Formalism and Realism in Fifteenth-Century English Law: Bodies Corporate and Bodies Natural

David J. Seipp
Boston University School of Law

Thomas Reed Powell, a U.S. law professor, said seventy years ago or more, "if you think you can think about a thing, inextricably attached to something else, without thinking of the thing it is attached to, then you have a legal mind."[i] Though many lawyers claim they have this legal mind as a matter of pride, Prof. Powell, I am sure, did not mean this as a compliment. The Legal Realism movement that swept through U.S. law schools in the 1920's and 1930's taught, among other things, that lawyers must see the real attachments between things, attachments that Legal Formalism had been so good at ignoring.

I was reminded of things inextricably attached to each other and of the legal mind that could so completely separate them as I worked my way through the Year Book reports of the end of the reign of Edward IV. In about a dozen reports from 1478 to 1482, many of them extending over several folios, English lawyers and judges made arguments that reminded me of formalist and realist positions. Let me say at once that I am not trying to claim that American Legal Realism was invented in 1478 in Westminster Hall. All Year Book discourse took place within a decidedly formalist framework. But in cases about what late-fifteenth-century English lawyers and judges called corporations and bodies politic, some of these lawyers and judges argued that these collective entities

were entirely separate from the real human beings who composed them, arguments that I will label formalist here, and others broke down that separation and argued that the legal positions of the individuals inside these collective entities could affect the collective entities themselves, arguments that I will label realist.

Frederic William Maitland took up many of these same cases in his classic *History of English Law* in 1898 and found them among "the most interesting cases in all the Year Books."[ii] Maitland had asked whether the theoretical basis of medieval English corporations was a canonist legal fiction idea or a more Germanic organic unity of groups. Here is a passage from his discussion of these late-fifteenth-century cases:

> The corporation is invisible, incorporeal, immortal; it cannot be assaulted, or beaten or imprisoned; it cannot commit treason; a doubt has occurred as to whether it can commit a trespass, but this doubt (though it will give trouble so late as the year 1842), has been rejected by practice, if not removed by any consistent theory. We even find it said that the corporation is but a name. On the other hand, it is a person. It is at once a person and yet but a name; in short it is a persona ficta.[iii]

After Maitland set the topic in 1893, Cecil Carr, Frederick Pollock, Harold Laski, William Holdsworth, H. Ke Chin Wong and Heinz Lubasz rang the changes on Maitland's thesis down through 1964.[iv] I will review some of these same arguments from the corporation cases, but with a different question in mind.

What I expected to find when I worked on each of these cases in isolation, as they came up in Year Book order, was that arguments that a corporate entity was entirely separate from the real individuals who comprised it and opposing arguments that the court should see through the corporate entity to consider the people inside of it would be

made by two opposing groups of lawyers and judges. I wanted to find formalist serjeants and justices regularly making the first type of argument in opposition to realist serjeants and justices regularly making the second type of argument. If lawyers as advocates couldn't differentiate themselves in this way, because they had to take their clients and their clients' best arguments as they found them, I expected that then at least judges would be consistent along this formalist-realist divide. What I found instead was that these lawyers and judges switched sides regularly, making arguments that seemed to me not only inconsistent, but having entirely different theoretical orientations.

First, a few words about terminology. The term "body politic" (corps politique) was introduced in the Year Books in Michaelmas 1478, when Serjeant Starkey said that there was a distinction between bodies politic and natural bodies.[v] Ten more reports used the term in the next four years, and a steady stream thereafter. Body politic did not mean the whole realm of England, but meant a mayor and commonalty of a city or town, a dean and chapter of a cathedral, a master and scholars of a college, or an abbot and covent of an abbey. Two abridgers of Year Book reports interpolated the term body politic into entries for cases from 1429 and 1388 but these are later additions to the original text[vi]. I did not find a parliament roll referring to a body politic until 1484, though then it was to "the body politic of England,"[vii] and a statute first used the term in 1523.[viii] The Oxford English Dictionary has no earlier references to a body politic.

