

Chapter II

English Conceptions of the State Before Bodin

From the time of Bodin's first French edition of the *Six Books* (1576) to the Knolles translation (1606) there was, even without an English text, interest in England in the concept of legal absolutism and in Bodin. But before we may appreciate the complexity of the English reception of sovereignty after 1576, and what sort of things the English did with the concept up to 1628, it is first necessary to sketch the state of English political thinking, so far as the texts allow, on the eve of 1576. Tudor ideas relating to rule and constitutionalism were patchy and inconsistent in the turbulent first half of the Sixteenth century, but after the return of the Marian exiles from Strassburg in the late 50s this changed, and the Elizabethan era is a period of rapid advance and conceptual change in English political thought. By 1576 ideas of the State which took on an increasingly abstract and Aristotelian aspect were circulating. Bodin's advanced *Politique* and Humanist theories did not catch the English entirely unprepared.

The greater part of this Chapter aims to sketch the background to the Elizabethan and Jacobean writers who will be encountered in subsequent Chapters of the thesis. This will involve looking at English political discourses ranging from the time of John Fortescue at the end of the Fifteenth century to Thomas Smith and John Hooker in the Elizabethan period. By examining a cross-section of pre-sovereignty texts, concentrating on nine particular works, it is possible to arrive at an overall understanding of Tudor theories of rule, in which most of the divergent positions in this difficult period are represented. Contrasting these Tudor understandings to the theory of Bodin and the *Politiques* demonstrates the conceptual difficulties which lay in the way of adoption of the new theory, and the confusion of many of the pre-sovereignty texts on the increasingly important subject of the State also shows the timeliness and utility of the new concept.

Before looking at actual authors, we must acknowledge the importance to politics of the English Reformation. Although today we live in a highly secular society in the west, for people of the late middle ages and early modern period, religion was the universal cypher, and it could be used to delineate the contours of, and suggest solutions to, all dilemmas - especially political ones. The upheaval of the 1520's and 1530's was not merely a crisis in matters of religion, but shook to the core the Tudor consciousness, and though the idea of an Anglican church polity was not a new one, the ending of Catholic unity (indeed of Christendom), coming with the force of such immediacy, must have been a great shock.¹ The rise of a State in England at that time which was *de facto* supreme, confirmed by the new oaths of allegiance and supremacy, was largely achieved through the actions of a Parliament which was already well developed.² Even before its remarkable partnership with Henry VIII (and Thomas Cromwell) during the 1530's, the Commons had gradually acquired the right and habit of legislating positively, notably during the period of the Hundred Years War.³ The implication of this partnership with Henry, and of its successful outcome, is that both Parliament and king (in council) must have felt themselves to have, and been seen to have, a much exalted place in the constitutional framework and the scheme of things in general. Geoffrey Elton is in broad agreement with this view, confirming that the English Reformation "transferred to the king-in-Parliament the power to make the Church", and adding that this left "the supreme head with the more limited power to rule the Church".⁴ Hinsley argues for a greater increase in the monarch's powers than those of parliament, and makes the significant point that "it was this very harmony [between government and governed] which made an argued and considered statement of sovereignty unnecessary".⁵

In order to understand the Elizabethan State at the time of the first appearance of Bodin's theory, we need to be aware of the intellectual basis and political significance of

¹ Christopher Morris, *Political Thought in England: Tyndale to Hooker*, (Oxford, 1953), p.48.

² See Christopher Hill, *Society and Puritanism in Pre-Revolutionary England* (London, 1966), p.396.

³ Kenneth Mackenzie, *The English Parliament* (Harmondsworth, 1950), pp.28ff. The whole break with Rome "was completed during the lifetime (1529-36) of the Reformation Parliament". A.G.Dickens in Joel Hurstfield (ed), *The Reformation Crisis* (London, 1965), p.48.

⁴ Geoffrey Elton, *Studies in Tudor and Stuart Politics and Government* (Cambridge, 1974), p.102.

⁵ F.H.Hinsley, *Sovereignty* (Cambridge, 1986), pp.118-119.

the revolution that took place when an Augustinian monk pinned a folio to a German church door on the day before All Souls, 1517. The Reformation of Luther and Calvin had major implications for the State, and it is to the Reformation itself that I shall now turn. The Puritan movement is destined to be forever associated in English history with the Seventeenth century, yet a precursor Puritan movement existed from an early date, and many things are foreshadowed in earlier Tudor writings. For example, William Tyndale and Robert Barnes were both eager drinkers of Luther's cup, and both were writing before Henry's official break with Rome.⁶

In all of the Protestant writings there is a strong emphasis upon Scripture as a source of all theory, including political theory. These early Reformed writers were convinced that kingship had received divine sanction, in an almost medieval sense, and to compound the conservatism, they were anxious to avoid the taint of rebelliousness arising out of the ashes of Munster. In the words of one commentator, they were "anxious to avoid the charge that Protestants were political or social anarchists".⁷ But their adherence to royal regimes was not unconditional, and it could at any time be replaced by doctrinal or dogmatic politics. As Morris reminds us, the "early Protestants would not have shared our doubts as to the qualifications of a lay ruler for interpreting theological truth. For them the Bible was not only an open book but a plain one".⁸ Obedience along the lines suggested in Romans 13 tended to remain, in the first phase, while the otherworldly emphasis of Protestantism took root, and ate away at the theocratic cloak which had shrouded the emergent late-medieval State.

The broader political implications of this separation of otherworldly concerns from the mundane became clear in the mid-century, however, as mainstream Protestants became more inclined to form social movements within States and engage in political life. J. N. Figgis characterises this as a form of "Passive Obedience", which buttresses monarchs against the Papacy, but still contains the potential for resistance.⁹ This potential having lain dormant for the first 35 years of mainstream Protestantism, it emerged when the Northern

⁶ Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), II, pp.66-68.

⁷ Christopher Morris, *Political Thought in England, Tyndale to Hooker* (London, 1953), p.33.

⁸ *Ibid.*

⁹ J. N. Figgis, *The Divine Right of Kings* (N.Y., 1965), pp.94-95.

European monarchies seemed to be “secured” for the cause. Given the anti-hierarchical nature of Calvin’s thought it is hardly surprising that the “priesthood of all believers” was taught with such conviction in Puritan circles, and within the sixteenth century politico-religious context this leads to a “duty to resist”, developed in the face of the Pauline injunction in Romans 13 to obey the powers that be. One possibility was to extend legal resistance until, like John Knox, the believer had reached a position of outright rebellion,¹⁰ and other English-speaking theorists of 1550’s were exploring such possibilities. Marian exiles like Christopher Goodman and John Ponet (or Poynt), agreed that resistance was justified in those cases where the divine City is attacked by the earthly City.¹¹ Anticipating much later thinking, Goodman stresses conscience:

God hath given them the charge of most precious jewels and inestimable riches: not to be hid in a corner or retained with[in] themselves: but rather (as the Apostle exhorteth) to stir up the gift of God, which is in them, and not neglect it”.¹²

In a similar vein, Ponet invokes Augustine in advocating passive disobedience towards “wicked princes” who would “command them [the godly] to do anything against God’s word”. Ponet also bases his argument on conscience:

God hath not given it [the state] power over the one and best part of man, that is, the soul and conscience of man, but only over the other and the worst part of man, that is, the body and those things that belong unto this temporal life.¹³

At the base of the Covenant theology of the Puritans is the notion of individual conscience. The liberated conscience could make priests of all believers, saints even; and conscience lends a dynamic to individualism arising from association directly with the

¹⁰ Quentin Skinner *The Foundations of Modern Political Thought* , II, pp.208-217. Knox is hard to reconcile with Rom. 13.

¹¹ Christopher Goodman *How Superior Powers Ought to Be Obeyed etc.* (Geneva,1558), pp.30-31.

¹² *Ibid.*, p.67. (see also p. 85).

¹³ John Ponet *A Short Treatise on the Politike Power etc* (Frankfurt,1557), pp.Dvi, Div. For Ponet’s claim to have developed the first theory of congregationalism, see Christina Garrett, *The Marian Exiles: A Study in the Origins of Elizabethan Puritanism* (Cambridge,1938), p.255.

Godhead. The history of this type of theology is long, extending back from the Independents to the earliest Reformers, and from the two-kingdoms doctrine of Luther to the two-cities doctrine of Augustine. Puritan conscience was informed by the Renaissance use of the Greek term *synteresis*; originally this meant “preservation”, and in the expression *synteresis hygieias*, referred to the maintenance of a sound spiritual attitude. It was used by St Jerome (transliterated as *synderesis*) to signify “a fourth, independent, and superintendent part of the soul” that could be rendered in Latin as *scintilla conscientiae*, the “spark of conscience”.¹⁴ Augustine’s term *scintilla rationis*, corresponding to the “image of God in man” is the characteristic distinguishing humans from animals: “there is still the spark, as it were, of that reason in virtue of which he was made in the image of God”. Virtue (the capacity to overcome evil and acquire wisdom) is “divinely implanted” and succeeds “because his heart is set only on that Supreme and Unchanging Good”.¹⁵ This capacity to be inflamed by the spark of truth, taught by a Christian tradition borrowing directly from Plato, meant that God’s gift of conscience was planted in every human soul, but only the elect would have a faith faculty developed to the acuity needed for recognising its commands.

For Augustine, political involvement remained important as a means for the actualization of moral truths of divine origin, captured in the facets of the bright part of the soul. The repudiation of politics (i.e. late Roman politics) on the surface is itself invalidated by the empowering tendency of his central thesis in which he highlights perfect justice; love of self, love of God, and love of one’s neighbour.¹⁶ Like Luther before him, Calvin was a theologian deeply in the Augustinian mould, notwithstanding the vast

¹⁴ Robert A. Greene “Synderesis, the Spark of Conscience, in the English Renaissance”, *The Journal of the History of Ideas*, LII, 2 (1991), p.197. Both Calvin and Luther were Augustinian theologians. See Thomas Lindsay *A History of the Reformation* (Edinburgh,1908), Vol.II, pp.104-105; and Richard Friedenthal *Luther* (London,1970), pp.158ff.

¹⁵ Greene, “Synderesis, the Spark of Conscience”, p.199. Augustine of Hippo *Concerning the City of God, Against the Pagans* XXII, xxiv: Bettenson translation, pp.1071-1072.

¹⁶ Hence the “need to give more weight to the political order” that necessitates Book XIX of the *City of God*. R.A.Markus *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge,1970), p.75. “Augustine could condemn Roman political order ... but he could also bring to bear a relative judgement capable of recognizing such good as was attainable.” Graham Walker *Moral Foundations of Constitutional Thought* (Princeton,1990), p.75.

erudition he displayed regarding the Fathers generally.¹⁷ In his *Institutes of the Christian Religion* he refers to conscience as “a certain mean between God and man”, our chief source of divine wisdom and the light of the soul.¹⁸ Using the metaphor of the two kingdoms he makes it clear that although ultimately fused, the political and spiritual lives of the people are also in a sense autonomous in that one cannot dictate to the other.¹⁹

Until the arrival of Calvinism, however, Protestants were politically less distinctive as a group, and even in the early years of Calvin’s influence in the 1550s, the practical problem of Mary and her Catholic regime overshadowed theoretical considerations of kingship which were beginning to flow from exiles like Goodman and Ponet (above). As one earlier commentator correctly points out, it was “only under Elizabeth that Protestant opposition to the action of the Crown in relation to religion and Protestant protest against the doctrine of royal supremacy was very seriously developed”.²⁰ The term “Puritan” is much abused, and is sometimes used for pre-Elizabethan figures like Bishop Hooper, included in the Vestrarian controversy as early as 1551.²¹

For the Puritans conscience, portrayed as a divine spark of illumination, was familiar from the metaphor in the Sermon on the Mount. The Geneva Bible is unique in its

¹⁷ One scholar has counted 1,708 references in Calvin’s works to Augustine, as opposed to 49 references to Eusebius of Caesarea; see Irena Backus “Calvin’s Judgement of Eusebius”, *Sixteenth Century Journal*, XXII, 3 (1991), p.423. Cf. Luther had “praised temporal government more highly than anyone since Augustine”, Sheldon Wolin *Politics and Vision* (Boston,1960), p.157. On the Patristic renaissance see Eugene Rice in Werner Gundersheimer (ed) *French Humanism 1470-1600* (London,1969), pp. 163 ff.

¹⁸ John T. McNeill (ed) *Calvin-Institutes of the Christian Religion* (London,1960), I, p.848.

¹⁹ McNeill (ed) *Calvin-Institutes* , I, p.847. See also I, pp.287-288. The separation and union of spiritual and secular is essentially modern; see Ralph Hancock, *Calvin and the Foundation of Modern Politics* (Ithaca,1989), p.166.

²⁰ J.W.Allen, *A History of Political Thought in the Sixteenth Century* (London,1960), p.212. It should be noted that Calvin’s all-important *Institutes of the Christian Religion* was first published in French in 1536, and in Latin in 1559, and that this work was less opposed to *de facto* sovereignty than is sometimes supposed: John T.McNeill(ed), *Calvin on God and Political Duty* (Indianapolis,1956), Introduction, pp.ix ff.. On the dangers of seeing the Henrician Reformation out of context see A.G.Dickens, “The Reformation in England”, in Hurstfield(ed), *The Reformation Crisis* (London,1965), pp. 44-57.

