Ibid. Walsingham portrays the earl of March as the naive dupe of smarter and more cunning men, an interpretation that is broadly endorsed by McNiven ("Rebellion, Sedition," 113). The knighting ritual incorporated steps in which the man to be knighted was ceremonially stripped, bathed, and re-clothed by other knights, as well as less intimate forms of corporeal contact such as the ceremonial kiss. For a detailed description, see Pilbrow, "Knights of the Bath," 201-7.

¹¹⁹ Pugh points out that despite providing loyal military service to Henry V and his father, Cambridge had little reward and was kept short of money by the king; ennoblement in 1415 was not accompanied by any grant of lands to support himself in expected noble style. In 1412, Grey had married his son to Cambridge's daughter; he had been a long-time retainer of Henry V but also had persistent money problems: *Southampton Plot*, 61, 91-92, 98, 104.

¹²⁰ Collins, *Order of the Garter*, 43, 114-16.

¹²¹ Pugh, *Southampton Plot*, 25; Jurkowski, "Henry V's Suppression of the Oldcastle Revolt," 110-11.

diplomatic missions on behalf of the king.¹²² The chroniclers emphasised the magnitude of Lescrope's violation of this trust, at the same time underplaying the involvement of Cambridge, Grey, and March. For the author of the *Gesta*, Lescrope was 'the more culpable an enemy because the more intimate a friend' while Walsingham dwelt on Lescrope's feigned loyalty and deception.¹²³ Asserting that Henry V trusted Lescrope's advice above that of any other man 'if ever private or public plans were negotiated', he claimed that the king's policy was that if official embassies were sent to France, they should have the benefit of Lescrope's superior intelligence and character ('ingenio et persona').¹²⁴ Walsingham reinforced the strength of the king's bond with Lescrope in his declaration that 'among the English race [*Anglicana gente*] there was hardly a man so dear to the king as Henry Scrope, apart from his own brothers'.¹²⁵ While the chronicler went on to explain the plot as in part the product of French scheming and bribery, it was Lescrope's personal betrayal to which his narrative repeatedly returned.

This interpretation is echoed to some extent in the official Record and Process as it was preserved in the parliament roll.¹²⁶ The indictment alleged the men had:

Falsely and treasonably conspired together and bound themselves to one another [*falso et proditorie conspiraverunt et se invicem confederaverunt*] to

¹²² TNA E 101/321/4 for his expense account for a journey to Calais; TNA E 30/1531 (25 June, 1414) is a report of a meeting of English and Burgundian commissioners at Leicester, and instructions to Lescrope to treat further with the duke of Burgundy.

¹²³ *Gesta Henrici Quinti*, 19.

¹²⁴ *St Albans Chronicle II*, 659, 661, Latin on 658.

¹²⁵ *Ibid.*, 661, Latin on 660.

¹²⁶ *PROME*, "Parliament of 1415," item 6, RP iv:64-66. All the documents relating to the trials at Southampton were presented in this parliament and the findings and sentences were confirmed as lawful and just.

the effect that, having gathered to themselves many others both of the retinue of the lord king and of his other lieges...¹²⁷

they would carry out their plan to support March as rightful king if Richard II should prove to be dead. In other words, Cambridge, Lescrope, and Grey had not only bound themselves together through a secret confederacy, but they had also subverted the loyalties of other men. The legal rhetoric is reminiscent of the charge seen in earlier cases that traitors intended to incite others against their love and allegiance, but the reference to 'retinues' located this transgression firmly within the world of masculine loyalties forged through military service. The trial record went on to make much of Lescrope's membership of the Order of the Garter, 'instituted for the strengthening of the faith, the king, the realm, and justice', a description that reminded the audience of the core virtues of knighthood while simultaneously stressing the extent to which Lescrope had betrayed these values.¹²⁸ This message was reinforced in a final warning that no one should use Lescrope's violation as a reason to malign other men who continued to wear the Order with honour.

At Southampton on 2 August, Cambridge, Grey, and Lescrope were indicted by a jury of local men in a hastily assembled judicial tribunal headed by Thomas duke of Clarence, the king's brother.¹²⁹ Ordered to plead, Cambridge and Grey denied any acts of treason although they did admit to partaking in some suspect conversations, and they threw themselves on the mercy of the king. Lescrope admitted he had talked to the others about elements of their plan but he denied there had ever been any intention to kill the king. He further

¹²⁷ *PROME*, "Parliament of 1415," item 6, RP iv:65.

¹²⁸ *Ibid.*, RP iv:66.

¹²⁹ Pugh (*Southampton Plot*, 122–23) details the trial procedure.

claimed he had only become involved in the conspiracy in order to defuse it from within, but he nevertheless put himself in the king's grace for concealing things from him. He then demanded that as a lord, he should have the customary right to be 'tried and judged by his peers of the realm', wording that suggests he expected a hearing in the Court of Chivalry.¹³⁰

The fact that all three men denied their guilt but also begged for mercy led to the production in court of their letters of confession.¹³¹ As noted earlier, the process of soliciting the king's pardon first required an admission of guilt and a demonstration of abject submission to the king's will. This meant the men had to provide some explanation for what they had been doing. Because the letters were extracted once the men had been imprisoned, they cannot be viewed as voluntary narratives free of coercion or manipulation.¹³² Yet a close reading reveals that these were not wholly supplicatory rhetorical performances, either. Instead, the authors drew on the opportunities created by customary notions of treason as a betrayal of knighthood, coupled with the proof value of men's first-person vernacular speech, in order to mitigate their actions and to convince the king that while other men may have transgressed against him, they remained true.

The letters are reminiscent of those produced by the men involved in the Essex conspiracy of 1403-5. An excess of detail, including names, times, dates,

¹³⁰ *PROME*, "Parliament of 1415," item 6, RP iv:66.

¹³¹ The originals are TNA E 163/7/7 ms. 1-8. However, these are badly stained and in many places parts of the membranes have been torn away or rotted. I have consulted these in conjunction with translations into modern English provided by Pugh: "Appendix II," in *Southampton Plot*, 160-77. Pugh reconstructed these with the aid of copies made in 1882 by James Gairdner, then Deputy Keeper of the Public Records Office. For the manuscript history, including confirmation that these are genuine 'autograph letters of confession', see Pugh, *Southampton Plot*, xiii, 160-61.

¹³² Although for reasons that will become clear below, I do not agree with Strohm's argument that they were entirely products of prosecutorial influence.

and places, along with the use of first-person English, places them within the rhetorical and linguistic framework of testimony given under oath in a court of law. The *Gesta* says the offenders were executed ‘after they had made public confession’, and the Record and Process confirms that the letters were read out before the ad hoc tribunal at Southampton.¹³³ These public performances were no doubt intended to prove the legal fact of treason in the offenders’ own words and thereby to validate its summary punishment.¹³⁴ Yet the stories the letters told and the admissions they made were far from straightforward. Veering between humble admissions of wrongdoing, veiled justifications, and attempts to deflect blame onto others, the authors sought to perform identities as true, if misguided and ‘uncunning’, knights.

Grey’s confession began with his abject self-representation as a man who was aware he had destroyed his knightly honour. He described bringing ‘the utter most shame to me and all my kin’ and imagined that ‘I were buried alive ... and my name never to be rehearsed’.¹³⁵ This recalls the social death and obliteration of noble identity that conviction as a traitor brought, not only for the offender but also for his entire lineage.¹³⁶ Grey conceived of treason as an intimate betrayal as he admitted to Henry that he was drawn into ‘speaking and

¹³³ *Gesta Henrici Quinti*, 19. The Record and Process in the parliament roll details each step in the process, including the issuing of writs, the appointment of jurors, and the presentation of evidence in the form of the confessions: *PROME*, “Parliament of 1415,” item 6, RP iv:64-66.

¹³⁴ The verbal confession would have met the requirement of notoriety. This marked an offence that was openly and commonly known to men of good repute, and in the case of treason it legitimised summary judgment on the king’s record. On notoriety: Keen, “Treason Trials,” 85–86, 89; Bellamy, *Law of Treason*, 19–20.

¹³⁵ TNA E 163/7/7 m. 1; “Appendix II,” 161.

¹³⁶ This social death was a legal and financial, as well as cultural, phenomenon because forfeiture stripped the offender’s heirs of their titles, lands, and offices: Bothwell, *Falling from Grace*, 87, 102–3, 117–18, 166, 226; Westerhof, *Death and the Noble Body*, chapters 5 and 6; Westerhof, “Deconstructing Identities on the Scaffold.”

working and counselling against your person'.¹³⁷ He even located the moment of his fall specifically in relation to his performance of knighthood, saying that it was when he was returning home from London, where he had contracted with the king to provide a retinue for the French campaign, that he had a fateful meeting with Cambridge.¹³⁸ Grey blamed Cambridge for seizing this opportunity to lead him into error, bewailing 'alas! the time of that retinue making, for it has brought me to this shame and undoing'.¹³⁹ This despairing admission served to remind the king of Grey's record of loyal military service while simultaneously deflecting responsibility onto the earl as the main offender.

Elsewhere in Grey's confession, there are hints at justification through the idea of *diffidatio* when Grey cited both poverty and covetousness as reasons for his transgression. While covetousness pointed to his own sinfulness as a cause, the reference to poverty may have been intended as a veiled allusion to Henry keeping him short of money and thus failing in his lordly obligations. There are parallels here between Grey's justifications and the complaints of the Percies prior to their rising against Henry IV, and this notion of *diffidatio* emerges more clearly in Grey's explanation for why the earl of March had agreed to the scheme. He first recounted how Henry V had placed an unprecedented fine on March for the latter's marriage, saying that Lescrope had had to loan March a large sum to help pay it.¹⁴⁰ In a second parchment fragment, probably a continuation of the same letter, Grey said that he had been shown a letter from March, 'written with his own hand, how he had been [to] your

¹³⁷ TNA E 163/7/7 m. 1; "Appendix II," 161.

¹³⁸ "Appendix II," 161, 174 n. 6.

¹³⁹ TNA E 163/7/7 m. 1; "Appendix II," 161.