The term corporation is older than body politic in the Year Books, appearing from 1429, the word corporate from 1408, incorporate from 1439, and the rather redundant "body corporate" (corps corporate) in a 1481 report[ix] as well as in a statute of 1461, which has also the first occurrence of the word corporation in any statute.[x] When

distinguished from these collective bodies, we ordinary human beings were called bodies natural, private persons, singular persons, sole persons, natural persons, single persons, common persons, natural men, and material men.[xi]

Now, to start with, two earlier cases led into the sort of disputes that raised these arguments around 1480. In 1372, a plaintiff prosecuted a nuisance action against the Dean and Chapter of St. Peter of Exeter and against a clerk named John Weliot. Counsel for the defendants pleaded that the named clerk was also a member of the chapter, and was thus sued twice. We have two reports of the case, but both just say that this plea "was not allowed."[xii]

The same issue came up again in 1429, and the reports show a much more interesting argument. (Maitland liked this case too.) The mayor, bailiffs and commonalty of Ipswich were sued for trespass, along with one J. Jabe as an individual defendant. Serjeant Rolf for the defendants pleaded that the individual defendant was one of the commonalty, and so was sued twice as a defendant. Justice Martin agreed with Rolf that if this writ were allowed the individual defendant could be charged twice for the same wrong or there could be inconsistent verdicts, and so the writ should be thrown out. Chief Justice Babington and Justice Paston disagreed with Martin. Martin had argued that if judgments were given against both the collective entity and the individual defendant, then that individual's goods could be put in execution twice. Babington and Paston insisted that when judgment is given against a collective entity, damages are only collected from goods that were collectively owned. Martin pointed out that when the king fined or amerced a collective entity, the king levied the fine on goods of the individual members, not just collectively-owned goods. The reports differ on whether

Babington conceded this point about fines to the king, as he should have, because Martin was right, but if there was one sure rule of the early common law it was, as Babington remarked in one of these reports, that there was a big difference between the king and everybody else. Maitland saw here the first stirrings of limited liability, the separation of corporate assets from individual assets for some purposes. Justice Strangeways joined with Babington and Paston on the formalist side saying that "no individual person is the commonalty" calling it an aggregate and at the same time a body. Like so many Year Book cases, this one has no judgment reported, but the weight of judicial authority seems to line up with the 1372 case on the formalist side.[xiii]

In 1478, an abbot and covent of an abbey brought a writ of trespass for trees cut down in the time of the abbot's predecessor. The defendant pleaded the legal maxim that personal actions die with the person, so it was too late to sue about what happened in the time of the previous abbot. Before the case went off on the application of the Statute of Marlborough (1267) as to standing trees, Serjeant Humfrey Starkey explained that the abbot and covent as a corporation, a body politic, unlike a natural body, could not die, could not be dead, and so its personal actions would always survive.[xiv] This point that corporations could not die had been made in 1465, and would be made again in four different cases in 1481 and 1482.[xv]

The two principal cases that best contrast formalist and realist arguments, one with five reports from 1478 to 1482 and the other with four reports all from 1481, were about a jury challenge and a duress defense. Both were "serjeants' cases" in which every one of the serjeants spoke. The jury challenge case can be called the Dean and Chapter of Lincoln versus Prat. A party, presumably Prat, challenged one of the prospective

jurors on the grounds that the juror was a brother of one of the canons or prebendaries of Lincoln Cathedral, thus a brother of one member of the chapter.[xvi]

In the Lincoln case, the formalist position, argued by four serjeants, one apprentice, and one justice, said that the canon's brother should not be struck off the jury. Some of the arguments were that the dean-and-chapter as a collective entity could not have a brother or any other relative, that the canon himself was a stranger to the action and not a party or privy to it, that the canon's death or excommunication or a release from the canon would not affect the lawsuit, that if the collective body lost a judgment the canon's own goods would not be executed upon, as was said in 1429, and finally that the canon had no advantage or individual benefit or interest if the collective body won. The collective entity of dean-and-chapter was completely separate, completely estranged from the canons who made up the chapter.

The realist position in this Lincoln case, argued by four serjeants, four justices, and one serjeant who became a justice while argument continued, was that the challenge was good and the canon's brother should be struck from the jury for presumed bias. Some of the arguments were that the canon was a party or privy to the action and not a stranger, that he had advantage by the collective body's recovery to their common use, and that the canon's brother would be permitted to appear in court and give evidence (if he had any), as a family member not barred by the law of maintenance, so that as to the dean and chapter he was family. Most often, those arguing the realist position said simply that the brother of one of the canons could be presumed to be biased when the dean and chapter were a party.