²¹ David Little, *Religion, Order and Law* (New York,1969), pp.81-83. The real rise of Calvinism in England begins with the return of the Marian Exiles, especially those from areas like Geneva, Lyons, Frankfurt and Zurich. See Christina Garrett, *The Marian Exiles: A Study of the Origins of Elizabethan Puritanism* (Cambridge,1938).

wording: “Ye are the light of the world. A city that is set on a hill ...” (Matthew 5.14), and this was the Bible of the original English Puritans, imported to England in large quantities during the second half of the sixteenth century.²² Lamps, candles and sparks, and of course the exemplary shining city on a hilltop (reflecting the Augustinian *Civitas Dei*) were frequent allusions in their writings. In a letter of 1584 Thomas Cartwright likens the godly to “burning lamps ... whereby light is conveyed more or less into all parts [of England]”.²³ The same idea of egalitarianism and virtue which prompts Cartwright to argue that “good men, that is to say, the church are the foundation of the world”, also has political ramifications: if “a beast [the state] should break into the temple of God, that is into the heart and conscience of man, and compell him to swear to accuse himself” then he must resist.²⁴ The Elizabethan Puritans, in the Admonition and Marprelate controversies of the 1580s²⁵, pressed their demands for a democratic church, understood by Cartwright in terms of the familiar mixed constitution: God as monarchy; pastors or elders as aristocracy; and “in respect that the people are not secluded but have their interest in church matters, it is a democracy, or a popular estate”.²⁶

Throughout the pre-1576 period Puritans like Goodman and Ponet had “propounded radical ideas not only about the popular contractual origin of government, but about the obligations of the people who conveyed governmental powers, to see that those powers

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- 22 Francis J. Bremer, “To Live Exemplary Lives: Puritans and Puritan Communities as Lofty Lights”, *The Seventeenth Century*, VII, 1 (1992), p.27. This Bible, edited by Goodman and Knox among others, was used in the pulpit frequently and was the chief household and school Bible for Elizabethan England. It is the version used by Shakespeare. Thomas Carter *Shakespeare and Holy Scripture* (London,1905), pp.2-3. The Geneva Bible “keyed to the scriptures a statement in the common tongue of the conception of man’s inner life derived from Paul by way of Augustine and Calvin”. Carl Bridenbaugh *Vexed and Troubled Englishmen* (New York,1976), pp.276-277.
- 23 Albert Peel and Leland H. Carlson (eds) *Cartwrightiana* (London,1951), pp.50-51. In the same place he represents reformed churches as candlesticks.
- 24 Peel and Carlson (eds) *Cartwrightiana* p.44. See also John Ayre (ed) *The Works of John Whitgift* (Cambridge,1853), Vol.III, p.189. This was in the context of the oath of office imposed by Elizabeth on all clergy.
- 25 In both cases the attacks on the Bishops can be studied in the crop of contemporary printed polemics produced by a variety of factions. It could be argued that these are the first examples of London “pamphlet wars” on domestic political issues.
- 26 J. P. Sommerville *Politics and Ideology in England 1603-1640* (London,1986), pp.190-191. David Little *Religion, Order and Law*, pp.90, 94.

were properly used”.²⁷ Despite a certain similarity to republican theory, this oppositional way of thinking is not necessarily constructive, but may also become a reflexive conservatism — a yearning for Biblical simplicity and reliance on literal Biblical interpretation.²⁸ In the Elizabethan period such attitudes usually came from extremists (Brownists, Barrowists, antinomians, separatists and others with anabaptist leanings) rather than the mainstream or congregational (i.e. non-separating) groups in the Puritan social movement. These more radical congregations (evolved from the early “conventicles” of the 1570’s), while they were political in the sense that they “fostered both strong community and spiritual security” and offered people “a living, spiritual fellowship”, eschewed secular politics.²⁹

On the other hand, the example of that continental European “city on a hill”, Geneva, provided the non-separating English Puritans with the example of a “city of the godly” having a largely democratic constitution which was “not only consistent with a republican [sic.] order of government, but in fact conducive to it”.³⁰ The non-separating Puritans, for whom godliness “demand[ed] the most intense participation” in public affairs, make much better bearers of democratic constitutionalism than their radical separatist cousins.³¹ Generations of Puritans regarded Geneva as “a city which had placed itself under the rule of the Word of god ... where the believers selected their pastors and the people their rulers; where there were neither masters or subjects”, confirming Augustine’s view that “human society is one of the stages of man’s advancement towards God”.³²

²⁷ Edmund S. Morgan *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988), p.126.

²⁸ Theodore Bozeman *To Live Ancient Lives*, (Chapel Hill, 1988) p.66. Francis Bremer “To Live Exemplary Lives: Puritans and Puritan Communities as Lofty Lights”, pp.29-30.

²⁹ Stephen Brachlow “John Robinson and the Lure of Separatism in Pre-Revolutionary England”, *Church History*, L,3 (1981), p.295.

³⁰ J.W. Allen *A History of Political Thought in the Sixteenth Century* (London, 1960) , p.67. E. William Monter *Calvin’s Geneva* (N.Y., 1967), p.145. John T. McNeill (ed) *Calvin — on God and Political Duty* , p.xxiv. This is not Pocock’s Harringtonian republicanism.

³¹ McNeill (ed) *Calvin — Political Duty*, pp.vii, ix. Sheldon Wolin *Politics and Vision* , pp.189ff.

³² Thomas Lindsay, *A History of the Reformation*, II, p.160. R.A. Markus, *Saeculum: History and Society in the Theology of Saint Augustine*, p.78. Many of these ideas are developed more fully by Graham Maddox in his *Religion and the Rise of Democracy* (London, 1996), pp.110-120 *et passim*.

It was this approach to the State, adopted by a social and religious movement which increasingly occupied the ideological high ground (as it had already occupied the theological high ground), which generated most of the literature on subjects cognate to sovereignty in England before 1576. Texts appeared which were opposed to it or in support of it, and other positions were different but moved in the same direction. Even those texts in the group of nine which I will be looking at here, which propound secular views, do so, it can be argued, within a theological framework.

We can reasonably expect to find several strands of thought in England in matters relating to the State in Sixteenth century England, which for the sake of convenience I shall label Thomist, Protestant, Gothic and Humanist. By Thomist, I mean the traditional medieval world view, essentially pre-Marsilian, in which reverence for a misunderstood version of Aristotle coexists with the medieval idea of divinely ordained monarchies. By Protestant, I mean the individualist and proto-democratic view outlined above, derived from Augustine's *City of God*, and from Luther and Calvin, which was associated with Puritans and with Huguenot and Dutch refugees. By Gothic I mean the view of many lawyers, that an 'ancient constitution' exists which continues the Anglo-Saxon limits on royal power, such as the Witanagemot and some of the common law.³³ Finally, by Humanist I mean theories growing out of that characteristic Renaissance bookish addiction to classical pagan authors, writers who are inclined, like Machiavelli, to want to resurrect the Roman Republic and the civil law codes, although like the Gothic writers, these theorists often had sympathies with the Protestant position.

These four somewhat arbitrary designations do not embrace all the writers from Fortescue's time to 1576, nor do they exactly fit many of the writers they do embrace. Terms could be multiplied, until the point was reached where there was one term corresponding to each writer or text. Four terms are neither too few nor too many, and the appropriateness of each of the terms will become clearer as we look at Tudor controversies in more detail.

³³ J.H.M.Salmon notes the persistence of this Gothic strand after 1688 as an "insular whig rationalisation of the past". *The French Religious Wars in English Political Thought* (Westport,1981), p.2. See also J.G.A.Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge,1987), pp.43,56-57.

Looking again at these four categories, and the texts that belong to them, we can discern two broad types of writing in the pre-1576 period. One type stresses obedience and sticks closely to the religious question, either in defence of the Protestant Anglican view or of the Marian attempt to restore Catholicism, and the other type deals with finer points of politics and legal theory, which gives it a more constitutionalist flavour. Examples of the former are Richard Morison,³⁴ and Thomas Starkey³⁵, writing in the latter part of the reign of Henry VIII; Edward Fox³⁶, writing in the reign of Edward VI and Somerset, Marian exile Christopher Goodman³⁷, and John Christopherson³⁸, chaplain of Mary I. Examples of the latter are John Fortescue³⁹, who wrote immediately prior to the inauguration of the Tudors, but was translated from Latin into English early in the reign of Elizabeth, Christopher Saint-German⁴⁰, writing a short time before the break with Rome, and finally the Elizabethans John Hooker⁴¹, and Thomas Smith⁴², both of whom, while not militant Puritans, had Puritan connections.⁴³ We should not regard the former writers as unimportant, simply because their work deals with Christian themes, for otherwise we would have to avoid the political thinking of greats such as Augustine, Luther, Languet,

34 Richard Morison, *An Exhortation to Stir all Englishmen* (London,1539).

35 Thomas Starkey, *An Exhortation to the People*. (London,?1540)

36 Edward Fox, *The True Difference Between the Regal Power and the Ecclesiastical Power* (London,?1548).

37 Christopher Goodman, *How Superior Powers Ought to be Obeyed etc..*

38 John Christopherson, *An Exhortation to all Men to take heed and Beware of Rebellion* (London,1554).

39 John Fortescue, *A Learned Commendation of the Politic Laws of England* (London,1567).

40 Christopher Saint German, *A Dialogue Between a Doctor and a Student* (London,?1530).

41 John Hooker, *Order and Usage of Keeping the Parliament.*, in Vernon F. Snow (ed), *Parliament in Elizabethan England: John Hooker's 'Order and Usage'* (New Haven,1977). John was the uncle of Richard Hooker, the subject of Cap. 4 (below).

42 Thomas Smith, *De Republica Anglorum* (London,1583). It is striking to see England portrayed as a "republic".

43 Vernon F. Snow, *Hooker: Order and Usage*, pp.8-9, noting Hooker's public act of writing the history of the Relief of Exeter, 1549, for the Puritan borough Electors, and the service he did Miles Coverdale. See also Philip Caraman, *The Western Rising 1549* (Tiverton,1994), pp.1-2. Caraman erroneously describes John as Richard's father.

Hooker, Wesley, Paley and even Emerson. As one commentator puts it, Tudor political thought was “for the most part, inextricably entangled with religious controversy”.⁴⁴ This is particularly the case in the second half of the Sixteenth century, although it has been argued that “policy thought in the first half of the century was dominated by abstract humanist assumptions”.⁴⁵ Yet religion remains the paradigm, and as Allen notes, a certain “conception of an ‘absolute’ national sovereignty was developed mainly in connection with the Reformation”.⁴⁶ Figgis even goes so far as to say that the Reformation was directly “connected” to both Divine Right and sovereignty theories.⁴⁷ Geoffrey Elton is much more cautious than this, agreeing that “the separation of Church and State [is] the hallmark of sovereignty”, but adding that “the story and the problems were much more complicated than he [Figgis] realised and the last word has certainly not yet been said”.⁴⁸ Religion is a factor for even the more secular Humanist writers, especially separation theory, and we should not lose sight of this when reading Tudor texts.

Returning to the four categories, it is convenient to begin with the broadly Thomist writings, noting that (rather surprisingly) four of the five religious writers fit into this category, including the two early Protestants and the one Catholic. The third Protestant, Fox, is starting to diverge, and Goodman is pointedly opposed to such assumptions about monarchic rule. Of the three early writers (Christopherson, Morison and Starkey), one is Catholic, and the other two are Protestant, with Richard Starkey developing Thomist arguments in more interesting Protestant ways than most early writers do. However, all four texts embrace an orthodox (one might say medieval) view of kingship, and this concerns us most, particularly where statements occur in the texts that relate to obedience and justification.⁴⁹ Although Scottish political theory is outside the scope of the thesis, it

44 J.W.Allen, *A History of Political Thought in the Sixteenth Century*, p.134.

45 Paul Fideler & T.F.Mayer(eds), *Political Thought and the Tudor Commonwealth* (London,1992), p.13.

46 J.W.Allen, *A History of Political Thought in the Sixteenth Century*, p.134.

47 J. N. Figgis, *The Divine Right of Kings*, pp.14-15 and passim.

48 Elton in J. N. Figgis, *The Divine Right of Kings*, Introduction, p.xxxi.

49 One good example of this style of writing after 1576 is Thomas Bilson, *Christian Subjection and Unchristian Rebellion*, published in 1585. Bodin is not even mentioned in this elephantinetext.

should be pointed out that John Mair and George Buchanan could also be included in this category. As Skinner says:

Buchanan agrees with the more radical scholastics - especially Almain and Mair - that the people merely delegate their authority to a ruler whose status is not that of a sovereign .. [but] rather that of a *minister* who remains ... bound by the positive laws of the commonwealth.⁵⁰

However, it should be added that in the case of Mair we can also see emerging an awareness of the legislative power in an earthly and absolutist sense coupled with his conciliarism in ecclesiastical affairs.⁵¹ I shall return to Buchanan in the discussion of Thomas Smith and John Hooker near the end of the Chapter.

Typical of the old-fashioned or Thomist view of politics is John Christopherson's statement that "whosoever maketh war against his prince, he maketh war against God, forasmuch as the Prince is (as I said before) appointed by God".⁵² Citing the authority of Paul, he rejects even the most Godly resistance, and begs readers to "be obedient to our Prince, and therein obey God too".⁵³ The same justification can be found in Edward Fox, although it is not quite so bluntly stated, and this demonstrates that such views are not confined to Catholic writers, but also occur in early Protestant works. Here we are informed that the "authority and power of kings" is given by God "with manifest words in the holy scriptures both of the old testament and the new".⁵⁴ Using as his text Romans 13, Fox resolves that "he that withstandeth the power [of the Crown], withstandeth the

50 Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), II, p.342.

51 J. H. Burns, "The Idea of Absolutism", in John Miller (ed), *Absolutism in Seventeenth Century Europe* (London, 1990), pp.24-25.

52 John Christopherson, *An Exhortation to all Men to take heed and Beware of Rebellion*, Ivi^v; (pagination is by signature). This superficially resembles divine right theory (see below, Cap.VI), but the Prince is more limited in practice, especially by the church, and so the term 'divine sanction of kings' is more accurate.

53 *Ibid.*, Kviii^v, Li^f. The political context of this text is critical for a proper understanding of such statements. It was printed in 1554, during the reign on Mary Tudor, by John Cawood, who according to the colophon was "printer to the Queen's highness". The attempt to reimpose Catholic observance was at its height, and rebellion a strong possibility.

54 Edward Fox, *The True Difference*, Iv^{dext}, Ivi^{sin}; (pagination by opening).

ordinance of God”, and in the same place Fox also defines the Crown as “the regal and civil power”.⁵⁵ At the time of writing (the late 1540’s), the Protestants were in power, and as in the previous case, rebellion was a concern. Elsewhere, Fox points to the perils of “free liberty”, including “murder, in oppressing or ravishing of women, and in all manner of mischievousness and ungraciousness”, calling to mind the German excesses of 1525, and he cites Augustine on obedience to secular authority.⁵⁶

The two Henrician Protestant writers in this survey, Morison and Starkey, should provide us with an even greater exaltation of kingship than Christopherson and Fox, considering its importance to their cause at the time, but, especially in the case of Starkey, things are much more complicated. Starkey refers, predictably enough, to “the princely authority, to which by God’s law straitly all true subjects are bound”.⁵⁷ The desire for order in this work is very great indeed, reflecting no doubt the situation at the time of the Pilgrimage of Grace.⁵⁸ We are informed by Starkey that “all good policy is ever grounded upon concord and unity”, upon which “all politic order is edified, all civil constitutions be ordained and established”.⁵⁹ The prince is “the very head of all unity” and “the chief officer and minister here under Christ”.⁶⁰ Starkey establishes his Thomist credentials in a long passage on the Natural law origins of basically political arrangements, although this is tinged with Augustinian dualism.⁶¹ Later in the text he actually proposes the Conciliarist position that the people should “elect and choose” the “head politic” of the national

55 *Ibid.*, lxviii^{sin}.

