

*Historia Successorum Regum Britanniae*

A Study in Medieval and Early Modern English  
Historico-Legal Argument

A thesis submitted for the degree of Doctor of Philosophy of  
the Australian National University

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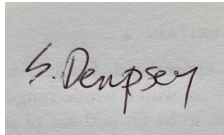
September 2020

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I hereby declare that, except where it is otherwise acknowledged in the text, this thesis represents my own original work. All versions of the submitted thesis (regardless of submission type) are identical. This thesis did not require human ethics research approval.

This research was supported by an Australian Government Research Training Program (RTP) Scholarship.

A rectangular box containing a handwritten signature in black ink. The signature is written in a cursive style and reads "S. W. Dempsey".

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# Abstract

This thesis is a *longue-durée* intellectual history that takes as its subject a form of historico-legal argument, which, for the sake of analytical convenience, will be termed the “succession claim”. Employing the serial contextualist method pioneered by David Armitage, the dissertation constructs a transtemporal narrative that ranges across some three-and-a-half centuries in order to trace the trajectory of a single intellectual tradition through time. It seeks to prove that numerous periods of English history which are usually considered discrete and are ordinarily analysed synchronically were in fact linked by a common diachronic context.

The succession claim was a form of English historico-legal argument invented at the turn of the thirteenth century. It was predicated on the idea that the kings of England were the juristic successors to the kings of Britain, and, as such, were entitled to preserve or recover – as the case may be – the rights and lands which had once been enjoyed by their eminent predecessors. In other words, the succession claim assumed that the various forms of regalian property which had been accumulated (and subsequently lost) between the reign of the first British monarch, Brutus, and that of the last, Cadualadrus, belonged *de jure* – if not *de facto* – to the kings of England. According to this logic, if certain British rulers had once enjoyed overlordship of the island then it followed that the English were subsequently entitled to recover these territories at their pleasure. Likewise, if certain British rulers had once wielded caesaropapal power then it followed that their English successors were entitled to restore this authority at will. It did not matter that the English were not the British, nor that decades, centuries, and even millennia might have passed since such rights or lands had last been possessed.

The succession claim consisted of two key elements. Its historical component was grounded in the English appropriation of Geoffrey of Monmouth’s *Historia Regum Britanniae* (c. 1138). Initially suspicious of the *Historia* for political and historiographical reasons, the English began incorporating Geoffrey’s legendary epic into accounts of their own history from the late twelfth century. The constitutional component of the succession claim presupposed the inalienability of regalian property. It assumed that that which belonged to the realm – as opposed to the king in his private capacity – could never truly be lost. Even those rights and lands which had been forfeited in the conventional sense of the term were said to remain the kingdom’s on a *de jure* basis.

A potent and highly versatile form of historico-legal argument, the succession claim was episodically deployed throughout the medieval and early modern periods in support of a wide range of political programmes. The English thinkers who used it did so, almost invariably, in order to portray revolutionary goals as attempts either to conserve the *status quo* or to restore the *status quo ante*. This thesis does not purport to document every instance in which identifiable historical agents utilised the succession claim; it is intended to be a selective – though representative – account of the intellectual tradition. The dissertation reconstructs four synchronic “moments” – two from the medieval period and two from the early modern – against the backdrop of the diachronic succession claim. Looking in particular at baronial resistance to John’s kingship, Edward I’s overlordship of Scotland, Henry VIII’s break with the Roman Church, and Lord Protector Somerset’s campaign for Anglo-Scottish union, the thesis demonstrates that historical actors from each of these periods were engaged in a transtemporal dialogue with one another, a dialogue which was made possible in large part by England’s sophisticated record-keeping practices.

# Acknowledgements

I would like to begin by thanking my superb supervisory panel – Dr Mark S. Dawson (chair), Dr Alexander Cook, and Dr Tania M. Colwell – for many years of helpful advice, constructive criticism, and welcome encouragement. Thanks are also due to my colleagues at the Australian National University’s School of History, including and especially my fellow doctoral students. I am grateful to Professor Roger A. Mason and the School of History at the University of St Andrews for hosting me as a Visiting Scholar in the Martinmas term 2017. I am also thankful to Professor John Robertson and Professor Michael Brown for stimulating conversations on Henry VIII and Edward I, respectively. I would additionally like to acknowledge a debt to Dr David Green and Professor Chris Given-Wilson, who edited the 2019 volume of *Fourteenth Century England* in which a version of this thesis’s Edwardian Moment appeared.<sup>1</sup> Warm thanks are due to my family, most notably my parents, Joseph and Isabella, my grandmother, Margaret, and my sister, Laura. My greatest debt is to my partner, Amy, without whose love and support this project would long ago have been abandoned.

*While my mind was often pondering many things in many ways, my thoughts turned to the history of the kings of England, and I was surprised that, among the references to them in the fine works of Powicke and Elton, I had found little concerning those monarchs who ruled as the successors to the kings of Britain, even though their deeds were worthy of eternal praise and are proclaimed by many people as if they had been entertainingly and memorably written down. I frequently thought the matter over in this way until Roger of St Andrews, a man skilled in the rhetorical arts and in foreign histories, brought me a very old book in the Latin tongue, which set out in excellent style a discontinuous narrative of their deeds from the first successor of the kings of Britain, John, down to Somerset, uncle of Edward VI. Though I have never gathered showy words from the gardens of others, I was persuaded by his request to translate the book into English in a rustic style, reliant on my own word processor.<sup>2</sup>*

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<sup>1</sup> S. W. Dempsey, ‘The Evolution of Edward I’s “Historical” Claim to Overlordship of Scotland, 1291-1301’, in *Fourteenth Century England XI*, ed. D. Green and C. Given-Wilson (Woodbridge, 2019), pp. 1-30.

<sup>2</sup> For Geoffrey of Monmouth’s scarcely more dependable prologue to his *Historia Regum Britanniae*, see p. 30 below.

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## Note on Conventions

The author has endeavoured to retain the original orthography of material derived from Early Modern English and Middle Scots texts. Translations from Latin, Anglo-Norman, and Middle French are the author's own unless otherwise stated.

# INTRODUCTION

The four regnal periods with which this thesis is chiefly concerned have attracted an enormous amount of scholarly attention. Indeed, few chapters in English history have been better documented than the reign of Henry VIII. The reigns of John and Edward I follow not too far behind. A smaller number of works have been devoted to the two-and-a-half years that Lord Protector Somerset spent ruling England as its *de facto* king, but the age has by no means been neglected. It is nevertheless the case that a certain methodological naivety pervades most accounts of the Johannine, Edwardian, Henrician, and Seymourian periods. As large and sophisticated as these historiographies may be, they have for the most part been written in the language of old-fashioned political history. This is a consequence of the fact that their foundations were laid by generations of scholars who, with varying degrees of conviction, rejected historical agents' own explanations of their actions as causally irrelevant. The leading figures in the "high politics" movement that dominated English political history for much of the twentieth century were Lewis Namier and G. R. Elton.<sup>1</sup> The two men had much in common: both emigrated from central Europe (Russian Poland and Germany, respectively) during their late teenage years, both Anglicised their names and became British subjects, both rose to the top of the English historical profession, and both were knighted for their scholarship by Elizabeth II. Namier and Elton also shared a disdain for intellectual history. Infamously, Namier dismissed historical expressions of principle as "flapdoodle" which serves only to obscure the *real* causes of behaviour. Elton similarly reckoned that *real* historians have no business interrogating the utterances of historical actors. He believed that, far from taking agents' own explanations of their actions at face value, *real* historians work hard to get beyond the "propaganda" and "rationalisations" offered.<sup>2</sup> In attempting to understand how such questionable views have managed to endure to this day, it is instructive to turn to the work of another eminent German: Friedrich Nietzsche.

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<sup>1</sup> M. Goldie, 'The Context of *The Foundations*', in *Rethinking the Foundations of Modern Political Thought*, ed. A. Brett and J. Tully (Cambridge, 2006), pp. 3-19.

<sup>2</sup> *Ibid.*, pp. 5-6.



‘God is dead,’ wrote Nietzsche in *Die fröhliche Wissenschaft*, ‘but given the way of men, there may still be caves for thousands of years in which his shadow will be shown’.<sup>3</sup> In this memorable aphorism — doubtless a nod to Plato’s famous allegory — the Prussian-born philologist lamented what he judged to be the philosophical inconsistency and intellectual cowardice of his fellow atheists. Nietzsche believed that modernity had emptied religion of its content, and rendered belief in the divine impossible for any thinking person. Yet he also keenly understood how deeply Christianity had embedded itself in western culture over the course of nearly two millennia. Having observed with great disdain those of his contemporaries who happily rejected the existence of god in the name of science yet continued to live more or less in accordance with Christian morality, Nietzsche made it his job to communicate to atheists the inescapable consequences of their unbelief. This advocate for reflective godlessness reserved his fiercest criticism for English moral philosophers, who he felt had an unmatched capacity for self-deception:

They have got rid of the Christian God, and now feel obliged to cling all the more firmly to Christian morality ... When one gives up Christian belief one thereby deprives oneself of the *right* to Christian morality. For the latter is absolutely *not* self-evident: one must make this point clear again and again, in spite of English shallowpates. Christianity is a system, a consistently thought out and *complete* view of things. If one breaks out of it a fundamental idea, the belief in God, one thereby breaks the whole thing to pieces: one has nothing of any consequence left in one’s hands. Christianity presupposes that man does not know, *cannot* know what is good for him and what evil: he believes in God, who alone knows. Christian morality is a command: its origin is transcendental; it is beyond all criticism, all right to criticize; it possesses truth only if God is truth — it stands or falls with the belief in God.<sup>4</sup>

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<sup>3</sup> Friedrich Nietzsche, *The Gay Science: With a Prelude in Rhymes and an Appendix of Songs*, trans. W. Kaufmann (New York, 1974), p. 167.

<sup>4</sup> Friedrich Nietzsche, *Twilight of the Idols and The Anti-Christ*, trans. R. J. Hollingdale (London, 1990), pp. 80-1 (emphasis in original).

Nietzsche had the courage to follow the truth wherever it led, and he demanded the same of others. For those who wished to pretend that the world could continue as before, he had nothing but contempt.

That the Anglo-American intellectual-historical revolution initiated in the 1960s and 70s<sup>5</sup> has scarcely touched numerous sub-fields of medieval and early modern English history is a problem analogous to the one with which Nietzsche grappled at the turn of the twentieth century. The stakes may be lower, but it arises out of the same human tendency to resist change even in the face of overwhelming evidence. Except perhaps in a few remote and forgotten outposts, the battle for intellectual history to be recognised as *real* history was fought and won long ago. Indeed, very few historians working today would choose to associate themselves with the once fashionable view that ideas are epiphenomenal. Nevertheless, many of these same practitioners continue to labour, however consciously or unconsciously, under the stifling influence of “high” political history. Namier and Elton may be deceased, but Namierite and Eltonian assumptions are very much alive. One of the principal aspirations of this thesis, therefore, is to spread the gains of the “Cambridge School” movement more widely, and to begin dissipating the shadow of dead gods which hangs heavily over historiographical accounts of the reigns of John, Edward I, Henry VIII, and Somerset.

However, this thesis is more than a series of case studies on how intellectual-historical procedures can be used to transform understandings of even the most well-documented events in English history. It is, first and foremost, a *longue-durée* intellectual history that takes as its subject a form of historico-legal argument, which, for the sake of analytical convenience, will be termed the “succession claim”. Before defining the succession claim and situating it within the history of English political thought, it is useful to say more about the aims and scope of this chronologically and methodologically ambitious project. Employing the serial contextualist

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<sup>5</sup> For comments on the Cambridge School, see pp. 14-18 below.

method pioneered by David Armitage,<sup>6</sup> the thesis constructs a transtemporal narrative that ranges across some three-and-a-half centuries in order to trace the trajectory of a single intellectual tradition through time. It seeks to prove that numerous periods of English history which are usually considered discrete and are ordinarily analysed synchronically were in fact linked by a common diachronic context, namely, the succession claim. Although this diachronic context was, by definition, subject to the laws that govern language evolution, it was sufficiently stable – at least within the temporal parameters of the present study – to be classified as a single intellectual tradition. Conscious of the need to demonstrate how this intellectual tradition was transmitted from one “moment” to another, the thesis gives an account of how and why historical agents episodically utilised the succession claim in service of their various political objectives.

This thesis contends that the succession claim was a form of English historico-legal argument that was invented at the turn of the thirteenth century. It was predicated on the idea that the kings of England were the juristic successors to the kings of Britain, and, as such, were entitled to preserve or recover – as the case may be – the rights and lands which had once been enjoyed by their eminent predecessors. In other words, the succession claim assumed that the various forms of regalian property which had been accumulated (and subsequently lost) between the reigns of the first British monarch, Brutus, and of the last, Cadualadrus, belonged *de jure* – if not *de facto* – to the kings of England. According to this logic, if certain British rulers had once enjoyed overlordship of the island then it followed that the English were subsequently entitled to recover these territories at their pleasure. Likewise, if certain British rulers had once wielded caesaropapal power then it followed that their English successors were entitled to restore this authority at will. It mattered not that the English were not the British, nor that decades, centuries, and even millennia might have passed since such rights or lands had last been possessed.

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<sup>6</sup> For comments on serial contextualism, see pp. 18-22 below.

This extraordinarily ambitious argument, which was deployed for the first time in the early thirteenth-century legal treatise known as the *Leges Anglorum*, was endowed with complex historical and legal dimensions. These can be touched upon here only in brief. The historical component of the succession claim was grounded in the English appropriation of Geoffrey of Monmouth's *Historia Regum Britanniae* – the work from which this thesis takes its title. Composed around 1138, the largely fictitious *Historia* was intended to endow the Britons – a people who had little sense of their own past – with an illustrious national history populated by such memorable heroes as King Arthur. Initially suspicious of the *Historia* for political and historiographical reasons, the English began incorporating Geoffrey's legendary epic into accounts of their own history from the late twelfth century. In time, the political, ethnic, cultural, and geographical differences represented by the terms “Britain” and “England” were forgotten as Brutus and Arthur became as much a part of the English past as Edward the Confessor or William the Conqueror. The legal component of the succession claim, on the other hand, presupposed the inalienability of regalian property. In other words, it assumed that that which belonged to the realm – as opposed to the king in his private capacity – could never truly be lost. Even those rights and lands which had been forfeited in the conventional sense of the term were said to remain the kingdom's on a *de jure* basis. This type of constitutional thought was existentially dependent on the concept of the royal office and on its most potent symbolic representation, the crown. Over the course of the twelfth and thirteenth centuries, the crown increasingly came to be understood as sempiternal – that is, perpetual within time – and therefore above and beyond any natural person. This important development served to recast the king as the impermanent occupant of an immortal office, who was bound by his coronation oath to prevent and revoke alienations of the regalian property over which he transitorily exercised authority. Put another way: the king was temporary, but the crown – along with the rights and lands which attached themselves to it by means invisible – was forever. Together, these

historical and legal elements gave rise to the notion of a single inalienable royal office stretching back to the time of Brutus, a notion which in turn made possible the succession claim.

The thesis argues that numerous English thinkers deployed this historico-legal argument in support of a wide range of political programmes across the medieval and early modern eras. They did so, almost invariably, in order to portray revolutionary goals as attempts either to conserve the *status quo* or to restore the *status quo ante*. This thesis does not purport to document every instance in which historical agents utilised the succession claim; it is intended to be a selective – though representative – account of the intellectual tradition. The dissertation reconstructs four synchronic “moments” – two from the medieval period and two from the early modern – against the backdrop of the diachronic succession claim. These moments have been selected on the basis of their chronological range, conceptual variety, textual diversity, and historical importance. The Johannine Moment (c. 1210) – which marks the beginning of the intellectual tradition – examines how the succession claim was used to legitimate baronial resistance to King John in the years leading up to *Magna Carta* and delegitimate Angevin conceptions of kingship. The Edwardian Moment (1291–1301) considers how the succession claim was used to legitimate Edward I’s overlordship of Scotland and delegitimate Scottish assertions of independence. The Henrician Moment (1530–1542) examines how the succession claim was used to legitimate Henry VIII’s royal supremacy and delegitimate the Roman Church’s authority in the king’s realm and dominions; as well as how the succession claim was used to legitimate Henry’s war against Scotland. The Seymourian Moment (1547–1548) details how the succession claim was used to legitimate Lord Protector Somerset’s campaign for Anglo-Scottish union and delegitimate Scotland’s preference for a politically segregated island.<sup>7</sup> While maintaining the synchronic specificity of the Johannine, Edwardian, Henrician, and Seymourian

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<sup>7</sup> For a more thorough summary of the Johannine, Edwardian, Henrician, and Seymourian Moments, see pp. 22-29 below.

Moments, the thesis seeks to demonstrate that historical agents from each of these periods were engaged in a transtemporal dialogue with one another, a dialogue which was made possible in large part by England's sophisticated record-keeping practices.

The label succession claim requires some explanation. As alluded to above, this terminology is historiographical — as opposed to historical — in nature. That is to say, it was not used by the historical actors with whom this project is concerned, and should not therefore be understood as a reified entity. Succession claim is employed throughout the thesis to denominate an intellectual tradition and form of historico-legal argument that would otherwise bear no name — or at least no distinguishing name. Inventing a new means of discussing a phenomenon is, however, distinct from inventing the phenomenon itself. The rainbow-billed bird that graces the tropical rainforests of Iberian America existed long before a taxonomist decided to call it *Ramphastos sulfuratus*, and the colourful creature is surely quite indifferent to the Graeco-Latin appellation now imposed upon it. Likewise, the intellectual activities of medieval and early modern English thinkers are part of the historical record, whether they are catalogued and analysed or not. So long as it is remembered that the term succession claim can have meaning only for those who study the utterances of the historical agents in question and not for the historical agents themselves, the dangers of anachronism are few.

This thesis represents the first attempt to produce an extensive and rigorous account of the succession claim. Its original contribution to knowledge with respect to that particular form of historico-legal argument is four-fold: it is the only work in existence to (1) establish the presence of the succession claim in medieval and early modern English political thought, (2) reveal whence the succession claim came, (3) explicate the constitutional and historiographical logic by which the succession claim operated, and (4) illustrate how historical agents in numerous times and places deployed the succession claim in support of their various political objectives. In so far as the historico-legal argument has previously been documented at all, it has been studied

in passing and within the context of a single king's reign — for example, that of Edward I<sup>8</sup> or Henry VIII<sup>9</sup> — rather than as a significant intellectual tradition connecting hundreds of years of English history. It would seem that many scholars have judged the succession claim to be propaganda deserving of only a peripheral place in the annals of history. A notable exception to these general trends is Walter Ullmann's 'On the Influence of Geoffrey of Monmouth in English History',<sup>10</sup> a short but important work which played no small part in the early development of the present dissertation. Fundamentally, this thesis contends that English appeals to the legendary British past ought to be regarded as more than mere footnotes to Edward I's war with Scotland or Henry VIII's break with Rome. It seeks to prove that, far from being epiphenomenal, the succession claim was a form of political action which played a central role in shaping some of the most consequential events in medieval and early modern English history, thereby meriting a more prominent place in the historiography than it has hitherto enjoyed. No 'history from the neck up',<sup>11</sup> the dissertation intends to demonstrate that accounts of the Johannine, Edwardian, Henrician, and Seymourian periods which do not integrate the intellectual and the material are necessarily impoverished accounts.

Yet while this thesis is an intellectual history, it is hardly a history of intellectuals. Concerned as it is with the thought of certain English elites from the medieval and early modern periods, the project cannot claim to be any kind of intellectual history of the lower orders. It is nevertheless somewhat atypical of the genre. The texts investigated throughout are not the

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<sup>8</sup> See E. L. G. Stones, 'The Appeal to History in Anglo-Scottish Relations Between 1291 and 1401: Part I', *Archives* 9 (1969), 11-21; R. R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093-1343* (Oxford, 2002), pp. 31-53.

<sup>9</sup> See J. Guy, 'Thomas Cromwell and the Intellectual Origins of the Henrician Revolution', in *The Tudor Monarchy*, ed. J. Guy (London, 1997), pp. 213-33; F. Heal, 'What Can King Lucius Do For You? The Reformation and the Early British Church', *English Historical Review* 120 (2005), 593-614.

<sup>10</sup> W. Ullmann, 'On the Influence of Geoffrey of Monmouth in English History', in *Speculum Historiale: Geschichte im Spiegel von Geschichtsschreibung und Geschichtsdeutung*, ed. C. Bauer, L. Boehm and M. Müller (Munich, 1965), pp. 257-76. See also, R. A. Mason, 'The Scottish Reformation and the Origins of Anglo-Scottish Imperialism', in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. R. A. Mason (Cambridge, 1994), pp. 161-86; D. Armitage, *Ideological Origins of the British Empire* (Cambridge, 2000), pp. 24-60.

<sup>11</sup> The clever phrase is Armitage's: D. Armitage, *Foundations of Modern International Thought* (Cambridge, 2012), p. 18.

magisterial works of philosophical titans, but the altogether-less-remarkable linguistic artefacts of practical politics — parliamentary statutes, royal correspondence, official pamphlets, legal compilations, and the like. It would of course be an elementary mistake to imagine that the intellectual activities of a Duns Scotus or a Francis Bacon were unbounded by the various contexts out of which they emerged. Yet it would also be futile to deny that these men — and the very few who stand beside them — were exceptional thinkers by the standards of almost any age. Scotus and Bacon were not transhistorical figures, but nor were they in any real way representative of their respective societies. This thesis deals in neither giants nor dwarfs, but in rather more ordinary thinkers who set about their various tasks with but rudimentary theories on the workings of the world.<sup>12</sup>

The preeminent work on English historico-legal argument remains J. G. A. Pocock's debut monograph, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century*.<sup>13</sup> In many ways, therefore, this thesis necessarily follows in the footsteps of that seminal contribution to scholarship. First published in 1957, *The Ancient Constitution and the Feudal Law* explored the common-law interpretation of English history, which might be regarded as something of a precursor to “Whig” historiography — a subject made famous by Pocock's doctoral supervisor, Herbert Butterfield.<sup>14</sup> Pocock's revelation was that, throughout the seventeenth century, English lawyers — chief among them, Edward Coke — attempted to constrain the exercise of monarchical authority by deploying a form of historico-legal argument ostensibly grounded in immemorial custom. In a bid to delegitimize the use of royal prerogative by the Stuart kings, these jurists appealed to an immutable, primordial body of law known as the ancient constitution. Although *The Ancient Constitution and the Feudal Law*

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<sup>12</sup> Richard Whatmore has argued that intellectual history ‘must not be ... the study of the peaks of the mountain and neglect of the foothills, through focus upon the figures who alone enjoy a global reputation’: R. Whatmore, *What Is Intellectual History?* (Cambridge, 2016), p. 91.

<sup>13</sup> J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century: A Reissue with a Retrospect* (Cambridge, 1987).

<sup>14</sup> Herbert Butterfield, *The Whig Interpretation of History* (London, 1931).



was primarily intended to be a study not ‘of the uses which were made of it [the ancient constitution] in political argument, but of the historiographical conditions which made its existence possible’,<sup>15</sup> the work pays sufficient attention to the former to demonstrate convincingly that the intellectual tradition was at the very forefront of English politics from the accession of James I in 1603 until the deposition of his grandson, James II, in 1688. What is altogether less persuasive, however, is Pocock’s assertion that the ancient constitution represented something fundamentally new in the history of English political thought.

As this thesis will show, many centuries before Jacobean jurists began exhorting the king to adhere to the tenets of the ancient constitution, another group of English elites had developed a form historico-legal argument which was intended to hamper the wielding of royal authority. This was the succession claim, whose concept of a single sempiternal and inalienable royal office stretching back to the time of Brutus had much in common with Coke’s primordial and immutable body of law. If the succession claim enjoyed a longer and more spectacular intellectual life than the ancient constitution, this fact can predominately be attributed to the manner in which the former’s purpose was inverted. As has been noted already, the succession claim was conceived in the early thirteenth century with the intention of persuading King John to curb his use of what would later be called royal prerogative. However, it was not until the succession claim was appropriated by various kings of England and turned against the kingdom’s numerous geopolitical rivals, including and especially Scotland and the Roman Church, that the historico-legal argument truly flourished. In other words, while the succession claim emerged out of a campaign to restrict monarchical power, its survival depended on its ability to legitimate attempts to expand regalian rights and lands. In genealogical terms, then, the origins of the succession claim appear to be intimately connected to those of the ancient constitution.

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<sup>15</sup> Pocock, *The Ancient Constitution*, p. 46.

Nevertheless, this thesis should not be understood as an endeavour in locating the intellectual antecedents of the ancient constitution so much as it should be understood as an attempt to demonstrate that the ancient constitution was but one of several related traditions of English historico-legal argument which emerged during the medieval and early modern periods. Fundamental to many of these traditions was the idea that there existed a certain category of rights beyond the capricious grasp of supreme pontiffs and sceptred kings. Indeed, the power of the ancient constitution emanated neither from its antiquity nor its immutability (*pace* Pocock) but from its inalienability. The word “inalienable” scarcely appears in *The Ancient Constitution and the Feudal Law*, but the principle animates almost every one of the primary sources treated throughout the book. One of this thesis’s key historiographical aspirations is to complement and revise Pocock’s great work by situating his notion of the common-law mind in the wider context of English historico-legal argument, imbued as it was with radical conceptions of inalienability. By providing the first systematic account of the succession claim, from its inception in the early thirteenth century to its apogee during the mid-sixteenth, the present dissertation seeks to prove that the ancient constitution was a seventeenth-century variant of the paradoxical if characteristically English tendency to appeal to the past in order to emancipate legal rights – be they regalian, baronial, or parliamentary – from the contingencies of time.

Although not one of the project’s primary objectives, the thesis also hopes to offer several distinctive insights into why English conceptions of kingship, sovereignty, and insular empire evolved as they did over the course of the medieval and early modern periods. The succession claim, as an intellectual tradition, was confined to a particular political community – the kingdom of England. One of the advantages of a *longue-durée* intellectual history of this kind is that it supplies a relatively constant background against which other forms of conceptual change can be observed. Not unlike Thomas Cole’s masterpiece, *The Course of Empire*, which uses a series of five landscape compositions painted from the same vantage point to depict the rise and fall of

an imaginary city, this thesis fixes a transtemporal gaze on the intellectual activities of a single political community. By reconstructing four synchronic moments of English history in one study, numerous diachronic contexts — in addition to the succession claim — are inadvertently recovered and rendered intelligible. Some of these diachronic contexts will doubtless be of little interest. Several, however, are deserving of some attention.

The value of providing new insights into the evolution of English conceptions of kingship, sovereignty, and insular empire may not be immediately obvious, and so will be illustrated by an example drawn from the Edwardian and Henrician Moments. It is perfectly possible to grasp the tenets of Henry VIII's royal supremacy without knowing anything about medieval notions of territorial sovereignty, just as it is perfectly possible to attain a reasonable command of the French language without proficiency in Latin. Nevertheless, to understand a transtemporal concept is to be intimately familiar with its intellectual antecedents. Those who approach French with a sound knowledge of its linguistic predecessor comprehend the Romance language much more deeply than those who do not, for they perceive not merely the "what" but also the "why". Likewise, those who come to the royal supremacy with a firm grip on medieval English political thought will be able to appreciate that, however revolutionary it may have been, Henry VIII's assertion throughout the 1530s that he recognised no superior on Earth was a logical — if scarcely inevitable — progression from Edward I's declaration in 1301 that he recognised no superior in temporal affairs. In other words, Henry's conception of territorial sovereignty took the precise shape and form that it did in large part because it grew out of Edward's conception of territorial sovereignty — which, coincidentally, had also been formulated in response to the universalist pretensions of a Roman pontiff. By surveying the intellectual fossil record in this way, the thesis hopes to deepen existing understandings of medieval and early modern English conceptions of kingship, sovereignty, and insular empire.

## A Note on Method

It is appropriate at this juncture to present a more extensive methodological statement. That the project will proceed by way of serial contextualism has been proclaimed already. However, before it is possible to offer a satisfactory definition of serial contextualism, it is first necessary to explain what is meant here by contextualism *tout court*.

This thesis owes much to the early methodological writings of Quentin Skinner, J. G. A. Pocock, and John Dunn.<sup>16</sup> Often regarded as the founder members of the “Cambridge School” movement, the three scholars each produced a number of theoretical essays (on top of their substantive works) during the 1960s and 70s which together charted a revolutionary new course for Anglo-American intellectual-historical research.<sup>17</sup> Arguably the most influential of these were (in chronological order) Pocock’s ‘The History of Political Thought: A Methodological Enquiry’ (1962),<sup>18</sup> Dunn’s ‘The Identity of the History of Ideas’ (1968),<sup>19</sup> and Skinner’s ‘Meaning and Understanding in the History of Ideas’ (1969).<sup>20</sup> Although not without their methodological differences, Skinner, Pocock, and Dunn were united in the belief that ‘the language or discourse in which an author was working, meaning the set of assumptions that he or she was adopting and employing in the articulation of their arguments, set limits to the argument itself’.<sup>21</sup> They argued that before intellectual historians could reasonably begin to interpret a historical agent’s utterances, they had to reconstruct the linguistic context that surrounded those utterances.

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<sup>16</sup> Also to Alasdair MacIntyre’s contemporaneous piece on the Weberian concept of legitimation: see A. MacIntyre, ‘A Mistake About Causality in Social Science’, in *Philosophy, Politics and Society*, ed. P. Laslett and W. G. Runciman, 2<sup>nd</sup> ser. (New York, 1962), pp. 48-70.

<sup>17</sup> This paragraph, along with the two which follow it, are greatly indebted to Whatmore’s learned account of the Cambridge School: see R. Whatmore, ‘Quentin Skinner and the Relevance of Intellectual History’, in *A Companion to Intellectual History*, ed. R. Whatmore and B. Young (Chichester, 2016), pp. 97-112.

<sup>18</sup> J. G. A. Pocock, ‘The History of Political Thought: A Methodological Enquiry’, in *Philosophy, Politics and Society*, ed. P. Laslett and W. G. Runciman, 2<sup>nd</sup> ser. (New York, 1962), pp. 183-202.

<sup>19</sup> J. Dunn, ‘The Identity of the History of Ideas’, *Philosophy* 43 (1968), 85-104.

<sup>20</sup> Q. Skinner, ‘Meaning and Understanding in the History of Ideas’, *History and Theory* 8 (1969), 3-53.

<sup>21</sup> Whatmore, ‘Quentin Skinner’, p. 99.

Skinner's 'Meaning and Understanding', in particular, was characterised by an attempt to forge a third way between "textualism" and "social contextualism". The essay began by enquiring as to how a given philosophical or literary text might best be understood:

There are of course two currently orthodox (though conflicting) answers to this question, both of which seem to command a wide acceptance. The first (which is perhaps being increasingly adopted by historians of ideas) insists that it is the *context* "of religious, political, and economic factors" which determines the meaning of any given text, and so must provide "the ultimate framework" for any attempt to understand it. The other orthodoxy, however, (still perhaps the most generally accepted) insists on the autonomy of the *text* itself as the sole necessary key to its own meaning, and so dismisses any attempt to reconstitute the "total context" as "gratuitous, and worse".<sup>22</sup>

Skinner argued that neither approach was sufficient to recover the meaning of a text. "Textualism" failed, he claimed, because it was predicated on the erroneous assumption that philosophical and literary works – or at least *some* philosophical and literary works – stood outside of time, and therefore resisted historicisation. He rejected as fiction the view, particularly popular among philosophers, that (certain) texts contained 'universal ideas' and expressions of 'dateless wisdom' which could be grasped simply by reading and comprehending the words that were used to articulate them. Skinner dismissed "social contextualism" as similarly inadequate because it sought to explain works of philosophy and literature solely (or at least predominantly) with reference to phenomena external to them. He argued that 'even if the study of the social context of texts could serve to *explain* them, this would not amount to the same as providing the means to *understand* them'.<sup>23</sup> (It bears emphasising, however, that Skinner did attach some analytical value to social context, as will be seen below; in Richard Whatmore's useful phrase, he regarded it as capable of supplying 'second-order support'.<sup>24</sup>) Having dismantled both

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<sup>22</sup> Skinner, 'Meaning and Understanding', p. 3 (emphasis in original).

<sup>23</sup> *Ibid.*, p. 46 (emphasis in original).

<sup>24</sup> Whatmore, 'Quentin Skinner', p. 100.

“textualism” and “social contextualism”, Skinner presented an alternative methodology: “linguistic contextualism”.

This third-way approach to the study of historical thought made authorial intent its focus. Drawing on the work of the British philosopher of language, J. L. Austin,<sup>25</sup> Skinner claimed that in order to understand an utterance, it was necessary to grasp both its locutionary sense and illocutionary force – that is, both its literal meaning and intended function. The distinction between literal meaning and intended function is best illustrated by an example. If John asks Jane ‘Do you know the time?’, the locutionary sense of his utterance is to enquire about Jane’s knowledge of the time of day. However, the illocutionary force of John’s utterance is to make a request of Jane, closer to the question ‘Will you tell me the time of day?’. Skinner was especially keen to emphasise the importance of discovering what historical agents had intended to mean when they said what they said:

[T]o understand a text must be to understand both the intention to be understood, and the intention that this intention should be understood, which the text itself as an intended act of communication must at least have embodied. The essential question which we therefore confront, in studying any given text, is what its author, in writing at the time he did write for the audience he intended to address, could in practice have been intending to communicate by the utterance of this given utterance. It follows that the essential aim, in any attempt to understand the utterances themselves, must be to recover this complex intention on the part of the author. And it follows from this that the appropriate methodology for the history of ideas must be concerned, first of all, to delineate the whole range of communications which could have been conventionally performed on the given occasion by the utterance of the given utterance, and, next, to trace the relations between the given utterance and this wider *linguistic* context as a means of decoding the actual intention of the given writer.<sup>26</sup>

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<sup>25</sup> See generally, J. L. Austin, *How To Do Things With Words: The William James Lectures Delivered at Harvard University in 1955* (Oxford, 1962).

<sup>26</sup> Skinner, ‘Meaning and Understanding’, pp. 48-9 (emphasis in original).

Skinner argued that intellectual historians should turn to the ‘facts about the social context of a given text’ only once they had recovered the author’s intentions in writing that text.<sup>27</sup> This final point – while correct as far as it goes – requires further comment.

Although authorial intent constitutes an integral – and, indeed, the paramount – component of the calculus of context, it is often not a sufficient basis upon which to recover the meaning of a text. As Cary J. Nederman has argued, ‘it is unreasonable to ascribe to any person at any time a full measure of critical self-awareness about the assumptions imbedded in one’s experience of historical circumstances and conditions’.<sup>28</sup> Accordingly, intellectual historians must recognise that:

[A] theorist brings to the text a vast range of historically constituted principles, assumptions, and values, imbedded deep in his contemporary experience, which influences both the shape and the substance of his thought. Insofar as the elements of an author’s historical experience function as hidden premises, unexamined postulates buried far beneath his stated words and concepts, it becomes the primary task of the historian to uncover them and to relate them to a particular text or tradition.<sup>29</sup>

The preamble to the *United States Declaration of Independence* famously reads, ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness’.<sup>30</sup> But could anything have been less self-evident to a classical Athenian than the equality of persons? Thucydides’s Melian Dialogue would suggest not.<sup>31</sup> And what would an ancient Roman citizen have said if confronted with Thomas Jefferson’s “truths”?<sup>32</sup> Might he have replied – as

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<sup>27</sup> *Ibid.*, p. 49.

<sup>28</sup> C. J. Nederman, *Lineages of European Political Thought: Explorations along the Medieval/Modern Divide from John of Salisbury to Hegel* (Washington, D.C., 2009), p. 25.

<sup>29</sup> *Ibid.*, p. 24.

<sup>30</sup> ‘Declaration of Independence: A Transcription’, *National Archives*, <<https://www.archives.gov/founding-docs/declaration-transcript>> [accessed: 01/04/2020].

<sup>31</sup> ‘[S]ince you know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must’: *Thucydides: History of the Peloponnesian War: Done Into English*, trans. R. Crawley (London, 1910), p. 394.

<sup>32</sup> Jefferson was the document’s primary author.

Pontius Pilate replied to Jesus of Nazareth – ‘What is truth?’ (*Quid est veritas?*).<sup>33</sup> All texts contain more than their authors ever intended, and many of these unintentional inclusions take the form of historically contingent assumptions. If intellectual historians are to recover, and make sense of, such assumptions – a task which becomes more urgent as the historical distance between text and interpreter increases – they cannot rely wholly on authorial intent to do so. As Nederman has argued, a ‘genuinely historical reading of a theoretical text must ... transcend the author’s self-ascribed intention regarding his own activity’.<sup>34</sup> Any rigorous attempt to render the aforementioned sentence of the *Declaration of Independence* intelligible to a classical Athenian or an ancient Roman would involve reconstructing Jefferson’s intellectual world – an intellectual world whose foundations lay in Enlightenment principles and, at a deeper stratigraphic level, Christian values. In this hypothetical exercise, Jefferson’s intentions would be of only limited assistance, for even a historical agent as contemplative as he cannot have been fully cognisant of all that underpinned his utterances. Put more succinctly: it is but a fantasy to imagine that historical actors were capable of viewing their own intellectual activities from an Archimedean point. By going beyond authorial intent, therefore, intellectual historians may come to understand a given text better even than its author did<sup>35</sup> – a possibility which Skinner himself has acknowledged.<sup>36</sup>

With that background in mind, it is now possible to define serial contextualism. Much of what follows, it should be noted, will be drawn from David Armitage’s recent methodological writings. In a 2012 paper entitled ‘What’s the Big Idea? Intellectual History and the *Longue*

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<sup>33</sup> John 18. 38.

<sup>34</sup> Nederman, *Lineages*, p. 24.

<sup>35</sup> *Ibid.*, p. 25.

<sup>36</sup> ‘The relevant logical consideration is that no agent can eventually be said to have meant or done something which he could never be brought to accept as a correct description of what he had meant or done. *This special authority of an agent over his intentions does not exclude, of course, the possibility that an observer might be in a position to give a fuller or more convincing account of the agent’s behavior than he could give himself*: Skinner, ‘Meaning and Understanding’, p. 28 (emphasis added).



*Durée*,<sup>37</sup> the prominent member of the Cambridge School's second generation and one-time doctoral student of Skinner urged his fellow intellectual historians to return to the chronologically ambitious projects that once characterised their field. Armitage's call to arms was a response to academic specialisation in general — 'knowing more and more about less and less',<sup>38</sup> as he and his co-author, Jo Guldi, put it in *The History Manifesto* — and synchronic and short-range intellectual history in particular.<sup>39</sup> While acknowledging the enormous benefits that have accrued from Cambridge School contextualism, Armitage has expressed his discontent with the collateral damage that the movement has inflicted upon *longue-durée* intellectual history. He has argued that Skinner's famous (and largely justified) critique of Arthur O. Lovejoy's *The Great Chain of Being* served to discourage an entire generation of intellectual historians from constructing long-range narratives:

At least since the contextualist revolution initiated by Skinner in 1969, most self-confessed contextualist intellectual historians have construed context synchronically and punctually: that is, defined with a narrow chronology and implicitly discontinuous with other contexts. One original purpose behind interpreting context so stringently was to discourage recourse to the *longue-durée* history of ideas *à la Lovejoy* that ignored context and downplayed the agency of language-users. This salutary exercise may however have had the unintended consequence<sup>40</sup> that intellectual historians sealed off similar contexts that occurred earlier or later in time from one another to create what one critic of contextualism has imagined as "history's mail-train hauling self-synchronized periods in series like boxcars" ... There is no good reason why we cannot overcome that objection by building corridors between the cars, as it were: that is, ways of joining diachronically reconstructed contexts across time—transtemporally—to produce longer-range histories which are neither artificially punctuated nor deceptively continuous.<sup>41</sup>

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<sup>37</sup> D. Armitage, 'What's the Big Idea? Intellectual History and the *Longue Durée*', *History of European Ideas* 38 (2012), 493-507.

<sup>38</sup> J. Guldi and D. Armitage, *The History Manifesto* (Cambridge, 2014), p. 49.

<sup>39</sup> See also, Nederman's comments on Skinner's 'atomized history': Nederman, *Lineages*, p. 18.

<sup>40</sup> Here Armitage is perhaps a little generous to Skinner, who, in his famous 1969 paper, wrote that 'it must be a mistake even to try to write ... histories of ideas tracing the morphology of a given concept over time' and that such studies are 'necessarily misconceived': Skinner, 'Meaning and Understanding', p. 48.

<sup>41</sup> Armitage, 'What's the Big Idea?', pp. 498-9.

It is certainly true that contextualists have by and large steered clear of the *longue durée* out of fear of committing the same methodological sins as Lovejoy. At times resembling the unsophisticated surgeon who fixes broken ankles by amputating healthy legs, they have generally opted to write chronologically modest – and, arguably, impoverished – intellectual histories. Armitage’s aspiration is to ‘effect a greatly overdue rapprochement between intellectual history and the *longue durée*’,<sup>42</sup> and to convince contextualists that they need not choose between agency and tradition. His distinctive method – which will be outlined below – promises to do for intellectual historians what Thetis did for Jason and his Argonauts: provide safe passage through treacherous waters, avoiding both the perils of Scylla (agency without tradition) and the horrors of Charybdis (tradition without agency).

The kind of *longue-durée* intellectual history Armitage advocates has far more in common with the Cambridge School movement as traditionally conceived than with Lovejoy’s history of ideas. Defined as ‘a genre of intellectual history in which episodes of contestation over meaning form the stepping-stones in a transtemporal narrative constructed over a span of time extending over decades, if not centuries’,<sup>43</sup> the revamped sub-discipline does not attempt the Sisyphean task of investigating abstractions or ‘hypostatized entities, making intermittent entries into the mundane world from the idealism’s heavenly spheres’.<sup>44</sup> Instead, it:

[L]inks discrete contexts, moments and periods while maintaining the synchronic specificity of those contexts ... is time-*bound* not timeless, to avoid the dangers of reification and denial of agency inherent in Lovejoy’s abstract, atemporal history of ideas ... [and] stresses the mechanisms of connection between moments and is therefore concerned with questions of concrete transmission, tradition and reception, again unlike the traditional history of ideas which assumed but did not investigate how ideas travelled materially and institutionally across time.<sup>45</sup>

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<sup>42</sup> *Ibid.*, p. 497

<sup>43</sup> *Ibid.*, p. 499. For an example of such an intellectual history, see D. Armitage, *Civil Wars: A History in Ideas* (New Haven and London, 2017).

<sup>44</sup> Armitage, ‘What’s the Big Idea?’, p. 499.

<sup>45</sup> *Ibid.*, p. 498.

Armitage's brand of *longue-durée* intellectual history is structured by a method he calls "serial contextualism", which utilises 'the distinctive procedures of Anglo-American intellectual history, but ... diachronically as well as synchronically'.<sup>46</sup> This approach allows for 'the reconstruction of a sequence of distinct contexts in which identifiable agents strategically deployed existing languages to effect definable goals such as legitimation and delegitimation, persuasion and dissuasion, consensus-building and radical innovation, for instance'.<sup>47</sup> Not unlike the so-called theory of everything in the physical sciences, serial contextualism is an attempt to reconcile the intellectual history of the very small (synchronic and short-range) and the intellectual history of the very big (diachronic and long-range). Combining the diverse methodological strengths of Skinner's *Machiavelli* and Pocock's *Machiavellian Moment*,<sup>48</sup> it represents the next step forward in the Cambridge School movement.

Armitage has (quite correctly) cautioned against writing *longue-durée* intellectual histories which are 'deceptively continuous',<sup>49</sup> and it is prudent to enlarge upon his concerns here, as tradition- or concept-selection is arguably the greatest challenge facing serial contextualists. If those who are incapable of learning from history are condemned to repeat the mistakes of the past, then those who are capable of learning from history are condemned to make new mistakes. The same might be said of those who are capable of learning from historiography. Well-versed in the methodological pitfalls of the history of ideas, Cambridge School practitioners are unlikely to construct Lovejovian narratives that overlook agency and disregard context. Far more likely is that they will produce *longue-durée* intellectual histories comprised of numerous rigorously contextualised moments without discernible themes linking them together – what Skinner has

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<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Q. Skinner, *Machiavelli: A Very Short Introduction*, 2<sup>nd</sup> edn (Oxford, 2019); J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975).

<sup>49</sup> Armitage, 'What's the Big Idea?', p. 499.

called ‘pearls without string’.<sup>50</sup> Though far from inevitable, this prospective blunder should not be impatiently waved away. It may seem counterintuitive that a *longue-durée* intellectual history devoted to tracing the trajectory of a concept through time would be devoid of a unifying theme. However, to take Skinner’s objection seriously is to scrutinise the adequacy of linkages between moments. Indeed, it is important that serial contextualists do not simply trade the problem of specialisation – knowing more and more about less and less – for the problem of generalisation – knowing less and less about more and more. An intellectual tradition which has something to say about everything invariably has nothing meaningful to say about anything – and begins to validate the Schopenhauerian view of history as ‘the same but otherwise’ (*eadem sed aliter*).<sup>51</sup> Put another way, the larger or broader an intellectual tradition, the less explanatory power it commands. If serial contextualists are to avoid composing transtemporal narratives whose stories are little more than trivial, they must be prepared to be highly discriminating in their choice of subject matter. As a genre, *longue-durée* intellectual history can and should be about big topics but it must strike a careful balance between specificity and generality if it is to escape the charge of explanatory impotence.

### An Overview of the Four Moments

The final section of this introduction provides a synoptic account of the Johannine, Edwardian, Henrician, and Seymourian Moments. Elaborating on what has been said already, it will summarise the content of Chapters 2, 3, 4, and 5. It seeks to equip the reader with a preliminary sense of how and why historical agents from each of the four periods under investigation deployed the succession claim in support of their various political objectives.

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<sup>50</sup> Skinner used this term when discussing serial contextualism in a 2015 interview: Max Weber Programme, ‘Quentin Skinner Interviewed by MW Fellows Franz Fillafer and Julia McClure’, *YouTube*, <[https://www.youtube.com/watch?v=TIN\\_8aYzjRU](https://www.youtube.com/watch?v=TIN_8aYzjRU)> [accessed: 04/06/2017].

<sup>51</sup> See Arthur Schopenhauer, *The World as Will and Idea*, trans. R. B. Haldane and J. Kemp, 3 vols (Norwich, 1948), iii, 227.

*The Johannine Moment, c. 1210*

Representing the formation of the intellectual tradition in question, this moment explores the manner in which the succession claim was deployed in service of the English baronage's resistance to King John in the early thirteenth century. Concentrating on sections of the c. 1210 legal treatise, the *Leges Anglorum*, Chapter 2 examines how the historico-legal argument was used to legitimate calls for constitutional change in the years leading up to *Magna Carta* (1215).

Although the *Leges Anglorum* was composed anonymously, there is very good reason to believe that its author was part of, or commissioned by, the baronial resistance to John. In two separate but related tracts interpolated into the immensely popular *Leges Edwardi Confessoris*, the writer argued that a monarch ought to govern as the first among equals in consultation with his magnates rather than as an exalted autocrat, unbridled by counsel or constitutional encumbrances. Using the succession claim to legitimate his advice, the pro-baronial author concocted an ancient pontifical letter from Pope Eleutherius which adumbrated the duties of the king. This spurious epistle was intended to prove that John occupied the very same royal office once held by the famous crowned heads of Britain, and that he, as their successor, had a constitutional responsibility to rule as they did. Urging the Angevin monarch to restore his kingdom's lost rights and lands, the writer presented his revolutionary political programme as an attempt to restore the *status quo ante*.

The Johannine Moment also examines the influence that the succession claim may have had in shaping the non-alienation clause of the English coronation oath. When the author of the *Leges Anglorum* urged John to promise not to alienate his regalian rights and lands, and to recover those that had been *de facto* lost during the reigns of his predecessors, he performed a remarkable feat of anticipation. It is highly probable that at the time the pro-baronial writer composed his work none of the crowned heads of Christendom had sworn non-alienation promises at their coronations. This would soon change. England, it would seem, was the very

first European monarchy to adopt the practice in 1216. This naturally raises the question of whether the *Leges Anglorum* did anything to establish the non-alienation clause of the English coronation oath. It will be argued that the constitutional innovation likely had nothing to do with the early thirteenth-century legal treatise. However, simply because the *Leges Anglorum* may not have played a role in *creating* the non-alienation clause of the English coronation oath does not mean that it did not play a role in *modifying* it long after it had been established. For reasons that will become apparent, it will be contended that the *Leges Anglorum* exercised a “posthumous” influence over the English coronation oath, and belatedly helped shape a legal mechanism which would come to be closely associated with the succession claim, as will be demonstrated variously in the Edwardian, Henrician, and Seymourian Moments.

### *The Edwardian Moment, 1291–1301*

Chapter 3 explores the manner in which the succession claim was mobilised in support of Edward I’s overlordship of Scotland at the turn of the fourteenth century. While the Johannine Moment demonstrates how the historico-legal argument was used by the English baronial class against the king, the Edwardian Moment examines how, nearly a hundred years later, it was redeployed by the monarch and the magnates as they erected a united front against external powers, including and especially the Roman Church. Chapter 3 of this thesis seeks to prove that the succession claim was at the forefront of some of the most consequential developments in Anglo-Scottish and Anglo-papal relations during the late medieval period.

Following the deaths of Alexander III in 1286 and Margaret of Norway, his granddaughter and heir, a few years later, Scotland found itself in a state of crisis, with no clear successor to the throne. In May 1291, Edward publicly offered to preserve the peace of the kingdom and adjudicate the disputed royal inheritance in return for recognition as the overlord of Scotland. In support of his claim to the northern realm – which was quickly accepted by many

of those contending for the crown – Edward presented a historico-legal argument which purported to prove that every king of England since Edward the Elder had exercised overlordship of Scotland. The Plantagenet monarch’s ambitious statement, which was bolstered by extracts from numerous chronicles, was intended to demonstrate that he was engaged not in innovation but in conservation.

Edward’s position remained largely unchanged until 1300, when, amidst the Anglo-Scottish war that had broken out in 1296, he received a papal bull from Pope Boniface VIII. The pontifical letter declared in no uncertain terms that the English king’s claim to Scotland was invalid because the northern realm had belonged to the Roman Church ‘from ancient times’. After much deliberation with his magnates and lawyers, Edward concluded that in order to defeat Boniface’s historico-legal argument, he needed to revise and expand his original claim. In May 1301, the Plantagenet monarch composed a reply to the pope which utilised the succession claim. This royal missive boldly asserted that the kings of England, together with their predecessors, the kings of Britain, had exercised overlordship of Scotland since Brutus of Troy, who ruled the island ‘in the days of Eli and of Samuel the prophet’. Edward’s modified claim was not only chronologically antecedent to Boniface’s own claim – it was chronologically antecedent to the very foundation of the Roman Church. Shortly thereafter, for reasons that are not wholly attributable to the power of the king’s historico-legal argument, the pope abandoned the Scots and threw his support behind England.

### *The Henrician Moment, 1530–1542*

The Henrician Moment explores the manner in which the succession claim was deployed in service of Henry VIII’s campaign against the Roman Church during the 1530s. While the Edwardian Moment demonstrates how the historico-legal argument was used by Edward I and his barons in support of the king’s claim to secular supremacy within his realm and dominions,

the Henrician Moment examines how, more than two centuries later, it was used by Henry and his parliament to legitimate the king's claim to caesaropapal power within his realm and dominions. Chapter 4 of this thesis seeks to prove that the succession claim was integral to the legislation that incrementally severed ties between England and the Roman Church.

During the summer of 1530, Henry's "great matter" – that is, the Tudor king's long-running effort to have his marriage to Katherine of Aragon annulled – took a consequential new turn. In response to Pope Clement VII's decision to advocate the divorce suit to Rome, Henry commissioned a new investigation into the legitimacy of the pontiff's authority in his realm and dominions. The result of this wide-ranging research programme was the *Collectanea satis copiosa*, a compilation of precedents plundered from Biblical, patristic, legal, and chronicle sources which sketched the contours of a revolutionary conception of monarchic power. In early January 1531, Thomas Howard, duke of Norfolk, outlined the central tenets of Henry's "imperial" kingship in a famous conversation with Eustace Chapuys, Ambassador of the Holy Roman Empire to England. (Although there can be little doubt that the imperial kingship grew out of the seemingly interminable struggle to secure Henry's divorce from Katherine, it is important to appreciate that the latter matter was separate from – and, indeed, would ultimately be dwarfed and subsumed by – the former.) Norfolk told Chapuys that the Tudor monarch recognised no superior in matters temporal and ecclesiastical within his realm and dominions, and that a long line of popes had tried in vain to usurp this God-given right from the kings of England. In order to provide an answer to the inevitable question, "whence did Henrician caesaropapism come?" the duke argued that Henry occupied the very same royal office which Constantine the Great and King Arthur had once occupied, and that he therefore enjoyed an identical plenitude of power to his eminent predecessors. Juristically speaking, Henry *was* Constantine and Arthur. All of this was intended to demonstrate that the king was embarking not on revolution but on restoration. In the years that followed, the succession claim was deployed



in support of the reformation statutes which converted Henrician caesaropapism from bluff and bluster into reality.

