

## Chapter VI

### Forset and Court Writers

As we saw in Chapter 3, by the end of the 1580s and early 1590s Bodin's idea of sovereignty was circulating widely in England, and the short logical statements which characterize the theory had been rendered into the English language. Sharpening internal divisions based on religion replaced anti-Spanish feelings, which declined after the early 1590s; partly due to the deaths of Sidney, Leicester, and Walsingham; partly due to the defeat of the Armada; and partly due to the increasing hostility of France towards Spain after Henri's conversion. The 1590s therefore provided the necessary political and social conditions for Politique ideas to prosper. That they did prosper is evident in Richard Hooker's work (above - Cap. 4). In this Chapter I examine a variety of writings from the 1590s onwards, as in the previous Chapter, to see what different writers and schools did with the theory, especially when they tried to adapt it to the complexities of the English constitution.

If the reception of Bodin's theory into England can be dated to the 1580s and to the works by Merbury and La Primaudaye, then other works written and published after this time can be said to belong to a post-reception period (broadly speaking, 1593-1613). The chief historical event of the post-reception period is the coming of James VI of Scotland to the centre of the English political stage, and as we have just seen in the previous Chapter, this marked the beginning of a divergence of Divine Right theory and constitutionalism, although the speech to Parliament in 1610 by James gives important concessions to the constitutionalist position. As far as Bodin is concerned, the accession is the signal for a reawakening of interest in his writings in the second half of the post-reception period.

There are many texts of this post-reception period which contain references to Bodin. Take for example the hefty anti-Puritan folio of Richard Bancroft, printed in the critical year

of 1593. Here Bodin's *Six Books* is quoted with approval on the equal legal status of all princes, great or small, as part of a diatribe against Cartwright and Travers.<sup>1</sup> Another reference is the one noted above (Cap. 4) in the Eighth Book (1595-1600) of Hooker's *Laws of Ecclesiastical Polity*. Then there is *The Mansion of Magnanimitie*, by Richard Crompton, published in 1599, which cites Bodin a number of times.<sup>2</sup> Again, one could mention Barnabe Barnes's *Foure Bookes of Offices*, published in 1606 by Islip and Bishop, publishers of the Knolles translation, which uses both Bodin and Machiavelli.<sup>3</sup> A later text which relies on Bodin is the *Aphorismes Civill and Militarie* of Robert Dallington, published in London in 1613. This contains at least twenty sourced quotations of the *Six Books*, taken from both French and Latin editions (but not Knolles), with the bulk coming from the first few Chapters of Book I.<sup>4</sup> One text which does not cite Bodin but which does develop a Politique position is Thomas Floyd's *Picture of a Perfit Commonwealth*, printed in London in 1600.<sup>5</sup> In the case of Thomas Heywood's 1608 translation of Sallust, Bodin is not cited, but part of the *Methodus* is plagiarised to furnish the argument of the author's preface.<sup>6</sup> Hayward, Forset, Spenser, and Beacon are others whom we have encountered, or are soon to encounter, in the present study, who were influenced by Bodin. In addition to these Fullbeck, Vaughan, and Leonard's translation of Charon are noted by Mosse for their citations.<sup>7</sup> This impressive list only looks at Bodin and does not include the other Politique influences, notably La Primaudaye and Le Roy (above - Cap. 3). Compared with the reception period, there is much more evidence of Bodin's presence in English writings at this time, and it should also be remembered that the English translation by Knolles in 1606

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<sup>1</sup> Richard Bancroft, *A Survy of the Pretended Holy Discipline* (London, 1593), p.256. The book, printed by John Wolfe (see below, Cap.VII), runs to almost five hundred pages. Other citations to Bodin are at pp.11,12,13 (the *Methodus*),37.

<sup>2</sup> Crompton, *The Mansion of Magnanimitie* (London, 1599), at G1<sup>r</sup>, G1<sup>v</sup>, I2<sup>v</sup>, and A4<sup>r</sup>.

<sup>3</sup> Barnabe Barnes, *Foure Bookes of Offices* (London, 1606), pp.29,63,128,175.

<sup>4</sup> Robert Dallington, *Aphorismes* (London, 1613) , pp.72,101,111,113,144-145,186,208,226, 242,244,249,256, 258,259,264,268,276,289. Bound in at the back of the *Aphorismes* is a 61 page essay on the suppressed section of Guicciardini's *History* which is rather interesting.

<sup>5</sup> Thomas Floyd, *The Picture of a Perfit Commonwealth* (London, 1600), pp.1,3,25.

<sup>6</sup> C. Whibley (ed), (T. Heywood), *Sallust — The Conspiracy of Catiline and the War of Jugurtha Translated into English* (London, 1924), Introduction.

<sup>7</sup> George Mosse, "The Influence of Jean Bodin's *Republique* on English Political Thought", *Medievalia et Humanistica*, IV (1948), pp.75,78-79.

(above, Cap. 1) itself fits within this period.

We have already seen Hayward, Wentworth and James I as examples of writers of the post-reception period, and Forset and some of the Courtiers also wrote and published in the post-reception period. Although some of the Court writers we shall be seeing belong to the reception period itself, notably Philip Sidney, they are included here in order to appreciate this group of writings as a whole. But first we shall look at Edward Forset (Forsett).

There are few sustained accounts of the constitution or of sovereignty in the post-reception period, and certainly nothing to compare with Richard Hooker, who straddles the boundary between the periods. Writings such as those of Hayward, James I, Barnes, and Crompton, which fit in between the more significant writings of (Richard) Hooker and Raleigh, bear signs of the influence of Bodin's theory, but little more. Edward Forset's highly distinctive yet nonetheless very interesting text on political analogies is different, in that it concerns the body politic specifically, and contains many passages on sovereignty itself instead of merely one or two plus some related subject matter.

*A Comparative Discourse of the Bodies Natural and Politique* by Edward Forset was published in the same year as Barnes and the Knolles translation of Bodin, and whereas the other two texts at least had some influence, it is doubtful whether Forset was widely read.<sup>8</sup> But Forset demonstrates the barriers to the acceptance of Bodin's ideas so well that we are going to look at him regardless. Stephen Collins has found similarities between Forset and James I, in that both writers emphasise "a strikingly conservative picture of the ordered, monarchical state".<sup>9</sup> But whereas James uses arguments based on scripture and political practice, Forset relies almost exclusively upon analogies, although analogies were also employed rhetorically by James, as in the speech of 1610 (above, Cap. 5). Forset's method often produces unease in those not familiar with this side of the early modern mind, and as James Daly observes, "he carried the casual harmonist confidence in analogy to dubious

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<sup>8</sup> David Hale, *The Body Politic* (The Hague, 1971), p. 91. Johann Sommerville, *Politics and Ideology in England 1603-1640* (London, 1986), p. 49.

<sup>9</sup> Stephen Collins, *From Divine Cosmos to Sovereign State.*, p. 114. See also W. H. Greenleaf *Order, Empiricism and Politics: Two Traditions of English Political Thought 1500-1700* (London, 1964), p. 74, where he finds "a striking likeness ... to the arguments of James".

lengths”.<sup>10</sup> A belief in the significance of analogies could be seen as a continuation of the logic of “high medieval” texts in which theory “rests on complex isomorphic relations within the universal whole and between its component parts, paving the way for an endless series of analogies and allegories”.<sup>11</sup> But it could also, and more easily, be seen as an amplification of a similar tendency in Platonic and Aristotelian political philosophy.

The first thing to observe about Forset’s text is the frequency of the terms “sovereign” and “sovereignty”, particularly the latter.<sup>12</sup> This is a clear indication that Bodin’s idea of a supreme, indivisible locus of legitimate force had become so completely assimilated in English discourse that it could be played upon in the interests of the royalist party. By incessantly using the term, Forset suggests not only that it had become an easily understood word, but also that it had become, like many ‘new’ words down through the ages, somewhat fashionable.

The recurring analogy in this text is between the sovereign and the soul, and this receives its first statement at the beginning of the book, just before the recognition of rulers and ruled. Thus, “in every civil state, there is a directing and commanding power”.<sup>13</sup> His next move is the Aristotelian recognition that the end of rule is the welfare of the people, so that sovereignty “affects not only the being, but also the flourishing ... of a commonwealth”.<sup>14</sup> Here, then, in the first few pages we find most of the author’s case for what Collins regards as a unique form of Divine Right theory. But if this “desire to find some immutable basis for politics”, in Figgis’ words, is at the back of Forset’s writing, then

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<sup>10</sup> James Daly *Cosmic Harmony and Political Thinking in Early Stuart England* (Philadelphia, 1979), p. 16 n. 11. These contemporary literary productions also focus on the bodies natural and politic: the comedy *Lingua* by Thomas Tomkis; Dekker’s dialogue *The Dead Term*; and Shakespeare’s *Coriolanus*. See David Hale, *The Body Politic.*, p. 85. For an interesting account of the relevance of the “body politic” as part of the “two bodies” debate in early Elizabethan legal circles, see Marie Axton, *The Queen’s Two Bodies* (London, 1977), pp. 12-19 passim. The resurfacing of this debate in Calvin’s Case at the time of James’s accession may help to explain Forset’s zeal in applying the analogy.

<sup>11</sup> Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge, 1995), p. 93.

<sup>12</sup> For example, see the table of contents at Aii<sup>v</sup>, Edward Forset, *A Comparative Discourse of the Bodies Natural and Politique* (London, 1606).

<sup>13</sup> Forset, *A Comparative Discourse of the Bodies Natural and Politique.*, p. 3. For Forset, this is always monarchic.

<sup>14</sup> Forset, *Bodies Natural and Politique*, p. 4. For the use of Aristotle at the time, see above; Cap. s. 3, 4.

like la Primaudaye or Hooker, he need look no further than Aristotle to satisfy the want. As we shall shortly see, it is not the basic ideas of the text which reveal the author's intentions, but the nuances of his analogies, and their message that rule is not only indivisible, but also untransferrable.<sup>15</sup>

Forset's next step is very much in keeping with Bodin's legal Humanism, for it is the affirmation that "all government [is] by law" in the sense that "in the state the sovereign governs by laws", such that law becomes "the soul of sovereignty" just as "reason is said to be the soul of the soul".<sup>16</sup> This implies that the defining power of the state is legislative, and that all other powers or "marks" can be encompassed by the legislative power. But rather than insist that sovereignty or legislative omnipotency is a consequence of human sociability, as for instance in contractarian theories, Forset goes on to make the claim that it is imposed by God. Although he does not wish "wholly to debar the peoples liking or electing their governors", he does believe that "in this high point of principality, God has reserved to himself this prerogative of bestowing that dignity."<sup>17</sup> It is not at all clear from this that he is asserting a Divine Right of the Filmeresque variety (or even the Jacobean variety for that matter), and the confusion is not cleared up by his statement that "the sovereign in his particular person, but much more the sovereign authority, may, notwithstanding the approbation of men ... be rightly avouched to be ordained and designed by God himself."<sup>18</sup> If the latter is more "ordained" than the former, then just how much prerogative power can the monarch claim on the divine warrant ?

After a brief digression on the economic analogy of bodies, the text begins to analyse the relation between sovereignty and the three estates. This is the very point of confusion and difficulty which arises when Bodin's conceptions are applied to the English constitution as understood by Fortescue and Smith, as being ruled by the king-in-parliament under the system of common law. Forset does not baulk at this, but insists that "sovereignty ... (moving, working and ruling in his three estates) ... [is like] the union of three loving

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<sup>15</sup> For the quote from Figgis see *The Divine Right of Kings* (N.Y.,1965), p. 153. See also Collins, *From Divine Cosmos to Sovereign State*, p. 113.

<sup>16</sup> Forset, *Bodies Natural and Politique.*, p. 4.

<sup>17</sup> *Ibid.*, p. 6. He cites the Pauline injunction of Romans 13.

<sup>18</sup> Forset, *Bodies Natural and Politique.*, p 7.

brethren” and that this union is like “the Gordian knot”.<sup>19</sup> Having said this, he must ask whether “the will of the sovereign” still has the property that “it alone may stand for law”. His answer to the question is not to deny the possibility of personal rule, but to allow for another kind of lawmaking:

How both prudently and lovingly do those sovereigns govern, who neither taking to themselves that absoluteness of sole power in law-giving which by some [is] claimed to be original and hereditary to their places; neither trusting too much to their own sufficiencies ... do at the making of statutes and ordinances, assemble for consultation and consent, a full assistance of the noblest and choicest advisors that the state affords.<sup>20</sup>

Of course it could be argued that this passage refers to an appointed council rather than parliament, but the preceding reference to the “three estates” renders such a reading problematic. Given that it is a reference to parliament as a legislative institution, it is hard to make sense of Eccleshall’s claim that “Forset was able to deny subjects any role in political affairs”.<sup>21</sup> Even though, as Daly suggests, he “did not quite know what to do with parliament”, the passage just quoted confirms that he was a constitutionalist: his theories “give the sovereign only a supervisory power over a bodily constitution which is beyond his power to change”.<sup>22</sup>

Under the rubric “prerogative royal”, Forset argues the case for a type of political act which is separable, and in fact separate, from the body politic. This sphere of action has “other peculiar [i.e. unique] motions and actions of his own, neither aided nor impeached by any corporeal assistance or resistance.”<sup>23</sup> What follows is fourteen lines of labyrinthine reasoning, the gist of which is that sovereignty places laws themselves beyond dispute, but that magistrates are obliged to apply these laws reasonably, and not as a means to increase

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<sup>19</sup> *Ibid.*, pp. 14, 15.

<sup>20</sup> *Ibid.*, pp. 16-17.

<sup>21</sup> Robert Eccleshall, *Order and Reason in Politics* (Oxford, 1978), p. 95.

<sup>22</sup> James Daly, *Cosmic Harmony*, p. 19. See also J. W. Allen, *English Political Thought 1603-1660* (London, 1938), I, p. 80. Bodin’s notion of the *leges imperii* does the same thing.

<sup>23</sup> Forset, *Bodies Natural and Politique*, p. 21. This is similar to the Machiavellian concept of *arcana imperii*, or secrets of state, for which see also the medieval tradition, and Pseudo-Aristotle’s *Secreta Secretorum*, which was published in English by Robert Copland in 1528.

their personal wealth and power.<sup>24</sup> The role of parliament in all this is conveniently ignored, even in the observation that a sovereign is a kind of memory faculty, in that “nothing passes from him ... but by record”.<sup>25</sup> Here we learn that he is not talking about legislation at all, but rather about public policy concerning the decisions of courts of law. At no point in this discussion of prerogative does the author make a statement on whether or not a monarch has the power to refuse assent to an Act of Parliament, although Elizabethan precedents would favour a limited power to refuse assent at this stage in the evolution of the Westminster system.<sup>26</sup>

Like Bodin, Forset seeks to establish the existence of something in a State which is qualitatively different from the rest, and which ensures that the whole is indeed greater than the sum of its parts. This is not to deny Daly’s observation that to “isolate Forset’s sovereign is to do great violence to his thinking and to cosmic harmony itself”,<sup>27</sup> but it does encourage us to look beyond the cosmic harmony theory, to the idea of sovereignty which it encapsulates. The author himself is at pains to distinguish sovereignty:

How much better were it rather to apply unto the sovereign the opinion which Aristotle held of the soul; that he consists of the pure and excellentest essence, being to be accounted scant any human creature, but wholly of a celestial temper.<sup>28</sup>

Thus, the body politic, if it lacks the divine spark provided by sovereignty, is nothing but dead, inanimate matter. A few pages later, when comparing it with the head and heart, he says that:

sovereignty in a state civil ... does severally convey and impart to any part of his, the very essential faculties of his government; without which no people can ever as subjects range themselves into the order and community of human society, howsoever as men, or

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<sup>24</sup> Forset, *Bodies Natural and Politique.*, p. 21.

<sup>25</sup> *Ibid.*, p. 20.

<sup>26</sup> There were exceptions: in the stormy 1597-8 parliament Elizabeth assented to 24 Bills, and rejected 12. J. R. Tanner, *Tudor Constitutional Documents 1485-1603* (Cambridge, 1951), p. 518 n 2.

<sup>27</sup> James Daly, *Cosmic Harmony*, p. 19.

<sup>28</sup> Forset, *Bodies Natural and Politique.*, p. 22.

rather as wild savages, they may perhaps breathe a while on earth.<sup>29</sup>

It is this special, non-bodily, nature of sovereignty which precludes lawful resistance, and makes opposition difficult, if not impossible, for such a harmonist author. By resisting the divine essence which suffuses the body politic such people would be draining the life out of the political community - their extraconstitutional activities might give them control over the body of the State, but they would then need to find a new soul for it.

One of the favourite analogies in this text is with the heart, and the circulatory system in general. The fact that Forset used the concept of "circulation" of blood more than two decades before William Harvey's *De Motu Cordis* was published is in itself worthy of comment, and it places him alongside James Harrington as an organicist, as opposed to the mechanistic approach of Hobbes.<sup>30</sup> His point in using the blood analogy is that its flow varies and is controlled by the central organ, sustaining all body parts, just as the State provides all welfare and regulates the flow of justice. From this it follows that "observance is deservedly due ... of all obedience to his commands and authority".<sup>31</sup> Using the analogy of the heart still, he then argues that property is never owned outright, but rather is held of the sovereign, which seemingly contradicts his acknowledgment of the traditional fiscal role of parliament in an earlier section. Either he is being inconsistent, in extending prerogative to cover all forms of property, or he is alluding to the consequences of the State's role in affirming and safeguarding title. If the latter, it is unfortunate he does not develop the argument further: we have already seen (above - Cap. 1) how great medieval jurists such as Bulgarus approached this problem, and C. B. Macpherson's "possessive individualism" thesis would also suggest a way around the difficulty posed by the earlier Imperialist

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<sup>29</sup> Forset, *Bodies Natural and Politique*, pp. 24-25. It is worth noting that, not for the first time, the allusion is to a state of matter.

<sup>30</sup> Forset, *Bodies Natural and Politique*, p. 29. His analogy is tidal rather than fully circulatory, but does emphasise the heart. For Harvey see Charles Schmitt, *Aristotle and the Renaissance* (Cambridge, Mass., 1983), pp. 11-12. See also Bernard Cohen, "Harrington and Harvey: A theory of the State based on the New Physiology", *Journal of the History of Ideas*, LV, 2 (1994), passim. In 1643 an anonymous parliamentary pamphlet announced that the "first intent that makes a king is the people's consent ... [which] is as the efflux of blood from the heart to the head, and lives before it.". See *The Subjects Liberty Set Forth*, (London, 1643); Thomason Tracts.

<sup>31</sup> Forset, *Bodies Natural and Politique*, pp. 29-30. He sees law here as being a form of command.

theories of reversion of property to the Crown.<sup>32</sup> If the State is in dire straits it should be able to fall back on the people for emergency resources, but constitutionalism requires that sufficient need is proven, and generous compensation paid. The heart analogy, already under pressure, fails completely in the remaining discussion, which draws a confused metaphor from its shape and inclination.

After a few commonplace remarks about councillors and wisdom, Forset returns to his favourite analogy, comparing the sovereign with the soul. He begins by pointing out that once a reign begins, the prince becomes cut off from all family ties. He states that “sovereignty admits of no terms or titles of consanguinity” and that “in his personal respects he is one man, single and individual, yet as in the right of sovereignty, he gains the appellation and capacities of a corporation.”<sup>33</sup> After briefly stating, almost parenthetically, that sovereignty is eternal and unbroken, being combined with laws of succession, he then returns to the human body. He justifies such a choice of analogy by saying that the human body is “the great miracle of nature”, study of which reveals the hidden workings of reality.<sup>34</sup> The soul, he argues, is the greatest part of this great blueprint, so that considering “the application ... of our state’s soul ... we conceive and even glory in our happiness ... that the sinews of law and justice knitting all subjection to sovereignty shall ... receive an increase of strength and firmness; and that this political soul ... will rather drain his own blood dry, than the wealth of the land should either be wastefully exhausted, or not sufficiently maintained”.<sup>35</sup> When Forset speaks about “knitting subjection” to a common point, he is suggesting that a strong system of justice in a State corresponds to that good conscience which, in a person, permits body and soul to coexist in harmony. Together with his second point, that kings ought to use the private revenues of their royal domain instead of increasing subsidies, the import of this passage is that the Crown needs to take what prerogative is available, as being sufficient to furnish a monarchic form of sovereignty,

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<sup>32</sup> For the medieval jurists see Kenneth Pennington, *The Prince and the Law* (Berkeley, 1993). C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford, 1962).