56 *Ibid.*, lxxv^{dcxl}. The constant use of Scripture here is a point of departure from the Catholic approach, and encourages believers to reach their own conclusions on regime legitimacy.

57 Thomas Starkey, *An Exhortation to the People*, p.26^v. Although this is his only work published in his lifetime, he is best known today for his *Dialogue Between Pole and Lupset*.

58 T.F.Mayer(ed), *Thomas Starkey - A Dialogue between Pole and Lupset* (London,1989), Introduction, pp.xiv-xv. Mayer adds that rebelliousness “was probably not uppermost in Starkey’s mind when he wrote the ‘Dialogue’”.

59 Starkey, *An Exhortation to the People*, p.32^v.

60 Starkey, *Exhortation*, 33^f.

61 *Ibid.*, 38^v-39^f.

church.⁶² This is a complex theory, but the sense of Divine law limits upon an otherwise Marsiglian state, sees Starkey adhering to the orthodox epistemological idea of separate yet complementary roles for the civil and spiritual life. He does foresee the implications of separation, yet sets these to one side in favour of obedience to the Crown, against the Pope.

Richard Morison is not nearly such an able prose stylist as Starkey, and passages in his book verge upon incomprehensibility. His work is full of antipapal invective, yet he too trots out the familiar defence of direct royal rule. For example, he says that “God wills all subjects,[under] pain of eternal damnation, to obey their princes”. Rome is therefore wicked to attempt to “deliver all princes’ subjects from the bonds, that God hath knit them in”.⁶³ Such a bond is described in the same place as a “lovely bond, which God hath ordained and set in nature”, which is a lot more reminiscent of Thomas than Marsiglio. He reinforces his argument by stating that “God ordained kings, magistrates, and rulers, commanding them to be honoured, even as fathers are of their children” and that obedience “undoubtedly is the knot of all commonwealths”.⁶⁴ Finally, there is one point where Morison comes close to a Divine Right type of argument. This is in his concluding remarks, where he asks, “may not we rejoice that God hath chosen our king, to work so noble a feat” as the break with Rome, and he likens Henry to a lion, and also a cyclone from Biblical prophecy. It is “our king, which first of all princes, durst take him [Christ] by the bosom”.⁶⁵

These writers follow the philosophical lead of Aquinas in that they also use divinely inspired order in a more distinctly rationalist fashion. This is by framing arguments which rely on analogy and on certain correspondences, which themselves tend to the conclusion that there is such a thing as a “body politic”. This entity is an important precursor of the sovereignty idea; it occurs with increasing frequency from the time of John of Paris, and we

⁶² *Ibid.*, 83^v. See T.F.Mayer, “Thomas Starkey’s Aristocratic Reform Programme”, *History of Political Thought*, VII (1986), pp.450-451.

⁶³ Richard Morison, *An Exhortation to Stir all Englishmen*, Bi^f-Bi^v.

⁶⁴ *Ibid.*, Bii^f. Marsiglio’s was published in a partial translation (Book I) by William Marshall in 1535, where the citizen body of Marsiglio (derived from the deliberative element of the polis of Aristotle) is translated as “Parliament” for the sake of justifying the break with Rome. See Alistair Fox and John Guy, *Reassessing the Henrician Age* (Oxford,1986), p.209n41.

⁶⁵ Morison, *An Exhortation to Stir all Englishmen*, Dviii^f. This is not nearly as strong as the Filmeresque Divine Right.

have already observed Bodin using the idea in the previous Chapter. Its presence in Henrician discourse indicates a degree of sophistication, and a preparedness for sovereignty proper when it came after 1576. There is not as much of this in Morison, however, and although he refers to the “obedience of the members to the head” at one point, there are no other mentions of the “body politic”.⁶⁶ Starkey, on the other hand, uses such corporeal analogies a great deal, and applies them in his *Exhortation* to both church (i.e. national church) and state. He speaks of “this spiritual body, this church of Christ, whereof we all be members” for example.⁶⁷ At one point he appeals to the Platonic analogy of order, in the guise of the “great chain of being”, when he says that the principle of spiritual and political unity is exemplified “as in the which [sic] all the parts thereof both in the heavenly bodies and in the earthly creatures, are as in a chain coupled and knit”.⁶⁸ The idea of a body politic, which becomes a crescendo in Edward Forset’s *Bodies Natural and Politic* of 1606 (see below, Cap. 6), undercuts Papal claims yet does not imply Divine Right.

If it can be said that the Henrician writers mark the beginning of serious English political and constitutional discourse (notwithstanding earlier individual works by the likes of Glanvill, Bracton, Fortescue and John of Salisbury), then we should find evidence of rapid theoretical development and conceptual change, especially in the immediate post-Henrician works. It is therefore interesting that we discover much more detailed analogies in the two later writers, Christopherson and Fox.⁶⁹ Christopherson is particularly concerned with the social organisation of “the simple bees”, inspired no doubt by the ubiquitous Aristotle.⁷⁰ His passage is worth quoting in full:

And we should herein follow the example of the simple bees, which so tender their king and governor, that if he have missed his way, they will dilligently seek for him, smell him out, and follow him to such time, as they have found him. And when he

⁶⁶ Morison, *An Exhortation*, Bii^r.

⁶⁷ Thomas Starkey, *An Exhortation to the People*, 14^r.

⁶⁸ Starkey, *Exhortation*, 64^v.

⁶⁹ It should be noted that Aquinas himself produced more detailed analogies. See A.P.D’Entreves (ed), *Aquinas: Selected Political Writings* (Oxford, 1954), pp.11,13.(The source is *On Princely Government*.)

⁷⁰ Aristotle, *The Politics* (Harmondsworth, 1981), p.60 (1253a8).

waxeth old, and is not able to fly, they bear him upon their backs, and if he die, then depart they all from that place. Doth not nature herein teach all subjects to tender and love their prince, as the poor bees do their king".⁷¹

But it is Fox who provides the definitive argument from analogy, and once again I quote the entire passage:

In the example of nature amongst the chief philosophers Plato, Aristotle and Apollonius did perceive and consider as in the whole world one is the high creature and ruler of all things, as among the stars the sun precelles all other, amongst the bees one king there is, one be the wether the flock doth follow, and one leader the herd, and the cranes follow all one, likewise in a commonality should be one king as head to whom the members should agree".⁷²

These kind of arguments, despite the fact that they are found in earlier texts such as *On Princely Government*, present the reader with a form of justification which is easily wrested from God. Tudor writers in general emphasised this analogic and naturalistic aspect of the more comprehensive medieval yearning for order.⁷³ An exclusive use of these analogies within the secular sphere would remove in one fell swoop many of the medieval Christian obligations upon rulers, leaving the centre of political discourse vacant, to be filled by such post-medieval entities as Machiavellism, monarchic absolutism of the Divine Right sort, or the more constitutionalist absolutism of sovereignty theory. These correspondences and arguments from analogy are typical of the gradual ascent of rationalism in Western Europe, including England, during the early modern period. This fact prompts us to ask whether sovereignty is also a corollary of the same rationalism. Analogies from nature become increasingly attractive to political analysts as political and administrative procedures grow in size and complexity, and the numbers of such analysts grow also. The feudal way of rule, involving a certain kind of personal relationship or

⁷¹ John Christopherson, *AnExhortation to all Men to take heed and Beware of Rebellion*, Ovii^r. (The femaleness of the apiary monarch was unrecognized till the Seventeenth Century, and even then Mandeville was able to adhere to the previous notion in his *Fable of the Bees*.)

⁷² Edward Fox, *The True Difference*, lvi^{sin}.

⁷³ E.M.W.Tillyard, *The Elizabethan World Picture* (Harmondsworth,1972), p.12.

Hausmacht, had become increasingly irrelevant, and alternative explanations were required to account for the increasingly remote relation of ruler and ruled.⁷⁴

With this in mind, it is appropriate to see what the Thomists had to say on the functions or attributes of monarchy. Here we generally find very little detail, which is predictable given that their writing is mainly religious. But we must not disregard them because as Morris says, a great deal “is gained by making an indirect approach to politics” in these particular works.⁷⁵ The two Henricians say nothing at all on the attributes of princely rule, and Fox and Christopherson must therefore suffice. Both writers deal with the idea of the administration of justice. Fox says that “it is the proper office of a king to minister justice”, whilst Christopherson remarks that “the government of a prince is the safeguard of all their [the optimates’] riches: for when the government is taken away, the laws are trodden under men’s feet”.⁷⁶ Along the same lines, Fox states that “the common gloss doth interpret the sword to mean power in judgements”.⁷⁷ Christopherson draws our attention to another attribute, the power to appoint officials, especially senior officers of state or commissioners. High administrative office is implied when he says that the “worldly prince should ordain an officer, and give him full authority to examine causes, and to execute justice under him”.⁷⁸ Fox identifies the further attribute of taxation.⁷⁹ As to the extent of specific powers of this sort, there is an intriguing fragment in Fox on the “high” attributes of royal majesty. He asserts that in particular “kings have in their person dominion, authority, pre-eminence, dignity, punishments and corrections”.⁸⁰ Christopherson’s idea of the royal commission and Fox’s idea of regal powers both

74 A.J. Slavin, “The Tudor state, reformation and understanding change: through the looking glass”, in Fideler and Mayer (eds), *Political Thought and the Tudor Commonwealth*, p.231. See also Joseph R Strayer, *On the Medieval Origins of the Modern State* (Princeton, 1970), pp.89-111 (passim). Christopher Morris, *Political Thought in England: Tyndale to Hooker*, p.12. G.O. Sayles, *The Medieval Foundations of England* (London, 1950), p.429.

75 Christopher Morris, *Political Thought in England*, p.3.

76 Fox, *The True Difference*, lxxvi^{sin}; Christopherson, *AnExhortation to all Men*, Diii^f.

77 Fox, *The True Difference*, lxxviii^{sin}.

78 Christopherson, *AnExhortation to all Men*, Ivi^v-Ivi^r.

79 Fox, *The True Difference*, lxxvii^{dext}.

80 *Ibid.*, lxxi^{sin}.

prefigure an English theory of sovereignty, with views broadly similar to some of those which Bodin was later to outline in the *Six Books*, *as the English political thought in the Kingdom of France of Robert a Barchinonensis*.

Arguably the dominant school of English political thought from 1470 to 1570, was not the Thomist religiously based justification, but the highly legalistic and constitutionalist strand of political reasoning I term Gothic. Of all who wrote in this Common law tradition, John Fortescue was pre-eminent, and even acquired a kind of ‘cult’ status.⁸¹ His *Learned Commendation* (*De laudibus legum Angliae*), written between 1468 and 1471, rapidly developed an aura of authority exceeding that of religious writers, and even after 1600, Fortescue was the main influence on that lawyer’s lawyer, Edward Coke.⁸² Fortescue is aptly labelled Gothic in the sense that he exaggerates the insularity of English political evolution by placing considerable stress on an Anglo-Saxon aversion to centralized authority amounting to a sort of “national political genius”.⁸³

The main theme of the *Learned Commendation* is that whereas kings on the Continent are royal, that is to say absolute, those who rule England are royal and politic, meaning constitutionally limited. The book takes the form of a dialogue between a young king and his wise Chancellor upon the extent to which the king should become expert in legal matters in order to rule well.⁸⁴ In all of this the primary concern is the tremendous growth of Roman law on the Continent during the Thirteenth to Fifteenth Centuries, and the fear that it might eventually supplant common law in England. This has major implications for sovereignty, as Bodin’s later formulation of the idea, as we saw in the previous Chapter, is indirectly foreshadowed in Roman law.⁸⁵ Fortescue notes that if the king were a purely royal ruler, “he might change the laws of his realm, and charge his subjects with tallage and other burdens without their consent”. But a politic ruler “can

81 J.G.A. Pocock, *The Ancient Constitution and the Feudal law* (Cambridge,1987), p.33.

82 Richard Tuck, *Philosophy and Government 1572-1651* (Cambridge,1993), pp.208-209. (See below, Cap. 8).

83 J.H.M. Salmon, *The French Religious Wars in English Political Thought* (Westport,1981), p.1. This is not to deny altogether the importance of Anglo-Saxon folkways, in the evolution of parliamentary constitutionalism.

84 John Fortescue, *A Learned Commendation of the Politic Laws of England*, 24^v-25^r.

85 Fortescue does in fact refer to this fear in the *Learned Commendation*, at 25^r, 39^r, 77^r-77^v, and elsewhere.

neither change laws without the consent of his subjects, nor yet charge them with strange impositions against their wills". It follows that such subjects "do frankly and freely enjoy and occupy their own goods, being ruled by such laws as they themselves desire".⁸⁶ Against such arbitrary lawmaking and taxing, he argues that from the time of the first Britons, the Romans, the later Britons, the Saxons, the Danes, the later Saxons, the Normans and so down to his own day, "this realm was still ruled with the self same customs".⁸⁷

It is worth noting the emphasis Fortescue places upon taxation and property rights, especially since, with one exception, this is neglected by the Thomist writers.⁸⁸ Such concerns are, on the other hand, to be expected from a lawyer who, from 1425 to 1430, was a governor of Lincoln's Inn.⁸⁹ Fortescue's arguments against taxation are particularly strident where he comments on the *maxim* "that the king is given for the kingdom, and not the kingdom for the king".⁹⁰ The historical context may help to explain this concern over the increasing size of the fisc, as the period after 1450 was one of increasing prosperity, and of decreasing local and international military conflict, and this was mirrored by a change to the administrative arm of government, bestowing upon certain appointees significantly greater resources and staff.⁹¹ Expenditure paradoxically increased, as did taxes, and the tax gathering machinery, while still primitive, had also been improved.⁹² Limited monarchy

⁸⁶ Fortescue, *A Learned Commendation*, 25^v-26^f.

⁸⁷ *Ibid.*, 38^r-38^v. In the Nineteenth Century there developed what might be termed the "Gothic fallacy", that ancient tribal usages and customs have been nurtured in England, which prevented the rise of arbitrary government. For typical examples see Bishop Stubbs's *Constitutional History*, and particularly see J.M. Kemble, *The Saxons in England* (N.Y., 1971), II, pp.182ff., and E.A. Freeman, *The History of the Norman Conquest of England* (Oxford, 1877), pp.73-74. For a general account of these writers see J.W. Burrow, *A Liberal Descent* (Cambridge, 1981), p.105 and passim. The position of Fortescue is not much different from this view, which saw the Witanagemot "as a kind of democratic parliament, deliberately devised to limit the king's power and to act as a constitutional check upon his authority". G.O. Sayles, *The Medieval Foundations of England*, p.175.

⁸⁸ The exception, according to Morris (*Political Thought in England: Tyndale to Hooker*, p.66.) is Richard Morison's *Remedy for Sedition*.