¹⁴⁰ The fine was 10,000 marks. Pugh (*Southampton Plot*, xiv, 80, 117) suggests it was set so high because Henry V was looking for additional sources of finance for his French campaign.

gracious lord. And how foul you had fared with him in the payment for his marriage. And so he saw no way but you would undo him'.¹⁴¹ Elsewhere, Grey claimed that it was Lescrope who, by speaking 'the highest and the haughtiest' to March, had pressured him into asserting 'his right of the crown'.¹⁴² Grey's letter was a *mélange*: admissions of sin and wrong-doing were followed by attempts to deflect blame from himself by depicting Cambridge and Lescrope as the ringleaders, and these were accompanied by attempts at justification through suggestions it was the king's own mistreatment of his faithful liege men that had driven them to desperate ends. Grey returned finally to contemplating the destruction of his own knightly identity and lineage, but concluded by claiming that this was the result of Cambridge's greater betrayal, and that 'I have slain all my kin through his false counsel'.¹⁴³

The earl of Cambridge wrote at least two letters to the king between 31 July and his execution on 5 August.¹⁴⁴ In the earlier text, he provided the fullest and most coherent account of the plot and if any of the confessions bears traces of being manufactured by the prosecution, it is this one. Cambridge implicated his fellow conspirators on a number of the standard points of treason itemised in the 1352 statute, including planning to ally with the Scots to ride in arms

¹⁴¹ TNA E 163/7/7 m. 2; "Appendix II," 165.

¹⁴² TNA E 163/7/7 m. 1; "Appendix II," 163–64;.

¹⁴³ TNA E 163/7/7 m. 2; "Appendix II," 165.

¹⁴⁴ One text survives as TNA E 163/7/7 ms. 4 and 5, which appear to be two fragments from the same letter. Two letters, one from between 31 July and 2 August, and the second written between 2 and 5 August, were also preserved separately in BL Cotton Vespasian C XIV, f. 39 and Cotton Vespasian F III, f. 7. These have been consulted in conjunction with the transcriptions published in *Foedera*, 300–1, accessed 10 May, 2015 at *British History Online* <http://www.british-history.ac.uk/rymer-foedera/vol9>. There are similarities in content between the letter in the Exchequer file and the first of the two Cotton Vespasian texts. This similarity, along with the fact that E 163/7/7 m. 4 includes at least three lines of erasure (the membrane is damaged and missing its lower left quadrant) suggests the former may have been a first draft of the latter. See also Pugh, *Southampton Plot*, 160, 166.

against the king and to seize royal castles in Wales.¹⁴⁵ On this score, though, it is significant that he made no mention of a plot to kill the king, for such an admission would leave no ambiguity that the confessant was a traitor. Cambridge did, however, admit to offences amounting to treasonous speech, something that might or might not be considered within the legal scope of treason depending on the nature of the tribunal and the opinion of the jury. He said the conspirators had planned to circulate:

A proclamacyoun, which schulde hadde bene cryde in the erle name, as the heyre to the coroune of Ynglond, ageyns yow, my lege lord, calde, by an untreu name, Harry of Lancastre usurpur of Yngland, to the entent to hadde made the more poeple to hade draune to hym, and fro yow.¹⁴⁶

Referring to the king as 'Henry of Lancaster' had already been adjudged an act of treason in the 1406 conviction of the earl of Northumberland and Lord Bardolf. Cambridge also made references to that other hazardous speech act, spreading rumours of Richard II's survival, although he was careful to deny that he had a part in this aspect of the plot. He first said that the Mortimer claim was to be advanced only if Richard II proved to be dead, but immediately added 'as y wot wel that he wys not alyve'.¹⁴⁷ He then blamed two Northumbrian knights, Sir Robert Umfraville and Sir John Widdrington, for hatching the plan 'for the bryngyng yn of that persone, wych they name Kyng Richard, and Henry Percy

¹⁴⁵ *Foedera*, 300; BL Cotton Vespasian C XIV, f. 39.

¹⁴⁶ Ibid. Strohm (*England's Empty Throne*, 98–99) notes that the term 'usurper' here is the first known usage in English. This may indicate the text was being shaped at this point by the king's legal officials, for whom the term *usurpare* was a familiar Latin usage. The reference to Henry as a usurper ('usurpasti... regnum Anglie') had also appeared in the Latin text of the Percies' 1403 proclamation, discussed in Chapter Four.

¹⁴⁷ *Foedera*, 300; BL Cotton Vespasian C XIV, f. 39.

oute of Scotland'.¹⁴⁸ He continued by beseeching the king for mercy and to 'have yee coupassyoun on me yowre lege man' in remembrance of Christ's Passion and forgiveness.¹⁴⁹ However, this submissive stance was immediately tempered by the final passage in the letter, in which Cambridge staged a defiant performance of knighthood by stating his readiness to prove the truth of his words through trial by combat:

And yf heny of thes persones, whos names arne contenyd in thys bylle,
holdyn contrary the substaunce of that I have wretyn at thys tyme, y schalle
be redy, wyth the myth of God, to make hyt good as yee, my lege lord, wylle
awarde me.¹⁵⁰

When Cambridge wrote this first letter, he probably hoped that by detailing the plot and naming the other conspirators, while simultaneously showing ready to prove the truth of his words with his body, he could win the king's pardon. His second letter suggests this hope was ebbing away. Here, there is instead abject contrition as Cambridge presented himself to Henry as 'yowre humble subgyt and very lege man', but he still tried to stress the greater culpability of others by claiming his transgressions were the result of 'steryng of odyr folke eggynge me thereto'.¹⁵¹ Given the context, Cambridge's use of the term 'very' (*veri*) here is likely an orthographic variant of the Anglo-Norman *verai*, meaning 'true' or

¹⁴⁸ Ibid. Henry Percy was the son of Henry 'Hotspur' Percy and grandson of the earl of Northumberland. After the death of his father at Shrewsbury in 1403, he went into exile in Scotland. However, he was restored to his grandfather's estates and rights in 1414, so it seems unlikely he would have been participating in a plot against Henry V the following year: Bothwell, *Falling from Grace*, 196, 209; Pugh, *Southampton Plot*, 125. Umfraville may have the same Robert Umfraville who had been serving as a Percy retainer in the Scottish marches in the early 1400s, and had been appointed as their lieutenant at Roxburgh Castle: King, "Northumberland, the Percies and Henry IV, 1399-1408," 145.

¹⁴⁹ *Foedera*, 300; BL Cotton Vespasian C XIV, f. 39.

¹⁵⁰ Ibid.

¹⁵¹ *Foedera*, 301; BL Cotton Vespasian F III, f. 7.

'loyal'. Thus in this final plea for mercy he clung to an identity as a loyal knight, echoing Hotspur's apocryphal words that he was 'no traitor but a true man'.¹⁵²

The confession of Henry Lescrope is also characterised by the performance of knightly manhood in resistance to charges of treason.¹⁵³ Unlike Cambridge and Grey, Lescrope never admitted to betraying Henry, either wilfully or through others 'egging him on'. At most, he confessed to having 'with great uncunning' concealed things from the king.¹⁵⁴ He staunchly maintained his loyalty by claiming he had deliberately infiltrated the conspiracy only in order to avert it.¹⁵⁵ Given Lescrope's history of service to the king, this is plausible and it is a stance made more credible by Lescrope's prominent role in foiling Oldcastle's rising. Indeed, Lescrope's letter is the only source to mention any connection to lollardy or to Oldcastle, and he may have viewed this conspiracy as connected to the earlier plot, which the king had empowered him to uncover and punish.¹⁵⁶ Oldcastle was still on the run in mid-1415; perhaps Lescrope suspected the conspirators knew where he was and thought that if he earned their trust, he might discover Oldcastle's hiding place. Throughout his confession, Lescrope repeatedly reminded the king of his unswerving performance of loyal knighthood, asking him to consider 'when I stood with you

¹⁵² To paraphrase *An English Chronicle*, 33.

¹⁵³ Lescrope's letter of confession, dated by Pugh to 1 August, is TNA E 163/7/7 ms. 6 and 7; "Appendix II," 167–70. The final membrane in the file, E 163/7/7 m. 8 ("Appendix II," 171–72), is in the same hand and appears to be instructions regarding Lescrope's will.

¹⁵⁴ TNA E 163/7/7 m. 6; "Appendix II," 167. The original has been badly damaged and is now almost completely illegible.

¹⁵⁵ Pugh suggests that Lescrope may have hoped to defuse the plot while keeping the details secret in order to preserve Cambridge's reputation, and perhaps also to ensure March would be able to repay the money he had borrowed from Lescrope for his wedding fine: *Southampton Plot*, 115–17.

¹⁵⁶ This seems a more plausible explanation than that of Strohm, who suggests the inclusion of references to lollardy are another sign that the confessions were a Lancastrian 'mock up': *England's Empty Throne*, 89.

... in France and Flanders' and reminding him of 'service that have continued with him that was our liege lord [of us all] your fathe[r]'.¹⁵⁷ He went on to describe in detail how he had tried to frighten the plotters out of doing anything by warning them of 'what perils would fall' if they persisted with their plans, and showing them that regardless of the strategy they tried to use to oppose the king, they would inevitably fail.¹⁵⁸ He then attested that March and the others had 'vowed me they should not come there but fully leave all such works after this'.¹⁵⁹

Confessing that he 'did great folly' by not telling the king immediately about the conspiracy, Lescrope defended himself by saying that 'yif I had herde a grounded purpose taken, the whych I ... to have told it you bot yif I might have siesid it my self I would have'.¹⁶⁰ In other words, if things had progressed beyond mere talk, Lescrope would have involved the king directly, but he evidently expected that it would not come to this. His confidence on this score must no doubt have been reinforced by the fact that March, Cambridge, and the others had given him their sworn word that they would not proceed. When Lescrope had secured these promises in late July, Henry V was making his final plans for the invasion of Normandy.¹⁶¹ It is plausible that Lescrope wanted to avoid distracting the king with a matter he believed he had resolved himself. This supposition is supported by Lescrope's assertion that after the vows had

¹⁵⁷ "Appendix II," 168, bracketed additions in original.

¹⁵⁸ *Ibid.*, 169.

¹⁵⁹ *Ibid.* Pugh ("Appendix II," 176, n. 90) notes the original word is 'hyght'. In Middle English, one meaning for this term is to make a vow or promise, or give an assurance of good faith: *MED*, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED21307>.

¹⁶⁰ TNA E 163/7/7 m. 7. This membrane is a continuation of m. 6. It is much better preserved, but part of the top right corner is torn away and some words are missing. However, the sense seems clear. Cf. "Appendix II," 170–71.

