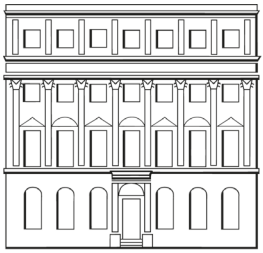

German Historical Institute London

German Historical Institute London Bulletin

CONFERENCE REPORT

Law and Consent in Medieval Britain
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German Historical Institute London Bulletin
Vol. XLIII, No. 1 (May 2021), 159–163

ISSN 0269-8552

CONFERENCE REPORTS

Law and Consent in Medieval Britain. Workshop organized by the German Historical Institute London in co-operation with the History of Parliament Trust and held online on 30 October 2020. Conveners: Hannes Kleineke (History of Parliament Trust) and Stephan Bruhn (German Historical Institute London).

On Monday, 2 November 2020, a video posted on Twitter showed the owner of a soft-play centre in Liverpool rejecting Covid-19 regulations, citing Clause 61 of Magna Carta. This historical agreement between the English king and his magnates was first concluded in 1215. In the opinion of the owner, the police had no right to close down his business since the medieval document showed that government authorities were bound by law and had to be resisted if they encroached on central personal liberties. This claim immediately provoked reactions from historians of the Middle Ages, who rightly pointed out that although parts of Magna Carta are, indeed, still part of English law today, Clause 61 is no longer in force. In fact, it was removed in 1216, when the agreement was revised after King John's death.

This case not only points to contemporary tensions which in turn show that societal acceptance of regulations can become extremely fragile at times of crisis, especially when they touch on personal liberties. It also highlights the function of the medieval past as a repository for current ideological and political debates. Although Magna Carta—an agreement between a monarch and his noble elites, not the people as a whole—has nothing to do with democratic ideals governing decision-making processes, it is, paradoxically and anachronistically, regularly cited as evidence for the continuous

This report is based on a post published previously on the GHIL's Blog, at [https://ghil.hypotheses.org/236#more-236]. I would like to thank Marcus Meer (GHIL) for his help, which has greatly benefited the text.

primacy of popular consent and the rule of law from the medieval past to the present. The example shows that our picture of law and consent in medieval Britain is far from accurate, which is why this topic was suitable for a one-day workshop, jointly organized by the History of Parliament Trust and the German Historical Institute London and held on 30 October 2020.

Stephan Bruhn and Hannes Kleineke opened their welcome address by observing that 'consent' is seldom explained, let alone defined—as if it were self-explanatory. Yet on closer examination, questions arise. Is there only one type of consent? For instance, does the term apply to all practices of collective decision-making? How can consent be achieved? Who needs to give their consent, and in what circumstances? Does it follow the principle of majority rule, or is there a need for unanimity? Is consent a means to an end, or can it also be an end in itself? Is it an essential prerequisite for action, or just a topos used to legitimize decisions already made by others, whether by a single ruler or a small elite? The workshop tackled these issues by focusing on the creation and application of law in medieval Britain. It brought together historians of different periods (early to late Middle Ages) and from different research contexts (England and Germany). Speakers addressed diverse topics, ranging from Anglo-Saxon synods to the parliaments of the later Middle Ages.

The first session was dedicated to ecclesiastical attitudes towards consent, with a focus on assemblies. Stephan Bruhn (GHIL) analysed how archbishops' claims to monarchical leadership were brought into line with pre-existing patterns of collective Church government at synods in early medieval England. Consent, understood as an essential Christian concept, played an important role in this process as it had different meanings and thus could be used for various purposes, such as promoting archiepiscopal authority.

Daniel Gosling (The National Archives, Kew) widened this perspective in the second paper by looking at the influence of ecclesiastics on the legislative processes of the English Parliament in the later Middle Ages. While MPs were concerned about the influence of the Church, actual attempts by members of the clergy to influence parliamentary processes remained the exception and had limited success. Although itself affected by secular legislation, especially when it

came to the holding of benefices, the clergy seldom used its vote in Parliament, preferring instead to appeal to the king directly and thus circumventing an institution that was supposed to ensure broadly based consent.