⁸⁹ Gerald Hurst, *A Short History of Lincoln's Inn* (London, 1946), p.8.

⁹⁰ Fortescue, *A Learned Commendation*, 86^v and ff.

⁹¹ Strayer, *On the Medieval Origins of the Modern State*, pp.89-94.

⁹² *Ibid.*, p.101.

can be viewed as an ideological position with broad appeal to a growing middle class worried about higher taxes, who thought that limiting the power of governments would reduce levels of taxation.

Of particular interest in this nascent Tudor text is Fortescue's use of the body politic idea. Not only does he use it on its own, without reference to the Christian obligations of the ruler, but he seeks to connect it to the idea of law. The relevant passage is a long one, running for several pages. He begins by quoting Augustine, from his *City of God*, where he defines the community as "a multitude of men associated by the consent of law, and communion of wealth". It follows directly that "such a people being headless, that is to say without a head, is not worthy to be called a body", and that "in things politic a commonality without a head is in no wise corporate".⁹³ He goes on to reiterate this point, using analogies, and here employs the terms "body mystical" and "body politic".⁹⁴ On the question of law, it is soon apparent that he does indeed see it as being closely related to the integrity of the "body politic". Laws, he says, "representeth the semblance of sinews in the body natural", and it is by this means that "such a mystical body is knit and preserved together".⁹⁵ In this passage we see an attempt to pre-empt the Roman law *maxims* giving the "*princeps*" legislative sovereignty. Instead of making the legislative prerogative subordinate to the "head" of the body politic, as would seem natural and logical, Fortescue clings to an older Anglo-Saxon idea that the fundamental law is found in the body politic itself.⁹⁶ Thus we see that laws are sinews, and that "as the head of a body natural cannot change his sinews ... no more can a king which is the head of a body politic change the laws of that body".⁹⁷ Rather, the monarch is "made and ordained for the defence of the law".⁹⁸ This goes hand in glove with Fortescue's more abstract idea of rule, for which the

93 Fortescue, *A Learned Commendation*, 30^r-30^v.

94 *Ibid.*, 30^v-31^r.

95 *Ibid.*, 31^r-31^v. This idea of the "mystic body" is explored at length in Ernst Kantorowicz's *The King's Two Bodies* (Princeton, 1957).

96 This idea is explored by Hans Kelsen in his *Pure Theory of Law* (Gloucester, Mass., 1989). See also G.O. Sayles, *The Medieval Foundations of England*, p.177. According to J.R. Strayer (*Medieval Origins*, p.44.), this idea was completely out of date by 1300.

97 Fortescue, *A Learned Commendation*, 31^v.

98 *Ibid.*, 32^r.

Latin term *dominium* has no exact English equivalent, although in respect of a propriety position this gives the prince something like sovereignty or supreme authority.⁹⁹ The existence of certain medieval precedents for such an abstract idea of rule, notably in Giles of Rome, Richard FitzRalph, and John Mair, does not imply consensus of the sort found in England in the period of this thesis. However, as we saw in the previous Chapter, Bodin's constitutionalism was partly derived from similar medieval sources to the ones which Fortescue uses.

This passage also contains a defence of property rights, and this matter too is couched in the terms and rhetoric of a body politic. Fortescue says that "in a body politic the intent of the people is the first lively thing, having within it blood, that is to say politic provision for the utility and wealth ... whereby the body is nourished and maintained".¹⁰⁰ It is therefore wrong for the king to "withdraw from the same body their proper substance against their wills and consents in that behalf".¹⁰¹ Given these two limits to the crown's powers, it nevertheless remains true that this body politic passage is closer to a recognition of sovereignty, particularly in terms of administrative autonomy (as in *imperium*), than the Thomist writings surveyed above. This can be seen as a response to the rise of the *de facto* supremacy of the State, noted in the previous Chapter. Professor Burns reminds us of the crucial significance of *politicum* and cognate Latin terms in all three of Fortescue's principal texts (of which the *Learned Commendation* is one), which is highly suggestive.¹⁰² By focussing on this Latinized Greek term, Fortescue sides with the "new" Italian political theorists, who more clearly understood Aristotle's meaning on constitutions than the Scholastics. This can be seen in the Latinization of *polis* which distinguishes Leonardo Bruni's version of *The Politics* from William of Moerbeke's version.¹⁰³ Fortescue's long career spans the decades either side of the invention of the printing press, when Greek texts

99 J. H. Burns, "Fortescue and the political theory of *Dominium*", *Historical Journal*, XXVIII, 4 (1985), p778. This is arrived at by regarding the State as an analogy of property, or perhaps being embodied in property, recalling the story of Barbarossa's horse, in which Bulgarus agreed that in an ultimate sense, private property was the property of the prince (see above, Cap. 1).

100 *Ibid.*, 31^r.

101 *Ibid.*, 31^v.

102 J. H. Burns, "Fortescue and *Dominium*", pp.778ff.

103 James Schmidt, "A Raven With a Halo: the Translation of Aristotle's *Politics*", *History of Political Thought*, VI, 2 (1986), pp.313-314.

(and Classical texts generally) circulated widely, and it would be surprising if Fortescue's library lacked such books.

This embryonic Humanism, couched in the Gothic idiom, goes a long way towards explaining Fortescue's remarkably abstract or "mature" use of *dominium* to refer to an idea, or even an ideal, of rule.¹⁰⁴ The fact that he has a more "political" and secularized view of the Crown than his Fourteenth century predecessors opens the way for later writers - especially legal writers - to adopt similarly rarefied and refined ways of talking about the emerging State in England. This view of rule as the exercise of public power, as in Aristotle, can later be demonstrated in the Humanists and Politiques writing in the 1570s and 1580s, both in England and in the West generally. But there are limits to the distance Gothic writers are prepared to go down the Humanist road, which, if followed to its conclusion, would question their own position as guardians of the common law, in favour of positivism. These limits are visible in the Henrician dialogue *Doctor and Student* by Christopher Saint German.

To the extent that he too places customary law ahead of statute law, Saint German, writing mainly in the 1520's, may also be regarded as a Gothic writer. Despite this his philosophy of law bears a superficial similarity to that of Thomist writings, as it recognises the primacy of Divine law and Natural law over human law.¹⁰⁵ Saint German clearly recognises the pre-eminence of the king-in-parliament when he states that positive law "standeth in diverse statutes made by our sovereign lord the king and his progenitors, and by the lords spiritual and temporal, and the commons of the whole realm in diverse Parliaments", and Slavin is correct to point to the probable connection between the emergence of such ideas and the Reformation Act of 1529[sic].¹⁰⁶ But in the finest Gothic tradition, Saint German places such laws unambiguously beneath common law.¹⁰⁷ This is

¹⁰⁴ J. H. Burns, "Fortescue and *Dominium*", p.794.

¹⁰⁵ Christopher Saint German, *Doctor and Student*, iv^v-v^r.

¹⁰⁶ Saint German, *Doctor and Student*, xxv^v. This was printed in 1530, in November according to the colophon. Slavin cites Fox and Guy to the effect that he made this claim for parliamentary supremacy in 1531, "two years after the passage of the Act of Appeals". Fideler and Mayer (eds), *Political Thought and the Tudor Commonwealth*, pp.226-227&n14..Yet the main Act of Appeals was the one passed in 1533, on the marriage of Henry to Anne Boleyn. See Tanner, *Tudor Constitutional Documents* (Cambridge,1951), p.40.

¹⁰⁷ Saint German, *Doctor and Student*, xxv^v.

defined as “diverse general customs of old time used through all the realm” which are “neither against the law of God, nor the law of reason”, and which are also “approved by our sovereign lord and king and his progenitors and all their subjects”, although this last part implies tacit rather than explicit consent.¹⁰⁸ The bulk of this text consists of tedious legal controversy, largely connected with the problems surrounding titles to landed estates, and may be considered too technical for the purposes of this thesis. It is interesting to note before passing on, however, that Saint German includes as one of his six categories of law the idea of “*maxims*”, which reminds us that ideas from Roman law had already entered English legal and political thought to some extent.¹⁰⁹ It should be remembered that this is a textbook, intended to introduce students to both ordinary and ecclesiastical law as practised in the 1520s, and this may explain the polyglot and eclectic nature of the book.

Having briefly examined the Gothic lawyers, we need only to view the Humanist category. There is not sufficient space to look at the earlier English Humanists, although it is true that from Fortescue’s time to about 1530 there was “a notable revival of classical learning and much general intellectual activity”. Yet the only political treatises this “activity” produced, Edmund Dudley’s *Tree of Commonwealth* and Thomas More’s *Utopia*, were both “surprisingly conservative and medieval”.¹¹⁰ Thomas Elyot’s *Book Named the Governor*, published in 1531, is largely an educational treatise modelled on Vives and Plato, and it also expresses the preference for monarchic rule in fairly medieval terms.¹¹¹ It may be said of these Humanists of the Erasmian circle that they were an English outpost of a Continental movement yet to make headway there, rather than a

¹⁰⁸ *Ibid.*, xiii^v. On the following page he asserts that “these be those customs that properly be called the common law”.

¹⁰⁹ *Ibid.*, iv^v-v^r. According to Slavin, “in the 1530’s there was a revival of arguments from Roman law about the prince and absolute property rights”. Fideler and Mayer(eds), *Political Thought and the Tudor Commonwealth*, p.233. In any case, for centuries medieval scholars in all parts of Christendom had glossed and re-glossed these *maxims*. See also Pocock’s *Ancient Constitution*, pp.262-263. Saint German’s other five categories are divine law, natural law, common law, customary law, and statute.

¹¹⁰ Christopher Morris, *Political Thought in England: Tyndale to Hooker*, p.15. To these two could also be added Erasmus’s *Education of a Christian Prince*.

¹¹¹ Thomas Elyot, (F. Watson ed.), *The Book Named The Governor* (London,1907), pp.7-9. He says that “one sovereign governor ought to be in a public weal” and that “public weals governed by multitudes” are of a sort “which might be called a beast with many heads”. He then uses the familiar analogy of the bees.

genuinely English phenomenon.¹¹² This explains their inability to apply humanist ideals to the political system in which they lived, which would have been revealed in writings suggestive of possible departures from the older monarchic tradition, and in which the secular State would be seen as much more autonomous. Like the Thomists, the early Humanists were yet to explore the logic of the *polis* in their own communities.

This certainly cannot be said of Elizabethan Humanists such as Thomas Smith, who in the Protectorate of the late 1540s held a number of important positions and later served on the Committee to revise the Prayer Book.¹¹³ Smith wrote his *De Republica Anglorum* in 1565, while English Ambassador to France, and although he “regarded it as one of his lesser works”, it has since come to be seen (quite rightly) as the most important of all early Elizabethan texts on the constitutional arrangements of the time.¹¹⁴ According to a letter, probably written by Smith at Toulouse in April 1565 (just one year before Bodin foreshadowed his own great theory in the *Methodus*), his inspiration in writing *De Republica* was Aristotle, and his comparative constitutional and institutional writings on the *polis*.¹¹⁵ But however much Smith might wear the trappings of Politique Humanism, he was also a Reformed English lawyer, making aspects of his writing both Protestant and, equally significantly, Gothic.¹¹⁶ His preoccupation with law and with the practical functioning of the English state should not prevent us from recognising that, although he writes in defence of English law against Roman law, his view of law is more amenable to the idea of sovereignty than that of any Gothic writer, for whom the legislative power is shared between many different elements, including the crown, the judges, and the people-

¹¹² *Utopia* was not translated into the vernacular until 1553, (J.W. Allen, *A History of Political Thought in the Sixteenth Century*, p.153).

¹¹³ Mary Dewar, *Sir Thomas Smith: A Tudor Intellectual in Office* (London, 1964), pp. 26ff..

¹¹⁴ *Ibid.*, pp.110-111.

¹¹⁵ Dewar, *Sir Thomas Smith*, p.111. The text was not printed until 1583, although a number of MSS were in circulation before that date, and according to Dewar (p.113), these are somewhat less parliamentarist than the printed version.

¹¹⁶ Christopher Morris, *Political Thought in England: Tyndale to Hooker*, p.81. Smith had also studied Civil law at Padua, a powerful Humanist influence upon his subsequent ideas. J.W. Allen, *A History of Political Thought in the Sixteenth Century*, p.263.

in-history.¹¹⁷ The importance of Thomas Smith to the development of English theories regarding sovereignty may have been underestimated, due to the early date of composition of the *Anglorum*, which draws attention away from the possible role Smith may have played through his mentoring of proteges such as Gabriel Harvey.¹¹⁸ A modification of his original views to accommodate Bodin after 1566, and especially after 1576, is entirely possible, although I am not aware of any manuscript that shows it. I shall therefore assume that the printed text is the same as the original manuscript.

Like the Thomists, Smith believes that the monarch “is the life, the head, and the authority of all things that be done in the realm of England”.¹¹⁹ But without fear of inconsistency, he also maintains that the “most high and absolute power of the realm of England, consisteth in the Parliament”, and that “the consent of Parliament is taken to be every man’s consent”.¹²⁰ The first thing to note here is the separation of executive authority from the *plenitudo potestatis* or full authority. Of course, this can be interpreted as a kind of “mixed government” theory, but then, why not take Smith at his word, and interpret it as a parliamentarist theory, extending the work of Fortescue? Allen, for example, is not correct when he says that Smith is an outright exponent of mixed monarchy or the mixed regime.¹²¹ As in earlier theories, ‘parliament’ means ‘king-in-parliament’, and yet Crown and legislature seem to be separated to an unusual extent in this text, and to the extent that this can be looked at as classic Aristotelian (not Thomist) theory, he is not actually giving any political power to the monarch, except within parliamentary contexts.

¹¹⁷ Such thinking could also be “the sign of a radical deficiency in the historical knowledge of English lawyers”. J.G.A. Pocock, *Ancient Constitution*, p.65. See also Allen’s discussion: *A History of Political Thought in the Sixteenth Century*, pp.262-265.

¹¹⁸ Virginia F. Stern, *Gabriel Harvey - His Life and Marginalia* (Oxford, 1979), p.38. The list of correspondents at pp.108 - 109 includes Bodin and Smith.

¹¹⁹ Thomas Smith, *De Republica Anglorum*, p.47.

¹²⁰ Smith, *De Republica Anglorum*, pp.34-35. A study on early theories of representation is, unfortunately, outside the scope of this thesis.

¹²¹ J.W. Allen, *A History of Political Thought in the Sixteenth Century*, p.263. For a detailed account of the idea of mixed monarchy see Michael Mendle, *Dangerous Positions - Mixed Government, the Estates of the Realm, and the Making of the Answer to the six propositions*, (University, Ala.,1985), pp.21-37.