¹⁶¹ According to the first part of Lescrope's confession, the promises were extracted during a meeting at March's lodgings on 25 July: "Appendix II," 169.

been made, 'this I never heard no more nor thought on', and he emphasised the veracity of his words by stating that 'truly our sovereign lord this is true as far as I ... communed in such matters'.¹⁶² His defence, grounded in his own knightly reputation and honour continued to the end of the letter. He beseeched the king's grace, 'synce this is the first tre[s]pas that evr I fel' and then appeared to suggest that if Henry did not pardon him, his 'worshyp be utterly destruyd'.¹⁶³

Discussing the power of chivalric ideals in fifteenth-century political culture, Watts notes that the ruling elite placed supreme value on 'worship and manhode'.¹⁶⁴ As discussed in Chapter One, 'worship' embraced the recognition by other men of a man's masculine identity and social status. It was attained and preserved by his physical display of the knightly virtues of prowess, courage, and largesse, but equally by his speech and behaviour, and most importantly by keeping his word. Lescrope's confession reveals the tensions between speaking and not speaking that reinforced this relationship between men's words and their worship. By failing to speak, to tell Henry of the plot against him as soon as he knew about it, Lescrope had imperilled his own manhood, that combination of knightly performance and masculine identity that condensed in the notion of worship. Through the rhetorical and linguistic performance of his confession, he tried to defend and authenticate his testimony that despite this failure of speech, he remained a true man. He admitted that by staying silent initially, he had been 'uncunning' and 'did great folly'.¹⁶⁵ Yet he had only done this out of misguided loyalty, to deter the king's cousin and other close associates from

¹⁶² "Appendix II," 170.

¹⁶³ TNA E 163/7/7 m. 7.

¹⁶⁴ Watts, *Henry VI*, 31–39, quote at 33 from the mid-fifteenth century text *The Boke of Noblesse*.

¹⁶⁵ "Appendix II," 167, 170.

attempting to enact their doomed plan. By finally speaking out and revealing everything to Henry in his vernacular first-person testimony, he sought to prove the truth of his words that 'I also never erst offended in no wise nor never will more'.¹⁶⁶

The confessional letters and petitions for mercy were to no avail. Grey was condemned to death by the local jury empanelled under the judicial authority of the duke of Clarence. As noblemen, Lescrope and Cambridge were judged and convicted by their peers in a tribunal headed by Clarence and the Earl Marshal.¹⁶⁷ The evidence and convictions in all three cases were reiterated and the validity of the executions confirmed in the November parliament. The Record and Process as it was presented there incorporated some charges that were shaped by the traditional view of treason as a personal chivalric betrayal. However, more prominent and of greater long-term significance was the construction of treason as a crime against the English nation.

It is important to remember that the conspiracy had been exposed mere days before Henry V sailed for France, in an atmosphere in which patriotic martial fervour might well influence how the king's judicial officers constructed the offenders' crimes.¹⁶⁸ Lescrope and Cambridge were judged at Southampton by 'lords and magnates of the realm of England, and peers of the said Richard earl of Cambridge and Henry Lord Lescrope, who were present there in preparation for the lord king's expedition overseas'.¹⁶⁹ This clause identified the offenders as part of the inner circle of nobles surrounding the king while at the

¹⁶⁶ Ibid., 168.

¹⁶⁷ The Earl Marshal was John, duke of Bedford, another of the king's brothers.

¹⁶⁸ Grey was tried and convicted on 2 August, Cambridge and Lescrope on 5 August. Henry sailed on 11 August.

¹⁶⁹ *PROME*, "Parliament of 1415," item 6, RP iv:66.

same time calling attention to their purported desire to destroy the national military enterprise that they and their fellow noblemen had been called upon to lead.

The perception of treason as a betrayal of the English nation also infiltrated the chronicle accounts. The *Gesta* claimed 'the stench of French promises or bribes' had been the main reason Lescrope and his fellows had tried to bring disaster to the planned English expedition.¹⁷⁰ Walsingham went even further. Having said that there was no man of the 'English race' ('*Anglicana gente*') closer to the king, he went on to portray Lescrope as English in external appearance and behaviour, but French in terms of his true, inner identity and intentions: 'He was deceitfully contriving ill-fortune for the realm by supporting the French' and was 'supporting his own side with his looks, but the French with his mind'.¹⁷¹ It is notable that while the confessional letters made some allusions to Scots involvement, the chronicle accounts eschewed this angle altogether and instead focused on the conspirators' alliance with the French, now clearly identified as the chief enemy of the English nation.¹⁷²

The Record and Process was considered in parliament on 8 November, in a heady atmosphere of victory when God himself had endorsed the legitimacy of Lancastrian kingship through the English triumphs at Harfleur and Agincourt. News of this had reached London on 29 October; shortly after parliament was dissolved on 13 November, the king made his ceremonial entry to the city on 23

¹⁷⁰ *Gesta Henrici Quinti*, 19.

¹⁷¹ *St Albans Chronicle II*, 661.

¹⁷² Both chronicle accounts were, of course, composed after Agincourt, the *Gesta Henrici Quinti* c. 1417 and the *St Albans Chronicle* between 1419 and 1422: Pugh, *Southampton Plot*, 155.

November.¹⁷³ The *Gesta* describes a crowd of thousands of London citizens riding out to Blackheath to congratulate the king and thank him 'for his work on behalf of the public good [*laboribus publicis*']'.¹⁷⁴ Henry was escorted through the city of London, where a series of pageants featured larger-than-life representations of English identity.¹⁷⁵ These included the statue of a giant bearing the royal arms on the southern entrance to London Bridge and, on a tower spanning the bridge, a statue of St George.¹⁷⁶ On a wooden castle constructed in Cheapside, there was another representation of St George, along with 'the arms of members of the royal house and of the great nobles of the realm'.¹⁷⁷

When the Southampton trials are considered against this background, the implications for the interpretation of treason become clear. By planning to wreck the king's French expedition, the Southampton plotters had proved themselves traitors to the English nation as it was now most vividly embodied in the divinely favoured Henry V. Although in their confessions, the conspirators had admitted to a convoluted scheme in support of either March or the Ricardian pretender, none of them had mentioned any plans to kill the king and his brothers. On the face of it, their plan was implausible at best and according to Lescrope's testimony, it had never progressed beyond wishful thinking and

¹⁷³ Pugh, *Southampton Plot*, 178.

¹⁷⁴ *Gesta Henrici Quinti*, 103, Latin on 102.

¹⁷⁵ The *Gesta Henrici Quinti* gives a detailed account of the pageant: 101–13. See also Wylie and Waugh, *Henry V*, vol. 2, 257–69; Nicola Coldstream, "'Pavilion'd in Splendour': Henry V's Agincourt Pageants," *Journal of the British Archaeological Association* 165 (2012): 153–71.

¹⁷⁶ *Gesta Henrici Quinti*, 101. The description of this giant suggests he was intended to represent Gogmagog, a figure prominent in the legendary history of Britain as described in texts such as Geoffrey of Monmouth's twelfth-century *Historia Regum Britanniae*: Jeffrey Jerome Cohen, *Of Giants: Sex, Monsters, and the Middle Ages* (Minneapolis, MN: University of Minnesota Press, 1999), 29–31, 35–36.

¹⁷⁷ *Gesta Henrici Quinti*, 109.

private conversations. Given the potential difficulty of convincing a jury such talk amounted to treason, Pugh suggests the charge of regicide was added to the indictment to ensure the jurors would bring in the death penalty.¹⁷⁸ However, the charge had an important political as well as legal function, because by depicting the conspirators' vague talk of invasion as a concrete physical attack on the king's person, it bound Henry's body more tightly to the body politic of the realm.

The construction of treason as a betrayal of the English people and nation, the *publicis* for which Henry had laboured so valiantly, was made explicit elsewhere in the official record where it reinforced the divinely endorsed embodiment of Henry V as the 'nation' of England but at the same time, stretched the definition of treason to new limits. This can be observed where the trial record affirmed that the three men had been justly and lawfully 'convicted of high treason committed by them against the lord king and his majestic realm [*regiam maiestatem*]'.¹⁷⁹ It is significant that 'majesty' was attached here to the realm rather than to the king's person. By extending majesty beyond the king's individual political body and vesting it in the realm, it recalled the charge in the Oldcastle case that the traitors sought to destroy the 'estate and majesty of the royal dignity'.¹⁸⁰ However, it took this idea to the next level of abstraction by identifying two distinct but intertwined acts of treason: one against the person of the king, and the other against the *majestas* or sovereign public power of the state.

The definition of treason as a crime against the nation re-appeared in

¹⁷⁸ Pugh, *Southampton Plot*, 128–29.

¹⁷⁹ *PROME*, "Parliament of 1415," item 6, RP iv:64.

¹⁸⁰ TNA KB 27/611 Rex m. 7.

emphatic terms at the conclusion of the record, where the judgment against Lescrope was given. Lescrope was excoriated as a (now-former) Knight of the Garter, whose chivalric honour had been undone by his crimes.¹⁸¹ The extent of his transgression was emphasised in the sentence against him: that he should be drawn through the town of Southampton, beheaded, and his head posted on one of the gates of York, the city with which his noble family was most closely associated. The degradation of public drawing, bodily division, and display sent the clear message that, as Lescrope feared, his worship had indeed been utterly destroyed. The sentence expressed the chivalric idea of treason as a betrayal of knightly identity and noble lineage. However, this cultural and legal construction was in the end subsumed into a much broader notion of treason when the record concluded that the display of Lescrope's head was meant to serve as a warning 'lest anyone henceforth so wickedly and audaciously should assume such audacity to transgress and rebel against his liege lord and the nation in which he was born'.¹⁸² The Latin original reflects an understanding of nationhood as originating in shared language: 'contra ... linguam in qua natus est taliter delinquendi et rebellandi'.¹⁸³ This passage clearly drew on precedents set in earlier trials that described traitors as seeking to destroy the English language and law, and this legal rhetoric was given additional power in Lescrope's case by incorporating birth, an equally potent signifier of national identity. Evidence can be seen here for a subtle but significant shift in how political subjecthood was being constructed in the later medieval period, as

¹⁸¹ As was the standard practice by this period, the process of Lescrope's punishment began with his being ceremonially stripped of his Garter membership: Collins, *Order of the Garter*, 109–10.

¹⁸² *PROME*, "Parliament of 1415," item 6, RP iv:66.

¹⁸³ *Ibid.*

Lescrope's legal identity as a traitor stripped him of ethnic identity as an 'English' man and the political privileges this entailed. His sentence therefore serves as an important waypoint for understanding a wider renegotiation of the relationship between subjects and the state, from being a 'subject of the English king' to being an 'English subject'. The public display of Lescrope's severed head may be read in similar terms, for when it came to the execution of noble traitors, English kings had a long history of treating offenders from Ireland, Scotland, and Wales with greater brutality and degradation than 'native' English.¹⁸⁴ Moreover, Lescrope's head was to be exposed on the gates of York before a large urban public of all social backgrounds, a symbolic act that suggests the message being sent was that treason was to be interpreted as a violation of the entire English community, and not simply a betrayal of the personal loyalties and chivalric values of its political elite.¹⁸⁵

The persecution of Sir John Mortimer, 1418-1424

In cases like Lescrope's, the Lancastrian state was able to extend the scope of treason to incorporate betrayal of the nation, but such extensions were not always accepted by the political community. Tensions continued to exist between the customary view of treason as an act against the person of the king and more expansive constructions of treason as attacks on or insults to the public authority of the state, especially when these attacks came in the form of political speech. These tensions shaped the case of Sir John Mortimer. He was first arrested and imprisoned late in 1418, although no formal charges were

¹⁸⁴ Gillingham, "Killing and Mutilating Political Enemies"; Royer, "The Body in Parts." See also Andy King, "False Traitors," 37–39.