<sup>33</sup> Forset, *Bodies Natural and Politique*, p. 33. Cf. Ernst Kantorowicz, *The King’s Two Bodies* (Princeton, 1957), *passim*.

<sup>34</sup> *Ibid.*, pp. 33-34. This is typical of the sort of world-view that makes such a text possible. The key to understanding this form of reasoning is the renaissance academic belief that an appropriate observation of nature reveals the deepest secrets of moral and political philosophy.

<sup>35</sup> Forset, *Bodies Natural and Politique*, p. 35. La Primaudaye’s *Second Part of the French Academy* is devoted entirely to the soul.

although the cost tends to “drain his own blood dry”, and he emphasises the utility of referring all powers to one sovereign.

Having dealt with a particular aspect of the body politic, Forset returns to look at the whole range of bodies. His first observation is that “bodies politique” come in all shapes and sizes. He begins to list the more obvious variations, then breaks off, to return to his “accustomed course; by speaking in generality”.<sup>36</sup> After a brief didactic segment on degree and the need for each person to be like the cobbler in Plato’s *Republic* who sticks to his last, he then refers to the growth, greatness and decay of States in history.<sup>37</sup> Here is an echo of Polybius and *anacyclosis* - the cycle of states, although in this case there is no remedy.<sup>38</sup> The main thing is to keep the body politic healthy, attending to diet and exercise, and also making sure that “equality [is] to be observed” between the orders and estates of society. This means that “the nobility is so to be maintained, as that the commons be not wronged” or in other words, “the plenty of some be not the cause of penury to others, nor that the ever-sucking veins of some do draw dry the poor that be in want.”<sup>39</sup> A short time later he shows “why the body politique is called a commonwealth”, and again we see in his thought a kind of economic nationalism. Even though he opposes the concept “that all the wealth should be in common”, he believes that wealth and economic activity “must be conferred and reduced to the common good”. Individuals and groups within the state must direct “their whole force according to their divers functions, as well for the upholding of the whole and every part in soundness, as also against a common enemy”.<sup>40</sup>

On the concept of lawful resistance, Forset is firmly opposed, and I shall pass over his discourse on this subject, together with his invective against the Gunpowder Plot, which

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<sup>36</sup> Forset, *Bodies Natural and Politique..* p. 40.

<sup>37</sup> *Ibid.*, p. 41.

<sup>38</sup> For a good contemporary specimen of this idea, see the discussion of Greek constitutions in John Ferguson *Utopias of the Classical World* (London, 1975), pp. 23-25. The difference is that Ferguson plots the life-cycle in terms of the monarchy, followed by varieties of oligarchy, followed by democracy. On mixed States (as in Polybius) see above, Cap. 2, (especially Starkey).

<sup>39</sup> Forset, *Bodies Natural and Politique..*, p. 45.

<sup>40</sup> *Ibid.*, p. 48. Such an outburst, where corporatism flowers into regimentation, is a far cry from the proto-liberal position of most Humanists, and demonstrates one of the well known dangers of organic political theory.

comprises a diatribe of about four pages. I will likewise pass over his ideas on vagrants and multiple office holding which follow. He then returns to the harmony of “parts of the body politic”, and refers specifically to the spiritual and temporal sides of the state, which should co-operate in the “work of upholding the majesty of supreme authority”.<sup>41</sup> Once again, we see a theorist who, as Daly points out, “regarded sovereignty as that on which all order and civilisation depended”<sup>42</sup>, although Forset does not write in the erudite legal and historical fashion of high Humanism of the day. By placing “the majesty of supreme authority” above the spiritual in this way, he is, like Richard Hooker, offering an unequivocal confirmation of the eclipse of medieval conceptions of dual dominion (as in the “two swords”), and endorsing the Politique alternative.<sup>43</sup> It also means, yet again, that there can be no question of the lawfulness of resistance. The educated classes must therefore “be bent all one way” in avoiding theories which smack of rebelliousness, and “the meaner and ministering [i.e. working] sort” need to do as they are told by their betters, “without any either rubs in their way by unruliness, or desisting from their duties by retrogradation”, so that all members of society keep to their “places and callings”.<sup>44</sup> Here, as elsewhere, we can see the craving for order which is often found associated with absolutist thought.

Next, the author addresses two themes: the idea of a perfect state, and the vexed question of toleration. On the former point, he approves the Greeks, but prefers the City of God (“the Jerusalem of God”) to either Plato’s “Idea” or the “sharp discussings” of Aristotle’s *Politics*.<sup>45</sup> However, utopias are not much to his taste, and his interest focuses instead on the “signs” of good health in the body politic. He is not specific what these are, but stresses pageantry and mentions affluence, and he also cautions statesmen that lusty healthiness is a portent of impending disease.<sup>46</sup> And because a diseased organ imperils the whole body, governments need to take care that grievances are not allowed to fester in

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<sup>41</sup> Forset, *Bodies Natural and Politique.*, pp. 56-57.

<sup>42</sup> James Daly, *Cosmic Harmony*, p. 19.

<sup>43</sup> As an Englishman he could point to the Acts of 1535, a course not open to French Politique writers. Another advantage of downgrading the spiritual is the scope it offers for eirenicism — the doctrine of reuniting divided confessions via rationalist religion. See Collins, *From Divine Cosmos to Sovereign State.*, p. 140.

<sup>44</sup> Forset, *Bodies Natural and Politique.*, p. 57.

<sup>45</sup> *Ibid.*, p. 61.

<sup>46</sup> *Ibid.*, pp. 61-62.

sections of society.<sup>47</sup> The second point about preserving good health in a body politic is to avoid radical changes to laws, especially “in the chief and substantial points” of constitutional arrangements.<sup>48</sup> Like Hooker (and Parsons), he accepts the Aristotelian premise that constitutions will vary from place to place due to the need to adapt to changes in geography and culture, which is another reason why “alterations must not be sudden”, but rather “by degrees and parts”.<sup>49</sup> Just as it is dangerous to meddle too much, so too is it dangerous to do nothing. Without specifying who or what they might be, he advocates the practice of uprooting “weeds” before they spread.<sup>50</sup> Although it is “propounded by some politicians [i.e. political theorists] that some evils must be tolerated in the state”, Forset is himself “in this point a Stoic ... by avouching no evil to be so small” as to be tolerable.<sup>51</sup> He concludes with the exhortation:

Then, from the warrant of God, the sense of nature, the directions of wisdom, the necessity and dignity of the state (which is not only to remove its opposites, but to advance itself to all perfection) let us abandon all such parti-coloured and ambidexter tolerations, [as] not fitting the justice or dignity, or good of the commonwealth.<sup>52</sup>

After a short section comparing types of political instability with types of disease,<sup>53</sup> the author picks up the threads of his sovereignty theme again. Just as “physic” is used to combat disease in the human body, “so against the corruption of manners in the political body, wholesome laws be provided”, and the shakier the regime, the more numerous the

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<sup>47</sup> *Ibid.*, pp. 62-63. He uses the example of Chiron’s ulcer from the *Nicomachean Ethics*: I cannot find the passage.

<sup>48</sup> Forset, *Bodies Natural and Politique*, p. 63.

<sup>49</sup> *Ibid.*, p. 64. Presumably, the need to recognise ancient customs does not include customs which are antithetic to sovereignty.

<sup>50</sup> *Ibid.*, p. 66. It is clear throughout this section of the book that he is not referring to religious toleration.

<sup>51</sup> *Ibid.*, p. 67. Tacitean Stoicism had, by this time, been made fashionable by Lipsius and Montaigne.

<sup>52</sup> *Ibid.*, p. 68. There follows an elaborate disclaimer in favour of the toleration of evils which are helpful and not dangerous in themselves.

<sup>53</sup> *Ibid.*, pp. 69-72. He includes “atheism, popery and disloyalty” among the life-threatening “diseases”.

laws.<sup>54</sup> At the same time, “the laws and provisions against offences in the state” must “range under the regiment of the sovereign”, whose will remains paramount.<sup>55</sup> Not only should the prince do this, but it is also the duty of all corporate parts of the body politic to help to combat all “oppositions against authority” and enhance the strength of the State. “Let it then be allowed”, he continues, “that all laws, as well in their first enacting as in their daily execution, and all magistracy [including administration] ... is dependent and secondary to the sovereignty”.<sup>56</sup> Even the lowliest of public servants and jurors “are to make a conscience and to stand upright in their diligence and duty”.<sup>57</sup> While there is nothing in this important passage which conflicts with either his earlier position on the continuing role of parliament in tandem with the monarchy, or the sovereignty theory of Bodin himself, the shrillness of its emphasis on order and supremacy suggests both a tendency towards arbitrary rather than constitutional rule, and a sense of nagging insecurity over England’s political future.

We are now in the concluding portion of the text, and we shall pass over the long section in which magistracy (i.e. office) is discussed as a form of “medical” work.<sup>58</sup> His last word in this section is on the legal system, which he accuses of allowing unscrupulous subjects to pervert, by not adhering to the spirit but rather to the word, of the law.<sup>59</sup> He concludes the book by looking, in overview, at “the entire embracements between sovereign and subject”. This is represented by the body’s relationship to the soul, in that “to rejoice the soul” is the end of the body’s functioning, although slightly further on he seems to change his mind, and makes it a reciprocal arrangement.<sup>60</sup> He sees the role of his account as a form of due recognition to “the wise and expert politicians”, whose “good labours”, involving the “conjunction of learning and acting”, involve them “broiling in the heat of

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<sup>54</sup> *Ibid.*, p. 73.

<sup>55</sup> *Ibid.* It is curious that he feels compelled to remind readers of this paramountcy over law, which, he is suggesting, protects the executive itself from these laws.

<sup>56</sup> *Ibid.*, p. 74.

<sup>57</sup> *Ibid.*

<sup>58</sup> Sovereignty includes the power of appointing magistrates. *Ibid.*, p. 92.

<sup>59</sup> *Ibid.*, p. 95.

<sup>60</sup> *Ibid.*, pp. 95-96.

affairs, and even [being] sun-burned with the business of state”.<sup>61</sup> His praise is not so much for political actors as for political theorists, whom he sees as providing essential texts to the former.<sup>62</sup> This leads him to an injunction against prying into state secrets, properly the province of “the reverend and sage senators of the state”, which is more of a reference to the privy council and star chamber than to parliament.<sup>63</sup> Fortunately, in the human body the senses provide the soul with information, but cannot sense the soul itself, and sovereignty likewise is “as great an *arcanum*” in the political body.<sup>64</sup> So ends Forset’s account.

What we have in Forset is an aggressive statement of the core concept of sovereignty itself, with very little consideration of the myriad of problems and consequences associated with it in Bodin’s *Six Books*, or for that matter in the later (1610) speech of James. Though today the analogic approach of the treatise appears rather silly, in 1606 this was a perfectly acceptable and appropriate way of conducting political or theological discourses.<sup>65</sup> In spite of his concessions to parliamentary consent in the enacting of some laws, he ends up by advocating a much larger royal prerogative than in Elizabeth’s day. Whereas Bodin fixed the constitution above the sovereign, and duly recognised the Aristotelian principle that a polity is built from the bottom up, as a coming together of households, Forset takes the short-cut of making royal sovereignty an imposition from above, by the providential will of God, without any reference to the prior sovereignty of the people as found in Hooker. While Forset is in the same tradition as Bodin, like James I he has walked some distance down the path which leads to Filmer by downplaying the constitutionalist element of sovereignty as found in the *Six Books*, which was first published in English at the same time as his own *Discourse*.

I shall now conclude the review of political writings of the post-reception period (i.e. before about 1613) with a number of texts associated with the courtiers of the anti-Spanish

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<sup>61</sup> *Ibid.*, p. 96, (note the modern use of terms). For a similar sentiment see the prefatory remarks in L. S. Amery’s *Thoughts on the Constitution* (London, 1947).

<sup>62</sup> Forset, *Bodies Natural and Politique.*, p. 97. He describes such actors as “governors of the state”.

<sup>63</sup> *Ibid.*, pp. 98-99. Prying into the king’s thoughts and feelings is even worse, although less likely (p. 99).

<sup>64</sup> *Ibid.*, p. 100.

<sup>65</sup> The analogy was extensively used in mannerist art, metaphysical poetry, and emblem books in this period.

faction, including Philip Sidney and Edmund Spenser. These writers are especially interesting because of their close contact with monarchomach theorists like Languet and Buchanan, and also for their use of republican theories, including ideas from Machiavelli. Whereas these writers were not followers of Bodin, in the manner of Merbury, Hayward and Forset, their superior knowledge of constitutionalism and of the monarchomach position makes them closer, in spirit, to the Frenchman and his frequently overlooked constitutionalism (above - Cap. 1).

Court writers differ significantly from their less famous fellow theorists by virtue of their involvement in public life at the highest levels, whereas other writers are spectators and maybe partisans, but not participants. The term “Court” is not easy to define, as a writer may be a public figure (e.g. a magistrate) but have no experience of politics at the level of the executive government. Nor is the term “executive government” easy to translate into the Elizabethan or Jacobean context, whereas the term “Court” would have been instantly recognisable to any Elizabethan, even if he or she had no inkling of who exactly belonged to it or what it did. For the sake of convenience I will refer to those who had personal access to the Queen (or King) as the Court, and anybody with experience of such official access as a potential Court writer, with the implicit understanding that this is roughly equivalent with having had exposure to the workings of executive government at the highest level. The value of such writers is their possession of experience of government, and rarely one of them will attempt to combine that experience with political thought, as for example Machiavelli did. But in order for this to happen the writer must have time to consider and write, as in the case of Walter Raleigh, whose output of political theory was entirely due to his long incarceration in the Tower, and another example is Machiavelli, who departed from politics in Florence at a comparatively early age, and had nothing to occupy himself each night except to “put on royal and curial robes”<sup>66</sup> and do the work of a scholar.

Court writers are especially important for the present thesis because they tend to wear Machiavelli’s “royal and curial” vestments, that is to say they are in a position to discuss both the (royal) executive government as in the day to day business of the Privy Council, and also the (curial) parliament, which proves to be such a complicating factor for English sovereignty theories, as we saw in the case of Forset (above). The Court writers also

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<sup>66</sup> Bernard Crick (ed.), *Machiavelli - The Discourses* (Harmondsworth, 1976), Introduction, p.69. The classic example of this is Cicero.

represent the younger “aspiring generation” of heirs to the Marian exiles who (with Elizabeth and William Cecil), had been running the government since 1558, but whose posterity were to become the parliamentary opposition by 1628. This is the reason why we find a tantalising republicanism pervading such texts, which is both “royal” and “curial”, and which involves considerations of sovereignty, especially in relation to mixed government.

Republican theories in the late Elizabethan period are mostly found expressed in literature rather than political writing. As Blair Worden says, the most interesting republican works typically include “Philip Sidney’s *Arcadia* and the verse of his friend Fulke Greville”, but no great polemics of the ilk of the *Vindiciae*.<sup>67</sup> Although there is rather more broadly “republican” speculation in the 1580s and 1590s than Worden allows for, he is quite right about the fugitive qualities of this school of thought, and any treatment of the theme must make do with fragmentary and circumstantial evidence. It should be noted in passing that Fulke Greville was not merely “republican”, but also had read Bodin. Greville is typical of the type known as “university wit”, sometimes implying minor but polished literary performances by authors lurking obscurely in Christopher Marlowe’s shadow. Rebholz’s biography corrects this distorted view of one of the major politicians of the period. In Rebholz’s account of the life and writings of Greville, a mixture of overseas influences can be discerned with Bodin among them but by no means shouldering aside other Sixteenth century writers, including Catholic and Calvinist radicals.<sup>68</sup> It is not a large claim on the surface, to say that the author of *Mustapha* used Bodin’s argument to oppose revolution and that knowing this helps to reveal the true (political) drama of that particular play. It becomes a bigger claim, however, when it is combined with the knowledge that the idea of sovereignty in Bodin is (perhaps unfortunately) highly detachable and portable. Every time

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<sup>67</sup> Blair Worden “English Republicanism” in J.H. Burns (ed.), *The Cambridge History of Political Thought, 1450-1700* (Cambridge, 1991), p. 445. In spite of Worden’s excellent contributions to the literature on the Republican writers of this period, his assertion that “republican writers of early modern England did not form a self-contained category, clearly distinguishable from other categories”, fails to satisfy; Israel (ed) *The Anglo-Dutch Moment* (Cambridge, 1991), p. 243. Firstly, few if any of the categories we could look at are “self-contained” in the late sixteenth century, and this applies also to divine rightism, ancient constitutionalism and ultramontaniam as it does to republicanism. Secondly, Worden fails to take into account the fact that “the movement of intellectual protest which opposed the rise of the Renaissance and Baroque monarchies” (Israel (ed) p. 242) embraces broader constitutionalist and protestant beliefs that, to us, appear to be only quasi-republican. For a succinct statement of the varieties of English “republicanism”, see John Morrill *The Nature of the English Revolution* (London, 1993), pp. 22-23.

<sup>68</sup> R. A. Rebholz, *The Life of Fulke Greville* (Oxford, 1991), pp. 147ff.

a middle ranking intellectual like Greville, or Gabriel Harvey, or Edward Dyer reveals a merely passing acquaintance with the *Six Books* we can be sure that the germ of a modern concept of the State has been transmitted, and that readers should be on guard not to confuse republicanism with Politique statements about the rational necessity of the unitary State.

When we look at the examples of “republican” constitutions, there are two distinct avenues of influence from the continent; one concerning the Italian republics, notably Florence and Venice, and the other concerning Calvinist proto-democratic examples, including the Dutch and Genevan regimes and the Huguenot “shadow-government” in France. To add to the complexity of the situation, one of the Italian republican theorists is Machiavelli, who, like Bodin, is a complex thinker, and cannot be considered simply as a republican.<sup>69</sup> Finally, we must be constantly aware that Court writers were invariably Humanists, which means that they had access to the Ciceronian, Aristotelian and Tacitean literature — in many cases they were steeped in it. Bearing these things in mind, we shall look at the Machiavellian “moment” of Italophile republicanism to begin with, then the complex and highly significant influence of Dutch constitutionalism and its Huguenot counterpart, including the contribution of monarchomach ideas.

In Chapter Three, some mention was made of Gabriel Harvey’s political studies at Cambridge in the late 1570s, including his interest in Machiavelli’s political works. By the time Harvey wrote that letter he had “become acquainted with such luminaries as the Earl of Leicester, Philip Sidney, Edward Dyer, and Daniel Rogers”.<sup>70</sup> This is the group of influential protestant radicals who we shall meet again when the Dutch, monarchomach, and Huguenot influences come into view (below). The 1580s saw nearly all of Machiavelli’s works printed in London, but in surreptitious Italian editions rather than English translations. Earlier, in 1579, Fancesco Gucciardini’s *History*, this one in English, had gone through the presses twice (although it was not reprinted until 1599).<sup>71</sup> An edited

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<sup>69</sup> J. G. A. Pocock *The Machiavellian Moment* (Princeton, 1975) is the usual point of departure for this kind of discussion, and eloquently testifies to the pitfalls of oversimplifying the views of the notorious Florentine.

<sup>70</sup> Virginia Stern *Gabriel Harvey: His Life, Marginalia and Library* (Oxford, 1979), p. 39.

<sup>71</sup> All bibliographical information, unless otherwise stated, is from the revised edition of *S.T.C.* (London, 1976-91) This edition contains a great deal of new information, not available to writers such as J.H.M. Salmon (his *French Religious Wars*, Appendix A, pp.171-180). In particular, Felix Raab could have improved his account using such information.

version of Gucciardini's work (the *Epitome*) was published in 1591. While Machiavelli's *Prince* and *Discourses* were only printed in the original form, his *Florentine History* was translated by one T. Bedingfield and printed in 1595. Thus, throughout the 1580s and 1590s there was Italian material of a republican nature coming off the London presses.