Though the justices said during argument that this question was evenly poised, *aequedubium,* all but one of the justices whose speeches were recorded argued the realist position, and it prevailed, striking the canon's brother from the jury. Older Year Book cases struck from juries brothers or other relatives of monks or nuns when the abbot and covent were on trial,[xvii]

that abbots went around imprisoning others in order to enter into bond obligations, six earlier Year Book reports show pleadings that abbots had imprisoned priors, imprisoned monks, threatened imprisonment, or had been imprisoned themselves.[xx]

The formalist position, argued by five serjeants and one justice, took the abbot's side and contended that imprisoning the mayor was not duress, so the city had to pay the abbot on the bond. Some of the arguments were that it was impossible to imprison a collective entity, just as it could not be beaten or wounded, that a collective entity likewise could not commit treason or felony or any corporal wrong for which it could be imprisoned, that the mayor was a stranger to the collective body, that the mayor was not imprisoned "as mayor," that if the mayor had been insane, an infant, excommunicated, outlawed, or a villein, or had given a release, none of these would have voided the collective entity's bond, and that the collective body had no cause of action for its mayor's imprisonment. As with the jury challenge case, there were earlier Year Book cases on the duress defense establishing that imprisonment of an abbot would invalidate the abbot and covent's deed. The formalist position again distinguished these old cases in the same way, arguing that the monks of the abbot's covent were dead in law, while all of the commonalty were fully capable at law.

The realist position, argued by five serjeants and two justices, took the Norwich side and argued that the city's bond was void for duress. Some of the arguments were that without the mayor's free and willing personal agreement the collective entity's bond was void, that thus not all of the collective body had made the bond and it was not their bond, that the mayor was imprisoned as mayor, that the mayor was not a stranger to the collective body, but was its principal member and head, that if the head be imprisoned the

rest of the body can do nothing, and that the collective entity could sue a writ of false imprisonment when their mayor was imprisoned. No judgment is reported in this case. Two Justices of Common Pleas, including the Chief Justice, favored the realist side and the defendant city. One Justice and a serjeant who was appointed Justice in the same Term the case was reported favored the formalist side.

Again I find the formalist arguments odd and unpersuasive. The extreme formalist position seemed to be that every single member of the collective body could be imprisoned, and yet the collective body itself was somehow distinct from and a stranger to all of them, could not be imprisoned and thus could never have a duress defense. The same Chief Justice who took the realist side in this case made that very formalist argument in 1475.[xxi] This again supposes that real human beings experience their role in a collective entity as entirely disconnected from their individual personal situations. I doubt the mayor of Norwich in Fleet prison had much consolation if he had known that half the serjeants and justices of England thought that he was not imprisoned "as mayor." If my dean were imprisoned to force us as a dean and faculty to enter into a promissory note, I think we should have a duress defense.

In both cases, those arguing the realist position tended to concede many of the narrow points made by the formalists but then disputed that those points did not lead to the formalist result. Those arguing the formalist position, perhaps ironically, made the most pragmatic arguments. Thus, no jury could ever be sworn when the Mayor and Commonalty of London were on trial, if relatives of every Londoner were excluded, to which Chief Justice Huse on the opposing realist side said that such a particular point would not change the law.[xxii] And if imprisonment of any one member of the

commonalty would void an obligation for duress, then the mayor and commonalty of no city could ever make a valid bond when any of the commonalty was in prison. Chief Justice Bryan, to refute this argument, announced that to enter into a bond or to take any other action a commonalty required only majority agreement, not unanimous consent.[xxiii] His is a rare judicial endorsement of majority rule in the Year Books.[xxiv]

The form of most Year Book argument from the thirteenth century onward was argument by analogy. Serjeants and justices would put hypothetical cases that were meant to seem obvious to both sides or would assert what had often been adjudged, and then the similarity of the hypothetical case to the actual litigated case was supposed to persuade rest of the court and bar. These analogies tended to be far broader, far more distant than we would use today. Many of the formalist and realist arguments in these cases followed this form, reasoning from dean and chapter to mayor and commonalty to husband and wife to one's hand and one's head. But what seem new to me in these corporation cases from the early 1480's are the arguments that pursue and extend this concept, the collective entity, its separate existence, and thereby its estrangement from the real people who made it up. So I suppose what I am calling formalism here could more precisely be called conceptualism.