¹⁸⁵ On this point, see Katherine Royer, "Review of *Death and the Noble Body in Medieval England* by Danielle Westerhof," *Journal of British Studies* 48 (2009): 988.

brought against him at that time. He was still in prison in 1420 when he was indicted for having in 1418 said treasonable things against the king. This indictment was not taken to trial and Mortimer was still in prison when he was indicted again in 1422. On that occasion, a trial jury returned an acquittal but Mortimer was not freed; he was instead re-indicted on the 1418 charges but again, the case did not go to trial. Apart from two brief escapes, he remained in prison until 1424 when he was convicted and executed as a traitor for his second escape. This judicial result was achieved by means of a new statute that extended the definition of treason to include the act of breaking prison while held there on suspicion of treason.

Sir John Mortimer was a relatively obscure knight who had little in the way of lands, money, or political influence. Despite his surname, he does not appear to have had any family connections to the Mortimer earls of March, although Pugh speculates he may have been an illegitimate relative.¹⁸⁶ Apart from a valuable article by Powell, to whom we owe our knowledge of Mortimer's background and the complex legal machinations that ended in his execution, his case has attracted little notice from historians.¹⁸⁷ Powell focused on what he saw as the anomalous extension of the 1352 law of treason to secure Mortimer's conviction, although he concluded that the reasons behind his 'strange death' remain unexplained.

However, if Mortimer's case is considered in relation to ad hoc extensions and precedents established in previous trials, it can be interpreted as

¹⁸⁶ Pugh, *Southampton Plot*, 84.

¹⁸⁷ Powell, "The Strange Death of Sir John Mortimer"; Powell, *Kingship, Law, and Society*, 256–58; Bellamy, *Law of Treason*, 130, 172–73. Bellamy's main interest was the implications of the new statute regarding prison escapes, rather than the details of Mortimer's alleged crimes.

part of a continuum along which the scope of treason was being stretched beyond traditional limits. The prosecution narratives in the proceedings against him feature elements that had appeared previously, including speech punished as an act of treason and the idea that words or deeds against the king's person were also attacks on an abstract national community. There were also some important differences. One of these was the new statutory offence of escaping from prison, which was to be treated as tantamount to a confession of treason. This was an inversion of the more familiar progression from thoughts to words to deeds, for now a physical act was equated to an act of speech - that of judicial confession. In addition, the speech for which Mortimer was indicted differed both in kind and degree from the overt rejections of Lancastrian rule that have featured elsewhere in this study. As shall be seen, when a trial jury rejected these attempts at expansion, the state was forced to other expedients to get its man; nevertheless, the Lancastrian conception of treasonous speech that shaped the Mortimer indictments foreshadows the kinds of statutory criminalisation of insults and slander seen in later fifteenth- and early-sixteenth century treason laws.¹⁸⁸

Mortimer had a fairly conventional military career, appearing first as an esquire in Guyenne in 1401 and going on to serve in various capacities under Henry IV and then Henry V.¹⁸⁹ He fought at Agincourt and was knighted sometime between then and 1417, when he was given a senior naval command with the duty to patrol the Channel and protect English shipping. However, in

¹⁸⁸ As discussed for example in Wicker, "The Politics of Vernacular Speech"; Harris, "Censoring Disobedient Subjects"; Lemon, *Treason by Words*; Manning, "The Origins of the Doctrine of Sedition"; Bellamy, *Tudor Law of Treason*, 30–36, 51–9.

¹⁸⁹ For Mortimer's military career, see Powell, "The Strange Death of Sir John Mortimer," 85–86.

February 1418, he was forced to take out a surety for 1000*l* and to swear to 'bear himself toward the king as his true liege'.¹⁹⁰ His guarantors for this enormous sum included his fellow knights Sir William Palton of Somerset and Sir Thomas Hoo of Bedfordshire. In December 1418, he was imprisoned. There is no record of the reasons for his arrest but he was still in the Tower when he was formally indicted in 1420. This indictment states that in the summer of 1418, in the town of St Albans, he had treasonably said ('proditorie dixit') that he wished Henry were a pauper like he was, and that if he was with the king of France and had enough men, he would destroy Henry and push him out of Normandy.¹⁹¹

The indictment features several departures from earlier treason prosecutions involving speech acts. First, there was no clear indication of where or in what context Mortimer's words were uttered. There were no bills being posted or public proclamations being circulated. Instead, the indictment simply stated Mortimer's remarks had been made in the town, implying that he may simply have been overheard. More importantly, Mortimer was not making any specific statements challenging Henry V's legitimacy or his kingship. He was not raising the ghost of Richard II or making reference to any alternative claim in the name of a Mortimer relative; nor did he refer to the king as 'Henry of Lancaster'. He was not even making any concrete criticisms about excessive taxation or 'wicked counsellors'. In fact, his comments about wishing the king were as poor as he was and driving Henry out of Normandy seem typical of the kind of unfocused griping associated with the popular speech of taverns and

¹⁹⁰ *CCR, 1413-1419*, 456–57; Powell ("The Strange Death of Sir John Mortimer," 86) converts this sum to £1000.

¹⁹¹ TNA KB 9/218/2 m. 45.

marketplaces.¹⁹² They foreshadowed, albeit in cruder terms, the concerns beginning to be exhibited by the Commons in parliament from 1419 about the mounting cost of Henry's French campaign, and the diversion of English tax revenues to France.¹⁹³ Even for the authorities, it appears to have been a step too far to treat such vague grumblings as treason because the case was not taken to trial. The indictment itself bears witness to its own uncertainty in this regard, for there is no trace of the usual legal rhetoric of treason in the form of standard phrases such as that offenders had 'compassed and imagined' the death of the king.

Although this first attempt to prosecute Mortimer was not tested in court, he remained a prisoner in the Tower until April 1422, when he managed to escape along with the clerk Thomas Payn, former secretary to Sir John Oldcastle, and two foreign prisoners of war.¹⁹⁴ Mortimer was soon recaptured and on 15 May he was once again indicted for treason. On this occasion, the charges were much more specific. First, it was said that he had 'falsely and treasonably conspired and imagined the death of our lord the king and many other evil and wicked things against the king and his realm of England', and that along with his accomplices, he had been conspiring 'to bring about the destruction of the person of... the king and of the realm'.¹⁹⁵ This rhetoric had become typical of treason indictments and it identified the traitor as posing a material threat to the person of the king as well as to the realm and people of

¹⁹² For examples of popular criticism about taxation, the king's stupidity, and his failure to produce an heir being treated as treasonable in the 1440s and 1450s: Wicker, "The Politics of Vernacular Speech," 185–95.

¹⁹³ Given-Wilson, introduction to "Henry V: Parliament of 1419" in *PROME*; G. L. Harriss, "The Management of Parliament," in *ibid.*, *Henry V: The Practice of Kingship*, 148–51.

¹⁹⁴ Thomson, *Later Lollards*, 17–18.

¹⁹⁵ TNA KB 27/644 Rex m. 11.

England. The next charge was more unusual, stating that against the king's will, Mortimer had treasonably conspired to escape the Tower and to help the king's prisoners to escape.¹⁹⁶ One of these men was Johan de Brakemonde, a knight in service to the dauphin of France, and the other was Martalinus de Flisca of Genoa; both were described as 'mortal enemies of the king and realm'.¹⁹⁷ The allegation that Mortimer had aided foreign 'enemies of the realm' implied that he had betrayed his nation as well as his king, and this interpretation of treason was reinforced in further charges that he planned to go into Wales and raise a rebellion to make war on the realm of England, and that he intended to become a retainer of the dauphin of France and to prey on English shipping in the Channel. It was also alleged that Mortimer was conspiring to help the dauphin by infiltrating 'English castles and towns in France with many soldiers, by acting as if they were true and loyal English men' ('plures soldares... tanquam essent veri Anglia et fideles').¹⁹⁸ The indictment concluded that Mortimer had planned and done these things contrary to his allegiance to the king and to the realm of England. In other words, he was to be viewed as a threat to English national interests at home and abroad, as well as to the person of the king. This was also implied through Payn's supposed involvement in Mortimer's plotting, for as a lollard and adherent of Sir John Oldcastle, Payn was already identified as an enemy to the Christian body politic of England.

Brought into King's Bench to face these charges, Mortimer pleaded not

¹⁹⁶ As shall be seen, there was as yet no statutory justification for treating an escape from prison as an act of treason in itself. While prison escapes had been mentioned as part of previous treason trials, such as that of Sir John Oldcastle, conviction had on those occasions been secured on other grounds.

¹⁹⁷ TNA KB 27/644 Rex m. 11.

¹⁹⁸ Ibid.

guilty and asked for a jury trial. One would have expected that given the evidence of his escape with two prisoners of war, and the harm he allegedly intended to wreak on English military and trading interests, a jury of London men would have had no hesitation in bringing in a conviction. This was clearly the verdict Henry and his justices were anticipating, for it is unlikely they would have brought the case to trial otherwise; they had already shown their willingness to keep Mortimer in prison without trial indefinitely.¹⁹⁹ Moreover, the jury had been selected and sworn in under the king's serjeants-at-law, a procedural step that highlights the king's personal interest in the trial.²⁰⁰ Despite this careful groundwork by the state, the jury acquitted Mortimer. The trial record shows the verdict was an unwelcome surprise to the judges, for they taxed the jurors as to whether or not they had understood their duty in rendering the verdict, to which the jury replied in the affirmative and restated their verdict of 'not guilty'.²⁰¹

Despite the unequivocal jury endorsement of his innocence, Mortimer was sent back to the Tower. Five days later, the 1420 indictment against him for treasonous words was revived and delivered into King's Bench but once again, this was not tested in a trial. The reluctance to arraign Mortimer before another jury indicates that the state's judicial officers had doubts about their ability to have their definition of treason accepted by the political community. Instead on 27 May, Mortimer was removed from the Tower to the Lancastrian stronghold

¹⁹⁹ This was in spite of at least three petitions from Mortimer to the Commons and Lords in parliament, pleading for their intercession with the king: SC 8/125/6236 (May 1421); SC 8/24/1171 (December 1421); SC 8/336/15882 (October 1423). It is interesting that while the first two petitions are in French, the final petition, in which Mortimer pleaded with the Commons to intervene on his behalf regarding the charge of treason, is in English.

²⁰⁰ Powell, "The Strange Death of Sir John Mortimer," 88.