The Henrician Moment also examines the manner in which the succession claim was used to legitimate Henry's war against Scotland in late 1542. Coinciding with the English invasion of the northern realm was the publication of a pamphlet entitled *A Declaration, Conteynyng the Iust Causes and consyderations, of this present warre with the Scottis, wherin alsoo appereth the trewe & right title, that the kinges most royall maiesty hath to the souerayntie of Scotlande*. As its long and inelegant heading suggested, the tract consisted of two parts: the first was an explanation of the events leading up to the Anglo-Scottish war; the second was an assertion of the king's dynastic claim to overlordship of Scotland, denominated in the title, though not in the document itself, as 'souerayntie'. Henry's *Declaration*, which drew heavily on Edward I's 1301 letter to Pope Boniface VIII, advanced a historico-legal argument that began chronologically in the time of Brutus. It was intended to demonstrate that the overlordship of Scotland was a right vested indefeasibly in the English crown, and that Henry was doing no more than recovering regalian property that had been *de facto* alienated during the reigns of his immediate predecessors.

#### *The Seymourian Moment, 1547–1548*

The Seymourian Moment explores the manner in which the succession claim was mobilised in service of Lord Protector Somerset's campaign for Anglo-Scottish union during 1547 and 1548. While the Henrician Moment demonstrates how the historico-legal argument was used in support of Henry VIII's war against Scotland during the early 1540s, the Seymourian Moment examines how, in the months and years after that king's passing, it was used to legitimate a much more sophisticated attempt to bring Scotland under English rule. The final chapter of this thesis seeks to prove that the succession claim was central to the mid-sixteenth-century English-led effort to furnish the island of Britain with a single monarch.

Following the death of Henry VIII in January 1547, the English throne passed to the king's only surviving son, a nine-year-old boy who assumed the regnal name, Edward VI. During the first two-and-a-half years of his reign, on account of his minority, regency was exercised by his uncle, Edward Seymour, duke of Somerset, in his capacity as lord protector of the realm. Somerset, a brother of the late queen consort, Jane Seymour, was an accomplished military commander who had risen to prominence during the late Henrician period. In May 1544, he had directed the devastating English invasion of Scotland, which had seen much of Edinburgh, including the Palace of Holyroodhouse, engulfed in flames.

The war with Scotland, which had been waged continually in one form or another since late 1542, took on a new focus and intensity during Somerset's administration. The lord protector's overriding goal *vis-à-vis* the northern realm was the very same one that had held Henry's attention from the death of James V of Scotland in December 1542 until his own demise eight years later, namely, bringing about Anglo-Scottish union by marrying Edward and Mary, queen of Scots. However, what was different about the manner in which Somerset pursued this objective was his insistence that traditional warfare be accompanied by intellectual combat. For a man who owed much of his reputation to achievements on the battlefield, the lord protector placed considerable faith in the power of words. Commissioning a series of pamphlets, Somerset tried, for the better part of two years, to convince sceptical Scots of the many benefits union with England would bring.

The Seymourian pamphlets took as their model Henry's *Declaration*, a tract which had been published prior to the birth of Mary in December 1542, and which therefore antedated the campaign for Anglo-Scottish union. However, these texts deployed the succession claim in a way quite different from their Henrician forerunner. Indeed, the lord protector's penmen utilised a unique "carrot and stick" approach in a bid to win the Scots over to their cause. In the first place, they framed the revolutionary political project in which they were engaged – the attempt to

consolidate the crowns of England and Scotland within a single royal person – as inherently traditional. Time and time again, they announced that it was not their aim to create a new political entity, but rather to restore an ancient and famous island-empire by the name of (Great) Britain. This, it was said, could be achieved in one of two ways. While the Seymourian pamphleteers stressed that the overlordship of Scotland was a right vested indefeasibly in the English crown (and purported to demonstrate such through historico-legal argument), they also emphasised their intention to secure this inheritance through the sacrament of matrimony rather than by a war of conquest. They claimed that the prospect of marriage between Edward and Mary presented a unique opportunity to transform English “feudal” superiority, which naturally demanded inferiority and servitude of Scotland, into Anglo-Scottish union, which would instead create equality and fellowship between the two kingdoms. As Somerset himself put it in February 1548: Would you not ‘rather brothers, then enemies, rather Countreymenne, then Conquerours’?

# Chapter 1

The “Succession Claim”:

A Form of English Historico-Legal Argument

This thesis takes as its subject a particular form of historico-legal argument that was episodically deployed by English thinkers throughout the medieval and early modern periods. This chapter provides a systematic account of the constitutional and historiographic logic that governed the succession claim, an intellectual tradition that must surely rank among the most remarkable in the history of English political thought. Invented at the turn of the thirteenth century, the succession claim was predicated on the idea that the kings of England were the juristic successors to the kings of Britain, and, as such, were entitled to preserve or recover — as the case may be — the rights and lands which had once been enjoyed by their eminent predecessors. Often utilised in order to portray revolutionary political objectives as attempts either to conserve the *status quo* or to restore the *status quo ante*, the succession claim assumed that the various forms of regalian property that had been accumulated (and subsequently lost) between the reign of the first British monarch and that of the last belonged *de jure* — if not *de facto* — to the kings of England. The notion of a single inalienable royal office stretching back to the time of Brutus — relatively simple (if fantastic) in and of itself — relied on a complex synthesis of historiographical and constitutional thought. This chapter offers a description of that thought. The intellectual foundations of the succession claim lay, on the one hand, in the English appropriation of Geoffrey of Monmouth's *Historia Regum Britanniae* and its successor works and, on the other hand, in the emergence of the concept of the royal office in English constitutional theory. It is analytically beneficial to examine these two traditions in isolation here prior to examining them together in the form of the succession claim in the Johannine, Edwardian, Henrician, and Seymourian Moments.

## 1.1 *Historia Regum Britanniae* and the Neo-Galfridian

### Historiographical Tradition

This, the first of two conceptual sections, provides an overview of Geoffrey of Monmouth's *Historia Regum Britanniae* (c. 1138) and the vast literary and historiographical tradition to which that work gave rise. Its purpose is to summarise the historical content of the particular form of historico-legal argument with which the present thesis is concerned. Central to the past-oriented aspect of the succession claim was the idea that the English were the political, cultural, and geographical heirs to the British. The notion of a “passage of dominion” – to borrow R. William Leckie Jr's phrase<sup>1</sup> – from the Britons to the Saxons was decidedly peripheral to the original version of the *Historia*.<sup>2</sup> However, the concept took on new importance and meaning in the works of Geoffrey's historiographical descendants, many of whom viewed the tales of ancient Trojan warriors and insular chivalric heroes as a splendid backcloth to their own civilisation.<sup>3</sup> The English appropriation of the British History, which began in the late twelfth century, converted Geoffrey's account of the Britons into a glorious prehistory of the Anglo-Saxon and Anglo-French peoples. So thorough was this transformation that the denominations “Britain” and “England” came to be used and understood synonymously, notwithstanding the fact that the former name had previously signified the entire island rather than just the southern portion of it.<sup>4</sup> No longer were the deeds of Brutus and Arthur the unsurpassable achievements of some magnificent foreign kingdom; they were now part and parcel of the English past, and could be

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<sup>1</sup> See generally, R. W. Leckie Jr, *The Passage of Dominion: Geoffrey of Monmouth and the Periodization of Insular History in the Twelfth Century* (Toronto, 1981).

<sup>2</sup> *The Historia Regum Britannie of Geoffrey of Monmouth II: The First Variant Version: A Critical Edition*, ed. N. Wright (Woodbridge, 1988), p. lxxviii; A. MacColl, ‘The Meaning of “Britain” in Medieval and Early Modern England’, *Journal of British Studies* 45 (2006), 248-69 (p. 256).

<sup>3</sup> R. R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093-1343* (Oxford, 2002), pp. 48-53.

<sup>4</sup> *Ibid.*; MacColl, ‘Meaning of Britain’, pp. 249, 256-7; R. A. Mason, ‘The Scottish Reformation and the Origins of Anglo-Scottish Imperialism’, in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. R. A. Mason (Cambridge, 1994), pp. 161-86 (p. 164).

exploited accordingly. It was from this suitably Anglocentric neo-Galfridian historiographical tradition that much of the succession claim emerged.

The *Historia Regum Britanniae* was composed by one Geoffrey of Monmouth around 1138.<sup>5</sup> More a work of fiction than fact, the *Historia* purported to chronicle the reigns of ninety-nine British kings over a nearly two-thousand-year period. In the preface to his epic, the mischievous Geoffrey represented himself as a humble translator, furnishing curious readers with a reliable and comprehensive account of a monarchy which had, until relatively recently, commanded the allegiance of all the island's inhabitants:

While my mind was often pondering many things in many ways, my thoughts turned to the history of the kings of Britain, and I was surprised that, among the references to them in the fine works of Gildas and Bede, I had found nothing concerning the kings who lived here before Christ's Incarnation, and nothing about Arthur and the many others who succeeded after it, even though their deeds were worthy of eternal praise and are proclaimed by many people as if they had been entertainingly and memorably written down. I frequently thought the matter over in this way until Walter, archdeacon of Oxford, a man skilled in the rhetorical arts and in foreign histories, brought me a very old book in the British tongue, which set out in excellent style a continuous narrative of all their deeds from the first king of the Britons, Brutus, down to Cadualadrus, son of Caduallo. Though I have never gathered showy words from the gardens of others, I was persuaded by his request to translate the book into Latin in a rustic style, reliant on my own reed pipe.<sup>6</sup>

Scholars are in general agreement that the 'very old book in the British tongue' of which Geoffrey spoke existed only in his fertile imagination,<sup>7</sup> but the dubious claim did little, it would seem, to discredit him in the minds of his contemporaries. Populated by such illustrious heroes as Arthur and such memorable villains as Vortigern, the *Historia* proved to be enormously successful,

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<sup>5</sup> *The Historia Regum Britannie of Geoffrey of Monmouth I: Bern, Burgerbibliothek, MS. 568*, ed. N. Wright (Cambridge, 1985), pp. xii-xvi; J. S. P. Tatlock, *The Legendary History of Britain: Geoffrey of Monmouth's Historia Regum Britanniae and Its Early Vernacular Versions* (Berkeley and Los Angeles, 1950), pp. 433-4; J. Gillingham, *The English in the Twelfth Century: Imperialism, National Identity and Political Values* (Woodbridge, 2000), p. 20.

<sup>6</sup> *Geoffrey of Monmouth: The History of the Kings of Britain*, ed. M. D. Reeve, trans. N. Wright (Woodbridge, 2007), p. 4.

<sup>7</sup> Tatlock, *Legendary History of Britain*, p. 422; Gillingham, *English in the Twelfth Century*, p. 25.

particularly in England and northern France. That the work survives in 217 manuscripts testifies to its enormous popularity during the medieval and early modern periods.<sup>8</sup> Greater still, however, was the vast literary and historiographical tradition to which the *Historia* gave rise. For centuries, Geoffrey's pseudo-history of the Britons stimulated the minds of writers across the Francophone world, generating innumerable derivative works of poetry and prose. It was not without justification, therefore, that the eminent Galfridian scholar, J. S. P. Tatlock, declared that '[i]f any single European work has been more influential over a long stretch of time than the early twelfth century Geoffrey of Monmouth's *History of the Kings of Britain*, I do not know what it is'.<sup>9</sup>

About the author of the *Historia*, remarkably little is known. Throughout the work, he referred to himself as Geoffrey 'of Monmouth' (*Monemutensis*), which would suggest some connection with Monmouth, Wales. To most of his contemporaries, however, he was known as Geoffrey *Arthur* (*Galfridus Arturus*),<sup>10</sup> which was presumably an eke-name — rather than a patronymic name — given on account of his most famous character.<sup>11</sup> There is no record of Geoffrey's birth, but it would seem that he died in 1155.<sup>12</sup> He identified as a Briton but of which variety — Breton, Cornish, or Welsh — has long been a point of dispute among both historians and literary scholars. Geoffrey evidently spent a good portion of his life in and around Oxford, where for a time he was probably a canon of St George's college.<sup>13</sup> In 1152, he was consecrated bishop of St Asaph, and appears to have held that office until his death.<sup>14</sup> Geoffrey penned numerous other pseudo-historical works, but none was as successful as the *Historia*.

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<sup>8</sup> Reeve and Wright, *History of the Kings of Britain*, p. vii.

<sup>9</sup> J. S. P. Tatlock, 'Geoffrey of Monmouth's Motives for Writing His *Historia*', *Proceedings of the American Philosophical Society* 79 (1938), 695-703 (p. 695).

<sup>10</sup> See Tatlock, *Legendary History of Britain*, pp. 438-9.

<sup>11</sup> As Neil Wright has argued, it is unlikely that Arthur was a patronymic because it was not written in the genitive: Wright, *Geoffrey of Monmouth I*, p. x; see also, Tatlock, *Legendary History of Britain*, p. 439.

<sup>12</sup> Tatlock, *Legendary History of Britain*, p. 443.

<sup>13</sup> *Ibid.*, pp. 441-2.

<sup>14</sup> *Ibid.*, p. 441.



It is useful at this juncture to provide an overview of the contents of the *Historia*. Geoffrey's narrative begins on the Italian peninsula, shortly after the fall of Troy, with Brutus, the great-grandson of the famous Aeneas. After inadvertently killing his father, the exiled Brutus travels to Greece, where he finds that hundreds of his fellow Trojans have been enslaved by King Pandrasus. Having liberated his compatriots from Greek bondage, he and they set sail for a land 'beyond the kingdoms of Gaul ... surrounded by the sea' on the advice of the goddess Diana.<sup>15</sup> After a long journey, the Trojan refugees happen upon the island of Albion, which is abandoned save for a few giants; Brutus renames it Britain after himself. On the banks of the Thames, he establishes a city called New Troy (later London). After ruling for some twenty-four years, Britain's eponymous first king dies. His island monarchy is subsequently divided among his three sons: Locrinus, the eldest, receives the region called Loegria (later England); Kamber receives the region called Kambria (later Wales); and Albanactus, the youngest, receives the region called Albania (later Scotland).

The reign of Arthur, occurring some 1650 years after that of Brutus, represents the apogee of the *Historia*. Following the death of his father, Uther Pendragon, Arthur is crowned king of the Britons at Caerleon. The young monarch soon declares war on the Saxons, who by this time control all of the island north of the Humber. Before long, Arthur vanquishes the Germanic invaders, killing 470 of them with his own sword, Caliburnus, and gains dominion over all Britain. Subsequently, he conquers Ireland and Iceland, following which the kings of Gotland and the Orkneys voluntarily submit to his overkingship. Arthur then subjugates Norway, Denmark, and Gaul. Britain becomes the wealthiest and most sophisticated of kingdoms. Later, the Roman procurator, Lucius Hiberius, writes to Arthur, demanding that he pay tribute to the republic. In response, the British king assembles a large army and goes to war against the Romans. Following a bloody battle in Gaul, Arthur triumphs over Hiberius, who dies from a

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<sup>15</sup> Reeve and Wright, *History of the Kings of Britain*, p. 20.

lance wound. Arthur begins to march on Rome when he learns that his nephew, Modred, has usurped the British crown. Arthur returns to Britain to confront Modred, who has recruited soldiers from among the Germanic tribes and allied himself with the Scots, Picts, and Irish. Arthur defeats his nephew and his army, but sustains a mortal injury in the process. He is taken to the isle of Avallon. The British crown passes to Constantinus.

The *Historia* concludes by narrating the largely inglorious reigns of a succession of post-Arthurian monarchs. Constantinus dies and is buried in the stone circle known as Stonehenge. His violent nephew, Aurelius Conanus, then becomes king of the Britons. He in turn is succeeded by Vortiporius, who repels a Saxon invasion. The most handsome Malgo then accedes to the throne. He distinguishes himself in battle, but displeases God by committing the sin of sodomy. Malgo is followed by Kareticus, a ruler whose love for civil war is great. Gormundus, king of the Africans, senses Britain's internal disunity, and invades the island from Ireland with the help of the Saxons. Kareticus retreats across the Severn into Wales, forfeiting his insular dominion. Gormundus of Africa then gifts Loegria to the Saxons. Later, the British make Caduan their king, who manages to secure peace with the Saxons. Caduan is succeeded by his son, Caduallo. Caduallo agrees to allow his childhood friend, Edwinus, king of Northumbria, to wear a crown. Later, however, the British king repudiates the agreement on the advice of his counsellors, who remind their master that custom dictates that the island have a single crowned head at any one time. When a furious Edwinus declares that he will wear a crown with or without Caduallo's permission, war ensues. After enduring heavy losses, Caduallo solicits the help of Salomon, king of the Armorican Britons, who enquires as to how such a valiant race could have been driven from their homes by a horde of barbarians. Caduallo explains that, in recent years, the Britons have been led by unworthy men given to 'immorality unheard of even among the pagans',<sup>16</sup> but that he is determined to turn the tide. Subsequently, Caduallo returns to Britain

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<sup>16</sup> *Ibid.*, p. 268.

with ten thousand of Salomon's knights, whom he uses to defeat and kill Edwinus and his army. He then proceeds to conquer each English province until he achieves mastery of the whole island. After reigning for forty-eight years, Caduallo dies, and the British crown passes to his son, Cadualadrus. Following twelve years of peaceful rule, Cadualadrus falls ill. The island then descends into civil war, which is soon accompanied by a terrible famine and a deadly plague. Cadualadrus and the few survivors flee overseas. Later, when the king is preparing a fleet to retake Britain, an angelic voice warns him that God does not wish the Britons to rule any longer. But the heavenly emissary soothes the refugee monarch by telling him that his people will one day recover the crown of the island, just as Merlin foretold. Britain now lies uninhabited, at the mercy of the Saxons.

Geoffrey's motives for writing the *Historia* have been the subject of much debate. Some scholars have argued that the work was intended to be a parody of twelfth-century historiography;<sup>17</sup> others, a medieval chivalric romance;<sup>18</sup> others still, a political treatise on the dangers of civil war.<sup>19</sup> Even among those who have insisted on seeing the *Historia* as a sober – if unreliable – history, there has been a good deal of disagreement about whether it was written for the Anglo-Normans, the Bretons, or the Welsh.<sup>20</sup> A work of such complexity admits a wide range of plausible interpretations. Nevertheless, arguably the most persuasive account of what Geoffrey was up to was offered some seventy years ago. In his mammoth study on the topic, *The Legendary History of Britain*, Tatlock argued that the *Historia* was a product of 'racial patriotism'.<sup>21</sup> As he explained, Geoffrey was a proud Briton, probably of Breton rather than

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<sup>17</sup> C. Brooke, 'Geoffrey of Monmouth as a Historian', in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney on His 70th Birthday*, ed. C. N. L. Brooke, D. E. Luscombe, G. H. Martin and D. Owen (Cambridge, 1976), pp. 77-91; V. I. J. Flint, 'The *Historia Regum Britanniae* of Geoffrey of Monmouth: Parody and Its Purpose. A Suggestion', *Speculum* 54 (1979), 447-68.

<sup>18</sup> E. van Beurden Jones, *Geoffrey of Monmouth: 1640-1800* (Berkeley, 1944); Tatlock, *Legendary History of Britain*, p. 425 n. 16.

<sup>19</sup> W. F. Schirmer, *Die frühen Darstellungen des Arthurstoffes* (Köln, 1958). The *Historia* was of course composed during the civil war known as the "anarchy".

<sup>20</sup> For a useful summary of the historiographical debate, see Gillingham, *English in the Twelfth Century*, pp. 21-4.

<sup>21</sup> Tatlock, *Legendary History of Britain*, p. 427.

Welsh descent, who sought to endow his people – a people which had little sense of its own past – with an illustrious national history.<sup>22</sup> By the early twelfth century, national histories were fast becoming a mark of civilisation. As Geoffrey's contemporary, Henry of Huntingdon, put it, only brutes 'neither know nor wish to know anything about their origins or their history'.<sup>23</sup> In the decades leading up to 1138, numerous grand national histories, including of England, France, Anjou, Flanders, and Normandy, were produced.<sup>24</sup> The *Historia* should, therefore, be seen as part of a larger historiographical movement that swept western Europe during the early twelfth century.

The English were initially highly suspicious of the *Historia*. After all, Geoffrey's was a history of the Britons, a people ethnically distinct from either the Anglo-Saxons or Anglo-French. Indeed, the British History, in its original form, was regarded not merely as un-English but as anti-English. As John Gillingham has been at pains to stress, whatever later became of it, the *Historia* for much of the twelfth century belonged to the Britons and not to the English.<sup>25</sup> There were also serious concerns about Geoffrey's reliability as a historian. Many aspects of the *Historia* were firmly at odds with Bede's *Historia ecclesiastica gentis Anglorum* (c. 731),<sup>26</sup> a work which had done much to shape how the English viewed their own past. William of Newburgh, for one, had nothing but contempt for Geoffrey's discombobulating pseudo-history. In the preface to his *Historia rerum Anglicana* (c. 1198),<sup>27</sup> William launched an entertainingly vicious assault on the *Historia*, and urged his readers to pay no attention to tall tales of British kings:

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<sup>22</sup> 'All the evidence goes to show that Geoffrey was of Breton and not Welsh paternity. Much the strongest point is in the *Historia*, his strong and steady favoritism for the Bretons and contempt for the Welsh ... Bretons coming with the new conquerors would be likely to have such a feeling to the conquered and seemingly barbarous remnant of Welsh Celts. Further one may remember the familiarity with Breton geography (and personal names) ... Geoffrey's own Norman name suggests a Breton rather than a Welshman ... It is doubtful if he would have been given a Welsh see, especially one regarded as an English outpost, had he been a Welshman, even a well-affected Welshman': *ibid.*, p. 443.

<sup>23</sup> Quoted in Gillingham, *English in the Twelfth Century*, p. 25.

<sup>24</sup> Tatlock, *Legendary History of Britain*, p. 429.

<sup>25</sup> Gillingham, *English in the Twelfth Century*, p. 23.

<sup>26</sup> *The Venerable Bede's Ecclesiastical History of England: Also the Anglo-Saxon Chronicle: With Illustrative Notes, A Map of Anglo-Saxon England, and a General Index*, ed. J. A. Giles (London, 1847).

<sup>27</sup> *The Church Historians of England*, ed. J. Stevenson, 5 vols (London, 1853-8), IV, ii, 395-672.

For the purpose of washing out those stains from the character of the Britons, a writer in our times has started up and invented the most ridiculous fictions concerning them, and with unblushing effrontery, extols them far above the Macedonians and Romans. He is called Geoffrey, surnamed Arthur, from having given, in a Latin version, the fabulous exploits of Arthur, drawn from the traditional fictions of the Britons, with additions of his own, and endeavored to dignify them with the name of authentic history; moreover, he has unscrupulously promulgated the mendacious predictions of one Merlin, as if they were genuine prophecies, corroborated by indubitable truth, to which also he has himself considerably added during the process of translating them into Latin ... Now, since it is evident that these facts are established with historical authenticity by the venerable Bede, it appears that whatever Geoffrey has written, subsequent to Vortigern, either of Arthur, or his successors, or predecessors, is a fiction, invented either by himself or by others, and promulgated either through an unchecked propensity to falsehood, or a desire to please the Britons, of whom vast numbers are said to be so stupid as to assert that Arthur is yet to come, and who cannot bear to hear of his death ... Since, therefore, the ancient historians make not the slightest mention of these matters, it is plain that whatever this man published of Arthur and of Merlin are mendacious fictions, invented to gratify the curiosity of the undiscerning ... Therefore, let Bede, of whose wisdom and integrity none can doubt, possess our unbounded confidence, and let this fabler, with his fictions, be instantly rejected by all.<sup>28</sup>

However, not all Englishmen were so confident that Arthur and his prophesied resurrection posed no threat. For minds less discerning than William of Newburgh's, the prospect of the great king returning to re-establish his famous island monarchy was a deeply disconcerting one, as it surely spelt the end of the kingdom that had been forged out of the ashes of insular disunity by the mighty Æthelstan (924–39).<sup>29</sup> Nevertheless, in time the gravitational pull generated by Geoffrey's epic proved too powerful for even the wary English to resist.

From the late twelfth century, the English began incorporating the British History into accounts of their own national past.<sup>30</sup> This process began with the First Variant Version of the *Historia*, which was composed by an unknown author between 1138 and 1155.<sup>31</sup> The differences

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<sup>28</sup> *Ibid.*, 398-9.

<sup>29</sup> Davies, *First English Empire*, p. 40; Gillingham, *English in the Twelfth Century*, p. 23.

<sup>30</sup> Gillingham, *English in the Twelfth Century*, p. 22; Davies, *First English Empire*, pp. 48-9; Mason, 'Anglo-Scottish Imperialism', p. 163.

<sup>31</sup> Wright, *Geoffrey of Monmouth II*, p. civ.

between the First Variant Version and the original are legion, but two changes — or rather, two sets of changes — are particularly relevant to the present discussion. The first is the mysterious author’s attempt — not wholly successful — to reconcile Geoffrey’s narrative with Bede’s.<sup>32</sup> The second is the writer’s systematic effort to equate “Britain” with “England”. In the original version of the *Historia*, Britain denoted the entire island; in the First Variant Version, it referred only to the southern part of it.<sup>33</sup> Modifying Geoffrey’s chronology and terminology was a means of exercising control over the British History and subsuming it within established understandings of the English past. This Anglicising trend became more pronounced with Wace’s *Roman de Brut* (1155),<sup>34</sup> a work composed in Anglo-Norman octosyllabic verse, which took the First Variant Version as its primary source. The *Roman de Brut* in turn served as the foundation for the Prose *Brut* (c. 1300),<sup>35</sup> which, as Alan MacColl has noted, ‘became the most widely copied secular text of the late Middle Ages in England, and between the fourteenth and early sixteenth centuries ... was the standard history of England’.<sup>36</sup> These decidedly Anglocentric works formed the cornerstones of a neo-Galfridian historiographical tradition that fundamentally reoriented the British History.

Integral to the neo-Galfridian historiographical tradition was the “passage of dominion”. To the extent that this concept featured at all in the original *Historia*, it represented nothing more than the temporary transfer of power to the Saxons. Indeed, in the closing pages of Geoffrey’s work, it was prophesied that the Britons would one day expel the Germanic invaders and recover the insular sovereignty that they had enjoyed for nearly two millennia.<sup>37</sup> With the Anglicised version of the British History, however, the “passage of dominion” took on new meaning and

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<sup>32</sup> *Ibid.*, pp. xiv-xv; Leckie, *Passage of Dominion*, pp. 102-19.

<sup>33</sup> MacColl, ‘Meaning of Britain’, pp. 253-5.

<sup>34</sup> *Wace’s Roman De Brut: A History of the British: Text and Translation*, ed. J. Weiss (Exeter, 2002); MacColl, ‘Meaning of Britain’, pp. 255-6.

<sup>35</sup> F. W. D. Brie, *The Brut; Or The Chronicles of England: Edited From MS. Rawl. B 171, Bodleian Library, &c.* (London, 1906).

<sup>36</sup> MacColl, ‘Meaning of Britain’, p. 254.

<sup>37</sup> Wright, *Geoffrey of Monmouth I*, p. 146.

importance. In fact, it became the centrepiece of the entire narrative. Replete with teleological thinking, the neo-Galfridian historiography portrayed the British History as an inexorable march towards English hegemony. R. R. Davies called this the ‘smooth grafting of the glorious history of Britain’s past to the saga of English victory’.<sup>38</sup> Fittingly, these works of poetry and prose characterised the transfer of power as permanent; the author of the First Variant Version was careful to dispel the notion of an Arthurian resurrection, reassuring his readers that no Briton would ever again wear the crown of the kingdom.<sup>39</sup> The neo-Galfridian tradition transformed Geoffrey’s *Historia* into a magnificent prehistory of the Anglo-Saxon and Anglo-French peoples, and used the concept of the “passage of dominion” to anoint the English the rightful successors of the Britons. In time, the political, ethnic, cultural, and geographical differences represented by the terms “Britain” and “England” were forgotten as Brutus and Arthur became as much a part of the English past as Edward the Confessor or William the Conqueror. Sufficiently Anglicised, the British History could now safely be used in support of contemporary English political programmes.

## 1.2 The Concept of the Sempiternal Crown

This, the second of two conceptual sections, provides an overview of the constitutional thought that underpinned the succession claim. Section 1.1 summarised the historical content of the particular form of historico-legal argument with which the present thesis is concerned; Section 1.2 will outline the legal. Central to the juristic aspect of the succession claim was the idea that regalian lands and rights were inalienable. The argument assumed, in other words, that property which belonged to the kingdom – as opposed to the king in his private capacity – could never

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<sup>38</sup> Davies, *First English Empire*, p. 41.

<sup>39</sup> Wright, *Geoffrey of Monmouth II*, pp. 190-1; Davies, *First English Empire*, p. 40.

truly be lost. Even those lands and rights which had been forfeited in the conventional sense of the term were said to remain the kingdom's on a *de jure* basis. According to the logic of the succession claim, decades, centuries, and even millennia could pass, but English kings remained entitled – and, indeed, obliged – to recover that which had been lost by their predecessors. In many ways, this thesis is a story about those who claimed to be preventing and revoking *de facto* alienations of regalian property.

This type of constitutional thought was existentially dependent on the concept of the royal office (*officium regis*) and on its most potent symbolic representation, the crown (*corona*). The crown came to be understood as sempiternal, and therefore above and beyond any natural person. This coincided with the idea that the king – who, like all earthly beings and things, was condemned to wither and die – was but the temporary occupant of an immortal office. The concept of the crown served, therefore, to reconfigure the role of the monarch; he who wore the crown was no longer regarded as the owner (*dominus*) of the kingdom but as the guardian (*curator*). And as guardian, the king had a responsibility to preserve, for his successors to the royal office and for the realm as a whole, the regalian lands and rights over which he transitorily exercised authority. As will be seen in Chapter 2, the duty to prevent alienations and to revoke those which had occurred in the past was eventually codified in the English coronation oath. This section explores in brief how, over the course of the long thirteenth century, the concept of the sempiternal crown earned a permanent place in English political thought.

Before the reign of Henry II, little distinction was made between the king and the crown. The important constitutional development came about as a result of administrative reforms enacted in the latter part of the twelfth century. When the first Angevin king of England acceded to the throne in 1154, the royal demesne (*dominica regis*) was in a greatly diminished state. The policies pursued by the monarch's Anglo-Norman predecessors – particularly William Rufus, Henry I, and Stephen – had seen regalian lands and rights sold off in order to replenish the royal



coffers and consolidate alliances with powerful nobles. These alienations, which were extensive in nature, had generated income and security for the crown, but at the cost of shrinking the royal demesne considerably.<sup>40</sup> Henry II, a king whose instincts were to strengthen and centralise royal authority, took it upon himself on numerous occasions to rescind the alienations of English rulers past. To take a famous example from the first year of his reign: in 1155, the monarch reclaimed certain ‘towns, castles, and manors which used to belong to *the crown* of the realm’ (*urbes, castella, villas quae ad coronam regni pertinebant*).<sup>41</sup> Here, the crown as an abstraction — as an institution which exceeded all natural persons, including the king, in importance and duration — was used to justify the revocations. It would be wrongheaded to imagine that Henry’s resumption of the royal demesne was comprehensive,<sup>42</sup> or that it was guided by a sophisticated theory of inalienability.<sup>43</sup> Nevertheless, the policy, such as it was, did much to establish the notion that regalian lands and rights attached not to the king but to the crown.

The advent of the non-alienation clause of the English coronation oath in 1216 imbued the concept of the crown with new constitutional connotations.<sup>44</sup> It is worth noting from the outset that this topic will be treated at length in Chapter 2, and that the present paragraph is intended to serve only as an entrée to that larger discussion. At Henry III’s enthronement ceremony, held at Gloucester Cathedral on 28 October 1216, new Romano-canonical concepts entered the coronation oath. Previously, English kings had sworn a tripartite promise upon acceding to the throne.<sup>45</sup> Henry’s oath, however, consisted of four articles: the customary three, together with a

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<sup>40</sup> R. S. Hoyt, *The Royal Demesne in English Constitutional History, 1066-1272* (Ithaca, 1950), pp. 84-92.

<sup>41</sup> *Select Charters and Other Illustrations of English Constitutional History From the Earliest Times to the Reign of Edward the First*, ed. W. Stubbs, 4<sup>th</sup> edn (Oxford, 1881), p. 128; E. H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (New Jersey, 1970), p. 343.

<sup>42</sup> Hoyt, *The Royal Demesne*, pp. 95-6.

<sup>43</sup> P. N. Riesenber, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956), p. 100.

<sup>44</sup> Kantorowicz, *King’s Two Bodies*, p. 359.

<sup>45</sup> The earliest surviving record of the tripartite oath is from Edward I’s coronation in 1274: ‘*Ego, Edwardus, filius et heres Henrici Regis, profiteor, confiteor, et promitto, coram Deo et Angelis ejus, amodo et deinceps legem et justitiam, pacemque Sancte Dei Ecclesie, populoque michi subjecto [sine] respectu [servare] sicut cum consilio fidelium nostrorum invenire poterimus; Pontificibus quoque Ecclesie Dei condignum et canonicum honorem exhibere ut ab Imperatoribus et Regibus ecclesiis sibi commissis collata sunt inviolabiliter conservare, Abbatibus et vasis dominicis congruum honorem secundum fidelium nostrorum [consilium] sicut Deus me adjuvet et Sancta Dei*

new (uncodified) non-alienation clause. The precise content of this clause is unknown, but the best evidence would suggest that the young monarch was required to undertake not to alienate regalian lands and rights, and to revoke those alienations which had occurred under his predecessors.<sup>46</sup> The reformulated coronation oath stressed the custodial role of the king, and helped establish the idea that the royal person was but the temporary occupant of the sempiternal royal office, represented symbolically by the crown. Alienation, which had been regarded as essential – and even as desirable – under the Anglo-Norman rulers of England, was now deemed antithetical to kingship.

At numerous junctures throughout his thirty-five-year reign, Edward I used the concept of the crown in service of his foreign and domestic policy objectives. In the capable hands of the Plantagenet king, the notion of the perpetual and impersonal office was a formidable tool for expanding royal power. Two examples should suffice here, but more will be provided in Chapter 3. Before acceding to the throne, Edward had gifted the vill of Stanford to the earl of Surrey. Once monarch, however, he chose to reclaim the land on the grounds that it was regalian property. Gilbert de Thornton, who pleaded on the king's behalf, argued that because the vill belonged to the English crown, Edward had had no right to alienate it as he did. The lawyer asserted, moreover, that because the king was now the sworn custodian of the crown, he could not be bound by agreements which he had made when he was 'of another nature ... and like another person' (*alterius condicionis ... et quasi altera persona*).<sup>47</sup> The earl's protestation that Edward was 'one and the same person' (*una et eadem persona*) before and after assuming the royal office was dismissed.<sup>48</sup> A few years later, the king again invoked the concept of the crown,

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*Evangelia*: B. Williams, 'The Lost Coronation Oath of King Edward I: Rediscovered in a Dublin Manuscript', in *Medieval Dublin IX*, ed. S. Duffy (Dublin, 2009), pp. 84-90 (p. 84). This is likely the same oath that John and Henry III swore at their coronations.

<sup>46</sup> For this evidence, see Chapter 2.

<sup>47</sup> F. Pollock and F. W. Maitland, *The History of English Law Before the Time of Edward I*, 2 vols, 2<sup>nd</sup> edn (Cambridge, 1898) i, 524 (present author's translation); see also, M. Prestwich, *Plantagenet England, 1225-1360* (Oxford, 2005), p. 35.

<sup>48</sup> Pollock and Maitland, *History of English Law*, p. 524 (present author's translation).

this time in a letter to Pope Gregory X. Writing in the summer of 1275, Edward told the pontiff that he was unable to pay “feudal” tribute (*census*) to Rome, for he was restrained (*astrecti*) from doing so by the oath he had sworn at his coronation (*jurejurando in coronacione nostra*), which required him to preserve unimpaired (*servabimus illibata*) the rights of his crown (*diadema*).<sup>49</sup>

Edward’s decision to revise the councillors’ oath in 1294 also played an important role in stimulating consciousness of the crown. By the late thirteenth century, it had long been customary for councillors – that is, those who were employed in the royal court and/or royal household<sup>50</sup> – to swear an oath of allegiance to the king. The earliest surviving record of the councillors’ oath dates to the reign of Henry III. This septempartite pledge, which was also used throughout the majority of Edward’s reign, imposed very few obligations with respect to safeguarding regalian property.<sup>51</sup> More than anything else, councillors swore allegiance to the *person* of the king. However, when the oath was reformulated in 1294, new importance was placed on the *office* of the king. The shift in emphasis was perhaps most perceptible in the revised fourth article, which effectively translated the non-alienation clause of the coronation oath to the councillors’ oath: ‘And that your pains, aid, and counsel and all your power, you will give and apply, to guard and maintain and preserve and restore the rights of the king and *of the crown*, where you can without wrongdoing’.<sup>52</sup> The modified promise ought to be seen as yet another attempt by Edward to use the concept of the crown to bolster royal power.<sup>53</sup> Although the councillors’ oath was sworn by only a minority of the leading men of the realm, the baronage as a whole seems to have identified itself with the pledge for reasons that are not entirely clear.<sup>54</sup>

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<sup>49</sup> *Parliamentary Writs*, ed. F. Palgrave, 2 vols (London, 1827-34) i, 381-2; see also A. M. Spencer, *Nobility and Kingship in Medieval England: The Earls and Edward I, 1272-1307* (Cambridge, 2014), p. 54; Kantorowicz, *King’s Two Bodies*, pp. 361-2.

<sup>50</sup> J. F. Baldwin, *The King’s Council in England During the Middle Ages* (Oxford, 1913) p. 73; Spencer, *Nobility and Kingship*, p. 53.

<sup>51</sup> Spencer, *Nobility and Kingship*, pp. 54-5.

<sup>52</sup> ‘*E qe votre peyne eide e consail e tot votre poair dorrez e metterez as droitures le Roy et de la corone garder et maintenir sauver et repeller par la ou vous porrez, sanz tort faire*’: Baldwin, *The King’s Council*, p. 348.

<sup>53</sup> Spencer, *Nobility and Kingship*, p. 55.

<sup>54</sup> See H. G. Richardson, ‘The English Coronation Oath’, *Speculum* 24 (1949), 44-75 (p. 51 n. 42).

This circumstance ensured that the changes enacted during 1294 had wide implications for English constitutional thought, and it was not long before the reformulated councillors' oath was put into practice. Indeed, when Edward's barons wrote to Pope Boniface VIII in 1301 on the matter of English overlordship of Scotland – a subject which will be treated fully in Chapter 3 – they declared that they would uphold their oaths to protect the rights of the crown, even if the king would not uphold his own.<sup>55</sup> The magnates, too, were claiming to be the guardians of regalian property.

It was, of course, possible for the concept of the crown to be used against the monarch.<sup>56</sup> This is what occurred at the beginning of the reign of Edward II when the English barons availed themselves of the infamous “doctrine of capacities”.<sup>57</sup> Exploiting the distinction between king and crown which had been drawn explicitly in the revised councillors' oath, the leading men of the realm declared that they owed their allegiance more to the royal office than to the royal person:

Homage and the Oath of Allegiance is more by reason of the Crown, than by reason of the Person of the King, and it bindeth itself more unto the Crown than unto the Person ; and this appears in that before the Estate of the Crown hath descended, no Allegiance is belonging to the Person ; wherefore if the King by chance be not guided by Reason, in right of the Crown, his liege Subjects are bound by the Oath made to the Crown to guide the King and the Estate of the Crown back again by reason, and otherwise the Oath would not be kept. Now were it to be asked, how they ought to guide the King ? Whether by Course of Law, or by Violence ? By Course of Law a Man will not be able to get Redress, for he will have no Judges but such as are the King's, in which case if the Will of the King be not according to Reason, he certainly will have only Error maintained and confirmed ; Wherefore it behoveth, in order to save the Oath, that when the King will not redress the matter and remove that which is hurtful to the People at large, and prejudicial to the Crown, it is to be determined, that the thing be removed by Violence, for He is bound by his Oath to govern the People and his Liege Subjects, and his Liege Subjects are bound to govern in Aid of Him, and in his Default.<sup>58</sup>

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<sup>55</sup> See *Foedera*, I, ii, 926-7.

<sup>56</sup> Prestwich, *Plantagenet England*, pp. 35-6; Spencer, *Nobility and Kingship*, p. 55.

<sup>57</sup> See J. C. Davies, *The Baronial Opposition to Edward II: Its Character and Policy: A Study in Administrative History* (Cambridge, 1918); Kantorowicz, *King's Two Bodies*, pp. 364-72.

<sup>58</sup> *Statutes of the Realm*, ed. A. Luders, 11 vols (London, 1810), i, 182.

That the “doctrine of capacities” was repudiated as treasonous shortly thereafter should not distract from fact that it arose in the first place.<sup>59</sup> By 1308, the concept of the sempiternal crown was so embedded in English political thought that the baronial class was able to prioritise its loyalty to the permanent institution over its loyalty to the temporary king. It would not be until the late Tudor period that lawyers would speak of the royal office as a corporation sole or as one of the king’s “two bodies”,<sup>60</sup> but the key elements of each of these expressions existed fully formed by the end of the long thirteenth century.

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This chapter has provided an account of the complex synthesis of historiographical and constitutional thought that underpinned the succession claim. The intellectual foundations of that historico-legal argument lay, on the one hand, in the English appropriation of Geoffrey of Monmouth’s *Historia Regum Britanniae* and its successor works and, on the other hand, in the emergence of the concept of the royal office in English constitutional theory. Integral to the past-oriented aspect of the historico-legal argument was the idea that the English were the political, cultural, and geographical heirs to the British. Central to the juristic aspect of the succession claim was the idea that property which belonged to the kingdom — as opposed to the king in his private capacity — could never truly be lost. Together these elements — which, as will be seen in the next chapter, were brought together for the first time during the early thirteenth century — gave rise to the notion of a single inalienable royal office stretching back to the time of Brutus. The next four chapters of this thesis will demonstrate how the succession claim — undoubtedly one of the most

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<sup>59</sup> Kantorowicz, *King’s Two Bodies*, p. 368.

<sup>60</sup> See generally, *ibid.*; F. Maitland, ‘The Corporation Sole’, *Law Quarterly Review* 16 (1900), 335-354.

remarkable achievements in the history of English political thought — was deployed down the centuries in support of a wide range of political programmes.

# Chapter 2

The Johannine Moment, c. 1210

The Johannine Moment – which marks the beginning of the intellectual tradition under investigation – argues that the succession claim was deployed for the very first time in service of the English baronage’s resistance to King John during the early thirteenth century. This chapter will examine how this form of legitimation was used to advocate constitutional change in the years leading up to *Magna Carta* (1215). At a secondary level of analysis, this chapter will pay special attention to those synchronic contexts which shed new light on how English kingship grew increasingly secular and contractual in nature during the late medieval period. It will also examine the posthumous influence that forms of political thought developed in the reign of John may have had in shaping the non-alienation clause of the English coronation oath.

That the reign of John witnessed enormous baronial discontent which culminated in the making of *Magna Carta* is a historiographical commonplace. The seventeen or so years that Lackland – as the monarch had been known during his youth – spent on the English throne have long been synonymous with tyrannical kingship. However, in many ways, John’s style of governance was little different from that of his father, Henry II, or his brother, Richard I. Indeed, many contemporaries believed that autocracy was in his blood. The chronicler, Gerald of Wales (c. 1146–c. 1223), famously called John a tyrannous dog who had descended from a line of most vicious tyrants (*catulum tyrannicum, cruentissimis a tyrannis parentaliter exortum*).<sup>1</sup> However much John’s harsh fiscal policy and particularly disagreeable personality may have contributed to the revolt of 1215,<sup>2</sup> it is important to realise that the roots of the crisis ran far deeper than his reign alone. As Nicholas Vincent has argued, the Great Charter of the Liberties was not a response to a particular king so much as it was a response to an entire tradition of Angevin kingship.<sup>3</sup> The baronage charged the Angevins – those who originated from Anjou, France –

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<sup>1</sup> *Giraldus Cambrensis: De Instructione Principum: Libri III*, ed. J. S. Brewer (London, 1846), p. 178.

<sup>2</sup> R. V. Turner, *King John: England’s Evil King?* (Gloucestershire, 2014), p. 140.

<sup>3</sup> N. Vincent, *Magna Carta: A Very Short Introduction* (Oxford, 2012), p. 36.



with failing to observe the “ancient” laws and customs of the realm, and with breaking with the practice of English rulership which had been upheld by the great monarchs of the past, including and especially Edward the Confessor.

The dispute between John and his barons was predicated on fundamentally divergent conceptions of kingship. The magnates of early thirteenth-century England advocated a theory of monarchy that has often been described by historians as “feudal”.<sup>4</sup> Although this terminology is not without its shortcomings,<sup>5</sup> a suitable alternative has yet to be devised. The baronage was firmly of the view that although the king had a God-given right to rule England, he ought to do so only in accordance with the established laws and customs of the kingdom. They also believed that they, as the leading men of the realm, were entitled to advise the king on matters of state. Their vision, therefore, was one of the monarch governing as the first among equals in consultation with his magnates rather than as an exalted autocrat, unbridled by counsel or constitutional checks and balances. John, of course, had a very different conception of kingship. Ralph V. Turner’s seminal researches have demonstrated that the Angevin monarch’s theory of royal authority was essentially theocratic or sacral in nature.<sup>6</sup> Like his father and brother before him, John regarded himself as an imperial and quasi-divine figure to whom the laws that bound ordinary mortals did not apply. This cosmology was frequently reinforced by the Romanist utterances of the king’s numerous clerks, trained as they were in civil and canon jurisprudence.<sup>7</sup> John did not seek the advice of his barons — at least not in any meaningful way — because he believed that he alone ruled *Dei gratia* (by the grace of God) — a revealing appellation that had

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<sup>4</sup> ‘Historians today shun the word “feudalism”, invented in the 18<sup>th</sup> century as a pejorative term to describe the lordly exploitation of the lower classes that characterized pre-Revolutionary France or Russia. Nonetheless, “feudalism” remains a word that, if it did not exist, we would find it necessary to invent’: *ibid.*, p. 14.

<sup>5</sup> See generally, S. Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford, 1994).

<sup>6</sup> Turner, *King John*, p. 148; R. V. Turner, ‘King John’s Concept of Royal Authority’, *History of Political Thought* 17 (1996), 157-78 (pp. 158-9).

<sup>7</sup> Turner, *King John*, p. 148.

been added to the royal style by Henry II. These irreconcilable conceptions of kingship underpinned the revolt which would be resolved, albeit temporarily, at Runnymede in June 1215.

The collection of English laws known as the *Leges Anglorum* was produced several years prior to *Magna Carta*, at a time before baronial resistance had become baronial rebellion. Historians have been familiar with the treatise since F. Liebermann published his groundbreaking 1894 work, *Über die Leges Anglorum saeculo XIII, ineunte Londoniis collectae*.<sup>8</sup> However, to date, only selections of the early thirteenth-century manuscript have been edited and printed.<sup>9</sup> The two tracts under investigation in the Johannine Moment have received far more scholarly attention than has much of the rest of the *Leges Anglorum*. The reasons for this will soon become apparent. Nevertheless, the present work represents the first attempt to analyse systematically the rhetoric that was used to legitimate the *Leges Anglorum* author's pro-baronial political programme.

## 2.1 Two Tracts on Kingship: A Plea for Royal Self-Restraint

The *Leges Anglorum Londoniis Collectae* was a mammoth collection of English laws produced during the early thirteenth century. More a work of compilation than composition, it brought together a number of well-known legal treatises, including *Quadripartitus*,<sup>10</sup> the *Leges Henrici Primi*,<sup>11</sup> the *Leges Edwardi Confessoris*,<sup>12</sup> and various writings on the laws and customs of the city of London. The *Leges Anglorum* survives in six manuscripts.<sup>13</sup> Scholars are in general agreement

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<sup>8</sup> *Über die Leges Anglorum saeculo XIII, ineunte Londoniis collectae*, ed. F. Liebermann (Halle, 1894).

<sup>9</sup> *Ibid.*; *Die Gesetze der Angelsachsen*, ed. F. Liebermann, 3 vols (Halle, 1903-1916), i, 635 ff; F. Liebermann, 'A Contemporary Manuscript of the "Leges Anglorum Londoniis Collectae"', *English Historical Review* 28 (1913), 732-45.

<sup>10</sup> Liebermann, *Die Gesetze*, i, 529-46.

<sup>11</sup> *Leges Henrici Primi*, ed. L. J. Downer (Oxford, 1972).

<sup>12</sup> B. R. O'Brien, *God's Peace and King's Peace: The Laws of Edward the Confessor*, (Philadelphia, 1999), pp. 158-203.

<sup>13</sup> See *ibid.*, p. 206.

that the work came into existence sometime between 1199 and 1215.<sup>14</sup> A date in the upper range of that temporal span – c. 1210 – will be favoured here on the grounds of the collection’s conceptual links to *Magna Carta*. Indeed, Liebermann – arguably the foremost authority on the *Leges Anglorum* – described the work as ‘an early contemporary of Magna Carta’.<sup>15</sup> J. C. Holt likewise reckoned that the collection represented ‘[o]ne of the clearest expressions of the constitutional views which lay behind the Charter’.<sup>16</sup> In a similar vein, Walter Ullmann quite plausibly suggested that the portions of the document pertaining to common counsel influenced the creation of article 12<sup>17</sup> of the Great Charter of the Liberties.<sup>18</sup> About the author of the *Leges Anglorum*, almost nothing is known: he likely hailed from London, based on his numerous references to the city, and seems to have had some clerical and/or legal training.<sup>19</sup> Judging by the tenor of his writing, he was almost certainly part of, or commissioned by, the baronial resistance to King John. More can hardly be said about him.

The Johannine Moment is concerned with two particular tracts from the *Leges Anglorum*: the first, a statement on the duties of the king; the second, a papal rescript pseudonymously ascribed to Pope Eleutherius (sometimes given as Eleutherus or Eleuterus). Both of these were interpolated approximately midway through the *Leges Edwardi Confessoris*, into an entry on monarchical responsibilities, an entry which was immediately preceded by a

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<sup>14</sup> Felix Liebermann concluded that it was written within the years 1206 and 1210: Liebermann, *Leges Anglorum*, p. 91; Bruce R. O’Brien has dated the treatise to ‘between 1206-1215’: O’Brien, *God’s Peace and King’s Peace*, p. 118; Walter Ullmann judged that it was produced during the ‘first decade of John’s reign’: W. Ullmann, ‘On the Influence of Geoffrey of Monmouth in English History’, in *Speculum Historiale: Geschichte im Spiegel von Geschichtsschreibung und Geschichtsdeutung*, ed. C. Bauer, L. Boehm and M. Müller (Munich, 1965), pp. 257-76 (p. 260).

<sup>15</sup> Liebermann, ‘A Contemporary Manuscript’, p. 733; J. Jahner, *Literature and Law in the Era of Magna Carta* (Oxford, 2019), p. 111.

<sup>16</sup> J. C. Holt, *Magna Carta*, 3<sup>rd</sup> edn (Cambridge, 2015), p. 73.

<sup>17</sup> Article 12 of *Magna Carta* read ‘No scutage or aid is to be imposed in our kingdom except by the common counsel of our kingdom, unless for the ransoming of our person, and knighting of our first-born son, and for marrying, once, our first-born daughter, and for these only a reasonable aid is to be taken. Aids from the city of London are to be treated in like manner’: *The Magna Carta Project*, <[https://magnacarta.cmp.uea.ac.uk/read/magna\\_carta\\_1215/Clause\\_12](https://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/Clause_12)> [accessed: 01/11/2019].

<sup>18</sup> Ullmann, ‘Geoffrey of Monmouth in English History’, pp. 261-2; see also, W. Ullmann, *Principles of Government and Politics in the Middle Ages* (London, 1961), pp. 161-3.