As far as attributes of sovereignty are concerned, Smith identifies five main types of power: legislation (the foremost), war and peace, taxation, appointments, and final appeal.¹²² These are divided between prince and parliament. To the prince goes “the authority of war and peace”, which excludes the supplies of money for the prosecution of war, but includes the declaring of war, the arranging of peace treaties and truces, and the emergency powers of wartime. In this respect “England is far more absolute than either the dukedom of Venice is, or the kingdom of the Lacedemonians was”, which is intriguing considering the strong republican overtones of Sparta and Venice.¹²³ The prince also has the power of coining, and a type of equitable jurisdiction at law. These powers supplement the executive power proper, according to which the prince “giveth all the chief and highest offices or magistracies in the realm”, including Bishoprics, “and hath the tenths and first-fruits of all ecclesiastical promotions”. Finally in this passage, all “writs, executions and commandments [including legislation] be done in the prince’s name”.¹²⁴

On the parliamentary side of the equation, there is a detailed account of powers, which it is necessary to quote in full. The queen-in-parliament

abrogateth old laws, maketh new, giveth orders for things past, and for things hereafter to be followed, changeth rights, and possessions of private men, legitimateth bastards, establisheth forms of religion, altereth weights and measures, giveth forms of succession to the crown, defineth of doubtful rights, appointeth subsidies, tailles, taxes and impositions, giveth most [but not all] free pardons and absolutions, restoreth in blood and name as the highest court, [and] condemneth or absolveth them whom the Prince will put to that trial”.¹²⁵

Considering how assertively parliamentarist this remarkable passage is, it is hard to agree with Weston and Greenberg that the royal power is in some undefined way commensurate,

¹²² Smith, *De Republica Anglorum*, p.48. He goes on to allocate the powers of war and appointing to the monarch, but the main powers are all with parliament.

¹²³ Smith, *De Republica Anglorum*, pp.43-44. On p.45 he says that “the absolute power is called martial law”. The division of the conduct of war from the ‘sinews of war’ necessitates strong coordination of legislature and executive. For more on republicanism see below, Cap. 6.

¹²⁴ Smith, *De Republica Anglorum*, pp.45-46.

¹²⁵ *Ibid.*, p.35.

but rather, it would appear that the crown has a legitimating role, with *de facto* power residing in parliament.¹²⁶

We have already seen Smith use the “body politic” analogy, when he refers to the prince as the “head”. In another place he says that when the constitution is “like a garment to the body or shoe to the foot”, then “the body politic is in quiet, and findeth ease, pleasure and profit”.¹²⁷ Smith also speaks of the command of “the ruling and Sovereign part”, and says that a lawbreaker “is justly to be condemned, because his doing is contrary to the law and the ordinance of that part which doth command”.¹²⁸ As we have seen (above, Cap. 1), the idea of law as command is a characteristic of the Roman law argument, and foreshadows Bodin’s theory of sovereignty, although there is doubt as to whether this account in particular had any influence on Bodin, or was even moving along the same political-theoretical path.¹²⁹

There is another aspect of Smith’s treatise which sets it apart from Saint German and Fortescue (not to mention the Thomists), and that is the detail of his political and constitutional analysis. His enumeration of the attributes of each of the two central institutions (above) reflects an increasing precision in political writing, and is reminiscent of the work of French theorists such as Seyssel, Hotman and Bodin. That an English writer (admittedly a Humanist) could bring such intellectual force to bear upon constitutional niceties shows the increasing complexity of government, and the increasing attractiveness of politics as a subject for scholarship. Michael Mendle confirms this aspect when, commenting on Smith’s sophistication, he states that :

Smith’s laudatory statements of what a king alone and what a Parliament alone could do, in the tradition of Fortescue, were incapable of resolution into [the] distinct competitive spheres that expositors and consistency prefer. Both are part of

¹²⁶ Corinne Weston & Janelle Greenberg, *Subjects and Sovereigns - The Grand Controversy over Legal Sovereignty in Stuart England* (Cambridge, 1981), p.9.

¹²⁷ Smith, *De Republica Anglorum*, p.17.

¹²⁸ *Ibid.*, p.2. The term “ruling ... part” is another example of Smith’s Aristotelianism.

¹²⁹ According to Allen (*A History of Political Thought in the Sixteenth Century*, p.264.), to argue that Smith anticipates Bodin “would misrepresent his thought”. Bodin never mentions Smith in any of his works.

a mystery of constitutionality, a “binity” that, like the first two persons of the Trinity, is a mystery of coequality and consubstantiality: make one or other prior or superior and there is error. The law functioned as a kind of Holy Spirit for Smith; it was neither above the king alone and king-in-Parliament nor below them, but another distinct expression of the underlying oneness of them both”.¹³⁰

The last of the English theorists to be dealt with here, John Hooker (alias Vowell), is, as Mendle says, advancing a similar position to that of Smith, which does not decouple the twin heads of authority, but leans towards parliament. Given this, and the existence of circulating MSS of Smith’s text between 1565 and 1583, it is quite probable that Hooker, who published his *Order and Usage* between 1572 and 1575, was familiar with it.¹³¹ Hooker makes his preference for parliament very clear in the first few pages, where he says that “the King himself ... cannot establish order or make any law: but only in Parliament, and with advice and consent of all the estates”, and that parliament is “in authority highest, and in power chiefest”, such that “albeit the King or prince be never so wise, learned and expert: yet is it impossible for any one to be exact and perfect in all things, but a Senate of wise, grave, learned and expert men, being assembled in council together” is better.¹³² In John Hooker we see a combination of the Aristotelian Humanism of his more famous nephew, and Puritan ideas along the lines of Calvin, Smith and (later) Raleigh, which place much stress upon rule by assembly.¹³³ John Hooker foreshadows Peter Wentworth’s aggressive position in favour of parliamentary privilege by stating that in parliament “a mean man speaking his conscience freely” should be heard, and he reminds us of the conciliarists when he suggests that there are three houses of parliament: “this one house ... did divide ... into three houses, that is to wit, the higher house, the lower house, and the

¹³⁰ Michael Mendle, *Dangerous Positions*, p.56.

¹³¹ Snow (ed), *Parliament in Elizabethan England: John Hooker’s Order and Usage*, pp.29ff.

¹³² Snow (ed), *John Hooker’s Order and Usage*, pp.123,116,117.

¹³³ This type of almost republican political theory is very much in evidence in the Martin Marprelate pamphlets, published secretly on an underground press in the aftermath of the Armada, by Job Throckmorton and Robert Waldegrave. The concept of episcopacy can be equated with royal monarchy, and the elder or presbyter with ‘royal and politic’ monarchs and MPs. The violent rejection of a church polity based on a purely ‘descending’ thesis of rule (to borrow a phrase from Ullmann) is found expressed with great panache in the Marprelate writings, and stems from Continental Reformed theology, not from ‘ancient constitutionalism’ of the Fortescue variety.

convocation house”.¹³⁴ He expresses a more classicist or renaissance Aristotelian position on the subject of rule “by laws and not by men”. In addition to rulers behaving responsibly, and “neither yet prefer[ring] private profit and wilful lusts, before the common and public wealth”, he reminds that “princes do rule and govern by law”, and later confirms that “the Prince obeyeth the laws”. There follows a *maxim* in Latin which Snow translates thus: “[Law is] what is pleasing to the wise and good prince, to whom nothing is pleasing but that which is approved by the judgement and decision of the nobler and more honourable for the Republic”.¹³⁵ Here we see an early attempt to translate the constitutionalist Huguenot (Calvinist) theory into English terminology, and if this seems an unwarranted intermingling of Humanist and Protestant traditions of political thought, let it be remembered that Calvin was converted whilst a member of the Bourges “Alciatei”.¹³⁶

Within a few years of the publication of John Hooker’s *Order and Usage*, the Aristotelian tendency, evident among so many Sixteenth century humanist writers, of identifying a ruling element of the constitution, had finally yielded the ultimate fruit in the form of Bodin’s theory of the abstract unity and legal supremacy of the State. This new awareness of the State, whether it came directly or indirectly from Bodin, removed the confusion of the pre-sovereignty texts, although as we shall shortly see, it replaced one set of questions with another. Humanism provided the tools for working out many of the implications of the Protestant separation theory, adding elements of Gothic constitutionalism, against the Thomist position. Bodin’s legal humanism was consistent with such an ideology, although the strong Gothic overtones of English Humanist writings made it impossible to adopt Bodin without modification. Humanist writers were already moving towards an English notion of “sovereignty” in which politics is an autonomous and important aspect of life, legislative powers are central, and legislation takes the form of positive law. The constitutionalist emphasis of Bodin and the *Politiques* was echoed in English political thought, which rapidly developed in a constitutionalist direction in earlier Elizabethan texts. The French theory of sovereignty needed to be adapted to a parliamentary system by those writers concerned to advance the parliamentary cause, leading to the first appearance of well formulated theories of parliamentary supremacy.

¹³⁴ Snow (ed), *John Hooker’s Order and Usage*, p.153.

¹³⁵ *Ibid.*, pp.118-119.

¹³⁶ Donald Kelley, *Foundations of Modern Historical Scholarship* (New York,1970), p.100.

This was done by equating “sovereignty” with the constitutional status of the king-in-parliament. This assimilation of Bodin marks the coming into being of England as a modern nation state and consummates the Reformation of the 1530’s.

Texts by Fortescue, John Hooker, and Smith were circulating in the early 1570s in England, and these prepared local readers for Bodin’s theory of sovereignty by drawing attention to the complicated nature of the Tudor State. In such texts as these, English readers could find the methodology of Aristotle applied to their own polity, a relentlessly empirical, almost scientific, manner. It became possible to speculate about the origins and legitimacy of secular rulers and their legal powers, renaissance fashion, without the characteristic Thomist assumption that all powers, including political powers, are mediated by the Church. In looking at the reception of Bodin’s theory in England it is important to remember that the separation of Church and State advocated by Calvinism assisted greatly in the advance of political thought at this time. It may even have had a strong influence on Bodin (see above, Cap. 1), especially if he was, as some have argued, a Huguenot himself during the 1560s.¹³⁷

137 *See the Introduction for a discussion of the rise of the modern state. Bodin's theory of sovereignty was a direct result of the Reformation and the separation of Church and State.*

Chapter III

The Reception

The readiness of English readers for Bodin's theory in 1576 is not reflected in a rapid penetration of his ideas into the locally produced literature, which has few echoes of the notion of sovereignty until the last decade or so of the Elizabethan era. The political crisis in France which was the catalyst for Bodin developing his theory, had no parallel in England in the 1570s. The English were, for once, united at this time against the Spanish threat, and only after 1600 did the threat subside. Serious opposition from the religious left, with its theory of lawful resistance, developed slowly until the accession of James I. While the intellectual conditions were right for an early emergence of local sovereignty theories, the political conditions were abnormal and held back the emergence of English sovereignty theories, with one or two notable exceptions.

In dealing with the early influence of Bodin's *Six Books* in England there are certain salient dates to be remembered. The first of these is 1581-82, the year of Bodin's celebrated visit to England¹ in the retinue of the Duke of Alençon, suitor to Elizabeth and brother of the French king. The second date is 1586, the date of publication of the Latin version² of

¹ See McRae's Introduction in Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale* (London, 1606), Facs. (Cambridge, Mass., 1962), pp. A10, A11. The visit placed Bodin at the centre of courtly activities for several months.

² Constance Jordan, *Renaissance Feminism: literary texts and political models* (Ithaca, 1990), p. 213, notes that it is "remarkable that no translation of Bodin's work was published during the reign of Elizabeth." Perhaps it was considered risqué. More likely the vast bulk of the text scared potential

Bodin's text. 1588 is the date of the defeat of the Spanish Armada. National pride skyrockets at this point and the anti-Spanish paranoia slowly begins to subside, and in the ensuing months, unknown Puritans (Throckmorton and Waldegrave) publish the scandalous Martin Marprelate pamphlets. The Marprelate tracts, with their furious libels on individual English Bishops and attacks on High Anglican institutional governance begin at this point to shift the political agenda back onto internal questions, leading in turn to the repression of the Puritans in 1593. Thus, the years 1588-89 can be taken as a turning point in the history of political thought in England, with Calvinism becoming as serious a challenge to received views of authority, as it had been in Bodin's France of 1576. There is no reason to doubt that this remained the case to the death of Elizabeth in 1603, and that Bodin's theory offered a means of reconciling the Puritan idea of opposition with the prevailing distaste for theories of lawful resistance. The reception period thus links up in the 1590s with the first wave of serious internal opposition to the constitutional order established in the Reformation Parliament, and influential Court figures attempted to bring the English Church into line with Reformed practices of ecclesiastical governance, and also maintain a strongly anti-Spanish foreign policy.³

Bodin's visit to England in 1581 was connected with his patron, Alençon, who was simultaneously courting the English Queen and negotiating English military and financial assistance for a proposed invasion of the Spanish Netherlands. In the latter business we can see very clearly that the Politique cause of Alençon and Bodin was allied to the Protestant desire to defeat Spain, even though many (perhaps most) of the Politiques were not Protestant. Bodin became Alençon's Master of Requests in late 1580, a position of great influence, which he held until the premature death of the Prince in 1584.⁴ As an advocate of

translators away. This would also account for the delay (until 1598) of a translation of LeRoy's *Aristotle*. For a brief account of the 1606 translation, see above, end of Cap. 1.

³ The Spanish war, which was undeclared but began in about 1586, did not formally end until the Treaty of London in 1604. Although hostilities subsided during the later 1590s, in 1599 rumours of another Armada caused an army to be assembled at Tilbury, and at one stage in London the gates were shut and chains put across the streets. G. B. Harrison, *The Life and Death of Robert Devereux Earl of Essex* (Bath, 1970), p.234.