²⁰¹ TNA KB 27/644 Rex m. 11. See also Powell, "The Strange Death of Sir John Mortimer," 88 n. 32.

of Pevensey Castle.²⁰² By the end of 1423, he was back in the Tower and following Henry V's death in August 1422, he became the problem of the conciliar regime of the infant Henry VI.²⁰³

In the parliament that ran from October 1423 to February 1424, several significant moves were made to secure Mortimer's conviction and execution. First, a new statute of treasons was enacted and the Commons' petition that marked its introduction into parliament requested that that if any man was arrested on an indictment, appeal, or even the mere suspicion of treason, 'and is committed and detained in the king's prison for any reason, and escapes voluntarily from the said prison, that such an escape shall be adjudged and declared treason'.²⁰⁴ The petition from the Commons acknowledged that escaping from prison had not been included in the 1352 statute, but under the new statute the act of escaping was itself to be treated as a voluntary admission of guilt and the offender was to be convicted without trial. Thus, the physical deed of breaking prison was transformed into the speech act of confession. The phrase 'detained... for any reason' left a further loophole, because it meant that those who had not been the subject of any formal accusation or legal procedure could still be executed as confessed traitors if they broke prison.

The potential for state abuse of such a statute may have been a concern for the political community, for the Commons' petition concluded by requesting that the new law should stay in effect only until the next parliament. This was just long enough for it to be used against Mortimer. After the statute was

²⁰² *CCR, 1419-1422*, 242.

²⁰³ Henry V's brother Humphrey, duke of Gloucester, was the Protector.

²⁰⁴ *PROME*, "Henry VI: Parliament of 1423," item 60, RP iv:260; *Statutes*, vol. 2, 226–27 (c. xxi). The parliament ran in two sessions, from 20 October to 17 December, 1423, and from 14 January to 28 February, 1424.

enacted, the jailer William Kyng, a servant of Robert Scot the lieutenant of the Tower, conveniently helped Mortimer to escape. He was promptly recaptured, indicted on 25 February and then brought before parliament on 26 February to be adjudged a traitor.²⁰⁵ Despite the reach of the new statute, additional steps had also been taken to ensure Mortimer's conviction, for on 14 February William Kyng had testified before parliament that Mortimer had spoken against the king while in prison, and had offered Kyng bribes to help him escape to carry out his treasonous plans.

Kyng's testimony, which does not appear in the parliament roll but which was recorded by a London chronicler, shows that the jailer was acting on orders as an *agent provocateur*.²⁰⁶ Kyng describes winning over Mortimer's trust by telling him 'he loved hym and wold love hym kyndely and truely', though he would not offend the duke of Gloucester nor any 'true liege man of the kyng', a qualifier that Kyng may have hoped would protect him from possible repercussions.²⁰⁷ He then claimed he had told his master, Scot, 'that Mortymer was false and wolde be false prisoner, if he myght', to which Scot replied that if Mortimer made any suggestions about escape, Kyng should go along with him and 'favour him as his frende'.²⁰⁸ Kyng then provided the only evidence that Mortimer had voiced any specific criticisms about Lancastrian

²⁰⁵ *PROME*, "Parliament of 1423," item 18, RP iv:202. The parliament roll gives the date of the indictment as 25 February and the date of Mortimer's appearance before parliament and conviction as 26 February. However, the *PROME* editor indicates these dates are out by a day or two, as this was a Saturday and Sunday (n. 1 and 2). The Guildhall proceeding was headed by three of the king's commissioners and the London mayor.

²⁰⁶ BL Cotton Julius B I, ff. 67v-68v. See also the transcription in *Chronicles of London (1189-1509)*, ed. Charles Lethbridge Kingsford (Oxford: Clarendon Press, 1905), 282-83. In other respects, the chronicle account closely follows the parliament roll, so there is no reason to doubt that this part of the narrative is unreliable.

²⁰⁷ BL Cotton Julius B I, f. 67v.

²⁰⁸ BL Cotton Julius B I, ff. 67v-68r.

legitimacy or the Mortimer claim. He alleged that when he asked Mortimer what he planned to do after his escape, Mortimer replied that he would go to Wales and raise an army:

And seid he wolde fere the Duke of Gloucestre and smyte of his hedde and al the Lordes heddes... And he seid also that therle of the March was but a dawe, save that he was the grettist, noblist, and worthiest blood of this land... And this Mortymer seid, that therle of the March shulde be kyng, if he had right and trouth And he shulde be his here. And if therle of the March wolde not take the Rule of the Realme and the Crowne, this Mortymer seid that he wolde take upon hym the Rule and the Crowne for he was next heir thereto.²⁰⁹

To these inflammatory charges, Kyng added that Mortimer told him that if his plans in Wales did not work out, he would join the dauphin in France. The account ended with Kyng offering to prove the truth of his testimony ‘upon the same Mortimer with his body’.²¹⁰ The impression that Kyng’s appearance before parliament was an elaborate set-up is heightened when, immediately after this challenge to combat, the chronicler reports that the new statute had been enacted and that Mortimer had subsequently escaped from prison, been recaptured, and was by the authority of parliament ‘dampned to be drawen and hanged as for a treitour’.²¹¹

Kyng’s allegations were shaped by the government to fit the model of previous successful treason convictions that had involved similar rash talk that threatened to reignite the question of Lancastrian legitimacy. The reference to March as a ‘dawe’ or halfwit who should assert his title to the throne but lacked

²⁰⁹ BL Cotton Julius B I, ff. 68r–68v.

²¹⁰ BL Cotton Julius B I, f. 68v.

²¹¹ *Ibid.*

the strength to do so was reminiscent of Sir Thomas Grey's confession that the Southampton plotters had thought March 'but a hog', and that Lescrope had had to speak 'the highest and the haughtiest' to him to encourage him to 'challenge his right'.²¹² Other elements, such as the reference to Mortimer joining forces with the dauphin, appear to be drawn from the unsuccessful indictment of 1422. In other respects, these charges went further for it was not the king who was presented as Mortimer's target, but the duke of Gloucester and other lords. While previous examples discussed have shown that threats against Henry V's brothers and against other magnates had featured as part of the standard rhetoric of treason prosecutions from the early 1400s, these crimes were always mentioned in conjunction with the charge of plotting the death of the king. To consider threats to the duke or to other lords as treason even in the absence of any explicit threat to the king was a novel construction that extended the scope of treason law to encompass attacks on the broader ruling elite, potentially including those outside the immediate royal family.

The message that Mortimer was a threat to the wider political community, and not just to the king or his royal uncles, was reinforced in the record of his conviction. On 26 February, Mortimer was brought into parliament. After the indictment of 25 February was read out, the Commons 'affirmed the indictment in all respects as a true and faithful indictment' and 'beseeched' the Lords to do the same.²¹³ Several times, the record states that the indictment was found to be true by the *tota communitas*, terminology that refers to the Commons in parliament but which also had a more inclusive sense of the

²¹² "Appendix II," 162–63. 'Dawe' meaning 'a stupid fellow': MED, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?type=id&id=MED10580>.

²¹³ PROME, "Parliament of 1423," item 18, RP iv:202.

broad community of the realm. The active part played by the Commons in finding the verdict true, rather than simply confirming an existing judgment, presents a telling contrast to the parliamentary convictions of Northumberland in 1406, Oldcastle in 1417, and Lescrope, Grey and Cambridge in 1415. In 1406, the Commons had simply asked to be informed about what action would be taken against the rebel earl; in the case of Oldcastle they had petitioned that the 1414 judgment of King's Bench be enforced; and similar wording was used in regards to Lescrope and his fellows, with the Commons requesting that the record of the king's judicial commissioners at Southampton be confirmed in parliament.²¹⁴ Bellamy argues that in Mortimer's case the Commons viewed themselves as a grand jury sitting on an inquest.²¹⁵ This may overstate their control over the parliamentary judicial process but nevertheless, by presenting the Commons as active participants in finding the verdict, the royal council was able to portray the dubious conviction of Mortimer as a lawful judgment endorsed by the entire national political community.

Mortimer's status as an enemy of the realm was further reinforced in his sentence. He was to be:

Led to the aforesaid Tower and then drawn through the centre of the aforesaid city up to the gallows at Tyburn, and be hung on the gallows in that place and stretched out on the ground, and his head cut off, and his intestines burnt, and his body divided into four parts, and his head placed on the gate of London bridge, and the said four parts of his body be put separately on the other four gates of London.²¹⁶

²¹⁴ *PROME*, "Parliament of 1406," item 15, RP iii:606; "Parliament of 1417," item 11, RP iv:107; "Parliament of 1415," item 6, RP iv:64.

²¹⁵ Bellamy, *Law of Treason*, 172.

²¹⁶ *PROME*, "Parliament of 1423," item 18, RP iv:202.

As in the case of Lescrope, this unusually harsh punishment combined with the prominent display of Mortimer's dismembered body before the London public marked him out as a traitor to the king but also, and perhaps more importantly given the nature of the charges against him, to the people and nation of England.

The reasons behind Mortimer's long imprisonment and his violent death at the hands of the state remain a mystery. Powell surmises that he can only have been targeted because of his name, and he accepts as unproblematic the jailer William Kyng's testimony to parliament that Mortimer had boasted of being heir to the earl of March and that he intended to claim the throne for himself if the earl would not.²¹⁷ Powell has shown that no connection can be traced between Sir John and the earls of March but, he argues, 'such a relationship must surely have existed, however, for without it the Lancastrian regime's vendetta against [him] is incomprehensible'.²¹⁸ It is possible, though, that it was not Mortimer himself who was the source of the government's anxieties but that, in the wake of the Southampton plot, Henry V feared another group of nobles might be using him as a front for their own ends. Although he was a knight of modest means and obscure parentage, Mortimer does seem to have had some powerful associates. He had no problems finding guarantors for the enormous sum of 1000*l* in 1418; in February of 1420, a mainprise made in Chancery named James earl of Ormond as one of five guarantors for Mortimer's good behaviour, pledging £40 that he would be 'a true prisoner to the king within the Tower of London'.²¹⁹ As a member of the Irish nobility, Ormond may

²¹⁷ Powell, "The Strange Death of Sir John Mortimer," 89, 91; *Kingship, Law, and Society*, 257.

²¹⁸ Powell, "The Strange Death of Sir John Mortimer," 91.