<sup>19</sup> O’Brien, *God’s Peace and King’s Peace*, p. 118; Ullmann, ‘Geoffrey of Monmouth in English History’, p. 260; E. H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (New Jersey, 1970), p. 345.

section on murder fines ‘devised in the time of King Cnut’<sup>20</sup> and immediately followed by a section on the ruler’s ‘power of mercy over captives’.<sup>21</sup> The author of *Leges Anglorum* presumably hoped that the immensely popular *Leges Edwardi Confessoris*<sup>22</sup> would serve to carry his own ideas to a wide audience. As a point of comparison, the reader is invited to consult the ur-treatise’s much shorter tract – singular – on the duties of the king provided here in translation:

The king, moreover, who is the vicar of the highest King, was established for this, that he rule and defend the kingdom and people of the Lord and, above all, the Holy Church from wrongdoers, and destroy and eradicate evildoers. If not, moreover, he loses the name of king, as Pope John testifies, to whom Pippin and his son Charles, not yet kings but princes under the foolish king of the Franks, wrote asking if those who were content with just the name of king ought to remain kings of the Franks? He responded: “Those ought to be called kings who vigilantly defend and rule the church of God and His people,” echoing the royal psalmist’s saying: “He who works pride will not dwell in the midst of my house,” et cetera.<sup>23</sup>

It was in this passage of the *Leges Edwardi Confessoris* that the author of the *Leges Anglorum* saw an opportunity to make what would be his most famous stand against John’s kingship.

It is appropriate, at this juncture, to provide the full text in translation of the two *Leges Anglorum* tracts under investigation. The first of these bore the instructive, if inelegant, heading ‘On the law and the appendages to the crown of the kingdom of Britain and what the king’s office is’ (*De iure et de appendiciis corone regni Britannie et quod sit officium regis*):

The king, moreover, because he is the vicar of the highest king, was established for this: to honour and rule the earthly kingdom and the people of the Lord and above all else his holy church and to defend it from injury and to root out and eradicate and thoroughly destroy wrongdoers. Unless he does, the name ‘king’ will not agree with him and he loses the name ‘king’, as Pope John testifies, to whom Pippin and his son Charles, not yet kings but princes under the foolish king of the Franks, wrote asking if those content with only the name ‘king’ ought to remain kings of the Franks. To which was answered: “Those ought to be called ‘kings’ who vigilantly defend and rule the church of God and his people’, echoing

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<sup>20</sup> O’Brien, *God’s Peace and King’s Peace*, p. 175.

<sup>21</sup> *Ibid.*, pp. 176-7.

<sup>22</sup> The *Leges Edwardi Confessoris* survives in nineteen manuscripts: see *ibid.*, p. 205.

<sup>23</sup> *Ibid.*, pp. 175-7.

the royal psalmist's saying: 'He who works pride will not dwell in the midst of my house etc.' (Psalms 100:7).

Truly, the king ought to observe and defend, according to law, all lands and honours and all dignities and rights and freedoms of the crown of this kingdom in its entirety with all integrity and without abatement, to restore the kingdom's scattered and dispersed and lost laws to a pristine state and what is owed to all men. Truly, the universal and whole land and every island of the Western Sea all the way to Norway and all the way to Denmark pertain to the crown of this kingdom, and are of the appendages and dignity of the king and the kingdom, and is one monarchy and one kingdom, and was formerly called the kingdom of Britain, presently called the kingdom of the English. For such constitutes and establishes the metes and bounds, as are previously named, of the crown of this kingdom [wrote]<sup>24</sup> the lord Pope Eleutherius, with his sentence, who in the [one hundred and]<sup>25</sup> sixty-seventh year after Christ's passion first addressed the blessed crown of Britain and Christianity, by the inspiration of God, Lucius king of the Britons. Furthermore, the king ought to reign with due observance and by the judgment of the nobles of the realm. That is to say *ius* and *iustitia* ought to reign in the realm rather than corrupt will: *lex* is always what makes *ius*, for will, that is violence and force, is not *ius*. Truly, the king ought to fear and hold a special regard for God above all else and to preserve his mandates throughout his entire kingdom. Additionally, he ought to serve, maintain, preserve, rule and defend against all enemies the holy church of his kingdom with all integrity and freedom according to the constitutions of his fathers and predecessors, so that God is honoured before all others and is always before his eyes. Additionally, he ought to encourage good laws and appropriate customs, while expunging from the kingdom and dismantling altogether the false ones. He ought to make just judgements in the kingdom and maintain justice by the advice of the nobles of his kingdom. This in all respects the king ought personally to swear upon the sacred and holy relics before the kingdom and priesthood and clergy, the sacred holy gospels having been inspected and touched, before he is crowned by the archbishops and bishops of the kingdom. The king ought to have three slaves: luxury, avarice and lust, which if he holds as slaves he will reign well and illustriously in his kingdom. He ought to consider everything in advance and this is the king's because 'anger manages everything badly' (Statius, *Thebaid* X, 704–705), according to the Gospel, 'every kingdom divided against itself will be forsaken' (Luke 11:17). This is sufficient.<sup>26</sup>

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<sup>24</sup> Editor's insertion.

<sup>25</sup> Present author's insertion based on the emendation in London, BL, Cotton MS Claudius D II, fols. 32rb-33rb, which reads '*anno scilicet sexagesimo centesimo septimo post passionem Christi*'.

<sup>26</sup> K. Har, 'Feature of the Month: September 2015 - The Leges Edwardi Confessoris and Pope Eleutherius' Letter to Lucius, King of the Britons in the early thirteenth century,' *The Magna Carta Project*, <[https://magnacarta.cmp.uea.ac.uk/read/feature\\_of\\_the\\_month/Sep\\_2015](https://magnacarta.cmp.uea.ac.uk/read/feature_of_the_month/Sep_2015)> [accessed: 15/05/2018].

The reader will observe that the first part of the tract was taken almost verbatim from the *Leges Edwardi Confessoris*. What followed it, however, were the author's own words, informed as they were by various Biblical, legal, and historiographical sources.

The second interpolated tract served to elaborate on the themes of the first. It was entitled 'The letter of the lord Pope Eleutherius to Lucius, king of Britain' (*Epistola domini Eleutherii pape Lucio regi Britannie*):

[One hundred and]<sup>27</sup> sixty-nine years after Christ's passion, the lord Pope Eleutherius wrote to Lucius, king of the Britons, for the correction of the king and the nobility of the kingdom of Britain: You asked us to send to you Roman and imperial law which you wished to use in the kingdom of Britain. The Roman and imperial laws we can always reject. God's law we can by no means reject. Indeed you have recently received by divine mercy the law and faith of Christ in the kingdom of Britain. You hold under your control in your kingdom both scriptures; from those by God's grace, obtain law in accordance with the counsel of your kingdom and in accordance with that, by God's patience, rule your kingdom of Britain. You are the vicar of the true God in the kingdom. According to the psalmist king: 'The earth is the Lord's and the fullness of it the world and all those who inhabit it' (Psalms 23:1). And again according to the psalmist king: 'You have loved righteousness and hated iniquity therefore God your lord has anointed you, your God with the oil of gladness above your associates' (Psalms 44:8). And again according to the psalmist king: 'O God give the king your judgment and your justice to the king's son' (Psalms 71:2). Indeed he did not say the judgment or justice of the emperor. Indeed the king's sons and the people of the kingdom are Christian people who under your protection and peace carry on and remain in the kingdom. According to the gospel: 'In the same way that a hen gathers [her]<sup>28</sup> chicks beneath her' (Matthew 23:37). Truly, the *gentes* and people of the kingdom of Britain are your chicks whom if divided you ought to bring together as one in concord and peace to the faith and law of Christ and to the holy church, to revive, to cherish, to hold by the hand, to protect, to reign and always to defend from injustices and evil things and enemies. Concerning the kingdom 'whose king is a boy and whose princes eat in the morning' (Ecclesiastes 10:16), I do not call him king because of his small and minimum age but also because of his stupidity and iniquity and unsoundness. According to the psalmist-king: 'Men of blood and deceit halve their days etc.' (Psalms 54:24). By consuming we understand appetite; by appetite luxury, by luxury all disgrace and perversion and ill. According to King Solomon: 'Wisdom will not enter a malevolent spirit nor live in a body subordinated by sin' (Wisdom 1:4). One is

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<sup>27</sup> Editor's insertion.

<sup>28</sup> *Ibid.*

called king by ruling, not by a kingdom. You will be king while you rule well, but if you do not do this the name 'king' will not agree with you and you will lose the name 'king', God forbid. Omnipotent God grant you the kingdom of Britain so to rule in order that you may reign with Him in eternity, whose vicar you are in the aforementioned kingdom, who with the Father and Son and Holy Spirit lives and reigns God for infinite ages of ages. This is sufficient.<sup>29</sup>

So declared pseudo-Eleutherius.

The overarching purpose of these two tracts was to persuade John to curb what were widely regarded as his autocratic tendencies. From the *Leges Edwardi Confessoris*, the author appropriated the famous Isidorean *rex-recte* maxim, which held that a king merited the royal denomination (and corresponding status) only so long as he observed his moral duty to govern for the common good of his subjects.<sup>30</sup> More telling still, he argued that a good king places himself under, rather than above, the law: '*ius* and *iustitia* ought to reign in the realm rather than corrupt will: *lex* is always what makes *ius*, for will, that is violence and force, is not *ius*.'<sup>31</sup> This was doubtless a criticism of John's seemingly arbitrary use of what would later be called royal prerogative, a practice which found support in Ulpian's maxim, *quod placuit principi habet vigorem legis* (what pleases the prince has the force of law), and various other Roman-law concepts that were familiar to the Angevin court.<sup>32</sup> The author of the *Leges Anglorum* made his disdain for civil jurisprudence apparent on a number of occasions. In the first tract, he expressed a clear preference for "indigenous" British (English) law over "foreign" Roman law when he declared that a king 'ought to encourage good laws and appropriate customs, while expunging from the kingdom and dismantling altogether the false ones'.<sup>33</sup> In the second tract, he had pseudo-Eleutherius tell Lucius that the kings of Britain had no need for Roman or imperial law, for the island was endowed with its very own laws and customs. The pro-baronial writer wished John to

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<sup>29</sup> Har, 'Pope Eleutherius' Letter'.

<sup>30</sup> See generally, J. Canning, *A History of Medieval Political Thought, 300-1450*, 2<sup>nd</sup> edn (London and New York, 2005), p. 20.

<sup>31</sup> Har, 'Pope Eleutherius' Letter'.

<sup>32</sup> Turner, *King John*, p. 148

<sup>33</sup> Har, 'Pope Eleutherius' Letter'.

restore the “ancient” laws and customs of Britain (England) forthwith. But what exactly did these compel the king to do? They required him — in a concept which would be immortalised in article 12 of *Magna Carta*<sup>34</sup> — ‘to make just judgements in the kingdom and maintain justice *by the advice of the nobles of his kingdom*’ (*iudicium rectum in regno facere et iusticiam per consilium procerum regni sui tenere*).<sup>35</sup> In other words, the author of the *Leges Anglorum* was adumbrating a theory of monarchy that placed the Angevin king back among the leading men of the realm, where he would rule not as some exalted figure or minor deity but as *primus inter pares*.

Yet even as he repudiated John’s theocratic conception of kingship, the writer gestured towards traditions of sacral monarchy. It may reasonably be conjectured that this was an attempt to cloak seditious ideas in garb familiar to the Angevin court. That the author of the *Leges Anglorum* invoked the Isidorean *rex-recte* maxim — whose teleology assumed that a king was to his subjects as a guardian was to a minor — has been noted already. However, the shadow of theocratic thought was most perceptible in his use of the term ‘vicar of God’ (*vicarius Dei*) and its cognates. This denomination signified that royal power was conferred directly by God, and that the king, as the Lord’s deputy on earth, had a divine mandate to rule over, and care for, his subjects.<sup>36</sup> This was, in effect, to suggest that the monarch was himself Godlike. While it could fairly be argued that, with respect to his first tract, the author of the *Leges Anglorum* did no more than preserve the vicar-of-God idea which he happened upon in the *Leges Edwardi Confessoris*, the same charge could be sustained with respect to his second tract, which was entirely his own work. There, pseudo-Eleutherius repeated the age-old appellation in grander and more direct terms — ‘You are the vicar of the true God in the kingdom’ (*Uicarius uero Dei estis in regno*)<sup>37</sup> — and supplemented it with copious Biblical passages attesting to the tutorial role of the king. It would be wrong-headed to imagine that all of this represented a sustained attempt to arrive

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<sup>34</sup> See n. 17 above; Ullmann, ‘Geoffrey of Monmouth in English History’, p. 261.

<sup>35</sup> Har, ‘Pope Eleutherius’ Letter’ (emphasis added).

<sup>36</sup> Canning, *Medieval Political Thought*, pp. 18-19.

<sup>37</sup> Har, ‘Pope Eleutherius’ Letter’.



dialectically at a solution to the seemingly irreconcilable notions that the king was at once above and below the law – à la *De legibus et consuetudinibus Angliae* (c. 1235),<sup>38</sup> a treatise usually ascribed to Henry de Bracton;<sup>39</sup> the pro-baronial writer, who had probably not received a professional legal education,<sup>40</sup> very likely deployed the vocabulary of theocratic monarchy for no other reason than to make his plea for John to rule by the common counsel of his barons more palatable. However, this was far from the only form of legitimation of which he made use.

In composing his work, the author of the *Leges Anglorum* demonstrated a deep familiarity with, and heavy reliance upon, the work of Geoffrey of Monmouth. The apocryphal story that Christianity was introduced to Britain during the late second century as a consequence of correspondence between Lucius and Eleutherius seems to have originated with Bede, the canonised Anglo-Saxon historian. In order that the reader might better discern how the tale evolved over time, it is helpful to begin with the relevant passage of Bede's *Historia ecclesiastica gentis Anglorum* (c. 731):<sup>41</sup>

IN the year of our Lord's incarnation of 156, Marcus Antoninus Verus, the fourteenth from Augustus, was made emperor, together with his brother, Aurelius Commodus. In their time, whilst Eleutherus, a holy man, presided over the Roman church, Lucius, king of the Britons, sent a letter to him, entreating that by his command he might be made a Christian. He soon obtained his pious request, and the Britons preserved the faith, which they had received, uncorrupted and entire, in peace and tranquillity until the time of the Emperor Diocletian.<sup>42</sup>

As Adolf von Harnack argued more than a century ago, this portion of the English saint's narrative was likely based on an erroneously transcribed entry of the *Liber Pontificalis*<sup>43</sup>

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<sup>38</sup> Henry de Bracton, *De Legibus et Consuetudinibus Angliae: Libri Quinque in Varios Tractatus Distincti*, ed. T. Twiss, 6 vols (Cambridge, 2012).

<sup>39</sup> However, see C. J. Nederman, 'Bracton on Kingship Revisited', *History of Political Thought* 5 (1984), 61-77.

<sup>40</sup> Ullmann, 'Geoffrey of Monmouth in English History', p. 260; Kantorowicz, *King's Two Bodies*, p. 345.

<sup>41</sup> *The Venerable Bede's Ecclesiastical History of England: Also the Anglo-Saxon Chronicle: With Illustrative Notes, A Map of Anglo-Saxon England, and a General Index*, ed. J. A. Giles (London, 1847).

<sup>42</sup> *Ibid.*, p. 10.

<sup>43</sup> *Book of Pontiffs (Liber Pontificalis): The Ancient Biographies of the First Ninety Roman Bishops to AD 715*, ed. R. Davis, 2<sup>nd</sup> edn (Liverpool, 2000), p. 6.

pertaining to Lucius Aelius Megas Abgar XI of Osroene, a contemporary of Eleutherius who resided in a castle (*britium*, the Latinised form of the Syriac *birtha*) in Edessa.<sup>44</sup> However, it was with the advent of the *Historia Regum Britanniae* that fallacy met outright fabrication, and a much embellished account of the Eleutherius-Lucius correspondence was recorded in the annals of history:

When he had been crowned after his father's death, Lucius ... sent a letter to pope Eleutherius, asking to receive instruction in the Christian religion from him; for his spirit had been illuminated by the miracles that were being worked in various lands by the soldiers of Christ. Lucius' eager desire for the true faith meant that his pious prayer was answered, since on learning of his devotion the holy pontiff sent him two religious instructors, Faganus and Duvianus, who preached the Word of God made flesh, anointed him in holy baptism and brought him to Christ. The people of his country immediately flocked from all quarters to follow their king's example, and were cleansed from the same font and restored to the kingdom of heaven. When the blessed teachers had eradicated paganism from nearly the whole island, they rededicated to the One God and his saints the temples which had been built to honour many gods, and they filled them with various communities of men in clerical orders.<sup>45</sup>

How the tale had grown in some four hundred years. Yet, in many ways, the author of the *Leges Anglorum* outdid even Geoffrey's fecund imagination when he invented the papal rescript that had hitherto been spoken of only in the vaguest of terms. Undoubtedly also drawing inspiration from the Carolingian-papal epistles that he encountered in the *Leges Edwardi Confessoris*, the pro-baronial writer concocted an ancient pontifical letter which promised to speak far more directly to the English experience than discourses on Frankish kingship ever could.

The author of the *Leges Anglorum* turned to the British History surely because he believed it to be the most effective means of legitimating his advice to John. Evidently, he regarded the original *Leges Edwardi Confessoris* tract as insufficient for his purposes. His was an

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<sup>44</sup> A. von Harnack, 'Der Brief des britischen Königs Lucius an den Papst Eleutherus', *Sitzungsberichte der Königlich Preussischen Akademie der Wissenschaften* (1904), 909-16; see also A. H. Mathew, 'Der Brief des britischen Königs Lucius an den Papst Eleutherus', *English Historical Review* 22 (1907), 767-70; A. Smith, 'Lucius of Britain: Alleged King and Church Founder', *Folklore* 90 (1979), 29-36.

<sup>45</sup> *Geoffrey of Monmouth: The History of the Kings of Britain*, ed. M. D. Reeve, trans. N. Wright (Woodbridge, 2007), pp. 86-8.

attempt to catch the royal eye and ear, and to this end he manufactured precedents that he believed would appeal to the imperial pretensions of the Angevin monarch. When the author of the *Leges Anglorum* wrote that ‘the universal and whole land and every island of the Western Sea all the way to Norway and all the way to Denmark pertain to the crown of this kingdom, and are of the appendages and dignity of the king and the kingdom’,<sup>46</sup> his claim once again dwarfed that which had been advanced by his historiographical forerunner. As Ullmann put it, this augmentation served to transform Geoffrey’s territorially expansive kingdom into ‘a veritable *Grossreich*’.<sup>47</sup> The lesson that the pro-baronial writer seems to have been trying to convey was that, even as they enjoyed sub-continental hegemony, the kings of Britain governed lawfully and justly with the advice of their nobility.<sup>48</sup> Reduced to its fundamentals, the author’s message was that the greatest rulers in the history of Christendom – among whom numbered certain kings indigenous to the island of Britain – were neither tyrants nor autocrats. On the contrary, these illustrious monarchs had reigned by the common counsel of their baronages. Although written before – and perhaps a good many years before – *Magna Carta* was composed, this passage could very well have served as a potent counter-offensive to Innocent III’s 1215 papal bull, *Etsi karissimus*,<sup>49</sup> which annulled the Great Charter of the Liberties on the grounds that the document was ‘not only shameful and demeaning but also illegal and unjust’ (*non solum vilem et turpem, verum etiam illicitam et iniquam*).<sup>50</sup> Whether the treatise was ever so deployed against the same pontiff who, in the summer of 1213, would happily place both the king and kingdom of England ‘under apostolic suzerainty’ (*apostolice subdideris ditioni*) can hardly be known.<sup>51</sup>

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<sup>46</sup> Har, ‘Pope Eleutherius’ Letter’.

<sup>47</sup> Ullmann, ‘Geoffrey of Monmouth in English History’, p. 258.

<sup>48</sup> See Jahner, *Literature and Law*, p. 112.

<sup>49</sup> For *Etsi karissimus*, see *Selected Letters of Pope Innocent III Concerning England (1198-1216)*, ed. C. R. Cheney and W. H. Semple (London, 1953), no. 82.

<sup>50</sup> *Ibid.*, p. 215.

<sup>51</sup> *Ibid.*, p. 149.

Integral to the historico-legal argument advanced in the two aforementioned tracts was the idea that the kings of England were the successors — understood in the full legal sense of that term — to the kings of Britain. If the pseudo-Eleutherius letter were to be more than a didactic missive to a foreign — and, indeed, extinct — realm, it was necessary for the author of the *Leges Anglorum* to demonstrate that the kingdom of Britain and the kingdom of England were juristically identical. Only then could the epistle take the form of a precedent that bound the present occupant of the English throne. In other words, unless the author could establish that John was the heir to Lucius’s office and all its attending powers — represented symbolically by the crown of the Confessor — there were no grounds upon which the English king could be charged with having failed to maintain the laws of his predecessor. It was this task, more than any other, which explains why the pro-baronial writer felt compelled to move beyond the instructive though ultimately non-binding papal rescript that was said to have been sent to Pippin and Charles. The author of the *Leges Anglorum* needed to prove continuity of dominion in the face of terminological change in order to demonstrate that the kings of England were the kings of Britain in all but name. It was for this reason that he stressed that there ‘is *one* monarchy and *one* kingdom ... formerly called the kingdom of Britain, presently called the kingdom of the English’ (*una est monarchia et una est regnum ... uocabatur quondam regnum Britannie, modo enim uocatur regnum Anglorum*).<sup>52</sup> This was the succession claim deployed for the very first time with consummate artistry.

However, because there was at this time little sense of the royal office (*officium regis*) as something separate from its impermanent occupant, it was not sufficient merely to demonstrate that the kingdom of Britain and kingdom of England were juristically indistinguishable from each other. The author of the *Leges Anglorum* had also to establish that John had a constitutional duty to prevent the alienation of regalian rights and lands and to revoke those alienations which

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<sup>52</sup> Har, ‘Pope Eleutherius’ Letter’ (emphasis added).

had occurred under his predecessors. (It may appear strange that a person writing on behalf of the baronial class – a community which had benefited enormously from gifts granted from the royal demesne – would attempt to dissuade the king from diminishing crown property. However, the reader should not be misled by the broad terms in which the author framed his argument. His overriding concern was “restoring” government by counsel, and he was probably quite blind to the possibility that the concept of revocability could be turned against his benefactors’ landholdings.) In the absence of such a duty, there was no legal basis for maintaining that the Angevin monarch ought to conform himself to Lucius’s model of kingship. Here, as elsewhere, the author availed himself of Romano-canonical conceptions of the sempiternal office. Revealing a good deal of familiarity with the non-alienation clause which featured in a select class of episcopal oaths (a subject which will be examined in greater detail in the next section), the writer argued that the king was the temporary guardian of an immortal corporation sole, and as such was obliged to preserve and restore the rights of the crown:

Truly, the king ought to observe and defend, according to law, all lands and honours and all dignities and rights and freedoms of the crown of this kingdom in its entirety with all integrity and without abatement, to restore the kingdom’s scattered and dispersed and lost laws to a pristine state and what is owed to all men.<sup>53</sup>

In a subsequent passage, the author claimed that this same promise had been sworn by none other than Edward the Confessor.<sup>54</sup> All of this was intended to persuade John that, although he had a God-given right to rule England, he did not own the kingdom so much as he held it on trust for his successors. It was, in effect, a plea for royal self-restraint.

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<sup>53</sup> *Ibid.* (emphasis added).

<sup>54</sup> Lieberman, *Die Gesetze*, i, 640; Kantorowicz, *King’s Two Bodies*, pp. 346-7 n. 116.

## 2.2 The Afterlife of the *Leges Anglorum*: The Non-Alienation Clause of the English Coronation Oath

When the author of the *Leges Anglorum* urged the king of England to promise not to alienate his regalian rights and lands, and to recover those that had been *de facto* lost during the reigns of his predecessors, he performed a remarkable feat of anticipation. It is highly probable that at the time when the pro-baronial writer composed his work none of the crowned heads of Christendom had sworn non-alienation promises at their coronations. This would soon change. Indeed, by the late fourteenth century, the Roman lawyer Baldus de Ubaldis could declare (somewhat hyperbolically) that ‘all kings in the world have to swear at their coronation to conserve the rights of their realm and the honor of the Crown’.<sup>55</sup> England, it would seem, was the very first European monarchy to adopt the practice in the second decade of the thirteenth century. This naturally raises the question of whether the *Leges Anglorum* played a role in establishing the non-alienation clause of the English coronation oath. This section, which will examine in brief what might be termed the legal treatise’s afterlife, seeks to answer that question. This discussion should not be regarded as tangential, for the non-alienation clause of the English coronation oath would come to be closely associated with the succession claim, as will be demonstrated variously in the Edwardian, Henrician, and Seymourian Moments.

With the (first) enthronement of Henry III on 28 October 1216,<sup>56</sup> the English coronation oath underwent an important change. Previously, kings of England had sworn a tripartite promise upon acceding to the throne. In fact, there is good reason to believe that the oath which John had taken in 1199 had remained largely unchanged since before the Norman conquest.<sup>57</sup> At Henry’s coronation, however, a fourth clause was added – a non-alienation clause. Because this

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<sup>55</sup> Quoted in Kantorowicz, *King’s Two Bodies*, p. 357.

<sup>56</sup> Henry III uniquely had two coronations.

<sup>57</sup> Kantorowicz, *King’s Two Bodies*, p. 347.

clause was not codified – which is to say, was never written down – until 1308, its precise character and wording can only be surmised from various statements made by Henry, and later, by his son, Edward I (several of which will be explored in Chapter 3). The official records are therefore of little assistance here: no account of Henry’s coronation oath survives, and the only extant account of Edward’s oath documents the customary tripartite promise.<sup>58</sup> There is no need for the reader to regard the omission with suspicion, as the English coronation oath followed the practice of a select class of episcopal oaths (discussed below) in not codifying its non-alienation clause. Nor should it be imagined that the clause was taken any less seriously because it was not written down; an oath was considered legally binding whether or not it was codified,<sup>59</sup> and Edward’s numerous pronouncements on the matter should disabuse the reader of the view that the article was appended to the customary tripartite promise as a mere afterthought. All of this is to say that there can be little doubt that the English coronation oath was, from 1216 onwards, quadripartite in nature. The question then becomes *why* a non-alienation clause was inserted in the English coronation oath in 1216.

The constitutional innovation likely had nothing to do with the *Leges Anglorum*. Rather, it was probably a consequence of England’s newfound status as a vassal-kingdom. That the realm became a papal “fief” in the early thirteenth century has been alluded to already. There is no need here to explore how this came to pass; it is sufficient merely to acknowledge the fact that John surrendered his kingdom and royal person to apostolic suzerainty in the summer of 1213.<sup>60</sup> When he did so, the English king swore an oath of fealty to Innocent III.<sup>61</sup> Based on statements made by the same pope a few years later, there is good reason to believe that John’s oath

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<sup>58</sup> See B. Williams, ‘The Lost Coronation Oath of King Edward I: Rediscovered in a Dublin Manuscript’, in *Medieval Dublin IX*, ed. S. Duffy (Dublin, 2009), pp. 84-90 (p. 84).

<sup>59</sup> See generally, A. Spencer, ‘The Coronation Oath in English Politics, 1272-1399’, in *Political Society in Later Medieval England: A Festschrift for Christine Carpenter*, ed. B. Thompson and J. Watts (Woodbridge, 2015), pp. 38-54.

<sup>60</sup> For papal bull, *Rex regum* (1214), see Cheney and Semple, *Letters of Pope Innocent III*, no. 67.

<sup>61</sup> *Ibid.*, pp. 180-2.

contained an uncodified non-alienation promise. Indeed, when Innocent annulled *Magna Carta* barely two months after it had been sealed at Runnymede, he made a point of telling the English baronage that, ‘since the lordship of the kingdom belonged to the Roman Church, he [King John] neither could nor should, without our special mandate, make any change in it to our prejudice’.<sup>62</sup> This was to suggest that the English monarch did not have the authority to agree to the Great Charter of the Liberties because the English crown was no longer his to diminish – it now belonged to the Roman Church. Although these words do not prove beyond doubt that John made a non-alienation promise in 1213, they demonstrate that the principle of inalienability was at the forefront of Anglo-papal relations in the years that followed the historic assertion of overlordship.

If John undertook not to alienate his regalian rights and lands in the latter part of his reign, it is clear that his son, Henry, was the first English king to do so at his coronation ceremony. This, too, seems to have been a consequence of England’s status as a vassal-kingdom. To recast the question posed previously, then: why was the non-alienation clause of an oath of fealty to the pope transposed to the English coronation oath in 1216? The absence of official records makes definitive conclusions impossible, but Ernst H. Kantorowicz’s researches provide a plausible explanation. As Kantorowicz demonstrated in his classic work, *The King’s Two Bodies*, the non-alienation promise was a feature of ecclesiastical governance long before it was a feature of lay governance.<sup>63</sup> From the eleventh century, bishops who were subject to the pope without an intermediary (*nullo medio*) were, at their consecration, required to swear the customary septempartite oath required of all ecclesiastical office-bearers,<sup>64</sup> as well as an additional, uncodified promise not to alienate the rights and property of the Roman Church which were

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<sup>62</sup> *Ibid.*, p. 215.

<sup>63</sup> See Kantorowicz, *King’s Two Bodies*, pp. 347-58; see also P. N. Riesenber, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956), pp. 48-80.

<sup>64</sup> For the standard episcopal oath, see *Corpus Iuris Canonici*, ed. A. Friedberg, 2 vols (Graz, 1955), ii, 360; Kantorowicz, *King’s Two Bodies*, p. 350.



temporarily placed under their care. Kantorowicz speculated that the non-alienation clause of this select class of episcopal oaths was inadvertently translated to the English coronation oath by Cardinal Guala Bicchieri, the papal legate who oversaw Henry's first enthronement ceremony. Indeed, he suggested that because Henry, like his father before him, was a vassal-king subject to the pope without an intermediary, it would have been quite natural for Bicchieri to append a non-alienation clause to the customary tripartite promise. The hypothesis is frequently ingenious and often persuasive, but without further evidence, it must remain a hypothesis.<sup>65</sup> Nevertheless, if Kantorowicz's conjectures are even approximately correct, there would be little reason to attribute causal power to the author of the *Leges Anglorum*.

However, simply because the early thirteenth-century legal treatise may not have played a role in *creating* the non-alienation clause of the English coronation oath does not mean that it did not play a role in *modifying* it long after it had been established. That the clause in question was codified at Edward II's enthronement ceremony in 1308 has been alluded to already. Yet it is important to stress that Carnarvon's non-alienation promise was materially different from that which his grandfather and father had sworn in 1216 and 1274, respectively. The coronation ceremony of 1308 saw the nearly century-old quadripartite oath substantially reformulated, with the modified non-alienation clause listed as the first of the four articles – a fact which reveals its increased importance to English constitutional thought in the early fourteenth century. Originally recorded in French and Latin, the clause is given here in translation:

Sire, will you grant and keep and by your oath confirm to the people of England the laws and customs given to them by the previous just and god-fearing kings, your ancestors, *and especially the laws, customs, and liberties granted to the clergy and people by the glorious king, the sainted Edward, your predecessor?*<sup>66</sup>

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<sup>65</sup> It would seem that H. G. Richardson shares Kantorowicz's view: see H. G. Richardson, 'The English Coronation Oath', *Speculum* 24 (1949), 44-75 (p. 55).

<sup>66</sup> *Sources of English Constitutional History: A Selection of Documents From A.D. 600 to the Present*, ed. C. Stephenson and F. G. Marcham (New York and Evanston, 1937), p. 192 (emphasis added); for the original French and Latin, see *Statutes of the Realm*, ed. A. Luders, 11 vols (London, 1810), i, 168.

It is the phrase pertaining to Edward the Confessor that is of greatest interest.

The decision to rewrite and reposition the non-alienation clause of the English coronation oath was taken by Edward II's baronage, which sought to bind the new king to the so-called ancient laws and customs of England. In the years immediately preceding Carnarvon's enthronement, the magnates of the realm had watched with impotent rage as Edward I repudiated *Confirmatio Cartarum* (1297), a document which had served to supplement the amended, briefer version of *Magna Carta* (1225) enacted during the reign of Henry III. The existing non-alienation promise had not only failed to prevent Edward from reversing his 1297 concessions; it had actively assisted him in doing so. Indeed, in December 1305 the king had solicited a papal bull from Clement V, which voided *Confirmatio Cartarum* on the grounds that its terms diminished the rights of the English crown in contravention of the coronation oath.<sup>67</sup> Persuaded that the non-alienation clause required reform in order to better constrain royal authority, the barons seem to have turned to the *Leges Anglorum* for guidance when the throne passed to Carnarvon. H. G. Richardson stressed the importance of distinguishing two aspects of the revised non-alienation promise (quoted in the previous paragraph): the general and the particular.<sup>68</sup> He argued that, while the first part of the article (which read, 'the laws and customs given ... by the previous just and god-fearing kings') referred to the entire body of law which was said to have been established by the "ancient" kings of England, the second (which read, 'the laws, customs, and liberties granted ... by the glorious king, the sainted Edward') alluded to a specific legal treatise associated with Edward the Confessor – the very treatise that had been composed by a pro-baronial writer in the early thirteenth century and which contained two tracts on the duties of the king.<sup>69</sup> Richardson's interpretation, which assumes great care and precision on the part of those who drafted the clause, is persuasive if not conclusive. To draw the discussion

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<sup>67</sup> M. Prestwich, *Edward I*, 2<sup>nd</sup> edn (New Haven and London, 1997), pp. 547-8; for papal bull, *Regalis devotionis integritas*, see *Fœdera*, I, ii, 978.

<sup>68</sup> Richardson, 'The English Coronation Oath', p. 75.

<sup>69</sup> *Ibid.*

to a close, it would appear that the *Leges Anglorum* exercised a “posthumous” influence over the English coronation oath in so far as the treatise which had been compiled in the turbulent reign of John was apparently pressed back into service in 1308 by Edward II’s barons. At long last, a non-alienation promise of the kind that had been cited approvingly by pseudo-Eleutherius was incorporated into English constitutional law.

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The Johannine Moment argued that the succession claim was deployed for the very first time in service of the English baronage’s resistance to King John during the early thirteenth century. Although the *Leges Anglorum* was composed anonymously around 1210, there is very good reason to believe that its author was part of, or commissioned by, the baronial resistance to the Angevin monarch in the years leading up to *Magna Carta* (1215). In two separate but related tracts interpolated into the *Leges Edwardi Confessoris*, the writer argued that a king ought to govern as the first among equals in consultation with his magnates rather than as an exalted autocrat. Using the succession claim to legitimate his advice, the pro-baronial author concocted an ancient pontifical letter from Pope Eleutherius which outlined the duties of a crowned ruler. This spurious epistle was intended to prove that John occupied the very same royal office that had been occupied by the famous kings of Britain, and that he, as their successor, had a constitutional responsibility to govern as they did. Urging the Angevin monarch to restore his realm’s lost rights and lands, the writer presented his revolutionary political programme as an attempt to restore the *status quo ante*.

The Johannine Moment also argued that the succession claim helped shape the non-alienation clause of the English coronation oath. When the author of the *Leges Anglorum* implored John to promise not to alienate his regalian rights and lands, and to recover those that

had been *de facto* lost during the reigns of his predecessors, it is highly probable that none of the kings of Christendom had sworn non-alienation promises at their coronations. This would soon change, with England seemingly being the very first European monarchy to adopt the practice in 1216. Although the *Leges Anglorum* may not have had a hand in *creating* the non-alienation clause of the English coronation oath, it likely played a role in *modifying* this important constitutional mechanism long after it had been established.

# Chapter 3

The Edwardian Moment, 1291–1301

The Edwardian Moment argues that the succession claim was deployed in support of Edward I's dynastic claim to overlordship of Scotland at the turn of the fourteenth century. The previous chapter demonstrated how this form of legitimation was used by the English baronial class against the king; the present chapter will demonstrate how, nearly a hundred years later, it was used by the king and the magnates as they erected a united front against external powers, including and especially the Roman Church. At a secondary level of analysis, this chapter will pay special attention to those synchronic contexts which shed new light on the emergence of medieval forms of territorial sovereignty. It will examine how the crowned heads of western Europe came to see the principle of non-recognition of a superior in temporal affairs as a constituent element of kingship, and the role that such ideas had in undermining the claims to universal secular dominion which were advanced first by the Holy Roman Empire and subsequently (on a hierocratic basis) by the Roman Church.

Edward I's 1301 letter ("the King's Letter") to Boniface VIII is widely known. Indeed, it is perhaps the most famous royal letter ever sent by an English king to a Roman pontiff. The document is particularly memorable for its attempt to prove Edward's claim to overlordship of Scotland via an audacious historico-legal argument which began chronologically in the time of Brutus, a legendary descendant of Aeneas of Troy. The King's Letter was governed by a simple but remarkably ambitious contention: the kings of England, together with their predecessors, the kings of Britain, had exercised uninterrupted overlordship of Scotland from antiquity to contemporary times. The sheer scale of the task that Edward and his clerks set for themselves, as well as the effect that the text ostensibly had in swaying papal policy, captured the imagination of contemporaries as readily as it has held the attention of modern scholars.

Yet the intellectual origins of the King's Letter remain largely obscured from view. It is little known that the text was the culmination of a long-drawn-out process that had begun a decade

earlier amidst the Scottish succession crisis. Indeed, it was at the commencement of the Great Cause that Edward had, in a rather rudimentary fashion, first articulated his historico-legal claim to overlordship of Scotland. Chapter 3 of this thesis will trace the evolution of the king's argument from its modest beginnings at Norham in 1291 to its celebrated apogee at Anagni in 1301. It seeks to demonstrate how, in the space of ten years, Edward's contention grew increasingly sophisticated as it responded to various challenges, real and imagined, from the Roman Church and Scots alike. In order to accomplish these tasks, it is necessary to reconstruct the intellectual and political context in which Edward's historico-legal argument was composed. Only then will it be possible to explain why it took the precise shape and form that it did.

### **3.1 From Modest Beginnings**

#### Monastic Chronicles at Norham

Edward chose to pursue his claim to overlordship of Scotland at a time when that realm was in a state of disarray and confusion. Margaret of Norway, the seven-year-old heir to the Scottish throne, died in late September 1290 *en route* to her own inauguration ceremony at Scone. The little girl had got no farther than Orkney, then a Norwegian possession, when she took her last breath. As fate would have it, she would never set foot in the kingdom which she had inherited following the death of her grandfather, Alexander III, some four-and-a-half years earlier. With no clear successor to the throne, Scotland was thrown into constitutional turmoil. Although Edward was temporarily preoccupied with the loss of his wife, Eleanor of Castile – who had died at Harby on 28 November, and whom he would mourn into the new year – it would not be long before he thoroughly involved himself in the matter. On 8 March 1291, the king wrote to the abbot of Evesham, requesting that he ‘examine his chronicles, and send without delay, under

seal, everything that he finds touching in any way our realm and the rule of Scotland'.<sup>1</sup> Similar research requests were later made of other monastic houses. Evidently, Edward intended to use the crisis in Scotland as an opportunity to press his dynastic claim to overlordship of the realm, and, to that end, had already begun laying the groundwork for an ambitious historico-legal argument.

In May 1291, Edward summoned English and Scottish magnates to the parish church at Norham, Northumberland for what was the beginning of the protracted adjudication of the Scottish succession. Several days prior to the commencement of this Great Cause, Edward had convened a meeting of his council in order to study the chronicle extracts he had recently received for evidence of his claim to Scotland.<sup>2</sup> Presumably, these materials had been arranged in some order, chronological or otherwise, by royal clerks prior to the meeting. According to one contemporary report, it had soon become 'clear to one and all that the overlordship of Scotland belonged and ought to belong to the king'.<sup>3</sup> This self-assured conclusion would set the tone for much of what followed.

On 10 May, Roger Brabazon, then a puisne justice of the King's Bench, addressed the English and Scottish magnates at Norham. He informed those present that Edward desired to bring the succession dispute to an end, but, in order to do so, he first required recognition of his status as overlord of Scotland.<sup>4</sup> Although there is no evidence that the chronicle sources were read aloud at this stage of proceedings, it seems most likely that the king would have provided some justification for his claim, especially when he had gone to the trouble of bringing so much material with him. When the good or responsible men (*bones genz*) of the realm of Scotland

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<sup>1</sup> *Edward I and the Throne of Scotland, 1290-1296: An Edition of the Record Sources for the Great Cause*, ed. E. L. G. Stones and G. G. Simpson, 2 vols (Oxford, 1978), i, 139.

<sup>2</sup> *The Chronicle of Walter of Guisborough: Previously Edited as the Chronicle of Walter of Hemingford or Hemingburgh*, ed. H. Rothwell (London, 1957), p. 234; *The Chronicle of Bury St Edmunds, 1212-1301*, ed. A. Gransden (London and Edinburgh, 1964), p. 98.

<sup>3</sup> Gransden, *Bury St Edmunds*, p. 98.

<sup>4</sup> Stones and Simpson, *The Great Cause*, ii, 16-19.



rebuffed Edward on the basis that only a king of Scots could reply to such a request,<sup>5</sup> the English king turned his attention to the claimants to the Scottish throne, many of whom duly recognised him as their overlord and proper judge.<sup>6</sup> The realm and its castles were subsequently surrendered to his custody, and the Great Cause began in earnest.<sup>7</sup> Edward's historico-legal claim to Scotland had achieved its first victory.

The chronicle extracts which Edward relied upon at Norham were many and varied. Indeed, their variety and chronological expansiveness can be gleaned from the monastic returns, which, commendably, were transcribed and published by Francis Palgrave nearly two centuries ago.<sup>8</sup> A word of caution is warranted, however, for although the returns included in Palgrave's *Documents and Records* are probably representative of the total amount of material sent by various religious houses, the extracts themselves may only have been a fraction of the evidence relied upon at Norham.<sup>9</sup> If the Bury St Edmunds chronicler can be trusted, the monks who attended the king's council had brought entire chronicles with them.<sup>10</sup> Despite these concerns, the returns are capable of providing great insight into Edward's original claim to Scotland. The monasteries provided material from a number of sources, including Marianus Scotus, William of Malmesbury, Henry of Huntington, Geoffrey of Monmouth, and Roger of Hoveden. The extracts sent by five monastic houses (Battle, Dover, Malmesbury, Newburgh, and Trinity) began chronologically in the reign of Æthelstan (924–39).<sup>11</sup> Another four (Bridlington, Colchester,

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<sup>5</sup> *Ibid.*, 30-1.

<sup>6</sup> *Ibid.*, 38-43, 52-3, 66, see also, 74. The claimants to the throne did not have the authority to recognise Edward as the overlord of *Scotland*, so they recognised him as their *personal* overlord and proper judge instead. However, because this acknowledgement was given by a group of men among whom numbered the future king of Scots, it is difficult to deny that this acknowledgement was a *de facto* recognition of Edward's claim to overlordship of the realm.

<sup>7</sup> *Ibid.*, ii, 98-101. For some useful analysis on precisely how possession and custody of the realm of Scotland was transferred to Edward, see *ibid.*, i, 118-20.

<sup>8</sup> See generally, *Documents and Records Illustrating the History of Scotland, and the Transactions Between the Crowns of Scotland and England, Preserved in the Treasury of Her Majesty's Exchequer*, ed. F. Palgrave (London, 1837), pp. 56-134.

<sup>9</sup> See Stones and Simpson, *The Great Cause*, i, 153-4.

<sup>10</sup> Gransden, *Bury St Edmunds*, p. 98.

<sup>11</sup> Palgrave, *Documents and Records*, pp. 59, 85, 107-8, 111-15, 115-19.

Evesham, and Gloucester) went back as far as the reign of Edward the Elder (*Edwardus Senior*) (899–924).<sup>12</sup> One (Carlisle) took the reign of Alfred the Great (*Alfredus*) (871–99) as its starting point.<sup>13</sup> And, remarkably, the extracts provided by the abbeys of Faversham and Waltham began with accounts of the Trojan Brutus.<sup>14</sup> It was an odd assortment of precedents, but one which reflected the exceptionally broad nature of the king’s initial request for information.

Historians have often questioned why Edward attempted to prove his “right” to Scotland in this particular way.<sup>15</sup> The answer is surely to be found in the nature of the king’s claim. Although appeals to the past were not an uncommon feature of medieval legal and political thought, there were certain matters which almost invariably gave rise to historico-legal argument. One such matter was the defence of the rights of the crown. Like his father before him, Edward had sworn in his coronation oath not to alienate the laws, customs, and liberties which his predecessors had given to the realm of England.<sup>16</sup> This type of constitutional thought – which was prevalent throughout Europe at the time – was necessarily past-oriented, for it assumed that kings were but the temporary occupants and custodians of an immortal office.<sup>17</sup> Given that Edward would later tell Boniface VIII that he was oath-bound to preserve Scotland as a possession of the English crown, it should come as little surprise that the king elected to couch his claim to the realm in historico-legal terms.<sup>18</sup> What has especially perplexed modern scholars, however, is that Edward elected to furnish his historico-legal argument with seemingly crude precedents from the pages of monastic chronicles.<sup>19</sup> Yet as Chris Given-Wilson has put it,

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<sup>12</sup> *Ibid.*, pp. 60-7, 86-92, 94-8, 108-10.

<sup>13</sup> *Ibid.*, pp. 68-76.

<sup>14</sup> *Ibid.*, pp. 92-4, 105-6.

<sup>15</sup> See Stones and Simpson, *The Great Cause*, i, 29.

<sup>16</sup> See generally, H. G. Richardson, ‘The English Coronation Oath’, *Speculum* 24 (1949), 44-75; E. H. Kantorowicz, ‘Inalienability: A Note on Canonical Practice and the English Coronation Oath in the Thirteenth Century’, *Speculum* 29 (1954), 488-502.

<sup>17</sup> See generally, P. N. Riesenbergh, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956); E. H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (New Jersey, 1970), pp. 347-58.

<sup>18</sup> *Anglo-Scottish Relations, 1174-1328: Some Selected Documents*, ed. E. L. G. Stones, 2<sup>nd</sup> edn (Oxford, 1970), p. 215.

<sup>19</sup> See Stones and Simpson, *The Great Cause*, i, p. 29 nn. 3, 7.

chronicles were ‘at this time regarded as the most reliable type of source for historical evidence’, and were taken ‘as competent and creditworthy records which not only ought to be, but were, consulted about matters of the highest significance in the political life of the English nation’.<sup>20</sup> Whose idea it was to utilise chronicles with respect to the king’s claim to Scotland can hardly be guessed. Michael Prestwich has suggested that Pierre Langtoft, a contemporary, credited Anthony Bek, bishop of Durham, with the initiative,<sup>21</sup> but the chronicler’s verse is ambiguous.<sup>22</sup> Because the parish church at Norham fell within the palatinate of Durham, Bek might have been charged with overseeing the examination of the extracts, and it well may have been this to which Langtoft would later refer. Whoever was responsible, it was a suggestion which greatly advanced Edward’s cause.

### The Great Roll of Scotland

The second stage in the evolution of Edward’s historico-legal claim to overlordship of Scotland took the form of the Great Roll of Scotland (c. 1298). The document consisted of twenty-eight pieces of parchment stitched together to form a single roll, and was the work of a notary public by the name of John of Caen. The historical portion of the Great Roll purported to be a written record of acts of homage performed, and oaths of fealty sworn, by Scottish kings to English kings from 901 to 1252. Far more sophisticated and comprehensive than what had been presented at Norham several years earlier, the document ostensibly proved that the kings of England had exercised uninterrupted overlordship of Scotland from the time of Edward the Elder to the reign of Henry III. In order that the reader might get some sense of what this chronological narrative

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<sup>20</sup> C. Given-Wilson, *Chronicles: The Writing of History in Medieval England* (Hambledon and London, 2004), pp. 67, 73.

<sup>21</sup> M. Prestwich, *Edward I*, 2<sup>nd</sup> edn (New Haven and London, 1997), p. 364.

<sup>22</sup> See *The Chronicle of Pierre de Langtoft, In French Verse, From the Earliest Period to the Death of King Edward I*, ed. T. Wright, 2 vols (London, 1868), ii, 190-1.

looked like, it is useful to provide an excerpt, both in the original Latin and in translation, from the Great Roll:

*A.D. 901: Edwardus, monarcha Anglie, cognomento senior, filius Elvredi, Scottorum, Cumbrorum, Stregewallorum reges sue dicioni subegit, et in dedicionem accepit. Hoc invenitur in cronicis [of Scotus, Howden, Malmesbury] quorum compilationes et libri inveniuntur in multis et diversis monasteris.*

*A.D. 921: Rex Scottorum, cum tota gente sua, et Reginaldus, rex Danorum, cum Danis et Anglis Nothumbriam incolentibus, et rex eciam Stregewallorum, cum suis, eundem regem Edwardum sibi in patrem et dominum elegerunt firmumque fedus cum ipso pepigerunt. Hoc invenitur in cronicis [of Scotus, Howden] in multis libris, etc.*

*A.D. 924: Idem Edwardus rex cunctis Britanniam incolentibus Anglorum, Scottorum, Cumbrorum, Danorum, et Britonum populis prefuit. Hoc invenitur in cronicis [of Scotus, Howden] in multis libris, etc.<sup>23</sup>*

A.D. 901: Edward, known as the elder, ruler of England, son of Alfred, subjugated the kings of Scots, Cumbrians, and Britons of Strathclyde with his authority, and received their surrender. This is found in the chronicles of Scotus, Howden, and Malmesbury whose collections and books are found in many and diverse monasteries.

A.D. 921: The king of Scots, with all his people, and Reginald, king of the Danes, with the Danes and Angles who inhabited Northumbria, and also the king of the Britons of Strathclyde, with his, elected the same king, Edward, to be their father and lord, and agreed upon a durable treaty with him. This is found in the chronicles of Scotus and Howden in many books, etc.

A.D. 924: The same king, Edward, ruled over the nations of the Angles, Scots, Cumbrians, Danes, and Britons, which together inhabited the whole of Britain. This is found in the chronicles of Scotus and Howden in many books, etc.

Why John made no use of the British History and its ancient precedents can only be conjectured. Perhaps he did not regard Geoffrey of Monmouth's tales as sufficiently credible for his purposes. Or perhaps the omission was merely a consequence of how little Galfridian material he had at his disposal. In any event, it is clear that the Great Roll narrative built upon the chronicle sources

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<sup>23</sup> Stones and Simpson, *The Great Cause*, ii, 301 (names of chroniclers inserted by editors).

that had proven so central to Edward's claim during the Great Cause. Yet, as Stones and Simpson demonstrated with great clarity, John utilised a much wider range of historical material than what had been provided by the monastic houses, and his literary efforts greatly exceeded those of the royal clerks.<sup>24</sup>

Precisely why and when the Great Roll was produced are questions which remain the subject of debate. Stones and Simpson saw the document as a means of formally authenticating the proceedings of the Great Cause.<sup>25</sup> It was, in other words, a further attempt at legitimating the argument that Edward had first advanced at Norham in 1291. The pair also concluded that John completed the Great Roll no later than May 1297, and must have begun working on the document several years before then.<sup>26</sup> These conclusions were later challenged by A. A. M. Duncan, who argued that John could not have commenced drafting the Great Roll until September or October 1296,<sup>27</sup> and that the document ought to be seen as a propagandistic attempt to justify the actions Edward took that year, namely, the invasion of Scotland and the deposition of its king, John Balliol.<sup>28</sup> There is no need to enter into this debate here, except to say that the Great Roll was almost certainly produced with a learned international audience – and very likely the papacy – in mind. Three facts support this contention. First, the Great Roll was written in a style that corresponded to the rhythms of the *Cursus Curiae Romanae*.<sup>29</sup> Second, the document took the form of a notarial instrument whose 'authenticity was internationally recognized, because notaries were at this time officers of one or other of the two international

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<sup>24</sup> See Stones and Simpson, *The Great Cause*, i, 148-53.

<sup>25</sup> *Ibid.*, 77-9.

<sup>26</sup> *Ibid.*, 49-50.

<sup>27</sup> A. A. M. Duncan, *The Kingship of the Scots, 842-1292: Succession and Independence* (Edinburgh, 2002), p. 225.

<sup>28</sup> A. A. M. Duncan, 'The Process of Norham, 1291', in *Thirteenth Century England V: Proceedings of the Newcastle upon Tyne Conference 1993*, ed. P. R. Coss and S. D. Lloyd (Woodbridge, 1995), pp. 207-30 (p. 228).