At this point it is appropriate to reveal that the person who printed these clandestine copies of Machiavelli was John Wolfe (Woolfe), who developed a close association with Gabriel Harvey in the 1590s. Wolfe, whose patron before 1586 was Philip Sidney, printed the *Discourses* twice and the *Prince* once, in the year 1584. He followed up with the *Art of War*, and the following year published the *History of Florence*.<sup>72</sup> Whether there were enough Italianate English readers to use these texts, as opposed to merely acquiring them for purposes other than study, is an unanswerable question, although one is reminded of the Italian exercises at the back of Merbury's 1581 treatise (above, Cap. 3). The fact that they were printed by Wolfe is doubly significant, because he was the leading printer of books and pamphlets related to the Huguenots and the Dutch revolt, especially after Robert Waldegrave's transfer to Edinburgh after his implication in the Marprelate scandal in 1588. The only other book on Italian city-state republicanism published at this time was Lewis Lewkenor's translation of Gaspar Contarini's *The Commonwealth and Government of Venice*, published by John Windet in 1599, which as we shall see also had suggestive Court connections.<sup>73</sup>

One of the most important monarchomach theorists, the Scot, George Buchanan, was highly influential among Leicester's circle in the 1570s and 1580s. However, as James Phillips reminds us, "genuine approbation [of Buchanan's ideas] was expressed only by men more or less closely associated with the Sidney circle", and not more widely.<sup>74</sup> An intimate of the Leicester circle, Thomas Randolph, arranged London printings in 1577 and 1578 of Buchanan's religious play *Baptistes*, which contains the earliest published version

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<sup>72</sup> Wolfe's nickname, apparently, was "Machivill". In addition to these printed editions, we know of manuscript translations of the *Prince* (seven) and the *Discourses* (three); Felix Raab *The English Face of Machiavelli* (London, 1965), p. 53. Wolfe collaborated, in 1586, in the printing of a Puritan sermon by Edward Bulkeley, with George Bishop, the printer of the Knolles edition of Bodin twenty years later, (*S.T.C.*).

<sup>73</sup> Discussed in Pocock *Machiavellian Moment*, pp. 320ff.

<sup>74</sup> James E. Phillips, "George Buchanan and the Sidney Circle", *Huntington Library Quarterly*, XII (1948), p. 43.

of his theory of the deposition of monarchs by private citizens.<sup>75</sup> The principal source for this idea was, according to Quentin Skinner, Cicero, although many of Buchanan's arguments and citations come from the more radical Conciliarists, such as Mair (Major) and Gerson,<sup>76</sup> and like his old friend Christopher Goodman (see above - Cap. 2), he was able to borrow from and build upon theories developed by medieval clerics.<sup>77</sup> Like Bodin and many others, Buchanan posits a state of nature from which political society originates, but unlike Bodin he regards the first coming together of a people as the moment of the inauguration of sovereignty, which thereafter is not able to be alienated as it is, for example, in Richard Hooker's social contract (above - Cap. 4).<sup>78</sup> While parts of this broadly Ciceronian account come from anti-Aristotelian Scholastics like Almain and Mair, the individualism which enables Buchanan to go beyond "inferior magistrates" and advocate popular resistance is not a Scholastic idea at all.<sup>79</sup> This individualism belongs squarely to the Augustinian world view of Luther and Calvin.

The circulation of this monarchomach theory in the Leicester circle during the 1570s and 1580s must have generated a great deal of debate in Court circles, considering the fundamental incompatibility of popular sovereignty and the sovereignty of the queen-in-parliament, as in John Hooker and Thomas Smith. The strength of the account of Hooker and Smith is its institutionalism; popular sovereignty leads to the rulers/ruled paradox and diminishes the concept of representation. Parliamentarism and republicanism are incompatible because they are based on different accounts of the State, and a follower of Goodman and Buchanan would seek to balance parliament with other institutions, as the Romans did with respect to their Senate. Thus it would be impossible to have the Queen in-parliament at all, let alone to regard such a parliament as the fountain of law. For the Leicester circle in the 1580s, a powerful Crown under their faction's control was just as

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<sup>75</sup> *Ibid.*, p.40. The first genuine London edition of his *De Jure Regni apud Scotos* was in 1581. The printer was Edward Aggas, (S.T.C.). Aggas was a close associate of John Wolfe.

<sup>76</sup> Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), II, pp. 340-341; the source in Cicero is his *On Invention*. Francis Oakley, "On the Road from Constance to 1688: The Political Thought of John Major and George Buchanan", *Journal of British Studies*, I (1962), pp. 1-31.

<sup>77</sup> For the association with Goodman see James Phillips, "Buchanan and the Sidney Circle", p. 27.

<sup>78</sup> Skinner, *Foundations*, II, pp.341-342.

<sup>79</sup> *Ibid.*, p. 343.

important as parliamentary activity, in which they participated vigourously. But by the 1590s the many changes, both at home and abroad (especially in France), were moving the debate away from resistance and towards quietist theories of constitutionalism, many of which can be regarded as *Politique*.

In the period around 1590 in London there was an explosion in the printing of recent French Huguenot writings, and much of this industry involved John Wolfe. Just as 1589 was a turning point in England (see above - Cap. 3), so too was it a turning point in France, for in that year Henri of Navarre's claim to the French throne began to materialise as a definite possibility, and the post-1572 theories allowing legal resistance to monarchs gave way to Michel Hurault's type of political thought, in which "[r]ebellion was rejected and regicide condemned."<sup>80</sup> These later Huguenot polemics, then, are much more likely to support sovereignty than the authors Bodin himself wrote against. Popular sovereignty remains highly problematic for Bodinean sovereignty theory. The people do not make appropriate bearers of sovereignty (except in rare cases of direct democracy) because a sovereign needs to be able to act in ways in which the entire population of a nation could never, in practice, act.

In 1588 Michel Hurault's *Discours* was published by Edward Aggas, who also handled the task of translation.<sup>81</sup> Like Wolfe's publications of this period, it is a highly polemical work and has none of the classical allusions or scholarly apparatus encountered in all Humanist productions. It is not surprising, therefore, that nowhere does he mention Bodin or, so far as it is possible to ascertain, quote from his works. Hurault's understanding of sovereignty conforms with Bodin's theory, however, and bears out the opinion of Stankiewicz quoted above.<sup>82</sup> His view of Henri III, forced out of the capital by the Ligue, is that his weakness stems from his lack of awareness of the constitutional powers of sovereign monarchs. Indecisiveness gives rise to "a contempt and disdain of the

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<sup>80</sup> W.J. Stankiewicz *Politics and Religion in Seventeenth-Century France* (Berkeley, 1960), p. 36 .

<sup>81</sup> *A Discourse upon the Present Estate of France* (London, 1588), although Hurault's name is nowhere on the title page. Edward Aggas was Wolfe's usual translator for French work, and the two often published jointly. In 1588, Aggas translated *A Caveat for France ...* for Wolfe, and the two co-published Du Plessis Mornay's *Letter to the Masters of the Sorbonne*. See Salmon *French Religious Wars*, Appendix A., p. 175, and *S.T.C.*

<sup>82</sup> This idea in Hurault is convincingly connected to sovereignty by Mosse, "The Influence of Jean Bodin's *Republique* on English Political Thought", *Medievalia et Humanistica*, IV (1948), pp. 80-81.

Prince, which are contrary both to duty [of subjects] and majesty.”<sup>83</sup> Recognising the rulers/ruled dichotomy, Hurault makes the point that even though “we can not be free, yet will we have but one master: and if that master hath another master above him, we straight leave the first to run to the last: such is the nature of man.”<sup>84</sup> Unlike extreme resistance theory, such as that found in Buchanan, the *Vindiciae*, or more pointedly, La Boetie’s *Contre Un*, but like Hotman’s *Franco-Gallia*, Hurault stresses the inviolability of the ancient constitution, which he refers to as “the ancient form of their [that is, the French] commonwealth”.<sup>85</sup> And this constitution embodies among other things, “the king’s absolute authority”.<sup>86</sup> Unlike Divine Right theorists, he never actually defends tyranny, but leaves his position on tyrants unclear, insisting that to be an authentic king, an incumbent must resolve “to wish the wealth and peace of his people”, most especially “the liberty of the churches”, or toleration, and “maintaining the laws”, which is of paramount importance.<sup>87</sup> Sovereignty is implicit in his sage observation on the French taste for dissension that “we can be content under a king that is already established to divide ourselves ... but if there were none, or that we were to provide for the Crown, we would never suffer the rending asunder of it.”<sup>88</sup> When Hurault repeats the view that “nothing is more dangerous for a king than the impairing of his majesty”, it is to foreshadow a version of divine sanction (not Divine Right) which emphasises “the holy respect which men owe to the sacred person of the king”.<sup>89</sup> Here, then, is the new Huguenot theory, not of resistance but of coexistence, under a more monarchic, less republican constitution.

Confirmation of the shift in Huguenot political theory away from the radical constitutionalism of the *Reveille-Matin* to a position based on total support for the Salic law,

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<sup>83</sup> Hurault, *A Discourse upon the Present Estate of France*, p.4. For a longer account, concentrating on style, see Huffman, *Elizabethan Impressions*, pp. 86-89.

<sup>84</sup> Hurault, *Discourse*, pp. 6-7. It is significant to note how far this diverges from feudal ideas.

<sup>85</sup> Hurault, *Discourse*, p. 8. For more on English ancient constitutionalism, see the next Chapter.

<sup>86</sup> *Ibid.* p. 11.

<sup>87</sup> *Ibid.* p. 20. Against Henri II (and Navarre by extension) the League wants “the subversion of laws, and alteration of the state [constitution] of the realm”.

<sup>88</sup> Hurault, *Discourse*, pp. 36-37.

<sup>89</sup> *Ibid.* pp. 45-45. He realtes this back to his strong sense of the value of unity and order: “as the sceptre belongeth to none but himself, not to suffer it to be broken into pieces”.

including what Professor Church describes as a “theory of absolutism ... developed indirectly from Bodin”,<sup>90</sup> is to be found in many of Wolfe’s books of this period. We shall look briefly at three, all from 1589, and all translations of French Huguenot pamphlets. In the *Contre-Ligue* (author unknown), we get quite a few glimpses of sovereignty theory, together with much on the divine sanction of kingship. The author insists that the ultramontanist League “breakest the union of the realm, and the power thereof, which consisteth in the union.”<sup>91</sup> A few pages later we are informed that “when an estate is once established and assured, we are not to dispute whether it be lawfully”.<sup>92</sup> On divine sanction, we are reminded that “God preserveth kings; he placeth them upon their thrones: they are his Lieutenants, and petty Gods in power.”<sup>93</sup> The distinction between this, and Divine Right of the Filmeresque variety, becomes evident if we study Pilippe Du Plessis-Mornay’s beautifully argued pamphlet *A Letter Written by a French Catholic Gentleman*. In his *Letter*, Du Plessis-Mornay refuses to rule out resistance, yet makes it most difficult (no doubt with an eye on Jesuit theory of the type found in Parsons - above, Cap. 5). Focusing on the case of Daniel, he notes that resistance applied only in the case of enforced worship of idols, rather than “heresy” or “apostasy”. The rule of either Henri III or Henri of Navarre, if tolerant in the Politique style, would not fit Augustine’s category of “great Empires without justice [which] are thieveries and not estates”, and thus would not be resistible.<sup>94</sup> Du Plessis-Mornay uses a long quote from Calvin to support the monarchic constitution and Salic law, arguing that princely constitutions are better than aristocratic or democratic ones, and that the superior magistrates and prince are equally necessary.<sup>95</sup> Before rejecting Henri of Navarre as successor to Henri III, “let him look whether the Queen of England, the King

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<sup>90</sup> William F. Church *Constitutional Theory in Sixteenth Century France* (N.Y.,1969), p. 246. He describes this group with some justification as “writers of lesser abilities” and “militant pamphleteers”, who combined Bodin’s sovereignty ideas with “divine right”, of a sort.

<sup>91</sup> *The Contre-Ligue; And Answer to Certain Letters etc.*(London,1589), p. 21.

<sup>92</sup> *Contre-Ligue*, p. 24 (misnumbered p. 22 in original). On the same page is a longer passage on tacit consent which is almost identical to Hooker’s position.

<sup>93</sup> *Contre-Ligue*, p. 11.

<sup>94</sup> P. Du Plessis-Mornay, *A Letter written by a French Catholic Gentleman* (London,1589), pp. 39-40. (It is perhaps unfair to apply Church’s poor estimation of the pamphleteers in general to Mornay.) On the question of deposition of kings for “heresy” alone, see his specific rejection of such forms of resistance at p. 53. Note the similarity to Bodin’s “robbers and pirates” (above - Cap. 1).

<sup>95</sup> Du Plessis-Mornay, *A Letter*, p. 40

of Denmark, and other protestant princes be obeyed in their estates".<sup>96</sup> Our third and last example, *A Politic Discourse, Most Excellent for this Time Present* (author unknown, translated by Francis Marquino), contains little of real interest except a climatic theory of political culture not dissimilar from that of Bodin,<sup>97</sup> and a positive reference to the political realism of Machiavelli's *Prince*.<sup>98</sup>

The importance of this shift in Huguenot theory away from monarchomach "republicanism" is not just that it suggests an acceptance of Politique ideas by Huguenots, but also that it helps to explain why the English Court theorists coming after Philip Sidney's death did not develop forms of republican theory more radical than the constitutionalism of Fortescue and Smith.

What did the Elizabethans make of Italian republican writings? The easiest way to proceed here is to look at two writers; Machiavelli and Contarini. In Machiavelli's case, the first hurdle is the difficulty in assessing the availability of sources. The handwritten translations, imported French and Latin editions, and surreptitious Italian printings of Wolfe, make for limited first-hand access, and favour Peter Donaldson's argument for "an interpretation of Machiavelli that regarded the original publication of the text as itself a surreptitious act, a disguised revelation of the arcana of tyrants".<sup>99</sup> For a long time, scholars were content with the view that Machiavellism was known entirely through the pejorative polemic of Innocent Gentillet's *Contre Machiavel*.<sup>100</sup> This view, propounded by Edward Meyer in 1897 and perpetuated by Arnold Weissberger in 1927, was refuted in an excellent paper by Mario Praz in 1928, and finally killed off by Felix Raab's groundbreaking study of 1965<sup>101</sup> (which, together with Zora Fink's *Classical Republicans*, provided the foundation

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<sup>96</sup> *Ibid.* p. 41.

<sup>97</sup> *A Politic Discourse, most Excellent for this Time Present* (London, 1589), pp. 32-34.

<sup>98</sup> *A Politic Discourse, most Excellent for this Time Present*, p. 33. This should serve as useful corrective to the Anti-Machiavellism of Gentillet, as both are Huguenot apologists.

<sup>99</sup> Peter Donaldson *Machiavelli and the Mystery of State* (Cambridge, 1988), p. 95.

<sup>100</sup> Innocent Gentillet *A Discourse upon the Means of Well Governing* (London, 1602), published by Adam Islip. The first preface, dated 1577, mentions that Machiavellism is a very recent import into England and France.

<sup>101</sup> Edward Meyer *Machiavelli and the Elizabethan Drama* (Weimar, 1897). L. Arnold Weissberger, "Machiavelli and Tudor England", *Political Science Quarterly*, XLII,4 (1927) pp. 589-607. Mario Praz "Machiavelli and the Elizabethans", *Proceedings of the British Academy*, XIV

of Pocock's book). Part of the problem here is that the Florentine wears two hats: one rather strange *raison d'état* helmet in the *Prince*, and a vehemently republican bonnet in the rest of his political works, notably the *Discourses*, and the contradiction between them is so great that admirers of his republicanism such as Rousseau have suggested that the *Prince* is a satirical piece.<sup>102</sup> Bearing this in mind, it is the Machiavelli of the *Discourses* who must be the subject of our attentions here.

John Wolfe not only printed the surreptitious *Discourses* of 1584 and employed Gabriel Harvey in 1592, but he also printed the great bulk of the English output of those two remarkable Italian lawyers, Scipione and Alberico Gentili. Both had connections with the Leicester circle,<sup>103</sup> but it is Alberico who interests us. In his *De Legationibus* of 1585 he affirms the republican view of the Florentine and, like Rousseau (and more recently Garrett Mattingly), claims that the *Prince* is a tongue-in-cheek criticism of absolute and arbitrary monarchies.<sup>104</sup> Later, in his *Regales Disputationes Tres* of 1605, he uses Roman law arguments to advance the cause of royal prerogative and to reduce parliament, along the same lines as Bodin's "royal monarchy" in the *Six Books*.<sup>105</sup> In the span of 20 years he has changed his views considerably, yet we are entitled to wonder how incompatible the two positions are. For instance, in 1594 (almost exactly halfway between Alberico's two texts) Richard Beacon, a colleague of Edmund Spenser, published a book on the Irish problem entitled: *Solon his Follie, or a Politique Discourse touching the Reformation of commonweales conquered, declined or corrupted*, in which both Machiavelli and Bodin were used extensively, notably the Latin versions of the *Discourses* and *Six Books*.<sup>106</sup> If Sidney Anglo is correct, then a twist is added to the story, in that the arguments of Bodin used by Beacon

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(1928), pp. 49ff. Felix Raab *The English Face of Machiavelli* pp. 56ff.

<sup>102</sup> J-J Rousseau (Cranston ed) *The Social Contract* (Harmondsworth, 1968), p. 118.

<sup>103</sup> Scipione published an epic poem celebrating the birth of Philip Sidney's daughter in 1585, and dedicated two other books to Sidney. Alberico's books contain dedications to Leicester, Edward Dyer and Francis Walsingham. These, and five others, were all printed by Wolfe between 1582 and 1590.

<sup>104</sup> Daniel C. Boughner *The Devil's Disciple: Ben Jonson and Machiavelli* (New York, 1968), p. 79n.

<sup>105</sup> Brian Levack "Law and Ideology" in Dubrow and Strier (eds), *The Historical Renaissance* (Chicago, 1988), pp. 228-229.

<sup>106</sup> Sydney Anglo, "A Machiavellian Solution to the Irish Problem" in Chaney and Mark (eds) *England and the Continental Renaissance* (Woodbridge, 1990), pp. 153-161 *passim*.

are in fact derived by Bodin from Machiavelli.<sup>107</sup> Nor should it be assumed from the scant references to Machiavelli in the *Six Books* that Bodin had not devoted much thought to Machiavellian theory. His *Methodus* (written before the *Six Books*) contains numerous references to the Florentine, and one whole section of it is devoted to a refutation of Machiavelli's ideas concerning the possibility of mixed regimes.<sup>108</sup>

To appreciate the role of the *Discourses* in Elizabethan Court thinking, it is appropriate to recall that the heyday of Machiavellian republicanism is in the period from the establishment of "republican" rule in the Dutch United Provinces in the late 1570s to the Marprelate controversy in 1589-91. Two factors of immense political significance are at work in this period. The first is the absence of a suitable protestant successor to Elizabeth, and the second is the internationalisation of politics which finds expression in the activities of the Leicester circle.<sup>109</sup> We have already seen some of the personnel in Leicester's orbit. The inner circle was Leicester, Philip Sidney and Frances Walsingham. Literary associates were Gabriel Hervey, Edward Dyer and Edmund Spenser. Foreign agents were much used by Walsingham, including Daniel Rogers, Pietro Bizari, and John Dee. Robert Devereaux, the Second Earl of Essex, was also associated with this group in the 1580s and 1590s, although the three core members were all dead by 1590. Intellectuals like Dee and Rogers were in turn part of a European network of individuals doing speculative research into Gnosticism and related subjects. This attraction to eirenic Gnosticism which Frances Yates

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<sup>107</sup> Anglo, "A Machiavellian Solution to the Irish Problem", p. 161.

<sup>108</sup> Bodin (Reynolds ed) *Method for the Easy Comprehension of History* (N.Y.,1969), p. 187ff.