²¹⁹ *CCR, 1419-1422*, 63. This was James Butler, the third earl. The other mainpernors were the knights William Esturmy, John Beaufort, and Richard Lakoun, along with John ap Harry, esquire.

have had connections to the earl of March, who had extensive estates in Ireland and was to be appointed the king's lieutenant there in March 1423.²²⁰

However, there is another angle from which this case starts to make more sense. The Lancastrian regime's persecution of Mortimer indicates continuing anxieties about dynastic security, even after the military and diplomatic successes of Agincourt and the establishment of the dual monarchy in the 1420 Treaty of Troyes.²²¹ This may seem puzzling, but it is important to note that despite early patriotic support for Henry's French wars, by 1420 the shine was wearing off and the Commons were proving increasingly reluctant to grant additional subsidies. The English political community also exhibited a good deal of suspicion about the Treaty of Troyes. This was reflected in Commons' petitions asking that English taxes not be diverted to government in France, and arguing that the two realms the Lancastrians now claimed should be kept quite separate.²²² Powell assumed that when the regime targeted Mortimer, it was reacting to a genuine threat (however impotent). Given the general climate of increasing political criticism, though, it is perhaps more plausible that in the absence of any obvious connection to the earls of March, Mortimer's discontented ramblings in combination with his emblematic name presented the Lancastrians with a convenient opportunity to enact some

²²⁰ For the Mortimer family's land-holdings: Alistair Dunn, "Richard II and the Mortimer Inheritance," in *Fourteenth Century England II*, ed. Chris Given-Wilson (Woodbridge, Suffolk: Boydell, 2002), 159–70. An investigation into the network of men who acted as guarantors for Mortimer over the years could shed further light on the government's motivations for pursuing him so relentlessly; however it is beyond the scope of this study.

²²¹ As Powell ("The Strange Death of Sir John Mortimer," 92) acknowledges.

²²² Given-Wilson, introduction to "Henry V: Parliament of 1420" in *PROME*; Allmand, *Henry V*, 366–67, 376–77; Harriss, "The Management of Parliament," 150–51. On the various measures taken to make the dual monarchy more palatable to English political subjects, see also J. W. McKenna, "Henry VI of England and the Dual Monarchy: Aspects of Royal Political Propaganda, 1422–1432," *Journal of the Warburg and Courtauld Institutes* 28 (1965): 145–62.

powerful political theatre at a time when an infant king, a regency council, and an on-going war created new potential for instability and unrest.

This interpretation is supported by the fact that there was no reference to the Mortimer claim or to Lancastrian legitimacy in the indictments brought against Mortimer in 1420 or 1422. These elements did not appear at all until the case came before the 1423 parliament and even then only on the word of Mortimer's jailer, which must be held suspect. The elaborate scheme used to finally convict and execute Mortimer allowed the royal council to raise the Mortimer claim, and therefore the issue of Lancastrian legitimacy, in the public political sphere explicitly in order to dismiss it. Such an approach had some precedent. Discussing the series of treason cases involving the Ricardian rumour, McNiven has argued that it was in the Lancastrian regime's interests to allow stories of the former king's survival to circulate and to associate them with the proclamations relating to the Mortimer claim or with more pragmatic complaints about judicial corruption and excessive taxation. The government could then 'charge people with taking a treasonable stance which also had the merit of being based on nonsense, and use this claim to discredit more rational challenges to Lancastrian authority'.²²³ After the exposure and destruction of the Southampton plotters, the Mortimer claim could be seen in the same light. The Southampton affair had shown that even amongst the conspirators, the earl of March was not considered a serious contender for the throne.²²⁴ Once March had divulged the plot and then helped to convict his former allies as traitors, the teeth appeared to have been well and truly drawn on any credible threat from

²²³ McNiven, "Rebellion, Sedition," 117.

²²⁴ The conspirators had viewed him as an inferior alternative to either Richard II, if he were alive, or to a more general northern rebellion.

that quarter. In 1424, Sir John Mortimer was not only drawn, hanged, and beheaded, but he also suffered the most brutal and degrading punishments for treason, those of disembowelling and quartering. By making such a graphic public example of him, Henry VI's council also made a pre-emptive strike against anyone else who would grasp the opportunities created by regime change and a royal minority to raise questions about the legitimacy or effectiveness of Lancastrian government.

The conviction of Mortimer by the *tota communitas* as represented in parliament, followed by the gruesome spectacle of his punishment, was a political message about cause-and-effect that would have lingered in the public imagination through the post-mortem display of his body parts in prominent sites around the city. As such, it had both immediate and longer-term consequences. The execution ritual showed that Mortimer had paid the ultimate penalty for his past acts of treason, but it was also intended to foreclose on the potential for future acts of critical political speech. This was a chilling response to those jurors who, in 1422, had decided that despite Mortimer's insulting words and seditious intentions against the king and the English nation, he was not guilty of treason. Mortimer's conviction was finally achieved only through a series of dubious legal machinations. Regardless of irregular procedures, this outcome established a precedent for the punishment of less specific, more equivocal expressions of political dissent as acts of treason. Connections can therefore be discerned between Mortimer's case and the more expansive terms in which, from the mid-fifteenth century onwards, critical, insulting, or even 'annoying' political speech against the king or the public authority vested in

state officials and symbols was defined and punished as treason.²²⁵

Conclusions

Between the Percy rebellions in the early 1400s and the death of Mortimer in 1424, sources relating to the prosecution of treason reflected a more general transformation in the constitutional relationship between the king, the English state, and its political subjects. The traditional perception of treason as the inversion of knighthood was still a powerful cultural influence on the way noble traitors were perceived, and chivalric discourses were deployed by the accused to defend themselves as loyal subjects and true men. However, in the legal sphere the idea of treason as a personal betrayal of one's lord was being displaced by more expansive definitions of offenders as men who had betrayed their nation, the Christian community of English men, and the collective interests of the realm. This in turn helped to underpin a broader transition in the way political subjecthood was envisaged and performed. This was marked by a gradual shift away from viewing allegiance in terms of individual loyalty to the king, to viewing loyalty as being constituted in relation to the more abstract entities of the nation, the English people, and the public authority of the realm.

²²⁵ For examples of this expansion in cases dating from the 1440s to 1460s: Wicker, "The Politics of Vernacular Speech"; Harris, "Censoring Disobedient Subjects." Bellamy (*Tudor Law of Treason*, 25) discusses a 1531 statute which defined as treasonous any activities that were contrived to 'annoy the king, his ambassadors, messengers or servants when they were executing the king's business', along with provisions against slandering 'the royal jurisdiction'. See also Manning, "The Origins of the Doctrine of Sedition." It would be valuable to trace precedents for treasonous speech from the early 1400s through to sixteenth-century case law and legislation.

Chapter Six

Conclusion

The crime of treason at its root is always about constitutional structures and relationships. By delineating the traitor's offences, and identifying the governing entities against which they are committed, treason law by default establishes the sources, nature, and limits of legitimate authority in the polity. At the same time, when the law identifies and punishes traitors by stripping them of the privileges of subjecthood, this determines how political subjects are constituted in relation to sovereign authority and the individuals and entities that embody and exercise it.

For the legal historian John Bellamy, and many others who have followed his conclusions, in medieval English political culture there was no concept of treason as a crime against the state. Treason remained a personal crime, defined primarily in traditional, feudal terms and focused on the body of the king. From the evidence of trial records, statutes, and other official and unofficial sources, this study has shown that while customary and chivalric ideas of treason as a personal betrayal remained relevant for the political community, between 1397 and 1424 there was nevertheless an emerging perception of treason as a crime against the state. These more expansive definitions of treason as an attack on the public authority of the state, on the nation, or on the community of the realm had significant repercussions for wider perceptions about where political power lay, and how and by whom it could be wielded. Despite crises such as the deposition of Edward II or Richard II, which had spawned debates about how to legally divide an individual king from the office of kingship, in theory at least,

sovereignty was envisioned as being embodied in the king's person. However, when it came to the practical application of political theory through the exercise of justice, from the early 1400s the scope of treason saw steady expansion to include offences that had little or no connection to direct attacks upon the king's person. For Henry IV, the legal construction of his personal enemies and critics as mortal threats to the English people and realm may have solved immediate political problems raised by the weakness of his dynastic title, but by including more abstract entities in the category of things harmed by the traitor's actions, emerging legal precedents also suggested that the king no longer fully embodied the public power of the state in his person. Through the exercise of justice in royal courts, expanding legal definitions of treason also fostered the renegotiation of individual political subjecthood. For English men, their identity as political subjects had traditionally been articulated in relation to the person of the king, but increasingly subjecthood was also being constructed in relation to the nation, *chose publique*, or *communitas* of England.

Central to this study has been the understanding that gender is integral to processes of state formation. It has argued that historically specific notions of manhood were as significant as other dimensions of identity, including social status and ethnicity, in shaping political subjecthood in relation to the state. The examples considered have shown that men accused of treason drew heavily on customary and chivalric notions of masculine honour to defend themselves and to assert identities as true men and loyal subjects. At times, they also justified their resistance to the Lancastrian kings by claiming to be acting as true men to the crown, and as manly defenders and protectors of the common good or the *res publica*. The gendered vocabulary of dissent captured by treason

proceedings indicates that in a public political culture marked by vernacularity and auralty, such ideas were relevant and meaningful to the educated ruling elite but also to ordinary men, who asserted masculine agency as part of a universally representative political community of the realm.

With no formal remedies short of armed rebellion to force a wayward king to rule according to the law, the problem of how to separate a 'bad' or inept king from his crown for the good of the realm was at the root of all the major constitutional crises of the later Middle Ages. In 1399, Richard's extensions to treason law had been seen as evidence of his tyranny, and his actions against the nobles in 1397 provided a considerable part of the ammunition used to justify dividing him from his crown and deposing him. For Henry IV, the ambiguities in treason law provided a means by which he could bind his own usurping 'body natural' and that of the Lancastrian bloodline more tightly to the political body of the crown. In the trial of the Counter-Appellants, the case of Morley versus Salisbury, and the conviction of the Epiphany rebels, Henry used his prerogative courts to endorse legal interpretations of treason as a crime against the *chose publique* and the *communalité*. By defining acts against his individual person as attacks on the public authority and community of the realm, Henry strengthened his own claim to embody sovereignty, and he reinforced this by exercising his prerogative of justice in relation to his greatest subjects. This was an opportunist response to Henry's immediate political problems rather than a considered policy decision based in jurisprudence, but nevertheless it had significant long-term constitutional implications.

As a result of the precedents being established in King's Bench from the early 1400s, changing conceptions of treason, and therefore a changing

constitutional relationship between political subjects and the English state, affected a much wider range of people. As a king who had come by his crown through deposition rather than by dynastic right, Henry had faced almost immediate resistance and critique from subjects of all social classes and this critique continued into the reign of his son. As a result, men representing a broad cross-section of the English community were accused of treason, including servants, artisans, vagrants, and clerics. To shore up Lancastrian legitimacy, new and progressively more expansive definitions of treason were being endorsed in common law. These still expressed the traditional understanding of treason as an attack on the king's person, but they were augmented by rhetorical constructions that defined traitors as enemies of the law and language of England; as threats to the *populum*, estates, and the Christian national community; or, as seen in Sir John Oldcastle's case, as threats to the *majestas* of the realm, which had now been wholly abstracted from the body of the king. After England's first statute of succession was enacted in 1406, a new clause incorporated into treason indictments also charged traitors with trying to disinherit the king's sons. In a sense, this portrayed traitors as enemies of the estates assembled in parliament, because they were seeking to violate the terms of statutes enacted by the political community of the realm.