<sup>29</sup> As Reginald L. Poole noted, 'the composition of Papal letters was governed by precise and elaborate rules determining the rhythmical proportion and the cadence of each period' and 'was based not on metre but on accent'. The *cursus* could take one of three styles: *planus* (dactyl-spondee), *tardus* (dactyl-dactyl), and *velox* (dactyl-spondee-spondee): R. L. Poole, *Lectures on the History of the Papal Chancery: Down to the Time of Innocent III* (Cambridge, 1915), pp. 76, 83. Although this rhetorical technique was predominantly used by the papal chancery, it was not uncommon for those writing to the pope to also employ the *cursus*.

authorities of medieval Europe, the papacy or the empire'.<sup>30</sup> Third, the text consistently used the more continental formula *superior et directus dominus* in reference to Edward's "right" to overlordship of Scotland.<sup>31</sup> As such, whether the Great Roll was intended to justify the Great Cause or the invasion of 1296, it was clearly an attempt to present Edward's historico-legal claim to Scotland in the most authoritative fashion possible. Despite John's remarkable and painstaking efforts, however, circumstances would soon render his work obsolete.

### 3.2 The Papal Intervention: *Scimus fili*

By June 1299, the English and Scots had been waging war against each other, in one form or another, for more than three years. In July of the previous year, Boniface VIII had tried in vain to bring the conflict to an end with the rather tamely worded papal bull, *Si missa*.<sup>32</sup> Nearly a year on, with little sign of the bloodshed abating, the pope issued Edward with a second and considerably more magisterial decree.<sup>33</sup> Papal bulls customarily take their name from the first two or three words of substantive text (the *incipit*). In this case, those words were *Scimus fili*, which mean 'we know, son'.<sup>34</sup> *Scimus fili* was transcribed on a single piece of vellum, measuring approximately the size of a modern broadsheet newspaper. Written in the language of the Roman Church, the script was compact though eminently legible. The decree's most notable feature was the elongated "B" for Boniface which towered majestically over the rest of the text. As was customary, a distinctive leaden seal (*bullā*—from which the term "papal bull" comes) was attached to the document with a long piece of string. The seal's obverse bore the faces of Saint

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<sup>30</sup> Stones and Simpson, *The Great Cause*, i, 77.

<sup>31</sup> *Ibid.*, pp. 120-2; S. W. Dempsey, 'Reassessing the Terminological Discrepancies in the Records of the Great Cause', *The Scottish Historical Review* 98 (2019), 291-9. For a different interpretation, see Duncan, *The Kingship of the Scots*, pp. 220-54.

<sup>32</sup> For the *Si missa*, see *Fœdera*, I, ii, 897-8.

<sup>33</sup> For *Scimus fili*, see Stones, *Anglo-Scottish Relations*, no. 28.

<sup>34</sup> Note the use of the *pluralis maiestatis*.

Paul and Saint Peter, together with the abbreviations *SPA • SPE*; the reverse read simply, *BONIFATIVS • PP • VIII*.<sup>35</sup> The bull was dated at Anagni, Latium, Boniface's birthplace and preferred place of residence, on 27 June 1299.

Above all else, *Scimus fili* was a repudiation of Edward's historico-legal claim to overlordship of Scotland. Promptly and forthrightly, Boniface told the king, 'we can hardly doubt that ... the realm of Scotland ... was not, and is not, feudally subject to your predecessors, the kings of the realm of England, nor to you'.<sup>36</sup> In support of this assertion, the pope made a brief survey of recent Anglo-Scottish relations, the substance of which, it can be reasonably assumed, was provided by Scottish agents.<sup>37</sup> Boniface told Edward that when the king's father, Henry III, had asked Alexander III of Scotland to assist him with his war against Simon de Montfort, he had done so not by right but of grace. Likewise, when Edward himself had requested the presence of Alexander at his coronation in August 1274, he had made the request not by right but of grace. On the recurring question of Alexander's submission to Edward at Westminster in 1278, Boniface claimed that the king of Scots had done homage only for lands held in England (Tynedale and Penrith), and explicitly not for the realm of Scotland. The pope also reminded Edward that during Margaret's minority, Scotland had not been placed under his control, as overlord of the realm, but rather in the custody of an elected body of Scottish magnates. Moreover, said Boniface, it was during this same period that Edward had agreed that if the heir to the throne of Scotland were to marry his son, Edward of Carnarvon, and the resulting marriage were to fail to produce issue, Scotland would retain its former state, namely, 'entirely free, and

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<sup>35</sup> *SPA • SPE* was the common abbreviated form of *Sanctus Paulus et Sanctus Petrus* (Saint Paul and Saint Peter), while *PP* was the common abbreviated form of *Pastor Pastorum* (shepherd of shepherds).

<sup>36</sup> Stones, *Anglo-Scottish Relations*, pp. 163-5.

<sup>37</sup> The deep conceptual links between Boniface's *Scimus fili*, and Baldred Bisset's *Instructiones* and *Processus*, leave no doubt that the papacy and the Scots formulated their respective arguments in close consultation with one another. The only question that remains is where the substance of these arguments originated. In all likelihood, it originated with the Scots. For the *Instructiones* and *Processus*, see *Chronicles of the Picts, Chronicles of the Scots, and other Early Memorials of Scottish History*, ed. W. F. Skene (Edinburgh, 1867), pp. 232-84. For a contemporary report to Edward on the *Instructiones*, see Stones, *Anglo-Scottish Relations*, no. 31.

subject, or submitted, to nobody'.<sup>38</sup> Although the pope conceded that Scotland's free status had subsequently been disrupted by 'certain unaccustomed innovations',<sup>39</sup> he argued that these had taken place only when the realm was leaderless or ruled by a puppet king.<sup>40</sup> Moreover, Boniface emphatically told Edward that the gains which he had made in Scotland from the Great Cause onwards had been achieved through force, or the threat of force, and, as a consequence, lacked legal validity. It was a stinging rebuke of the English king's claim to Scotland from the vicar of Christ.

Yet if *Scimus fili* served to declare Scotland's independence from the king of England, it also served to proclaim the realm's dependence on the papacy. In no uncertain terms, Boniface told Edward that Scotland had belonged to the Roman Church from ancient times (*ab antiquis temporibus*), and that 'out of regard for the pastoral office which rests on our shoulders, we are bound to cherish and watch over diligently the property and all the rights of the church, and that we cannot and should not defer to man rather than to God'.<sup>41</sup> The significance of this counter-claim cannot be overstated, for if Scotland were a papal "fief" then it followed logically that the realm could not be "feudally" subject to the English king. The pope's message could hardly have been clearer: he, and not Edward, was the true overlord of Scotland.

*Scimus fili* was predicated upon a hierocratic interpretation of the two-swords theory. The two-swords theory was used by medieval thinkers to clarify one of the most enduring problems of the period, namely, the relationship between spiritual and temporal power. The imagery of the two swords — one representing the spiritual sphere, the other the temporal — was

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<sup>38</sup> Stones, *Anglo-Scottish Relations*, p. 167. This was, of course, a reference to the Treaty of Birgham-Northampton (1290). For this treaty, see G. W. S. Barrow, 'A Kingdom in Crisis: Scotland and the Maid of Norway', *The Scottish Historical Review* 69 (1990), 120-41 (pp. 137-41).

<sup>39</sup> Presumably, the pope was referring to how, during the Great Cause, the claimants to the throne of Scotland had recognised the English king as their overlord and proper judge; and how John Balliol, as the newly inaugurated king of Scots, had acknowledged Edward as the overlord of Scotland at the English Parliament on St Stephen's Day 1292.

<sup>40</sup> Boniface referred to John only as 'the man to whom you are said to have committed the rule of the kingdom': Stones, *Anglo-Scottish Relations*, p. 169. This was a marked departure from *Grande divinæ*, a papal bull sent eleven months earlier, in which the pope had addressed John as the illustrious king of Scotland (*Regi Scotiæ illustri*): see *Fœdera*, I, ii, 893.

<sup>41</sup> Stones, *Anglo-Scottish Relations*, p. 173.



based on a rather curious allegorical interpretation of Luke 22:38: ‘Then they said, “Lord, look, there are two swords here.” But he replied, “It is enough!”’. Medieval theologians and jurists alike took this passage to mean that Christ himself had separated the spiritual from the temporal, and, therefore, the functions of the priest from the functions of the king.<sup>42</sup> Yet if it was generally agreed that human affairs were governed by two distinct authorities, there was far less agreement on how these two authorities related to each other. Such matters were not, it should be stressed, merely philosophical; they lay at the heart of church and state relations during the Middle Ages, and divergent understandings of spiritual and temporal power could – and did – lead to excommunication, deposition, and war.

Broadly speaking, there were two rival interpretations of the two-swords theory: the dualist and the hierocratic. The dualist interpretation, which had first been advanced by Emperor Henry IV in the context of the Investiture Controversy, held that spiritual and temporal power existed in parallel, and that each, therefore, possessed an autonomous sphere of influence. Although the dualists were content to admit the pope’s supremacy in spiritualities, they steadfastly maintained that the emperor recognised no superior in temporalities: ‘Then repay to Caesar what belongs to Caesar and to God what belongs to God’.<sup>43</sup> On this view, the papacy had no legitimate grounds to interfere in the earthly affairs of secular rulers.<sup>44</sup> Proponents of the hierocratic interpretation, however, saw things very differently. They argued that spiritual and temporal power existed hierarchically and, in many ways, in unity.<sup>45</sup> This idea was captured quite beautifully by the famous hierocratic analogy: just as the light of the moon is derived from the sun, so the power of the secular ruler is derived from the pope. Put another way, temporal power was naturally subordinate to, and derivative of, spiritual power. To the hierocratic mind, the

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<sup>42</sup> J. A. Watt, ‘Spiritual and Temporal Powers’, in *The Cambridge History of Medieval Political Thought c. 350-c. 1450*, ed. J. H. Burns (Cambridge, 1988), pp. 367-423 (pp. 367-74).

<sup>43</sup> Matthew 22. 21.

<sup>44</sup> Watt, ‘Spiritual and Temporal Powers’, p. 372; J. Canning, *Ideas of Power in the Late Middle Ages, 1296-1417* (Cambridge, 2013), p. 13.

<sup>45</sup> Watt, ‘Spiritual and Temporal Powers’, p. 369.

Church – understood as the entire Christian community – was a mystical body (*corpus mysticum*) within which all spiritual and temporal power resided. The pope, as St Peter’s successor and Christ’s deputy (*vicarius Christi*), was the head of that body, and, as such, reserved the right to intervene in secular affairs. On the hierocratic interpretation, then, there could be no autonomous temporal sphere; the pope, as Christ’s earthly representative, rightfully held the spiritual sword in one hand and the temporal sword in the other.<sup>46</sup>

Boniface’s claim to overlordship of Scotland – like all papal claims to overlordship of kingdoms, principalities, duchies, and other such territories – was but another manifestation of the hierocratic logic.<sup>47</sup> As such, it would be misguided to follow one commentator, who has concluded that *Scimus fili* amounted to a ‘radical assertion of papal supremacy in temporal affairs’.<sup>48</sup> Boniface was certainly a hierocratic pope in the tradition of Innocent III and Innocent IV, but he was no radical. Moreover, the creation of papal “fiefs” was something of a commonplace during this period. The same scholar has also argued that it was highly unusual for a “feudal” monarchy to subject itself to the pope.<sup>49</sup> This, however, betrays a fundamental misapprehension of the nature of papal overlordship. By the late thirteenth century, there were numerous examples of monarchies which had voluntarily become papal “fiefs”.<sup>50</sup> One need look no further than England, which John had willingly surrendered to the papacy in 1213. Yet it is important to stress that papal “fiefs” were not “fiefs” in the ordinary sense of the term, for they did not exist in order to expand the temporal power or extend the territorial reach of their overlord. Generally speaking, monarchies sought the overlordship of the pope because they were

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<sup>46</sup> *Ibid.*, p. 372. Boniface would later provide one of the most dramatic representations of the hierocratic worldview when, during the Papal Jubilee of 1300, he appeared before the gathered faithful carrying two swords: F. Rocquain, ‘Two Hostile Sovereigns at the Brink’, in C. T. Wood, ed., *Philip the Fair and Boniface VIII: State vs. Papacy* (New York, 1967), pp. 47-52 (p. 48).

<sup>47</sup> See generally, W. Ullmann, *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power*, 3<sup>rd</sup> edn (London, 1970), pp. 331-43.

<sup>48</sup> R. J. Goldstein, *The Matter of Scotland: Historical Narrative in Medieval Scotland* (Lincoln and London, 1993), p. 70.

<sup>49</sup> *Ibid.*

<sup>50</sup> For some such examples, see Ullmann, *The Growth of Papal Government*, pp. 333-4.

in need of the protection of the Roman Church – or, more precisely, the protection of St Peter (*patrocinium beati Petri*) – from secular rulers abroad or hostile forces at home.<sup>51</sup> Therefore, while it may appear contradictory that Scotland would seek to preserve its independence from England by swapping one overlord for another, it should be remembered that papal “fiefs” were (with some exceptions) independent in all but name.

What was peculiar about *Scimus fili*, then, was not Boniface’s claim to overlordship of Scotland *per se*, but rather Boniface’s claim to overlordship of Scotland ‘from ancient times’. The origins of this particular historical assertion can properly be excavated only by reading the bull alongside the *Instructiones* and *Processus*, documents which were produced approximately two years later by Baldred Bisset, a highly capable Scottish lawyer and the official of St Andrews. The *Instructiones* and *Processus* leave no doubt that the pope’s claim to Scotland was grounded in an especially tendentious reading of Honorius III’s 1218 papal bull, *Cum universi*.<sup>52</sup> This decree – which had previously been issued by Celestine III in 1192 and Innocent III in 1200<sup>53</sup> – had granted the Scottish Church (*Scoticana ecclesia*) independence from the archbishop of York by conferring upon it the status of special daughter (*filia specialis*) of the Roman Church.<sup>54</sup> However, it bears emphasising that *Cum universi* had pertained only to spiritual overlordship. *Scimus fili*, by contrast, asserted that the pope recognised no superior in the realm of Scotland both in matters spiritual and temporal. The papal claim was, therefore, revised from ‘the Scottish

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<sup>51</sup> *Ibid.*, p. 332.

<sup>52</sup> Bisset actually referred to Honorius III by name in the *Instructiones*: see Skene, *Chronicles of the Picts*, p. 263. For Honorius III’s version of *Cum universi*, see Stones, *Anglo-Scottish Relations*, no. 5. Although Bisset referenced the Donation of Constantine in both the *Instructiones* and *Processus*, the forgery did not form a central part of either the papal or Scottish argument: see Skene, *Chronicles of the Picts*, pp. 246, 274.

<sup>53</sup> A version of *Cum universi* may also have been issued by Clement III in 1189: see A. D. M. Barrell, ‘The Background to *Cum universi*: Scoto-Papal Relations, 1159-1192’, *The Innes Review* 46 (1995), 116-38.

<sup>54</sup> The Roman Church had initially conferred special-daughter status only on Glasgow, as per Alexander III’s papal bulls, *Super anxietatibus* (1176) and *Cum ex injuncto* (1179). *Cum universi* extended this status to the entire Scottish Church. For *Super anxietatibus* and *Cum ex injuncto*, see *Registrum episcopatus Glasguensis: Munimenta ecclesie metropolitane Glasguensis a sede restaurata seculo ineunte XII ad reformatam religionem*, ed. C. Innes, 2 vols (Edinburgh, 1843), i, no. 38, 51. See generally, D. Broun, *Scottish Independence and the Idea of Britain: From the Picts to Alexander III* (Edinburgh, 2007), pp. 124-57; H. Birkett, *The Saints’ Lives of Jocelin of Furness: Hagiography, Patronage and Ecclesiastical Politics* (Woodbridge, 2010), pp. 171-5.

church is subject to the apostolic see with no intermediary' (*Scotiana ecclesia sedi apostolice ... nullo medio sit subjecta*) to 'the kingdom of Scotland is directly subject to the said Roman church in temporalities' (*in temporalibus immediate sit subditum eidem Romanæ ecclesiæ regnum ipsum Scociæ*).<sup>55</sup> This shift was predicated on the dubious assertion that Scotland had been a special papal "fief" (as opposed to a mere special daughter of the Roman Church) since the days of Durst or Hurgust (*Durst sive Hurgust*),<sup>56</sup> and that *Cum universi* had merely affirmed (rather than conferred) this status.<sup>57</sup> However imaginative and brilliant this historical and conceptual sleight of hand may have been, it would prove to have enormous consequences for how the English king reformulated – and, indeed, enhanced – his own claim to the realm.

There can be little doubt that Boniface's decision to frame his claim to Scotland in these particular terms was taken in direct response to Edward's historico-legal argument. The pope would have been well informed of the manner in which the king had made use of monastic chronicles at Norham in 1291, and may even have been aware of the existence of the Great Roll. He was certainly conversant with the Scottish account of the events leading up to June 1299 by the time *Scimus fili* was written. Boniface's assertion of overlordship of Scotland 'from ancient times' should, therefore, be understood as an attempt to defeat Edward's historical claim – which took Edward the Elder as its starting point – by advancing a chronologically antecedent claim.

Although the pope surely intended *Scimus fili* to be the end of the matter, he nevertheless gave Edward a right of reply. Boniface told the king that if he still proposed to assert that he had a right to the realm of Scotland, he ought to dispatch his proctors and envoys (*procuratores et nuncios*) to Rome within six months of receiving the bull. The pope assured him that if he chose to do so, he would be granted full and complete justice in the matter. The implication of this

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<sup>55</sup> Stones, *Anglo-Scottish Relations*, p. 30; Skene, *Chronicles of the Picts*, pp. 263-4.

<sup>56</sup> Scotland was a special papal "fief", according to Bisset, because, unlike other papal "fiefs", it had not been required to pay "feudal" tribute (*census*) to Rome: Skene, *Chronicles of the Picts*, pp. 248-9.

<sup>57</sup> *Ibid.*, p. 248. This section of the *Processus* linked conceptually to the passage in *Scimus fili* on how Scotland had first been converted to the faith: see Stones, *Anglo-Scottish Relations*, p. 171.

offer was clear: Boniface was prepared to conduct a formal trial at the *curia Romana* in order to resolve the Scottish question once and for all. And in case there was any lingering doubt that the pope regarded himself as a proper judge in the matter, he closed *Scimus fili* with the following remarks:

For by this present letter we from now onwards recall and reserve to the jurisdiction and judgment of the Holy See whatever disputes, questions, and controversies have arisen, and in future, from whatever previous causes, may arise, between you and the realm of Scotland and its prelates, clergy, and secular persons, and every matter which concerns this subject, or any part of it.<sup>58</sup>

While the Scots may only have been too happy to submit to papal adjudication on temporalities, Edward would surely regard the prospect with deep suspicion.

### 3.3 The English Response

#### Deliberations at Lincoln

For reasons that are not altogether clear, *Scimus fili* did not reach Edward until 26 August 1300.<sup>59</sup> Robert Winchelsey, archbishop of Canterbury, whom Boniface had entrusted to deliver the document, had the unenviable task of travelling to Galloway, the focal point of the floundering English invasion of 1300, in search of the king. The cleric found Edward at Sweetheart Abbey, *en route* home. The following day, the king and his magnates assembled to listen to Winchelsey read the papal bull aloud, first in the original Latin then in French.<sup>60</sup> Upon hearing Boniface's bold words pass the archbishop's lips, the king flew into a rage, quoted Isaiah 62:1, and swore by God's blood to use all his strength to defend his right to Scotland, which was, he claimed, already

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<sup>58</sup> *Ibid.*, p. 175.

<sup>59</sup> T. S. R. Boase, *Boniface VIII* (London, 1933), p. 210. Michael Prestwich has suggested, quite plausibly, that Boniface may have held the papal bull back 'until it became clear that Edward had not given up his plans for the conquest of Scotland': Prestwich, *Edward I*, pp. 490-1.

<sup>60</sup> Prestwich, *Edward I*, p. 491.

known to all the world.<sup>61</sup> If Edward regarded Boniface's repudiation of his claim to Scotland as a menacing attempt to diminish greatness of the English crown, he must have been nothing less than bewildered by the pope's own — arguably even more dubious — historico-legal claim to overlordship of the kingdom. After all, how could Scotland possibly have belonged to the Roman Church 'from ancient times'?<sup>62</sup>

Edward ruminated on how best to proceed. He placed the issue on the agenda of the Lincoln parliament,<sup>63</sup> which was to commence in January of the following year, and summoned experts in Roman law from the universities of Oxford and Cambridge.<sup>64</sup> In a move reminiscent of 1291, the king also dispatched letters to monasteries and cathedrals, requesting that they search their chronicles, records, and private papers 'about the right and dominion that belong to us in the realm of Scotland, and which the kings of England, our predecessors, had in that realm in former times'.<sup>65</sup> Searches were also made of the royal archives, including by Andrew de Tange, the notary public who would later produce the Ragman Roll, a long compilation of notarial instruments which listed the names of Scottish clergy, nobles, knights, and landowners who had sworn oaths of allegiance to Edward following the invasion of 1296.<sup>66</sup> Here was the first indication that the king no longer regarded the Great Roll narrative as sufficient for his purposes, and that his historico-legal claim to Scotland would be revised and expanded. The catalyst for this evolution, it will be argued, was *Scimus fili* in general and two of its assertions in particular: first,

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<sup>61</sup> T. F. Tout, *Edward the First* (London, 1893), p. 213; M. Powicke, *The Thirteenth Century, 1216-1307* (Oxford, 1962), p. 229. Stones and Simpson suggested that Winchelsey had forewarned Edward of *Scimus fili* in a letter dated 28 June. Given the king's reaction at Sweetheart Abbey, however, it is very possible that the archbishop reached Edward before his letter did: see Stones and Simpson, *The Great Cause*, i, 154 n. 5.

<sup>62</sup> It should be remembered that Boniface had provided little evidence to support his historical claim in *Scimus fili*, and that the intellectual origins of the bull would not be known to Edward until the following summer: see n. 37 above.

<sup>63</sup> *PROME*, parliament of 1301.

<sup>64</sup> W. Ullmann, 'On the Influence of Geoffrey of Monmouth in English History', in *Speculum Historiale: Geschichte im Spiegel von Geschichtsschreibung und Geschichtsdeutung*, ed. C. Bauer, L. Boehm and M. Müller (Munich, 1965), pp. 257-76 (pp. 265-6); E. L. G. Stones, 'The Appeal to History in Anglo-Scottish Relations Between 1291 and 1401: Part I', *Archives* 9 (1969), 11-21 (p. 19).

<sup>65</sup> Stones and Simpson, *The Great Cause*, i, 154-5.

<sup>66</sup> *Ibid.*, 155; Prestwich, *Edward I*, p. 491; G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland*, 4<sup>th</sup> edn (Edinburgh, 2005), p. 151.

that Scotland had belonged to the Roman Church ‘from ancient times’, and second, that Edward’s gains in Scotland from the Great Cause onwards had been achieved through force, or threat of force, and, therefore, lacked legal validity.

William of Sardinia, a civil lawyer in the service of Winchelsey, was among those asked to provide a legal opinion on *Scimus fili* and present the king with a list of options on how to proceed.<sup>67</sup> William’s advice, though rather hastily drafted, was a learned and comprehensive account of the relevant matters of law. Many of the jurist’s arguments and turns of phrase would later appear in the two English replies to the papal bull, suggesting that the king’s clerks made a close study of the legal brief. William was firmly of the view that Boniface had presented scant evidence to support his claim that Scotland had been a papal “fief” ‘from ancient times’. He also took issue with the allegation that Edward had acted unlawfully and unjustly towards the Scots, writing that ‘the king of England has tried nothing injurious, but has sought for and defended the continuous right, possession, and status of his predecessors and of himself, and has restrained, as he was entitled to do, the rebellion, and the unbearable insults, offences, and excesses of his own subjects’.<sup>68</sup> As far as William was concerned, Edward’s claim to Scotland was beyond dispute. Yet the question for both the jurist and his king was how to prove all of this to a pope who appeared to have already made up his mind.

William saw legal pitfalls at every turn. If Edward were to ignore the papal bull, Boniface might declare him contumacious, and subsequently make a prejudicial judgment against him. However, if the king were to dispatch proctors and envoys with letters of credence to the *curia Romana*, just as Boniface had requested, this would be to participate in a trial in which the pope was, rather farcically, a party to the very matter he was adjudicating. William was particularly worried that Boniface, himself an accomplished lawyer, could employ skilful questioning to take

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<sup>67</sup> For William of Sardinia’s legal opinion, see Stones, *Anglo-Scottish Relations*, no. 29.

<sup>68</sup> *Ibid.*, pp. 177-9.

the king's representatives beyond their brief, where they might make statements detrimental to their master's cause. Furthermore, as the jurist was at pains to point out, to submit to papal adjudication would be to concede that the pope had jurisdiction over the matter.<sup>69</sup> This Edward would never be able to accept, for he, like his contemporary, Philip IV of France, took very seriously the idea that he recognised no superior in temporalities. Yet an outright invocation of the *rex qui superiorem non recognoscit* (a king who does not recognise a superior) maxim – which would amount to an outright denial of the pope's jurisdiction – would be to risk provoking Boniface's ire. The question of papal authority over English temporalities was, as William noted, further complicated by the fact that Edward's grandfather, John, had submitted to the overlordship of Innocent III in 1213. It was not impossible, then, that the current pope still regarded England as a papal possession.

William, therefore, explored more subtle methods by which Edward could avoid formal proceedings in Rome. One possibility was that the king could excuse himself on the basis that the nobles and magnates of his realm would not consent to his submitting the rights of the English crown to papal adjudication. Yet William feared that Boniface would regard this excuse as frivolous, and would subsequently make a prejudicial judgment against the king. In what would ultimately prove to be his most consequential piece of advice, the jurist also suggested that Edward might reply to the pope not through proctors and envoys but via a royal letter written in an extra-judicial (*extrajudicialiter*) capacity. Although at odds with Boniface's explicit demands in *Scimus fili*, William argued that a royal letter would enable the king to present his case in a single, self-contained document without recourse to a papal interview. Moreover, by writing in an extra-judicial capacity, Edward would, at least in theory, be able to avoid formal proceedings in Rome without directly contesting the pope's jurisdiction. The jurist warned the king, however, that such

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<sup>69</sup> 'On the first point, whether a mission should be sent to the pope, according to the terms of the papal letter, it seems to some that it would be dangerous to send according to the terms of the mandate, because in this way the pope would be admitted as superior, and as a proper judge in matters temporal': *ibid.*, p. 179.



a letter would have to be composed with the utmost care, for once it had been received by Boniface, it would be entered into the papal registers and preserved for all time.

The Lincoln parliament commenced in January 1301, and much of its sitting time was devoted to the matter of Boniface's bull.<sup>70</sup> Correspondence from Edward to John Langton, chancellor of England, reveals that, as early as November of the preceding year, the king had resolved to compose a reply at Lincoln.<sup>71</sup> Edward, it seems, was from the beginning convinced that his claim to Scotland was eminently defensible, and that *Scimus fili* was an exemplar of papal overreach. The real question for the king and his magnates, then, was not whether but how to respond.

Two letters of reply emerged from the Lincoln parliament. The first, dated 12 February, was the Barons' Letter, so called, presumably, because of the sixty-four barons (together with seven earls) who affixed their seals to it. It would appear that this letter never found its way to Boniface. The second letter, signed by Edward himself and dated 7 May, will, for convenience's sake, be termed the King's Letter. It is not entirely clear why the English felt it necessary to prepare two separate responses to *Scimus fili*. The most plausible explanation seems to be that they originally intended to send the letters together or in quick succession, and that the rather brusque Barons' Letter was meant to soften the ground for the more measured and respectful King's Letter — a medieval version of the “good cop, bad cop” routine. This would certainly have accorded with the practice of previous kings of England *vis-à-vis* the papacy.<sup>72</sup> Moreover, the idea that the English originally intended to send two replies — one from the king and another from

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<sup>70</sup> It was very likely at this same parliament that Edward bestowed upon his son and heir, Edward of Carnarvon (later Edward II), the title ‘prince of Wales’. Considering the timing, it is difficult not to see this move as part of a larger effort by the English king to demonstrate his insular (and, indeed, archipelagic) superiority. Moreover, given the prominence that the British History would assume in the King's Letter, it is far from inconceivable that, at some level, Edward entertained ambitions of ‘restoring’ the Arthurian monarchy of Britain. However, one chronicler, writing shortly after Edward's 1296 conquest of Scotland, had declared that even the great Arthur was no match for the Plantagenet king; see Wright, *Langtoft*, ii, 266-7.

<sup>71</sup> *The Functions of the Medieval Parliament of England*, ed. G. O. Sayles (London and Ronceverte, 1988), pp. 242-3.

<sup>72</sup> See G. G. Simpson, ‘The Declaration of Arbroath Revitalised’, *The Scottish Historical Review* 56 (1977), 11-31 (p. 22).

the magnates — is compatible with the principle, enduring if inconsistently applied, that matters which touched the crown ought to be approved by the whole body politic. Perhaps, in the end, this two-pronged approach was deemed too hazardous, and the Barons' Letter was held back as a consequence. However, another possibility is that the English initially intended to dispatch but one letter — the Barons' Letter — and the King's Letter was an afterthought, composed only once the Barons' Letter had been deemed inadequate for one reason or another. In support of this alternative explanation is William's "fourth point" of advice, which explored the merits of sending a baronial letter, rather than proctors and envoys, to Anagni,<sup>73</sup> as well as the considerable lapse in time between the Lincoln parliament and the final composition of the King's Letter. It bears repeating, however, that the former explanation seems to be the more plausible.

### The Barons' Letter

Although the Barons' Letter was predominantly a declaration of Edward's supremacy in temporalities and a repudiation of Boniface's hierocratic interpretation of the two-swords theory, it was also an important step in the evolution of the king's historico-legal claim to overlordship of Scotland.<sup>74</sup> Indeed, beneath the magnates' strenuous assertions that the pope lacked jurisdiction to sit in judgment on Edward were the first intimations of an ambitiously expanded historical narrative which would culminate in the King's Letter. The Barons' Letter is capable of providing many important insights into Edward's thinking during the early weeks of 1301, and is, therefore, worth examining in some detail.

While the Barons' Letter was probably conceived of as a tactical manoeuvre which enabled Edward to issue a forceful reply to Boniface under the cover of plausible deniability, its very existence reveals a good deal about the nature of English kingship during the period. After

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<sup>73</sup> See Stones, *Anglo-Scottish Relations*, p. 187.

<sup>74</sup> For the Barons' Letter, see *Foedera*, I, ii, 926-7.

all, as has been noted already, this was not the first time that a group of English magnates had taken it upon themselves to address the vicar of Christ on matters affecting the welfare of the crown (*status coronæ*) and of the realm (*status regni*). The magnates and prelates, together with the king, constituted a corporate body known as the community of the realm (*communitas regni*).<sup>75</sup> The king, by virtue of his royal office (*officium regis*), was the head of that corporate body, and, as such, possessed the right to govern for the common good. However, it was generally accepted that certain matters should not be dealt with by the king alone. In principle, if not always in practice, matters which touched the crown required the approval of the whole community of the realm. Edward himself had made this very point in 1275, when, in an effort to avoid paying “feudal” tribute (*census*) to Rome, he told Gregory X that his coronation oath prohibited him from doing anything ‘which touched the crown without the consent of the prelates and magnates’.<sup>76</sup> While the king’s reference to his coronation promise undoubtedly pertained to the non-alienation clause that would remain unrecorded until the 1308 oath of Edward II,<sup>77</sup> his reference to the prelates and magnates was, as Ernst H. Kantorowicz noted, an allusion to the famous Romano-canonical maxim of corporate consent, *quod omnes tangit ab omnibus approbetur* (what touches all must be approved by all).<sup>78</sup> Such ideas link conceptually with the fact that, two days after the Barons’ Letter had been dated, Edward reconfirmed the *Confirmatio Cartarum* under the Great Seal (*sub magno sigillo*).<sup>79</sup>

By the turn of the fourteenth century, the English magnates regarded themselves as the temporary guardians of an immortal crown, which they, like the king, had sworn an oath to

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<sup>75</sup> It was for this reason that the magnates who sealed the Barons’ Letter purported to speak on behalf of all the communities of the realm of England (*totâ communitate ... regni Angliæ*): *ibid.*, 927.

<sup>76</sup> *Parliamentary Writs*, ed. F. Palgrave, 2 vols (London, 1827-34) i, 381-2; see also, A. M. Spencer, *Nobility and Kingship in Medieval England: The Earls and Edward I, 1272-1307* (Cambridge, 2014), p. 54; Kantorowicz, *King’s Two Bodies*, pp. 361-2.

<sup>77</sup> See generally, B. Wilkinson, ‘The Coronation Oath of Edward II and the Statute of York’, *Speculum* 19 (1944), 445-69; R. S. Hoyt, ‘The Coronation Oath of 1308’ *EHR* 71(1956), 353-83; see also, n. 17 above.

<sup>78</sup> Kantorowicz, *King’s Two Bodies*, pp. 361-2.

<sup>79</sup> See *Fœdera*, I, ii, 927.

protect. The original councillors' oath, formulated during the reign of Henry III and used for most of Edward's reign, had principally been an oath of allegiance to the person of the king.<sup>80</sup> However, in 1294 the oath had been substantially revised to impose greater obligations on councillors with respect to the crown.<sup>81</sup> The fourth clause of this revised oath, which in many ways mirrored the as-yet-unrecorded non-alienation clause in the king's coronation oath, read: 'And that your pains, aid, and counsel and all your power, you will give and apply, to guard and maintain and preserve and restore the rights of the king and of the crown, where you can without wrongdoing'.<sup>82</sup> Therefore, the councillors' oath of 1294 was as much a pledge of allegiance to the office of the king as it was a pledge of allegiance to the temporary occupant of that office. Referencing this oath in the Barons' Letter, the magnates told Boniface that they would not permit their king to submit to papal adjudication, even if the king himself so desired it, because to do so would be to jeopardise the crown of England (*coronæ regni Angliæ*) and the royal dignity (*Regiæ dignitatis*).<sup>83</sup> For the time being, constitutional encumbrance — or, at the very least, the pretence of constitutional encumbrance — suited Edward's purposes.

The Barons' Letter was, for the most part, a declaration of Edward's supremacy in temporalities. Indeed, the entire text was predicated upon a dualist interpretation of the two-swords theory that insisted on the autonomy of spiritual and temporal power. While the hierocratic Boniface claimed the right to intervene in secular affairs, the magnates, for their part, considered such interventions as papal overreach of the most intolerable kind. As far as they were concerned, the king of England recognised no superior in temporalities, and that was that. In all but name, they invoked *rex qui superiorem non recognoscit*, a formula whose origins lay

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<sup>80</sup> Spencer, *Nobility and Kingship*, pp. 54-5; Prestwich, *Edward I*, p. 437. For the 1257 councillors' oath, see J. F. Baldwin, *The King's Council in England During the Middle Ages* (Oxford, 1913), p. 346.

<sup>81</sup> Spencer, *Nobility and Kingship*, p. 54. For the 1294 councillors' oath, see Baldwin, *The King's Council*, pp. 347-8.

<sup>82</sup> 'E qe votre peyne eide e consail e tot votre poair dorrez e metterez as droitures le Roy et de la corone garder et maintenir sauver et repeller par la ou vous porrez, sanz tort faire': Baldwin, *The King's Council*, p. 348.

<sup>83</sup> *Fœdera*, I, ii, 927.

in Innocent III's 1202 decretal, *Per venerabilem*,<sup>84</sup> and which, in the hands of English, French, Neapolitan, and Spanish jurists, had later been combined with the *rex in regno suo est imperator regni sui* (a king in his kingdom is the emperor of his kingdom) formula to form a theory of territorial sovereignty.<sup>85</sup> Taken together with a revealing passage from William's legal brief, there can be little doubt about the magnates' intentions.<sup>86</sup> In this respect, the Barons' Letter anticipated Philip IV's defiant response to Boniface's 1302 papal bull, *Unam sanctam*, arguably the most definitive articulation of the hierocratic logic.<sup>87</sup> With national monarchies growing increasingly confident and assertive of their independence from Rome, the ground was beginning to shift beneath the pope's feet.

Yet the Barons' Letter also represented an important stage in the evolution of Edward's historico-legal claim to Scotland. Indeed, at the risk of pushing the metaphor too far, the text ought to be regarded as a transitional form between the Great Roll narrative and the King's Letter narrative. As far as the magnates were concerned, Boniface's claim to overlordship of Scotland 'from ancient times' could not go unanswered. In direct response to the pope's assertion, they argued that the kings of England had exercised overlordship (*superius et directum dominium*) of Scotland from ancient times (*ab antiquo*):

For we know, most holy father, and it is widely known in parts of England and not unknown to some others, that, from the first arrangement of the kingdom of England, the kings of that kingdom, both in the times of the Britons and of the English, have had superior and direct lordship of the kingdom of Scotland, and have existed in possession or quasi-possession of superiority and direct lordship of the kingdom of Scotland at successive times. Nor at any time has that kingdom in temporalities belonged, nor does it belong, to the above-mentioned church by any right whatsoever.<sup>88</sup>

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<sup>84</sup> For *Per venerabilem*, see *Corpus Iuris Canonici*, ed. A. Friedberg, 2 vols (Graz, 1955), ii, 714-16.

<sup>85</sup> J. Canning, *A History of Medieval Political Thought, 300-1450*, 2<sup>nd</sup> edn (London and New York, 2005), pp. 124-5. See generally, G. Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (New Jersey, 1964), pp. 453-82.

<sup>86</sup> See n. 69 above.

<sup>87</sup> For *Unam sanctam*, see Friedberg, *Corpus Iuris Canonici*, ii, 1245.

<sup>88</sup> '*Scimus enim, pater sanctissime, & notorium est in partibus Angliæ, & nonnullis aliis non ignotum; quod, a prima institutione regni Angliæ, Reges ejusdem regni, tam temporibus Britonum, quam Anglorum, superius & directum dominium regni Scotiæ habuerunt, & in possessione vel quasi superioritatis & directi domini ipsius regni Scotiæ*

To go toe-to-toe with the papacy in the genre of historico-legal argument, the magnates needed every authority they could lay their hands on. They turned, in the first instance, to the recently completed Great Roll of Scotland, which took 901 and the Anglo-Saxon king, Edward the Elder, as its starting point. Yet even the Great Roll narrative proved insufficient to counter *Scimus fili*. While four centuries of precedent was impressive, it scarcely qualified as ancient history. The English required something far older. They found it, as the reference to ‘the Britons’ reveals, in Geoffrey of Monmouth’s *Historia Regum Britanniae*. This fleeting allusion to the legendary kings of Britain – an allusion that would be thoroughly elaborated upon in the King’s Letter – marked the first time that the British History was used in official communication to justify an English king’s claim to overlordship of Scotland. It would certainly not be the last.

### The King’s Letter

The second of the two English replies to *Scimus fili* was the King’s Letter, signed with Edward’s own hand.<sup>89</sup> Considerably longer and more sophisticated than the Barons’ Letter, the document was dated at Kempsey, Worcestershire on 7 May 1301, more than three months after the Lincoln parliament had first deliberated upon Boniface’s bull. The King’s Letter ought to be seen as a direct response to the decree in general and two of its assertions in particular: first, that Scotland had belonged to the Roman Church ‘from ancient times’, and second, that Edward’s gains in Scotland from the Great Cause onwards had been achieved through force, or threat of force, and, therefore, lacked legal validity. That the English king would have felt compelled to counter these papal pronouncements goes a long way towards explaining why his reply took the precise shape and form that it did. After all, the various challenges which Boniface had laid down in

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*successivis temporibus extiterunt; Nec ullis temporibus ipsum regnum, in temporalibus, pertinuit, vel pertinet quovis jure ad ecclesiam supradictam*: *Foedera*, I, ii, 927.

<sup>89</sup> For the King’s Letter, see Stones, *Anglo-Scottish Relations*, no. 30.

*Scimus fili* could not have been met simply by rendering the tedious diction of the Great Roll into eloquent epistolary prose. Instead, the Great Roll narrative – which took 901 as its starting point and 1252 as its terminus – had to be expanded chronologically in both directions. This required a good amount of new material. Drafted first in French, with the final version composed in the ornamental style of the *Cursus Curiae Romanae*,<sup>90</sup> the King’s Letter was intended to prove Edward’s historical claim to Scotland once and for all.

The king began his reply to Boniface with a carefully prepared disclaimer. Closely adhering to William’s legal advice, Edward told the pope that his reply ought to be understood as a mere courtesy: ‘What follows we send to you not to be treated in the form or manner of a legal plea, but altogether extrajudicially, in order to set the mind of your Holiness at rest’.<sup>91</sup> While the English magnates could bluntly assert that their king recognised no superior in temporalities, the king himself had to proceed with greater care. Yet even an uncharacteristically cautious Edward would not abide the pretensions of a hierocratic pope. Indeed, the king simply took for granted that the papacy had no legitimate grounds to interfere in the earthly affairs of secular rulers, for he, like his French counterpart, Philip IV, steadfastly observed the maxim, *rex in regno suo est imperator regni sui*. And if Edward’s reply to *Scimus fili* ultimately proved to be more restrained than the French king’s response to *Unam sanctam*, this was not on account of any fundamental difference in principle.

Having issued his disclaimer, Edward turned to the matter proper. With a lawyerly abundance of prepositions, conjoined phrases, and protracted sentences, the king laid out his central argument:

The All-Highest, to whom all hearts are open, will testify how it is graven upon the tablets of our memory with an indelible mark, that our predecessors and progenitors, the kings of England, by right of lordship and dominion, possessed, from the most ancient times, the suzerainty of the realm of Scotland and its kings

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<sup>90</sup> See n. 29 above.

<sup>91</sup> Stones, *Anglo-Scottish Relations*, p. 193. Note the use of the *pluralis maiestatis*.

in temporal matters, and the things annexed thereto, and that they received from the self-same kings, and from such magnates of the realm as they so desired, liege homage and oaths of fealty. We, continuing in the possession of that very right and dominion, have received the same acknowledgments in our time, both from the king of Scotland, and from the magnates of that realm.<sup>92</sup>

Edward assured the pope that despite what certain ‘foes of peace and sons of rebellion’ may have told him,<sup>93</sup> his claim to overlordship (*superioris et directi domini*) of Scotland was grounded in an ancient and celebrated history.

The King’s Letter narrative began not as the Great Roll did, with Edward the Elder, but rather with the Trojan Brutus. Drawing heavily on Geoffrey of Monmouth’s *Historia Regum Britanniae*, the king told Boniface:

[I]n the days of Eli and of Samuel the prophet, after the destruction of the city of Troy, a certain valiant and illustrious man of the Trojan race called Brutus, landed with many noble Trojans, upon a certain island called, at that time, Albion. It was then inhabited by giants, and after he had defeated and slain them, by his might and that of his followers, he called it, after his own name, Britain, and his people Britons, and built a city which he called Trinovant, now known as London.<sup>94</sup>

According to Edward, Brutus had later divided his island kingdom among his three sons: Lochrine, the eldest, had inherited the land now called England; Albanact, Scotland; and Camber, the youngest, Wales. Yet in spite of the tripartite partition, the royal dignity (*regia dignitate*) had been conferred on Lochrine alone, ‘for the custom of Troy demanded that the dignity of the inheritance should go to the first born’.<sup>95</sup> It was for this reason, said the king, that Lochrine and his successors, the kings of the Britons, had worn the crown of the island (*diadema insule*) and enjoyed overlordship of Scotland and Wales. Moreover, Edward claimed that several British kings, including Dunwal and the famous Arthur, had demonstrated this overlordship by deposing rebellious Scottish kings for just causes and installing more amenable crowned heads to govern

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<sup>92</sup> *Ibid.*, pp. 193-5.

<sup>93</sup> *Ibid.*, p. 195.

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*, p. 197.



in their place. Following this logic, the kings of the Britons had remained the *de facto*, if not *de jure*, rulers of the island even after the partition.

It should be stressed that this was a particularly tendentious account of the British History. Indeed, Edward's version of the island's ancient past departed from the traditional Galfridian narrative in several ways.<sup>96</sup> Some of these departures were rather minor in nature, and may well have been unintentional. Take, for example, how Albanact was depicted as Brutus's second, rather than third and youngest, son.<sup>97</sup> Other alterations, however, were of a far more deliberate and consequential character. The most important of these is what will be termed the Edwardian Emendation. In Geoffrey's original account, Britain was divided among Brutus's three sons without any mention of overlordship or Trojan laws of primogeniture.<sup>98</sup> In fact, the tripartite partition appears to have been an attempt to defeat primogeniture altogether. Otherwise, what was the virtue of apportioning the inheritance in the first place? The Edwardian Emendation all but inverted the logic of the island partition as traditionally conceived. By inserting the phrase 'with the royal dignity having been reserved to Lochrine, the eldest' (*reservata Lochrino seniori regia dignitate*),<sup>99</sup> Edward introduced the concept of overlordship into the equation, and thereby transformed three independent if not strictly equal monarchies into two asymmetric monarchies.<sup>100</sup> The genius of the Edwardian Emendation, of course, was that it elaborated on the widely accepted idea that Lochrine's inheritance was greater and more prestigious than that of his brothers. As Roger A. Mason has noted, Lochrine's seniority was always

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<sup>96</sup> See generally, *The Historia Regum Britannie of Geoffrey of Monmouth I: Bern, Burgerbibliothek, MS. 568*, ed. N. Wright (Cambridge, 1985).

<sup>97</sup> It may be conjectured that this variation was an unconscious reflection of the fact that Scotland was a kingdom, while Wales was a mere principality. In the Scottish reply to the King's Letter, Albanact was depicted as the third and youngest son, as per the traditional Galfridian narrative: see Stones, *Anglo-Scottish Relations*, p. 227.

<sup>98</sup> See Wright, *Historia Regum Britannie*, p. 15. The Scots would later point out this discrepancy in their response to the King's Letter. Armed with Bisset's legal brief, they assured Boniface that when Brutus divided the island between his three sons, he 'made them peers, so that none of them was subject to another': Stones, *Anglo-Scottish Relations*, p. 227.

<sup>99</sup> *Ibid.*, p. 194.

<sup>100</sup> The present author delivered a paper on this topic, entitled 'A Britain of Asymmetric Monarchies: Theorising English Overlordship of Scotland and Wales in the Thirteenth Century', at the *XVIIIth Thirteenth Century England Conference*, which was held at Selwyn College, Cambridge in September 2019.

implied in the traditional Galfridian narrative.<sup>101</sup> That Geoffrey's work devoted little more than a few lines to the various rulers of Scotland and Wales is proof enough of this fact. However, the Edwardian Emendation served to formalise the hierarchy between Lochrine, Camber, Albanact, and their respective successors. And, in yet another variation on the original, Edward claimed that this political arrangement had been imposed on the island by none other than its eponymous founder.<sup>102</sup>

It is worth briefly considering whence this distinctive version of the British History might have come. In a learned study of the King's Letter and its antecedents, Stones concluded that 'we can hardly tell whether this adaptation of the story of Geoffrey of Monmouth was invented by Edward's clerks, or borrowed'.<sup>103</sup> There is, however, good reason to believe that it was their invention. In the first place, Edward's account of the British History differed markedly from the *Historia* and the known variant versions that were produced before 1301. Second, Edward's account in general, and the Edwardian Emendation in particular, were so perfectly suited to the king's agenda that it is difficult to imagine that they were lifted from the pages of some obscure monastic chronicle. Rather, they appear to have been tailor-made to the exigencies of Anglo-Scottish relations at the turn of the fourteenth century. Third, the Galfridian component of the King's Letter bore a very real conceptual resemblance to another text produced during the period, namely, the *Declaratio quomodo dominium Hiberniæ est ad regem Angliæ devolutum*,<sup>104</sup> which mobilised the British History in support of Edward's claim to lordship of Ireland. While

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<sup>101</sup> R. A. Mason, 'Scotching the Brut: Politics, History and National Myth in Sixteenth-Century Britain', in *Scotland and England 1286-1815*, ed. R. A. Mason (Edinburgh, 1987), pp. 60-84 (p. 62).

<sup>102</sup> As Laura Keeler astutely noted, this, too, was a departure from the traditional Galfridian narrative, which held that the three sons divided the island among themselves after Brutus had died: L. Keeler, *Geoffrey of Monmouth and the Late Latin Chroniclers 1300-1500* (Berkeley and Los Angeles, 1946), p. 53. Curiously, the Scots followed Edward in this alteration: see Stones, *Anglo-Scottish Relations*, p. 227.

<sup>103</sup> Stones, 'Appeal to History', p. 20.

<sup>104</sup> Walter Ullmann, who first discovered the *Declaratio quomodo dominium Hiberniæ est ad regem Angliæ devolutum*, concluded that the document had been produced some time between 1245 and 1274: see Ullmann, 'Geoffrey of Monmouth in English History', pp. 268-76. However, more recent research by J. R. S. Phillips has firmly dated the manuscript to the reign of Edward: see J. R. S. Phillips, 'Three Thirteenth-Century Declarations of English Rule: Over Aquitaine, Ireland and Wales', in *Ireland and the English World in the Late Middle Ages: Essays in Honour of Robin Frame*, ed. B. Smith (Basingstoke, 2009), pp. 20-43.

it would be careless to draw broad conclusions from a text whose authorship and very purpose remain unclear, it can at least be said that the use of novel Galfridian arguments in service of English foreign-policy objectives was far from unheard of during the Edwardian age. On balance, then, it seems reasonable to conclude that the version of the *British History* which Edward relayed to Boniface was the invention of the king's own clerks. However, even the term "invention" ought to be qualified, for Edward's men did little more than rearrange the contents of the *Historia*. It was at the beginning of *Liber III*, in the context of the inheritance dispute between Belinus and Brennius, that Geoffrey had first made reference to the custom of Troy (*Troiana consuetudo*) and the crown of the island (*diadema insule*).<sup>105</sup> The Edwardian Emendation, therefore, merely transposed these ideas to the chronologically antecedent partition between Lochrine, Camber, and Albanact. It was a simple yet brilliant piece of trickery.

The Galfridian component of the King's Letter ought to be understood as a direct response to Boniface's claim to overlordship of Scotland 'from ancient times'.<sup>106</sup> Although Edward had, from the very beginning, articulated his claim to Scotland in historico-legal terms, there was nothing in the English argument prior to 1300 that could properly be described as ancient. It was only after the king had received *Scimus fili* that his clerks had gone in search of older, grander authorities. In the genre of historico-legal argument, where precedents were of paramount importance, and where older precedents were often presumed to be superior precedents, Edward's ability to paint himself as the juristic successor to the ancient kings of the Britons was crucial to any refutation of Boniface's claim. Given the Edwardian enthusiasm for

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<sup>105</sup> Wright, *Historia Regum Britannie*, p. 24.

<sup>106</sup> Even the manner in which Edward presented his response to *Scimus fili* echoed Boniface's original claim. The king wrote, 'it is graven upon the tablets of our memory with an indelible mark, that our predecessors and progenitors, the kings of England, by right of lordship and dominion, possessed, from the most ancient times, the suzerainty of the realm of Scotland'. Nearly two years earlier, the pope had written, 'we can hardly doubt that it is contained in the book of your memory, that from ancient times the realm of Scotland belonged rightfully, and is known still to belong, to the Roman church': Stones, *Anglo-Scottish Relations*, pp. 193, 163.

the legend of Arthur,<sup>107</sup> it is hardly surprising that these supplementary authorities were located in the British History.

However, it is important to stress that the Galfridian component of the King's Letter was not, as some scholars have suggested, a mere 'afterthought'.<sup>108</sup> While it is true that neither the original French draft,<sup>109</sup> nor the Latin draft included in Walter of Guisborough's chronicle,<sup>110</sup> contained this section of text, it is also clear that, by the time the Lincoln parliament had been prorogued in February 1301, Edward had resolved to use the British History in support of his claim to Scotland. This is borne out by the fact that the Barons' Letter, dated 12 February, briefly alluded to Geoffrey's legendary history. It is clear, therefore, that the Galfridian component of the King's Letter, which was so essential to Edward's revised historico-legal claim, was at least several months in the making. Indeed, it may be conjectured that the long lapse in time between the Lincoln parliament and the final composition of the King's Letter was due in no small part to the difficulties associated with modifying and abbreviating the British History to suit Edward's needs.<sup>111</sup>

The King's Letter narrative moved swiftly from the kings of the Britons to the Anglo-Saxon and Anglo-French kings of England. It should be noted that this section of text was derived almost entirely from John of Caen's Great Roll. The period between Arthur and Edward the Elder — some four hundred years — was elided without explanation. Moreover, no reason was given for the terminological shift from the "kings of the Britons" to the "kings of England".<sup>112</sup> Yet implied in this terminological shift was the idea that dominion over the island had passed

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<sup>107</sup> See generally, R. S. Loomis, 'Edward I, Arthurian Enthusiast', *Speculum* 28 (1953), 114-27; R. R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093-1343* (Oxford, 2002), pp. 32-3; H. A. MacDougall, *Racial Myth in English History: Trojans, Teutons, and Anglo-Saxons* (Montreal and Hanover, New Hampshire, 1982), pp. 13-14.