<sup>109</sup> Although it was a coterie, it was a very extensive one. The following references provide a glimpse of this (they are in no particular order):

Virginia Stern *Gabriel Harvey, His Life, Marginalia and Library*, pp. 40-109 *passim*. Charles Nicholl *A Cup of News: The Life of Thomas Nashe* (London,1984), pp. 112-134 *passim*. James Phillips "Daniel Rogers: A Neo-Latin Link Between the Pléiade and Sidney's 'Areopagus'", in J. Phillips and D. C. Allen *Neo-Latin Poetry of the Sixteenth and Seventeenth Centuries* (Los Angeles,1965), and his "George Buchanan and the Sidney Circle", pp.23-55. Peter French *John Dee: the World of an Elizabethan Magus* (London,1972), pp. 126-159. Maureen Quilligan "Sidney and his Queen" in Dubrow and Streier (eds) *The Historical Renaissance*, pp. 171-196. Katherine Duncan-Jones *Sir Philip Sidney, Courtier Poet* (London,1991). Nicholas Berker "The Perils of Publishing in the Sixteenth Century: Pietro Bizari and William Parry" in Chayney and Mack (eds) *England and the Continental Renaissance*, pp. 125-141. It should be noted that Dee actually met Bodin early in 1582 while Bodin was in England for the marriage negotiations. See James O. Halliwell (ed.) *The Private Diary of Dr. John Dee* (London,1842), p. 10.

has portrayed so brilliantly in her books marks a profound epistemological shift among intellectuals. This profound shift can be seen in the tenth Book of the *Hermetica* where the concepts of “prime mover” and God are totally conflated.<sup>110</sup> Perhaps because it arises from the Humanist side of the Humanist-Protestant synthesis it is not surprising that this is the source of that eirenic vision of “the one” which Hooker and Dee shared.

Given the stringencies of the situation, with the Counter-Reformation at the height of its onslaught and no guarantee that Elizabeth would avoid assassination herself, leading political figures would have been remiss not to consider the republican alternative, either in Italian or Dutch terms. But to consider is one thing, and to publish another, as the unfortunate John Stubbes discovered when he published a forthright tract opposing the Alençon match, and had his right hand cut off.<sup>111</sup> Elizabeth’s sensitivity to political writings has already been seen in the discussion of Peter Wentworth’s case (above - Cap. 5), and the absence of any outright republican treatise is not enough to rule republicanism out — especially republicanism of the less radical Dutch variety.

Blair Worden has identified Sidney’s *Arcadia* as one of the key republican (and perhaps Machiavellian) texts of the period before 1600.<sup>112</sup> In the preface to the Oxford edition of the version of *Arcadia* written in 1580 (the “Old Arcadia”), Jean Robertson confirms that Sidney was familiar with not only Machiavelli and Guicciardini, but also Gianotti and Contarini, when he wrote the book.<sup>113</sup> But what we get in *Arcadia* is not the trenchant anti-monarchic rhetoric of pure republicanism, but what Clark Hulse describes as: “a new form of political and historical discourse”. For Hulse, this discourse is characteristic of all the “politique” writers before 1600, who were “rooted in the humanistic study of Livy and Tacitus, but hostile to or cynical about the humanists’ ethical claims”.<sup>114</sup> The twisting, labyrinthine speculations which follow the “death” of King Basilius in Book Four of *Arcadia*

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<sup>110</sup> Walter Scott (ed), *Hermetica*, Vol.I. (Oxford,1924). Facsimile, (London, 1968), pp.187ff.

<sup>111</sup> D.R. Woolf, “The Power of the Past” in Fideler & Mayer (eds), *Political Thought and the Tudor Commonwealth* (London,1992), p.34.

<sup>112</sup> Blair Worden, “English Republicanism”, p.445.

<sup>113</sup> Jean Robertson (ed.) *Sidney — The Countess of Pembroke’s Arcadia* (Oxford,1973), pp. xxvi, xxvii. She also states that he knew the *Six Books* of Bodin (xxviii).

<sup>114</sup> Clark Hulse “Spenser, Bacon, and the Myth of Power” in Heather Dubrow and Richard Strier (eds) *The Historical Renaissance*, p. 316.

perfectly illustrate Pocock's statement that Elizabethan Machiavellism had a bifocal view of "the effective statecraft" of parliament, and "the Tudor passion for descending authority".<sup>115</sup> Although lack of space prevents any close examination of this profound text, the curious reader of Book Four ought to ask whether the figure of Pamela symbolises royal monarchy, or a republican constitution-giver such as Lycurgus. To this might be added Blair Worden's acknowledgment of "the influence of Buchanan's radical ideas" in the text of *Arcadia*<sup>116</sup>, which accords well with the monarchomach connections in the Leicester circle generally (above).

Another well-known member of Leicester's circle was Edmund Spenser, who, like Sidney, managed to combine literary and political activities. Also like Sidney, Spenser was intimately connected with English efforts to neutralise the perceived threat of a predominantly Catholic population based on a landmass with fairly easy access to the Iberian peninsula — the Irish.<sup>117</sup> Spenser's *View of the Present State of Ireland* (1596) is his most forthright political composition, and it provides us with some clues as to the influence of both Machiavelli and Bodin upon the Court writers of the Leicester circle.

Spenser's *View* takes the form of a dialogue between a curious scholar (Eudoxus) and a traveller recently returned from Ireland (Irenius).<sup>118</sup> Near the beginning of the dialogue, Irenius states that Henry VIII was accepted as king in an Irish "parliament" of "lords", to which Eudoxus replies: "Then by that acceptance of sovereignty they also accepted his laws — why then should any other laws be now used amongst them?".<sup>119</sup> Here and elsewhere the interlocutor Eudoxus personifies a strictly Bodinean position, that

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<sup>115</sup> Pocock *Machiavellian Moment*, p. 354. The allusion to ascending and descending theses of power is from Walter Ullmann *Principles of Government and Politics in the Middle Ages* (London, 1966), pp. 20-21.

<sup>116</sup> Blair Worden "Classical Republicanism and the Puritan Revolution" in Hugh Lloyd-Jones et. al. (eds) *History and Imagination* (London, 1981), p. 187.

<sup>117</sup> Sidney was in Ireland in the late '70s, where his father Henry was Lord Deputy Governor. Katherine Duncan-Jones *Sir Philip Sidney* pp. 106-112. Like the elder Sidney, Edmund Spenser held a senior post in the English administration in Ireland.

<sup>118</sup> Clark Hulse, "Spenser, Bacon and the Myth of Power", p. 327: "The *View* is a policy paper, reflecting the position of the permanent colonial administration in Ireland". Spenser's identification with the persona of Irenius is suggestive of an eirenic disposition.

<sup>119</sup> Rudolf Gottfried (ed) *Spenser's Prose Works* (Baltimore, 1949), IX, p. 48. For the parallel between Spenser and Bodin here, see Gottfried's Commentary at p. 281.

sovereignty implies the power to annul all existing customary laws, not least the law of tenures, whereas Irenius personifies pragmatism. Eudoxus expects the Irish to submit unreservedly, having in times past recognised the Crown, noting that “without first cutting this dangerous custom, it seemeth hard to reduce them to ... a civil government”; and a little further on he says that although the original conquest places everything “absolutely in his own power”, nonetheless a subsequent consent is preferable.<sup>120</sup> Further on, Eudoxus finds it hard to believe that the laws of the English administration are “unfitted” to the Irish, and Irenius responds by telling how the Irish deliberately misconstrue laws wherever possible, for the sole reason that the laws are English. Nor can magistrates correct this by picking “safe” juries, for the Irish would regard this as another instance of oppression.<sup>121</sup> This is a good example of the way Spenser uses the Irish case to test Bodin’s logic of sovereignty, although in defence of the theory of sovereignty it must be noted that an occupied territory hardly fits the Aristotelian definition of a body politic on which it is based (above - Cap. 1).

Slightly more than halfway through the *View* Spenser, having discussed the history of law in Ireland in considerable detail, comes to the point. Given the serious difficulties being experienced by the English administration, the obvious response is to draft many new laws, with severe penalties. But another option exists, which is to scrap the whole administration and virtually reconquer the island, and thus “to alter the whole form of the government”.<sup>122</sup> It is clear that the author advocates the latter course, and when Euxodus accuses him of wishing for a bloodbath, Irenius responds that:

by the sword I do not mean the cutting of all that nation by the sword, ... but by the sword I meant the royal power of the prince, which ought to stretch itself forth in her chief strength to the redressing and cutting of all those evils ... and not of the people ... for evil people by good ordinances and good government may be made good.<sup>123</sup>

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<sup>120</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, pp. 51-53. Commentary: pp. 284-285. Both commentators refer to Bodin as the most likely source.

<sup>121</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, pp. 6-68.

<sup>122</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, pp. 146-147. The regret Euxodus expresses regarding the changing of laws is variously sourced to Bodin and Smith, although Aristotle would be another possibility (p. 374).

<sup>123</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, p. 148.

Here, then, we have a reasonably obvious restatement of the idea of sovereignty, used not to explain the English constitution but to offer a constitution to a hitherto subjugated people.<sup>124</sup> On the religious question, Spenser suggests encouraging active “ministers of the gospel” rather than coercion and suppression of Catholicism.<sup>125</sup> The first step towards such a change of the “form of government” is to grant the Lord Deputy plenary powers and to establish a number of self-contained garrisons.<sup>126</sup> It is on this practical note that the *View* closes, and here is found the only explicit citation of Machiavelli, where Spenser praises the passage in the *Discourses* which condemns the excessive limitation of powers practised in Venice and Florence.<sup>127</sup>

Given that the *View* “demonstrates Spenser’s command of the historical, legal and military discourse of the politiques”<sup>128</sup>, what, then, are we to make of the contemporaneous translation of Cardinal Gaspar Contarini’s *The Commonwealth and Government of Venice*? At first sight it would seem that a Catholic “prince of the church” and a coterie of Calvinistical pseudo-republicans would have no connections. Contarini, together with Reginald Pole, Piermartire Vermiglio, Bernardino Ochino, and Jacobus Acontius headed a movement in Italy in the 1540s to reconcile the Catholics and Protestants. Three of them, Ochino, Acontius and Vermiglio, fled to England when the Counter-Reformation began, and Acontius, who stayed with Emmanuel van Meteren until his death in 1566, achieved renown as a kind of early Politique. It was Acontius who was the author of the *Una essortatione al timor di Dio*, which in 1580 became John Wolfe’s first Italian publication.<sup>129</sup> In fact,

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<sup>124</sup> It is uncanny to notice how much this resembles the extension, in the nineteenth century, of responsible government to the dominions.

<sup>125</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, p. 221. This resembles a passage in Bodin; Bodin (Knolles edition), *The Six Bookes of a Commonweale* (London, 1606), p. 423.

<sup>126</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, pp. 228-229; 153. This is derived from *The Art of War* (see p. 379).

<sup>127</sup> Gottfried (ed) *Spenser’s Prose Works*, IX, p. 229. Machiavelli’s influence is less than that of Bodin, and it is misleading of Mario Praz to say that Spenser “did not scruple to adopt almost word by word the maxims laid down by Machiavelli,” Praz, “Machiavelli and the Elizabethans”, p. 56. Cf. Robin Wells *Spenser’s “Faerie Queen” and the Cult of Elizabeth* (London, 1983), pp. 124-125.

<sup>128</sup> Clark Hulse “Spenser, Bacon and the Myth of Power”, p. 327.

<sup>129</sup> C.C. Huffman *Elizabethan Impressions: John Wolfe and his Press* (N.Y., 1988), pp. 19-20.

Contarini wrote the account of Venice in the 1520s,<sup>130</sup> and it can hardly be compared with later, more orthodox, religious works. The translation is by “Lewes Lewkenor Esquire”, who wrote a book on Continental universities, printed in 1600, in which he criticises Florentine discord, and praises the Venetian constitution.<sup>131</sup> He dedicates the Contarini volume to Anne Russell, the Countess of Warwick, who was married to Philip Sidney’s uncle and Leicester’s brother, Ambrose Dudley.<sup>132</sup> Immediately following this revealing dedication is a dedicatory sonnet by Edmund Spenser.

Apart from providing a working alternative to monarchy (which we shall shortly return to), Contarini’s *Venice* also prefigures several aspects of Bodin’s theory of sovereignty, demonstrating in the process a considerable indebtedness to Aristotle’s *Politics*.<sup>133</sup> Contarini sets the stage for the discussion stating that “neither ... were the rule of men to be wished for before the government of laws”, and that “the sovereignty of government should be recommended not to men but to laws”.<sup>134</sup> He then moves on to discuss “that controversy of constitution of laws ... that is to say, whether one, or a few, or the whole multitude, be to be preferred to the defence of the laws, and to judge those things that do not fall into the comprehension of laws.”<sup>135</sup> On this score, “the government of the multitude is far more convenient ... yet is the whole multitude of itself unapt to govern, unless the same be in some sort combined together, for there cannot be a multitude without

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<sup>130</sup> Pocock *Machiavellian Moment*, p. 320. The first printed edition was in 1543. By the time of the London edition (1599), Wolfe had ceased printing.

<sup>131</sup> L.S. Lewkenor *A Discourse ... of Forraine Cities* (London,1600), pp. 39<sup>v</sup>, 30<sup>v</sup>

<sup>132</sup> Duncan-Jones *Sir Philip Sidney*, p. 342. Lewkenor says in the dedication that Anne “did ... impose this task upon me”, Contarini (Lewknor ed) *Commonweale ... of Venice* (London,1599), \*2<sup>R</sup>, and mentions “the duty our family oweth unto that noble house wherein you matched”, (\*2<sup>V</sup>). Cf. Mendle, *Dangerous Positions*, p. 99 — Mendle links Lewkenor to William Stoughton, a notorious Puritan campaigner of the 1580’s. The Countess of Warwick, too, seems to have played a leading role in the political opposition. In 1596 she was linked with the ill-fated Earl of Essex; Mervyn James, *Society, Politics and Culture* (Cambridge,1986), pp.456, 458.

<sup>133</sup> Contarini’s book was an important source for Bodin. See Bodin (Knolles edition), *The Six Bookes of a Commonweale*, pp. 166, 168, 184 for examples. Both writers were, like Hooker, political Aristotelians. Lewkenor, in his preface “to the reader”, cites Bodin (A3<sup>v</sup>).

<sup>134</sup> Contarini (Lewknor ed), *Venice*, p. 12. It would be anachronistic to confuse this Rule of Law with the Diceyan doctrine (above - Introduction).

<sup>135</sup> Contarini (Lewknor ed), *Venice* p. 13.

the same be in some unity contained".<sup>136</sup> Later in the book, he makes the point that "a city is a certain civil society, sufficing within itself of such things as are necessary to the leading of a happy and quiet life", such that "every civil society is contained and linked together in a certain unity".<sup>137</sup> His view of this need for "authority to bind them together", which he compares to the *primum mobile* of the macrocosm and the human heart of the microcosm, is close indeed to Bodin's sovereign, even to the point of being "one head and superior".<sup>138</sup>

In order to appreciate how protestant Humanists of the Leicester circle, and their successors, may have interpreted the republican element of this text, we need to look fairly closely at those institutions which correspond to parliament. At first, Contarini portrays the Venetian constitution as mixed: "a princely sovereignty, a government of the nobility, and a popular authority, so that the forms of all seem to be equally balanced", which is held to accord with Aristotle's "polity" or mixture "between the state of nobility and popular sort".<sup>139</sup> He begins with the famous Grand Council in which is found "the whole authority of the city from whose decrees and laws as well the senate as all other magistrates derive their power".<sup>140</sup> The popular nature of the Grand Council is affirmed by his statement that "nothing is more proper to a commonwealth, than that the common authority and power should belong to many: for it is just that the citizens, by whom the city is maintained ... should not ... be made unequal." But on the same page we are informed that "though upon the first view this great council of ours appears to bear the show of a popular estate, yet looking well into it, you shall find therein an apparent intermixture of the government of the nobility."<sup>141</sup> The aristocratic part of the mix is found in the Senate and Council of Ten, primarily, and these "are (as it were) the mean or middle, which reconcileth and bringeth

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<sup>136</sup> *Ibid.* This is a very telling point against notions of popular sovereignty.

<sup>137</sup> *Ibid.* p. 37.

<sup>138</sup> *Ibid.* p. 38. Aristotle is cited more frequently than any other source in this part of the text.

<sup>139</sup> *Ibid.* pp. 15,14.

<sup>140</sup> *Ibid.* pp. 15-16. He quickly adds that "the common people should not be admitted into this company of citizens, in whose authority consisteth the whole power of the commonwealth".

<sup>141</sup> Contarini (Lewknor ed), *Venice* p. 33. Bodin is strongly opposed to all theories of mixed government, and he rejects the idea that citizenship in Venice is anything but a form of aristocracy. See Bodin (Knolles edition), *The Six Bookes*, p. 427. He puts the population at 132,330; of whom perhaps 1,500 vote. On p. 184 Bodin lists Contarini along with Polybius, Cicero, Machiavelli and More, as a deluded advocate of mixed states.

together the two extremes, that is, the popular estate represented in the great council, and the prince bearing a show of royalty.”<sup>142</sup> Despite the name “Senate”, we discover that “their number exceedeth two hundred and twenty”, and furthermore, that “[t]he whole manner of the commonwealth’s government belongs to the senate.”<sup>143</sup> The powers listed include war and peace, taxation, appointment of magistrates, and foreign affairs.<sup>144</sup>

The question of how English readers may have imagined this republican apparatus working in their own country is not an idle one, given later events. Because of the territorial size and large population of England any simple replication of the Venetian model would have been unthinkable. However, a system which contained an assembly with limited real powers and a large senate, together with a figurehead monarch, would be a markedly different proposition from one which retained the existing parliament, but with dramatically enhanced powers.

It is appropriate to turn now and look very briefly at the role of the Dutch “republic”, as an alternative cluster of republican concepts available for English use. To begin with, the constitutional theories developed to cope with the situation in the late 1570s and early 1580s need to be briefly described. The Dutch “republic” was not a sudden development, but a slow emergence of independent federalism which took place “from the 1560s to the early 1590s”.<sup>145</sup> It was, in many ways, “a consequence of an unexpected combination of political events”, which by their own accidental logic compelled “the leading figures of the provinces of Holland and Zeeland ... to consider (in general terms) the possibility of an independent state.”<sup>146</sup> This pragmatic aspect of the advent of Dutch republicanism must have made it a vastly more exciting prospect to English opponents of strong monarchic rule than its refined and ancient Italian cousins, just as it would have offered an example very close to home of autochthonous constitutional reform on a grand scale. In this context, the Leicester circle’s

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<sup>142</sup> Contarini (Lewknor ed), *Venice* p. 65.

<sup>143</sup> *Ibid.* p. 68.

<sup>144</sup> *Ibid.* pp. 68-69.

<sup>145</sup> E.H. Kossmann “Freedom in Dutch Thought and Practice”, in J. Israel (ed) *The Anglo-Dutch Moment* (Cambridge,1991), p. 283.

<sup>146</sup> Eco Mulier “The Language of Seventeenth Century Republicanism in the United Provinces: Dutch or European?” in Anthony Pagden (ed) *The Languages of Political Theory in Early Modern Europe* (Cambridge,1987), p. 179.

association with the Dutch United Provinces is highly suggestive.<sup>147</sup>

To flesh out the Dutch republican theory, a quick look at the exchange between Leicester's countryman Thomas Wilkes and spokesperson for Dutch constitutionalism François Vranck will be helpful.<sup>148</sup> At the heart of claims by Vranck and his supporters in the legislature of the state of Holland is the position of the Stadtholder or titular head of state; a position which had been held by William of Orange (William the Silent) until his assassination in 1584, which left the fledgling nation acephalous.<sup>149</sup> Even the appointment of Maurice of Nassau, a son of William, to the vacant headship a year and a half later, and the Governorship of Leicester a year after that, did not subdue the rising tide of republican sentiment.<sup>150</sup> The issue of sovereignty inevitably arose, not least because the Stadtholder "had originally been intended to act as substitute for the sovereign".<sup>151</sup> By the time Leicester was in de facto command, serious confusion existed concerning rival claims to sovereignty. The "states" (i.e. legislatures) of the individual provinces and the States General of the federation were now establishing their claim to constitutional pre-eminence, and Leicester's supporters countered with a gubernatorial variant, also based on an account of sovereignty.<sup>152</sup>

Looking at the situation from a distance, the problem of Dutch sovereignty is more explicable. It should not be surprising that the Dutch came to reject their Habsburg overlords. There is something fundamentally suspect about a situation in which a single king inherits (like property) two geographically and culturally distinct kingdoms, and then attempts to rule one of them from the other. Nor should the Dutch quest for a more republican and constitutional regime astonish the reflective historian. Once a person has

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<sup>147</sup> See Martin van Gelderen *The Dutch Revolt* (Cambridge, 1993), Introduction, p. xxvii. Ironically, Leicester's military role against the Spanish compelled him to oppose aspects of republicanism, due to the state of emergency.

<sup>148</sup> For the background, see van Gelderen *The Dutch Revolt*, pp. xxviii, xxix.

<sup>149</sup> E.H. Kossmann "Freedom in Dutch Thought and Practice", p. 287.