⁴ Summerfield Baldwin, "Jean Bodin and the League", *Catholic Historical Review*, XXIII, 2 (1937), pp.162-163. Bodin was an associate of Alençon already by 1576.

the proposed marriage Bodin was in frequent contact with the court and with Elizabeth herself during his visit, and this fact alone suggests a strong stimulus for English audiences to study the *Six Books*. He is also known to have been on good terms with the anti-Spanish faction of Leicester and Walsingham, even though they strongly opposed the marriage, and a letter survives from him to Walsingham in 1582, not long after his arrival in Antwerp with the invading forces under Alençon.⁵ Shortly before leaving for Antwerp he gave a speech to the Queen in Council, probably in the Star Chamber, arguing for a policy of toleration in response to the execution of Edmund Campion, some of which he later included in the Latin version of the *Six Books* published in 1586.⁶ As a visiting celebrity he was a target of English wits, and Jean Hotman (son of Francois Hotman) tells the following story in his book *The Ambassador*, in which Bodin comes off second best:

Being at dinner with an English Lord, he [Bodin] began to speak of the succession (a matter then amongst them odious and capital) and affirmed that a certain Princess was the presumptive inheritrix thereunto; notwithstanding a certain law which seemed to exclude those that were born out of the land; and yet, said he, I know not where this law is for all the diligence which I have used to find it out. It was suddenly replied unto him by this Lord: you shall find it on the backside of the Salic law; a judicious and biting rebound, which instantly stopped the curiosity...⁷

This reference to Bodin's idea of *leges imperii* shows that at least one Lord was familiar with his writings, either directly or through current opinion, even if the general significance of his ideas was not appreciated, and we have already seen that English Humanist thought was moving in that direction in the 1570s (above, Cap. 2). There was pressure for rationalism as the eirenic alternative to religiously-based forms of political ideology; we could postulate that Bodin was a celebrity in England during the Alençon courtship, but this does not prove that English political thought was being influenced by Bodin and the *Politiques* at this time. Of

⁵ Summerfield Baldwin, "Jean Bodin and the League", p.165.

⁶ Baldwin, "Jean Bodin and the League", p.166.

⁷ Jean Hotman, *The Ambassador: His Behaviour, Charge, Privileges, Familie* (London,1603).

the three texts I shall discuss below, only one can be proved to have been popular, and that popularity was not until the decade after Bodin's visit. Yet the turbulent tides of Elizabethan Puritanism encouraged the adoption of the new idea of the State. Growing religious discord was a challenge to High Renaissance philosophy, but it also made the new view of the State a more attractive alternative; it is to the religious situation that I shall now briefly turn.

From the time of the first Elizabethan parliament, where Strickland introduced proposed legislation (to begin the hoped-for second phase of Reform in the English parish churches) known as the "bill and book", the Crown and many parts of the government had resisted any change whatsoever, with an almost paranoid intensity.⁸ As Jones so insightfully reminds us, the effect of the "bill and book" episode, along with other early Elizabethan political crises, was to spur English theorists to think of more "rational" bases to politics, ones which would yield less divisive approaches to the art of the legislator than those of the religious parties.⁹ Writers who were solidly in favour of the Reformation, such as Thomas Smith, were able to view rule in an almost republican way, regarding the Crown as, in Collinson's words, a purely "public office".¹⁰ The reader finds in both John Hooker and Thomas Smith a rationalist element like nothing in the earlier texts, and this higher degree of abstraction gives their respective texts a noticeable similarity to the works of the Politiques. Rather than Hooker and Smith being directly influenced by the Politiques, it is more likely that they were forced by the dangerous religious situation to seek metaphysical terms with which to describe the evolving English constitution and related legal issues. It may have taken some time for these rationalist approaches to catch up with the French advocates of the 1560s and 1570s, but the impetus which was there ultimately led to highly abstract constitutionalism of the sort typified by Pym's idea in 1628 that private property is absolute, and that no direct taxes can therefore be levied by the crown without explicit

⁸ Jennifer Loach, *Parliament Under the Tudors* (Oxford, 1991), pp. 106-107.

⁹ N. L. Jones, "Religion in Parliament", D. M. Dean & N. L. Jones (eds), *The Parliaments of Elizabethan England* (Oxford, 1990), pp. 124-127.

¹⁰ Patrick Collinson, *Elizabethan Essays* (London, 1994), pp. 16-19.

consent and representation.¹¹ It should be noted that this is similar to Bodin's argument, discussed in the first Chapter (above).

This religious instability was to worsen after 1588. The four anonymous satirical booklets known collectively as the Marprelate Tracts provoked the extreme displeasure of the Queen and Privy Council, partly because they impugned the office of Bishop and partly because they were filled with scandalous Court gossip connected to actual Bishops.¹² The extended effect of the widely read diatribes was to engender a substantial secondary literature of two years or more duration, itself in pamphlet form, in which various authors attacked or defended "Martin Marprelate", or adopted an ambivalent stance. Thus the issue of "how Reformed is Reformed" began to pick away at a raw nerve in the English collective political unconscious during the time before the beginning of the administration of Robert Cecil in 1593. Instead of doubting the righteousness of vestments the people were now being called upon to doubt the righteousness of the very office of a Bishop, even of a Bishop answerable to the Queen. This Marprelate exchange is thus of primary importance in seeing where a writer like Richard Hooker is situated, ideologically speaking, given that his brief is to write in defence of episcopal office in general terms, and yet he has to embrace the position of a strongly Calvinist left wing within both Church and State if he is to succeed at all.

Richard Hooker's *Laws of Ecclesiastical Polity* is the major political work of the later Elizabethan period, but as it provides the subject of the next chapter it need not be dealt with here. The early period before 1586, which is the same date as the more accessible Frankfurt Latin edition of Bodin's *Six Books*, contains one important text, Charles Merbury's *Brief Discourse of Royal Monarchy*, published in 1581, which is the first text in English to restate his theory. Another important reception period text is the Bowes translation of Pierre de La Primaudaye's *The French Academy*, published in 1586 (and very often thereafter). Finally,

¹¹ Clive Holmes "Prerogative Taxation", J. H. Hexter (ed), *Parliament and Liberty - From the Reign of Elizabeth to the English Civil War* (Stanford, Ca., 1992), p.141.

¹² E. B. Tribble, *Margins and Marginality- The Printed Page in Early Modern England* (Charlottesville, 1993), pp.104ff. Edward Arber, *An Introductory Sketch of the Martin Marprelate Controversy* (London, 1879). W. Pierce, *An Introduction to the Marprelate Tracts* (London, 1908), Facs., (New York, n.d.). V. Cornell, *Understanding Elizabethan Laughter: The Martin Marprelate Tracts* (Arizona State University, 1977, Unpublished Ph.D. Dissertation).

there is the translation of Louis Le Roy's critical edition of the *Politics* of Aristotle, in 1598, which, although this is somewhat late (the original French edition was in 1576) played a major part in rejuvenating political discourse in England. The latter two texts are *Politique* rather than strictly Bodinean, but are based on the same Aristotelian combination of constitutionalism and absolutism.¹³

The availability of *Politique* theory in Latin and in these English-language editions must have greatly enlarged the group of English readers acquainted with the idea of sovereignty. But we have good evidence that Bodin was read from an early date, in the original. At Cambridge such political writings were very much in vogue;¹⁴ and Bodin himself remarks upon the use of his book by students of the law faculty there.¹⁵ Gabriel Harvey, in a letter written before 1580 (and possibly as early as 1577) remarks upon the popularity of political writings in intellectual circles¹⁶. He says that "Scholars in our own age are ... rather active than contemplative philosophers", and now read "many outlandish braveries" such as Castlingone's *Courtier* and books on military strategy. He goes on to say: "You can not step into a scholar's study but (ten to one) you shall likely find open either Bodin's *De Republica* or LeRoy's *Exposition upon Aristotle's Politics* or some other like French or Italian discourses".¹⁷ He adds that Aristotle is no longer read as a metaphysician, but as a political theorist, and later he alludes to the ultimate in darkly political reading - the works of Machiavelli¹⁸. It is clear from this letter that copies of the early French editions of the *Six*

13 J.H.M. Salmon, *The French Religious Wars in English Political Thought* (Westport, 1981), p.24

14 Is this *Politique* tendency owing to the pre-eminence of Cambridge as the training ground for Elizabethan courtiers?

15 Beatrice Reynolds, *Hotman and Bodin - Proponents of Limited Monarchy in Sixteenth Century France* (New York, 1931), p.189. The difficulty that Cambridge students experienced in reading the French version reinforced Bodin's intention to do a Latin 'translation'.

16 B.L. Sloane 93, printed by the Camden Society as *The Letterbook of Gabriel Harvey*, edited by E.J.L. Scott (London, 1884).

17 Scott (ed), *The Letterbook of Gabriel Harvey*. pp 78,79 (MS fol. 426,43)

18 *Ibid.* Similarly, the young King James of Scotland had a copy of the *Six Books* on his shelf as early as 1577. See Helena Chew "King James I" in F.J.C. Hearnshaw (ed), *The Social & Political Ideas*

Books quickly found their way to England and were widely read by those whose French was adequate. Yet we would not expect the book to be influential until the arrival of the Latin version after 1586. The idea of sovereignty is a different matter. Much of the original theory is found in short pithy passages such as can be found in I, 8 and also the beginning of the book. These formulations travelled far and fast, in disembodied form, and we should not be surprised to find them in English at an early date.

This brings us to Charles Merbury's little book of 1581. The full title reads: *A Brief Discourse of Royal Monarchy, As of the Best Common Weale: Wherein the subject may behold the Sacred Majesty of the Princes most Royal Estate*. The term "Royal Monarchy" echoes Fortescue. We saw in the previous chapter that common law advocates distinguished between "monarchy regal" and "monarchy regal and politic", with the former being characteristic of an absolutist Continent and the latter denoting a uniquely English constitutionalism. Either Merbury's title is advancing the cause of a less "politic" monarchy in England¹⁹ or else he may be indulging in the hero worship of monarchs, without reference to Fortescue. Merbury's background has been remarked upon by some commentators, and may explain these putative Continental tendencies. Christopher Morris describes him as "a very 'Italianate' English diplomat" who "had been out of the country for many years".²⁰ Merbury himself states in the epistle to the reader that he has lately come "from beyond the seas" and that the *Discourse* is based on "those few studies which I had used in my late travels ... as then attending in Court at her Majesties service." He goes on to refer to his previous studies of politics at Oxford under the direction of "Doctor Humphrey"²¹. He discusses briefly his views on the curriculum, and makes it clear that the "royal" is but one

of some Great Thinkers of the Sixteenth and Seventeenth Centuries (New York, 1949), p. 111. Since the letter in question is addressed to his old Master at Pembroke, it must be assumed that he had gone down to London. He is referring to his Cambridge days in the letter.

19 Fortescue could not have anticipated the nature of the Tudor regime, and if he had he would have been horrified. From this point of view, Merbury was merely attempting to reconcile theory with fact.

20 Christopher Morris, *Political Thought in England - Tyndale to Hooker* (London, 1953), p. 80.

21 Charles Merbury, *Discourse of Royal Monarchy* (London, 1581), iii r°, (the text itself is fully paginated).

type of monarchy²². Here too we see the results of the reinvigorated study of Aristotle's *Politics* at the Universities. The references to Humphrey are also interesting because, according to Professor Skinner, he was only the third English writer to use the term "State" in its modern sense.²³ There is a tentative suggestion in this that Merbury may have been part of a Politique grouping around Humphrey, which if it existed would have complemented Leicester's circle, but much more evidence would need to be uncovered to explore this tantalising topic. Merbury completes the epistle with a reference to the Italian proverbs which appear as an appendix to the *Discourse*. There would seem to have been a demand for such material for keen language students to practise on, reminding us of Gabriel Harvey's comments on the reading of Italian political authors. The sensitivity of political writings in Elizabethan times is evident from the inclusion in the text of Thomas Norton's report to the censorship authorities²⁴.

The account in *D.N.B.*²⁵ confirms that Merbury was at Oxford. He received his B.A. in 1569 (1570 by the new calendar), and seems to have been at Magdalen. The "Doctor Humphrey" referred to is Laurence Humphrey, one of the most distinguished of the Marian exiles. He was quite a Calvinist, repeatedly getting into trouble for not wearing vestments, and as president of Magdalen managed to "calvinize" that ancient establishment.²⁶ Merbury went down to Gray's Inn and was thus briefly associated with that close community of barristers. Not many years later Gray's Inn became Francis Bacon's home. Merbury, now a diplomat, was thus "often about the court". After *Royal Monarchy* was published, Merbury went to France as a spy, perhaps to keep an eye on Alençon and Bodin. He also spent time

²² Merbury, *Discourse of Royal Monarchy*, v°. (this seems to rule out the hero worship mentioned above).

²³ Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), Vol. II, p. 245.

²⁴ Printed after the text, Sig. G. p. iii r°. A good example of the official touchiness concerning printed books is the order (from the Council) of June 1599 banning satires and books on English history. One of the victims of the ban was Gabriel Harvey. G.B. Harrison, *The Elizabethan Journals* (New York, 1965), II, pp. 97, 98.

²⁵ *D.N.B.*, vol. XIII, pp. 263, 264.

²⁶ *D.N.B.*, vol. X, pp. 245-248.

at the Huguenot stronghold of La Rochelle, and is known to have corresponded with Anthony, brother of Francis Bacon. In early 1594 he returned to Oxford.

The structure of Merbury's argument in this text is messy²⁷. After a typical four-page preface he sets out his basic plan, which is in three parts. The first is an analysis of the types of State, and of lawful monarchy in particular. Next he intends to discuss the teleology of statecraft, and finally, we are to learn what policies best address these ends²⁸. Unfortunately, what his readers actually get is only the first part. The body of this text is in roughly four sections: first, the types of States (pp. 7-15); second, the types of monarchies (pp. 16-19); third, a debate on the comparative virtues of elective and successive monarchy (pp. 20-39); and fourth, an exposition of Bodin's theory of sovereignty with minor amendments (pp. 40-51). It is interesting to speculate whether this was intended to become part of a more ambitious work. Two features of the text bear mentioning at this point. The first is that, like all humanist works, the text is heavily encrusted with examples, mainly from classical sources. Secondly, the logic of the argument is to move down from generalities to particulars in the Ramist manner, until a point of departure is reached - in this case the method of deciding upon the succession, which, as we have seen, was a topic liable to get even Bodin into trouble.

The typology employed by Merbury is that of Aristotle: constitutions are good or bad; States are governed by many, few, or one. Democracy is equated with mob rule and its "good" equivalent is a shared rule of both rich and poor. This form of State is known as either a "commonwealth" or "respublica"²⁹. Tyranny is the worst state, monarchy the best³⁰. The many different categories of monarchy are distinguished by the method of deciding who shall be the monarch. Some are capricious, including those of gift, of lot and of conquest, while some are more regulated, as by testament, by adoption and by succession,

27 J.W. Allen describes the book as "trivial and confused" (*A History of Political Thought in the Sixteenth Century*, p.250).

28 Merbury, *Discourse of Royal Monarchy*, p. 5.

29 Merbury, *Discourse*, pp. 8-11.

30 *Ibid.*, p. 15. The lawful nature of monarchy is stressed.

whereas others must revert to the people, as by custom and by election³¹. Although Merbury's categories may seem trivial to us, this was a burning issue in 1581³². Elizabeth was childless and seemed likely to remain so. Furthermore, many wars had been fought over various claims to thrones. Finally, there was the problem of the Netherlands. They had come to Philip II by both succession (to Charles V) and testament, but so too had Spain. Why should the Dutch share a king? And if thereby the Dutch felt that monarchy had failed them, why not try one of the other types of constitution? Elective monarchy was probably seen by royalist diplomats as a feasible alternative for the Dutch (should they survive).