When Serjeant Humfrey Starkey first said in 1478, that there was a distinction between a natural body and a body politic, which is ordained by the policy of a man (or of one man), this suggests that the body politic and the arguments associated with it were consciously invented.[xxv] Many of the arguments pursue and elaborate the metaphor of an disembodied incorporeal yet corporate body composed of many natural bodies. The most obvious and proximate source of this talk in Westminster Hall about bodies politic, their

heads and their members was the "conciliarist" writing earlier in the fifteenth century by theologians and canonist lawyers, mostly in Paris, about the "mystical body" (*corpus mysticum*) of the church, based on 1 Corinthians chapter 12, and the church's *corpus politicum*.[xxvi] These church reformers had an immediate, practical need to differentiate the church as an ideal entity from the individual popes and prelates who led it at the time. Their writings clearly influenced English constitutional writers of later centuries.

Justice Fairfax, in a case in 1481 about charging a successor abbot for his predecessor's act, actually called an abbacy a "mystical body" that never died.[xxvii] There are hints as well of other religious models for these arguments. Chief Justice Bryan and two serjeants all said in various ways that in the body politic of Norwich there were "three separate persons," mayor, sheriffs, and commonalty, "this body is in three parts," three "distinct members." This recalls the theologians' mystery of the trinity preached every Trinity Sunday. Serjeant Pygot, whose formalist arguments were the most detailed, said that "the corporation ... is only a name that cannot be seen and does not have substance."[xxviii] Justice Choke said that a body politic is made up of natural men and yet when it is made it is a dead person in law, which could not be arrested, a body dead in law.[xxix]

Ernst Kantorowicz in his masterful The King's Two Bodies of 1957 joined other scholars in attempting to show that these Year Book lawyers in 1478 and afterwards were transplanting Pope Alexander III's late twelfth-century decretal *Quoniam abbas*,[xxx] and its accompanying glosses and elaborations from Innocent IV in the mid-thirteenth-century, translating the canonist *dignitas* now for some reason as body politic and corporation in the late fifteenth century.[xxxi] Some of the arguments these lawyers made, that the body

politic never died, and that a legal act taken in one's personal name had completely different consequences from the same act taken in the name of one's role in a collective entity, do support that link. In many other contexts, Year Book lawyers stated much more clearly that they were drawing on the law of holy Church or were talking to doctors of the canon law side.[xxxii] I'm not convinced.

Kantorowicz and others have also suggested an origin for these arguments in the high politics of the realm, linked to the decision supposed to have been made by Edward IV's legal counselors changing the Duchy of Lancaster from a personal possession of the Lancastrian kings to a corporation held by the House of York.[xxxiii] Successors of these Year Book lawyers were to build upon these body politic arguments eighty years later in 1561 in Plowden's report of the case of the Duchy of Lancaster, a great matter of state, in which it was resolved that the nine-year-old Edward VI had in him two bodies, to wit, a body natural and a body politic.[xxxiv] It is hard to imagine that these 1481 arguments about the canon's brother's jury duty or the mayor's imprisonment were dictated by crown policy or eight decades' foresight. King's Serjeants were about as likely to make realist arguments as formalist ones, as was Humfrey Starkey, former Recorder of London.

I suspect that in a broader sense the appeal of these formalist arguments was simply the lawyers' love of the counterintuitive result. For legal reasoning to be different from and better than ordinary common sense, there seems to be a need for legal reasoning to reach unlikely, surprising, tricky, paradoxical outcomes. So we have lawyers' loopholes, technicalities, and traps for the unwary. Guilty defendants go free. Bequests to grandchildren at their christening are void as perpetuities. And we have collective entities that have nothing to do with the people collected within them. We have brothers

who are not brothers, mayors who are not mayors, and imprisonment that is not imprisonment.

As I said already, I did not find a consistent group of formalists to deplore nor a consistent group of realists to admire among the bench and bar of 1481. In Michaelmas 1481, there were nine serjeants at law, four Justices of Common Pleas, and three Justices of King's Bench. Between the two cases that I have studied most closely, the Lincoln jury challenge and the Norwich duress defense, two serjeants (Catesby and Pygot) stayed formalist, two (Tremayle and Townshend) switched from formalist to realist, two (Starkey and Bridges) switched from realist to formalist, and one (Vavasour) stayed realist. Both serjeants who remained formalist in these two cases (across nine different reports), Catesby and Pygot, took the realist position against Starkey in 1478, refusing to find a body politic separate from the dead abbot.[xxxv] The one consistent realist in the Lincoln and Norwich cases, Vavasour, took formalist positions in cases involving interpretation of a jury exemption in 1481 and disseisin of rent from dean and chapter in 1483.[xxxvi] I found no consistently formalist nor consistently realist serjeants.