<sup>150</sup> M. van Gelderen *The Dutch Revolt*, pp. xxxv, xxxvi.

<sup>151</sup> Eco Mulier "The Language of Seventeenth Century Republicanism in the United Provinces: Dutch or European?", p. 180.

<sup>152</sup> M. van Gelderen *The Dutch Revolt*, p. xxvii. Van Gelderen raises the pivotal (epoch-making?) point that popular sovereignty is based as much on medieval corporatism as it is on emerging civic individualism (see pp. xxix-xxxii).

come to see that the legitimacy of a particular King's rule is open to doubts, why then replace it with more of the same? In the absence of any convenient alternative king, the second option of a weak prince (of Orange) plus a puissant parliament (or series of parliaments) is plausible.

In his *Remonstrance to the States General and the States of Holland* of March 1587, Thomas Wilkes employs Bodin's theory in an instantly recognisable cluster of expressions and logical inferences. He speaks of "general and absolute command" and says that "sovereignty is limited neither in power nor in time", and being delegated ultimately from "the commonality", it would require "a similar authorisation to take it wholly or in part away" from Leicester.<sup>153</sup> In the same year, responding to these claims of Wilkes, François Vranck rediscovered, and partly invented, a contrary theory of parliamentary supremacy and popular sovereignty. He states in his *Short Exposition* of that year (and it really is short) that an indicative array of sovereign powers appertain to the States (i.e. parliaments), and through them, to the individual towns.<sup>154</sup> Not only does Vranck describe it as a mixed and federal regime, but he also claims that "the States of this country have had [authority] to bring their Princes to right and reason ... not only with remonstrances and requests, but also, if these found no proper response, with deeds."<sup>155</sup> Yet this assertion of what might be termed federal parliamentary supremacy was not made against a high-handed monarch (or even Governor General), but in response to the initial suggestion by a populist (Wilkes) that "sovereign or supreme authority in the absence of a monarch belongs to the commonality", rather than the States.<sup>156</sup> In light of this, one is left pondering who, in such a dispute, the real republicans were?

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<sup>153</sup> Kossman and Mellink (eds) *Texts concerning the Revolt of the Netherlands* (Cambridge, 1974), pp. 272-273. In the same month, Gerard Prounik, another of Leicester's supporters, wrote an *Apology* in which he too made an appeal to the logic of sovereignty in terms of "the rule of one supreme command" and the uniqueness of "supreme authority"; Kossman and Mellink (eds) *Texts concerning the Revolt of the Netherlands*, p. 270.

<sup>154</sup> Vranck "Short Exposition" in M. van Gelderen *The Dutch Revolt.*, pp. 230, 2236-237. On p. 230 the powers are declaring war and peace, taxation, and general administration.

<sup>155</sup> Vranck "Short Exposition". p. 231.

<sup>156</sup> Peter Geyl "The interpretation of Vrancken's *Deduction* of 1587", in Charles Carter (ed) *From the Renaissance to the Counter-Reformation* (London, 1966), p. 232. Later, Althusius was to develop these ideas, using Bodin's theory of sovereignty. See J.H.M. Salmon, *The French Religious Wars in English Political Thought* (Westport, Conn., 1981), p. 41 and pp. 40-50 passim. The argument of Wilkes has obvious affinities here with the position of monarchomachs such as Buchanan.

If the radical views of Thomas Wilkes were shared by the other members of Leicester's circle of Puritan Humanists and courtiers, then not only do Wolfe's printing activities make sense, but so also does the rise of Tacitus in the political theory of the 1590s. Unfortunately Leicester, Sidney and Walsingham were all dead by 1590, and the end of the Spanish scare and the reaction to the Marprelate affair in 1593 combined to set the radical Puritan cause back tremendously. We have already seen evidence of this in the writings of Hooker and James, and the imprisonment of Wentworth. The "republicanism" of the 1590s is an embattled ideology in comparison with its counterpart in Leicester's circle, although like all Elizabethan resistance theory it is covert. Order rather than liberty was the preoccupation of English Humanists, and fear of tyranny went hand in glove with acceptance of monarchic institutions. Instead of the republicanism of Algernon Sidney or Thomas Jefferson, we must search for a variety of "republicanism" consonant with Politique theory — a "republicanism" of the Dutch variety, which seeks to limit monarchy and retain parliamentary activism, rather than abolish monarchy altogether in favour of popular sovereignty.

By the time the new Jacobean regime had become well established (ca. 1610) ideas such as those we have seen in Court writings of the Leicester circle - ideas based on the concept of regime change and the yearning for a more popular State - were no longer tenable. As Forset's example shows, royal theories of rule were in the ascendant, and this can also be seen from examples in the previous Chapter (above). For instance, Wentworth's attack on Parsons favours both monarchy and lawful succession, but as a notorious Puritan, we would expect him to side with Buchanan and the other monarchomachs. Hayward mixes the Politique position with Divine Right, and the new English King also had a *published* political theory, which was again a combination of sovereignty and a cult of monarchy unlike anything under the rule of Elizabeth. Nevertheless, the rise of both Politique and Divine Right systems of political thought does not completely overshadow or cancel what had gone before, and the discovery of a group of Court writers interested in republican and monarchomach ideas of the State warns us that underground pools of ideology opposed to Divine Right, even to monarchy itself, remained to influence subsequent constitutional developments.

## Chapter VII

# Walter Raleigh and the Parliamentary Constitution

The theme of the sovereignty of the king-in-parliament as implied in the accounts of Thomas Smith and John Hooker, and which was to some extent replaced by more royal theories after 1576, was once more reasserted in the fifteen years or so leading up to 1628. Apart from some of the Court writers most of the theorists after 1576: Merbury, Hooker, James, Forset and Hayward have shared a common belief in royal forms of rule. Even La Primaudaye and Wentworth, both of them Calvinists, wrote as apologists for monarchic government, although in Wentworth's case he also advocated limits in favour of parliament. Among those advocating monarchy (and this includes Bodin himself, although he never allows his preference to interfere with the logically neutral position of sovereignty) we have seen a tendency gathering momentum, which emphasises prerogative powers, paternalism, and forms of Divine Right. But this period cannot be regarded as a period solely experiencing monarchist constitutional developments. As we saw in the previous Chapter, divergent models of republican sovereignty, based on Venice, the Dutch United Provinces, and Geneva, were in the wind at the end of the Sixteenth century. While the latter two models cannot be disentangled from monarchomach theory, it must be stressed from the very outset that the United Provinces was not a pure republic, and to the extent that the Prince of Orange was its constitutional head of state, and the house of Nassau its royal family, the United Provinces was not a republic at all (See above - Cap. 6.). The present Chapter returns to parliamentary claims - claims to a Dutch sort of constitutional pre-eminence over the royal prerogative. Although we shall need to look at parliamentary debates and the writings of Edward Coke and Francis Bacon, the emergence of alternative, less royalist, theories of the State at this time can best be demonstrated with reference to the later writings of Walter Raleigh.

To an observer living in England in the decade after 1610, it must have seemed that little could prevent the flourishing of a type of unlimited or ‘baroque’ monarchy into the following century, with little dissent and few suggestions of serious alternatives. Yet at the end of the century, the monarchy had been overtaken by Parliament in a constitutional process which continued in all but name the quasi-republican constitution developed in the course of the civil war. By 1642, an alternative to baroque style royal sovereignty had emerged, sufficiently convincing at least to sanction open rebellion, if not to motivate it.<sup>1</sup> As early as 1628, this alternative, embodying constitutionalism and parliamentary supremacy (from the sovereign legislative power) produced the Petition of Right, which clearly prefigured the coming storm. But at the time of James’s speech of 1610 (above, Cap. 5), just eight years before the execution of Raleigh and the Defenestration of Prague, such an alternative to rapidly increasing royal absolutism would have seemed unlikely to most of his subjects.<sup>2</sup>

Part of the reason no doubt for this slippery slide into internal conflict from the heights of Elizabethan conservatism was the unwillingness of James I upon accession to co-opt the “rising generation” of parliamentarians in defiance of the wishes of his newly secured friend, Spain. This set up a barrier between the Commons and the Crown. Before he was England’s monarch, in fact while James was still quite young, Francis Walsingham had advised him of the great value of having parliaments.<sup>3</sup> This teaches us more about Walsingham’s attitude towards the English constitution than it tells us about James’s future attitude when King in England. James, as we have seen, did not take kindly to robust opposition, which is probably why he kept Raleigh out of parliament and in the Tower, although with the benefit of hindsight James might have agreed that it is better by far to have the Opposition in the House than in the Tower. The subterranean ideology of republican and monarchomach ideas could not be fought by martyring individuals, but might have been reduced with parliamentary co-operation.

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<sup>1</sup> The motivation came from more deeply felt (religious) causes.

<sup>2</sup> According to Victor Moran, after the interesting and partly deadlocked Parliament of 1604-1610, there was only one Parliamentary Session that produced a satisfactory output of legislation (by Elizabethan standards), the Petition of Right session of 1627-28. V. Moran, “Whose Prerogative in Late Sixteenth Century and Early Seventeenth Century England?”, in A. Kiralfy, M. Slatter & R. Virgoe (eds), *Custom, Courts and Counsel* (London, 1985), p.54.

<sup>3</sup> Conyers Read, *Mr Secretary Walsingham and the Policy of Queen Elizabeth* (Oxford, 1925), pp.216-217.

When we look at this period from 1610 to 1628, ideological positions and groupings based on divergent understandings of the constitution can easily become retrojections of the divisions brought out by the civil war a generation later. This approach to the period has in turn produced histories which reject any ideological positions whatsoever. According to Johann Sommerville,

a number of recent scholars lay stress on rivalries between factions, and on the clash of personality. They argue that there were few if any deep-rooted divisions of political principle in early-seventeenth-century England. Englishmen, in short, were broadly united in their political attitudes.<sup>4</sup>

Sommerville then convincingly refutes this position and the self-interested philosophy of politics with which it is known to be associated. But the inappropriateness of the position can also be demonstrated readily by merely flipping through the two main volumes of the revised edition of Pollard and Redgrave's *Catalogue* of English books printed between 1475 and 1640. Ideological publications, including Puritan polemics and other pieces on ecclesiastical politics, form a very substantial part of the overall output of London presses for the whole period in question. Secondly, one only has to look at the tense European political scene in general between the second-last French religious war and the second phase of the Thirty Years War, and accept that England was not culturally insulated from the European world, to see how charged the atmosphere must have been during this period. These were troubled times, and England was a deeply divided and insecure society in an era of rapid change.

Walter Raleigh and the Leicester circle (above - Cap. 6) are linked at many levels, one being the idea of New World colonisation, a subject upon which Philip Sidney wrote, in a letter to Ralph Lane in 1585.<sup>5</sup> The idea of New World colonisation is blatantly anti-Spanish and therefore anti-Papal, and this helps us to understand the rapidity of Dutch and English entry into the Western Hemisphere, and the solidarity of the Dutch and English in the early period of colonisation. Increasing privateering

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<sup>4</sup> J. P. Sommerville, *Politics and Ideology in England, 1603-1640* (London, 1986), p.2.

<sup>5</sup> Katherine Duncan-Jones, *Sir Philip Sidney, Courtier Poet* (London, 1991), p.280.

during this period laid the foundations of England's maritime trading Empire, aided by the work of intellectuals such as John Dee and Richard Hakluyt. Raleigh was intimately involved in Elizabethan privateering and high finance, and through Thomas Shirley and the Myddletons he had business links with the Leicester circle.<sup>6</sup> In 1585 he was MP for Devon, and he carried through a Bill on American colonisation with the help of Walsingham, Sidney and Francis Drake among others (Leicester himself being in the other House).<sup>7</sup> Given these links with the highest levels of political Puritanism, it is not surprising that he was to develop a secular and non-monarchic conception of the State alongside an interest in religious toleration.

Walter Raleigh's published works fall into two distinct classes, those written by him, and those written by other authors and wrongly attributed to him in the middle of the seventeenth century, but which the credulous editors of an age of less careful scholarship than our own passed off as his. This has resulted in extremely serious misconceptions arising as to the consistency of Raleigh's political theories, and played into the hands of his detractors. Today, thanks to the philologist's art, the authentic opus of his writings that have survived the shipwreck of the ages can be put on an even keel. Together with the evidence of his career as a leader in the House of Commons in the 1590s, this necessitates a major reappraisal of Raleigh. His role in, and contribution to, the long development of a democratic parliamentary constitution ought now to be acknowledged.

A good example of the old attitude to Raleigh is the statement by Laurence Stapleton in 1941 that as a political theorist he was almost terminally inconsistent:

Raleigh's political writings serve the function of a weather-vane: they show what way, in the sixteenth century, the winds of secular doctrine blew. As theory they have no importance whatsoever. Raleigh not only thought of nothing new; he did not even give a clear exposition of the ideas he had collected from

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<sup>6</sup> K. R. Andrews, *Elizabethan Privateering: English privateering during the Spanish war 1585 - 1603* (Cambridge, 1964), pp.37,53,62, 116-117.

<sup>7</sup> W. Oldys (ed), *The Works of Sir Walter Raleigh, Kt.* (London, 1829), I, p.58. Oldys is in eight volumes. The first volume comprises the biographies by Oldys and Birch. The next six are *The History of the World*. Volume 8 contains his *Miscellaneous Works*. Unless otherwise stated all citations are to this edition.

Machiavelli and from Bodin, from Sansovino and from Justus Lipsius.<sup>8</sup>

The blame for this confused and confusing image of his political thought rests with the pieces wrongly ascribed to him. In this category are two short pieces, originally published, decades after their supposed author's execution, from "newly uncovered" MSS, and subsequently included in the Oldys edition of Raleigh's *Works* published in 1829.<sup>9</sup> These two short documents are *The Prince, or Maxims of State*, and *The Cabinet Council: Containing the Chief Arts of Empire and Mysteries of State*. The inclusion of these items in the *Miscellaneous Works* has caused much mischief, and even leading scholars such as Stephen Collins, Quentin Skinner and Weston & Greenberg have not recognised their illegitimacy.<sup>10</sup> Yet it is a French philologist, Pierre Lefranc, who has made this discovery in his study, *Sir Walter Raleigh Ecrivain*, published in Paris in 1968.<sup>11</sup> Even though the identity of the authors of these two documents (it is unlikely they were by the same person) shall in all probability remain a mystery, the fact that both were almost certainly written during the late Elizabethan to early Jacobean period means that we can usefully consult them for passages on sovereignty, while recognising that the author of each is anonymous.<sup>12</sup>

Both the *Maxims of State* and the *Cabinet Council* contain theories of sovereignty, and we shall begin with the former. This runs to barely 34 pages in the Oldys edition, and the outlines of Bodin's theory are stated briefly, but fully, on the first page. The term "State" is defined as "the frame or set order of a commonwealth, or of

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<sup>8</sup> Laurence Stapleton, "Halifax and Raleigh", *Journal of the History of Ideas*, II, 2 (1941), p.211. J.W.Allen is another commentator who chides Raleigh unfairly for "confusingly" wavering from a position in one or both of these misattributed works; J. W. Allen, *English Political Thought 1603-1660* (London,1938), p.64.

<sup>9</sup> W. Oldys (ed), *The Works of Sir Walter Raleigh, Kt.* (London,1829), VIII.

<sup>10</sup> Stephen Collins, *From Divine Cosmos to Sovereign State* (N.Y.,1989), p.33. Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge,1978), Vol.2., p.357. C. C. Weston & J. Greenberg, *Subjects and Sovereigns* (Cambridge,1981), pp.18-19. The *Cabinet Council* is the most obvious interloper: until 1968, even those aware of the dubious provenance of the *Cabinet Council* accepted the *Maxims* as genuine. For more see Pocock's *Machiavellian Moment* (Princeton,1975), at p.355.

<sup>11</sup> Pierre Lefranc, *Sir Walter Raleigh Ecrivain - l'Oeuvre et les Idees* (Paris,1968), pp.45-47,67-70. For his remarks on the consistency of the new, purified canon of Raleigh's writings, see p.70.

<sup>12</sup> Pocock (*Machiavellian Moment*, p.356) notes the similarity of the *Maxims* to *The Prerogative of Parliaments*, which is accepted as Raleigh's. The real author of the *Maxims* may have belonged to the same ideological grouping as Raleigh.

the governors that rule the same, especially of the chief and sovereign governor that commandeth the rest".<sup>13</sup> In one recent commentary (which also accepts Raleigh's authorship uncritically) this passage is cited to demonstrate the manner in which the "potency of the word 'state' derives from the fact that it means both ruler and people, and at the same time".<sup>14</sup> This calls to mind Walter Ullmann's ascending and descending theses of government.<sup>15</sup> From this definition, the author moves directly to the task of listing the marks of sovereignty, of which there are five in this account, with the postscript that where they are found, "there is the state". These five marks are (in order), "making or annulling of laws ... creating and disposing of magistrates ... power over life and death .... making of war and peace ...[and] highest or last appeal".<sup>16</sup> Comparing this list with the marks of sovereignty listed by Bodin in I,8 and I,10 of the *Six Books* (above - Cap. 1) reveals some interesting differences. The English author omits some of the lesser marks such as coining and weights and measures, but more importantly says nothing of the crucial power of taxation.<sup>17</sup> Such a major omission from Bodin's list (which may not have been known to the author) confirms the sensitivity of the author to the role of parliament in English constitutionalism, although it has to be remembered that even Bodin, when a Deputy of the Third Estate at Blois in 1576, refused to pass a subsidy to Henri III without concessions.<sup>18</sup> Given this sensitivity, it is odd that the author includes the legislative power in the list, rather than recognising it, together with taxation, as a parliamentary prerogative, in the manner of Thomas Smith and John Hooker, although the framing of legislation and the promulgation of legislation, falling to the parliament and the monarch respectively, may

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<sup>13</sup> Oldys (ed), *Raleigh - Miscellaneous Works* , p.1.

<sup>14</sup> Alan Harding, "The Origins of the Concept of the State", *History of Political Thought*, XV, 1 (1994), p.58. The original title was *The Prince, or Maxims of State*, in both 1642 and 1664 editions.

<sup>15</sup> Ullmann, *Principles of Government and Politics in the Middle Ages* (London,1966), pp.19-21. Note the difference between this view and one that only considers the descending thesis.

<sup>16</sup> Oldys (ed), *Raleigh - Miscellaneous Works*, p.1. There is little here to suggest separation of powers.

<sup>17</sup> Bodin (Knolles edition), *The Six Bookes* (London,1606), pp.85,87-88,91-92,97, 154,159-162, 166,179-180.

<sup>18</sup> The story has been retold many times in works touching Bodin's career, including McRae's introduction in Bodin (Knolles edition), *The Six Bookes*, pp.A9-A10.

explain this anomaly.<sup>19</sup>

This brings us to the *Cabinet Council*, and the differences which suggest that the *Maxims* were penned by a Machiavellian with passing familiarity with Bodin, whereas the *Cabinet Council* was by a more Bodinean author.<sup>20</sup> For example, one element of Bodin's theory not present in the *Maxims* but found in the *Cabinet Council* is the concept that because sovereignty characterises the State in an abstract sense rather than the regime in power at any particular time, a diversity of historical cases may belie a uniformity of constitution. Thus we learn that the "diversity of monarchies doth not proceed from the nature of the state, but the diverse proceedings of those princes that govern". Bodin puts the same point more broadly, saying that "the government of a Commonwealth may be more or less popular, aristocratic, or royal ... yet so it is that the state in itself receiveth no comparison of more or less. For the sovereignty is always indivisible ...".<sup>21</sup> This raises the possibility of political change at the highest imaginable level, where the winner takes all. On the same page the English author lists the "essential marks" of "sovereign or monarchical government", and although once again the taxing power is strangely omitted, this list is more obviously influenced by Bodin. Instead of making the first power the lawmaking power, the author of the *Cabinet Council* begins with "absolute power ... to command", to be exercised "without consent", recalling Bodin's definition of sovereignty in I,8 of the *Six Books*.<sup>22</sup> The definitive character of this "mark" could be seen to embrace both taxing and legislative powers, so that without being explicit, the author is doing considerable damage to the constitutional role of parliament (through the careless application of the logic of sovereignty) in a manner not attempted by the author of the *Maxims*. The remaining four "marks" are the same ones as in the *Maxims*, although in a different order and with different appellations. Immediately following these "marks", the author of the *Cabinet*

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<sup>19</sup> Thomas Smith, *De Republica Anglorum* (London, 1583), p.48.