<sup>108</sup> Stones, 'Appeal to History', p. 20; Goldstein, *The Matter of Scotland*, p. 63.

<sup>109</sup> London, TNA E 39/1/48, 50, 51.

<sup>110</sup> Rothwell, *Guisborough*, pp. 338-44.

<sup>111</sup> Like the rest of the document, the Galfridian component of the King's Letter was drafted first in French: see London, TNA E 39/1/18.

<sup>112</sup> It was not, of course, a mere terminological shift, for the Britons and Anglo-Saxons (and the Anglo-Normans, for that matter) were racially distinct peoples.

seamlessly from the former to the latter. To what extent Edward's clerks were consciously engaged in what R. R. Davies called a 'mythological sleight of hand',<sup>113</sup> and to what extent they were merely propagating, in an uncritical fashion, the widely held view that the terms "Britain" and "England" were all but synonymous,<sup>114</sup> cannot be known with any certainty. It is undeniable, however, that such dubious history was politically advantageous. In a lengthy and rather repetitive section of text, Edward told Boniface that the kings of England had exercised overlordship of Scotland during the reigns of Edward the Elder, Æthelstan, Eadred, Edgar the Peaceful, Edward the Martyr, Æthelred, Edmund Ironside, Cnut, Harold Harefoot, Harthacnut, Edward the Confessor, William the Bastard (William I), William Rufus (William II), Henry I, the Empress Matilda, Stephen, Henry II, Richard I, John, and Henry III.<sup>115</sup> The king also drew the pope's attention to the famous Treaty of Falaise (1174), by which William I of Scotland had formally acknowledged Henry II as his liege lord and sworn fealty to him for the realm of Scotland;<sup>116</sup> as well as to Gregory IX's 1235 papal bull, *Si tua*, which had lent the support of the Roman Church to Henry III's claim to overlordship of Scotland, and had even gone so far as to admonish Alexander II of Scotland for abrogating his duties under the Treaty of Falaise, which had been signed and observed by his father.<sup>117</sup> To underline this point, Edward would later dispatch a copy of *Si tua* to Anagni with the King's Letter.<sup>118</sup>

In the final portion of the King's Letter, Edward gave a lengthy account of Anglo-Scottish relations during his own reign. This section of text represented the second of two departures from the Great Roll narrative, and ought to be understood as a direct response to Boniface's claim that the king's gains in Scotland from the Great Cause onwards had been achieved through

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<sup>113</sup> Davies, *The First English Empire*, p. 49.

<sup>114</sup> See generally, A. Ruddick, *English Identity and Political Culture in the Fourteenth Century* (Cambridge, 2017), pp. 61-72; Alan MacColl, 'The Meaning of "Britain" in Medieval and Early Modern England', *Journal of British Studies* 45 (2006), 248-69.

<sup>115</sup> Edmund I, Eadwig, and Harold Godwinson were omitted from the king-list.

<sup>116</sup> For the Treaty of Falaise, see Stones, *Anglo-Scottish Relations*, no. 1.

<sup>117</sup> For *Si tua*, see *ibid.*, no. 6.

<sup>118</sup> Stones and Simpson, *The Great Cause*, i, 156.

force, or threat of force, and, therefore, lacked legal validity. Why Edward had not deemed it necessary to include an account of these events in the historical portion of the Great Roll can only be conjectured. Perhaps the original thinking was that if it could be shown that the kings of England had been overlords of Scotland from the time of Edward the Elder up until the reign of Henry III, then what transpired immediately before and after the Great Cause required no explanation. Whatever the reason, the advent of *Scimus fili* necessitated a more direct justification of these events.

Edward told the pope that, following the death of Alexander III, and of Margaret a few years later, the bishops, abbots, priors, earls, barons, magnates, and other nobles, along with the communities of the whole realm of Scotland (*communitates tocius regni Scocie*), had come to him of their own accord, and acknowledged him as the overlord of Scotland. Subsequently, the towns, burghs, villages, and castles of the realm had been surrendered to his custody. The king alleged that various claimants to the throne of Scotland had then approached him and asked that he adjudicate the succession. He had agreed to do so, he said, only after the competitors had expressly accepted his jurisdiction as overlord of the realm. After examining and diligently considering the various claimants' petitions, he had 'duly promoted John Balliol, whom we found to be true heir in succession to the realm, and to possess the best right to it, to be the king of Scots'.<sup>119</sup> Edward told Boniface that he had later summoned John to the English Parliament like a mere subject, and that, at the same parliament, the king of Scots had sworn fealty and rendered homage to him as the overlord of Scotland.

According to Edward, the king of Scots had later violated his oath. With the assistance of the prelates, magnates, and other leading men of Scotland, John had embarked 'upon the crime of treason, entered into plots, confederations, conspiracies and alliances for the

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<sup>119</sup> Stones, *Anglo-Scottish Relations*, p. 211.

disinheritance of ourselves, our heirs, and our realm'.<sup>120</sup> Having heard rumours of these matters, Edward had repeatedly asked the king of Scots to meet him at specified places along the Anglo-Scottish border to 'give security upon these and other things, in order to guard the well-being, the tranquillity, and the peace of either kingdom'.<sup>121</sup> John, however, had responded only by declaring war on England. Edward told Boniface how the king of Scots had assembled a great army and invaded Northumberland, Cumberland, and Westmorland, and how his forces had burnt monasteries, churches, and villages to the ground, and laid waste to their inhabitants, including by amputating women's breasts and slaying children in their cradles. The king claimed that, because of the coronation oath that bound him to safeguard the rights of the English crown, he had mobilised his forces against the treacherous Scots, before defeating them in battle. Edward further told the pope how John had publicly admitted his treasons and crimes, and how he had rendered the realm of Scotland into the hands of his overlord 'freely, completely, and absolutely'.<sup>122</sup> Afterwards, said the king, the prelates, earls, barons, nobles, and communities of the realm of Scotland had once again acknowledged him as the overlord of Scotland, and had surrendered the towns, villages, castles, and fortresses of the realm to his custody. Moreover, Edward told Boniface that he remained 'in possession of the realm by right of full lordship' (*jure pleni domini in possessione ejusdem regni*).<sup>123</sup>

Edward's account of Anglo-Scottish relations at the turn of the fourteenth century was, of course, a rather distorted one. It would be too onerous a task to unpick every half-truth and outright lie contained therein. However, three falsehoods particularly stand out. First: Edward claimed that, after the death of Margaret, Scottish leaders had come to him freely and spontaneously, and had acknowledged him as the overlord of Scotland. There is little evidence to support any of this. Although William Fraser, bishop of St Andrews and guardian (*custode*)

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<sup>120</sup> *Ibid.*, pp. 211-13.

<sup>121</sup> *Ibid.*, p. 213.

<sup>122</sup> *Ibid.*, pp. 215-17.

<sup>123</sup> *Ibid.*, p. 216.

of Scotland, had written to the English king in October 1290, requesting that, if the rumours of Margaret's death were substantiated, he come to the border to help preserve the peace of the realm, the letter had made no mention of overlordship.<sup>124</sup> It is, of course, possible that other prominent Scots had written to Edward during this period, but it is unlikely that their appeals for help would have departed much from Fraser's. Second: Edward gave the misleading impression that the Scots' decision to acknowledge him as their overlord had been unconnected to his adjudicating the Great Cause.<sup>125</sup> In reality, the king had made the former a condition of the latter.<sup>126</sup> Moreover, it was only after the claimants to the throne of Scotland had recognised Edward as their overlord and proper judge at Norham in June 1291 that the realm and its castles had been surrendered to the king's custody.<sup>127</sup> Third: Edward claimed that he was in full possession of the realm of Scotland at the time of writing the King's Letter. While this had been true immediately following the successful invasion of 1296, the situation had changed substantially by mid-1301. The Scots would later make this very point to Boniface, and accuse the English king of telling a barefaced lie to the pope.<sup>128</sup> It is quite clear, therefore, that Edward's account of Anglo-Scottish relations during his own reign very much followed the style and tone of the rest of the document, and did not let the facts get in the way of a good story.

Edward concluded the King's Letter with one final appeal to Boniface. In a passage which mirrored the closing words of *Scimus fili*,<sup>129</sup> the king told the pope:

Since, indeed, from what has been said already, and from other evidence, it is perfectly clear and well-known that the realm of Scotland belongs to us of full right, by reason of property and of possession, and that we have not done and

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<sup>124</sup> For William Fraser's letter to Edward, see Stones and Simpson, *The Great Cause*, ii, 3-4.

<sup>125</sup> Whether honestly or dishonestly, Edward implied that he had received *de jure*—rather than *de facto*—recognition of his claim to overlordship of Scotland at the commencement of the Great Cause: see n. 6 above.

<sup>126</sup> Stones and Simpson, *The Great Cause*, ii, 16-19.

<sup>127</sup> *Ibid.*, 38-43, 52-3, 66, 74; see also, n. 7 above.

<sup>128</sup> See Skene, *Chronicles of the Picts*, pp. 239-40.

<sup>129</sup> Boniface had written: 'It is right, well-beloved son, that you should straightaway think upon these things with care, and diligently study them in your heart of hearts; and nobody who considers them can doubt that the realm of Scotland belongs to the Roman church, and that it was not, and is not, lawful for you to dominate it by force and to subjugate it to your rule, to the prejudice of the Roman church and of no small number of people': Stones, *Anglo-Scottish Relations*, p. 171.



have not dared to do anything, as indeed we could not do, in writing or in action, by which any prejudice may be implied to our right or possession, we humbly beseech your Holiness to weigh all this with careful meditation, and to condescend to keep it all in mind when making your decision, setting no store, if you please, by the adverse assertions which come to you on this subject from our enemies, but, on the contrary, retaining our welfare and our royal rights, if it so please you, in your fatherly regard. May the Most High preserve you, to rule his Holy Church through many years of prosperity.<sup>130</sup>

In many ways, the King's Letter was a remarkable effort in historico-legal argument. Edward's attempt to prove his claim to Scotland could scarcely have been more ambitious or audacious. By using the succession claim to construct an uninterrupted line of island overlords from antiquity to contemporary times,<sup>131</sup> the king hoped to settle the Scottish question for all time. Whether his frequently one-sided account of Anglo-Scottish relations would hold up under papal scrutiny, however, remained to be seen.

### 3.4 The Denouement

It is necessary to say a few words about how the King's Letter was received, even if such was not, strictly speaking, relevant to the evolution of Edward's historico-legal claim to overlordship of Scotland. The document was carried to Anagni by two English knights, Thomas Delisle and Thomas Wale.<sup>132</sup> It was quite plausibly suggested by Stones that these 'two cool and unimaginative laymen' were selected for the mission because they could be relied upon to deliver the letter in a respectful manner without saying too much.<sup>133</sup> This hypothesis is certainly consistent with the

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<sup>130</sup> *Ibid.*, pp. 217-19.

<sup>131</sup> Throughout the King's Letter, there was some slippage between whether the kings of England enjoyed overlordship of the whole island or merely of Scotland. This was probably a consequence of the incongruities between the British History, on the one hand, and the Anglo-Saxon and Anglo-Norman chronicle sources, on the other.

<sup>132</sup> See generally, E. L. G. Stones, 'The Mission of Thomas Wale and Thomas Delisle from Edward I to Pope Boniface VIII in 1301', *Nottingham Medieval Studies* 26 (1982), 8-28.

<sup>133</sup> *Ibid.*, p. 10.

strategy, first suggested by William of Sardinia, to present the king's case in a single, self-contained document without recourse to a papal interview. By dispatching two low-ranked envoys to the *curia Romana*, the King's Letter would all but speak for itself.

Wale and Delisle arrived in Anagni on 2 July, more than two years after *Scimus fili* had been transcribed by papal clerks. What was more important, however, was that the King's Letter reached Boniface more than four months after the six-month deadline for reply,<sup>134</sup> a detail the Scots were only too happy to point out.<sup>135</sup> It seems, however, that not much was made of Edward's tardiness, perhaps on account of the fact that *Scimus fili* itself had hardly been dispatched in a hurry. In any event, the pope accepted the bull from the king's agents, and retired to study its contents.

The following day, the envoys were granted a second papal audience. If Wale's written account can be relied upon, a very different Boniface emerged to give voice to sentiments startlingly at odds with those that he had expressed in *Scimus fili*:

[H]e told us that he had examined your letter, and that he felt so grateful to you for telling him thus honestly, graciously, and plainly about your right in Scotland, that he was genuinely delighted. We replied that you had such faith, both in his virtue and in his great trustworthiness, that you wished him to know your full right in all of its aspects. Then he had Brother William Gainsborough sent for, and in his presence said exactly the same thing, remarking that you ought to put your whole trust in him, Boniface, for before he was in the state [of health] that he now was in, he had been bent on preserving the suzerainty of Scotland for the crown of England, and he said plainly to us, before many witnesses, that of all the crowned heads in the world, you were the one whom he loved the best. And if what you told him in your letter were true, as he believed it to be true, he did not see how any man could oust you from the suzerainty of Scotland.<sup>136</sup>

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<sup>134</sup> Boniface had asked Edward to dispatch his proctors and envoys within six months of receiving *Scimus fili*. Robert Winchelsey, archbishop of Canterbury, delivered the bull to Edward on 26 August 1300, and read the document aloud to the king the following day. Even if the clock were to be stopped on the day when the King's Letter was dated (rather than when it was delivered) — that is, 7 May 1301 — Edward's reply would still have been more than two months late.

<sup>135</sup> Stones, *Anglo-Scottish Relations*, p. 221.

<sup>136</sup> Stones, 'The Mission of Wale and Delisle', pp. 18-19; see also, Boase, *Boniface VIII*, p. 272.

It is difficult to know what to make of this seemingly miraculous transformation.<sup>137</sup> Was Boniface merely playing the part of the wily and disarming politician, or was he speaking from the heart?<sup>138</sup> Unless Wale's report to Edward was a gross embellishment of what transpired at Anagni – a possibility which cannot be entirely discounted – it seems reasonable to take the words attributed to the pope at face value. After all, it should be remembered that Boniface's support for the Scottish cause was rarely more than lukewarm, *Scimus fili* notwithstanding. Moreover, in light of what would later unfold, it is far from inconceivable that the pope considered switching his support to the English side as early as July 1301. Furthermore, this was not the first time that Boniface had expressed his love and admiration for Edward.<sup>139</sup> For all these reasons, Wale's account of what transpired at Anagni during that summer should not be easily dismissed.<sup>140</sup>

A little over a year later, amidst a shifting political landscape, Boniface all but threw his support behind Edward's claim to overlordship of Scotland. Philip IV's crucial defeat at the Battle of Courtrai on 11 July 1302 had left the French king seeking terms of peace with Edward,

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<sup>137</sup> It may be tempting to see Boniface's change of heart during the summer of 1301 in the context of his dispute with Philip IV. However, it should be borne in mind that the arrest of Bernard Saisset, bishop of Pamiers – the act which reignited Franco-papal quarrel – took place on 12 July 1301, two days after Edward's agents had departed Anagni.

<sup>138</sup> Michael Prestwich, for one, has rather downplayed the significance of this event, writing that the 'mission of Thomas Delisle and Thomas Wale to the pope, bearing the letter prepared at the Lincoln parliament, had achieved little ... their interviews with the pope, although conducted in a most friendly atmosphere, achieved nothing positive': Prestwich, *Edward I*, p. 495.

<sup>139</sup> Nearly a year earlier, on a different matter entirely, Boniface had told Edward's envoys: 'We have a great affection for the king of England, for we have tried him and found him loyal. And he will assuredly find us his peer and his friend, and we will not fail him now. God fail us, should we fail him' and 'We wish you to know that we very greatly desire to show the king of England by deeds the love we have for him, and please God that before we die he may perceive and recognise by the outcome the great feeling of love and goodwill we bear towards him': *English Historical Documents 1189-1327*, ed. H. Rothwell (London, 1975), pp. 504, 507.

<sup>140</sup> The mission of Wale and Delisle to Anagni was not, of course, the end of the matter. The Scots promptly countered the King's Letter with a response that was both formidable in its learning and relentless in its logic. Bisset's *Instructiones* and *Processus* took Edward to task for failing to respond to *Scimus fili* by the prescribed deadline, for contesting the pope's right to adjudicate his (Edward's) claim to overlordship of Scotland (which touched upon the crime of sacrilege), for responding by way of a royal letter in an extra-judicial capacity, for wilfully distorting the chronicle sources, for exploiting Scotland's vulnerabilities during its interregnum, and for attempting to deceive the pope by falsely claiming to be in possession of all Scotland (rather than merely Glasgow and St Andrews). For the *Instructiones* and *Processus*, and for a contemporary report to Edward on the *Instructiones*, see n. 37 above. See also, Barrow, *Robert Bruce*, pp. 152-5; Goldstein, *The Matter of Scotland*, pp. 57-78; R. J. Goldstein, 'The Scottish Mission to Boniface VIII in 1301: A Reconsideration of the Context of the *Instructiones* and *Processus*', *The Scottish Historical Review* 70 (1991), 1-15.

much to the detriment of the Scottish cause and quite contrary to the provisions of the Franco-Scottish treaty of 1296, which stipulated that neither side would broker a separate peace with England.<sup>141</sup> Sensing which way the wind was blowing, Boniface, too, sought to rebalance his relationship with the English king, who now found himself in a position of strength. The following month, the pope wrote to the Scottish clergy, and urged them to make peace with Edward.<sup>142</sup> And, in a move fundamentally at odds with the sentiments expressed in *Scimus fili*, the pope laid the blame for the Anglo-Scottish war firmly at the feet of Robert Wishart, bishop of Glasgow, whom he labelled the ‘prime mover and instigator of all the tumult and dissension which has arisen between his dearest son in Christ, Edward king of England, and the Scots’.<sup>143</sup> So much for the protection of St Peter. English chroniclers would later immortalise Boniface’s capitulation as a great national victory over the mighty Roman Church. The most important thing for Edward, however, was that he now had a free hand in Scotland.

What role the King’s Letter played in Boniface’s *volte-face* cannot be known with any certainty. It is, however, noteworthy that the Scots who had been present at Anagni in 1301 had felt compelled not only to discredit Edward’s effort in historico-legal argument, but to respond with one of their own. Tucked among the pages of Baldred Bisset’s eminently sensible *Instructiones* and *Processus* were the foundations of a legendary, anti-Galfridian historical tradition that would reach its apogee with John of Fordun’s *Chronica Gentis Scotorum* (c. 1360).<sup>144</sup> Indeed, as Dauvit Broun has shown, Bisset’s legal brief played a key role in refashioning the existing Scottish origins legend in a way that elevated the importance of Scotland (at the expense of Ireland) and emphasised the realm’s political independence. This included

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<sup>141</sup> Prestwich, *Edward I*, p. 497; Barrow, *Robert Bruce*, p. 85.

<sup>142</sup> See *Fœdera*, I, ii, 942.

<sup>143</sup> P. F. Tytler, *The History of Scotland from the Accession of Alexander III. to the Union*, 10 vols (Edinburgh, 1866), i, 167-8.

<sup>144</sup> *Johannis de Fordun Chronica Gentis Scotorum*, ed. W. F. Skene, 2 vols (Edinburgh, 1871). See generally, D. Broun, *The Irish Identity of the Kingdom of the Scots in the Twelfth and Thirteenth Centuries* (Woodbridge, 1999); Mason, ‘Scotching the Brut’, pp. 60-84.

the claim that Scotland was the true homeland of *Scoti*.<sup>145</sup> Bisset and his delegation had been in no doubt about the importance that the Roman Church attached to historico-legal argument. After all, popes had long made a practice of appealing to the past in order to bend disobedient kings to their will. Perhaps, then, Walter Ullmann was not far off the mark half a century ago when he concluded:

Although frequently outdistanced by the papacy in matters of “historical” argument, Edward’s letter to the pope would show that the royal chancery once it had been given an opportunity, could, in this genre of “historical” justification, prove itself an equal of the papal chancery, thanks to the ready availability of the “historical” records provided by Geoffrey of Monmouth. No more was heard from the papacy about its claim to sovereignty over Scotland: the papacy had been defeated by the very same weapon of “historical” precedent which it always knew how to wield so masterly.<sup>146</sup>

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The Edwardian Moment argued that the succession claim was mobilised in support of Edward I’s overlordship of Scotland at the turn of the fourteenth century. Following the death of Alexander III in 1286, and that of his granddaughter and heir, Margaret of Norway, a few years later, Scotland descended into constitutional crisis, with no clear successor to the throne. In early May 1291, Edward publicly offered to preserve the peace of the kingdom and adjudicate the royal inheritance dispute in return for being recognised as overlord of Scotland. In support of his claim to the northern realm, Edward presented a historico-legal argument which purported to prove that every king of England since Edward the Elder had enjoyed dominion over Scotland. Edward’s position remained largely unchanged until 1300, when, amidst the Anglo-Scottish war that had broken out in 1296, he received a papal bull from Pope Boniface VIII. The pontifical

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<sup>145</sup> See Broun, *The Irish Identity of the Scots*, pp. 120-1, 198-9.

<sup>146</sup> Ullmann, ‘Geoffrey of Monmouth in English History’, p. 267.

letter declared in no uncertain terms that the English king's claim to Scotland was invalid because the northern realm had belonged to the Roman Church 'from ancient times'. After much deliberation, Edward concluded that in order to defeat Boniface's historico-legal argument, he needed to advance a chronologically antecedent claim. In May 1301, the Plantagenet monarch composed a reply to the pope which boldly asserted that the kings of England, together with their predecessors, the kings of Britain, had exercised overlordship of Scotland since the time of Brutus of Troy. Shortly thereafter, for reasons that are not wholly attributable to Edward's use of the succession claim, Boniface abandoned the Scots and threw his support behind England.

# Chapter 4

The Henrician Moment, 1530–1542

The Henrician Moment argues that the succession claim was deployed firstly in service of Henry VIII's campaign against the Roman Church during the 1530s, and secondly in service of the same king's war against Scotland during the early 1540s. The previous chapter demonstrated how this form of legitimation was used by Edward I and his barons in support of the king's claim to secular supremacy within his realm and dominions; this chapter will demonstrate how, more than two centuries later, it was used by Henry and his parliament in support of the king's claim to caesaropapal power within his realm and dominions, as well as in support of the king's dynastic claim to overlordship of Scotland. At a secondary level of analysis, this chapter will pay special attention to those synchronic contexts which shed new light on how and why English kingship grew increasingly theocratic and absolutist in nature during the first half of the sixteenth century. It will also examine the manner in which previously secular notions of empire took on new sacral elements, and how this process served to transform English conceptions of sovereignty.

When, on 28 September 1530, the duke of Suffolk and earl of Wiltshire told a papal nuncio that the English cared nothing for Roman popes, not even for St Peter himself, and that Henry VIII was both 'Emperor and Pope in his own kingdom',<sup>1</sup> they were announcing a revolutionary new conception of kingship – an "imperial" kingship. Although it would take several more years and a good number of parliamentary statutes before Henrician caesaropapism was transformed from bluff and bluster into reality, its central tenets were already on the lips of the king and his advisers during the closing months of 1530. The assertion that Henry recognised no superior in matters temporal and ecclesiastical (as distinct from spiritual proper) within his realm and dominions was not only a departure from the two-swords theory; it was a complete inversion of the hierocratic worldview that had been advanced by Roman pontiffs – including,

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<sup>1</sup> *Calendar of State Papers, Spanish*, ed. G. A. Bergenroth, P. de Gayangos, M. A. S. Hume and R. Tyler, 13 vols (London, 1862-1954), IV, i, 445; J. J. Scarisbrick, *Henry VIII* (Berkeley and Los Angeles, 1968), p. 267.



as was seen in Chapter 3 of this thesis, by Boniface VIII – during the high and late Middle Ages. Yet while the imperial kingship represented a significant – and, for many, a repugnant – redrawing of monarchic power, Henry and his advisers went to great lengths over many years to persuade audiences at home and abroad that Henrician caesaropapism was not a revolution but a restoration.

Although there can be little doubt that the imperial kingship grew out of the seemingly interminable struggle to secure Henry's divorce from Katherine of Aragon, it is important to appreciate that the latter matter was separate from – and, indeed, would ultimately be dwarfed and subsumed by – the former. The legatine court, which was constituted at Blackfriars, London in late May 1529, and presided over by the cardinals Thomas Wolsey and Lorenzo Campeggio, was never really intended to settle Henry's "great matter". While Clement VII had (reluctantly and conditionally) authorised the proceedings, he had also instructed Campeggio to postpone continually and to withhold judgment indefinitely.<sup>2</sup> It is difficult, therefore, to see the trial as anything other than an attempt to delay events until a more suitable, and less public, resolution presented itself. In any event, by mid-July the legatine court was essentially rendered defunct when, in response to Katherine's decision to appeal to Rome, the pope recalled the case.<sup>3</sup> For Henry, the sudden prospect of appearing before the Apostolic Tribunal of the Roman Rota (*Tribunal Apostolicum Rotae Romanae*) was surely both a humiliating and a perilous one.

In response to Clement's decision to advoke the divorce suit to Rome, a new investigation into the legitimacy of the pope's authority in Henry's realm and dominions was commissioned.<sup>4</sup> The task fell to two clergymen, Edward Foxe and Thomas Cranmer, who were able to draw handsomely on research that had previously been undertaken for the king. The result of their

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<sup>2</sup> Scarisbrick, *Henry VIII*, pp. 212-16.

<sup>3</sup> *Ibid.*, p. 226.

<sup>4</sup> D. Hoak, 'Booby, Baby or Classical Monster? Henry VIII in the Writings of G. R. Elton and J. J. Scarisbrick', in *Henry VIII and History*, ed. T. Betteridge and T. S. Freeman (Farnham, 2012), pp. 241-59 (p. 252).

efforts was a lengthy compilation of precedents known as the *Collectanea satis copiosa*,<sup>5</sup> which they presented to Henry in September of the same year.<sup>6</sup> The so-called sufficiently plentiful collection consisted of 120 folios of material plundered from Biblical, patristic, legal, and chronicle sources. The document was demonstrably the work of several hands, and its shifting pagination would suggest that its contents were revised and expanded on at least two and probably three occasions.<sup>7</sup>

The *Collectanea* sketched the contours of a revolutionary conception of monarchic power. Abounding with seemingly authoritative extracts, complete with citations and glosses in the margins, the document ostensibly provided the theological, legal, and historical basis for royal supremacy in matters temporal and ecclesiastical. Graham Nicholson – who rediscovered the compilation during his doctoral studies at the University of Cambridge, and whose work on the subject remains largely unsurpassed – explicated the logic of the *Collectanea* as follows: it ‘proceeds to establish, from scripture first and then from a variety of authors, certain principles of Kingly power; then it retraces its steps to show how those principles have been employed by past English Kings in their dealings with the Church and clergy’.<sup>8</sup> In other words, what had begun as an attempt to establish Henry’s right to dissolve his marriage and to prevent appeals to a foreign court had evolved into a comprehensive research programme on the limits of secular and clerical authority. It is worth quoting John Guy (who has done much to publicise Nicholson’s work) at length on this point:

Cranmer and Foxe were not merely justifying Henry VIII’s divorce in *Collectanea satis copiosa*; they were simultaneously announcing doctrines of royal supremacy and empire ... not only should his suit for annulment of his marriage be dealt with

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<sup>5</sup> London, BL, Cotton MS Cleopatra E VI, fols. 16-135.

<sup>6</sup> J. Guy, ‘Thomas Cromwell and the Intellectual Origins of the Henrician Revolution’, in *The Tudor Monarchy*, ed. J. Guy (London, 1997), pp. 213-33 (pp. 217-8); J. Guy, *Tudor England* (Oxford, 1988), pp. 128-9.

<sup>7</sup> G. Nicholson, ‘The Act of Appeals and the English Reformation’, in *Law and Government under the Tudors: Essays Presented to Sir Geoffrey Elton, Regius Professor of Modern History in the University of Cambridge on the occasion of his Retirement*, ed. C. Cross, D. Loades and J. J. Scarisbrick (Cambridge, 1988), pp. 19-30 (pp. 20-1); Guy, ‘Intellectual Origins’, p. 218.

<sup>8</sup> G. Nicholson, ‘The Nature and Function of Historical Argument in the Henrician Reformation’ (unpublished Ph.D. dissertation, University of Cambridge, 1977), p. 82.

promptly and in England, as he had thought previously. He must now reassert, too, the imperial status of which English kings had been deprived by the machinations of popes. For England was an empire; it had been one in the ancient British past, and English imperial jurisdiction was a theological truth which no pope could conscionably disregard.<sup>9</sup>

All of this was intended to demonstrate that, in claiming caesaropapal power for himself, Henry was doing no more than restoring the authority that had been wielded by his predecessors, the kings of Britain, and which, as their lawful successor, was inalienably his.<sup>10</sup>

One piece of evidence above all others was purported to prove the historicity of British/English imperial kingship: a letter that had allegedly been sent by Pope Eleutherius to Lucius, king of the Britons, some 169 years after Christ's crucifixion (*centesimo sexagesimo nono a passione Christi*).<sup>11</sup> The spurious papal rescript, which was derived from the early thirteenth-century treatise, the *Leges Anglorum*, was quoted in full no less than three times throughout the *Collectanea*.<sup>12</sup> Although the epistle has already been examined in some detail in Chapter 2 of this thesis, it is useful to reproduce it here:

[One hundred and] sixty-nine years after Christ's passion, the lord Pope Eleutherius wrote to Lucius, king of the Britons, for the correction of the king and the nobility of the kingdom of Britain: You asked us to send to you Roman and imperial law which you wished to use in the kingdom of Britain. The Roman and imperial laws we can always reject. God's law we can by no means reject. Indeed you have recently received by divine mercy the law and faith of Christ in the kingdom of Britain. You hold under your control in your kingdom both scriptures [*pagina*]; from those by God's grace, obtain law in accordance with the counsel of your kingdom and in accordance with that, by God's patience, rule your kingdom of Britain. You are the vicar of the true God in the kingdom. According to the psalmist king: 'The earth is the Lord's and the fullness of it the world and all those who inhabit it' (Psalms 23:1). And again according to the psalmist king: 'You have loved righteousness and hated iniquity therefore God your lord has anointed you, your God with the oil of gladness above your

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<sup>9</sup> Guy, 'Intellectual Origins', p. 218.

<sup>10</sup> See generally, P. N. Riesenberg, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956); E. H. Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (New Jersey, 1970), pp. 347-58.

<sup>11</sup> K. Har, 'Feature of the Month: September 2015 - The Leges Edwardi Confessoris and Pope Eleutherius' Letter to Lucius, King of the Britons in the early thirteenth century,' *The Magna Carta Project*, <[https://magnacarta.cmp.uea.ac.uk/read/feature\\_of\\_the\\_month/Sep\\_2015](https://magnacarta.cmp.uea.ac.uk/read/feature_of_the_month/Sep_2015)> [accessed: 15/05/2018].

<sup>12</sup> London, BL, Cotton MS Cleopatra E VI, fols. 27, 35, 74v; F. Heal, 'What Can King Lucius Do For You? The Reformation and the Early British Church', *English Historical Review* 120 (2005), 593-614, (p. 599).

associates' (Psalms 44:8). And again according to the psalmist king: 'O God give the king your judgment and your justice to the king's son' (Psalms 71:2). Indeed he did not say the judgment or justice of the emperor [*iusticia Cesaris*]. Indeed the king's sons and the people of the kingdom are Christian people who under your protection and peace carry on and remain in the kingdom. According to the gospel: 'In the same way that a hen gathers [her] chicks beneath her' (Matthew 23:37). Truly, the *gentes* and people of the kingdom of Britain are your chicks whom if divided you ought to bring together as one in concord and peace to the faith and law of Christ and to the holy church, to revive, to cherish, to hold by the hand, to protect, to reign and always to defend from injustices and evil things and enemies. Concerning the kingdom 'whose king is a boy and whose princes eat in the morning' (Ecclesiastes 10:16), I do not call him king because of his small and minimum age but also because of his stupidity and iniquity and unsoundness. According to the psalmist-king: 'Men of blood and deceit halve their days etc.' (Psalms 54:24). By consuming we understand appetite; by appetite luxury, by luxury all disgrace and perversion and ill. According to King Solomon: 'Wisdom will not enter a malevolent spirit nor live in a body subordinated by sin' (Wisdom 1:4). One is called king by ruling, not by a kingdom. You will be king while you rule well, but if you do not do this the name 'king' will not agree with you and you will lose the name 'king', God forbid. Omnipotent God grant you the kingdom of Britain so to rule in order that you may reign with Him in eternity, whose vicar you are in the aforementioned kingdom, who with the Father and Son and Holy Spirit lives and reigns God for infinite ages of ages. This is sufficient.<sup>13</sup>

Although the pseudo-Elleutherius letter included in the *Collectanea* was nearly identical to that which had been inserted in the *Leges Anglorum* approximately 325 years earlier, it is analytically beneficial to regard the Henrician iteration of the missive as an altogether different text. What had been read and understood during the early thirteenth century as a repudiation of John's autocratic kingship was, by the 1530s, read and understood as a confirmation of Henry's caesaropapism and of the English church's ecclesiastical independence from Rome. Accordingly, new emphasis was placed on the appellation 'vicar of God' (*vicarius Dei*). For if Lucius had once been the head of the British church in external or governmental matters (*potestas jurisdictionis*) then – so the argument went – Henry, as his heir in succession, now had both the right and the obligation to assume the same jurisdictional control over the English church. As Felicity Heal

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<sup>13</sup> Har, 'Pope Elleutherius' Letter'.

has put it, the letter ‘could very usefully be construed as showing that kings of Britain, and by extension of England, had possessed general authority over the Church, which they had then lent in specific circumstances to clergy and papacy. Nothing could in principle prevent the crown from reclaiming that power’.<sup>14</sup> The precedent was all the more impressive because it ostensibly came from the pen of a Roman pontiff.

It is clear that Henry made a close study of the *Collectanea*. Guy has identified his handwriting in forty-six places throughout the manuscript.<sup>15</sup> Moreover, it would not be long before he began rehearsing the arguments contained therein. Indeed, in the very same month that he received the collection from Foxe and Cranmer, Henry instructed his diplomatic representatives in Rome to advise the pope that he was ‘not only prince and king, but set on such a pinnacle of dignity that we know no superior on earth’.<sup>16</sup> And just like that, the world – or at least the world which Henry and his advisers inhabited – was unchained from the sun.

With its revolutionary interpretation of monarchic power, the *Collectanea* brought about nothing less than a paradigm shift in Henry’s quarrel with Clement. From late 1530, the king and his advisers, armed with a nascent conception of Henrician caesaropapism, were asking – and, indeed, answering – increasingly provocative questions about the boundary between temporal and spiritual power. The divorce thus became but one part of a larger jurisdictional struggle between the Tudor monarch and the Medici pontiff, as an international scandal was transformed into a disputation that threatened to destroy the *concept* of the unity of Christendom. Although few areas of English history have received more scholarly attention than the imperial kingship, much remains to be said about the rhetoric which Henry used to legitimate his revolutionary political programme. In a bid to rectify the oversight, this chapter will examine the forms of historico-legal argument that were deployed in support of Henrician policy advanced variously

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<sup>14</sup> Heal, ‘King Lucius’, pp. 599-600.

<sup>15</sup> Guy, ‘Intellectual Origins’, p. 217.

<sup>16</sup> Quoted in Scarisbrick, *Henry VIII*, p. 267.

through diplomatic dialogues, parliamentary statutes, and official pamphlets during the 1530s and early 1540s.

#### 4.1 A Revealing Conversation Between the Duke of Norfolk and the Imperial Ambassador to England

It is helpful, at this juncture, to examine a famous conversation between Thomas Howard, duke of Norfolk, and Eustace Chapuys, Ambassador of the Holy Roman Empire to England. Although this particular episode has garnered a good deal of scholarly attention already,<sup>17</sup> several important aspects have hitherto escaped notice. As Henry's chief minister and Anne Boleyn's uncle, Norfolk was intimately acquainted with the notions of imperial kingship that were developing in England during the early 1530s. On the one hand, it is unlucky that the only record of this fascinating exchange is to be found in one of Chapuys's fortnightly reports to his master, Charles V.<sup>18</sup> On the other hand, it is fortunate that there is any trace of the conversation at all, for the ambassador's account, though fragmentary, provides a privileged insight into the evolution of Henrician caesaropapism. It should be noted, however, that not all scholars have judged the source to be authoritative. Nicholson, for example, has suggested that 'nothing in Norfolk's rambling speech is really to be relied upon'.<sup>19</sup> Yet such judgments have all too often been predicated on the assumption that Chapuys's account was a complete and accurate one. It was not; it was a summary of a wide-ranging discussion, composed from memory a day after the fact,

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<sup>17</sup> R. Koebner, "The Imperial Crown of This Realm": Henry VIII, Constantine the Great, and Polydore Vergil', *Bulletin of the Institute of Historical Research* 26 (1953), 29-52 (pp. 37-42); Nicholson, 'The Act of Appeals', pp. 23-4; C. T. Wood, 'Guenevere at Glastonbury: A Problem in Translation(s)', in *Arthurian Literature XVI*, ed. J. P. Carley and F. Riddy (Cambridge, 1998), pp. 23-40 (pp. 38-9); D. Starkey, 'King Henry and King Arthur', in *Arthurian Literature XVI*, ed. J. P. Carley and F. Riddy (Cambridge, 1998), pp. 171-96; S. Mottram, "An Empire of Itself": Arthur as Icon of an English Empire, 1509-1547', in *Arthurian Literature XXV*, ed. E. Archibald and D. F. Johnson (Cambridge, 2008), pp. 153-73.

<sup>18</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.

<sup>19</sup> Nicholson, 'Nature and Function of Historical Argument', p. 202.

with several indications of abbreviation and omission.<sup>20</sup> And while the ambassador clearly found much of what Norfolk had to say incomprehensible, there is little cause, with the benefit of hindsight, to join him in his confusion. Far from being unintelligible, the duke's remarks rank among the clearest contemporary expositions of Henry's new conception of monarchic power. Moreover, Norfolk's was a uniquely bold articulation of the succession claim. Never again would Brennius, Constantine, Arthur, and the like be so explicitly invoked in support of Henry's imperial status. And yet because the logic of this historico-legal argument would remain largely unchanged over the succeeding decade and a half, even as its least defensible elements were purged from parliamentary statute, the duke's words can serve as a Rosetta Stone for deciphering some of the most hieroglyphic aspects of Henrician political thought, including that famous declaration, 'this Realme of Englonde is an Impire'.<sup>21</sup>

On the evening of 11 January 1531, the imperial ambassador received a communication from Norfolk, requesting that they meet at nine o'clock the following morning at London's Greyfriars.<sup>22</sup> When Chapuys arrived at the church the next day, he was greeted by the duke, who was accompanied by Stephen Gardiner, the king's secretary, and William FitzWilliam, the treasurer of the household. The four men withdrew to what the ambassador described as 'a secret chapel' (*une chapelle bien secreete*).<sup>23</sup> The purpose of the meeting, according to Norfolk, was to acquaint Chapuys 'with a statute made by the Estates of the kingdom, and which had been promulgated and preconized, against whomsoever should dare to execute mandates or provisions emanating from the Roman Court to the detriment of the honour, or authority of the

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<sup>20</sup> Chapuys wrote at one point: 'Among other casual remarks which would take too much time to relate, I told them that Your Majesty and the Queen, your aunt, had more reason to be discontented with the Pope in this business than the King himself'; the ambassador also reported how Norfolk had told him that 'Constantius had reigned in England, and that Helen, the mother of Constantine, was English by birth, and several other things as little pertinent to the matter in question as the above': Bergenroth et al, *Calendar of State Papers, Spanish, IV, ii*, 598 (emphasis added).

<sup>21</sup> *Statutes of the Realm*, ed. A. Luders, 11 vols (London, 1810), iii, 427.

<sup>22</sup> Bergenroth et al, *Calendar of State Papers, Spanish, IV, ii*, 598.

<sup>23</sup> *Ibid.*

King and kingdom'.<sup>24</sup> Although it cannot be known for certain to which piece of legislation the duke was referring, it will be asserted here (and argued in the next section) that it was the Statute of Carlisle, which had been enacted by Edward I's 1307 parliament.<sup>25</sup> The act, an abridged version of which was twice included in the *Collectanea*,<sup>26</sup> had prohibited the exaction of papal annates from 'monasteries, priories and other religious houses and places established in his [the king's] realm and in the lands subject to his lordship' (*monasteria, prioratus, et alias religiosorum domus et loca in regno et terris dominio suo subjectis constituta*).<sup>27</sup>

Although Norfolk was probably quite sincere when he gave his reason for meeting the ambassador – for the Statute of Carlisle would later be alluded to in several of the reformation statutes – the conversation soon took a different turn. After telling Chapuys that he believed the pope to be on the verge of 'issuing certain decretals very injurious to the King',<sup>28</sup> the duke subjected the ambassador to a lecture on the historico-legal basis for Henry's imperial kingship:

[T]he Duke went on to say that the popes in old times had in vain attempted to usurp in England certain authority and prerogatives; the Kings predecessors on the throne had never consented to it, and it was not to be expected that king Henry should suffer it at the present moment. He further went on to say that kings were before popes; the King [of England] was absolute master in his own kingdom, and acknowledged no superior. That an Englishman, that is Brennus, had once reduced Rome under his obedience. That Constantius had reigned in England, and that Helen, the mother of Constantine, was English by birth, and several other things as little pertinent to the matter in question as the above. After warmly thanking the Duke for the good-will he bore me, I told him in substance that my curiosity did not go so far as to inquire into the statutes and ordinances of their kingdom, by which I did not presume that they wished to bind the agents and ministers of Your Imperial Majesty. Respecting the rights which His Holiness assumed to exercise here, in England, though I had read something about them in their national chronicles, I had nothing to say. I did not wish to dispute the right and power which the Pope could exercise against kings and kingdoms

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<sup>24</sup> *Ibid.*

<sup>25</sup> PROME, parliament of 1307.

<sup>26</sup> See London, BL, Cotton MS Cleopatra E VI, fols. 42v, 174v.

<sup>27</sup> PROME, parliament of 1307, Vetus Codex, item 19.

<sup>28</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.



disobedient to his authority. That was a notorious fact in full practice in our very days.<sup>29</sup>

It is worth taking the time to unpack this intellectually rich if rather prolix passage.

When Norfolk told Chapuys that Henry recognised no superior in his realm and territories, he was making a claim that transcended the boundaries of the well-known and widely accepted maxim, *rex in regno suo est imperator regni sui* (a king in his kingdom is the emperor of his kingdom). This formula – which was the subject of some discussion in Chapter 3 – pertained to a ruler’s supremacy in temporal (rather in spiritual or ecclesiastical) affairs. That Norfolk was giving new meaning to established terminology, and that his claim was caesaropapal in nature, was certainly not lost on the imperial ambassador. Indeed, it was precisely because Chapuys understood the full implications of the duke’s revolutionary claim that he told him that he ‘did not wish to dispute the right and power which the Pope could exercise against kings and kingdoms disobedient to his authority’.<sup>30</sup> The ambassador was a highly learned man who held a doctorate in canon and civil law; had the duke employed the *rex-imperator* maxim in the traditional manner, Chapuys would have known it and raised no objections.

Yet while Norfolk ascribed to Henry caesaropapal authority, he did not go so far as to deny completely papal jurisdiction over the king’s realm and dominions. Turning directly to the question of Henry’s divorce, Norfolk claimed that the archbishop of Canterbury was the ‘only ecclesiastic to whom the cognizance of this present affair belonged’.<sup>31</sup> Chapuys countered that the pope, as ‘the shepherd of the Christian flock’, was the ‘supreme judge in such matters’.<sup>32</sup> To this, the duke replied that ‘the Pope had no business to interfere in affairs of this kind, except to decree and discuss the cases of heresy’.<sup>33</sup> This remarkable statement reveals just how developed

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

conceptions of the imperial kingship were by January 1531.<sup>34</sup> As will be examined in more detail in the next section, Henrician caesaropapism was a claim to royal jurisdiction over the external or governmental functions (*potestas jurisdictionis*) – but not, with one possible brief exception,<sup>35</sup> the internal or sacramental functions (*potestas ordinis*) – of the church.<sup>36</sup> Heresy was strictly an internal matter over which the priesthood alone exercised authority.<sup>37</sup> Whatever else Henry claimed to be, he never claimed to be a priest. Indeed, as Norfolk all but told Chapuys, the king possessed the power of a late Roman emperor – no more and no less. And although such Constantinean sentiments went a long way towards the break with Rome, and perhaps even made it inevitable, they were not in and of themselves a repudiation of the doctrine of papal primacy. That would not come for several more years.

Norfolk was not content merely to assert the contemporary existence of the imperial kingship; he sought to prove that such was a tradition firmly rooted in British and English history. His was an attempt to provide an answer – albeit an indirect one – to the inevitable question: whence did Henrician caesaropapism come? To this end, the duke deployed a historico-legal argument that painted Henry as the successor to various kings of Britain who had themselves been supreme in matters temporal and ecclesiastical. Norfolk's intention here was to demonstrate that the Tudor monarch occupied the very same royal office (*officium regis*) – represented symbolically by the crown of Edward the Confessor – that Constantine and Arthur had once occupied, and therefore that he enjoyed an identical plenitude of power to his eminent predecessors. Juristically speaking, Henry *was* Constantine and Arthur. The absence of British/English caesaropapism in the centuries leading up to the 1530s could be explained away by the same logic: although those who had immediately preceded Henry on the English throne

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<sup>34</sup> A few months earlier, Henry had asked his agents to search through the papal library in order to determine whether the pope had any jurisdiction over him other than in matters of heresy: see Scarisbrick, *Henry VIII*, p. 268.

<sup>35</sup> See *ibid.*, 275-6, 287-8.

<sup>36</sup> G. R. Elton, *England under the Tudors* (London, 1997), pp. 161-4.

<sup>37</sup> W. Ullmann, ““This Realm of England is an Empire””, *Journal of Ecclesiastical History* 30 (1979) 175-203 (p. 195).

had not been imperial kings *de facto*, they had been imperial kings *de jure*, for inalienable rights, by definition, can never truly be lost. It was for this reason that the duke told the ambassador that ‘popes in old times *had in vain attempted to usurp* in England certain authority and prerogatives’.<sup>38</sup> As Norfolk would have it, then, Henrician caesaropapism was not a revolution but a restoration of royal authority that had lain dormant for generations.

It is important, however, not to misunderstand the purpose of Norfolk’s historico-legal argument. A number of eminent historians have suggested that the duke invoked Constantine the Great in a bid to establish that Henry’s imperial kingship was derived from Rome’s first Christian emperor. Indeed, Richard Koebner understood the duke’s remarks to be an attempt at demonstrating that ‘[i]mperial greatness had been brought to England by Constantine’,<sup>39</sup> and that ‘an Imperial Crown had devolved from Constantine on the king of England’.<sup>40</sup> Not dissimilarly, J. J. Scarisbrick has argued that the duke’s words were ‘presumably meant to prove ... that kings of England ... were the heirs to Constantine’s imperial status’.<sup>41</sup> However, if Scarisbrick’s reading is only ambiguous then Koebner’s is clearly mistaken. Norfolk’s historico-legal argument was intended to show that British/English caesaropapism had existed in the ancient past and continued to exist in the present, but it made no attempt to expound the origins of that power. In other words, although the duke held up Constantine as proof of the existence of the imperial kingship, he never attributed the existence of the imperial kingship to Constantine. The disputation is put beyond doubt by the fact that Lucius — a king whose rule was, according to the Galfridian regnal list, chronologically antecedent to Constantine’s — was repeatedly held up throughout the 1530s as the archetype of British/English imperial kingship.<sup>42</sup> But if Henrician caesaropapism was not derived from Constantine, whence did it come? It came,

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<sup>38</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598 (emphasis added). This distinction might be regarded as meaningless were it not for the fact that it would later be maintained in the reformation statutes.

<sup>39</sup> Koebner, ‘The Imperial Crown’, p. 41.

<sup>40</sup> *Ibid.*, p. 36.

<sup>41</sup> Scarisbrick, *Henry VIII*, p. 272.

<sup>42</sup> See draft versions of the Act in Restraint of Appeals below.

according to Henry and his advisers, not from the king's predecessors, but from God; it was conferred, they said, not by royal descent but by divine grace. It was properly grounded, therefore, not in historico-legal but politico-theological argument. This should not, however, be taken to mean that the historico-legal argument advanced by Norfolk — and later, as will be seen in Section 4.2, in the reformation statutes — was trivial in nature. On the contrary, the succession claim was of the utmost importance in legitimating the imperial kingship. Without such a claim, it would have been nigh on impossible to argue that Henrician caesaropapism was anything other than a revolutionary redrawing of monarchic power, and that Henry himself was anything more than a power-hungry usurper.

However, there can be little doubt that Chapuys completely missed the point of Norfolk's argument. Indeed, the ambassador, in his report to the emperor, casually dismissed the duke's talk of Brennius and Constantine as 'little pertinent to the matter in question'.<sup>43</sup> Perhaps sensing that Chapuys had failed to comprehend his argument, Norfolk tried again, this time by invoking Arthur:

[T]he Duke went on to say that some days ago he had had occasion to shew to the French ambassador a copy of the inscription on the tomb of king Arthur (I could not understand at the time to which of the Arthurs he alluded), which inscription he produced in a parchment roll out of his pouch and handed over to me, adding that he had caused it to be transcribed for my use. I looked at it, and saw only these words written in large letters PATRICIVS ARCTVRVS BRITANNIE, GALLIE, GERMANIE, DACIE IMPERATOR.<sup>44</sup>

That this attempt fared no better than the first was attested to by the ambassador's withering remarks:

My answer was that I was sorry to see that he was not entitled also Emperor of Asia, IMPERATOR ASIE, as he might have left the present king Henry for his successor in such vast dominions; but that as all things in this world were so

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<sup>43</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.

<sup>44</sup> *Ibid.* Charles T. Wood has argued that '[i]n all likelihood, this inscription and its remarkable claims came not from the tomb at Glastonbury but only from Caxton's introduction to Malory': Wood, 'Guenevere at Glastonbury', p. 39. This is possible, but there was seemingly at this time a seal associated with Arthur located at the tomb of Edward the Confessor in Westminster Abbey: see n. 51 below; see also, E. M. R. Ditmas, 'The Cult of Arthurian Relics', *Folklore* 75 (1964), 19-33 (pp. 29-30).

subject to change, it was reasonable that an English monarch of our days should conquer a portion of the provinces above named, since in those very countries men had been found who had conquered and held for a long time this very kingdom of England, where the succession of William of Normandy still lasted. If by shewing me the inscription the Duke meant that the present king Henry might be such a conqueror as king Arthur, I could not help observing that the Assyrians, Persians, Macedonians, and Romans had also made great conquests, and everyone knew what had become of their empire.<sup>45</sup>

Chapuy's merciless retort was perhaps a factor in the decision, subsequently taken by Henry and his advisers, to relegate to Delphic allusion all reference to the kings of the Britons in the reformation statutes.

It is necessary to say a few words in closing about the rather curious interpretation that Nicholson has given to Norfolk's remarks about Arthur's alleged conquests on the European continent.<sup>46</sup> Although the archipelagic dimension of the imperial kingship is a subject that will be more fully treated in the next sections, it is useful to make some preliminary comments here, if only because Nicholson's revisionist analysis of the Norfolk-Chapuy conversation has been so influential in shaping scholarly opinion.<sup>47</sup> Nicholson's interpretation of the duke's Arthurian talk must be understood as a direct response to Koebner's seminal paper, "The Imperial Crown of This Realm": Henry VIII, Constantine the Great, and Polydore Vergil', which argued that Chapuy's transcript testified 'to a pathetic scene of mutual misunderstanding', for although the 'duke did threaten a conquest', it was a conquest 'not of territory, but of authority'.<sup>48</sup> According to Koebner, Norfolk was certainly not suggesting that Henry intended to become a conqueror of nations *à la*

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<sup>45</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.

<sup>46</sup> Nicholson, 'The Act of Appeals', pp. 23-5.

<sup>47</sup> Guy, 'Intellectual Origins', p. 219; J. Robertson, 'Empire and Union: Two Concepts of the Early Modern European Political Order', in *A Union for Empire: Political Thought and the British Union of 1707*, ed. J. Robertson (Cambridge, 1995), pp. 3-36 (p. 9); R. A. Mason, 'The Scottish Reformation and the Origins of Anglo-Scottish Imperialism', in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. R. A. Mason (Cambridge, 1994), pp. 161-86 (p. 169); D. Armitage, *Ideological Origins of the British Empire* (Cambridge, 2000), p. 36.