These serjeants were advocates, of course, who pleaded for the clients they had, so their inconsistency is perhaps to be expected. But my two principal cases were so-called serjeants' cases, in which every serjeant at the bar took part, and it seems unlikely that the two parties would have paid counsel fees to all of the serjeants who spoke, when in one case the dispute was merely a challenge of one juror in an assize. There has sometimes been an assumption that in civil cases every lawyer who spoke in support for one side's position or another's was paid a fee by the litigant, and an opposite assumption in criminal cases. The truth probably lies somewhere in between. I still find it puzzling

that the serjeants who might be expected to argue their own opinions as if they were judges showed so little consistency in this regard.

We can and should expect more consistency from the judges. Justices of Common Pleas spoke in both cases. Two of them, Nele and Chief Justice Bryan, stayed on the realist side, and one, Choke, switched from realist to formalist. Bryan, a consistent realist in the Lincoln and Norwich cases, made some very formalist arguments in cases before and since. Bryan argued in 1475 that it was impossible to imprison an abbot and covent even if the abbot and all the monks were imprisoned, and in 1488 he argued that a collective entity could not hire or command a servant without writing, though he did not use quite as formalist an argument of Serjeant Wode employed in 1492 on the same issue, that a corporate body had no mouth, so it was reduced to writing, although somehow then it did have hands.[xxxvii] The other consistent realist, Justice Nele, was not reported in any other case raising these issues.

All these Serjeants and Justices, so renowned for finding distinctions between seemingly identical situations, did not make a distinction between the Lincoln jury challenge dispute and the Norwich duress defense. They did not distinguish between the corporate identity of the dean and chapter as a religious group and that of the mayor and commonalty as civic group. The jury challenge and duress defense situations are analytically similar as instances of sworn obligations overcome by presumed human frailties: a juror's oath to give a true and impartial verdict overcome by family loyalty (presumed bias), and a contractual obligation to pay money overcome by imprisonment (presumed lack of consent). Consistency of approach across these two and other similar cases is not too much to expect.

So I find distinct, persistent patterns of two types of opposing arguments, but not two distinct, consistent groups of lawyers or judges who make these opposing arguments. I find formalism and realism, but no formalists, no realists. Year Book reports carefully name the speakers in almost every case, but the content of the named lawyers' and judges' speeches does not differentiate them well at all. Any judge's speech could have been made by any other judge, and any serjeant's speech by any other serjeant. I have not found any speaker in the late fifteenth century Year Books as distinctive as Thomas Rolf, who in the 1420's and 1430's barked animals noises, sang snatches of ballads, reported a seven-year pregnancy, introduced Latin grammar and logic terminology, and made arguments from etymology.[xxxviii]

Thomas Littleton, the author of the famous treatise on Tenures, stands out in the years before his death in August 1481, because his pronouncements often seem didactic. Littleton conveniently died just months before these arguments took place about bodies politic and their separation from the people inside them, but when he did speak in prior cases raising similar issues he tended to split the difference between formalist and realist positions in oddly modern-sounding ways.[xxxix]

In this examination of formalist and realist arguments I intended to find heroes and villains, but in failing to find them I find another lesson about fifteenth-century English judges and lawyers. They did not seem to invest their personalities in the performance of their professional duties. They seemed to appreciate that the full range of the legal profession's stockpile of arguments needed to be preserved, and a serjeant or judge would take up an argument in one case, inconsistent with what he had just said in another case, simply because no one else was making that argument, or no one else was

making that argument well enough. I suspect that these judges and lawyers were not interested in driving one or another type of argument out of existence, but were consciously preserving modes of argument because the next generation's clients might need them. These fifteenth-century judges did not view the opposing arguments the way I read them (and Maitland read them), as so fundamentally opposed to one another that no single person could seriously make both sorts of arguments in different cases. Each side did not think the other side's arguments were silly or not worth making, though Maitland would say that Edward Coke and Robert Brooke made an awful nonsense of those arguments in later centuries.

Looking for distinctive, consistent individual judicial philosophies, what I find instead is a consistent collective judicial commitment to preservation of conflicting philosophies and conflicting approaches. What I find is a corporate, collective personality separable from the individuals who comprised the judiciary and bar of fifteenth-century England.

[i] Thomas Reed Powell, quoted in Thurman W. Arnold, The Symbols of Government, p. 101 (1935).