<sup>20</sup> In Pocock's treatment (see above, n.4), he is evidently impressed by the *Maxims'* Machiavellism. Could the author have been Gabriel Harvey?

<sup>21</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, , p.38. Bodin (Knolles edition), *The Six Bookes*, p.250. This passage of Bodin is quoted by Skinner (*Foundations*, II, p.356), but although he quotes the *Maxims* (on p.357) in a not dissimilar context, the *Cabinet Council* passage is not mentioned.

<sup>22</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.38. See Bodin (Knolles edition), *The Six Bookes*, p.84, where we see that "sovereignty is that most high, absolute and perpetual power over the citizens ... that is to say, the greatest power to command". See above - Cap. 1.

*Council* divides monarchies into three sorts - “signioril [sic], royal, tyrannical”.<sup>23</sup> This three-fold division corresponds to II,2-II,4 of Bodin’s *Six Books* , which makes the same points in much greater detail.

The strong influence of Bodin which distinguishes the *Cabinet Council* can also be seen in its treatment of delegated powers. All powers are seen as commissions of the sovereign, revocable at will yet partaking of that full authority which is the hallmark of sovereignty. Every major public official “is an officer having power to command in the state”, and such a person is duty bound “to compel those that do not obey what sovereignty commandeth; for all the force of commandment lies in compulsion”. Instead of the power of commanding in the sense that it “may be called sovereign and absolute, above laws, above magistrates, and above people”, such officers can only issue commands which “are subject both to sovereignty and law”.<sup>24</sup>

The second third of the *Cabinet Council* is strikingly similar to the *Politicorum* of Justus Lipsius, and may have been modelled on it.<sup>25</sup> Here the subject matter is centred around *arcana imperii* , and each section is formed from brief classical citations, each with a gloss of six or so lines. Stoicism is favoured, with the lion’s share of the aphorisms coming from Tacitus, Seneca and Cicero. There is no material in this section which can be considered relevant to the question of sovereignty and, even in the section “Of princely authority”, the best the author can come up with is the suggestion that “it rests chiefly in admiration and fear”, and the didactic advice that to “govern constantly is nothing else but to continue the old and ancient laws in force without change or innovation”.<sup>26</sup> The final 60 pages of the *Cabinet Council* see a return to naturalistic prose forms and humanist political views, and are obviously taken from a commonplace book of the sort which was popular at the time, where each paragraph is written down when the thought occurs, and so bears no relation to paragraphs above or

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<sup>23</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, pp.38-39. The second of these corresponds, in the author’s eyes, to the extant systems in both France and England, (p.40).

<sup>24</sup> *Ibid.* , pp.46-47.

<sup>25</sup> Lipsius is actually quoted in at least one place (*Ibid.*, p.62). The three sections of this text are so different that one could be excused for thinking the editor of the original printing was dealing with three different MSS jumbled together and placed beneath Raleigh’s name.

<sup>26</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.59.

below.<sup>27</sup> All of these paragraphs are snippets of practical advice to princes encompassing war and diplomacy, and I can find nothing here which could be described as theory in any true sense.

The long-term damage which this pair of texts by unknown authors has done to the reputation of Raleigh as a political thinker can hardly be ~~under~~<sup>over</sup>estimated. The idea of royal monarchic sovereignty in the anonymous texts contradicts the sovereignty of the king-in-parliament which Raleigh and his party advocated. Yet generations of interpretation from Kempner in the 1920s to George Mosse in the 1950s have been misled by the texts into arguing that Raleigh wanted to transpose Bodin's theory from France to England rather than trying to adapt the theory to the existing English constitution, including parliament.<sup>28</sup> This is a case which confirms the importance of Skinner's approach, of putting texts in the ideological contexts in which they are written<sup>29</sup>, for if this had been done earlier, the difference between the views of the two problematic texts and the position of the anti-Spanish faction which Raleigh led must surely have started alarm bells ringing.

I now want to turn from the two anonymous texts, which tell us little except that Bodin was influencing writers in England at the time of their composition (which we do not know accurately), to the authentic works of Walter Raleigh. As well as his *History of the World*, the three works contained in the Oldys miscellany (Volume VIII) which are known to be by Raleigh and which contain material relating to sovereignty are: *The Prerogative of Parliaments*, *On The Seat of Government*, and *A Discourse of the Original and Fundamental Cause of Natural, Arbitrary, Necessary, and Unnatural War*. In the case of the second title, we are dealing with a fragment - a paltry three pages in Oldys - but it is noteworthy for two things. First, it contains the interesting prefatory remark that "the seat of government is upheld by two great pillars ... civil justice and martial policy".<sup>30</sup> This contains at least two elements of sovereignty theory - the idea of a single locus of supreme executive power implied in the term "seat of government",

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<sup>27</sup> For an interesting recent account of this practice, see Ann Blair, "Humanist Methods in Natural Philosophy: the Commonplace Book", *Journal of the History of Ideas*, LIII, (1992), pp.541-551.

<sup>28</sup> George L. Mosse, *The Struggle for Sovereignty in England* (New York, 1968), pp.42ff..

<sup>29</sup> Quentin Skinner, *The Foundations of Modern Political Thought* (Cambridge, 1978), Vol.1 - Preface, p.viii.

<sup>30</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.538.

and the notion that “civil justice” is integral in any legitimate State. The other noteworthy aspect of this fragment of Raleighiana is the Puritan tone which pervades it. All of Raleigh’s reliably sourced writings abound with hints of Puritan connections, whereas these are by no means discernible in either the *Maxims of State* or the *Cabinet Council*, adding further evidence for the case that both were written by other individuals, the identity of whom we shall probably never know.<sup>31</sup> The Calvinist sympathies of Raleigh in ecclesiastical politics fits with his strongly anti-Spanish public persona, which could be likened to a political campaign, and also explains the financial links he had with Leicester’s circle (above).

This brings us to the first of the two substantial pieces in the Oldys miscellany, which is the dialogue known as *The Prerogative of Parliaments*.<sup>32</sup> The two personalities in the dialogue are both men of the law, described in the dialogue and in its original title as a “counsellor of state” and a “justice of peace”.<sup>33</sup> As the title suggests, this text deals with the problem of where to place authority in a parliamentary and monarchic state, and in its moderate parliamentary position it resembles John Hooker’s *Order and Usage* of 1575 (see above, Cap. 2). It is worth remembering that when Raleigh was first in parliament in the mid-1580s, Hooker’s *Order and Usage* was still fairly up to date both as a manual of procedure and as a representation of the parliamentary attitude to the constitution. In the later Elizabethan parliaments Raleigh was one of the most polished and influential MPs, sometimes working on the same side as Robert Cecil.<sup>34</sup> Raleigh’s position is that parliament has a guaranteed place in the

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<sup>31</sup> Perez Zagorin endorses the view of both Anthony Fletcher and S.R. Gardiner, that the subsequent civil war can only be explained as a religious conflict; without doubt “a Puritan revolution”. P.Zagorin, “The Political Beliefs of John Pym to 1629”, *English Historical Review*, CIX (1994), p.870. Raleigh was rumoured to be far from godly - an atheist in fact - but Frederick Boas, *Christopher Marlowe, A Biographical and Critical Study* (Oxford,1953), pp.112-114,255-259, has conclusively proved this to be untrue.

<sup>32</sup> This was written in 1615, under the title *The Dialogue Between a Counsellor of State and a Justice of Peace*. Anna Beer, “‘Left to the world without a Maister’: Sir Walter Raleigh’s *The History of the World* as a Public Text”, *Studies in Philology*, XCI, 4 (1994), p.441. We have already seen this literary form employed by Spenser in his *Present State of Ireland* (see above). Michael Mendle, *Dangerous Positions* (University, Ala.,1985), p.210n62, also accepts Lefranc’s date of 1615.

<sup>33</sup> Presumably the JP is a lesser magistrate, and the Counsellor either a member of the Star Chamber or Privy Council. The junior lawyer is the protagonist, matching wits with the senior lawyer, and perhaps this is an indication that Raleigh sees himself as an outsider.

<sup>34</sup> J. E. Neale, *The Elizabethan House of Commons* (Harmondsworth,1963), pp.365, 384, 396.

English constitution as “consultors in law making” and that this goes well beyond the idea of simply giving “advice” to an unlimited monarch. But as James Daly observes, his view of parliament also has a “utilitarian hint”, aimed at getting the system to work in the interests of both the monarch and the subjects collectively.<sup>35</sup>

The first forty or so pages (in Oldys) deal with medieval precedents borrowed from books in Robert Cotton’s library<sup>36</sup>, and are of little interest from the standpoint of Politique political ideas. But four places in the remaining, contemporary, part of the dialogue contain evidence for a theory of the State in which sovereignty is accepted and employed to the advantage of parliament. When the Counsellor attacks the J.P. for wanting to petition the Queen, the J.P. responds that one of the conditions of a modern monarchy is being open to suits from all subjects without exception, so that “a prince that suffereth himself to be besieged, forsaketh one of the greatest regalities belonging to a monarchy; to wit, the last appeal, or as the French call it, *le dernier resort*.”<sup>37</sup> Raleigh here implies the marks of sovereign power as “regalities”, and he suggests the French provenance of such an idea at the end of the sentence. A little further on, he links the monarch and parliament via the subsidy, making the point that without supply, which is a power of parliament, other sovereign powers are of little avail to the Crown.<sup>38</sup> Now Raleigh is applying Bodinean logic in searching for the locus of sovereignty in institutions, even if he is using the argument to demonstrate the sovereignty of parliament, rather than that of the prince.

The importance of this becomes clearer ten pages later, when the real purpose of this curious dialogue suddenly springs forth in a remarkable passage. The context is the use of the Royal Prerogative to sanction extensive indirect taxation (for which James was notorious):

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<sup>35</sup> James Daly, *Cosmic Harmony and Political Thinking In Early Stuart England* (Philadelphia, 1979), p.27.

<sup>36</sup> Anna Beer, “‘Left to the world without a Maister’: Sir Walter Raleigh’s *The History of the World* as a Public Text”, p.441. This supports the 1615 date. Raleigh’s most interesting political writings are all late, and this supports the idea of a period of eclipse for the “Opposition” after 1593.

<sup>37</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.195. Linking sovereignty and the French legal tradition in this way is suggestive.

<sup>38</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, pp.202-203.

Couns. Yes, sir, but that which is done by the king, with the advice of his private or privy-council, is done by the king's absolute power.

Just. And by whose power is it done in parliament, but by the king's absolute power? Mistake it not, my lord: the three estates do but advise, as the privy council doth; which advice if the king embrace, it becomes the king's own act in the one, and the king's law in the other ... and what doth his majesty lose, if some of those things which concern the poorer sort be made free again, and the revenue kept up upon that which is superfluous ? ... Yea, ... is it not more honourable and more safe for the king that the subject pay by persuasion, than to have them constrained ?... Certainly it is far more happy for a sovereign prince that a subject open his purse willingly, than that the same be opened by violence. Besides, that when impositions are laid by parliament, they are gathered by the authority of the law, which, as aforesaid, rejecteth all complaints and stoppeth every mutinous mouth...

Couns. But, good sir, it is his prerogative which the king stands upon, and it is the prerogative of the king's that the parliaments do all diminish.

Raleigh perceives that the sovereignty of parliament and the sovereignty of the King (implicit in prerogative) cannot logically coexist. This is the position which makes him the most politically dangerous parliamentarist since Peter Wentworth, as much as his place as the last rival to the Cecils after the deaths of Leicester and Essex, assuming that his position was the same in 1603. At this point in the dialogue the JP points to three areas where parliaments traditionally challenged the sovereignty of the Crown (as in Bodin's *leges imperii*), which are the adherence to Magna Carta, the power to administer supply, and the power to impeach.<sup>39</sup> In each of these three cases we see a limitation that is far greater than anything Bodin envisages in his writings on the French Crown, or for that matter his writings on the English (see above - Cap. 1).

All of the antiquarian obscurity of the first forty pages of the dialogue resolves itself then into an ominously forthright assertion of the indispensability of parliament, and of its very real powers over the Crown, which any attempted personal rule by the monarch would contradict. James is being challenged by Raleigh to come clean about his intentions regarding the future calling (or not calling) of Parliament after the drama

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<sup>39</sup> *Ibid.* , pp.213-214.

of the 1614 session (the “Addled Parliament”). With respect to theories of sovereignty, there is a balance between the power to command and constitutionalism, between *rex* and *lex*, which one would not expect from the incoherent and confused theorist of Stapleton’s account (above). Raleigh plainly accepts the monopoly of force which the Crown possesses, and just as clearly maintains that sovereignty is as much a matter of laws as of executive action. Royal prerogative is an adjunct to the generality of law, not a replacement: “ where laws’ forecast cannot provide remedies for future dangers, princes are forced to assist themselves by their prerogatives”.<sup>40</sup> The royal prerogative can not be used to obstruct the commands of the king-in-parliament, but only to deal with cases where the law is unclear.

In the context of these concerns about the whittling down of limits established by Magna Carta and by usage, the Counsellor asks the JP (innocently) if the next Parliament is likely to demand another confirmation of the Charter. This is the reply:

I know not, my good lord, perchance not; for if the house [of Commons] press the king to grant to them all that is theirs by the law , they cannot in justice refuse the king all that is his by the law. And where will be the issue of such a contention ? I dare not divine, but sure I am, that it will tend to the prejudice of both the king and subject .

Raleigh is in no doubt that the constitution involves such a tight intertwining of Crown and parliament that sovereignty rests in neither, although it can rest in both, and on this basis he can safely be placed in the group advancing the king-in-parliament idea, including Fortescue, John Hooker, Smith and Wentworth. This passage proves that Raleigh was aware of the implications arising from the theory that the site of sovereign authority is the seat of the legislative power, a realisation which Charles Howard

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<sup>40</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, pp.214-215. Raleigh is primarily interested in the *habeas corpus* type liberties from Magna Carta, presumably because he thought they could be a means to secure his own release from the Tower.

McIlwain also finds in Philip Hunton, Robert Filmer and Jean Bodin.<sup>41</sup>

The concluding portion of the dialogue is slightly anticlimactic, but is quite remarkable for its venom. The JP remarks sardonically that the Council's desire to avoid calling parliament has been foreshadowed by the King already, despite the burden of his financial problems. Against this "fear" of parliament, the JP identifies the moving force of the King within the Council, which no number of Counsellors (as opposed to MPs) can resist, and in response the outraged Counsellor issues a naked threat:

Couns. Well, sir, it grows late, and I will bid you farewell; only you shall take well with you this advice of mine, that in all that you have said against our greatest, those men in the end shall be your judges in their own cause: you, that trouble yourself with reformation, are like to be well rewarded.<sup>42</sup>

The riposte of the JP at this critical finale, is to almost casually reassert the sovereignty of the king-in-parliament, so that if "princes may be unhappy in any thing, certainly they are unhappy in nothing more, than by suffering themselves so enclosed" by their officeholders.<sup>43</sup> Here Raleigh seems to be crying out emphatically to some sort of larger audience, a call which hints at battle lines being already drawn in politic society in the 1614-1615 period, therefore making any confirmation of the provisional dating of these prose fragments more than usually crucial. These ideological battle lines are simply between a parliamentary faction and a court faction (Country and Court), in which the religion of the parliamentary faction is of interest, not least Raleigh's since he is now, with the removal of some inconsistencies, much more visible as a parliamentarist of substance.

Before examining the sprawling leviathan of a concordant history, *The History*

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<sup>41</sup> C. H. McIlwain, *Constitutionalism and the Changing World* (Cambridge, 1969), pp.224-226. He cites the same passage. McIlwain relates this to the rise of the concept of positive law.

<sup>42</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.218. A purely fictional threat - and one which the author is in a good position to understand. There is a strong suggestion of his entanglement in the Parliamentary struggle against Jacobean pretensions at a pretty high level.

<sup>43</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.218.

*of the World*, rich though it is in evidence supporting its author's Puritan beliefs,<sup>44</sup> we need to look at the final text from the miscellaneous prose. The work that requires particular attention in terms of Raleigh's political thought is *A Discourse of the Original and Fundamental Cause of Natural, Arbitrary, Necessary, and Unnatural War*. This was not printed until 1650, in which year it was published "By T.W. for Humphrey Moseley".<sup>45</sup> From the style, especially in the first few pages, and from the testamentary flourishes near the end, and from the fact that full scale war had at last broken out in Bohemia in the early part of that year, making war topical for the first time since the peace treaty of 1604, it is possible tentatively to date the piece to mid-1618, just months before the execution of the author.<sup>46</sup> The interest of this fragment is in the fact that it deals (among other things) with the state of nature and the original social contract, which as we saw above (Cap. 1) is important in Bodin's theory of sovereignty, and which would again appear later in Hobbes and Locke.

Raleigh begins by attempting to define the special features of that state of human existence we call war. As a renaissance Humanist thinker in the classical mould, he is alive to the heroic possibilities of war, but he had also tasted the bitter fruits of civil war *in the field* at a surprisingly early age<sup>47</sup>, and as a Puritan with overseas connections he knew well before 1618 that in Europe the worst was still to come. The creative tension brought about by these two contradictory but not incommensurable views of the potential of war, as a vehicle for heroic regime changes (classical) or as a holocaust (realist), enables political theory for the first time to regard the state of nature as both a theoretical and abstract-political *tabula rasa*, and simultaneously, a state of nasty civil

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<sup>44</sup> The teaching of Calvin on sovereignty and law, and Bodin's teaching on the same subject, are much the same. Both recognise an identical vetoing power of "Divine law". Perhaps that is why Bodin has been suspected by some commentators as being more than a strict Politique - in effect a "closet Huguenot".

<sup>45</sup> WING, R157. According to Wing, it came out simultaneously with *Sir Walter Raleigh his Apology for his Voytage to Guiana*, and *Excellent Observations and Notes*. Lefranc observes that Moseley had these three bound in, with the title *Judicious and Select Essayes and Observations* (*Sir Walter Raleigh Ecrivain - l'Oevre et les Idees*, p.46). From the evidence in Lefranc these were the main surviving MSS, preserved for many years by Walter's youngest brother, Philip, and were the last of Walter's authentic texts to arrive in print.

<sup>46</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, pp.253-256, 295, 297. If written in 1618, it may have been part of some envisaged new edition of the *History*, which the axe robbed him of.

<sup>47</sup> William Oldys, *The Life of Sir Walter Raleigh*, in Oldys(ed), *The Works*, Vol. I, pp.14ff..

war.<sup>48</sup> Also, this text is almost unique in the early Seventeenth century in setting out an account of colonisation which recognised (to a limited extent) the prior claims to land of indigenous peoples.<sup>49</sup> In addition, Raleigh warns us that even the holy of holies - the human conscience - fails as “a sufficient curb” in the state of nature, which he describes as the state “of man out of community”.<sup>50</sup> And yet, even recognising these awesome risks posed by the state of nature (including civil war), he nevertheless condones the Calvinist view of resistance. This ultimate group right is the right (no less) of the people to depose a regime, on the grounds of the same sort of ungodly corruption (the rape of Lucrece) which led to the fall of Tarquinius Superbus.<sup>51</sup>

This raises again the question of where Raleigh stood on the religious situation in late Jacobean England, which was a very rapidly deteriorating one. For the further towards the radical Puritan end he was, the more likely he would have been to favour this sort of high politics, as in the Defenestration of Prague, which his obvious references to both resistance theory and classical republicanism tend to confirm.<sup>52</sup> The main source for his religious views is his *History of the World*, published in 1614, and it is to this text that I shall very shortly turn. We have already seen the depth of his parliamentarism in the *Prerogative of Parliaments*, and his broadly Puritan connections at Court. The Dutch revolt had long since set an important precedent in regime change to the godly, as had the deposition of Mary Queen of Scots, and as the chances of such regime change in England were much brighter in later Jacobean times than they had been in Elizabethan or early Jacobean times, the possibility of such change also must

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<sup>48</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.279.

<sup>49</sup> *Ibid.*, pp.254-255.

<sup>50</sup> *Ibid.* In this he is an Aristotelian.

<sup>51</sup> *Ibid.* , pp.280-281. See also pp. 282-283, where he pits assertion of the collective right against a certain corruption of public life which he describes in intimate and modern language which Machiavelli himself would have been proud of.