Merbury's discussion of sovereignty is undoubtedly based on Bodin's theory, and bears out his remark that "if by chance there shall be anything new [in the *Discourse*] and not in this our native language before time written" it will be worth knowing.³³ In most respects he follows Bodin closely. Sovereign power is absolute and perpetual.³⁴ Sovereign rulers are accountable only to God³⁵. A sovereign state is militarily autonomous,³⁶ and not enmeshed in any remnant feudalism.³⁷ Sovereign rule is the only rule which is authentic, and there are certain sovereign powers (marks), of which the legislative power is foremost³⁸. Where Merbury differs from Bodin is in his insistence that a sovereign ruler is bound by "laws, both civil and common", and by customs.³⁹ J. W. Allen takes him to task for this. He says that "if Merbury had really read the [*Six Books*] he had not, it would seem,

³¹ *Ibid.*, pp. 16-19.

³² The categories of monarchy are based on increasing limits to princely power. This need not imply that Merbury favoured such limits, however.

³³ Merbury, *Discourse of Royal Monarchy*, p. 6.

³⁴ Merbury, *Discourse*, p. 41.

³⁵ *Ibid.*, p. 43.

³⁶ *Ibid.*, p. 46.

³⁷ *Ibid.*, p. 47.

³⁸ *Ibid.*, p. 51

³⁹ *Ibid.*, p. 44.

understood it". He takes the passage to mean that "The Prince cannot make law himself of his sole authority." Thus, "Merbury copied from Bodin and left out the main point."⁴⁰ Allen is being hard on Merbury, but he is also being too hard on Bodin on this point, especially given Bodin's brief political career as a Deputy (see above - Cap. 1), and it could be argued that at this early stage in the emergence of the State, constitutional limits were less important to writers than mechanisms which would empower the State. At the end of the day Merbury and Bodin are both legal absolutists, though the former is more sensitive to the English process of lawmaking than the latter. If Bodin's theory was to make headway in England the lawmaking position of parliament would need to be combined with the Crown's royal functions, and the Crown would need to promulgate Acts promptly when advised by parliament, thus regulating many areas of previously free public life. Allen is criticising Merbury for precisely those parts of the theory where the Bodinean position would need to be adapted to fit English habits of legislating.

What was the position of Bodin on this point? It is not as clear cut as might be expected, and we have seen in Chapter 1 that he was in many ways a constitutionalist. True, Bodin does say that "a king or sovereign prince cannot be subject to his own laws" which are based "upon nothing but mere and frank good will"⁴¹. In other words, "the prince is acquitted from the power of the laws"⁴². According to Bodin, even in England the Crown retains this feature. Here, despite the fact that "laws made by the king of England, at the request of the Estates, cannot be again repealed but by calling a Parliament", yet the king retains the power to override law in the meantime⁴³. The difference is now less obvious. Bodin resorts to even subtler distinctions on the subject of oaths. The prince may swear to

40 J.W. Allen, *Political Thought in the Sixteenth Century*, p. 251. George Mosse does not see this as a problem-- merely an "adaptation" ("The Influence of Jean Bodin's *Republique* on English Political Thought", *Medievalia et Humanistica*, IV (1948), pp. 75-76). Morris merely cites the passage (*Political Thought in England - Tyndale to Hooker* (London, 1953), p. 80)

41 Bodin (Knolles edition), *The Six Bookes*, p. 92. Sovereignty is, by definition, "not subject to any law" (p. 88).

42 Bodin (Knolles edition), *The Six Bookes*, p.91. See also p. 98.

43 *Ibid.*, p. 96.

keep the laws, yet “the equity of the law the which he has sworn to keep ceasing, he is no more bound”, which is in full accord with the idea that the legislative power only authorises laws which are just⁴⁴. So, although English monarchs take the coronation oath, this is “how that oath is to be understood”⁴⁵. Returning to Charles Merbury, it is now clear that Allen is mistaken in saying that his *Discourse* “copied from Bodin and left out the main point”⁴⁶. This is to underestimate Merbury’s ability to read (and copy) Bodin, and Bodin’s constitutionalist absolutism (above - Cap. 1). Bodin and Merbury both fall back on the notion of rule of law, as in Bodin’s position in his prudential argument, which reminds us of the importance of the monarchy/tyranny distinction. Here, Bodin says that “there is nothing better, or more beseeming a prince, than by his deeds and life to confirm those laws which he himself has made” and nothing worse “than without just cause to break or infringe” such laws⁴⁷. Bodin, as we have seen, recognises limits based on the *leges imperii* (which could include aspects of custom and common law), and the idea of private property found in civil law, and Merbury could be read as implying these rather than only the “royal and politic” type of legal limits identified by Fortescue (see above, Cap. 2).

I shall conclude this section with a brief demonstration of the indebtedness of Merbury’s text to the *Six Books*. Merbury says that the prince “is for to have therefore (by the grace and permission of the almighty God) that power which the Greeks call Ἀρχὴν ἐξουσίαν, the Latins majestatem, the Italians signoria, the Frenchmen souverainete”. Bodin says “Majesty or sovereignty is [the power] which the Latins call majestatem, the Greeks Ἀρχὴν ἐξουσίαν ... the Italians segnoria ...”. Merbury says this is “a power full and perpetual over all his subjects” while Bodin says it is “the most high, absolute and perpetual power over the citizens and subjects”⁴⁸. The examples of temporary power used by Merbury

44 *Ibid.*, p. 93. For example, in keeping with the law of God and the law of nature.

45 *Ibid.*, p. 96.

46 Allen, *Political Thought in the Sixteenth Century*, p. 251.

47 Bodin (Knolles edition), *The Six Bookes*, pp. 103,104.

48 Merbury, *Discourse of Royal Monarchy*, pp. 40,41. Bodin (Knolles edition), *The Six Bookes*, p. 84. Merbury shies away from “absolute” in favour of “full”, which is much more ambiguous than

are the dictators Mamercus, Servilus Priscus, Cincinnatus and Sylla, which selfsame examples are cited by Bodin⁴⁹. The characteristic powers of the crown are listed by Bodin as the legislative power, war and peace, final appeal, major appointments, taxation, pardoning, privileges, coining and allegiance⁵⁰. Merbury chooses the legislative power, war and peace, major appointments, coining, (fortification), pardoning and privileges. Merbury's omission of final appeal and taxation is a very eloquent example of the complicating factor of parliament. Even a royalist dares not advocate these particular powers reverting to the Crown. The general concurrence of the two lists is a further confirmation of Merbury's indebtedness to Bodin. The part of Merbury's book from p.41 to p.52 corresponds to Bodin's *Six Books*, Book I, Ch. 8, Ch. 9, and the first part of Chapter 10, (ie pp. 84-162 in Knolles).

Pierre de La Primaudaye's *French Academy* originally appeared in French in 1577 and in English in 1586⁵¹. It can be assumed that the French version was read in England before a translation became available, and it must be stressed that this was an extremely popular book in both countries. The British Library and Bibliotheque Nationale contain numerous copies in their respective languages. The English version had experienced "at least 16 editions [by] the turn of the century"⁵². The author is known to have been a member of Henri III's court in 1577 (it was Henri to whom he dedicated his book), and he was also a Huguenot Politique and a member of Alençon's shadowy "Anjou Academy"⁵³. The translator was probably

"absolute", although even the latter term can be used, as in Bodin, in conformity with the Rule of Law.

49 Merbury, *Discourse*, p. 41. Bodin (Knolles edition), *The Six Bookes*, pp. 85,86.

50 Bodin (Knolles edition), *The Six Bookes*, pp. 161,162.

51 D.T. Staines, "The French Academie and Wits Commonwealth", *Philological Quarterly*, XIII, 2 (1934), p. 211. The English version appeared in the period of agitation leading to the execution of Mary queen of Scots.

52 Mosse, "The Influence of Jean Bodin's *Republique* on English Political Thought", p. 75. Even more French editions appeared. By contrast, Frances Yates only lists five editions of the Bowes volume, Frances Yates, *The French Academies of the Sixteenth Century* (London, 1947), p.124n4.

53 J.H.M. Salmon, *The French Religious Wars in English Political Thought*, p.21. Frances Yates, *The French Academies of the Sixteenth Century*, pp.125, 295.

Thomas Bowes, although in the text he appears merely as “T.B.” The entry for Bowes in the *D.N.B.* is only brief, and mostly pertains to *The French Academy*. He is thought to have taken his M.A. at Queens, Cambridge. According to the *D.N.B.* the first English edition of the book “met with immediate popularity”.

In overall terms *The French Academy* is like an introductory textbook of the social sciences, with a generalist flavour and encyclopædic arrangement. It is written as a stiff and clumsy dialogue of four scholars seeking refuge from the carnage of civil war in France. Each of the eighteen chapters represents the discourse of a single day. Discussion moves logically, from the soul and body, to the family, and then on to matters political, and finishes with war and death. Politics occupies Days Fourteen to Sixteen (pp. 573-753 in the 1594 edition). Later volumes were translated, culminating in the mighty four volume “complete” edition of 1618, but only the first volume contains sections of political theory.⁵⁴ In addition to serving as a vehicle for Bodinean and Politique ideas, *The French Academy* was itself plundered. Parts of it were incorporated into Floyd’s *Picture of a Perfit Commonwealth* (1600) and it furnished most of the definitions for *Politeuma or Wits Commonwealth* (1597), including the definitions “Of Policie” and “of Laws”.⁵⁵ This is a further confirmation of the popularity and influence of this important text.

La Primaudaye provides many definitions, and some are of interest for the light they shed on Politique conceptions at the time. The meaning of the word “policy” is defined as “the order and estate whereby one or many towns are governed, and public affairs well administered”. In another place he says that “policy is the order of a city in the office of magistracy, namely, in the chief of all, in whose government the commonwealth consists”⁵⁶. The constitutionalist and Aristotelian elements in these definitions are noteworthy, and it is appropriate to regard these as practical definitions of politics, and not to view the word “policy” in its current sense of denoting proposals for government action or legislation. As Quentin Skinner reminds us, the word “State” was in the process of reception into English at

54 D.T. Staines, “The French Academie and Wits Commonwealth”, p.211, n. 3.

55 *Ibid.* pp. 212,213.

56 Pierre de La Primaudaye, *The French Academy* (London,1594), p. 577.

about this time⁵⁷. The term corresponding to “State” here is “commonwealth”, a term much used in early modern England. La Primaudaye says that: “The ordinance of a city, or order amongst magistrates, especially amongst them that had sovereign rule over all, was called of the ancients *commonwealth*, or as some others will have it, “weal-public”⁵⁸. This is a little broader than our term “state”, but not quite so broad as “body politic”. The closeness to “body politic” is evident when he says that “the whole commonwealth represents but one certain body compounded of diverse members”⁵⁹. Unity is stressed, as where he speaks of “one perfect body of a commonwealth”⁶⁰, and like Bodin he uses this idea to provide the subject for the meaningful application of sovereignty⁶¹. The artificiality of the term is apparent throughout the text, and we must remember that intellectuals of this period were influenced by the Aristotelian (and Ramist) tendency to formulate abstract terms which cover many examples.

The French Academy deals with the theme of sovereignty as extensively as its overall plan permits, and George Mosse’s claim that this text “contained the essence of Bodin’s formulation” is fully justified⁶². Professor Salmon agrees that most of La Primaudaye’s political discussion “closely followed the thought of Jean Bodin”⁶³. La Primaudaye is a staunch advocate of sovereignty. He says that it “is the sure foundation, union and bond of all the particulars in one perfect body of a commonwealth... [Sovereignty] is the absolute and perpetual power of the commonwealth, and is not limited either in power, or charge, or

57 Quentin Skinner in Ball, T., Farr, J., & Hanson, R. L.(eds), *Political Innovation and Conceptual Change* (Cambridge,1989), pp. 111,112.

58 La Primaudaye, *The French Academy*, p. 578.

59 La Primaudaye, *The French Academy*, p. 590. See also the heart metaphor on p. 589.

60 *Ibid.*, p. 584.

61 *Ibid.*, pp. 586ff. Commonwealths are divided according to the types of *polis* in Aristotle’s *Politics*.

62 Mosse, “The Influence of Jean Bodin’s *Republique* on English Political Thought”, p.75.

63 J.H.M. Salmon, *French Religious Wars*, p. 578.

for a certain time.”⁶⁴ This comes directly from the *Six Books*⁶⁵. Both texts are characterised by a willingness to think in analytic and empirical terms about the idea of secular rule, which is so important for establishing the foundations of progress in political thought. They both contain strong rationalist and eirenic overtones, often argued by way of analogies. *The French Academy* likens law to the ethereal sphere, and makes it “the bond that reduces all the parts [of society] to unity”. It is closely associated with sovereignty. It “is the law whereby he [the sovereign] is joined and united to the rest of the public body.”⁶⁶ He restates the position of Bodin, that “civil laws and ordinances depend only of the sovereign ruler, and that he may change them”.⁶⁷ It will be remembered that the legislative power is the highest power for Bodin, yielding a creative model of the lawful State (above, Cap. 1).

La Primaudaye, like Bodin, tempers absolute sovereignty by imposing two sorts of limits. These are the higher law (or laws of God and nature), and the *leges imperii* or constitutional limits. The higher law is discussed in this text, but it was written many years before the subject was first systematically laid out in the *De Jure Belli et Pacis* of Grotius of 1625.⁶⁸ Quite early in the fourteenth chapter La Primaudaye states that “public benefit and civil justice” depend upon “right government according to the laws of nature”⁶⁹. This is a tangible limit, but it is unenforceable, as is clear in a subsequent passage: the law of nature is “a singular reason imprinted in nature” and “a sense and feeling, which everyone has in himself ... whereby he discerns between good and evil”. Being of divine origin, to deny Natural law is to endanger one’s soul; indeed, some higher laws such as the Ten

⁶⁴ La Primaudaye, *The French Academy*, pp. 584,586. Mosse cites the same passage from the 1602 edition.

⁶⁵ From the opening definition in I, 8: See Bodin (Knolles edition), *The Six Bookes*, p. 84.

⁶⁶ La Primaudaye, *The French Academy*, pp. 593,594.

⁶⁷ La Primaudaye, *The French Academy*, p. 603. See also Bodin (Knolles edition), *The Six Bookes*, p.92.

⁶⁸ Charles McIlwain attributes the earliest form of this to Cicero. For Cicero as for Bodin et al., these abstract laws are genuinely operative-- they have as much force as any statute or command; *Constitutionalism Ancient and Modern* (Ithaca,1947), pp. 37,38.