<sup>48</sup> Koebner, 'The Imperial Crown', p. 41.

Arthur, despite what the ambassador may have thought. Nicholson, however, has taken a rather different view of things:

If Chapuys had understood this ... point correctly, Norfolk was making ‘empire’ a matter of an aggregation of kingdoms, rather as in the usual modern sense of the word. It would be easy to dismiss the reference as a meander of the duke’s somewhat unchannelled imagination, but for some remarkable passages in the ‘Collectanea’ which suggest that he may have caught something important.<sup>49</sup>

The *Collectanea* passages that Nicholson had in mind belonged to a short tract entitled *Regum Angliæ in Walliam Hiberniam et Scotiam ditio*, which purported to demonstrate how the kings of England had historically exercised authority over Scotland, Ireland, and Wales.<sup>50</sup>

But Nicholson’s argument is not persuasive. Although the *Regum Angliæ* tract played a hitherto undervalued role in the formation of Henrician caesaropapism – and will be the subject of analysis in Section 4.3 – there is little reason to suppose that it informed Norfolk’s aforementioned remarks about Arthur. After all, none of the passages which Nicholson cites in support of his interpretation made any reference to the legendary king or his conquests. It is far more likely that Norfolk’s immediate source of information was John Leland, the antiquary who had tutored him as a child and who would later devote a whole chapter of his *Assertio inclytissimi Arturii regis Britanniae* to Arthur’s tomb and seal,<sup>51</sup> rather than the *Collectanea*. Moreover, it seems prudent not to make too much of Chapuys’s apocalyptic allusion to the four kingdoms of Daniel.<sup>52</sup> It is very likely that Norfolk invoked Arthur for the very same reason that he appealed to Constantine and Brennius: to establish the historicity of British/English imperial kingship (rather than to announce a programme of territorial expansion).

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<sup>49</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.

<sup>50</sup> London, BL, Cotton MS Cleopatra E VI, fols. 41v-42; for a useful description of these passages, see Nicholson, ‘The Act of Appeals’, p. 24.

<sup>51</sup> See J. Leland, *A Learned and True Assertion of the original, Life, Actes, and death of the most Noble, Valiant, and Renowned Prince Arthure, King of great Brittain*, trans. R. Robinson (London, 1582), viii.

<sup>52</sup> Daniel 2. 37-40, 7. 4-8

## 4.2 The Reformation Statutes: ‘This Realme of Englonde is an Impire’

This section argues that the succession claim was deployed in support of the parliamentary statutes which effectuated Henry’s reformation during the 1530s. It does not purport to deal comprehensively with the legislation that converted Henrician caesaropapism from theory to fact; it is necessarily selective. The five reformation statutes under investigation here are the Act in Conditional Restraint of Annates (1532),<sup>53</sup> the Act in Restraint of Appeals (1533),<sup>54</sup> the Heresy Act (1534),<sup>55</sup> the Act Concerning Peter’s Pence and Dispensations (1534),<sup>56</sup> and the Act Against the Authority of the Bishop of Rome (1536).<sup>57</sup> These statutes have been chosen on the basis of their importance to the incremental process by which English ties with the Roman Church were severed and the imperial kingship was realised, as well as for the clarity with which they showcase the evolution of Henry’s historico-legal argument. This section represents the first attempt to analyse systematically the rhetoric that was used to legitimate the reformation legislation. In recognition of this fact, ample extracts from the relevant primary sources will be provided in order that the reader may better be able to judge the merits of the analysis offered.

Throughout the reformation statutes, two trends are readily discernible. The first is the conscious effort to eschew *direct* reference to the British History. Given that Henry’s reliance on the Galfridian historiographical tradition scarcely waned during the 1530s and 1540s (as will be seen in Section 4.3), this trend can reasonably be attributed to a change in register. Presumably, the likes of Constantine and Arthur were deemed unsuitable for the respectable pages of England’s book of statutes. It should therefore be well understood that the manner in which the succession claim was used to legitimate the reformation acts was far more subtle than any other

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<sup>53</sup> Luders, *Statutes of the Realm*, iii, 385-8.

<sup>54</sup> *Ibid.*, 427-9.

<sup>55</sup> *Ibid.*, 454-5.

<sup>56</sup> *Ibid.*, 464-71.

<sup>57</sup> *Ibid.*, 663-6.

text examined in this thesis. This fact requires considerable effort on the part of the historian to reconstruct the intellectual and political context in which the legislation should be read, and not inconsiderable patience and forbearance on the part of the reader to follow the nuance of the interpretation offered. It cannot be stressed more heavily that simply because the reformation statutes did not mention Constantine or Lucius by name does not mean that the succession claim was not used to justify the arguments advanced therein. Indeed, it will be contended throughout this sub-chapter that Henrician assertions of papal usurpation and royal restoration were necessarily bound up with the succession claim. The second – and more important – trend is the manner in which the succession claim became more explicit as time went on. The earliest reformation acts, although far from devoid of historico-legal argument, deliberately circumvented the contentious issues of papal usurpation and royal restoration. They instead fixed their gaze on narrow and pragmatic questions, such as the Roman Church's right to tax the clergy within Henry's realm and dominions, and the ability of the king's subjects to appeal judicial decisions to the apostolic see and to other foreign courts. The later statutes, which directed increasingly vitriolic rhetoric at the past and present occupants of the throne of St Peter, took as their subject the historical boundary between temporal and spiritual power. They asserted, in no uncertain terms, that a long line of popes had systematically usurped the God-given right of British/English kings to exercise caesaropapal authority within their realm and the lands which attached to the crown of the Confessor. Henry, it was said, was merely reclaiming what was inalienably his. With the passage of the Act Concerning Peter's Pence and Dispensations and the Act Against the Authority of the Bishop of Rome, the succession claim was laid bare. The Tudor monarch had gone too far to turn back; there was no longer any need to pull punches.

In the twelve or so months since the duke of Norfolk had attempted to impress Chapuys with tales of British/English heroes, Henry's dispute with Clement had only escalated. During



February or March 1532, in what Scarisbrick has termed the king's last direct appeal to Rome,<sup>58</sup> Edward Carne, a doctor of canon law who served as his majesty's excusator, told the pope and his cardinals that if they persisted in their attempts to have Henry appear before the Rota on the matter of the divorce, 'they shall do unto Us so expresse a wrong and iniquitie, as they shall never be hable afterwarde to redubbe; and not onely unto Us, and to al other Princes, and unto justice self, but also to the due ordre reason and equitie of all lawes'.<sup>59</sup> A few weeks later, the reformation parliament began in earnest with the passage of the Act in Conditional Restraint of Annates.<sup>60</sup> It is noteworthy that Henry elected to use legislation to bring about his imperial kingship. G. W. Bernard has quite plausibly suggested that the move was intended to demonstrate that the series of measures against Rome were taken not by the monarch alone but by the English nation as a whole.<sup>61</sup> The reformation statutes enacted by Henry's Westminster parliament had application not only in England itself but also in the king's dominions of Wales, Calais, the Channel Islands, and the Isle of Man.<sup>62</sup> Duplicate acts were later passed by Henry's Dublin parliament in accordance with the long-standing constitutional principle of Anglo-Irish separatism.<sup>63</sup> The belated effect of Henrician caesaropapism on Scotland, a realm over which the king of England could not claim to exercise any direct control, will be discussed in the next section.

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<sup>58</sup> Scarisbrick, *Henry VIII*, p. 286.

<sup>59</sup> *State Papers of Henry VIII*, 11 vols (London, 1830-52), VII, v, 353.

<sup>60</sup> G. R. Elton called this statute 'the first direct attack on Rome itself': Elton, *England under the Tudors*, p. 130.

<sup>61</sup> G. W. Bernard, *The King's Reformation: Henry VIII and the Remaking of the English Church* (New Haven and London: 2005), pp. 69-71.

<sup>62</sup> F. Heal, *Reformation in Britain and Ireland* (Oxford, 2003), p. 127; G. Williams, *Wales and the Reformation* (Cardiff, 1999).

<sup>63</sup> See *The Statutes at Large, Passed in the Parliaments Held in Ireland: From The Third Year of Edward the Second, A. D. 1310, to the Twenty sixth Year of George the Third, A. D. 1786 inclusive*, ed. G. Grierson (Dublin, 1786), pp. 76-83, 90-3, 96-9, 104-10, 171-4; J. Lydon, 'Ireland and the English Crown, 1171-1541', *Irish Historical Studies* 29 (1995), 281-294 (pp. 289-92).

### The Act in Conditional Restraint of Annates (1532)

The Act in Conditional Restraint of Annates was passed in late March 1532. The statute declared that ‘the unlauffull paymentys of Annates or first fruytes and almaner contribucions for the same ... shall from hensforth utterly cesse and no suche hereafter to be payed for any Archebishshopriche or Bysshopriche within this Realme other or otherwise then hereafter in this present acte ys declared’.<sup>64</sup> Annates – alternatively known as “first fruits” – had been introduced to England late in the reign of Edward I, and amounted to a papal tax on income obtained during the first year of ecclesiastical benefices falling vacant.<sup>65</sup> The impost constituted Rome’s predominant source of income from the church in England.<sup>66</sup> As such, the parliamentary proscription of English annates represented an attack not only on Clement’s spiritual authority, but on his fiscal capacity as well. Furthermore, the statute warned that if the pope chose to retaliate by withholding bulls of consecration from Henry’s archbishops- and bishops-elect, the king would simply consecrate the nominees himself, as had occurred ‘in auncient tyme by sondry the Kynges most noble progenitours ... according to the auncient lawes and customes of this Realme and the Kinges prerogatif Royall’.<sup>67</sup> Evidence of these laws and customs, according to a draft version of the act, appeared plainly ‘in auncient boks’.<sup>68</sup> The act also declared that, notwithstanding any censures, excommunications, or interdictions from Rome, ecclesiastical services would continue to be administered ‘thoroughout this seid Realme and all other the Domynions and Territories belonging or apperteyning thereunto’.<sup>69</sup> This phraseology made clear that the legislation pertained not only to England proper, but also to the territorial appendages of the English crown.

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<sup>64</sup> Luders, *Statutes of the Realm*, iii, 386.

<sup>65</sup> See generally, W. E. Lunt, ‘The First Levy of Papal Annates’, *The American Historical Review* 18 (1912), 48-64.

<sup>66</sup> Elton, *England under the Tudors*, p. 131.

<sup>67</sup> Luders, *Statutes of the Realm*, iii, 386-7.

<sup>68</sup> London, TNA E 175/7.

<sup>69</sup> Luders, *Statutes of the Realm*, iii, 388.

Despite the revolutionary nature of the Act in Conditional Restraint of Annates, Henry was not yet ready to burn all bridges with Rome. The act was *conditional* because it included a clause which postponed the statute's commencement for one year, during which time the king had the discretion to veto all or part of its contents:

So that yf his Highnes by his seid lettres patentys before the expiracion of the tymes above lymytted therby, doo declare his pleasure to be that the premysses or any parte clause or matter therof shall not be put in execucion contynued nor obeyed, In that case all the seid premysses or suche parte clause or matter therof as the Kynges Highnes so shall refuse disasferme or not ratifye shall stonde and be from thensforth utterly voide and of noon effect.<sup>70</sup>

This was a crucial concession, and one which reveals a very real reluctance to repudiate the pope's authority in Henry's realm and dominions.

The hallmarks of indecision were also evident in the rhetoric that was deployed for the purposes of legitimating the statute. By examining the intellectual antecedents of the Act in Conditional Restraint of Annates, Nicholson has demonstrated how a robust and wide-ranging debate about the validity of papal power in Henry's realm and dominions ultimately gave way to a political solution that was modest both in its scope and in its tone:<sup>71</sup> 'Nothing suggests that England might withdraw its obedience from Rome, the matter of annates excepted. The sole complaint of the Act's preamble is the miserable decay of the realm on account of huge and unjust payment to Rome'.<sup>72</sup> Questions of papal usurpation and royal restoration were carefully placed to one side, as the succession claim was substituted for a simpler historico-legal argument that characterised the decision to prohibit the collection of first fruits as the rehabilitation of late medieval law.

The historico-legal argument that was advanced in support of the Act in Conditional Restraint of Annates had been intimated by Norfolk more than a year earlier. In his conversation

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<sup>70</sup> *Ibid.*, 387.

<sup>71</sup> See Nicholson, 'Nature and Function of Historical Argument', pp. 139-56.

<sup>72</sup> *Ibid.*, p. 154.

with Chapuys at Greyfriars in January 1531, the duke had made an obscure allusion to ‘a statute made by the Estates of the kingdom, and which had been promulgated and preconized, against whomsoever should dare to execute mandates or provisions emanating from the Roman Court to the detriment of the honour, or authority of the King and kingdom’.<sup>73</sup> It was suggested in the previous section that this was a reference to the Statute of Carlisle, which had been enacted in 1307 at Edward I’s final parliament. But why would Norfolk have sought to draw the imperial ambassador’s attention to this particular piece of legislation? Following the pontificates of Boniface VIII and Benedict XI, the Roman church had found itself in a precarious fiscal position, with the papal treasury (*camera apostolica*) also much depleted. Shortly after acceding to the throne of St Peter, Clement V, the first Avignon pope, had attempted to remedy the situation by instituting a new tax on benefices.<sup>74</sup> Presumably with Edward’s approval or acquiescence, the pope had elected to trial his new tax in the ‘kingdoms of England and Scotland and provinces or regions of Ireland and Wales’ (*Anglie et Scotie regnis Hybernice et Wallie provinciis sive partibus*),<sup>75</sup> all territories which ostensibly fell under the sway of the Plantagenet monarch. However, many of Edward’s parliamentarians had later objected to the new levy, warning that it would impose ‘intolerable grievances, oppressions, wrongs, and extortions’ (*intollerabilibus gravaminibus, oppressionibus, injuriis et extorsionibus*) on the monasteries, priories and other religious houses in England and in the lands subject to the king’s lordship.<sup>76</sup> Edward’s parliament had subsequently passed the Statute of Carlisle, which prohibited the collection of annates within the British Isles.<sup>77</sup>

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<sup>73</sup> Bergenroth et al, *Calendar of State Papers, Spanish*, IV, ii, 598.

<sup>74</sup> Lunt, ‘Papal Annates’, p. 50.

<sup>75</sup> *Ibid.*, p. 63 (present author’s translation).

<sup>76</sup> PROME, parliament of 1307, *Vetus Codex*, item 127.

<sup>77</sup> *Ibid.*, item 19.

There can be little doubt that the Statute of Carlisle served as the model for the Act in Conditional Restraint of Annates. Norfolk's words (quoted above) need only be compared with the following passage from the 1532 act:

[T]he seid exaccions of Annates or first fruyttes be so intollerable and importable to this Realme that it is considered and declared by the hole bodye of this Realme nowe represented by all the astatys of the same assembled in this present parliament, that the Kynges Highnes before Almyghty God ys bounde as by the duetye of a good Cristen Prynce for the conservacion and preservacion of the good astate and commyn welth of this his Realme to doo all that in hym ys to obvyate and repress and redresse the said abusions and exaccions of Annates or first fruytes.<sup>78</sup>

However, the relationship between the Edwardian and Henrician legislation can be further demonstrated. Nicholson has established that the phrase, 'Annates or first fruyttes were first suffered and to be taken within the same Realme for the thonelye defence of Cristen people ayenst thinfideles', which appeared in the preamble to the Act in Conditional Restraint of Annates, was derived from a section of the *Collectanea* devoted to the Statute of Carlisle.<sup>79</sup> Nicholson expertly traced this section of the *Collectanea* back to an incomplete copy of Walter of Guisborough's chronicle.<sup>80</sup> However, he failed to notice that Guisborough himself had taken the text without attribution from Edward's 1307 parliamentary roll.<sup>81</sup> In other words, the Henrician legislation in question was based not merely on a chronicler's summary of the Statute of Carlisle, as Nicholson has supposed, but on a copy of the actual parliamentary petitions which compelled its enactment. A third connection between the Edwardian and Henrician statutes can be discerned in the archipelagic terminology alluded to already. The aforementioned *Collectanea* passage spoke of how Edward's earls, barons, and magnates, together with the community of the whole realm of England, had put forward petitions 'for the estate of the royal

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<sup>78</sup> Luders, *Statutes of the Realm*, iii, 386.

<sup>79</sup> See Nicholson, 'Nature and Function of Historical Argument', pp. 142-3; London, BL, Cotton MS Cleopatra E VI, fol. 133.

<sup>80</sup> Cambridge, UL MS Dd 2.5.

<sup>81</sup> PROME, parliament of 1307, Vetus Codex, item 127.

crown, and also of the same king's lands of Scotland, Wales, and Ireland' (*pro statu corone regie nec non terrarum ipsius regis Scocie, Wallie, et Hibernie*).<sup>82</sup> Here lay the foundations of the expression 'this seid Realme and all other the Domynions and Territories belonging or apperteyning thereunto' in the Act in Conditional Restraint of Annates,<sup>83</sup> an expression which would go on to animate all subsequent reformation statutes, including the one that would make Henry's parliamentary proscription of annates permanent.<sup>84</sup>

### The Act in Restraint of Appeals (1533)

Arguably the most famous reformation statute of them all, the Act in Restraint of Appeals was passed in early April 1533. A few months earlier, Henry had secretly married Anne Boleyn, who was now more than three months pregnant with the future queen regnant of England. The union would be validated in late May by the newly consecrated archbishop of Canterbury, Thomas Cranmer, the same cleric who, a few days later, would crown and anoint Anne in a spectacular coronation ceremony at Westminster Abbey. Enacted in belated response to Katherine of Aragon's decision to appeal her case to Clement, the Act in Restraint of Appeals explicitly prohibited 'appeales sued oute of this Realme to the See of Rome, in causes testamentarie causes of matrimony and dyvorges, right of tithes, oblacions and obventions'.<sup>85</sup> It was said that the move would facilitate the 'trewe and spedy determynacion' of justice in so far as cases would no longer have to be sent to the faraway court of Rome, where there was, in any event, little knowledge or understanding of matters under litigation in England.<sup>86</sup> Any who attempted to appeal to foreign

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<sup>82</sup> *Ibid.*

<sup>83</sup> Luders, *Statutes of the Realm*, iii, 388.

<sup>84</sup> *Ibid.*, 462-4.

<sup>85</sup> *Ibid.*, 428.

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

powers from the day of enactment, the statute forewarned, would incur penalties pursuant to the Statute of Praemunire passed during the reign of Richard II.<sup>87</sup>

The Act in Restraint of Appeals commenced with a long and grandiose preamble. Far better known than understood, the celebrated declaration of empire was a guarded – almost enigmatic – statement of Henrician caesaropapism:

Where by dyvers sundrie olde autentike histories and cronicles it is manifestly declared and expressed that this Realme of Englund is an Impire, and so hath ben accepted in the worlde, governed by oon Supreme heede and King having the Dignitie and Roiall Estate of the Imperiall Crowne of the same, unto whome a Body politike compacte of all sortes and degrees of people, devided in termes and by names of Spiritualltie and Temporalltie, ben bounden and owen to bere nexte to God a naturall and humble obedience ; he beyng also institute and furnysshed by the goodnes and sufferaunce of Almyghtie God with plenary hoole and intiere power preemynence authoritie prerogatyve and jurisdiction to rendre and yelde Justice and finall determynacion to all maner of folke reseautes or Subjectes within this his realme, in all causes maters debates and contencions happenyng to occurr insurge or begyne within the limittes therof without restraynt or provocation to any foreyn Princes or Potentates of the World.<sup>88</sup>

Before attempting to make sense of this, one of the most convoluted sentences on the English book of statutes, it is necessary to reconstruct the intellectual and political context in which it was manufactured.

Precisely how to justify the decision to prohibit all appeals to the Holy See was a question that plagued Henry and his advisers as they prepared the statute. The many surviving draft versions of the Act in Restraint of Appeals testify to a long-running discussion about whether or not to advance a full-throated defence of the imperial kingship.<sup>89</sup> Only weeks before the legislation was passed, the Tudor monarch had railed against the pope's 'vanity of letting his feet be kissed, and of his great ambition, and the authority he assumed over the Empire and the other realms

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<sup>87</sup> *Ibid.*, 429.

<sup>88</sup> *Ibid.*, 427.

<sup>89</sup> London, TNA, E 175/8.

of Christendom, creating or deposing emperors and kings at his pleasure'.<sup>90</sup> Henry had also told the imperial ambassador that he was determined to 'reunite to the Crown the goods which churchmen held of it, which his predecessors could not alienate to his prejudice, and that he was bound to do this by the oath he had taken at his coronation'.<sup>91</sup> This was the same non-alienation clause that the barons had urged John to incorporate into the English coronation oath during the early thirteenth century, and the same non-alienation clause that Edward I had invoked in support of his claim to overlordship of Scotland at the turn of the fourteenth. For a time, it appeared that the succession claim would be used unrelentingly to legitimate the Act in Restraint of Appeals. However, the statute as passed struck a considerably more conciliatory tone, presumably with a view not to obliterate Anglo-papal relations while a less destructive solution to the impasse still seemed possible. It is highly instructive to examine how Henrician rhetoric evolved throughout the different iterations of the statute.

The earliest versions of the Act in Restraint of Appeals elaborated an ambitious historico-legal argument which charged the Roman Church with usurping the divine right of British/English kings to wield caesaropapal authority. These drafts spoke of 'the see apostolik most ambiciously aspyryng to be suppreme lordis of all the world forgetting the holy steppes and examples of their good predecessours which nothing els desired but the advauncement of the lawes of god thencrease of the catholik faithe',<sup>92</sup> and of how popes past and present had sought 'to amplifie their wordly */sic/* honor and possessions as their auctorite power prehemynence and iurisdiccio[n] nott only within this realme but in many other sundry provincis and contreyis of the world'.<sup>93</sup> In a revealing passage which was also redacted before the act was passed, it was declared that Henry's parliament was restoring forthwith the imperial crown to its former status:

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<sup>90</sup> *Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII, 1509-47*, ed. J. S. Brewer, J. Gairdner and R. H. Brodie, 21 vols (London, 1862-1910, 1920), VI, 235.

<sup>91</sup> *Ibid.*

<sup>92</sup> Quoted in Nicholson, 'Nature and Function of Historical Argument', p. 298 (the present author has inspected the originals).

<sup>93</sup> *Ibid.*



In consideration and for Reintegracion apparently of the auncient auctorities liberties prehemynencis and prorogatyves of the imperiall crown of this realme and of iurisdiccions spirituall and temporall depending of the same which hath uniuistly be taken awaye by negligent sufferance and usurpacion, the nobles and comens of this realme assembled in this present parliament calling to ther remembraunce the great division which hath byn hertofore in this realme for dyversite of titles to the crown of this realme for the uncertenty of the posterite and succession of the kingis of the same to the great effusion and destruccion aswell of A gret number of the nobilite as of other subiectis inheritours in the same And that now thankis be to allmighty god all the titles whereof variaunce ensued or mought ensue be now lynally comen descended conioyned in the Kingis most roiall person without question or ambiguite.<sup>94</sup>

This was the succession claim in full flight, deployed in order to disguise the revolutionary nature of the imperial kingship.

The draft versions of the Act in Restraint of Appeals revealed the extent to which attempts to legitimate Henrician caesaropapism were grounded in the British History. Although the statute as passed spoke of ‘dyvers sundrie olde autentike histories and cronicles’<sup>95</sup> – which historians generally agree was an allusion to the Galfridian historiographical tradition<sup>96</sup> – the reference was a deliberately obscure one.<sup>97</sup> However, in the earlier versions of the act, the precedent which loomed larger than all others was the pseudo-Elleutherius letter, composed in the early thirteenth century by the anonymous author of the *Leges Anglorum*, and thrice quoted in the *Collectanea*. Utilising the appellation ‘vicar of God’, by which the second-century pope was said to have addressed Lucius, king of the Britons, the draft versions of the Act in Restraint of Appeals made the spurious epistle its centrepiece:

In confirmation whereof divers of the king’s most royal progenitors, kings of this said realm and empire, by the epistles from the See of Rome have been named, called and reputed the vicars of God within the same, and in their times have made and devised ordinances, rules and statutes consonant unto the laws of God by their princely power, authority and prerogative royal, as well for the due

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<sup>94</sup> *Ibid.*, p. 301.

<sup>95</sup> Luders, *Statutes of the Realm*, iii, 427.

<sup>96</sup> Scarisbrick, *Henry VIII*, pp. 272-3; Guy, ‘Intellectual Origins’, p. 218; S. E. Lehmborg, *The Reformation Parliament, 1529-1536* (Cambridge, 1970), p. 164.

<sup>97</sup> Scarisbrick argued that it ‘had to be, if the statute were to remain respectable’: Scarisbrick, *Henry VIII*, p. 273.

observing and executing of things spiritual as temporal within the limits of the imperial crown of this realm.<sup>98</sup>

Here the missive was used to establish the historicity of British/English imperial kingship, as the cosmology of one Roman pontiff was turned against that of another. Henry, it was suggested, was doing no more than recovering the powers that attended the position ‘vicar of God’, of which he and his predecessors had been unjustly deprived. Why, then, given its importance to the succession claim, was all reference to the pseudo-Eleutherius letter redacted for the final version of the statute? Heal has suggested that there were perhaps ‘qualms about basing a new claim to kingly authority on one papal letter’.<sup>99</sup> This is possible, but the fact that the text would continue to be used in support of Henrician caesaropapism for many more years, including by the archbishop of Dublin in a speech to the Irish parliament in 1536,<sup>100</sup> would appear to count against the hypothesis. The decision seems to have been a strategic one which was inextricably bound up in the move away from the succession claim proper and towards a simpler form of historico-legal argument.

However much talk of papal usurpation and royal restoration animated the draft versions of the Act in Restraint of Appeals, the statute as passed focused on narrow and pragmatic matters. There was still a form of historico-legal argument at work – advanced in the interests of demonstrating that Henry was not engaged in reformation – but it was considerably more modest in character. After referencing various pieces of legislation enacted during the reigns of Edward I, Edward III, Richard II, and Henry IV, the Act in Restraint of Appeals declared its intention to ameliorate ‘sondry inconveniences and daungers not provided for playnly by the said formar Actes, Statutes and Ordyn<sup>a</sup>nces have risen and spronge by reason of appeales sued oute of this

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<sup>98</sup> Quoted in Guy, ‘Intellectual Origins’, p. 220 (Guy’s modernised orthography; the present author has inspected the originals).

<sup>99</sup> Heal, ‘King Lucius’, p. 600.

<sup>100</sup> See *The Life of Archbishop Browne: The First Protestant Bishop in Ireland: And the Life of Bishop Bedell* (London, 1832), p. 5.

Realme to the See of Rome'.<sup>101</sup> In other words, the statute was tendentiously framed as a mere extension to anti-papal legislation passed by numerous English parliaments in the late medieval period. This sleight of hand served its purpose well – perhaps even a little too well – for it gave hardly any indication that a break with Rome was in the offing, boasts of empire notwithstanding.

The aforesaid provides the intellectual and political context within which the famous phrase, 'this Realme of Englonde is an Impire',<sup>102</sup> should be read and understood. Although there were some differences of emphasis, the monarchic theory adumbrated in the Act in Restraint of Appeals was fundamentally the same as that which Norfolk had articulated at Greyfriars more than two years earlier. However, it was one thing to shock foreign dignitaries with boasts of the king's caesaropapal power; it was quite another to set those boasts down in statute. The king of England, the Westminster parliament declared, recognised no superior in matters temporal and ecclesiastical within his realm and dominions. Where exactly did this leave the pope? In January 1531, the imperial kingship had been deemed compatible with a limited form of the doctrine of papal primacy. Was the same still true by April of 1533? There is good reason to doubt it. The earlier versions of the Act in Restraint of Appeals consistently employed the term 'see Appostolik'. However, in the statute as passed, this phrase was menacingly crossed out wherever it appeared and replaced with the words 'See of Rome'.<sup>103</sup> Henry's contemporaneous correspondence with the French king, Francis I, may provide some insight on the issue. After telling his brother monarch that the pope was guilty of violating and usurping the rights of a great many Christian rulers, the English king posed the following rhetorical questions: 'Ought a prince to submit to the arrogance and ambition of an earthly creature whom God has made his subject?

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<sup>101</sup> Luders, *Statutes of the Realm*, iii, 427-8.

<sup>102</sup> *Ibid.*, 427.

<sup>103</sup> London, TNA, E 175/8; G. R. Elton, 'The Evolution of a Reformation Statute', *English Historical Review* 64 (1949), 174-97 (p. 181).

Ought a King to humble himself, and pay obedience to him over whom God has given him the superiority?<sup>104</sup>

The opening words of the preamble to the Act in Restraint of Appeals represented an attempt to reconcile the *rex in regno suo est imperator regni sui* maxim with a Constantinean conception of kingship. As was seen in Chapter 3 of this thesis, the *rex-imperator* formula – which during the course of the fifteenth century had given birth to the regal appurtenance of the closed, “imperial” crown<sup>105</sup> – comprised the idea that a king recognised no superior in temporalities, but made no claim whatever to authority over matters ecclesiastical.<sup>106</sup> For Henry and his advisers, such a narrow conception of monarchic power had to be significantly revised in order to accommodate the ideals of imperial kingship.<sup>107</sup> Availing itself of the Constantinean distinction between internal (*potestas ordinis*) and external (*potestas jurisdictionis*) affairs, Henrician caesaropapism asserted supreme royal jurisdiction over the governmental – but not the sacramental – functions of the church.<sup>108</sup> In other words, the phrase ‘this Realm of England is an Empire’ was the consequence of taking the centuries-old *rex-imperator* maxim – the same one that Edward I had deployed against Boniface VIII in 1301 – and imbuing it with new meaning.

However, this explanation still leaves one matter unresolved. Why did the preamble to the Act in Restraint of Appeals not instead declare that “this king of England is an emperor”? Such an expression would have more accurately characterised the thought contained therein.

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<sup>104</sup> Brewer, et al, *Letters and Papers*, VI, 230.

<sup>105</sup> See generally, D. Hoak, ‘The Iconography of the Crown Imperial’, in *Tudor Political Culture*, ed. D. Hoak (Cambridge, 2002), pp. 54-103; P. Grierson, ‘The Origins of the English Sovereign and the Symbolism of the Closed Crown’, *British Numismatic Journal* 38 (1964), 118-34.

<sup>106</sup> See generally, J. Canning, *A History of Medieval Political Thought, 300-1450*, 2<sup>nd</sup> edn (London and New York, 2005), pp. 124-5; G. Post, *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (New Jersey, 1964), 453-82.

<sup>107</sup> As such, H. G. Koenigsberger was greatly mistaken to conclude that when ‘Henry VIII claimed that the realm of England was an empire, and therefore not subject to the authority of the pope or the Holy Roman Emperor, Henry, or rather his lawyers, were claiming no more than the lawyers of continental kings had been claiming for generations’: H. G. Koenigsberger, *Monarchies, States Generals and Parliaments: The Netherlands in the Fifteenth and Sixteenth Centuries* (Cambridge, 2001), p. 324.

<sup>108</sup> Ullmann, ‘This Realm of England’, p. 181.

The reason for the linguistic peculiarity would appear to lie in Henry's attempt both to distance himself from the work of his parliament and to represent the statement as one made by the English nation as a whole. That effort is readily discernible throughout many of the reformation statutes, as well as in the decision to use legislation – as opposed to royal proclamations – in the first place. The curious language of “empire” may also have owed something to another extract from the *Leges Anglorum* which was included in the *Collectanea*.<sup>109</sup> That passage asserted that England ‘can and ought to be called an empire rather than a kingdom by the excellence of the most illustrious aforesaid crown’ (*potius appellari potest et debet excellentia illustrissimæ prædictæ coronæ imperium quam regnum*).<sup>110</sup> Whatever its precise origins, there can be no doubt that the Act in Restraint of Appeals gave voice to a revolutionary theory of monarchic power – a fact which would have been obvious were it not for the many editorial redactions that accompanied the final version of the statute.

### The Heresy Act (1534)<sup>111</sup>

The Heresy Act was introduced to the Commons on 7 February and passed the Lords on 28 March 1534,<sup>112</sup> by which time England's new queen had borne Henry a daughter, Elizabeth, who had promptly been pronounced first in the line of succession at the expense of her half-sister, Mary, who had found herself declared illegitimate after reaching adulthood.<sup>113</sup> The statute, which purported to amend heresy laws that had been enacted during the reigns of Richard II and Henry V,<sup>114</sup> was an important stride in the long march towards the king's break with the Roman Church. The term ‘See of Rome’, which had appeared for the first time nearly a year earlier in

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<sup>109</sup> London, BL, Cotton MS Cleopatra E VI, fol. 41v.

<sup>110</sup> *Ibid.*

<sup>111</sup> The present author chose to position the Heresy Act before the Act Concerning Peter's Pence and Dispensations because the former passed the Commons more than a month earlier than the latter.

<sup>112</sup> Lehmborg, *The Reformation Parliament*, pp. 186-7.

<sup>113</sup> By virtue of the Succession Act (1534): Luders, *Statutes of the Realm*, iii, 471-4.

<sup>114</sup> However, see Lehmborg, *The Reformation Parliament*, p. 187 n. 1.

the Act in Restraint of Appeals, had by now become a permanent feature of the reformation statutes. The Heresy Act, however, took matters much further than any piece of Henrician legislation yet had, for it referred to the pope no fewer than five times as the 'Bysshop of Rome'. This terminological shift constituted a powerful if guarded assault on the doctrine of papal primacy. Indeed, it implied that the vicar of Christ was a mere provincial bishop, and, as such, possessed no better jurisdictional claim to Henry's realm and dominions than any other foreign ecclesiastic.

But the statute did not stop there. It further announced that any person who spoke against the doctrine of papal primacy could neither be regarded nor prosecuted as a heretic:

AND WHERE the great nombre of the Kynges subjectes havng lytyll or noo lernyng nor knowlege of letters have byn put in opynyon that by dyverse lawes decrees orden<sup>a</sup>unces and constitucions heretofore made by the Bysshop of Rome called the Pope and hys predicessours or by there auctorities for the advancement of there worldly glorye and ambicion, every man that in any thyng speketh or doth agaynst the seid pretended power or auctoritie of the same Bysshop of Rome, or any the seid lawes decrees ordinaunces and constitucions, stonddith in danger and is impeachable of herisie; [wiche]<sup>115</sup> effect or matter nor any suche lawes decrees ordyn<sup>a</sup>nces or constitucions not approved & confirmed by holy scripture was never comunly accepted or confirmed to be any lawe of God or man within this Realme : Wherefore be it enacted and ordeyned by auctoritie of this present parliament that noo maner of spekyng doing communicacion or holdyng ayenste theseid Bisshop of Rome, or hys pretended power or auctoritie made or geven by humayne lawes or policies and not by holy scripture, nor any spekyng doing communicacion or holdyng ayenst any lawes called Spirituall lawes made by auctoritie of the See of Rome by the police of men, which be repugnant or contr<sup>a</sup>yant to the lawes & statutes of this Realme or the Kynges prerogative Royall, shalbe deemed reputed accepted or taken to be Heresie; nor that any subjecte or resiant of this Realme shalbe, for any suche spekyng doing communicacion or holdyng, impeched vexed or troubled for any poynt or mater of the seid detestable cryme of Heresie...<sup>116</sup>

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<sup>115</sup> Editor's insertion.

<sup>116</sup> Luders, *Statutes of the Realm*, iii, 455.

This legislative provision recalled a colourful anecdote from earlier in Henry's reign which featured in the imperial ambassador's correspondence with Charles V.<sup>117</sup> Writing to his master on 22 March 1531, Chapuys claimed that a Lutheran priest had recently been imprisoned for heresy, and that Henry had intervened to prevent the priest from perishing at the stake. According to the ambassador, the 'King, taking in his hands a roll containing the articles of heresy objected against him, noticed the article in which he said the Pope was not Head of the Christian Church; and said that that ought not to be entered among the heresies, for it was quite certain and true'.<sup>118</sup> Although the Heresy Act stopped short of codifying such sentiments – and, therefore, recoiled from explicitly repudiating the doctrine of papal primacy – it came awfully close.

Like the Act in Conditional Restraint of Annates and the Act in Restraint of Appeals before it, the statute prioritised the practical over the theoretical, and the particular over the general. And it, too, advanced a historico-legal argument that presented its reforms as but minor improvements to established legislation enacted by English kings past:

Be it establysshed ordeyned and enacted by the auctoritie of this presente parliamente that the statute made in the fyfthe yere of your noble progenitour Kyng Richarde the seconde, and the statute made in the seconde yere of Kyng Henry the v<sup>th</sup> concernyng punyshement and reformacion of herytykes and lollardes and every provysyon therin conteyned, not being repugnaunt to this acte, shalbe and stonde in their force strength and effecte.<sup>119</sup>

Henry was again breaking new ground, but he remained as determined as ever not to be seen as an innovator. Yet the Heresy Act also signalled a newfound boldness on the part of the Tudor monarch, for it contained precisely the kind of anti-papal rhetoric that previous reformation legislation had been careful to avoid. Indeed, the statute spoke openly of how 'the Bysshop of Rome called the Pope and hys predicessours' had worked 'for the advauncement of their

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<sup>117</sup> Brewer, et al, *Letters and Papers*, V, 148.

<sup>118</sup> *Ibid.*

<sup>119</sup> Luders, *Statutes of the Realm*, iii, 454.

worldly glorye and ambicion’,<sup>120</sup> and of the ‘pretensed power or authoritie of the same Bysshop of Rome’ over the king’s realm and dominions.<sup>121</sup> The larger and altogether more dangerous questions of papal usurpation and royal restoration were left untouched for now, but there were clear signs of what was to come. For the time being, the succession claim remained in the shadows.

#### The Act Concerning Peter’s Pence and Dispensations (1534)

The Act Concerning Peter’s Pence and Dispensations was passed on 20 March 1534.<sup>122</sup> Continuing in the same vein as the legislation against annates, the statute proscribed the payment of the following levies to the Holy See:

[P]ensions censures peter pence procuracions fruytes suytes for provysions and expedicions of Bulls for Archebishopsriches and Bishopriches and for delegacies and rescriptis in causes of contencions and appeles jurisdictionis legatyne and also for dispensacions licences faculties grauntys relaxacions writtys called perinde valere rehabilitacions abolicions, and other infynyt sortes of bulles breves and instrumentes of sondre natures names and kyndes in great numbers.<sup>123</sup>

This move served to deprive the Roman Church of the various sources of revenue which had remained intact throughout the early 1530s, including and especially the annual payment known as Peter’s Pence,<sup>124</sup> and to further diminish the pope’s authority in Henry’s realm and dominions. The enactment of the Act Concerning Peter’s Pence and Dispensations coincided with a period of intense scrutiny for those who offered any form of resistance to the imperial kingship. Increasingly confident of his position, Henry required his leading subjects to swear an oath recognising his caesaropapal power.<sup>125</sup> Those who capitulated to the new order – such as Cuthbert

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<sup>120</sup> *Ibid.*, 455.

<sup>121</sup> *Ibid.*

<sup>122</sup> Lehmborg, *The Reformation Parliament*, p. 192.

<sup>123</sup> Luders, *Statutes of the Realm*, iii, 464.

<sup>124</sup> See generally, R. Naismith and F. Tinti, ‘The Origins of Peter’s Pence,’ *English Historical Review* 134 (2019), 521-52.

<sup>125</sup> Luders, *Statutes of the Realm*, iii, 492-3.



Tunstal, bishop of Durham – were absolved of their sins; those who refused to relent – such as Thomas More, former lord chancellor, and Cardinal John Fisher – would live out their final days in the Tower of London. Something of this doubtless febrile atmosphere can be detected in the statute itself.

The Act Concerning Peter's Pence and Dispensations represented nothing less than a paradigm shift in Henrician rhetoric. Unlike previous reformation legislation, which had concerned itself only with practical questions, the statute waded into the treacherous waters of papal usurpation and royal restoration. There was still no express mention of Constantine or Arthur, but there was a newfound emphasis on the decline and fall of ancient British Christianity, and on the need to restore the English church to its former state. The succession claim, therefore, did not replace the more modest forms of historico-legal argument that had hitherto animated the output of Henry's reformation parliament so much as it supplemented and elucidated them. The same logic had governed the Act in Restraint of Appeals before various editorial redactions purged it of its most adversarial features.

It is worthwhile examining this rhetoric in detail. The Act Concerning Peter's Pence and Dispensations alleged that the pope and his predecessors had aggressively expanded their jurisdictional power over temporalities – to the detriment of secular rulers – by conflating matters ecclesiastical with matters spiritual:

[T]he Bishop of Rome aforseid hath not byn only to be blamed for hys usurpacion in the premisses but also for hys abusyng and begylyng your subjectes, pretending and perswadyng to theym that he hath full power to dispence with all humayne lawes uses and customes of all Realmes in all causes which be called spirituall, which mater hath byn usurped and practised by hym and hys predycessours by many yeres in great derogacion of your imperiall crowne and aucthorytie royall contrary to right and conscience.<sup>126</sup>

This, it was said, had done untold harm to the realm and to the office of the king:

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<sup>126</sup> *Ibid.*, iii, 464.

[B]y cause that it is nowe in thes dayes present sene that the state dignitie superioritie reputacion and auctoritie of the said imperiall Crowne of this Realme by the longe sufferance of the seid unresonable and uncharitable usurpacions and exaccions practysed in the [tymes]<sup>127</sup> of your moste noble progenitours is moche and sore decayed and dymynshed, and the people of this Realme therby impoverished and so or worse be lyke to contynue yf remedy be not therfor shortly provyded.<sup>128</sup>

The statute then declared its intention to turn back the clock on papal usurpation and to restore Henry's realm and dominions to their original position:

For where this your Graces Realme, recognysyng noo superior under God but only your Grace, hath byn and ys free frome subjeccion of any mannes lawes but only to suche as have bene devysed made and ordyned within this Realme for the welthe of the same, or to suche other as by sufferance of your Grace and your progenytours the people of this your Realme [have]<sup>129</sup> taken at their free libertie by their owne consente to be used amonges them, and have bounde them selves by longe use and custome to the observance of the same, and not as the observaunce of the lawes of any foren Prynce Potentate or Prelate, but as to the accustomed and auncient lawes of this Realme orygynally established as lawes of the same by the seid sufferance consentes and custome and none otherwyse : It stonddith therfore with naturall equitye and good reason that in all and everey suche lawes humayne, made within this Realme or induced into this Realme by the seid sufferance consentes and custome, your Royall Majestie and your Lordes Spirituall and temporall and Commons, representyng the holle state of your Realme in this your most high Courte of Parliament, have full power and auctoritie not only to dispence but also to aucthorise some electe person or persones to dispence with those and all other humayne lawes of this your Realme.<sup>130</sup>

For the first time, a full-throated defence of the imperial kingship was placed on England's book of statutes.

The Act Concerning Peter's Pence and Dispensations captured the essence of Henrician caesaropapism with a clarity and elegance that far surpassed the celebrated declaration of empire contained in the Act in Restraint of Appeals. It was argued earlier that the rather abstruse phrase,

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<sup>127</sup> Editor's insertion.

<sup>128</sup> Luders, *Statutes of the Realm*, iii, 465.

<sup>129</sup> Editor's insertion.

<sup>130</sup> Luders, *Statutes of the Realm*, iii, 464-5.

‘this Realme of Englonde is an Impire’,<sup>131</sup> represented an attempt to reconcile the famous maxim of royal territorial sovereignty, *rex in regno suo est imperator regni sui*, with a Constantinean conception of kingship. This interpretation would seem to be vindicated by an evocative expression from the Act Concerning Peter’s Pence and Dispensations: ‘this your Graces Realme, recognysyng noo superior under God but only your Grace’.<sup>132</sup> Notwithstanding the emphasis placed on the *realm* of England rather than on the *king* of England (a linguistic peculiarity for which an explanation has already been offered), the claim was intended to demonstrate that Henry deferred to no earthly authority, and therefore to no man; he was below God alone. It was for this reason that the same statute referred to the king – in language that anticipated the Act of Supremacy – as the ‘supreme hede of the Church of Englonde’.<sup>133</sup>

The Act Concerning Peter’s Pence and Dispensations continued the assault on the doctrine of papal primacy. In January 1531, Norfolk had told Chapuys that Clement had jurisdiction over England and the appendages of the English crown only in cases concerning heresy. That nascent form of Henrician caesaropapism had permitted the vicar of Christ a spiritual overlordship, albeit a limited one. However, with the maturation of the imperial kingship, the pope found himself stripped even of this role. The Act Concerning Peter’s Pence and Dispensations, which freely deployed the terms ‘Bishop of Rome’ and ‘See of Rome’, challenged the very apostolicity of the Roman Church.<sup>134</sup> The governing assumption here was that the international Christian community consisted of a great many national churches, each endowed with its own royal head, but that there was no overarching supreme leader, save for Christ himself. Several years earlier, in May 1531, the bishop of Durham had written to Henry, warning him that his decision to claim superiority in matters temporal and ecclesiastical within

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<sup>131</sup> *Ibid.*, 427.

<sup>132</sup> *Ibid.*, 464.

<sup>133</sup> *Ibid.*, 465.

<sup>134</sup> Note the phrase ‘hys [the pope’s] chambres which he calleth Apostolyke’: *ibid.*, 465.

his realm and dominions would lead inevitably to the destruction of the “unity of Christendom”.<sup>135</sup> Though he had doubtless overstated the extent to which the Christian world was unified on the eve of Henry’s reformation, Tunstal must have felt rather vindicated by much of what he saw in the years that followed his remonstrance.

Yet it would be a mistake to imagine that the king wandered mindlessly into the position of denying the pope’s headship. Henry had carefully chosen to delay his reply to Tunstal for some two-and-a-half years. When he had finally offered it publicly in late 1533, he presented a confident and considered statement on caesaropapal power and its consequences for papal authority. It is worth quoting this remarkable letter at length:

[Y]e intend to prove, which no man will deny, the ministration of spiritual things to have been by Christ committed to priests, to preach and minister the sacraments, them to be as physicians to mens souls ; but in these Scriptures, neither by spiritual things so far extended, as under colour of that vocabule be now adays ; nor it proveth not, that their office being never so excellent, yet their persons, acts, and deeds should not be under the power of their prince by God assigned, whom they should acknowledge as their head ; the excellency of the matter of the office doth not always in all points extoll the dignity of the minister. Christ, who did most perfectly use the office of a priest, “*et nihil aliud quam vere curavit animas,*” gainsaid not the authority of Pilate upon that ground ; and S. Paul executing the office of a priest, said, “*Ad tribunal Caesaris sto, ubi me judicari oportet ;*” and commanded likewise, indistinctly, all others to obey princes ; and yet unto those priests, being as members executing that office, princes do honour, for so is Gods *[sic]* pleasure and commandment : wherefore, howsoever ye take the words in the proeme, we indeed do shew and declare, that priests and bishops preaching the word of God, ministering the sacraments according to Christ’s laws, and refreshing our people with ghostly and spiritual food, we not only succour and defend them for tranquillity of their life, but also with our presence ; and otherwise do honour them, as the case requireth, for so is God’s pleasure ; like as the husband, although he be head of the wife, yet, saith S. Paul, “*Non habet vir potestatem sui corporis, sed mulier,*” and so is, in that respect, under her. And having our mother in our realm, by the commandment of God we shall honour her; and yet they, for respect of our dignity, shall honour us by God’s commandment likewise.<sup>136</sup>

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<sup>135</sup> *Concilia Magnae Britanniae et Hiberniae ab Anno MCCCCL ad Annum MDXLV*, ed. D. Wilkins, 4 vols (London, 1837), iii, 745; Scarisbrick, *Henry VIII*, p. 276.

<sup>136</sup> Wilkins, *Concilia Magnae Britanniae*, iii, 763.

Henry's imperial kingship left room for priests, certainly, but not for Roman ones with pretensions to universal dominion. His Christianity was, it was said, an ancient one in which the clergy concerned themselves with matters of the soul, and left this-worldly affairs to sceptred rulers: 'Then repay to Caesar what belongs to Caesar and to God what belongs to God'.<sup>137</sup> Henry was caesar, and he was taking back what belonged to him.

However, as with so many of the reformation statutes, there was a two-steps-forward-one-step-back quality to the Act Concerning Peter's Pence and Dispensations. Although the legislation was replete with audacious invective against the pope and the Roman Church, it was in other ways incongruously apprehensive. As Stanford E. Lehmborg has noted, the Act Concerning Peter's Pence and Dispensations was 'cast in the form of a petition from the Commons to the king'.<sup>138</sup> Presumably, this was a tactical gambit intended to provide Henry with plausible deniability. But this was neither the statute's sole nor most significant capitulation. Echoing the Act in Conditional Restraint of Annates, the legislation was drafted to include a proviso, which empowered the king to veto all or part of its contents up until 24 June.<sup>139</sup> In other words, Henry could, if he so chose, render the legislation null and void. Even at this late stage, then, many signs of incertitude can be discerned.

### The Act Against the Authority of the Bishop of Rome (1536)

The Act Against the Authority of the Bishop of Rome was passed during the month of July 1536. By now Paul III, the Farnese pontiff who would later excommunicate Henry, occupied the throne of St Peter; Anne Boleyn, the woman who had played no small part in setting the wheels of revolution in motion, had been decapitated by a Calaisien swordsman; and the king had

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<sup>137</sup> Matthew 22. 21.

<sup>138</sup> Lehmborg, *The Reformation Parliament*, p. 192.

<sup>139</sup> Luders, *Statutes of the Realm*, iii, 471; Lehmborg, *The Reformation Parliament*, p. 192.

remarried again, this time with considerably more ease. The complex legislative programme to realise Henrician caesaropapism had been carried to completion more than two years earlier (except in Ireland, where the same would be achieved the following year by the Dublin parliament).<sup>140</sup> The Tudor monarch's authority over the English church had never been stronger; the pope's, never weaker. And yet the statute which was enacted in the summer of 1536 purported to be 'for the extirpacion abolucion and extinguyshment, out of this Realme and other his [Gracis]<sup>141</sup> Domynyons Seignories and Countreys ... of the pretended Power and usurped auctorite of the Bisshop of Rome'.<sup>142</sup> But was there really any papal power or authority left to extirpate, abolish, and extinguish?

Whether the Act Against the Authority of the Bishop of Rome, its short title notwithstanding, actually did anything to further diminish the pope's authority in Henry's realm and dominions has been a point of historiographical dispute. Guy has argued that the legislation was required in order to abrogate the last vestiges of papal power:

In 1536 the jurisdictional revolution was completed by the Act Extinguishing the Authority of the Bishop of Rome. This was necessary because the acts of 1533–4 had omitted to proscribe the pope's rights as a pastor or teacher who might interpret Scripture or offer moral guidance. Such rights had been affirmed by Gardiner's *Oration of True Obedience* but this standpoint could not last. The act came into force on 31 July 1536; it prohibited the exercise or defence of papal authority in any form.<sup>143</sup>

However, the hypothesis is not particularly persuasive. The statute consistently spoke of Henry's reformation in the past tense, as will be seen below. It would seem, therefore, that its purpose was not to rectify the deficiencies of previous legislation, but rather to clarify the consequences of disregarding that legislation. Indeed, the act announced that, after the last day of July, any subject who, 'by wrytyng cifryng printing preaching or teaching, dede or acte, obstynatly or

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<sup>140</sup> See n. 63 above.

<sup>141</sup> Editor's insertion.

<sup>142</sup> Luders, *Statutes of the Realm*, iii, 663.