<sup>52</sup> On Raleigh's religious position, see W. M. Wallace, *Sir Walter Raleigh* (Princeton,1959), pp.78-80. These problems seem not to have been an insurmountable obstacle for the leaders of the Reformed city of Prague in 1618 when they deposed their Habsburg governors without realising they would then need to establish a provisional government to ensure public safety. There is a useful summary of these events in C.A.Macartney(ed), *The Habsburg and Hohenzollern Dynasties in the Seventeenth and Eighteenth Centuries* (N.Y.,1970), pp. 33-37, although Schiller's account is more to the point.

have occurred to Raleigh in the period around 1614.<sup>53</sup> Consider Lord Chancellor Ellesmere's pronouncement at the final dissolution of the busy Parliament of 1604-10, that "in this present state ...the popular state ...[was] so big and audacious ... [that if it] be suffered to usurp and encroach too far upon the regality, it will not cease until it break out into democracy", by which he meant mob-rule.<sup>54</sup> But what appears to a modern reader as Ellesmere's solecism is not really so far off the mark, if one applies it to these works of Raleigh in the last fifteen years of his life. They all contain the seed of Puritan democratic theory, as found also in the *Vindiciae, Contra Tyrannos* and Ponet's *Short Treatise* (above - Cap. 2).

This brings us back to the *Discourse of War*, which was possibly the last thing Raleigh wrote on theory before his execution. In the *Discourse* Parliament is not expected to rise to heights of principled opposition or sink to the sort of depths predicted by Ellesmere. Raleigh is not prepared to censure the Roman Senate for giving in to popular demands because "there are few national or civil assemblies in the world, but have greater care of themselves than of the public".<sup>55</sup> This sort of realism exists in a certain tension with his strong Puritan belief in the *summum bonum*, and he elaborates his position on assemblies a page later with a remarkable passage:

But no senate or civil assembly can be under such natural impulses as single persons; for politic members meet with neither encouragement nor reproaches for what was the effect of number only. For a majority is nobody when that majority is separated, and a collective body can have no synteresis, or divine ray, which is in the mind of every man, never assenting to evil, but upbraiding and tormenting him when he does it: but the honour and conscience that lies in the majority is too thin and diffusive to be efficacious; for a number can do a great wrong, and call it right, and not one of that majority blush for it. Hence it is, that

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<sup>53</sup> Oldys (ed), *The Works*, Vol.IV, p.696. "For the Athenians changed first from kings (after Codrus) to governors for life; which ending in this Alcamenon, they erected a magistrate whom they termed an archon, who was a kind of burgomaster, or governor of their city, for ten years."

<sup>54</sup> Quoted in Alan Harding, "The Origins of the Concept of the State", pp.70-71. To get a feel for the limits of pressure on religious issues by the Commons in this Parliament cf. J.P.Kenyon, *The Stuart Constitution* (Cambridge,1966), p. 128. Consider also the "foolish and bombastic rhetoric" of James to Parliament in 1609, as quoted by C.H.McIlwain, *The High Court of Parliament* (Hamden, Conn.,1962), pp.347-348.

<sup>55</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.290.

though a public assembly may lie under great censures, yet each member looks upon himself as little concerned ...<sup>56</sup>

But while he exhorts his countrymen to entertain no false hopes regarding Parliament, this does not mean he is anti-parliament or pro-king. Towards the end of this text Raleigh moves on from the issue of civil war (which he believes is to be avoided at all costs) to the excellence of the English constitution. He claims that the “common people of England have suffered the same fate as other nations ... [to] shed one another’s blood for such a liberty as their leaders never intended they should have”.<sup>57</sup> But then he goes on to declare that “learned writers abroad have declared, that of all seignories in the world, the realm of England was the country where the commonwealth was best governed”.<sup>58</sup> His admiration for the constitution (as he understands it) is clear from the next paragraph:

And men well governed should seek after no other liberty; for there can be no greater liberty than a good government. The truth is, the easiness of the government has made some so wanton as to kick against it; our own historians write, that most of our kings have been unthankfully used.<sup>59</sup>

It would be all too easy to misinterpret this as meaning that the parliaments exercised too much power over the royal prerogative. But if so, then why call England a “seignorie” (which has overtones of Venice), or on the same page praise the “mixed” constitution, or compare England with Sparta and Athens as well as Venice? In his discussion of Rome and Carthage in the preceding ten pages, his theme is not the royal prerogative, but the perfidy of demagogues, using popular opinion dishonestly for personal aggrandizement, to the eventual ruin both of their fellow citizens and themselves, suggesting Catilinean figures like the Second Earl of Essex rather than those who resist, in the name of Parliament, the unconstitutional use of the royal

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<sup>56</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.291. This idea is explored in his *Treatise of the Soul* (Oldys(ed), *Raleigh - Miscellaneous Works* pp.571ff.), and this is itself indebted to the *Second Part* of La Primaudaye’s *French Academy*.

<sup>57</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.295.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, pp.295-296.

prerogative. These are distinctly different cases of resistance, one just, the other unjust.

Raleigh concludes his *Discourse on War* by echoing Loius Le Roy's own reworking of the Polybian theme, that all states are subject to cycles of greatness and decay (*anacyclosis*) which the study of history demonstrates.<sup>60</sup> "It is plain", he says, that "whilst we are mixed bodies we are continually passing from one alteration to another, as well civilly as naturally", implying that the "civil" body is a "mixed body".<sup>61</sup> This is also a piquant note on which to end the work, foreshadowing perhaps Burton's *Anatomy of Melancholy*, and full of ennui: "there is the same proportion of good and evil in the world as ever, though it shifts and changes, not always in the same place, and never in the same degree". And so he concludes:

It would be an unspeakable advantage, both to the public and private, if men would consider that great truth, that no man is wise or safe, but he that is honest. All I have desired is peace to my country; and may England enjoy that blessing when I have no more proportion in it than what my ashes make !<sup>62</sup>

There is an eerie sepulchral style to the wording of this passage, especially the final sentence, which suggests that it might have been finished not long before a different final sentence altogether was carried out upon the author.

The last and in certain respects the best of Raleigh's works for us to look at is his bulky *History of the World*, especially the passages on ancient prototype States, on the state of nature, and on limits to princely rule. In Book II of the *History* Raleigh makes a number of references to the work of Joseph Scaliger, the almost legendary Calvinist philologist, in the context of linking the Classical and Biblical chronologies

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<sup>60</sup> According to Werner Gundersheimer *The Life and Works of Louis Le Roy* (Geneva, 1966), pp.133-135, the 1594 translation of his *Vicissitude* by Robert Ashley (*Of the Interchangeable Course or Variety of Things in the Whole World*) influenced Spenser and Bacon among others, though he makes no mention of Raleigh.

<sup>61</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, pp.296-297. Note the similarity with Forset. This account of the state of nature (or state of war to use a Lockean term) is reasonably well summarised by J. W. Allen (*English Political Thought 1603-1660*, p.63.) who also notes the existence of this idea in Bodin and Buchanan, although he utterly fails to grasp the significance of the double contract, especially if it were to be combined with Puritan separation theory.

<sup>62</sup> Oldys(ed), *Raleigh - Miscellaneous Works*, p.297. This notion of good and evil does not square with Puritan ideas of establishing a "godly commonwealth". But it does fit with the Calvinist theory of double predestination.

accurately. At one point in his discussion of the Assyrians he singles Scaliger out for special praise, and then two pages later praises him again at the same time as he most grudgingly praises Tornelli, a Catholic philologist.<sup>63</sup> A little further on, in his discussion of the Babylonian kings, he again uses “the learned Scaliger”, together with Tornelli and Sethus Calvisius, to correct the confusion of unreliable later king-lists.<sup>64</sup> Scaliger had become aware of these sources in 1602-3, which were circulating as the *Babyloniaca* of Berosus, and the presence of many errors in such a popular book motivated Scaliger to write his study of parallel history, the *Thesaurus Temporum*, published in 1606, which was Raleigh’s source. This is the closest thing to Raleigh’s own parallel history at the time, and probably was the model for it. At no time did Scaliger lose sight of his Calvinist religious commitment, however, even though he followed the critical methodology set out in Bodin’s *Methodus*.<sup>65</sup> In the same part of the *History*, Raleigh prefaces an account of the Egyptian king-list of Suidas with an epigram from the English translation of Du Plessis-Mornay’s *Trueness of Christian Religion*, illustrating yet again his preference for solidly Protestant authors.<sup>66</sup>

This brings us to the state of nature. The concept of the state of nature is, as we saw when studying Bodin’s *Six Books* (above - Cap. 1), much older than Hobbes and Locke. Raleigh deals with this notion in a surprisingly detailed way in Book I, Chapter ix, of of the *History*. Here he recognises two social formations in the prehistory of political institutions, the first being the rule of fathers in early societies with forms of social organisation based on kinship, and the second being the result of a change from this original type of society to political society. In this second social formation, made necessary because “wisdom was separated from power, and strength from charity”, such that “the estate of reasonable men” was “far more miserable than that of beasts”, salvation was secured “by a general obedience to order and dominion”.<sup>67</sup> He continues:

For the mighty, who trusted in their own strengths, found others again (by

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<sup>63</sup> Oldys(ed), *The Works*, Vol. IV, pp.676-677, 679.

<sup>64</sup> *Ibid.*, pp. 717-718.

<sup>65</sup> Anthony Grafton, *Defenders of the Text: The Traditions of Scholarship in an Age of Science, 1450 - 1800* (Cambridge, Mass.,1991), pp. 76-78.

<sup>66</sup> Oldys(ed), *The Works*, Vol. IV, p.742.

<sup>67</sup> Oldys(ed), *The Works*, Vol. II, pp.340-341.

interchange of times) more mighty than themselves; the feeble fell under the forcible, and the equal from equal received equal harms. Insomuch, that licentious disorder (which seemed to promise a liberty upon first acquaintance) proved, upon a better trial, no less perilous than an unendurable bondage.

However, far from conferring an unlimited right to rulers, the “obedience to order” is in fact limited by a second stage to the social contract which replaced the rule of persons with the rule of laws. Thus, “the same necessity which invented, and the same reason which approved sovereign power, bethought itself of certain equal rules, in which dominion (in the beginning boundless) might also discern her own limits”.<sup>68</sup> Following this to its logical conclusion, he deduces that “after a few years (for direction and restraint of royal powers) laws were established; and that government which had this mixture of equality, (holding in an even balance supreme power and common right) acquired the title of regal; the other, which had it not, was known for tyrannical; the one God established in favour of his people, the other he permitted for their affliction”.<sup>69</sup> He finishes by setting out his theory of political obligation or “obedience” which “we call duty”. This derives from two quite different sources. The first source is “natural” justice, which follows from the rule of parents within families and more extended kinship structures, and the second is “divine” justice, which is “drawn from the laws and ordinances of God” and to which “obedience hereunto was called conscience”, which calls to mind his reference to the Puritan notion of “synderesis”, the divine spark of conscience.<sup>70</sup> Raleigh develops the familiar Puritan theory that obedience to authority (as in Rom.13) is not binding on conscience, thus leaving a way open for passive or maybe even active resistance. The overall effect of his theory of a double social contract is to allow Puritan constitutionalism to jump over the royalist versions of sovereignty theory which were becoming so common on the Continent at the time. This in no way implies, however, that he was deviating from Bodin’s original conception of sovereignty.<sup>71</sup> In fact Raleigh’s position, and the Puritan position generally, accepts

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<sup>68</sup> Oldys(ed), *The Works*, Vol.II, p.341. Note the resemblance of this account to those of Aristotle and Bodin, (above - Cap. 1).

<sup>69</sup> *Ibid.* , pp.341-342.

<sup>70</sup> *Ibid.* , pp.342-343. This is developed into an oppositional way of thinking by Buchanan, Knox, Ponet and Goodman. For a thorough account see Graham Maddox, *Religion and the Rise of Democracy* (London,1996), pp.126-127.

<sup>71</sup> It would be a mistake to suppose that later Puritans had the same view of the State as the

without demur one of the two premisses of Bodinean sovereignty theory, that the state is subject to no power from outside its territories. On the second premiss, that the sovereign is the only source of laws within this same territory, Raleigh and his co-religionists took up the idea of the laws of God and nature, to include aspects of English constitutionalism held to be peculiarly English, such as the legislative and fiscal (in effect sovereign) powers of parliament, and the inability of the monarch to subtract from these powers. To reconcile such a position with the principle that sovereignty needs to be one and undivided, it was expedient to divide the notion of rule per se, in the same manner that Calvin had separated Church from State in a not dissimilar context.<sup>72</sup> Thus, rule in terms of maintaining the constitution, rule in the sense of command, and rule as lawmaking, were entrusted to national custom, the Crown, and parliament respectively, ensuring the continuance of the essential legal fiction that acts of parliament are commands of the reigning monarch. In the sense that this position combines monarchic and representative institutions it is a Dutch model, except that it is unitary, not federal.

It can be seen from this belief in the possibility at least of linking the people, as origin of the contract, with parliament, as Raleigh does, that he is (like Richard Hooker before him) anticipating John Locke (by about seventy years). Locke developed this position, which is touched on by Harrington, by simply equating the people as constituting agent with the legislative power, and then arguing that since the people cannot tie their own hands when it comes to judging those to whom they entrust executive power, therefore the legislative and executive powers must remain forever separate.<sup>73</sup> Yet as Laslett observes, whereas the powers themselves are separate, there is nothing to stop both of them being “exercised by the same body or person”, or that “the executive will have a part to play in the legislative, as is the case in the constitution

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*Vindiciae*. Bodin's *Six Bookes* is a convincing refutation of the extreme resistance position, which was developed in the heat of the St. Bartholomew's massacre period, but it is not inconsistent with a constitutionalist view, which both limits and frees the sovereign, or relocates sovereignty. The limits on sovereignty imposed by separation of church and state can coexist with a positivist view of the legislative power that remains. For example take the case of the Calvinist polemic of George Carleton, *Jurisdiction Regall, Episcopall, Papall*, (London,1610), Chapters II&III. See above, Cap. 1.

<sup>72</sup> For a good recent account see Ralph Hancock, *Calvin and the Foundations of Modern Politics* (Ithaca,1989), pp.193-194.

<sup>73</sup> Richard Ashcraft, *Locke's Two Treatises of Government* (London,1987), p.114.

of England, which Locke so obviously had in mind”.<sup>74</sup> That the primary legislative power is understood in two senses is evident from section 142 of the *Second Treatise*, where Locke limits the special restriction on taxation without consent to “only such Governments where the *Legislative* is always in being, or at least where the People have not reserved any part of the Legislative to Deputies, to be from time to time chosen by themselves”.<sup>75</sup> Locke sets out his theory of powers in the following sections (ss.143-158), in which he delimits three powers, the legislative, the executive, and the federative, although this last is only an external affairs category, and should be considered part of the executive. The weaker meaning of “legislative power”, which corresponds to the legislature, is used to confirm that there is no absolute need for separation, but that “the legislative and executive power come often to be separated”, and Locke also accepts that executive and federative powers “are hardly to be separated” in practice.<sup>76</sup> This parliamentarist view of Locke together with his use of the double social contract has the great philosopher of the Glorious Revolution occupying essentially the same ground as Walter Raleigh.

As we have already noted, Raleigh’s position on the religious question is obvious in his *History*, and this is especially true of Book II, Chapter 4, which is his discussion on the theme: “That only the prince is exempt from human laws, and in what kind”.<sup>77</sup> This is partly an extension of his discussion of different legal systems on the preceding few pages, and it views the sovereign as the fountainhead of all positive laws, in just the way that Bodin would have done. He does it at the part of the *History* where Moses is about to set up the Old Testament “State” of Israel. For a Puritan, this is the paradigm against which past and present constitutions are measured, and therefore this passage is of no small importance considering the role which Puritans were playing at this point in the development of the Westminster system. He begins by identifying “these properties to every Christian law, that the same be honest, that it be possible, that it be according to nature, and according to the custom of the country” and moreover

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<sup>74</sup> Peter Laslett(ed), *John Locke - Two Treatises of Government* (Cambridge,1963), pp.131-132.

<sup>75</sup> Laslett(ed), *John Locke - Two Treatises*, p.409.

<sup>76</sup> *Ibid.*, pp.410,412.

<sup>77</sup> Oldys(ed), *The Works*, Vol. III, p.143.

“that it be written for the general good”.<sup>78</sup> His idea is that princes exist to give assent to the will of parliament, and that “by giving authority to laws” the prince is both raised and limited, for (as Bracton says) “it is the law that doth make kings”.<sup>79</sup> Raleigh follows this by distancing himself from the common law lawyers, using a forceful restatement of the idea of sovereignty to reject any notion that princes could ever be limited by judge-made laws. As the source of law, “the prince cannot be said to be subject to the law”, and he cites the canon law caveat recognising the impossibility of autolimitation, that “the governor himself, in whom the governing power doth reside, ... cannot by himself, or by his own power, be controlled”.<sup>80</sup> His treatment of this aspect of State theory in such an assertive manner leaves no room for doubt as to where Raleigh stands on the general idea of sovereignty. He was in favour.

On the question of whether the Mosaic code should be used as a template for all other legal codes, Raleigh argues for adaptability in the face of variations of climate, custom, astrological influences, and the like. Roman law was the same throughout the ancient world, he notes, but it was administered differently according to the “natural customs” of the populations in the different Roman provinces. As a result, “the moral judicials of Moses do partly bind, and partly are let free”. Although this is as far as he is prepared to go in stating the limits stemming from the Mosaic code, he does take Divine law seriously, and his concluding paragraph is a retelling of Fortescue’s example of the wrongly convicted woman, used to illustrate a quotation from Augustine on the importance of Divine law.<sup>81</sup>

Raleigh returns a number of times to the main themes of Puritan (or Huguenot) political theory, including a markedly enlarged proportion of society enjoying the duties of citizenship, on Christian terms. Yet in terms of sovereignty theory, he follows Bodin; and probably moreso than Richard Hooker’s (presumed) Anglican justification -

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<sup>78</sup> Oldys(ed), *The Works*, Vol.III, p.142.

<sup>79</sup> *Ibid.* , pp.143-144. This theory was developed further by the Long Parliament. According to Francis Wormuth, *The Royal Prerogative* (N.Y.,1967), p.12, parliament “represented the kingdom, it was charged with a trust by the kingdom; the king also was a trustee, and if he failed in his duty the fundamental laws required Parliament to perform it for him. The fundamental laws thus led to the law of sovereignty, rather than the sovereignty of law”.

<sup>80</sup> Oldys(ed), *The Works*, Vol.III, p.144.

<sup>81</sup> *Ibid.* , pp.145-148. He quotes Fortescue most approvingly.

he is actually closer to Edmund Spenser's (presumed) Machiavellian justification. The main conclusion to be drawn from his writings, apart from the evidence they provide of a sophisticated use of sovereignty theory, is the awareness of the Puritan party of a power shift to Parliament as the legislative part of the constitution. This suggests that, far from seeing themselves cast in the role of contestants for constitutional supremacy, the majority MPs in the Commons at this time believed that the King was the one who sought radical change, not they.<sup>82</sup>

Raleigh's image as the parliamentary martyr and prophet of the future Westminster form of legislative sovereignty should be balanced by at least an awareness of the continuing use of Bodin's theory by his royalist opponents. Take for example the parliamentary debates of 1628, where a number of Puritan speakers alluded to Bodin's theory as it applied to supporters of the pro-prerogative school of constitutional thinking, especially those supporting Divine Right. Although we have seen in other Chapters (and above) that there is ample justification for the view that Bodin was inspiring Divine Right theorists (James I or John Hayward for example), another case is Hadrian Saravia. His *De Imperandi Autoritate* of 1594 is Anglican in the same rationalistic sense as Hooker's *Laws*, although its conclusions are far less constitutionalist. Saravia's book is greatly in Bodin's debt, and Johann Sommerville points out that "it presented a fully-fledged and strikingly Bodinean theory of royal sovereignty".<sup>83</sup> Saravia was, like Bodin, a Continental European, unaware of the shift of power to parliament in England, and he preferred to regard England as "an absolute Monarchy", in the sense that he "regarded parliament as a purely advisory body".<sup>84</sup> For

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<sup>82</sup> See Jess Flemion, "A Savings to Satisfy All: The House of Lords and the Meaning of the Petition of Right", *Parliamentary History*, X (1991). Flemion is unable to view the Petition of Right episode without retrojecting Civil War positions and arguments (p.44). The Puritans of 1628 had no reason to suppose their actions would stiffen the resolve of the Court Anglicans, and their big concern was certainly not a domestic one - they were trying to change policy in relation to the Thirty Years War. The increasing use of Baroque methods by the early Stuart kings was an issue, however. David Berkowitz, "Reason of State in England and the Petition of Right", R. Schnur (ed), *Staatsrason: Studien zur Geschichte eines politischen Begriffs* (Berlin, 1975), p.201, says that "evidence of continued violation of their liberties, cited by speaker after speaker" was a powerful motivation. (see also p.205 on the Lords' 'Addition' and p.207 on the role of Bedford and Say and Sele).