⁶⁹ La Primaudaye, *The French Academy*, p. 575 (also cf. pp. 584,585).

Commendments are written in scripture.⁷⁰ This notion of an overarching morality of politics is a direct affront to the Machiavellism referred to in Gabriel Harvey's letter (quoted above). It confirms what we have already seen in Bodin (Cap. 1) - that Politiques might be Machiavellian in the sense of raising the State above sectarianism, but they also traded on a conservative morality resting on the idea of all-embracing order and harmony.

This leads us to consider the idea of *leges imperii*, or constitutional limits. Once again *The French Academy* borrows from Bodin. These are "laws that are ratified and established, upon which every monarchy and public government is first grounded ... which ought not in any way to be infringed or changed" and which can be said to be "annexed and united to the crown"⁷¹. These are not really laws, but, as J.H. Burns has noted, defining principles which confer legitimacy under certain conditions⁷². For if sovereignty is a perpetual and absolute power or authority, then the formulations upon which it depends must also be absolute and perpetual. The Politique theorists of the late sixteenth century, by re-inventing the abstract Aristotelian concept of rule, simultaneously laid the foundations of today's constitutionalism. It is another Politique follower of Bodin, Pierre Gregoire of Toulouse, who is credited by McIlwain as being the first to use "constitution" in something approaching the modern sense of the term.⁷³ The significance of *leges imperii*, and other limits, in *The French Academy*, is that they give a truer, more balanced account of Bodin's Politique theory of sovereignty than Merbury did, even though Merbury adapted the theory to English institutions somewhat.

La Primaudaye, like Merbury, includes a listing of the marks of sovereignty. These are "power to prescribe laws to all in general, and to every one in particular" and beneath this the power "to make and to abrogate a law; to proclaim law or to make peace; ... the last appeal; ... to appoint or to disappoint the greatest officers; to charge ... taxes ...; to grant

70 La Primaudaye, *The French Academy*., pp. 596, 597. A difficult passage.

71 *Ibid.*, p. 597. He cites the Salic Law of France.

72 J.H. Burns, "Sovereignty and Constitutional Law in Bodin", *Political Studies*, VII,2 (1959), p. 177.

73 C.H., McIlwain, *Constitutionalism Ancient and Modern*, pp. 24,25. There is at least one problem in identifying Gregoire as a Politique; he appears never to have abandoned the idea of the "mixed constitution", Donald R. Kelley, *The Beginning of Ideology*, p.191.

[privileges]; to [vary] the title, value and constant rate of money;” and to command allegiance.⁷⁴ There is no attempt by the translator Bowes to adapt the list to English circumstances, as Merbury does, by deleting taxation.

In conclusion, La Primaudaye presents the Politique argument complete with Bodin’s theory of sovereignty from the position of the moderate Protestant, and because the book became very popular with English readers we can be sure that the new approach was beginning to gain respectability. The significance of La Primaudaye is that he aims for the same comprehensiveness as Aristotle or Ramus. This comprehensiveness, or cutting of ethical, social and political issues down to their barest essentials, compels the reader to think in increasingly abstract terms about their own country; about its history and constitution, and perhaps the role of the people in that constitution. Ideas remarkably similar to Bodin’s, possibly even based on Bodin⁷⁵, began to circulate widely after the first edition of La Primaudaye in 1586, and thus a stimulus existed during the 1590s for thinking about the English political system in a more analytical and tolerant fashion.

This concludes our look at *The French Academy*, and brings us to that crucial period of time around 1588. We are now in a position to say that by this time English readers of two sorts would have assimilated Bodin’s theory. First, those with access, both physical and intellectual, to original editions of the French writings of Bodin and other Politiques. These would consist mostly of people with a university background, including possibly members of Court and of the inns of court, but it could also include merchants and those with religious or family connections in France or who had spent time there. The second group are those literate enough and wealthy enough to own and read Merbury and/or the vernacular text of La Primaudaye, or their friends who might borrow a copy, which would embrace the Protestant urban middle class and yeomanry. Merbury was not popular enough to go to a second printing, and may have been used primarily for the Italian exercises at the back. This leaves us with La Primaudaye, and the many subsequent editions of La Primaudaye were all published after 1588; in 1589, 1594 and 1602 in the case of the Elizabethan editions. In the

⁷⁴ La Primaudaye, *The French Academy*, p. 617.

⁷⁵ Frances Yates, *The French Academies of the Sixteenth Century*, p.124.

absence of any pamphlet literature, and using only the evidence of the printing histories, we must assume that the theory of sovereignty did not become well known in literate English society until the post-1588 period, with the concomitant rise of militant Puritanism.⁷⁶ La Primaudaye's popularity in the 1590s suggests that numerous English readers knew of the theory of sovereignty well before 1603.

It emerged in the analysis of *The French Academy* that political ideas were being discussed with increasing detachment at this time. Gabriel Harvey's letter (see above) spoke of the renewed interest in Aristotle's *Politics*, eclipsing his other works. Merbury's indebtedness to the *Politics* has also been noted, and any reader of these works, or of Bodin, who is familiar with the political thought of Aristotle, would detect many borrowings. For although European scholars had been following the Classics in physic, rhetoric and other arts for well over a century, it was only in the mid to late Sixteenth century that they began to imitate the political Classics.

Numerous Greek manuscripts were collected by great Italian antiquaries in the Fifteenth century, especially after 1453. Aristotle's *Politics* was printed by Aldus Manutius at Venice in 1498. Leonardo Bruni had translated it faithfully into Latin and this version was printed often in the 1540s and 1550s, in Paris and elsewhere.⁷⁷ It has been suggested by Gordon Schochet that Aristotle's *Politics* came to England via Bodin.⁷⁸ But Salmon, noting Gabriel Harvey's letter, says that "Englishmen knew their Aristotle through [Louis] Le Roy". He also says that "Le Roy's own views were themselves very similar to Bodin's" and that with his "rational bent" he "anticipated" Bodin's *Six Books*.⁷⁹ Further, Salmon describes Le

76 Nonconformity had been of concern to Bishop Bancroft at an earlier date, but the Martin Marprelate publications (five booklets published in 1588 and 1589) brought matters to a head.

77 Werner Gundersheimer, *Life and Works of Louis Le Roy* (Geneva, 1966), p. 48(n). Texts of the *Politics*, circulated in the age of scholasticism, but this was before the Bruni edition of 1438 which was the first to view the text sympathetically; James Schmidt, "A Raven With a Halo: the translation of Aristotle's *Politics*", *History of Political Thought*, VII, 2 (1986), pp.298-299.

78 Gordon Schochet, *Patriarchalism in Political Thought* (Oxford, 1975), p.47.

79 J.H.M. Salmon, *The French Religious Wars in English Political Thought*, p.24

Roy as a “politique theorist”⁸⁰. Thus, there is a twofold reason for examining LeRoy’s version of Aristotle -- the influence of Le Roy as a Politique, and the influence of Aristotle himself as a source of rationalist or Politique constitutional thinking.

The first edition of Le Roy’s critical translation of the *Politics* appeared in 1568⁸¹, and a second in 1576.⁸² The English version was published in 1598 by Adam Islip, at London. The translator is known merely as “I.D.,” and the translation is described as “a very faithful and conscientious rendition of the second edition”.⁸³ Since the commentary of the second edition is the same as the first⁸⁴, we are clearly dealing with a pre-sovereignty text. It is therefore important to look for passages which prefigure what Bodin wrote, rather than echoes of his ideas. Likewise, it should be remembered that *The French Academy* and Merbury’s *Discourse* are likely to be partly based on Le Roy’s Aristotle. In many ways it would be better to examine Le Roy first. Yet Le Roy’s English audience, like La Primaudaye’s audience, was dependent on the vernacular editions, and these did not appear until the last decade of the century. In the difficult case of Le Roy, there had been many overseas editions, but in England a translation did not appear until 1598, and the English words therefore have a much later context. This was one of the first translations of Aristotle into modern English, and certainly the first of the *Politics*, which at least indicates that there was a market for this particular text, although at best it only hints at the existence of a Politique tendency in England at the turn of the century.

Le Roy’s commentary provides some useful examples of how political terms were used in the 1590’s. In the introduction we see the word “state” used twice in a political context. Le Roy’s text is translated with references both to lawgiving -- “found a new state”

80 Salmon, *The French Religious Wars*, p. 168

81 Gundesheimer, *Life and Works of Louis Le Roy*, p. 21 (see also pp.148, 149).

82 Gundesheimer, *Le Roy*, p.47. This “is the edition usually quoted by scholars”.

83 *Ibid.*, p. 134. I.D. would be very common, especially given the use of “I” for both “T” and “J”.

84 *Ibid.*, p. 47. It is the commentary alone which concerns us.

and territory -- “country or nation or state”.⁸⁵ As with *The French Academy*, republic is rendered as “common-weal”.⁸⁶ He refers to the people as a “body politic”⁸⁷, and defines the city as an “assembly of many towns”.⁸⁸ The use of the term “constitution” is surprisingly modern. Although in some places this word is used to mean a law or ordinance⁸⁹, it is used elsewhere to refer in a broader sense to the political set-up in a given State.⁹⁰ In this translation of Le Roy we find “sovereign” and “sovereignty” used in several different ways. Firstly, it is used merely to connote greatness, as in “the chief and sovereign good of man”.⁹¹ Elsewhere it is used to refer to simple dominion, as in “sovereignty and almightiness” or “sovereign puissance”.⁹² Or it can refer to a monarch.⁹³ But in another place we find the argument that the study of politics deals with rule as “sovereign authority”, and this passage is worth quoting in full:

ye have here the excellency and profitableness of Civil government, and therewithall ye have been certified what men of old time had set up states of government or written of them, and ye have seen the Common-weales of Plato and Aristotle compared together. By which means I think ye become very well affectioned towards this noble science... [for] what science is there that behighteth greater honour than civil government doth, which calleth you to the ruling of cities, lordships, and kingdoms, wherein the

85 Louis Le Roy, *Aristoteles Politiques or Discourses of Government* (London, 1598), Sig. C, ii v°. See also p. 2.

86 Le Roy, *Aristoteles Politiques*, p. 10. Venice is the example give. On p.9 he uses “common-wealth” when quoting Cicero.

87 Le Roy, *Aristoteles Politiques*, p. 2.

88 *Ibid.*, p.12.

89 *Ibid.*, pp. 167,175.

90 *Ibid.*, p. 21 (A transitional case is on p. 175)

91 *Ibid.*, p. 13.

92 *Ibid.*, pp. 163, 164.

93 Le Roy, *Aristoteles Politiques.*, p. 1.

sovereign authority among men consisteth.⁹⁴

One additional point of interest is the focus in the commentary upon Aristotle's remarks about the state of nature, which we have seen in connection with Bodin's account of the origin of the State (above, Cap. 1). This also indicates a possible point of departure for subsequent Spanish theories, particularly those of Suarez. This translation uses the curious term "wights" to denote both primitive humans and animals in general. The state of nature precedes all law, including natural law, and is Hobbesian. Property is gained by force, "even by murder and blows", and retained the same way. This state is immediately antecedent to the original political state, which is characterised by town living.⁹⁵ Le Roy's attitude to natural law also emerges from his attempts to understand Aristotle's concept of the *polis*. Natural or divine law cannot be said to be non-existent before the first towns grew up. The important thing is that this law was not available - it was not known. In these primeval communities, then, political wisdom was gained and subsequently lost.⁹⁶ Political wisdom is invariably partial, although given Le Roy's "evolutionary theory of human development", even the Classics can no longer be appealed to as authorities.⁹⁷ The groundwork for the political rationalism of Hobbes and Locke (among others) is as much to be found in Le Roy as in Bodin.

However, Le Roy lacks Bodin's commitment to political sovereignty. Some kings are more absolute than others. The "sovereign power" of the French king is limited, and Le Roy stresses the checks and balances imposed by the function of the sovereign courts (ie. Parlement de Paris), echoing both Seyssel and the early Bodin.⁹⁸ He follows by discussing

94 *Ibid.*, Le Roy's Preface, ciii^r.

95 Le Roy, *Aristoteles Politiques*, pp. 16,17. In another passage, people are drawn together by instinct rather than by leaders. Cf. pp. 4,5

96 *Ibid.*, pp. 16,17.

97 Gundesheimer, *Life and Works of Louis Le Roy*, p. 50. This tendency is already evident in Machiavelli, one of Le Roy's favourite authors. Cf p. 54.

98 Le Roy, *Aristoteles Politiques*, pp. 170,171.

the limits on arbitrary taxation in parts of Spain.⁹⁹ Yet he appears to be ill-informed concerning England; he fails to mention the English parliament, preferring instead to dwell on the headship of the Church and the tenure of land.¹⁰⁰ Le Roy is less able to distinguish sovereignty from kingship than Bodin, yet the overall tenor of his comments remains undeniably *Politique*.¹⁰¹ While Le Roy's Aristotle can hardly be claimed as an appropriate vehicle for Bodin's theory of sovereignty, it is likely that it nurtured *Politique* views. As "a standard work of reference in every library of politics" in England¹⁰², the translation was very well placed.

In conclusion, the three texts studied in this chapter show that sovereignty, and *Politique* thinking in general, were well and truly introduced into the English political culture of the 1580s and 1590s. There is no greater claim here made than this. The aim is not to "prove" that all English theorists at this time upheld Bodin's theory. Neither can it be maintained that the English would have nothing to do with it¹⁰³. In the next chapter English ambivalence to, and adaptation of, the idea of sovereignty will be explored further, with an analysis of the role of sovereignty in that political classic, Richard Hooker's *Laws of Ecclesiastical Polity*. The works of Merbury and La Primaudaye had already introduced English readers to the idea of sovereignty, and the Latin text of the *Six Books* was available to educated English theorists like Hooker after 1586. Both Merbury and La Primaudaye provided compact logical formulations of the main tenets of sovereignty theory which could be very easily detached from the heavy constitutional arguments in Bodin's original, giving, it has to be said, an incomplete and more plainly absolutist account of the theory. But the basic idea was the same, and when we examine Richard Hooker's famous *Ecclesiastical*

99 *Ibid.*,

100 *Ibid.*, pp. 171,172. When he wrote the original Mary was on the English throne.

101 He was in fact a member of the *Politique* faction after the massacre of 1572. His Huguenot leanings did not exclude him from being a *Politique*, and his connections with Alençon point to a relationship with Bodin; Frances Yates, *The French Academies of the Sixteenth Century*, p.124.

102 Gundesheimer, *Life and Works of Louis Le Roy*, p. 134.

103 If the English constitution appeared to leave no room for such a theory, then its defenders were deceived. For theories themselves become part of the historical background for future generations.

Polity we can safely assume from the outset that the author knew something about Bodin's theory.