Between 1397 and 1424, novel rhetorical constructions in treason law were reinforcing in the judicial sphere a broader shift in how political subjecthood was constituted, from being a 'subject of the English king' to being an 'English subject'. In other dimensions of social and economic life, programmes such as denization were cementing the connection between English ethnicity and political and legal identity as an English subject, with the

rights and privileges this entailed. For those accused of treason, the association was working in a reverse direction. Traditional views of treason as a personal crime against the king were progressively augmented and supplanted by legal definitions of the traitor as an enemy of the people, law, and language of England. Thus, by the time Henry Lescrope was convicted in 1415, he could be condemned for violating his chivalric loyalty to the king, but also for betraying his nation. The sentence imposed stripped him of his social identity as a knight but more significantly, it stripped him of his political and legal identity as an English subject.

To prove the crime of treason, the nature, loci, and limits of legitimate political authority had first to be stated and affirmed in order to show how it had been transgressed by the traitor. Through treason proceedings, the political theory expressed in statutes, writs, and indictments was put into practice in relation to individual political subjects through the exercise of justice in royal courts. As has been seen, by expanding the legal scope of treason to include offences such as talking others out of their allegiance, or seeking to destroy English language and law, the state redefined the qualities that made loyal political subjects. Increasingly, those who spoke critically about the Lancastrian regime were being tried as traitors, even in the absence of any serious material threat to the king. However, these expanded definitions were not always accepted by the wider political community. Jury acquittals in cases like that of Sir John Mortimer, the scribe Thomas Clerk, and a number of the friars tried in 1402 showed that English subjects did not necessarily agree with the state's construction of acts of political speech as offences that should be punished as treason. This indicates that identity as a loyal political subject was actively

shaped and defended by individuals and by the wider political community, and was not simply an identity that could be imposed and controlled by state.

Despite emerging legal precedents for treason as a crime against the state, the *chose publique*, or the English nation, treason continued to exist on a continuum, with customary and chivalric meanings also being drawn on by the state as well as by accused traitors to construct or deflect charges. The enduring relevance of a personalised, chivalric perception of treason brings into focus the central role of gender in mediating the relationship between political subjects and the state. In a political culture deeply conditioned by masculine virtues of loyalty, honour, and worship, traitors were marked out by their fundamental violation of homosocial bonds that connected them to each other and to the king through networks of service and obligation. This was reflected in accusations such as Morley's that, as a traitor, Salisbury was by default a 'faux chivaler'. It also surfaced through the Lancastrian regime's persistent fears about 'bonds of confederacy' and 'false covigne' that threatened to corrupt and debase the love and fidelity owed by all men to their lord, the king. The perception of treason as the inversion of knighthood shaped the legal rhetoric of indictments and sentencing clauses, and it was vividly reflected in the chronicle and literary accounts, such as Hoccleve's conclusion that Oldcastle's treason was ultimately the result of his fall from manly chivalry, or the *Gesta's* assertion that Sir Thomas Grey would have been a noble knight had he not been stained by the dishonour of treason.

From the perspective of accused traitors, the customary view of treason as the inversion of knighthood and as a betrayal of masculine trueness provided valuable ammunition to justify and legitimise their political resistance. When

Richard II had broken his sacred oaths of forgiveness and revoked the pardons of Arundel and Gloucester, these were perceived as acts against his manhood, honour, and regality, marking him as a tyrant rather than a legitimate king. Likewise, in texts like the Percy manifesto, Henry IV's oath-breaking was presented as the proof of his failures of chivalric manhood and of the illegitimacy of his kingship. The Percies had positioned themselves as protectors of the *res publica*, but more so as knights acting for their true lord against a usurper and murderer. The customary act of *diffidatio* expressed the right and duty of noblemen to withdraw homage, and even to exercise manly violence, in order resist or remove a bad lord. While Richard's extensions to treason law in 1397 had formally criminalised any discussion of deposing the king or withdrawing liege homage, in cases such as the Percies' and Oldcastle's rebellion, *diffidatio* still lingered as a customary knightly defence for resisting an illegitimate or unjust king.

The role of gender in negotiating the constitutional relationship between subjects and the state was also reflected in the treatment of spoken and written critiques of Lancastrian legitimacy. As demonstrated by the precedents developed in King's Bench, the years around 1400 witnessed an important change in judicial perceptions of political speech as the state began to punish as treason verbal and textual expressions of dissent against the Lancastrian regime. Scholars have generally examined this development through the lens of conventional legal history, with debates centring on whether the prosecution of speech in the absence of overt acts was covered by the 1352 statute and therefore constitutionally valid. Drawing on recent scholarship on gender, speech, and political agency, this study has offered an alternative framework for

understanding the development of legal precedents against treasonous speech. Detailed examination of the records from cases like that of John Sperhauk, Nicholas Louthe, and the persistent bill casters operating in Westminster has shown that the law of treason was being shaped by a sociocultural context in which masculinity was publicly performed through vernacular speech acts that had material effects. When men spoke their words in public and avowed them as true, the instrumental power of certain male speech acts imbued their words with the agency to do tangible harm. This was a legal interpretation that reflected wider cultural changes related to concerns about 'sins of the tongue' such as defamation and blasphemy, by which a gendered distinction had developed between words as merely words, and words as injurious deeds. This broader underlying shift helped to foster a judicial environment in which a man's deviant political speech could justifiably and logically be punished under the common law as a physical act of treason. This was seen particularly in cases like those of Sperhauk and Louthe, where women were implicated as the sources of treasonous ideas about Lancastrian legitimacy, but their speech appears to have been dismissed as gossip and they were not prosecuted. It was the men who repeated their words and swore to their truth who were indicted, convicted, and executed.

The relationship between gender and speech worked in the opposite direction, too, generating new rhetorical and linguistic means by which those named as traitors could resist or evade the state's accusations. The political agency of men's words, particularly the masculine speech act of the oath, created the potential for men to enact alternative subject positions through a vernacular discourse of true manhood. This drew on the legal and ethical proof

value of men's words in English to enable accused traitors to represent themselves as loyal subjects and 'true men'. It was this discourse that shaped the vernacular confessions of men like Lescrope and Sir John Pritewell, who admitted they had been misled into politically suspicious activities, but nevertheless asserted that though they may have been 'uncunning' or gullible, they had never been untrue. For these men of high social status, their claims to loyal political subjecthood as true men were overtly connected to their knighthood. However, while the masculine virtues of loyalty, trueness, and honour were characteristic of chivalric culture, these values influenced masculinities at all social levels. For English political subjects, 'true man' was much more than an adjectival descriptor; it was an inner, self-claimed identity that carried political and ethical claims to agency. This was seen most vividly in Wyghtlok's appeal to the political authority of a universal community of true men; these were the ruling elite of lords, burgesses, and knights but also all others who saw or heard his bill. Wyghtlok's self-claimed vernacular identity as a 'trewe man' to the crown is particularly interesting. His bill had incorporated the traditional concept of individual masculine loyalty to one's lord, in this case the deposed Richard II who had been wrongfully deprived of his right, but it also embraced a more abstract conception of manly loyalty to the political entities of the crown, commons, and 'true people' of England.

The sources for the treason prosecutions against men like Wyghtlok, Louthe, and John Staunton incorporate first-person English directly into the official record, sandwiched between the third-person French of coerced confessions and the Latin of formal indictment and sentencing clauses. This usage is unusual, because as noted in Chapter One, while English was the aural

language of the common law, French or Latin will still be used almost exclusively in formal written records. The English-language material incorporated into trial records was either endorsed as 'written by my own hand' in cases like Staunton's confession, or it appeared in the form of copies of bills or letters being circulated by accused traitors. From the care taken to provide accurate transcriptions, and the way the English content was situated in relation to French and Latin components, it is clear that this was intended to serve as material proof of treason in the traitor's own words, the textual equivalent of his oral plea before the court. This would be consistent with the growing status of English as a language of record in other government contexts, and with the power attributed to the vernacular to endorse a written text as a 'true' copy of an oral/aural proceeding.

However, as an authenticator of 'truth', English could subvert as well as authorise. Fixing the first-person speech of the accused into the record validated it as definitive proof the state could use, but the interaction of Latin, French, and vernacular discourses could also open fractures in the state's monologic prosecution narratives. When the words of accused traitors were presented as 'truth' voluntarily revealed and given the status of legal proof, this inadvertently created possibilities for that same speech to destabilise the authorising texts within which it was embedded. In the confessions of men like the earl of Cambridge and Abbot Thomas, the use of first-person English had verified their supplications as sincere, but it also enabled evasion as they deflected the fault onto others while at the same time avowing they remained the king's loyal liege men. The power of the vernacular to authenticate the veracity of resistant claims to true manhood and loyal subjecthood was nowhere more apparent

than in the post-mortem conviction of the duke of Gloucester. His first-person confessional text had to be heavily edited before it could be presented publicly before the 1397 parliament, and the care taken to falsify the record in this way highlights the subversive potential of a man's sworn word to undermine the official prosecution narrative against him.

This linguistic dynamic is reminiscent of the first-person testimonies produced by inquisitorial procedures under canon or civil law, where the interaction of Latin and vernacular discourses created opportunities for evasion or resistance to authority. However, in the context of treason prosecutions under the common law, an additional layer of volatility was created. This was because, unlike inquisitorial proceedings, treason trials were conducted before the wider political community in the public space of King's Bench. The legal imperative to record the offenders' speech accurately as evidence and then to present it aurally as part of the performance of royal justice meant that alternative visions of loyal political subjecthood could leak into the public sphere. In many cases, these models of subjecthood remained conservative; there was no outright denial of monarchy as a legitimate form of political authority, but rather the claim that it was embodied by Richard II or by the earl of March, rather than the usurping Lancastrian kings. Wyghtlok's claim to be a true man to the crown recalled earlier constitutional crises, during which the political community had produced complex political justifications for treating the individual king and the office of kingship as separable. It also foreshadowed the kind of rhetoric that would shape public discourse from the 1450s, as political opponents on all sides claimed to be defending the crown from misgoverned or illegitimate kings. In other cases discussed here, the vision was

more radical. For example, the prosecution of Thomas Samford early in 1401 had uncovered a militant plan for rule by conquest. Coming so soon after Henry IV had essentially done this exact thing by entering England with an army and deposing Richard II, Samford's case raised dangerously extreme political possibilities. Later, Sir John Oldcastle was said to be planning to divide England into many smaller 'principalities', rendering it a monstrous political body without a head.