[ii] Frederick Pollock & Frederic William Maitland, A History of English Law, vol. 1, p. 491 (2nd ed., Cambridge 1898). Maitland took Otto von Gierke's Das Deutsche Genossenschaftsrecht (Berlin 1873) with him on his first winter spent in the Canary Islands. He was strangely attracted to Gierke's idea of the organic reality of groups in German law. H.A.L. Fisher, Frederick William Maitland: A Biographical Sketch (Cambridge 1910), pp. 157-159. The German influence on English and American corporation law is well examined in Ron Harris, The Transplantation of the Legal Discourse on Corporate Personality Theories, Washington & Lee Law Review, vol. 63, pp. 1421-1478 (2006).

[iii] Id. at 490-491. Maitland based this passage on a lecture he delivered to Liverpool law students on 25 May 1893. Frederic William Maitland, The Corporation Aggregate: The History of a Legal Idea, p. 6 (Liverpool 1893).

[iv] C.T. Carr, The General Principles of the Law of Corporations (Cambridge 1905), pp. 150-153 ("Anthropomorphism"); Frederick Pollock, Has the Common Law Received the Fiction Theory of Corporations?, Law Quarterly Review, vol. 27, pp. 219-235 (1911); Harold J. Laski, The Early History of the Corporation in England, Harvard Law Review, vol. 30, pp. 561-588 (1917); W.S. Holdsworth, English Corporation Law in the 16th an 17th Centuries, Yale Law Journal, vol. 31, pp. 382-407 (1922); W.S. Holdsworth, A History of English Law, (3rd ed., London 1923), vol. 3, pp. 482-487; John Dewey, The Historical Background of Corporate Legal Personalty, Yale Law Journal, vol. 35 pp. 655-673 (1926); H. Ke Chin Wang, The Corporate Entity Concept (or Fiction Theory) in the Year Book Period, Law Quarterly Review, vol. 58, pp. 498-511 (1942), and vol. 59, pp. 72-86 (1943); Heinz Lubasz, The Corporate Borough in the Common Law of the Late Year-Book Period, Law Quarterly Review, vol. 80, pp. 228-243 (1964). And see now Sir John Baker, The Oxford History of the Laws of England (Oxford 2003), vol. 6, pp. 622-627, and Susan Reynolds, The History of the Idea of Incorporation or Legal Personality: A Case of Fallacious Teleology, in Ideas and Solidarities of the Medieval Laity (Variorum 1995), VI, pp. 12-14.

[v] Mich. 18 Edw. 4, pl. 17, fol. 15b-16a (1478.088). Parenthetical references in Year Book citations are to the author's index and paraphrase of printed Year Book reports, www.bu.edu/law/seipp.

[vi] Robert Brooke, Grand Abridgement, tit. Corporations, pl. 24, fol. 188v (London 1563), excerpting Mich. 8 Hen. 6, pl. 2, fol. 1a-1b (1429.086) and adding words, "to wit, a body politic and a natural body"); David Jenkins, Eight Centuries (London 1661), p. 64 (2nd century, case 21), 145 Eng. Rep. 46, a version of Trin. 12 Ric. 2, pl. 10, Ames 19-20 (1388.058am).

[vii] A roll of Parliament referred to "the body politic of England" in 1484, 6 Rot. Parl. 237a (23 Jan. 1484). A Year Book report of 1522 had the statement that the king, lords, and commons in Parliament were a corporation. Mich. 14 Hen. 8, pl. 2, 119 SS 98, 101 (Fyneux CJKB) (1522.011ss).

[viii] 14 & 15 Hen. 8, ch. 6, sec. 5 (1523).

[ix] Mich. 8 Hen. 6, pl. 2, fol. 1a-1b (1429.086) (corporation); Mich. 10 Hen. 4, pl. 5, fol. 3b (1408.005) (corporate); Mich. 18 Hen. 6, pl. 6, fol. 21a-22a (1439.006) (incorporate); Pasch. 21 Edw. 4, pl. 21, fol. 7a-7b (1481.029) (body corporate).

[x] 1 Edw. 4, ch. 1 (1461).

[xi] Most of these terms can be found in the Lincoln and Norwich cases cited below; natural body in Mich. 18 Edw. 4, pl. 17, fol. 15b-16a (1478.088); material man in Hil. 21 Edw. 4, pl. 9, fol. 16a-16b (1482.009) (Sjt Sulyard); and common person in Hil. 10 Hen. 7, pl. 15, fol. 16a-6b (1495.015) (Sjt Wode).