The question of the actual importance of processes intended to ensure consent was then raised in the discussion following the papers: to what extent did synods, parliaments, and other assemblies merely rubber-stamp decisions taken by powerful individuals eager to create the illusion of popular approval?

The role of consent in the royal succession was at the heart of the second session. The first paper, by Alheydis Plassmann (University of Bonn), addressed the role of consent during Stephen of Blois's rise to kingship. Although there were no formal elections in England at this point, the barons clearly had a say in the appointment of a new king, as their decisive influence on Stephen's path to kingship shows. This was far from straightforward in dynastic terms. Had Stephen ultimately prevailed in the dispute over the throne, Plassmann suggested, his reign could have been crucial for the magnates' claim to the right to hold formal elections.

Stephen Church (University of East Anglia) identified similar tendencies for the succession after the death of Henry II. As Henry's oldest living son, Richard I clearly had a solid claim to the English throne. Nonetheless, he had to secure this position by winning over the magnates, since his younger brother John or his Guelph nephew Otto of Brunswick could have been viable alternatives. Consent also mattered when it came to the actual enthronement, when the acclamation of the commons added another layer of consent, if only as a formality.

The following discussion indicated that the papers diverged from current scholarship—most notably Robert Bartlett's recent *Blood Royal*, which stresses the dynastic dimensions of royal succession.[1] In contrast, both papers showed just how important ideas of consensus were in the processes of English royal succession, and thus pointed to clear similarities with practices in Germany.

[1] Robert Bartlett, *Blood Royal: Dynastic Politics in Medieval Europe* (Cambridge, 2020).

The last session was dedicated to the broader issues of consent in debating and making decisions. Adrian Jobson (University of Bristol) took a fresh look at the First Barons' War (1215–17), highlighting the importance of consent-seeking for both the baronial and Montfortian reform programmes. Still, for the reformist movement, the desire for unanimity and self-serving pragmatism were not mutually exclusive, and there was no contradiction in its agenda between altruistic goals and self-interest.

Mark Whelan (King's College London) opened the perspective to the Continent in his paper on Cardinal Beaufort's struggle to raise an Empire-wide tax in Germany to finance the Hussite Wars. Drawing on new archival findings, he emphasized the complex nature of the consent that had to be negotiated and secured from various layers of the Holy Roman Empire's hierarchy. While different actors accepted some aspects of Beaufort's plan, the cardinal's efforts ultimately failed because the ambitious project could not be realized simply by seeking consent from the Imperial Diet alone, as Beaufort's English background might have led him to believe.

The last paper in the workshop returned to ecclesiastical lawmaking. By focusing on William Lyndwood's *Provinciale* (*c.*1432), a commentary on the decrees of the Canterbury province, Paul Cavill (Pembroke College, Cambridge) analysed how a local body of canon law was received and adopted in late medieval England. While Lyndwood seldom applied the idea of consent to law, later readers added glosses which downplayed the archbishops' importance within the provincial synod. On a 'national' level, the *Provinciale* mirrored the cross-fertilization of ideas between Church and state as it also commented on the relationship between ecclesiastical and secular governments and later found its way into the statutes passed by Parliament.

A formal response by Levi Roach (University of Exeter) opened the workshop's concluding discussion. In summing up the participants' different approaches, Roach stressed the benefits of Anglo-German comparisons and conceptual work on key terms such as 'consensus', 'consensual rule', and 'law' to further bridge gaps between the past, the present, and different historiographical traditions. By adopting a broad, comparative perspective of this sort, differences that are

taken for granted can quickly be replaced by surprising similarities, just as a closer look can reveal unexpected differences. Given that the papers highlighted the many and varied manifestations of consensus and its procedural dimensions, several issues remained to be addressed—a statement which the participants agreed with in the final discussion. One of these issues relates to Roach's observation that by the fourteenth century, there seemed to be increased interest in conceptualizing ideas such as consent. The notion of an 'oven-ready' concept of law and consent in the Middle Ages—however desirable this may seem to contemporary students of the past—does not do justice to the nuances and evolution of these two notions during the medieval period. Putting contemporary debates and discourses into a historical perspective thus still promises to broaden our views of present-day phenomena.

Stephan Bruhn (GHIL)