<sup>143</sup> J. Guy, *Tudor England*, p 136.

maliciously' sought to 'attribute any manere of iurisdiction auctoritie or prehemynence to the said See of Rome, or to eny Bisshop of the same See' would incur penalties under the Statute of Praemunire passed during the reign of Richard II.<sup>144</sup> It also imposed a new oath of abjuration on all office holders, temporal and ecclesiastical, requiring that they renounce 'the Bisshop of Rome and his auctorite power and iurisdiction'.<sup>145</sup> Those who refused to take the oath, the statute forewarned, would be prosecuted for high treason. More than anything else, then, the Act Against the Authority of the Bishop of Rome ushered in new enforcement mechanisms in support of the imperial kingship. As such, G. R. Elton's judgment of nearly seventy years ago still has much to recommend it: the act 'did not deprive him [the pope] of anything further or add anything to the king's competence. It could not have done so: the work of transferring the papal powers to the crown, begun in the act of appeals, was completed by the enactments of 1534'.<sup>146</sup>

Whatever little it may have accomplished legislatively, the Act Against the Authority of the Bishop of Rome represented the apogee of Henrician rhetoric in the reformation parliament. Building on the historico-legal argument advanced in the Act Concerning Peter's Pence and Dispensations, the statute deployed the succession claim to legitimate the assertion of royal supremacy in matters temporal and ecclesiastical. Yet the unrestrained aggression with which the Act Against the Authority of the Bishop of Rome accused the pope of usurping the God-given right of British/English kings to exercise caesaropapal authority within their realm and lands made all previous reformation legislation look meek by comparison:

[H]e did not oonly robbe the Kynges Majestie, being oonly the supreme hedde of this his Realme of Englande immediatly under God, of his honour right and preemynence due unto hym by the lawe of God, but spoyled this his Realme yerely of ynnumerable treasure, and with the losse of the same deceyved the Kynges lovyng and obedient subjectes, perswadyng to them, by his lawes bulles and other his deceyvable meanes, such dreames vanyties and fantasies as by the

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<sup>144</sup> Luders, *Statutes of the Realm*, iii, 664.

<sup>145</sup> *Ibid.*, 665.

<sup>146</sup> Elton, *England under the Tudors*, p. 136.

same many of them were seduced and conveyed unto superstitious and erronyous opynions.<sup>147</sup>

The statute declared that, for the good of the long-suffering realm, Henry and his parliament had been compelled to take measures to eradicate the unlawful authority which proceeded from that ‘pretended Monarchie’,<sup>148</sup> the Roman Church:

[T]he Kynge's Majestie, the Lordes spirituall and temporall and the Commons in this Realme being overweried and fatygated with the experience of the infynite abhomynacions and myschiefes procedyng of his impostures, and craftily colouryng of his deceytes to the great damages of soules bodies and goodes, were forced of necessite for the publike weale of this Realme to exclude that forayne pretended power jurisdiction and auctorite, used and usurped within this Realme, and to devise suche remedies for their relief in the same as doth not oonly redounde to the honour of God, the high praise and av'ncement of the Kynge's Majestie and of his Realme, but also to the great and inestimable utilite of the same.<sup>149</sup>

But the rhetoric was no longer just about matters of ecclesiastical governance; there was a new theological dimension to the historico-legal argument advanced throughout the Act Against the Authority of the Bishop of Rome. Bernard has argued, quite correctly, that much of the statute was quasi-Protestant in nature.<sup>150</sup> In referring to Roman Catholicism as deceptive, ‘superstitious and erronyous’,<sup>151</sup> the act charged the pope and his predecessors not only with unseating the true vicars of God – Christian kings – but also with perverting the one true faith:

[T]he pretended Power and usurped auctorite of the Bisshop of Rome by soome called the Pope, used within the same or els where concernyng the same Realme Domynions Seignoreis or Countreis, which did obfuscate and wreste Goddis holy worde and testament a long season from the spirituall and trew meanyng therof, to his worldly and carnall affections, as pompe glory avarice ambicion and tyranny, coveryng and shadowyng the same with this his humayne and polytyke dyvyses tradicions and invencions sett forth to promote and stabliss his only Domynyon, both uppon the sowles and also the bodyes and goodes of all Cristen people, excludyng Criste out of his Kyngdome and rule of Man his

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<sup>147</sup> Luders, *Statutes of the Realm*, iii, 663.

<sup>148</sup> *Ibid.*, 664.

<sup>149</sup> *Ibid.*, 663-4.

<sup>150</sup> Bernard, *The King's Reformation*, pp. 227, 243.

<sup>151</sup> Luders, *Statutes of the Realm*, iii, 663.



sowle, as moche as he may, and all other temporall Kynges and Prynces out of their Domyions, which they ought to have by Goddis lawe, upon the bodies and goodes of their Subjectes.<sup>152</sup>

Here the idea of restoring royal authority over the church coincided with the notion of recovering ancient British Christianity in all its purity. Simply doing away with the bishop of Rome – “Catholicism without the pope” – was not sufficient anymore; it was necessary to exorcise the ungodly ‘dreames vanyties and fantasies’ that he and his predecessors had introduced to the king’s realm and dominions.<sup>153</sup>

The same quasi-Protestant sentiments appeared even more clearly in Henry’s extra-parliamentary pronouncements. The previous year, the king had told his nephew, James V of Scotland, that, by stripping Christian monarchs of their divinely ordained rights, popes past and present had allowed themselves to be used by Satan to undermine God’s creation:

Whenne God had created Adam and set him in paradise, subduyng to hes obeysaunt subjection all creatures, and having noo superior undre God, without any restrainte of free libertie save only to obey Goddes precept, what was it otherwise thenne a perfit demonstracion of a kinges majestie, to be in his realme as Adam was in paradise, lorde over all? In whiche felicitie he contynued, tyl, Goddes precept set aparte, he assented to the subtile suasion of the serpent ... And this wylie serpent that thus undermyned Adam, prince of paradise, was the veray same Lucifer who ambitiously presumed to be equal with God, sayeing, *Ascendam et similis ero Altissimo*. This arrogant Lucifer, cast out of heven, hath not seased sythens, as he undermyned Adam, likewise to defeate godly elected princes of their lafull jurisdiction. For whiche purpose he hath powred his perverse spirite into the bosom of the Pope to prevayl by presumptuous usurpacion here in erth as he wold have doon (albeit he could not) in heven.<sup>154</sup>

A clearer allusion to the anti-Christ prophesied in the Johannine epistles can scarcely be imagined.<sup>155</sup> This from the same king who, only fifteen years earlier, had been proclaimed ‘Defender of the Faith’ (*Fidei Defensor*) by Leo X.

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<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> *The Hamilton Papers: Letters and Papers Illustrating the Political Relations of England and Scotland in the XVIth Century*, ed. J. Bain, 2 vols (Edinburgh, 1890-2), i, 20.

<sup>155</sup> 1 John 2. 18.

### *4.3 A Declaration of War with, and Souerayntie of, Scotlande*

The Henrician Moment denotes not only the various attempts to use the succession claim to legitimate Henry's assertion of caesaropapal power in his realm and dominions, but also the efforts made to deploy the same rhetoric in service of the king's dynastic claim to overlordship of Scotland. Although these political programmes were not mutually exclusive, as will be demonstrated below, they were advanced by fundamentally different means and framed in distinct registers. The parliamentary statutes which effectuated Henry's reformation went to considerable lengths to conceal their reliance on the British History. The pamphlet which accompanied the king's military campaign in Scotland during the final years of his reign, by contrast, made no secret of it. Indeed, the tract under investigation in this section represented one of the most explicit articulations of the succession claim in English official communication during the medieval and early modern periods, paling in comparison only to Edward I's 1301 letter to Boniface VIII, upon which it was assuredly modelled. Following the lead of his Plantagenet predecessor, Henry advanced a historico-legal argument that began chronologically in the time of Brutus and which asserted that the overlordship of Scotland was a right vested indefeasibly in the English crown.

By 1542, the kingdoms of England and Scotland had not engaged in open warfare with each other for nearly two decades. The period of relative peace came to a rather abrupt end on 24 November of that year with the famous Battle of Solway Moss, which saw Henry's forces triumph decisively over those who fought on behalf of his nephew, James V of Scotland. Subsequently, the king of Scots retreated to Falkland Palace, where, according to one commentator, 'broken in spirit rather than in body, he took to his bed, and he died on 14 December'.<sup>156</sup> The crown of Scotland passed to James's infant daughter, Mary, whose marital

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<sup>156</sup> G. Donaldson, *Scotland: James V to James VII* (Edinburgh, 1965), p. 60.

prospects will be the subject of much discussion in Chapter 5 of this thesis. Yet if the consequences of the 1542 conflict are reasonably discernible, its causes have proved considerably more elusive for historians. Scarisbrick memorably argued that the war was no more than an attempt ‘to secure the rear’, and that Henry ‘looked to the North only because he was about to plunge into the Continent’.<sup>157</sup> In light of Marcus Merriman’s revisionist work, which emphasises the king’s efforts to reach an accommodation with James in order that his dynasty and reformation might be consolidated,<sup>158</sup> Scarisbrick’s thesis appears highly reductive. For several of the preceding years, Henry had urged his nephew to follow his lead and break with the Roman Church. In one letter, dated 3 October 1535, the king had told his Scottish counterpart, ‘it may please your gracious highnes to open your bodely eyes ... clerly to perceyve thoffice of a Christen prince, thauctoritie of a king annoynted, and true administracion of a faithfull ruler, whiche thobscure tradicions of the Bischope of Rome and his adherentes have utterly defaced’.<sup>159</sup> Precisely how Henry imagined a Scottish reformation would help him shore up his own affairs can only be conjectured, but it is clear from the king’s only public explanation of the war – the substance of which will now be examined – that he had grown increasingly frustrated with James’s repeated refusal to meet and discuss the matter. Although the first portion of Henry’s pamphlet may fairly be regarded as tedious, it serves as an important prelude to the historico-legal argument advanced in the second portion. Indeed, the opening pages of the document should be understood as a form of legitimation in and of themselves, devised in order to justify the making of the succession claim.

Coinciding with the English invasion of southwest Scotland in November 1542 was the publication of a pamphlet entitled *A Declaration, Conteynyng the Ivst Causes and consyderations, of this present warre with the Scottis, wherin alsoo appereth the trewe & right*

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<sup>157</sup> Scarisbrick, *Henry VIII*, p. 425; see also, D. M. Head, ‘Henry VIII’s Scottish Policy: A Reassessment’, *The Scottish Historical Review* 61 (1982), 1-24.

<sup>158</sup> M. Merriman, *The Rough Wooings: Mary Queen of Scots, 1542-1551* (East Linton, 2000), p. 61.

<sup>159</sup> Bain, *Hamilton Papers*, i, 18.

*title, that the kinges most royall maiesty hath to the souerayntie of Scotlande.*<sup>160</sup> As its heading suggested, the tract consisted of two parts: the first pertained to events leading up to the present Anglo-Scottish war; the second concerned England's historico-legal claim to overlordship of Scotland, denominated in the title, though not in the document itself, as 'souerayntie'. The *Declaration* was written from Henry's perspective, but who among the king's long list of helpers actually penned the document can scarcely be guessed. Merriman (following J. D. Mackie)<sup>161</sup> attributed its authorship to the archbishop of York and the bishop of Durham on the basis of letters which the two clergymen received from the Privy Council in late 1542.<sup>162</sup> These letters, which were dispatched from London on 3 October, spoke of the need to 'have the King's title to the realm of Scotland more plainly set forth to the world', and asked the clerics to search their 'old registers and ancient places of keeping' because 'the archbishops of York hath in times past had jurisdiction over all the bishops of Scotland'.<sup>163</sup> Nevertheless, there are good grounds to question Merriman's conclusions. Although the aforementioned epistles very likely related to the *Declaration*, they certainly did not instruct the archbishop of York and the bishop of Durham to compose the tract. Indeed, the research requests that were put to the clerics were narrowly construed ones. There are also important questions of timing, given that Henry received copies of the finished *Declaration* on 5 November. It is unlikely that the two clergymen could have produced so lengthy and complex a document within a month from a standing start. Finally, the tract relied on sources which were – with the exception of those that related to the archbishop of York's historical overlordship of the Scottish church – available in the capital. The *Declaration* more likely originated there, and the Privy Council's letters to the northern episcopates, which resulted in little of substance (as will be seen below), were but one part of a much larger research

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<sup>160</sup> For Henry's *Declaration*, see *The Complaynt of Scotlande wyth ane Exortatione to the Thre Estaites to be Vigilante in the Defiens of their Public Veil, 1549*, ed. J. A. H. Murray (London, 1872), pp. 191-206.

<sup>161</sup> J. D. Mackie, 'Henry VIII and Scotland', *Transactions of the Royal Historical Society* 29 (1947), pp. 93-114 (pp. 111-2).

<sup>162</sup> Merriman, *Rough Wooings*, p. 62; Brewer, et al, *Letters and Papers*, XVII, 898.

<sup>163</sup> *Ibid.*

effort. On the other hand, Merriman's admonition not to see the pamphlet in the context of prospective Anglo-Scottish union is sound and should, for straightforward reasons of chronology, be followed.<sup>164</sup>

The purpose of the *Declaration*, according to the tract's opening paragraph, was to explain and justify England's part in the unfolding Anglo-Scottish war. Although composed in the vernacular, the document was evidently intended to be read by a continental audience:

BEYNG NOVVE ENforced to the warre, which we haue always hitherto so moch abhorred and fled, by our neighbour and Nephieu the Kyng of Scottis, one, who, aboue all other, for our manifold benefites towardis hym, hath most iust cause to loue vs, to honor vs, and to reioise in our quiet : we haue thought good to notify vnto the world his doinges and behauour in the prouocation of this warre, and lykewyse the meanes and wayes by vs used to exhue and aduoyde it, and the iust and true occasions, wherby we be nowe prouoked to prosecute the same, and by vtterance and diuulging of that matier, to disourden som part of our inwarde displeasure and griefe, and the circumstances knowen, to lament openly with the worlde the infelicitie of this tyme, in which thinges of suche enormitie do brest out and appere.<sup>165</sup>

Just as he had done during the reformation, Henry was conducting international diplomacy via the printing press.

What followed was a rather convoluted account of Anglo-Scottish relations during the current king's reign. Narrating first the early years of Henry's rule, during which time James IV had occupied the throne of Scotland, the *Declaration* claimed that not even the extraordinary honour of a dynastic marriage to an English princess had been sufficient to quell the Scots' treacherous nature and belligerent instincts:

IT HATH ben very rarely and seldom seen before, that a king of Scottis hath had in mariage a doughter of England : We can not, ne wyll not reprehend the kynge our fathers acte therin, but lament and be sory it toke no better effecte. The kynge our father in that matier intended loue, amitie, and perpetuall frendshyp betwene the posteritie of both, whiche how soone it fayled, the death

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<sup>164</sup> 'Most historians have insisted ... on seeing the *Declaration* in the light of Henry's attempt to conclude the betrothal of Mary and Edward and have criticised him heavily for it. But the *Declaration* was conceived and executed when James was a vigorous thirty and the sex of his unborn heir obviously unknown. The *Declaration* must be judged first not in the light of subsequent events, but as part of the crisis of 1542': Merriman, *Rough Wooings*, p. 64.

<sup>165</sup> Murray, *Complaynt of Scotlande*, p. 192.

of the kynge of Scottis, as a due punyshment of god for his iniuste inuasion into this our realme, is and shall be a perpetuall testimonye to theyr reproche for euer.<sup>166</sup>

Nevertheless, it was said, Henry had magnanimously elected not to visit the sins of the father upon the son, and so had borne no ill will towards the Scottish king's successor, James V, until such time as he himself had provoked it.<sup>167</sup>

With little attempt to provide the reader with adequate signposting, the *Declaration* then turned to the events of the preceding few years. The tract complained of the enduring disjunction between Scottish words and action:

IT IS specially to be noted, vpon what groundes, and by what meanes we be compelled to this warre, wherin among other is our chiefe grieffe and displeasure, that vnder a colour of faire spech and flattering woordes, we be in dedes so iniured contempned and dispised, as we ought not with sufferance to pretermitte and passe ouer. Wordes, writinges, letters, messages, ambassiatiss, excuses, allegations, coulde not more pleasantly, more gently, ne more reuerently be deuised and sente, then hath bene made on the kynge of Scottis behalfe vnto vs, and euer we trusted, the tree wold bryng forth good fruite, that was on thone partie of so good a stocke, and contynually in apparance put forth so fayre buddes : and therefore wolde hardely byleue or gyue eare to other, that euer alledged the dedes to the contrary, being neuerthelesse the same dedes so manyfest, as we muste nedes haue regarded them, had we not haue ben so lothe to thinke euell of our Nephieu, whom we had so many wayes bound to be of the best sorte towarde vs.<sup>168</sup>

The *Declaration* spoke of how, in October of the previous year, Henry had travelled to York – the farthest north the king had ever been – in order to meet with James. Contrary to his promises, however, the Scottish monarch had failed to show. Then, to add insult to injury, several of his countrymen had invaded England.<sup>169</sup> Nevertheless, Henry, it was said, was reluctant to attribute any blame to his nephew, choosing instead to believe that these were the doings of the king of Scots' mischievous subjects, and therefore 'gaue as benigne and gentyl audience to suche

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<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*, p. 193.

<sup>169</sup> *Ibid.*

Ambassadors, as repayred hither at the Christmas afterwarde, as if noo suche causes of displeasure had occurred'.<sup>170</sup>

But this, according to the *Declaration*, was far from the king's only benevolent gesture towards James. Later, when Scottish ambassadors had proposed a meeting to discuss the ongoing dispute about the Anglo-Scottish demarcation line, Henry, though nursing several grievances against his nephew, had dispatched his agents to the border to negotiate in good faith.<sup>171</sup> And even when the Scottish ambassadors had, for nationalistic reasons, stubbornly refused to accept English evidence of historical possession of certain lands, the king instructed his men to conclude the meeting peacefully and respectfully:

Where after greate trauaile made by our Commissioners, this fruite ensued, that being for our part chalenged a piece of our grounde, playnly vsurped by the Scottis, and of no great value, being also for the same shewed such euidence, as more substanciall, more autentique, more playne and euydent, can not be broughte fourthe for any parte of grounde within our realme. The same was neuerthelesse by them denied, refused, and the euidence only for this cause reiected, that it was made (as they alledged) by Englishemen. And yet it was soo auncient, as it coulde not be counterfaite nowe, and the value of the grounde so lytell, and of so smal wayte, as no man wolde haue attempted to falsifie for suche a matier. And yet this denyall being in this wyse made vnto our Commissioners, they neuer the lesse by our *commandement* departed as frendes.<sup>172</sup>

The *Declaration* recounted a further episode of unrest between the two kingdoms which was alleged to have resulted from a proclamation, issued by 'the lorde Maxwell, warden of the west marches of Scotland', that ordered 'the bourderers of Scotlande' to 'withdrawe their goodes from the bourders of England'.<sup>173</sup> Shortly thereafter, it was said, Scots had crossed into the southern realm and despoiled subjects, forcing the English to erect a garrison on the partition. Later, the king of Scots had sent one 'James Leyrmouth, maister of his howseholde, with letters

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<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*, p. 193-4.

<sup>173</sup> *Ibid.*, p. 194.

deused in the most pleasant maner, offerynge redresse and reformation' of all that had occurred.<sup>174</sup> And yet, at the very moment that Leyrmouth had been charming Henry with sweet promises, the Scots launched further attacks on English border towns. According to the *Declaration*, the king had finally been 'compelled to forgette fayre wordes, and onely to consyder the kyng of Scottis dedes ... and therefore put in a redynesse our army'.<sup>175</sup> Hearing of this, James had urgently sued for peace. In response to his nephew's request, Henry had stayed his army at York, and appointed several of his leading men, including the duke of Norfolk and the bishop of Durham, to enter into dialogue with the ambassadors of Scotland.

According to the tract, considerable progress was made in the diplomatic negotiations that had followed, with both sides agreeing that a formal peace should be concluded at a summit between Henry and James. On the question of where this meeting of monarchs should take place, the Scots had requested six days to consult their master. However, when the northern delegation returned, they had only the 'power to conclude a metynge precisely at suche a place, as they knew wel we wolde not, ne coude not in wynter obserue and kepe'.<sup>176</sup> Upon hearing Henry's agents voice their displeasure at this, James's ambassadors had asked for a further intermission of six days in order that they might receive 'a more ample and large commission' from their king.<sup>177</sup> Yet, when they returned a second time, it had soon become clear that the instructions they carried with them were so hamstrung by secret articles – which, according to the *Declaration*, the Scots had revealed to the English 'for defence of them self ... not carynge howe mucche they charge therein their kynge, whose faulte they disclosed'<sup>178</sup> – that the new commission was no better than its predecessor. The purpose of such cynical tactics, it was said,

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<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*, p. 194-5.

<sup>176</sup> *Ibid.*, p. 195.

<sup>177</sup> *Ibid.*, p. 196.

<sup>178</sup> *Ibid.*



had been to achieve delay after delay, hoping that, with ‘winter approchyng, and the tyme lost in theyr communication theyr maister shulde be defended agaynste our power for this yere’.<sup>179</sup>

Having endured all this, said Henry, we were ‘inforced and compelled to vse the sworde, whiche god hathe put in our hande as an extreme remedy, wherby to obteigne bothe quiete for our subiectes, & also that is due vnto vs by right, pactes, and leages’.<sup>180</sup> Once again pointing to the discrepancy between Scottish words and action, the *Declaration* recapitulated the king’s many grievances against the northerners:

WE HAVE paciently suffred many delusions, and notably the laste yere, when we made preparation at Yorke for his repaire to vs : But shuld we suffer our people and subiectes to be so ofte spoyled without remedy? This is done by the Scottis what soo euer theyr wordes be. Shulde we suffer our rebelles to be deteyned contrary to the leages without remedye? This is also done by them what so euer theyr wordes be. Shuld we suffer our lande to be vsurped contrary to our most playne euidence, onely vpon a wylle, pryde, and arrogancye of the other partie? This is done by them what so euer theyr wordes be. And all these be ouer presumptuously done agaynste vs, and gyue suche signification of theyr arrogancy, as it is necessary for vs to oppresse it in the begynning, leste they shuld gather further courage to the greater displeasure of vs and our posteritie hereafter.<sup>181</sup>

Henry, it was said, would have acted much sooner had he not been blinded by avuncular affection for the king of Scots. However, upon realising that his sentiments were unrequited by James, and that their common blood was ‘frome with the cold ayre of Scotlande’,<sup>182</sup> the king belatedly concluded that ‘there was neuer prynce more vyolently compelled to warre then we be, by the vnkynde dealyng, vniust behaiour, vnprincely demeanour of him that yet in nature is our Nephieu’.<sup>183</sup>

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<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid.*, p. 197.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

Henry went to great lengths to stress that he did not go to war with Scotland in order to press his dynastic claim to overlordship of that realm. Transitioning to the second portion of the *Declaration*, the king proclaimed:

[T]his present warre hath not proceded of any demaund of our right of superioritie, which the kinges of Scottis haue alwais knowledged by homage and fealtie to our progenytours even from the begynnyng : But this warre hath ben prouoked and occasioned vpon present matier of displeasure, present iniury, present wrong mynistrred by the Nephieu to the Uncle most vnnaturally, and supported contrary to the desertes of our benefites most vnkindly.<sup>184</sup>

Had we desired possession of Scotland, said Henry, we ‘had more oportunity in the minority of our Nephieu’, when the realm was at its most vulnerable.<sup>185</sup>

The king nevertheless felt at liberty to announce that his right to the northern kingdom could scarcely be disputed. We know not of any prince, he said, ‘that hath more iuste title, more euident title, more certayn title, to any realme ... than we haue to Scotland’.<sup>186</sup> Moreover, this title was neither ‘diuised by pretense of mariage’ nor ‘contriued by inuention of argument’, but ‘lineally descended from the begynnyng of that astate established by our progenitours, and recognised to successiuey of the Kinges of Scotlande by dedes, wordes, actes & writings’.<sup>187</sup> According to the *Declaration*, Henry had previously declined to pursue the matter himself only out of a sense of familial responsibility to James, a desire to conserve insular peace, and an obligation to preserve the unity of Christendom against the Turkish infidels. ‘BUT for what so euer considerations we haue omitted to speake hitherto of the matier’, pronounced the king, ‘it is neuer the lesse true that the kynges of Scottes haue always knowledged the kynges of Englande superior lordes of the realme of Scotlande’.<sup>188</sup>

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<sup>184</sup> *Ibid.*, pp. 197-8.

<sup>185</sup> *Ibid.*, p. 198.

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*

Henry asserted that English overlordship of Scotland could be demonstrated through three separate forms of evidence. His tripartite classification was composed as follows:

[A]ppereth fyrst by historie written by such as for confirmation of the trueth in memory haue truly noted and signified the same. **SECONDLY** it appereth by instrumentes of homage made by the kynges of Scotlande, at dyuers and sundry times sealed with theyr seales, and remaynyng in our Treasorye. **THIRDLY** it appereth by regesters and recordes iudicially and autentiquely made, yet preserued for confyrmation of the same.<sup>189</sup>

Such a great variety of sources, it was said, proved beyond doubt that English kings had exercised overlordship of the kings of Scots *ab initio*. However, as will be seen shortly, all three forms of evidence relied upon in *Declaration* were – except where they were supplemented by the work of Henry’s own advisers – produced during the reign of Edward I over the course of a decade or so when Anglo-Scottish relations were at an all-time low. As such, they were hardly the wide-ranging and independently verified records they purported to be.

Henry turned to his first form of evidence: history, which – quoting Cicero without attribution<sup>190</sup> – he called the witness of time, the light of truth, and the life of memory, ‘wherby thinges of antiquitie may be brought to mens knowlege’.<sup>191</sup> He produced a long regnal list, stretching from Brutus of Troy, the first king of Britain, to the present occupant of the English throne. Henry’s historical survey was demonstrably based on his Plantagenet predecessor’s 1301 letter to Pope Boniface VIII – a missive which was the subject of much discussion in Chapter 3 of this thesis – and tellingly began with the Edwardian Emendation:

According whervnto we rede how Brutus, of whom the realme than callyd Brytayne toke fyrst that name (being before that tyme inhabited with gyauntes, people without order or ciuilitie) had thre sommes, Lochrine, Albanact, and Camber, and determinyng to haue the whole Isle within the Ocean sea to be after gouerned by them thre, appoynted Albanact to rule that nowe is called Scotland, Camber the parties of Wales, and Lochrine that nowe is called Englande:

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<sup>189</sup> *Ibid.*

<sup>190</sup> Cicero, *On the Orator*, trans. E. W. Sutton and H. Rackham, 2 vols (Cambridge, MA, 1942), 225.

<sup>191</sup> Murray, *Complaynt of Scotlande*, p. 198.

vnto whom as being the elder somme, the other two brothers shuld do homage,  
recognisyng and knowleagyng hym as theyr superior.<sup>192</sup>

Can it really be supposed, asked the king, that in such rude and barbarous times, the island could have been governed by three rulers ‘in all poyntes equal without any maner of superioritie’?<sup>193</sup> After all, he said, it was only natural for ancient kings to organise themselves hierarchically in the interest of avoiding bloodshed. And if something different had occurred in Britain, why then would the great Venetian historian, Marcus Antonius Coccius Sabellicus, have referred to Scotland as part of England?<sup>194</sup> Deeming the matter settled, the *Declaration* moved on.

Quickly passing over the subsequent kings of Britain, including the famous Arthur, the tract shifted its focus to the Anglo-Saxon and Anglo-French kings of England. Mirroring the post-British portion of the 1301 letter, including the unexplained terminological shift, the *Declaration* began its survey of English monarchs with ‘EDVVARDE the fyrst before the conquest, somme to Alured kyng of Englande’.<sup>195</sup> And like the epistle on which it was modelled, the work assumed a seamless transfer of dominion from the Britons to the English. What followed was a lengthy section of text, complete with a timeline and a series of historical anecdotes, some more relevant than others, which purported to demonstrate that English kings had exercised overlordship of Scotland continually up until the reign of Henry VI, ‘not withstandyng any ... interruption by resistence, which ... neuer indured so longe as it made intermission within tyme of mynde, wherby the possession myght seme to be enpaired’.<sup>196</sup> The narrative then abruptly cut off, before being resumed at a later point in the *Declaration*.

Henry next turned to consider his so-called second category of evidence attesting to historical English overlordship of Scotland. He claimed that, in addition to the extensive regnal list stretching back to Brutus, ‘there remayne instrumentes made ... and sealed with the seales of

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<sup>192</sup> *Ibid.*, p. 199.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*, p. 200.

<sup>196</sup> *Ibid.*, p. 205.

the kynges of Scotlande testifyenge the same'.<sup>197</sup> Despite multiple references to instruments – plural – produced ‘at dyuers and sundry times’,<sup>198</sup> it should be noted that only one such instrument was actually quoted in the *Declaration*, namely:

I John N. kynge of Scottes shall be trewe and feythful vnto you lorde Edward by the grace of god kynge of Englande, the noble and superior lorde of the kyngdome of Scotlande, and vnto you I make my fydelitie of the same kyngdome of Scotland, the whiche I holde, and clayme to holde of you : and I shall beare to you my feythe and fidelitie of lyfe and lymme and worldely honour agaynste all men, and feythfully I shall knowlege, and shal do to you seruice due vnto you of the kyngdome of Scotlande aforesayd, as god so helpe me & these holy euangelies.<sup>199</sup>

No effort was made to place this passage in context. Presumably, prospective readers – many of whom, it should be remembered, were European – were deemed to possess sufficient knowledge of late thirteenth-century Anglo-Scottish relations to decipher its meaning. The text was derived from a written record of John Balliol’s homage to Edward, which was performed at the English parliament in Newcastle upon Tyne on St Stephen’s Day 1292, a few weeks after the conclusion of the Great Cause. Curiously, Henry’s translator – whoever he was – did not work with John of Caen’s completed instrument, composed in Latin,<sup>200</sup> but rather with the notary public’s considerably less elegant draft instrument, recorded in French, a copy of which had found its way into the early fourteenth-century manuscript, *Annales Regni Scotiae*.<sup>201</sup> Henry surely included this text in his *Declaration* in order to establish beyond doubt that at least one king of Scots had done homage to an English king. And as per the logic of the succession claim, one was enough.

Henry moved swiftly on to what he termed his third category of evidence. This, too, pertained to Anglo-Scottish relations during the reign of Edward, and to the Great Cause in

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<sup>197</sup> *Ibid.*, p. 202.

<sup>198</sup> *Ibid.*, p. 198.

<sup>199</sup> *Ibid.*, p. 203.

<sup>200</sup> *Anglo-Scottish Relations, 1174-1328: Some Selected Documents*, ed. E. L. G. Stones, 2<sup>nd</sup> edn (Oxford, 1970), no. 20.

<sup>201</sup> See *Willelmi Rishanger, Chronica et Annales*, ed. H. T. Riley (London, 1865), pp. 364-5.

particular, as was made clear when the king referred to the ‘iudicial processe of our progenitour EDWARD the firste, in discussion of the title of Scotland, when the same was challenged by twelue competitours’.<sup>202</sup> In preparing this portion of the *Declaration*, it can reasonably be inferred that Henry’s advisers had plundered one or more of the notarial rolls which John of Caen and, later, Andrew de Tange had produced at the turn of the fourteenth century. Few if any other documents relating to the Great Cause could possibly have corresponded to the description given in the tract: ‘recordes and registres ... so formall, so autentiquall, so seriously handeled’.<sup>203</sup> The *Declaration* went on to denominate the dozen claimants to the Scottish throne, each of whom, it was said, had ‘repaired to our said progenitour, as to the chiefe lord for discussion of the same, in as muche as the auctoritie of the iudgement to be gyuen depended thervpon’.<sup>204</sup> It was then asserted that the ‘hole parliament of Scotland spirituall, temporall, and of all degrees’ had likewise affirmed Edward’s title to the kingdom after ‘consideryng vpon what ground and foundation the kynges of Scotlande had in tymes paste made the sayd homages and recognition of superyoritie’.<sup>205</sup> All of this was intended to prove that the king of Scots, together with the leading men of the realm, had acknowledged the overlordship of an English king in the relatively recent past.

Returning to his regnal list: Henry was well aware that recent kings of England, himself included, could not claim to have exercised dominion over Scotland. This required an explanation. In an attempt to account for the absence of English overlordship since the time of Henry VI (a highly questionable proposition in itself), the *Declaration* provided a number of excuses, the legal merits of which were doubtful at best. It is worth quoting these at length:

SITHENS THE death of our progenitour Henry the .VI. our grandfather Edwarde the .IIII. reyned, who after great trauailes to attayne quietnesse in his realme, fynally in the tyme of preparation of warre against Scotlande, dyed ...

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<sup>202</sup> Murray, *Complaynt of Scotlande*, p. 203.

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.*

<sup>205</sup> *Ibid.*

RICHARDE the .III. than vurped for a smalle tyme in yeres, whome the kynge our father by the strength of goddis hand ouerthrew in battaile, and moost iustely attained the possession of this realme, who neuertheles after the great tempestious stormes fyndynge all matiers nat yet broughte to a perfecte quiete and reste, ceased and forbare to require of the Scottis to do theyr duetie, thynking it policy rather for that tyme to assay to tame their nature by the plesant coniunction and conuersation of affinitie, then to charge them with theyr fault, and requyre duety of them, when oportunitie serued not, by force and feare to constrayne and compell them ... AND thus passed ouer the reygne of our father, without demaunde of this homage. And beinge our reygne nowe, .XXXIIII. yeres, we were .XXI. yere letted by our Nephieu his minoritie, being then more carefull howe to bringe hym out of daungier, to the place of a king, then to receyue of hym homage when he had full possession in the same.<sup>206</sup>

Henry argued that those Scots who sought to deny English overlordship of Scotland could rely only on the ‘defence of discontinuance of possession’.<sup>207</sup> But, as any lawyer would have told him, this defence was hardly a flimsy one.

Henry’s historico-legal argument was frequently muddled and repeatedly strained. That the first portion of his regnal list – from Brutus to Henry VI – relied on the idea of continuous possession (in addition to the succession claim) is clear enough. In this respect, the *Declaration* was identical to Edward’s 1301 letter. But the second portion – from Edward IV to his own reign – could not be sustained by the same logic. What resulted, then, was a rather sloppy attempt to explain why English kings had failed to exercise their so-called right in 122 years. Given how much emphasis was placed on the inalienability of regalian rights during the reformation, it is especially curious that Henry made no *explicit* appeal to his coronation oath and his sworn duty to revoke alienations. There, the king would have been on far firmer legal ground. And, indeed, this does seem to be the logic that Henry and his advisers would invoke the following year, when the English parliament passed ‘An Acte for the Subsidie of the Temporaltie’.<sup>208</sup> Revealingly, this statute would refer to the late James V as the ‘pretensed King of Scottes ... an Usurper of the

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<sup>206</sup> *Ibid.*, p. 205.

<sup>207</sup> *Ibid.*

<sup>208</sup> Luders, *Statutes of the Realm*, iii, 938-51.

Crowne and Realme of Scotlande’, and speak of ‘a tyme apt and propyse for the recoverye of his [the English king’s] saide right and tyle to the saide Crowne and Realme of Scotlande’.<sup>209</sup> For the moment, however, Henry was content simply to allude to the succession claim: ‘LAW AND reason serueth, that the passing ouer of tyme not commodious for the purpose, it is not allegable in prescription for the losse of any right’.<sup>210</sup>

At this point, the *Declaration* clumsily inserted an obscure allusion to the historical status of the Scottish church. Lacking any demonstrable conceptual link to the preceding passages, it was merely asserted that, in times gone by, ‘the byshoppes of saynt Andrewes and Glascoo were not as they nowe be archebysoppes, but recognised the prouince of our archebishop of Yorke, whiche extended ouer al that countrey’.<sup>211</sup> This fleeting reference – which seems to have completely escaped scholarly attention – was very likely the underwhelming result of a research request that had been made of the archbishop of York several months earlier, when the Privy Council had asked the cleric to search his records for proof of ‘the King’s title to the realm of Scotland’.<sup>212</sup>

[F]or because the archbishops of York hath in times past had jurisdiction over all the bishops of Scotland, we do not doubt but there is very old, ancient and authentical monuments of the superiority of the same see over them (if there be good and diligent search) to be found in your old registers and ancient places of keeping of such writings.<sup>213</sup>

Henry had entertained this line of thought before. Indeed, in the days following his victory at the battle of Flodden in 1513, he had written to Leo X, requesting that the pontiff reinstate the archbishop of York’s spiritual overlordship of the Scottish church.<sup>214</sup> What purpose such ideas were now intended to serve in the *Declaration* cannot be known for certain. However, in light of

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<sup>209</sup> *Ibid.*, 938.

<sup>210</sup> Murray, *Complaynt of Scotlande*, p. 206.

<sup>211</sup> *Ibid.*, p. 204.

<sup>212</sup> Brewer, et al, *Letters and Papers*, XVII, 898.

<sup>213</sup> *Ibid.*

<sup>214</sup> Brewer, et al, *Letters and Papers*, I, 2355; R. B. Dobson, ‘The Political Role of the Archbishops of York During the Reign of Edward I’, in *Thirteenth Century England III: Proceedings of the Newcastle upon Tyne Conference 1989*, ed. P. R. Coss and S. D. Lloyd (Woodbridge, 1991), pp. 47-64 (p. 60).



the break with Rome and the formulation of the imperial kingship, it may reasonably be supposed that Henry had come to understand the archbishop of York's historical jurisdiction over the Scottish clergy – and the prospect of its restoration – in a very different light. After all, if Henry were the supreme head of the English church, and the Scottish church were, by law and by right, a mere extension of the English church, then it followed naturally that Henrician caesaropapism did not stop at the border. But, for one reason or another, the full implications of this historical assertion were never fleshed out.

It is appropriate, at this juncture, to address a point of historiographical debate, namely, the connection between Henry's caesaropapism and his claim to overlordship of Scotland. Writing more than a century ago, A. F. Pollard argued that, following his break with Rome, the king worked systematically to incorporate Scotland, Wales, and Ireland into England, in an attempt to unify the British Isles under one imperial crown.<sup>215</sup> Many decades later, with characteristic shrewdness and wit, Scarisbrick took aim at these conclusions, famously remarking that 'it is doubtful if Henry was ever either capable or guilty of such high statesmanship'.<sup>216</sup> There will be no attempt here to rehabilitate Pollard's *Rex et Imperator* thesis, for there is little evidence to support the view that Henry sought, by a series of incremental advances, to fashion the Atlantic archipelago into a unitary state. That being said, a section of the *Collectanea satis copiosa*, entitled *Regum Angliæ in Walliam Hiberniam et Scotiam ditio*,<sup>217</sup> gives us cause to question much of Scarisbrick's assessment.

The *Regum Angliæ*, a text which laid bare the corporational principles at the heart of the imperial kingship, clearly expounded the view that Scotland, Wales, and Ireland were appendages of the English crown. The tract consisted of three entries. The first (which was discussed earlier in the context of the Act in Restraint of Appeals) was taken from the

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<sup>215</sup> See A. F. Pollard, (London, 1902), pp. 245-97.

<sup>216</sup> Scarisbrick, *Henry VIII*, p. 424.

<sup>217</sup> London, BL, Cotton MS Cleopatra E VI, fols. 41v-42.

*Leges Anglorum*, and asserted that the kingdom of England, once called the kingdom of Britain, held sway over numerous territories, and ‘can and ought to be called an empire rather than a kingdom by the excellence of the most illustrious aforesaid crown’ (*potius appellari potest et debet excellentia illustrissimæ prædictæ coronæ imperium quam regnum*).<sup>218</sup> The second entry was derived from Edward I’s 1301 letter to Boniface,<sup>219</sup> a document whose ambitious historico-legal claim to Scotland has already been discussed at length. The third entry was taken from Guisborough’s chronicle and related to Edward’s 1307 parliamentary roll. A duplicate version of this entry appeared elsewhere in the *Collectanea* (and was discussed earlier in the context of the Act in Conditional Restraint of Annates). Here, however, the extract from Guisborough’s chronicle was deployed in a bid to demonstrate English kings’ historical (over)lordship of ‘Scotland, Wales, and Ireland’ (*Scocie, Wallie, et Hibernie*).<sup>220</sup> The *Regum Angliæ* tract concluded with the following sentence: ‘From these things it is sufficiently certain that both Scotland and Wales were, at those times, in the office and power of the king of England’ (*Ex ijs satis constat et Scotiam, et Walliam illis temporibus fuisse in officio et potestate Regis Anglie*).<sup>221</sup> Why Ireland was omitted from this closing statement is unclear. Nevertheless, the implication was that all three territories had once belonged to the English crown, and – according to the logic of the succession claim – remained the *de jure* property of the same. Although such ideas did not necessitate composite monarchy, much less unitary statehood,<sup>222</sup> they did, at the very least, presuppose a “feudal” body politic in which all the territories of the British Isles existed under the temporal and ecclesiastical authority of the king of England.

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<sup>218</sup> *Ibid.*, fol. 41v.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*, fol. 42.

<sup>221</sup> *Ibid.*

<sup>222</sup> See generally, H. G. Koenigsberger, ‘Monarchies and Parliaments in Early Modern Europe: *Dominium Regale* or *Dominium Politicum et Regale*’, *Theory and Society* 5 (1978), 191-217; J. H. Elliott, ‘A Europe of Composite Monarchies’, *Past & Present* 137 (1992), 48-71.

Historians have generally chosen to see the *Regum Angliæ* and its purported precedents as separate, or only tangentially related, to Henrician caesaropapism. Nicholson has concluded that the ‘practical point of these references from the chronicles ... was simply that they showed the English king to be a feudal overlord, and thus without a superior’.<sup>223</sup> Similarly, Guy has argued that the ‘dominant element of the Tudor theory of “imperial” kingship after the break with Rome was the case for the royal supremacy. But the proposition that “emperors” ruled, or claimed to rule, subordinate territories was embedded’.<sup>224</sup> Roger A. Mason has likewise judged Henrician caesaropapism and overlordship to constitute two separate political programmes – the former, modern and imperial; the latter, medieval and “feudal”.<sup>225</sup> Even David Armitage, whose position is closer to the one advanced in the present work, has maintained the distinction: ‘Henry VIII’s parliamentary claim to empire in the 1530s had territorial as well as caesaropapal implications, and was intended not only to assert the independent ecclesiastical authority of the Crown but also England’s overlordship of its neighbours in Wales, Ireland and ultimately Scotland’.<sup>226</sup>

In a subtle but important revision, the present work argues that caesaropapism and archipelagic (over)lordship were two sides of the same coin, forming a seamless theory of how royal and ecclesiastical power functioned throughout the British Isles. During the 1530s, Henry’s English and Irish parliaments had projected his reformation beyond the bounds of England proper to his dominions – that is, Ireland, Wales, Calais, the Channel Islands, and the Isle of Man.<sup>227</sup> In these lands – as in England (from which they were juristically distinct) – Henry was not merely *rex* but *rex et sacerdos*. That the English king was unable to accomplish the same in Scotland, despite his intermittent claims to the realm, has a very simple explanation: he possessed no real authority there. Nevertheless, the *Declaration’s* reference to the archbishop of York’s

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<sup>223</sup> Nicholson, ‘The Act of Appeals’, p. 24.

<sup>224</sup> J. Guy, ‘The Tudor Theory of “Imperial” Kingship’, *History Review* 17 (1993), 12-16.

<sup>225</sup> Mason, ‘Anglo-British Imperialism’, p. 168.

<sup>226</sup> Armitage, *Ideological Origins*, p. 36; Robertson has expressed a comparable view: see ‘Empire and Union’, pp. 8-10.

<sup>227</sup> See nn. 62-3 above.

historical jurisdiction over the Scottish church would suggest that Henry imagined a not-altogether-different religious solution for the northern kingdom. Leaving aside the question as to whether any of this was even remotely achievable, it is critical that Henry's claim to overlordship of Scotland not be understood in secular terms, for he and his advisers had long since abandoned conceptions of secular kingship.

Henry concluded the *Declaration* by reiterating that he did not go to war with Scotland in order to press his claim to overlordship of that realm. However, he also suggested that, to the extent that any man could discern the mind of God, the present Anglo-Scottish war was divinely intended to provide a means by which the ancient English right could justly be recovered:

[S]uch be the workes of god, superior ouer all, to suffre occasions to be minystred, whereby due superioritie may be knowen, demaunded, and required, to the intent that according thervnto all thinges gouerned in due order here, we may to his pleasure passe ouer this lyfe, to his honour and glory, whiche he grant vs to do in such rest, peace, and tranquillitie, as shalbe mete and conuenient for vs.<sup>228</sup>

Produced in London by the King's Printer, Thomas Berthelet, 'with the exclusive right to print' (*cum priuilegio ad imprimendum solum*).<sup>229</sup>

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The Henrician Moment argued that the succession claim was deployed in service of Henry VIII's campaign against the Roman Church. During the summer of 1530, the king's "great matter" took a consequential new turn. In response to Pope Clement VII's decision to advoke the divorce suit to Rome, a new, wide-ranging research programme was commissioned. The result was the *Collectanea satis copiosa*, a compilation of precedents which adumbrated a revolutionary

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<sup>228</sup> Murray, *Complaynt of Scotlande*, p. 206.

<sup>229</sup> *Ibid.*

conception of monarchic power – an imperial kingship. Thomas Howard, duke of Norfolk, famously made use of these ideas in an interview with Eustace Chapuys, Ambassador of the Holy Roman Empire to England, in January 1531. Norfolk told Chapuys that Henry recognised no superior in matters temporal and ecclesiastical within his realm and dominions, and that a long line of popes had tried in vain to usurp this God-given right from the kings of England. In an attempt to demonstrate that the Tudor monarch was engaged not in revolution but in restoration, Norfolk utilised the succession claim. He argued that Henry occupied the very same royal office that Constantine the Great and King Arthur had once occupied, and that he therefore enjoyed an identical plenitude of power to his eminent predecessors.

In the years that followed, a more subtle version of the succession claim was deployed in support of the reformation statutes which incrementally converted Henrician caesaropapism from bluff and bluster into reality. While the earliest reformation acts deliberately circumvented the contentious issues of papal usurpation and royal restoration, and fixed their gaze on narrow and pragmatic questions, the later legislation directed increasingly vitriolic rhetoric at the past and present occupants of the throne of St Peter, and took as their subject the historical boundary between temporal and spiritual power. They asserted, in no uncertain terms, that the Roman Church had systematically usurped the divine right of British/English kings to exercise caesaropapal authority within their realm and dominions. Henry, it was said, was merely reclaiming what was inalienably his.

The Henrician Moment also argued that the succession claim was used to legitimate Henry's war against Scotland in late 1542. The pamphlet which accompanied the English invasion of the northern realm comprised two parts: the first was an explanation of the events leading up to the Anglo-Scottish war; the second was an assertion of Henry's dynastic claim to overlordship of Scotland. The *Declaration*, which drew heavily on Edward I's 1301 letter to Pope Boniface VIII, advanced a historico-legal argument that began chronologically in the time of

Brutus. It was intended to demonstrate that the 'souerayntie' of Scotland was a right vested indefeasibly in the English crown, and that Henry was simply recovering regalian property that had been *de facto* alienated during the reigns of his immediate predecessors.

# Chapter 5

The Seymourian Moment, 1547–1548

The Seymourian Moment argues that the succession claim was deployed in service of Lord Protector Somerset's campaign for Anglo-Scottish union during the mid-sixteenth century. The latter portion of the previous chapter examined how this form of legitimation was used in support of Henry VIII's campaign against Scotland during the early 1540s; the present chapter will examine how, in the months and years after that king's passing, it was used in support of a much more sophisticated attempt to bring Scotland under English rule. At a secondary level of analysis, this chapter will pay special attention to those synchronic contexts which shed new light on the transition away from the medieval concept of overlordship and towards the early modern concepts of composite monarchy and unitary statehood, an intellectual process which laid the foundations for the Anglo-Scottish unions of 1603 and 1707.

Following Henry VIII's death in late January 1547, the English throne passed to the king's only surviving son, a nine-year-old boy who assumed the regnal name, Edward VI. During the first two-and-a-half years of his reign, on account of his minority, regency was exercised by his uncle, Edward Seymour, duke of Somerset, in his capacity as lord protector of the realm. Somerset, a brother of the late queen consort, Jane Seymour, was an accomplished military commander who had risen to prominence during the late Henrician period. In May 1544, he had led the devastating English invasion of Scotland, which had seen much of Edinburgh, including the Palace of Holyroodhouse, engulfed in flames. Over the succeeding three years, Somerset had worked hard to translate his military triumphs into political power, and was aided in his quest by considerable royal favour. Yet it was with the death of his benefactor that his greatest opportunity for advancement came. Although Henry's will stipulated that England was to be ruled by sixteen executors until Edward reached the age of eighteen, the dead king's wishes were promptly set



aside while his body still lay in state,<sup>1</sup> and Somerset was appointed sole regent in an act that A. F. Pollard characterised as a *coup d'état*.<sup>2</sup> And so the son of a landed gentleman came to bestride the realm of England and its dominions as if he himself had inherited the crown of the Confessor.

The war with Scotland, which had been waged continually in one form or another since 1542, took on a new focus and intensity during Somerset's protectorship. If for Henry Scotland had always come second to France in his foreign policy considerations,<sup>3</sup> the opposite was true of his *de facto* successor.<sup>4</sup> Yet, as M. L. Bush has astutely noted, this difference was more one of priority than of motive.<sup>5</sup> Indeed, Somerset's overriding goal in Scotland was the very same one that had held Henry's attention from the death of James V of Scotland in December 1542 until his own demise four years later, namely, bringing about Anglo-Scottish union by marrying Edward and Mary, queen of Scots. However, what was different about the manner in which the lord protector pursued this objective was his insistence that traditional warfare be accompanied by intellectual combat. For a man who owed much of his reputation to achievements on the battlefield, Somerset placed a remarkable amount of faith in the power of words. Over a nearly two-year period, the lord protector commissioned a number of pamphlets whose purpose was to persuade sceptical Scots that union with England was to their great benefit. Collectively, these publications served to frame a revolutionary political project – the attempt to consolidate the crowns of England and Scotland within a single royal person – as inherently traditional and conservative. Time and time again, Somerset's pamphleteers announced that it was not their

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<sup>1</sup> J. Guy, 'The Tudor Age (1485-1603)', in *The Oxford History of Britain*, ed. K. O. Morgan (Oxford, 2010), pp. 284-5.

<sup>2</sup> See generally, A. F. Pollard, *England Under Somerset: An Essay* (London, 1900), pp. 1-38.

<sup>3</sup> J. J. Scarisbrick *Henry VIII* (Berkeley and Los Angeles, 1968); D. M. Head, 'Henry VIII's Scottish Policy: A Reassessment', *The Scottish Historical Review* 61 (1982), 1-24.

<sup>4</sup> M. L. Bush, *The Government Policy of Protector Somerset* (London, 1975), p. 9.

<sup>5</sup> *Ibid.*

intention to create a new political entity, but rather to restore an ancient and famous island-empire by the name of (Great) Britain.

Although the Seymourian pamphlets have attracted a good deal of scholarly attention,<sup>6</sup> much remains to be said about the historico-legal argument that animated them. Chapter 5 of this thesis will examine the texts in considerably more detail than has hitherto been attempted. However, in recognition of the fact that several portions of each of the tracts under investigation defy comprehensive summary, the decision has been taken to utilise long-form quotation more frequently in this chapter than elsewhere in the dissertation. Yet, while granting the pamphleteers greater liberty to speak for themselves, much industry will be devoted to reconstructing the intellectual and political context in which they composed their works.

### 5.1 James Harryson's *Exhortacion to the Scottes*

The first pro-union pamphlet commissioned by Somerset was entitled *An Exhortacion to the Scottes to conforme themselves to the honorable, Expedient, & godly Union betweene the two Realmes of Englande and Scotlande*.<sup>7</sup> The tract was published in late August or early September 1547, on the eve of the Pinkie invasion. Its author was a former Edinburgh merchant called James Harryson (sometimes given as Henrisoun). After English forces had razed the Scottish capital in 1544, Harryson had elected to become an “assured Scot”, swearing an oath to do what

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<sup>6</sup> See especially, R. A. Mason, ‘The Scottish Reformation and the Origins of Anglo-Scottish Imperialism’, in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. R. A. Mason (Cambridge, 1994), pp. 161-86; R. A. Mason, ‘Scotching the Brut: Politics, History and National Myth in Sixteenth-Century Britain’, in *Scotland and England 1286-1815*, ed. R. A. Mason (Edinburgh, 1987), pp. 60-84; M. Merriman, *The Rough Wooings: Mary Queen of Scots, 1542-1551* (East Linton, 2000), pp. 62-4, 265-91; M. Merriman, ‘James Henrisoun and “Great Britain”: British Union and the Scottish Commonweal’, in *Scotland and England 1286-1815*, ed. R. A. Mason (Edinburgh, 1987), pp. 85-112; D. Armitage, *Ideological Origins of the British Empire* (Cambridge, 2000), pp. 24-60.