Although King's Bench was nominally under the control of royal judicial officials, in practical terms its physical and discursive boundaries were porous and it formed part of a wider public political sphere that encompassed the streets, taverns, and marketplaces of Westminster and London. This urban public political sphere was being shaped by the aural dissemination of bills like those of Wyghtlok and his fellow Westminster bill casters, which brought questions of governance, justice, and political authority out of the rarified circles of parliament and royal counsel and made them part of the discourse of ordinary people. Through these vernacular discourses, the commons were beginning to exercise an independent political and intellectual agency that would help to make public opinion an important influence in national politics by the second half of the fifteenth century.

Wyghtlok's surviving bill, alongside the more indirect sources for the letters sent to foreign governments and circulated domestically by men like Benedict Wolman, provide evidence that bill casters knew how to engage the broad popular audience of 'all who see and hear', but also how to craft appeals to men of far higher status. Their targets included the Lords and Commons in parliament; the representatives of the common law living and working at the

Inns of Court; the ruling authorities of France, the Low Countries, and Scotland; and even the emperor. The bill casters exhibited a sophisticated knowledge of petitionary practices, and they were skilled at deploying the rhetoric of the common law in combination with the aural vernacular of royal courts to authorise their texts as legitimate forms of political complaint. The cases discussed in Chapter Four also reveal a number of points where the community of political malcontents operating in and around Westminster overlapped with London's community of lollard religious dissenters. This confluence was most clearly marked in the case of the lollard lawyer and bill caster Thomas Lucas. This study has suggested that in addition to the social and professional connections between Westminster's political and religious dissenters, the two groups may also have been drawing from the same discursive well in their self-representations as 'trewe men' and in their appeals to law (whether God's law or common law) to justify their resistance to illegitimate political or religious authority. This is an intriguing supposition that would reward further investigation.

In addition to offering this new perspective from which to consider intersections between political and religious dissent, this research contributes to debates across a range of fields, including constitutional and legal history; historical linguistics; the study of popular political culture; and the history of gender, particularly in relation to processes of state formation. Over the past two decades, scholars examining later medieval England through the lens of political culture and the 'new constitutional history' have developed new interpretive models that effectively integrate individuals and institutions in order to understand how private and public power interacted. At the same time,

they have drawn on a wide range of sources, including parliamentary petitions, public proclamations, didactic treatises, and imaginative literature, to produce detailed studies exploring the relationship between political thought and political action. This study has shown that when read closely and with attention to both their rhetorical and linguistic features, the records of treason prosecutions offer another richly informative source for late medieval political thought, as well as providing evidence for how and in what circumstances political ideas were expressed, by whom, and with what constitutional results. Legal records may be particularly useful for understanding the relationship between theory and practice, because it was through the institution of royal justice that political power was most tangibly experienced as a force in the lives of individuals, and where it most directly shaped their relationship with the state. The scope of this study has necessarily been limited to a small number of cases over a brief timeframe. However, the findings suggest a more expansive investigation into legal records could offer additional insights into how the English state and individual political subjects addressed enduring questions about the constitutional relationship between the king, the law, and the political community. This could prove especially valuable for understanding systemic weaknesses contributing to the repeated political crises and civil wars of the fifteenth century.

This study has a number of implications for the *longue durée* history of treason in common law contexts. Scholars studying treason in the Tudor period have asserted that legal formulae drawing a causal connection from intentions, to words, to corporeal acts of treason were a product of sixteenth-century jurisprudence. However, early modern jurists were not making their

determinations or writing about the law in a vacuum, and it is known that both the Year Books and the plea rolls were important sources for precedent and legal opinion on difficult issues. The analysis of verdicts such as that in the Sperhauk case has shown that precedents for interpreting the 'intent' to talk others out of their allegiance as an attack on the person of the king were in place from the early fifteenth century. It would be invaluable to trace this legal and constitutional development over a far longer period, breaking down the conceptual barriers between 'medieval' and 'early modern' treason law by seeking evidence for early modern jurists drawing on fifteenth-century precedents.

Related to this inquiry is the role of jury behaviour in shaping treason law. In cases like that of Sir John Mortimer, juries were seen to actively resist the constructions of treason being developed by the state. As mediators between the judicial power of the state and its material impacts on the lives of individuals, juries were a critical site for negotiating political subjecthood through the law. Where the sources allow, further systematic investigation into jury behaviour in treason cases would no doubt shed more light on late medieval and early modern constitutional developments, and on how the state's views on the nature and loci of legitimate authority were received, adapted, or resisted by the wider political community.

Another issue broached by this study is the question of the relationship between common law and civil or canon law in late medieval England. While many historians continue to treat these as separate fields, the analysis of confessional letters and trial records presented here suggests certain similarities to heresy proceedings in ecclesiastical courts, indicating that

procedural and conceptual boundaries may in fact have been far more blurred than is often assumed. The legal interpretation of intentions and words as overt acts against the king's person may also reflect the influence of canon law views of heresy as a crime with its origins in corrupt thoughts and intent. Was there a proximate cause for this in English political and legal culture, possibly connected to the dual role of Thomas Arundel as Chancellor and archbishop of Canterbury? Or were common law judicial interpretations a reflection of more general legal developments in late medieval nation-states, which were increasingly treating political and religious dissent as synonymous? These are questions that would reward further investigation.

The argument presented here that connects legal developments on 'treason by words' with wider cultural perceptions of men's speech also calls attention to another lacuna remaining to be explored, which is the status of women implicated in cases of treason. Women appear exceedingly rarely in trial records, and when they do, they generally 'disappear' again without further legal action. The 'gossips' informing Sperhawk and Louthe were never named or charged. Maud de Vere, whose prominent role as the instigator of the Essex plot would seem to render her far more culpable than men like Abbot Thomas of Beeleigh, was not even questioned let alone formally indicted. As noted in Chapter Three, she escaped with only short-term financial penalties.¹ The crime of treason most fundamentally symbolised an irrevocable fracture between the state and the individual political subject. Arguably, in an overtly masculinist state like medieval England where the basic qualifier for active political

¹ Given-Wilson (*Henry IV*, 448) notes of Maud de Vere's case that Henry IV 'did not put women to death,' but he does not explore the reasons for this.

subjecthood was to be an adult male, women were simply not considered to have the political agency to *be* traitors. However, this remains an open question, and it is one I intend to pursue in future research.

The defiant and sometimes radical speech of a number of the accused traitors considered here has also contributed new material for the study of popular political culture in the fourteenth and fifteenth centuries. Early studies on dissent and rebellion tended to view the ‘commons’ as simply parroting the ideas of their political superiors, and often considered dissenters from the lower social orders as mere dupes of more sophisticated noble instigators. Recent scholarship has moved away from this rather condescending interpretive model, attributing far more political agency and creativity to the ordinary people who voiced their complaints in the urban streets and posted their political bills for ‘all to see and hear’. There is now a rich vein of scholarship on the ‘voices of the people’ in continental polities including France, the Low Countries, and Spain. However, in an English context much of this newer work either focuses on the major rebellion of 1381 or on the mid-to-late fifteenth century, against the background of political conflict between Lancastrians and Yorkists. The evidence considered in this study addresses the decades in between, and has shown that sophisticated popular political commentary was being produced in the form of bills and letters in the immediate wake of the Lancastrian usurpation. It is clear that for the men of the ‘commons’ circulating this material in streets, markets, and taverns, petitionary practices and the legitimising rhetoric of the common law were both familiar and accessible. While much work on late medieval popular politics in England has focused on large-scale rebellions such as that of 1381 or 1450, scholarly attention has

recently turned towards the analysis of more commonplace, non-violent expressions of political dissent. Writs and statutes considered in this study show that this type of non-violent political dissent was endemic in the early 1400s. It would be valuable to seek out further examples of bill casting, including those that did not result in charges of treason, in order to gain a fuller understanding of how and in what terms political complaint and constitutional thinking were being expressed.

From the perspective of linguistic politics, as well as legal culture and scribal practices, this research has provided additional evidence for the growing status of English as a language of record in the later medieval period. While I have only scraped the surface by considering the use of English in a small number of records relating to the prosecution of treason, this nevertheless sheds new light on the operations of state power and the way language functioned in judicial contexts to shape and negotiate the relationship between the state and political subjects. By considering the use of English in legal records, this study has also augmented recent research into English usage in other government contexts, such as for petitions or royal letters. This is a topic that requires far more investigation, including the question of whether the use of English was limited to treason trials, or whether by the early 1400s it was appearing more generally in trial records for other types of offence. In addition, the findings here may provide useful historical context for emerging research into the late-fifteenth-century development of a distinctive vernacular legal

culture, which came to be seen as integral to England's 'superior' common law judicial system.²

The longer history of treason shows that many of the questions addressed in this study have continued to resonate, not only throughout the early modern period but also down to the present day. Now, at a time when modern democratic states are struggling to balance principles of freedom of speech with laws defining 'hate speech' or incitement as criminal actions, the debated status of dissenting political speech in late medieval England may seem eerily familiar. The state might try to define such speech as an act of treason, but the wider political community represented by juries does not always accept such expansive constructions as valid. In 2016 as in 1416, the boundaries between politically offensive but legally allowable speech, and words that have crossed a line to become criminal deeds, remain imprecise and difficult to navigate. As the world asks whether whistleblowers such as Edward Snowden are 'traitors' or 'patriots', or whether 'terrorism is the modern form of treason', we are by implication debating what it is that defines a loyal political subject or citizen, and therefore what makes any one individual someone who merits the protections and privileges that status entails.³ This necessarily forces us to engage with enduring questions of where sovereign power lies in the state; how individuals as citizens or subjects are constituted in relation to that power; and what the limits of legitimate political authority are, especially as it is expressed

² For example, Sebastian I. Sobecki, *Unwritten Verities: The Making of England's Vernacular Legal Culture, 1463-1549* (Notre Dame, IN: University of Notre Dame Press, 2015).

³ A comment made by the former Australian Prime Minister, Tony Abbott: "Australia PM calls terrorism 'treason's modern form,'" *Al Jazeera*, 11 June, 2015, accessed 6 November, 2015, <http://www.aljazeera.com/news/2015/06/australia-pm-calls-terrorism-modern-form-treason-150611020510296.html>. For a nuanced view of the political and cultural implications of this debate across a range of modern polities, see the essays in Thiranagama and Kelly, *Traitors: Suspicion, Intimacy, and the Ethics of State-Building*.

in the state's coercive power to execute justice. In polities built on common law, contextualising current legal and constitutional debates within a longer history of treason and political subjecthood may help us to better grasp the principles at stake and perhaps, to develop more nuanced judicial and political responses to contemporary challenges.

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