<sup>83</sup> J.P.Sommerville, "Richard Hooker, Hadrian Saravia, and the Advent of the Divine Right of Kings", *History of Political Thought*, IV (1983), p.237.

<sup>84</sup> J.P.Sommerville, "Richard Hooker, Hadrian Saravia, and the Advent of the Divine Right of Kings", p.241.

leading Puritan MP and distant relative of the Warwicks, Nathaniel Rich<sup>85</sup>, the connection with Bodin was taken for granted. On 6 June 1628, in the Commons, Rich declares that “I would there were none near his Majesty that do infuse this doctrine of absolute sovereignty”, complaining that Divine Right theorists “are suffered in the King’s presence” along with “those books printed” which express their views.<sup>86</sup> Rich was referring to an exchange which had taken place on the 20th of May, after an MP named Alford had raised the issue in connection with the remonstrance then before the House: “Let us look into the words and see what they are. What is ‘sovereign power’? Bodin says it is that that is free from any condition”. This brings the issue of parliamentary supremacy, foreshadowed by Raleigh fourteen years earlier, to a head. Pym responds: “I know how to add ‘sovereign’ to his person, but not to his power”, adding that “we cannot leave to him sovereign power - we were never possessed of it.”. Hakewill then says that “we cannot admit of these words with safety”.<sup>87</sup> Edward Coke, representing the common law lawyers, endorses this with a speech that has become one of the nodes of English constitutional history. Although he concedes that “prerogative is part of the law”, he insists that “‘sovereign power’ is no parliamentary word”, and shortly after there appears his oft-quoted saying that “Magna Carta is such a fellow that he will have no sovereign”.<sup>88</sup> Absolute rule is neither reconciled with constitutionalism, nor is it detached entirely from kingship in the sense of personal rule, yet in Pym’s reaction we can see at least an appreciation of the significance of sovereignty, and maybe popular sovereignty, in legitimating the regime.

On the 26th of May, at the end of the second reading of this instrument (only later did it become the “Petition”), Thomas Wentworth (son of Peter) declares that

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<sup>85</sup> Nathaniel Rich was the grandson, on the wrong side of the sheets, of the Henrician Chancellor, Richard Rich, another of whose grandsons was Robert Rich the Earl of Warwick who married Penelope Devereux.

<sup>86</sup> Robert Johnson et al.(eds), *Commons Debates 1628* (New Haven,1977), Vol.IV, p.170 (6 June).

<sup>87</sup> Johnson et al.(eds), *Commons Debates 1628*, Vol. III, p.494. The original use of the sovereignty thesis in the remonstrance debates was by Charles, through his mouthpiece in the Parliament, the Lord Keeper: “we have thought good to let you know that without overthrow of sovereignty we cannot suffer this power to be impeached.” The date is May 12, and the power is taxation. *Ibid.*, p.372.

<sup>88</sup> J.R.Tanner, *English Constitutional Conflicts of the Seventeenth Century* (Cambridge,1952), p.63. George Mosse fails to make any mention of this speech, despite the excellent if indirect corroborating evidence it provides for the influence of Bodin in England.

“sovereignty and subjection shall henceforth walk together”,<sup>89</sup> which links the issue of liberties to an anti-Bodinean position unambiguously. Both lawyers like Coke and Puritans like Pym and Wentworth felt threatened by the royalist use of a theory which, when read superficially, suggests that the only form of monarchic rule possible is “royal” - that is unmixed and constitutionally virtually unlimited, as opposed to other categories in Bodin such as “seignorial” monarchy. This also displays a lack of recognition of the constitutionalist elements in the original theory of Bodin, which we saw above (Cap. 1).

The vituperation of the parliamentary lawyers like Coke and Selden towards sovereignty, echoed by Puritan allies like Wentworth, arises out of the use of Bodin by a group of royalist lawyers in the Jacobean period, particularly Sergeant Fleming in Bate’s Case in 1606. The political outcome of Bate’s Case was that it partly undermined the power of the Commons to withhold supply, but the legal and constitutional outcome was to expand the absolute power of coinage and war and peace into “an absolute discretion of a larger and less defined nature”.<sup>90</sup> Coke and company were not resisting royalist MPs or bureaucrats, but fellow members of the Inns of Court.<sup>91</sup> In a study of Bate’s Case which makes a good deal of use of medieval legal texts, Francis Oakley has drawn attention to the connections of the judgements with Bodin’s theory. Oakley cites two passages of the *Six Books* which deny the possibility of autolimitation, as sources for the idea that many areas of government are subject to absolute (i.e. sovereign) power, which these lawyers interpret as royal absolute power.<sup>92</sup> In line with the Roman law *ius privatum*, Fleming argues that parliament is only able to legislate in the area of “common law”, and the political sphere itself is under the

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<sup>89</sup> Johnson et al.(eds), *Commons Debates 1628*, Vol.IV, p.617. Thomas was the son of Peter Wentworth, and very like him.

<sup>90</sup> James Daly, “The Idea of Absolute Monarchy”, *The Historical Journal*, XXI, 2 (1978), p.232. The timing of this Case coincides with the publication of Knolles, and this raises the possibility that the two events could be connected.

<sup>91</sup> “But the jurists who between 1600 and 1640 boldly and ably sketched out the theory of high prerogative : Chief Baron Fleming, Sir John Davies, Serjeant Ashley, Sir Robert Heath, Sir Robert Berkeley, and the rest, were merely lawyers who believed the law vested certain transcendant powers in the king.”. Francis Wormuth, *The Royal Prerogative*, p.71.

<sup>92</sup> Francis Oakley, “Jacobean Political Theology: The Absolute and Ordinary Powers of the King”, *Journal of the History of Ideas*, XXIX, 3 (1968), pp.323-330. The two passages in Bodin (Knolles edition), *The Six Bookes*, are at p.92 (“the Pope can never bind his own hands”) and at p.103 (“approbation of laws in the assembly of the Estates” is not necessary).

“absolute power of the king”.<sup>93</sup> It is easy, therefore, to see how threatened parliamentarians must have felt, even given the power they possessed over a chronically underfinanced executive.

To see how jealously Parliament guarded Fortescue’s account of the law of the constitution it is instructive at this point to pay brief attention to the curious fate of Doctor Cowell in 1609-10. Cowell’s superb dictionary of legal terminology (*The Interpreter*<sup>94</sup>) was published just after the end of the session of parliament which finished in 1607, and was therefore not discussed in the Commons until resumption of business in the first few months of 1610.<sup>95</sup> On one level this dictionary was a severe affront to the English legal establishment, and Chrimes quotes Fuller’s *Worthies* to the effect that lawyers in the common law tradition were dismayed that a Professor of Civil Law should open the secrets of legal terminology, and import into it such a large number of Roman law *maxims*.<sup>96</sup> While this may account for the strength of the attack in the Commons, the reasons for the animosity of the MPs and also for the animosity of the King are to be found in Cowell’s approach to sovereignty. He was steeped in both English and Continental legal writings, and his Continental sources include many authors who either influenced Bodin or were influenced by him.<sup>97</sup> In the definitions of certain key constitutional terms Cowell asserts both that the sovereign must be above the law in a logical sense, and that there are certain limits upon the absolute power which such a doctrine might otherwise seem to confer.<sup>98</sup> The former assertion was to scandalise the Parliament, and the latter one was to scandalise James, but for the purposes of this account, it is important to recognise that the placement of the sovereign

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<sup>93</sup> Francis Oakley, “Jacobean Political Theology”, p.324.

<sup>94</sup> John Cowell, *The Interpreter*, (Cambridge, 1607). Facsimile, (New York, 1970).

<sup>95</sup> Johann Sommerville, *Politics and Ideology in England 1603-1640* (London, 1986), pp.121-122. S.B.Chrimes, “The Constitutional Ideas of Dr. John Cowell”, *English Historical Review*, LXIV, (1949), pp.463-467. Stephen Collins, *From Divine Cosmos to Sovereign State*, p.115.

<sup>96</sup> Chrimes, “The Constitutional Ideas of Dr. John Cowell”, p.466.

<sup>97</sup> As well as Tribonian, he cites Baldus, Bartolus, Alexander, Bude, Alciati, Zasius, du Haillan, Faber, Blackwood and Pierre Gregoire. He does not cite Bodin anywhere. Another reason for the animosity of parliamentarians is his role as one of the three experts selected to draft a code of 141 canons for the Church of England in 1604. E.W. Kemp, *Counsel and Consent* (London, 1961), p.159.

<sup>98</sup> See his definitions of “law”, “king”, “pardon”, “parliament”, “praemunire” and “prerogative”.

above positive law in the logical sense of Cowell (and Bodin) need not imply a diminution in the powers of parliament, a point appreciated by Raleigh (above).

While this brings to an end our examination of Raleigh and the parliamentarists, it would be inappropriate to end a discussion of Raleigh's intellectual surroundings with no mention of Francis Bacon. Bacon is a topic for a thesis in his own right, of course, and the following account will be limited to a few facets of his often labyrinthine thought, which connect directly with some of the things discussed above. Although his writings are mostly from the period after 1610, and therefore fit chronologically into this final Chapter, thematically his Machiavellism and republicanism are fully consonant with the preceding Chapter, and his residency at Paris in the period of the Alençon courtship has implications for the reception of Bodin's ideas, discussed in Chapter 3. But since his influence was late, and he acts as a kind of bridge to the mature rationalism of Mersenne and Descartes, I have saved him until last.

It was Frances Yates who raised the possibility that Francis Bacon and Jean Bodin may have met in person in Paris. She suggests that this "is perfectly possible since Bacon in his early youth, in 1576, stayed at the English Embassy in Paris at the time when Bodin was prominent among the Politique supporters of [Alençon]".<sup>99</sup> Some corroboration is furnished by the fact that not long after (in 1580), "during the visit of the Duke of Alençon to England, Bacon was employed as a translator".<sup>100</sup> Certainly it is hard to imagine Bodin as Alençon's *Maitre de Requetes* not spending a good deal of time at the Embassy in this period, and young Bacon, educated and ambitious, not wanting to meet the author of the *Six Books*; yet hard evidence for a meeting has not been found to my knowledge.

Bacon's earliest writings are appeals for a general secularisation of English political life, and already bear prominently the impress of the Machiavelli, whilst giving few, if any, indications of Bodinean influence. According to G.P.Gooch (writing in 1914), Bacon was "by far the greatest" of the "champions of a strong and enlightened

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<sup>99</sup> Frances Yates, *Ideas and Ideals in the North European Renaissance* (London, 1984), p.145. According to Campbell's *Lives of the Lord Chancellors* (London, 1868), Vol.III, p.6, Bacon was there from 1576 to 1579.

<sup>100</sup> Jonathan Marwil, *The Trials of Counsel: Francis Bacon in 1621* (Detroit, 1976), p.66.

monarchy”, and this tendency is also found in these early works.<sup>101</sup> In about 1590 he composed a short treatise (*An Advertisement touching the Controversies of the Church of England*) on the best course of action for the State in the Marprelate controversy, in which these two beliefs - republicanism and a strong monarchy - are weighed in the balance. Although “in civil states, a republic is better than a monarchy” it is wrong “that lawful kingdoms” should be disrupted by radical constitutional change.<sup>102</sup> This is a bit like Machiavelli, who prefers republicanism, but in the immediate circumstances is prepared to advocate dictatorship, if that is what it takes to get what he wants in terms of Italian unity. And unity, in the guise of “order”, also features in the sovereignty theory of Bodin (above - Cap. 1).

Bacon wrote his *Maxims of the Law* in 1597, although it was not published until after he died.<sup>103</sup> In the Epistle Dedicatory, he addresses the Queen, and puts to her in her capacity as a lawgiver his scheme for a rewriting of the Corpus of common law which foreshadows the same call in the speech of James I in 1610 (above - Cap. 5). As well as being the authority which gives law its force, and empowers an executive for keeping the peace, Elizabeth “is *anima legis*, [and] doth not only give unto your laws force and vigour, but also hath been careful of their amendment and reforming”.<sup>104</sup> This assertion would seem to contradict at a very basic level the idea of a legislature in parliament. As well as the Emperor Justinian, Bacon points to the example of Edward I, who is “the principal lawgiver of our nation”, and who “bent himself to endow his state with sundry notable and fundamental laws, upon which the government ever since hath principally rested”.<sup>105</sup> In the text of the *Maxims of the Law*, however, we find no

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<sup>101</sup> G. P. Gooch, *Political Thought in England from Bacon to Halifax* (London, 1933), p.22. He is incorrect, however, to maintain that it “had occurred to no one as possible” that “a great State could be run by a Parliament”, since this is just what Raleigh and his co-religionists were contemplating, and at any rate, it was happening *de facto*. See Heath’s Preface to *Of the True Greatness of Britain*, Spedding et al. (eds), *The Works of Francis Bacon*, Vol. XIII, p.224.

<sup>102</sup> Edward Arber (ed.), *An Introductory Sketch of the Martin Marprelate Controversy* (London, 1879), p.157. In this tract he seems to be setting both sides of the religious feud against each other in order to exalt the secular state. By 1621 Bacon had changed his tune, and preferred monarchy in theory as well as in practice. See Francis Wormuth, *The Royal Prerogative 1603-1649*, p.6.

<sup>103</sup> Anthony Quinton, *Past Masters - Francis Bacon* (Oxford, 1980), p.73.

<sup>104</sup> Spedding et al.(eds), *The Works*, XIV, p.171. It is worth remembering that the Queen did not automatically sign Acts into law at this time.

<sup>105</sup> Spedding et al.(eds), *The Works*, XIV, pp.172-173. He also mentions the legislative activities of

working out of this idea, only a digest along the lines of St German's *Doctor and Student* (above - Cap. 2), so that it is impossible to say whether Bacon was considering the making of law by the monarch in Council, or the monarch-in-parliament, although the former is implied.<sup>106</sup>

In the period between 1603 and 1608 Bacon composed the fragment *Of the True Greatness of the Kingdom of Britain*, where once again he is scrupulous to avoid any criticism or limitation of the monarch. The point of this text is to “provide the people and the House of Commons with some matter of interest or ambition which they might pursue with the government, and not against it”, and this can only be found in some foreign war.<sup>107</sup> The socioeconomic aspects of a militant citizenry are the principal concern in this enterprise, and his criticism of mercenaries and praise of the martial life are quite unmistakable.<sup>108</sup> In order for this martial life to take hold in the community, Bacon explains, “the most forcible and the most constant” of the requisite conditions is “the hard means to live of many subjects”.<sup>109</sup> Before the text reaches its premature conclusion, there is a passage on taxation that is of interest, in which he echoes Bodin's advice to kings to preserve their freedom of action by relying on no source other than the royal demesne.<sup>110</sup> It is not really surprising that he says this, since taxes on the subject would require some degree of consent, and this is very much at odds with Bacon's concept of purely royal government.

There is absolutely no hint of a role for Parliament in *The Advancement of Learning*, published in 1605, but instead Bacon heartily endorses James I's own view of

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Henry VIII.

<sup>106</sup> In the preface he places his Tribonian adjacent to Elizabeth as Justinian, offering this framework as a Codex of English law. Constitutionally, he is saying that the framework can be wilfully altered, not by the community, as in contract theories, but by the Queen, in the manner of Edward I. But the capacity for royal constitutional engineering was highly debatable at the time this was written, due to the steady (unplanned) growth of parliamentary power.

<sup>107</sup> Spedding et al.(eds), *The Works*, XIII, p.226.

<sup>108</sup> Markku Peltonen, “Politics and Science: Francis Bacon and the True Greatness of States”, *The Historical Journal*, XXXV, 2 (1992), pp.297, 279, 288. Spedding et al (eds), *Works*, XIII, pp.243ff.

<sup>109</sup> Spedding et al (eds), *Works*, XIII, p.248. Contrast this with Raleigh's solicitude on behalf of the poor (above).

<sup>110</sup> Spedding et al (eds), *Works*, XIII, pp.251-252. For Bodin, see Martin Wolfe, “Jean Bodin on Taxes”, *Political Science Quarterly*, LXXXIII, 2 (1968), *passim*. Bodin (Knolles edition), *The Six Bookes*, p.663.

his royal power. Addressing James, he says: “in your book of a free monarchy, you do well give men to understand, that you know the plentitude of the power and right of a king”, by which he means both executive power and prerogative power.<sup>111</sup> By 1625, recognising the “growing Puritan parliamentary opposition to the king”, Bacon adapted one of his *Essays* to accuse the enthusiasts of “superstition”.<sup>112</sup> This contemptuous view of Calvinism can be used to explain his later writings, as a partial yet successful (at least in his own terms) construct of secular learning. This is significant, not just because it has informed rationalist philosophy from Mersenne and Descartes down to our own day, but also because it raises the spectre of systems of thought which are purged of teleology, and therefore become subject to what Timothy Paterson refers to as a “power orientation”, which ends up with the scientist literally playing God.<sup>113</sup> This is a far cry from Bodin who, as we have seen, is thoroughly teleological like his master Aristotle, and for whom sovereignty implies constitutional limits as well as powers. To Bacon and others of his cast of mind, sovereignty means benevolent dictatorship, and the ideal state is ruled by a sort of magus, who uses arcane knowledge to control nature. Even if he did meet Bodin in 1576, Bacon does not belong in the company of Politique writers such as Raleigh.

What we have seen in this Chapter is a series of constitutional crises unlike anything in the Elizabethan period, except perhaps the succession problem. To those close to the Court who wanted to see a more Continental style of “baroque” absolute monarchy, there had been limited but palpable progress, with much revenue being raised by extraordinary means. To supporters of the parliamentary system of Elizabethan times, the Petition of Right and the improving fortunes of the German Princes in the Thirty Years War gave room for hope, as did the sure knowledge that financial problems would eventually guarantee another Parliament. Yet despite all of this, one is inescapably drawn to the fact that England from 1614 to 1628 was deeply and bitterly divided, and the bone of much of this contention was the vexed question of where, within the constitution, to find the locus of sovereignty. Raleigh’s *Prerogative*

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<sup>111</sup> Arthur Johnston (ed), *Francis Bacon: The Advancement of Learning and New Atlantis* (New York, 1971), p.156. For James and the *True Law of Free Monarchies* see above, Cap. 5.

<sup>112</sup> Ian Box, “Bacon’s *Essays*: from Political Science to Political Prudence”, *History of Political Thought*, III, 1 (1982), p.37.

<sup>113</sup> Timothy H. Paterson, “Bacon’s Myth of Orpheus: Power as a Goal of Science in *Of the Wisdom of the Ancients*”, *Interpretation*, XVI, 3 (1989), p.441.

*of Parliaments* shows how keenly the Puritan MPs understood the impossibility of sovereignty residing in both the legislature and the king.

The political thought of Walter Raleigh is not easy to isolate, but this task is considerably eased if we remove the *Maxims* and *Cabinet Council* from consideration. His remaining authentic political writings, notably the last part of his *Prerogative of Parliaments* and some passages from the *History*, contain both monarchomach and Politique ideas of the State. He supports the notion of a sovereign king-in-parliament, and he sees parliament as the sole law-making institution, such that the Crown's prerogative merely augments the laws, especially in cases where the generality of law cannot be made to address specific circumstances. Raleigh is the opposite to Bacon, and where Bacon would have the Crown as the originator and source of law, Raleigh sees the Crown as an institution which merely formalizes parliament's creative legislative activity. Raleigh goes to few pains to elaborate this idea, perhaps because he thought discretion might prolong his life. This idea is supported by scholarly debate on the Classics and the Bible in his *History*, and is coloured by a strongly fatalistic philosophy of history. But once found and studied, his authentic political writings make sense, locating sovereignty in the king-in-parliament, relegating the Crown to a legitimating role, and even denying it a representative capacity.