[xii] Mich. 46 Edw. 3, pl. 7, fol. 23b-24a (1372.075); 46 Edw. 3, Lib. Ass. 9, fol. 306b-307a (1372.123ass).

[xiii] Mich. 8 Hen. 6, pl. 2, fol. 1a-1b (1429.086); Mich. 8 Hen. 6, pl. 34, fol. 14b-15a (1429.118); Mich. 9 Hen. 6, pl. 9, fol. 36b (1430.056).

[xiv] Mich. 18 Edw. 4, pl. 17, fol. 15b-16a (1478.088).

[xv] Mich. 21 Edw. 4, pl. 3, fol. [38]b (1481.071) (per Fairfax JKB); Mich. 21 Edw. 4, pl. 4, fol. 12b-15a (1481.068) (per Sjt Townshend); Hil. 21 Edw. 4, pl. 3, fol. 15a-15b (1482.003) (per Catesby JCP); Hil. 21 Edw. 4, pl. 9, fol. 75b-77b (1482.038) (per Sjt Pygot, "a crabbish case"). The practical difficulty that these religious entities did not die had ben realized at least as early as the mortmain legislation in 1279.

[xvi] Dean and Chapter of Lincoln v. Prat (1478-1482) was reported in Hil. 17 Edw. 4, pl. 1, fol. 7a (1478.001); Pasch. 21 Edw. 4, pl. 28, fol. 31a-33b (1481.059); Mich. 21 Edw. 4, pl. 3, fol. 11b-12b (1481.067); Mich. 21 Edw. 4, pl. 33, fol. 63a-63b (1481.101); and Hil. 21 Edw. 4, pl. 29, fol. 20b-21a (1482.029).

[xvii] E.g., Trin. 28 Hen. 6, pl. 17, fol. 10a (1450.007); 34 Edw. 3, Lib. Ass. pl. 6, fol. 203b-204b (1360.006ass).

[xviii] Abbot of St. Benet (Benedict) of Hulme v. Mayor and Commonalty of Norwich (1481), Pasch. 21 Edw. 4, pl. 21, fol. 7a-7b (1481.029); Pasch. 21 Edw. 4, pl. 22, fol. 27a-28b (1481.053); Mich. 21 Edw. 4, pl. 4, fol. 12b-15a (1481.068); and Mich. 21 Edw. 4, pl. 53, fol. 67b-70b (1481.121).

[xix] After a disputed mayoral election in 1433, former mayor Thomas Wetherby feuded with a succession of mayors, aldermen, and commons. Wetherby enlisted the Earl of Suffolk and the Abbot of Hulme on his side. Norwich enlisted the Duke of Gloucester on their side. In Jan. 1441, Wetherby instigated the Abbot to prosecute Norwich for erecting new mills on the river Wensum. A commission under the Earl of Suffolk awarded Norwich to pay the abbot 100 pounds. When the parties were ordered to appear before the king's council, the mayor was committed to Fleet Prison from 13 Feb. to 26 Mar. 1441. On 10 Mar. 1441, while the mayor was in the Fleet, Wetherby took the Norwich common seal and, according to the Earl's award, sealed a bond of 100 pounds to the Abbot of Hulme. Francis Blomefield, An Essay Towards a Topographical History of the County of Norfolk, vol. 3, pp. 144-149 (London, 1806). Blomefield recorded that a successor abbot's lawsuit in 1481 to recover on the bond was unsuccessful, as was a commission subsequently brought to destroy the new mills. Id. at 149 n.7. See also J.R. Green, Town Life in the Fifteenth Century (London 1907), vol. 1, pp. 387 n.1, 391-393 (London, 1907); William Page, ed., The Victoria History of the County of Norfolk (London 1906), vol. 2, p. 334.

[xx] Trin. 28 Hen. 6, pl. 7, fol. 8b (1450.017); Mich. 35 Hen. 6, pl. 26, fol. 17b-18a (1456.080); Pasch. 38 Hen. 6, pl. 7, fol. 27a (1460.015); Mich. 39 Hen. 6, pl. 48, fol. 35b-36a (1460.076); Hil. 39 Hen. 6, pl. 16, fol. 50b-51b (1461.016); Mich. 15 Edw. 4, pl. 2, fol. 1b-2a (1475.034).z 005 Tm5P 0 Tw 0.00011 Tc -0a