<sup>7</sup> For Harryson's *Exhortacion*, see *The Complaynt of Scotlande wyth ane Exortatione to the Thre Estaites to be Vigilante in the Deffens of their Public Veil, 1549*, ed. J. A. H. Murray (London, 1872), pp. 207-36.

he could to further the prospect of matrimony between Edward and Mary.<sup>8</sup> He had then escorted the English army – the very same force that had laid waste to his city and very probably his own house – back across the border, where he had established a new home.<sup>9</sup> Residing in London on an English pension, Harryson had busied himself with various ventures until the lord protector, intent upon launching an ambitious new campaign for Anglo-Scottish union, saw fit to make use of his rhetorical talents.<sup>10</sup>

Harryson began his tract with a lengthy, fawning dedication to Somerset, whom he described as ‘a patrone vertuous and Godly’ and ‘so worthie a gouernor of so noble a kyng’.<sup>11</sup> Adopting the deferential second-person plural, the Scot lavished praise on his benefactor:

[B]y your high wisdom, pollicie, & other Princely vertues, the stormes of this tempestious worlde, shall shortly come to a calme. And seying God hath not onely called you to the height of this estate, but so prospered your grace in all affaires, bothe of war and peace, as your actes bee comparable to theirs, whiche beare moste fame: your grace cannot merite more towards GOD or the worlde, then to put your helpyng hande to the furtheraunce of this cause. Hereby shall you declare an incomparable seruice to the kynges Maiestie of England.<sup>12</sup>

This preamble, together with the fact that the work was published by the King’s Printer, Richard Grafton, should leave no doubt that it was the lord protector – the king of England in all but name – who commissioned the *Exhortacion*. Indeed, it is quite appropriate to regard Harryson’s work, along with the other unionist tracts that were produced during 1547 and 1548, as Seymourian pamphlets. Following the example of Henry VIII’s 1542 text – which was the subject of much attention in Chapter 4 – Somerset chose to harness the power of the printing press, still a comparatively new piece of technology. However, unlike Henry, who had attempted to persuade a continental audience of the merits of his Scottish policy,<sup>13</sup> the lord protector sought

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<sup>8</sup> Merriman, ‘James Henrisoun’, p. 88. See generally, M. H. Merriman, ‘The Assured Scots: Scottish Collaborators with England During the Rough Wooing’, *The Scottish Historical Review* 47 (1968), 10-34.

<sup>9</sup> Merriman, ‘James Henrisoun’, p. 88; Mason, ‘Anglo-British Imperialism’, p. 171.

<sup>10</sup> Merriman, ‘James Henrisoun’, p. 88.

<sup>11</sup> Murray, *Complaynt of Scotlande*, p. 210.

<sup>12</sup> *Ibid.*

<sup>13</sup> Merriman, ‘James Henrisoun’, p. 89.

to persuade the Scots themselves. An astute statesman, Somerset recognised that the battle for hearts and minds was no less important than the battle for territory. In the multi-pronged attack that was the campaign for Anglo-Scottish union, these pamphlets formed the intellectual offensive.

From Somerset's perspective, there was considerable advantage in having a demonstrably erudite Scot extol the virtues of union to his 'moste dere countreyemen'.<sup>14</sup> Although Harryson prefaced his discourse with several self-deprecating remarks – referring to himself, among other things, as 'simple, vnlearned, and most barayn of all orators arte and perswasion'<sup>15</sup> – there can be little doubt that he was a well-educated man in possession of a carefully cultivated mind. Certainly he was nobody's useful idiot. The title page of the *Exhortacion*, which bore the words, "James Harryson Scottisheman", made no secret of its author's nationality. Indeed, it was plainly an exhortation to the Scots from a Scot. This fact conferred certain rhetorical advantages. Unlike the English pamphleteers, Harryson had the ability to use first-person-plural pronouns – such as, "we", "us", and "our" – to foster a sense of intimacy with his readers. This language proved especially effective in those portions of his tract which accused his countrymen of various crimes, for it implied that he, too, was morally responsible for those wrongs. For many a Scottish reader, tired of the imperious and self-righteous pronouncements of English writers, this would have been a welcome change. Yet more valuable than the quality of Harryson's prose was his very status as a Seymourian pamphleteer, for who could better personify the benefits of Anglo-Scottish union than a Scot who had not only been welcomed into English society with open arms, but who had also been rewarded with a prestigious post as one of the lord protector's official penmen?

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<sup>14</sup> Murray, *Complaynt of Scotlande*, p. 231.

<sup>15</sup> *Ibid.*, p. 211.

Harryson commenced his tract proper by expressing his sorrow at the present Anglo-Scottish conflict – a conflict that he revealingly termed a civil war – for which he chiefly blamed his fellow Scots. He declared that, despite the protestations of certain northern writers,<sup>16</sup> ‘the cause of this mischief, and the long continuance thereof, to come rather of vs, then of the contrary parte’.<sup>17</sup> Announcing that he had no intention of pleading England’s cause, Harryson begged his readers to judge his arguments with a dispassionate mind, ‘and not to leane more on the one side, then on the other’.<sup>18</sup> By characterising the present war as a *civil* war, the Scot drew on a distinctly Roman conception of intrastate conflict. As David Armitage has shown in his monograph, *Civil Wars: A History in Ideas*,<sup>19</sup> ancient Roman thinkers had originally conceived of war as something that was waged against barbarians on distant battlefields rather than between citizens in crowded towns and cities. In order to account for what they regarded as a contradictory and uniquely cruel type of combat, the Romans coined the term “civil war” (*bellum civile*). Something of the inherently paradoxical nature of this form of conflict was captured by the Scot’s work: ‘Vnnaturall, I maie wel call it, or rather a Ciuill warre, where brethren, kynsmen or countrey men be diuided, and seke y<sup>e</sup> bloud of eche other’.<sup>20</sup> According to Harryson, internal – or, as he put it more than once, “intestine” – conflict was so aberrant and strange a thing as to be detestable in the eyes of God. All of this served to underscore a point that he would make time and time again throughout the *Exhortacion*, namely, that the Scots and English were, properly speaking, one (British) people. And it was on this basis that he accused his allegedly warmongering countrymen of ‘treson and trecherie’.<sup>21</sup>

Yet Harryson also observed that the present conflict was but the latest tragedy to befall a people long plagued by the horrors of war. ‘Loke well vpon the Chronicles of this island of

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<sup>16</sup> *Ibid.*, p. 227.

<sup>17</sup> *Ibid.*, p. 213.

<sup>18</sup> *Ibid.*, p. 227.

<sup>19</sup> See generally, D. Armitage, *Civil Wars: A History in Ideas* (New Haven and London, 2017), pp. 31-58.

<sup>20</sup> Murray, *Complaynt of Scotlande*, p. 208.

<sup>21</sup> *Ibid.*, p. 213.

Britain ... and compare them, with the histories of other nacions', the Scottish émigré urged his readers, 'and you shal not lightly heare or read of any one countrey sithe the worldes creacion, more inuaded, wasted, and destroyed'.<sup>22</sup> According to Harryson, Britain had led such a tortured existence because its sinful inhabitants had, through ancient discord and division, provoked the vengeance of a just God. For in its segregated state, the island had proved easy prey for the invading armies of foreign nations. Conquest had followed conquest until, finally, the Britons, overcome and mixed with strangers, 'lost their name and Empire'.<sup>23</sup> Harryson warned that ruin and devastation would continue to be the island's lot until such time as it was unified — or rather, reunified — under the banner of Britain:

I will sette my foundacion, vpon the infallible truthe of Gods woorde, takynge this texte for my purpose. *Omne regnum in se diuisum desolabitur*: that is to saie: euery kyngdom diuided in it self, shalbe brought to desolacion. If this sentence bee well marked, and the persone of the speaker considered, I shall not nede to bee long in perswadyng you to beleue it. The wordes be true: for he that spake them, cannot lye, whiche is Christ himself the aucthor of al truth and veritie.<sup>24</sup>

Included in Harryson's tract was a plea from Britain personified, the 'vnhappy mother of ... rebellious, discordant and graceles children'.<sup>25</sup> Adopting a decidedly more literary style, the Scot wrote as if channelling Britannia:

Hath not the almighty prouidence seuered me from the reste of the worlde, with a large sea, to make me one Islande? hath not natures ordinaunce furnished me with asmany thinges necessary, as any one ground bringeth furth? hath not mans pollicie at the beginning subdued me to one gouernoure? And hath not the grace of Christ illumined me ouer all, with one faith: and finally the workes of all these foure, tended to make me one? Why then wil you diuide me in two? What folly, yea, or rather what contempt of God is this, y<sup>t</sup> ye still teare me, pull me, & ryue me in peces? were their euer children so vnnaturall (if they were not of the vipers nature) to rend their mothers wombe? yea, were there euer beastes so saluage, or cruel, to deuour the dame? If birdes, beastes, and all thinges naturall haue this reason, not to destroy their kynde, how chaunceth it then, that you beyng men

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<sup>22</sup> *Ibid.*, p. 212.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, p. 211.

<sup>25</sup> *Ibid.*, p. 233.

endewed with reason, bredde in one lande, ioyned in one faithe, should thus vnkindly, vnnaturally, and vnchristenly, bathe your swoordes in eche others blode?<sup>26</sup>

Staying in character, he declared that the island's inhabitants had spilt more blood fighting one another than they would have expended conquering Europe and perhaps even the whole world. Plaintively, Harryson's Britannia enquired: 'Wil this fire neuer be quezched? this malice neuer cease, nor your furye neuer ende?'<sup>27</sup>

Yet Harryson claimed that God, in his divine mercy, had seen fit to provide Britain's inhabitants with an opportunity to remedy 'al the discord of bothe realmes, by ... vnion and knot of mariage'.<sup>28</sup> As the next two sections will further demonstrate, framing the prospect of Anglo-Scottish union in providentialist terms was a recurring theme of the Seymourian pamphlets. This is, perhaps, hardly surprising given the centrality of the doctrine of providence to Protestant theology.<sup>29</sup> If "universal providence" pertained to God's perpetual supervision and governance of the cosmic plan that he had laid down at the beginning, "special providence" pertained to his extraordinary interventions in the lives of his creations.<sup>30</sup> The opportunity to realise Anglo-Scottish union was, Harryson suggested, an instance of special providence. However, because God had endowed man with free will, the Scots could choose to accept or reject the divine overture:

[I]f God of his goodnesse, without our desertes hath in these latter daies, provided that blessed meane and remedy for the glorie of his name, and for our wealth and commoditie: and wee for our parte, either of stubburnesse will not, or of wilfulnesse liste not, thankfully to receiue his synguler grace and benefite so freely offered, what then maie bee thoughte in vs?<sup>31</sup>

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<sup>26</sup> *Ibid.*, p. 232.

<sup>27</sup> *Ibid.*, p. 233.

<sup>28</sup> *Ibid.*, p. 227.

<sup>29</sup> See generally, A. Walsham, *Providence in Early Modern England* (Oxford, 2001), pp. 8-15.

<sup>30</sup> *Ibid.*, p. 12.

<sup>31</sup> Murray, *Complaynt of Scotlande*, p. 212.

If the Scots were to spurn God's offer, declared Harryson, they would be thoroughly deserving of all the death and misery that the resulting war would inflict upon them.

He argued that the Scots had, several years earlier, given their consent to the marriage of Edward and Mary only to dishonour their promises and themselves by once again taking up arms against the English. In contrast to the many historical grievances that he adumbrated against his countrymen – many of which will be examined shortly – here the Scot spoke of wrongs committed 'not by our auncestors, but by our selves, and to a prince now liuying, not in tyme oute of mynde':<sup>32</sup>

AT the parliament holden at Edinbrough (immediatly after the death of our last kyng) wher al the lordes, thother states and orders of our realme wer assembled ... The mariage betwene our Princes and kynges maiestie of England, kyng Edward the VI. (then beyng prince) was fully concluded by authoritie of thesame Parliament ... And what madnes or deuill (O moste dere couxtremen) hath so moued, or rather distracte our myndes, eftsones to take weapon in hand, and thesame against oure promises, fidelities, honoures, and othes, hauyng on oure side, no good ground, honestie, reason, ne any iuste respecte, but onely of the prouocation of the deuill, the pope, and his rable of religious men.<sup>33</sup>

He was, of course, referring to the Treaties of Greenwich (1543),<sup>34</sup> the marriage pact that the Scots had abrogated following an internal power struggle in which Cardinal Beaton's anti-union forces had triumphed over the earl of Arran's pro-union forces.<sup>35</sup> However, contrary to Harryson's claims, it was not the Scots but the English who had first recommenced hostilities.<sup>36</sup> After hearing of the Scots' decision to walk away from the agreement, Henry VIII's privy council had ordered Somerset (then known as the earl of Hertford) to 'put all to fyre and swoorde, burne Edinborough towne, so rased and defaced when you have sacked and gotten what ye can of it, as there may remayn forever a perpetuel memory of the vengeaunce of God lightened upon [them]

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<sup>32</sup> *Ibid.*, p. 227.

<sup>33</sup> *Ibid.*

<sup>34</sup> For the Treaties of Greenwich, see *Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII, 1509-47*, ed. J. S. Brewer, J. Gairdner and R. H. Brodie, 21 vols (London, 1862-1910, 1920), XVIII, ii, 804.

<sup>35</sup> See generally, Merriman, *Rough Wooings*, pp. 118-28.

<sup>36</sup> See generally, *ibid.*, pp. 137-40.



for their faulsehode and disloyailtye'.<sup>37</sup> Marcus Merriman suggested, quite plausibly, that it was amidst this devastating attack on the Scottish capital that Harryson had first presented himself to Somerset, then Henry's most accomplished military commander.<sup>38</sup>

Singling out the Scottish clergy for special condemnation in the decision to repudiate the Treaties of Greenwich, Harryson suggested that his homeland would do well to follow the late Henry's lead and break with the Roman Church. This portion of the *Exhortacion*, it should be noted, was imbued with a decidedly apocalyptic eschatology.<sup>39</sup> Drawing on the Lutheran idea of the papacy as the antichrist prophesied in the New Testament, Harryson praised Henrician England for having purged itself of the 'peruerters of all true Religion', the very agents of the 'prince of darkenesse'.<sup>40</sup> If Scotland, too, could find the courage to throw off the yoke of Rome, he argued, the way would be made clear to unite the entire island under the banner of the one true religion:

For howe godly were it, y<sup>e</sup> as these two Realmes should grow into one, so should thei also agre in the concorde & vnite of one religion, & the same y<sup>e</sup> pure, syncere & incorrupt religion of christ, setting a part all fonde supersticions, sophistications, & other thousandes of deuilries brought in by the bishop of Rome & his creatures, wherby to geue glosse to their thinges & darknes to Gods true worde, for y<sup>e</sup> onely purpose, to aduauyce their glory, & treade Gods word vnder fote, to vtter their fylthye merchauzdise, & to sclaunder y<sup>e</sup> precious ware & Iewels of y<sup>e</sup> scripture: & emozges y<sup>e</sup> rest, to destroye Gods peace, & ringe their awne alarmes, against his moste glorious victory on y<sup>e</sup> Crosse, throuout the worlde.<sup>41</sup>

Put another way: the day of judgment was fast approaching, and Scotland ought to put its house in order lest its inhabitants find themselves on the left side of the throne of glory when the great shepherd begins separating the sheep from the goats.<sup>42</sup>

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<sup>37</sup> *The Hamilton Papers: Letters and Papers Illustrating the Political Relations of England and Scotland in the XVIth Century*, ed. J. Bain, 2 vols (Edinburgh, 1890-2), ii, 326.

<sup>38</sup> Merriman, 'James Henrisoun', p. 88.

<sup>39</sup> *Ibid.*, p. 71.

<sup>40</sup> Murray, *Complaynt of Scotlande*, p. 220.

<sup>41</sup> *Ibid.*, p. 234.

<sup>42</sup> Matthew 25. 31-46.

Returning to this-worldly matters, Harryson argued that Anglo-Scottish union would bring ‘euerlasting peace, quiete & trauquillite’ to the war-torn and blood-soaked island.<sup>43</sup> He also suggested that it would create a larger and more glorious empire:

For beeyng then ... bothe vnder one kyng, the more large and ample the Empire wer: the more honorable and glorious: the kyng of greater dominion, gouernaunce power, and fame: and the subiectes more renoumed, more happy and more quiet: the realm more sure, and formidable to the enemies: and thei lesse eshuned and feared ... Thvs beyng bothe our people and forces ioyned in one, we should be the more puyssaunt to inuade, more strong to resist and defende. And our power beeyng suche & so great, should ... make vs fre & sure from outward inuasion.<sup>44</sup>

There can be little doubt that this portion of the *Exhortacion*, concerned as it was with the topic of civic greatness (*grandezza*), had much in common with the Jacobean unionist tracts which would emanate from both sides of the Anglo-Scottish border half a century later.<sup>45</sup> To determine to what extent Harryson can properly be regarded as the intellectual progenitor of such ideas would require a discussion beyond the scope of the present work. The similarities are, nevertheless, striking. And yet it is important that these resemblances not obscure significant points of divergence. For example, the *Exhortacion* placed far greater emphasis on peace as a prerequisite for human flourishing than any Jacobean tract later would. That this distinctly Augustinian theme permeated Harryson’s treatment of civic greatness can surely be explained by the belligerent period in which his work was composed.<sup>46</sup>

Harryson also expressed his eagerness for the day when ‘those hatefull termes of Scottes & Englishemen, shalbe abolisshed and blotted oute for euer’.<sup>47</sup> He suggested that the island

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<sup>43</sup> Murray, *Complaynt of Scotlande*, p. 235.

<sup>44</sup> *Ibid.*, pp. 229-30.

<sup>45</sup> Mason, ‘Anglo-British Imperialism’, p. 174; see generally, M. Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570-1640* (Cambridge, 1995), pp. 190-228; *The Jacobean Union: Six Tracts of 1604*, ed. B. R. Galloway and B. P. Levack (Edinburgh, 1985); *The British Union: A Critical Edition and Translation of David Hume of Godscroft’s De Unione Insulae Britannicae*, ed. P. J. McGinnis and A. H. Williamson (Aldershot and Burlington, 2002).

<sup>46</sup> See generally, P. Weithman, ‘Augustine’s Political Philosophy’, in *The Cambridge Companion to Augustine*, ed. E. Stump and N. Kretzmann (Cambridge, 2001), pp. 234-52.

<sup>47</sup> Murray, *Complaynt of Scotlande*, p. 230.

should be renamed “Britayn”, ‘as it was first, & yet stil ought to be’,<sup>48</sup> and that its inhabitants should proudly entitle themselves “Britons”. As revolutionary as Harryson’s suggestion might have seemed, it was not without precedent. Roger A. Mason’s illuminating work on early modern Scottish political thought has demonstrated that it was John Mair (sometimes given as Major), a sixteenth-century theologian, who first proposed the island-wide adoption of a British terminology.<sup>49</sup> In his 1521 work, *Historia Maioris Britanniae*, Mair laid out a visionary plan for Anglo-Scottish union, which included the (arguably quite naïve) recommendation that Scots embrace the label “Britons”, despite its long association with the Anglocentric British History:

Either the original inhabitants of the island alone are Britons, and therefore the dwellers in Wales at this present will be the only Britons, against all common use of language; or the English, who are descended from the Saxons, and others of foreign origin, but are natives of the island, are Britons; and in this way it will behove us to speak of the Scots born in the island as Britons also, and by like reasoning we will say that the Picts too are Britons in respect that they were born in the island; just as we ought to call those men Gauls that were born in Gaul. I say, therefore, that all men born in Britain are Britons, seeing that on any other reasoning Britons could not be distinguished from other races.<sup>50</sup>

Although not sharing Mair’s disdain for the Galfridian historiographical tradition,<sup>51</sup> Harryson was, it would seem, happy to take up his countryman’s terminological suggestion.<sup>52</sup> Implied in the *Exhortacion*, as in Mair’s *Historia Maioris Britanniae*, was that “Britain” and “Britons” were value-neutral appellations. That this was the dominant view among the Seymourian pamphleteers would later be made abundantly clear when a subsequent tract urged the Scots to ‘take the indifferent old name of Britaynes again’.<sup>53</sup>

Harryson also employed physiological – including loosely anthropomorphic – analogies in support of his claim that England and Scotland were, by nature, two parts of a single body

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<sup>48</sup> *Ibid.*, p. 234.

<sup>49</sup> Mason, ‘Scotching the Brut’, p. 66.

<sup>50</sup> John Major, *A History of Greater Britain as well England as Scotland*, ed. A. Constable (Edinburgh, 1892), p. 18.

<sup>51</sup> Mair referred to Monmouth’s narrative as ‘partly fabulous ... partly ridiculous, and partly to have some connection with historical fact’: *ibid.*, p. 2.

<sup>52</sup> Mason, ‘Scotching the Brut’, p. 68; Mason, ‘Anglo-British Imperialism’, p. 171.

<sup>53</sup> Murray, *Complaynt of Scotlande*, p. 241.

politic. As Otto von Gierke demonstrated in his classic work, *Political Theories of the Middle Age*,<sup>54</sup> such analogies were central to medieval and early modern conceptions of society, predicated as they were on the idea of a single whole.<sup>55</sup> This argument from unity animated much of Harryson's *Exhortacion*. He suggested that Scotland, once a member of the same body as England, had, in a senseless act of self-mutilation, torn itself from that body.<sup>56</sup> Yet even in this severed state, Scotland remained part of the single political entity which comprehended the entire island. Therefore, argued Harryson, war between Scots and Englishmen could no more be justified by reason than could conflict between a man's very arms and legs.<sup>57</sup> And by laying violent hands upon England, said the émigré Scot – switching to first-person plural – we 'do hurte to a part of our awnselves'.<sup>58</sup> Turning more directly to the question of Anglo-Scottish union, Harryson expertly used the same physiological logic to make the case for consolidating both crowns in one royal person. Because Scotland and England were two parts of a single realm, he claimed, it followed naturally that they should be governed by a sole monarch:

For who so shall well consider the states of all commone weales, that haue been gouerned by mo then one, shal perceiue that the same hath been y<sup>e</sup> cause of their finall ruine & extermin[ac]tion. For gouernaunce maye in no wyse suffer an equal companyon, ne any more be diuided into the rule of twoo sundrie administers, then one bodye maye beare two heades, or the worlde endure to haue two sunnes to geue lighte at once. And that same appereth in all other creatures, emonge whom, there is any societie, or bodye politique, wherby it may easily be gathered to be the primatiue decre, and the due ordre of nature. Whiche, like as in many other thynges, so doth it specially appere in the swarme of Bees: for thei beyng ledde with the onely and mere instinct of nature, will neither bee without one Kyng and gouernor, ne yet admit any mo kynges, then one at once; And by the same nature, bee wee taught, to repute and recken that body to be moztreous, that hath twoo heddes, and no lesse is the realme, that hath two kynges.<sup>59</sup>

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<sup>54</sup> O. Gierke, *Political Theories of the Middle Age*, ed. F. W. Maitland (Cambridge, 1922).

<sup>55</sup> *Ibid.*, pp. 22-30.

<sup>56</sup> Murray, *Complaynt of Scotlande*, pp. 228-9.

<sup>57</sup> *Ibid.*, p. 208.

<sup>58</sup> *Ibid.*, pp. 228-9.

<sup>59</sup> *Ibid.*, p. 231.

The imagery of the two-headed monster (*animal biceps*) was a familiar one to medieval and early modern political thinkers,<sup>60</sup> and served as a powerful reminder of the principle of hierarchical unity.

Whether Harryson envisaged the formation of a composite monarchy or a unitary state is not altogether clear. Neither of these terms were, of course, in common usage in England or Scotland during the 1540s; they are, for the most part, conceptual categories which historians have imposed on early modern Europe in order to distinguish between personal or dynastic union, on the one hand, and perfect or political union, on the other.<sup>61</sup> Put more simply: did Harryson's British solution consist of two monarchies – one north, one south – ruled by a common monarch (*à la* the Anglo-Scottish union of 1603), or did it consist of one monarchy, comprehending the entire island, ruled by a single monarch (*à la* the Anglo-Scottish union of 1707)? Although the Scot failed to make a definitive pronouncement on the issue, the balance of evidence would suggest that he favoured the creation of a unitary state. Indeed, at one point in the *Exhortacion*, Harryson declared that the island would continue to be ravaged by war 'vntil it shal please Gods goodnesse to haue mercie on the people, and to reduce the islande to the firste estate, to one Monarchy, vnder one kyng and gouernor as it was in the Britons tyme'.<sup>62</sup> Elsewhere, however, he was more ambiguous, advocating only the establishment of 'one sole Monarchie'.<sup>63</sup> Of course, it is quite possible that for Harryson the question of whether Anglo-Scottish union ought to take the form of a composite monarchy or a unitary state was a peripheral one. Yet, as will be seen in Section 5.3, this question would gain greater significance as subsequent

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<sup>60</sup> It was famously deployed by Boniface VIII in *Unam sanctam* (1302): '*Ecclesiae unius et unice unum corpus, unum caput, non duo capita quasi monstrum*': *Corpus Iuris Canonici*, ed. A. Friedberg, 2 vols (Graz, 1955), ii, 1245.

<sup>61</sup> See generally, H. G. Koenigsberger, 'Monarchies and Parliaments in Early Modern Europe: *Dominium Regale* or *Dominium Politicum et Regale*', *Theory and Society* 5 (1978), 191-217; J. H. Elliott, 'A Europe of Composite Monarchies', *Past & Present* 137 (1992), 48-71.

<sup>62</sup> Murray, *Complaynt of Scotlande*, p. 212.

<sup>63</sup> *Ibid.*, p. 230.

Seymourian pamphleteers attempted to assuage Scottish fears that union with England would see their laws and customs abrogated.

In a bid to legitimate the revolutionary political programme in which he was engaged, Harryson deployed an ambitious historico-legal argument that cast Anglo-Scottish union as a means of restoring the island to its ancient state. However much the prospect of matrimony between Edward and Mary had been discussed in the years leading up to the publication of the *Exhortacion*, and however close the ambition may have come to being realised in the summer of 1543,<sup>64</sup> the idea of uniting old – if not quite ancient – enemies was one that many Scots still regarded with great suspicion. That early modern Europe was replete with union, dynastic and political alike, should also not obscure just how extraordinary a proposition forging a composite monarchy or unitary state out of England and Scotland was. For the English, cultural memory of Edward I's various attempts to subjugate the northern realm at the turn of the fourteenth century served as a potent reminder that it was far easier a task to vanquish Scotland on the battlefield than it was to defeat the spirit of independence that animated its people. Even if the anonymous author of the *Complaynt of Scotlande* (1549) – a tract that would later be published in response to the Seymourian pamphlets – was strictly correct when he claimed that 'realmis ar nocht conquest be buikis, bot rather be bluid',<sup>65</sup> there can be little doubt that some ideas are more capable of deciding the fate of nations than standing armies. It was for this reason that, while many English soldiers were preparing to take up the pike against Scotland, Harryson took up the pen. His objective was to dress up revolution as restoration, and thus persuade his compatriots that Anglo-Scottish union represented a return to the natural order of things. While Henry VIII had deployed the succession claim in an attempt to prove that British and English kings had once wielded caesaropapal power and should do so once more, Harryson deployed it in an attempt

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<sup>64</sup> See generally, Merriman, *Rough Wooings*, pp. 111-36.

<sup>65</sup> Murray, *Complaynt of Scotlande*, p. 82.

to prove that England and Scotland had once been a single people and empire and should be so again.

Although Harryson advised his readers that his historico-legal argument would make use of a multitude of authorities – a claim which is difficult to refute in light of his allusions to the works of Homer, Julius Caesar, Tacitus, Gildas, Bede, and John of Fordun, among a great many others – the contours of his narrative were positively Galfridian. His decision to ground his work in the *British History* expressed not only a historiographical preference but an ideological one as well, for this tradition of thought was, by the mid-sixteenth century, inextricably bound up with English claims to insular and archipelagic hegemony. Yet if the enthusiasm with which the émigré Scot adopted Geoffrey of Monmouth's tales conjured up the image of a fanatical new convert, the innovative manner in which he narrated them reveals a decidedly more discerning mind. As Merriman argued, Harryson 'embraced the Galfridian legend so wholeheartedly because, in his imaginative and remarkable reworking of history, it heralded a potent apocalyptic regeneration of Scotland'.<sup>66</sup> It is difficult to overstate just how ambitious an objective this was. Harryson's was an attempt to win the hearts and minds of the Scots – a people whose national identity was predicated, in no small part, on an anti-Galfridian historical tradition<sup>67</sup> – with the *British History*. As was seen in Chapters 3 and 4, Edward I and Henry VIII had deployed Galfridian arguments in order to legitimate their Scottish ambitions to continental audiences. Here, however, Harryson was attempting to use the very same arguments to persuade the Scots themselves of the merits of the English case. It was audacious stuff.

While refusing to endorse in full the *British History*'s account of Brutus's origins, Harryson declared that there could be no doubt whatsoever that Brutus himself had existed and that he had reigned over the entire island as its first king. Sceptical that the eponymous founder

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<sup>66</sup> Merriman, 'James Henrisoun', p. 91.

<sup>67</sup> See generally, D. Broun, *The Irish Identity of the Kingdom of the Scots in the Twelfth and Thirteenth Centuries* (Woodbridge, 1999); Mason, 'Scotching the Brut', pp. 60-84.

of Britain had hailed from Italy, much less Troy, the Scot suggested in passing that there was nothing more noble, high, or honourable than for a small and humble family to grow into a great monarchy and kingdom. To illustrate the point, he used the example of the ‘old latins of whom the Romaines discended’, a people who referred to themselves as aborigines and who took great pride in having inhabited the country from the beginning of time.<sup>68</sup> He argued that Britain, too, might have been inhabited from the beginning, and that this made for more glorious an origin story than any which involved Graeco-Roman gods or heroes from faraway lands.<sup>69</sup> In other respects, however, Harryson’s Brutian narrative was rather more orthodox:

Brvtvs the first Kyng of the whole Islande, by whom it was called Britayne, & the people thereof Britaynes, reigned the yere after the creacion of the worlde, foure thousande, CC and xlij. and as writers affirme, had three sonnes, *Locrinus*, *Albanactus*, and *Camber*, among whom he diuided the whole island, assignyng y<sup>e</sup> supreme empire with y<sup>e</sup> greatest and moste fruitful part toward the Southe, vnto Locrinus his eldest sonne, of whom it was called *Logres*, and now England. To the second sonne, named Albanactus, he assigned another part towards the Northe, whiche at this day the Scottes possesse; by which Albanactus, the countrey was called *Albania*, and the people, *Albanactes*, as shalbe shewed hereafter. The iij. part, liyng West, & towards the seas of Gaule, whiche nowe is called Wales, he gaue to *Camber* his yongest sonne, by whom it was called *Cambria*, & the people, *Cambrians*, as they cal *themselves* to this day.<sup>70</sup>

This account of ancient Britain’s tripartite partition was consistent with the Edwardian Emendation, which had, by the 1540s, become an integral part of the British History. As explicated in Chapter 3 of this thesis, the intellectual foundations of the Edwardian Emendation lay in Edward I’s famous response to Boniface VIII’s 1299 papal bull, *Scimus fili*. The King’s Letter of 1301 had, by sleight of hand, inverted the logic of the island partition as traditionally conceived by inserting the phrase ‘with the royal dignity having been reserved to Loctrine, the

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<sup>68</sup> Murray, *Complaynt of Scotlande*, p. 214.

<sup>69</sup> *Ibid.*, pp. 213-14.

<sup>70</sup> *Ibid.*, p. 214.



eldest' (*reservata Loctrino seniori regia dignitate*).<sup>71</sup> Harryson's own phrase — 'assignyng y<sup>e</sup> supreme empire ... vnto Loctrinus his eldest sonne'<sup>72</sup> — merely recast the Edwardian Emendation in terms with which a mid-sixteenth century audience would have been more familiar. Then, anticipating any who might challenge this portion of his narrative, he recapitulated the point before cautioning his readers against blindly rejecting those historical facts that happened to prove inconvenient to them:

And though the island was thus parted, betwene the three brethren, yet the supreme power and kyngdome, remained alwayes in the eldest; to whom the other twoo were obedient, as to a superior kyng. The profe wherof, if any bee so curious to require, I aunswere, that thesame histories, whiche speake of this particion, declare in likewise of the subieccion: So that admittyng them in the one, thei muste likewise bee admitted in y<sup>e</sup> other.<sup>73</sup>

However, on this historiographical matter, Harryson revealed himself to be somewhat less informed than might be expected, for the notion that Loctrine had enjoyed overlordship of his two younger brothers had been completely foreign to the British History prior to the early fourteenth century. As the Scottish delegation to Anagni had told Boniface during the summer of 1301, Geoffrey's original account was quite clear that after Brutus had divided the island between his three sons, he 'made them peers, so that none of them was subject to another'.<sup>74</sup> Although it is possible Harryson was merely playing fast and loose in this instance, it seems eminently more likely that he was simply unaware that the Edwardian Emendation was in fact an emendation. Here, perhaps, he demonstrated his overreliance on sources — including and especially Henry's 1542 pamphlet — that were themselves derived from Edward's King's Letter.

Conceding that the Britons had later lost their insular dominion as a result of the Roman occupation, Harryson argued that Constantine the Great, born of a British mother, had then

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<sup>71</sup> *Anglo-Scottish Relations, 1174-1328: Some Selected Documents*, ed. E. L. G. Stones, 2<sup>nd</sup> edn (Oxford, 1970), p. 194.

<sup>72</sup> Murray, *Complaynt of Scotlande*, p. 214.

<sup>73</sup> *Ibid.*, p. 214.

<sup>74</sup> Stones, *Anglo-Scottish Relations*, p. 227.

reunited the whole island ‘vnder one Emperour, and beeyng vnder one Emperour, then was Scotlande and Englande but one Empire’.<sup>75</sup> According to the Scot, this had seen the titles “emperor of Rome” and “king of the Britons” ‘vnited & knit together’ in a single person.<sup>76</sup> He also claimed that the kings of England, as the rightful successors to Constantine, had inherited this imperial status, affording them the right to ‘weare a close crowne Emperiall, in token that the lande is an empire free in it self, & subiect to no superior but God’.<sup>77</sup> Mason has noted, quite astutely, that this portion of the *Exhortacion* was heavily indebted to Polydore Vergil’s *Anglica Historia*,<sup>78</sup> a controversial work that had been commissioned by Henry VII and had appeared in print, following a series of lengthy delays, during the reign of Henry VIII. (Vergil’s – and, by extension, Harryson’s – view of Constantine has much in common with the one Richard Koebner incorrectly ascribed to Henry VIII.<sup>79</sup> Koebner’s mistake was assuming that Vergil’s conception of the imperial kingship in any way resembled that of his benefactor.) Yet it ought to be remarked in passing that Mason has rather exaggerated the role of Constantine in Harryson’s argument.<sup>80</sup> Constantine was certainly important to the Scot, but he did not take precedence over Brutus. For Harryson, Constantine’s significance lay chiefly in the idea that he had re-established the Brutian monarchy, thus providing yet another example of how England and Scotland had historically existed as parts of a single political entity. Yet, as the Scot himself observed, ‘al worldly thynges be mutable’,<sup>81</sup> and, within but a few generations, the Constantinean arrangement had crumbled and Britain had once again become a divided island.

As a matter of course, Harryson dismissed the rich corpus of anti-Galfridian writings that had been produced by his countrymen as the ‘new fonde fables of our Scottishe Poetes, framed

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<sup>75</sup> Murray, *Complaynt of Scotlande*, p. 218.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> Polydore Vergil, *Anglica Historia*, ed. D. Hays (London, 1950); see also, Mason, ‘Anglo-British Imperialism’, pp. 172-3.

<sup>79</sup> See p. 125 above.

<sup>80</sup> Mason, ‘Anglo-British Imperialism’, p. 172; Mason, ‘Scotching the Brut’, pp. 69-70.

<sup>81</sup> Murray, *Complaynt of Scotlande*, p. 219.

vpon phantasia, without auctoritie precedent'.<sup>82</sup> After reciting from, and alluding to, John of Fordun's *Chronica Gentis Scotorum* (c. 1360) and Hector Boece's *Scotorum Historia* (1527),<sup>83</sup> Harryson subjected the traditional Scottish origins legend to a devastating historiographical critique. It is worth quoting his analysis at length:

THIS is a greate stomble at the thressholde of the dore: for it is plain by histories, that Lusitania, was not called Portyngale, almost by a M. yeres, after this supposed tyme. But for the better triall, let vs examine the circumstaunces of the persone, time and place. And for the persone, we will admit Gathelus to be the kynge of Athens sonne, although no suche name is found in the Greke histories, and wee will admitte Pharao to haue a doughter, thoughe no historie, Greke or Egipt, mencion of any suche. But when wee haue admitted the persons, al the doubt is, how we shall couple them in mariage. For accomptyng the tyme of Pharaos reigne, father of Scota, after y<sup>e</sup> Hebrues, then was she in the yere of the creacion of the worlde, twoo thousand foure hundred yeres; and by our histories, Gathelus was in the yere of the creacion of the world three thousand sixe hundred fortie and three: whiche is diferente, twelfe hundred yeres and more ... THIS beinge true, here were a very vnfitte mariage betwene these twoo persones, the Bride beinge elder then y<sup>e</sup> Bridegrome, by xii. C. and .xl. yeres. But some wiseman will saye, y<sup>e</sup> folke liued long in those daies, yet can thei not denye, but she was to olde a mayde for so yonge a bachelar, whereby I can worse beleue, that they had any children, she beinge of suche yeares. So that to make this mariage frame, either Gathelus was elder than his father, or she was yonger than her brother by a thousande yeares at the leaste. And syns the tyme of Abraham, men by course of nature, haue not commonlie lyued much aboute a .C. yeares. And this is ouer plaine to be excused, as a faulte of the writer, seing the whole course of our historie, dependeth vpon y<sup>e</sup> tyme. If she then coulde be doughter to none of the Pharaoes, no more coulde he be sonne to any of the kynges of Athens.<sup>84</sup>

Such tales, he said, were to be regarded 'more like Poetes fableis then syncere histories'.<sup>85</sup>

Yet Harryson went even further, writing that 'neither Pictes ne Scottes had any dominion in Britayn, vntil about the declinacion of the Romain Empire'.<sup>86</sup> He claimed (erroneously) that none of the ancient Roman authorities who had written about the island made any mention of

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<sup>82</sup> *Ibid.*, pp. 219-20.

<sup>83</sup> *Johannis de Fordun Chronica Gentis Scotorum*, ed. W. F. Skene, 2 vols (Edinburgh, 1871); H. Boece, *Scotorum historiae a prima gentis origine* (Paris, 1527).

<sup>84</sup> Murray, *Complaynt of Scotlande*, pp. 222-3.

<sup>85</sup> *Ibid.*, p. 223.

<sup>86</sup> *Ibid.*, p. 215.

such peoples or the great and glorious kings who were said to have ruled over them.<sup>87</sup> From this proposition, Harryson posited two possible conclusions: either the Scots and Picts were simply not in Britain during the Roman occupation; or, they were in Britain during the Roman occupation, but were so insignificant a people that ‘their name and power was nothyng suche, as we pretend’.<sup>88</sup> He appears to have favoured the former, remarking at one point that the Picts had arrived on the island in ‘aboute the yere of Christe .lxxii.’, and the Scots some time after that.<sup>89</sup>

While acknowledging that numerous invasions had resulted in considerable admixture among the island’s population, Harryson claimed that British blood still coursed through the veins of many a Scot and Englishman. Although he conceded that none of the contemporary inhabitants of Britain was a pure Briton, he argued that the majority could nevertheless claim descent from the Britons:

For though the Islande hath been often inuaded by sundry nacio<sup>ns</sup> as Romaynes, Pictes, Scottes, Saxons, Danes, and lastely by Normaynes: yet doth it not folowe, y<sup>t</sup> the whole bloud of Britaynes was so extincte thereby, but that there must great numb<sup>re</sup> remain in euery parte of the island, wherby it maie be said y<sup>t</sup> the race of the<sup>m</sup> is mixte, but not merely fordoen and extirped: for no countrey can bee so inuaded by straungers, y<sup>t</sup> the whole race of the olde inhabiters, can bee worne all out, but that the substaunce or more parte, shall still remain.<sup>90</sup>

As a point of comparison, he referred briefly to the inhabitants of modern Italy, who, he said, were the inheritors of Roman blood, despite the fact that the land which they occupied had been invaded by ‘Gothes, Vandales, Hommes, and other barbarous nacios’.<sup>91</sup> The purpose of this line of attack – which Mason has termed Harryson’s ‘novel racial argument in favour of union’<sup>92</sup> – was to persuade the contemporary inhabitants of Britain that they shared a common lineage that ought to be privileged over divergent ethnic identities, such as “Scottish” and “English”. Indeed,

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<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*, p. 216.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Mason, ‘Anglo-British Imperialism’, p. 172.

he implied that the British bloodline was – to borrow a phrase regularly invoked in relation to union – the greater which drew the lesser.

Yet, because he also sought to demonstrate that Scotland had always been subject to the overlordship of British and English kings, Harryson gave a full-throated endorsement of Henry VIII's pamphlet, *A declaration conteynyng the ivst causes and consyderations, of this present warre with the Scottis, wherein alsoo appereth the trewe & right, that the kinges most royall maiesty hath to the souerayntie of Scotlande*. Referring to this 'Englishe boke put in Printe in the yere of our Lorde 1542 at the beginninge of these warres',<sup>93</sup> the Scot pronounced the matter of English overlordship so well and concisely proved that he need not spend too much time on it. In fact, he urged the fair-minded among his readers to seek out the work and judge its arguments for themselves. To what extent Harryson's *Exhortacion* was influenced and shaped by Henry's *Declaration* is a question that has not received the attention it deserves. Yet there can be little doubt that the latter publication served as the model for Harryson's work and for the other Seymourian pamphlets. Indeed, just as the military and diplomatic strategies with which the lord protector pursued Anglo-Scottish union represented the continuation of Henrician policy, so the rhetorical campaign he sponsored to accompany them represented the continuation of Henrician political thought.

Harryson held up the Great Cause, that extraordinary inheritance trial which had taken place during the final decade of the thirteenth century, as authoritative proof of the historicity of English kings' overlordship of Scotland. Reproving his countrymen for denying the validity of Edward I's adjudication of the Scottish succession, he argued that the decision which the Plantagenet king had handed down was as just as any which had been delivered by the great lawgivers of antiquity:

Is it not manifest, that when question arose, vpon the title of the croune of Scotlande, betwene *Balliol*, *Brus*, and *Hastynges*, was it not decided by Edward

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<sup>93</sup> Murray, *Complaynt of Scotlande*, p. 225.

the fyrst, kinge of Englande, as competent iudge in that case? But here it is sayde agayn, that he was iudge in that case, not of righte, but by consente of the parties. Then loke well to the woordes of the compromise, which nameth him superior lord of Scotland. And this was done in Parliamente, by consente of the thre estates, which of likelyhoode could not be all compelled. In which cause, I am partely ashamed, of the impudent vanitie of our writers, whiche raile without reason agaynst the iudgement of Edward in that plea, as corrupte & false. This I saie, that if the Iudgement were to be geuen agayne, neither *Mynos*, *Lycurgus*, nor *Salomon*, (whose iudgementes in histories be so celebrate) dyd euer geue a more true, a more perfect or a more rightful sentence.<sup>94</sup>

And anticipating those who might appeal to the fact that more than two-and-a-half centuries had passed since certain claimants to the Scottish throne had acknowledged Edward as their overlord, Harryson responded with the famed legal maxim, *nullum tempus occurrit regi* (no time runs against the king). ‘For once admittinge hym superiour kynge,’ he wrote, ‘no prescripcion wil serue agaynst hym’.<sup>95</sup> A more confident assertion of the succession claim can hardly be imagined.

In the same vein, Harryson claimed that the Scottish church and its clergy had, during the time of Lucius, ‘the firste christen Kynge of the Britaynes’,<sup>96</sup> recognised the ecclesiastical overlordship of the archbishop of York. Here the Scot built on a line of argument that had been tentatively advanced in Henry’s *Declaration*:

[T]his godly King, ordeined as many Bishoppes of Christes religion, & thre Archebishoppes, placinge the first at London, the second at Yourke, and the thirde in the cite of Legions, whiche at this day is called Chester. To the prouince of Yourke, there belonged all the northe parte of Britayne, now called Scotlande with the orcadis. And notwithstanding all the mutatio<sup>ns</sup>, happening in processe of yeres, yet al the Bishops of those countreys, came vnto Yorke to be con<sup>secrated</sup> of y<sup>e</sup> Archbisshop there, and promised obedie<sup>n</sup>ce vnto him, as to their Metropolitan & hed bishop ... If my cou<sup>nt</sup>reymen beleue me not in thys point, let them beleue the Bulles of Paschall, Calixte, Honorius, Innocentius, Eugenius and Adrianus, Bishoppes of Rome, written to the Bishops of Scotlande.<sup>97</sup>

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<sup>94</sup> *Ibid.*, p. 226.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, p. 220.

<sup>97</sup> *Ibid.*

This, he declared, proved that England and Scotland had once been united not merely in one empire, but also in one religion. Although Harryson did not himself carry this argument to its logical conclusion, it contained all the necessary elements to formulate a historico-legal justification for translating Henrician caesaropapism to Scotland. As Mason has noted, this mode of thinking opened up the possibility – if not the probability – that Scotland could be ‘incorporated within the orbit of the closed imperial crown given statutory recognition in the Act in Restraint of Appeals, and Scotsmen too could participate in the imperial and Protestant future which the break with Rome inaugurated’.<sup>98</sup>

All of this was intended to demonstrate that the present king of England had good title to the realm of Scotland, even if he sought to secure his inheritance through the sacrament of matrimony rather than by a war of conquest. Harryson made this point unequivocally in his dedication to Somerset, where he flattered the lord protector by telling him that he would prove himself an even greater governor of England if he could see to it that young Edward was, by virtue of wedlock, ‘restaured to the whole isle of Britayn, where unto as he is iustely entitled’.<sup>99</sup> This implied that even if the English king were not permitted to marry Mary, his title to the northern realm would remain intact. As will be seen in the next two sections, the inalienability of English overlordship of Scotland was a theme that Seymourian pamphleteers would return to again and again. Yet Harryson attempted to assuage his readers’ fears on this point, claiming that there was presently a unique opportunity to transform English “feudal” superiority, which naturally demanded inferiority and servitude of Scotland, into Anglo-Scottish union, which would instead create equality and fellowship between the two kingdoms.<sup>100</sup>

However, pursuant to a “carrot and stick” approach, Harryson told his fellow Scots that if they were stubbornly to refuse so magnanimous an offer as union with England, the English,

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<sup>98</sup> Mason, ‘Anglo-British Imperialism’, p. 173.

<sup>99</sup> Murray, *Complaynt of Scotlande*, p. 210.

<sup>100</sup> *Ibid.*, pp. 225, 227, 234.

as the instruments of divine justice (again, the providentialist theme), would let slip the dogs of war. For, he warned, ‘the ‘lord protector is comyng towardes you, with a puissauzt & invincible army, hauing on his side God, & the iust cause’.<sup>101</sup> Harryson, therefore, urged his countrymen to cast aside the armour and weapons with which they had been all too quick to equip themselves, and humbly submit to Somerset, who would receive them with the warm embrace of a loving mother:

But, if you shal despice my counsaile & abuse his humanitie & good offers, how gentle & clement soeuer he be of his awn nature, thinke you for sure, y<sup>e</sup> God who wil not suffre infidelitie, tescape long in chastised, wil stirre vp hys corage to do vengeance vpon you for your insolencie and faith broke: y<sup>e</sup> which I writ, not without sorow & teares: Praising God for his pitie & goodnesse, to geue you his grace & better mynde, so as you may forsake the errors y<sup>e</sup> now lead you hedlong, and maie folow these good & holsome counsailes, of your most natural, and most tendre louyng countreiman.<sup>102</sup>

## 5.2 The Lord Protector’s *Epistle or Exhortacion to Vnitie & Peace*

After a decisive victory at the Battle of Pinkie (1547), the English had seized much of southern Scotland. Having keenly observed, during the reign of Henry VIII, how swiftly hard-won successes had been overturned once the invading armies had packed up and marched home, Somerset settled on a policy of continuing occupation in Scotland. He erected an elaborate system of military strongholds along the Anglo-Scottish border, which served not only as a means of preserving what had been conquered, but also as a series of launching pads for further incursions into enemy territory.<sup>103</sup> As Bush has observed in his seminal study on the topic, ‘Somerset planned, then, not to crush Scotland periodically with an impressive and expensive army in the traditional manner, but to hold Scotland in permanent subjection, if necessary, by

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<sup>101</sup> *Ibid.*, p. 235.

<sup>102</sup> *Ibid.*, pp. 235-6.

<sup>103</sup> Bush, *Policy of Protector Somerset*, pp. 13-23; Merriman, *Rough Wooings*, pp. 232-64.



means of garrisons'.<sup>104</sup> Through this innovative policy, the lord protector forged the creation of an English "pale", or – as it was known in London – the 'King's Lordship of Scotland'.<sup>105</sup>

On 5 February 1548, a second pro-Anglo-Scottish union tract was published. Ostensibly authored by Somerset himself, *An Epistle or exhortacion, to vnitie & peace, sent from the Lorde Protector, & others the kynges moste honorable counsaill of England: To the Nobilitie, Gentlemen, and Commons, and al others the inhabitauntes of the Realme of Scotlande* was considerably shorter in length and sharper in tone than Harryson's *Exhortacion*.<sup>106</sup> Early on in the work, the lord protector suggested that Scotland's leaders had conspired to suppress previous English publications in order to keep their people in the dark.<sup>107</sup> It was surely for this reason that he urged his readers to 'let neither your Gouvernour, nor your Kirkmen, nor those who so often hath falsefied their faithe & promise, and by treacherie and falshed, be accustomed to prolong the tyme, fede you further with faire wordes'.<sup>108</sup> His, therefore, was another attempt to speak directly to the Scottish populace. Notably, the *Epistle* was published both in English and in Latin,<sup>109</sup> and there is evidence to suggest that it was the most widely circulated of the Seymourian pamphlets.<sup>110</sup> The work also signalled a shift of intellectual focus. Compared to Harryson's *Exhortacion*, the lord protector's tract placed rather little emphasis on historico-legal argument. Although the succession claim did explicitly animate important portions of the *Epistle* – for example, when the document called on the Scots to 'take the indifferent old name of Britaynes again'<sup>111</sup> – the text, for the most part, downplayed its reliance on the British History. Presumably

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<sup>104</sup> Bush, *Policy of Protector Somerset*, p. 12.

<sup>105</sup> Merriman, *Rough Wooings*, p. 258.

<sup>106</sup> For Somerset's *Epistle*, see Murray, *Complaynt of Scotlande*, pp. 237-46.

<sup>107</sup> *Ibid.*, p. 239.

<sup>108</sup> *Ibid.*, pp. 244-5.

<sup>109</sup> The Latin version was published as *Epistola exhortatoria ad pacem, missa ab illustrissimo Principe, Domino Protectore Angliae, ac caeteris Regiae Maiestatis consiliarijs, ad nobilitatem ac plebem, uniuersumq populum Regni Scotiae*.

<sup>110</sup> See Mason, 'Anglo-British Imperialism', p. 174.

<sup>111</sup> Murray, *Complaynt of Scotlande*, p. 241 (emphasis added).

this was a consequence of the Seymourian pamphleteers having come to appreciate the Anglocentric connotations which the Galfridian tradition had for many a Scot.

Somerset began his tract by urging his Scottish readers to recognise the position of strategic disadvantage in which they presently found themselves. He asked rhetorically, 'be we not in y<sup>e</sup> bowels now of the realme? Haue we not a greate parte thereof ... in subieccio<sup>n</sup>?'<sup>112</sup> And yet, he observed, it was not the Scots but the English who were offering to reach a diplomatic solution:

[B]y all reasone and ordre of necessite, it should bee rather more conuenient for you to seke and require moderate agrementes of vs (whom god hath hetherto, accordyng vnto our moste iuste, true, and Godly meanynges and intentes, prospered and set forwarde, with youre affliction and miserie) then that we, beyng superiours in the feld, Masters of a great part of your realme, should seke vpon you.<sup>113</sup>

Would you not rather have us as brothers than enemies, he continued, as countrymen than conquerors?

Somerset argued that union was the only means by which the 'destruccio<sup>n</sup> of the realme of Scotland' could be avoided.<sup>114</sup> Reminding his readers of the long and bloody history that Scotland and England shared, and that the northern kingdom had often fared far worse than the southern in the insular wars of the past, the lord protector noted that the two realms were naturally set apart from the rest of the world and were bound together by a common language, culture, and geography:

WHO that hath red thistories of tyme paste, and doth marke and note the greate battailes, fought betwixte Englande and Scotland, thincursions, roades, and spoyles, whiche hath been doen on bothe the parties: The realme of Scotlande fiew tymes wonne by one kyng of Englande: The Scottishe kynges, some taken prisoners, some slain in battaill, some for very sorowe and discomforte vpon losse, diyng and departing the world: and shall perceiue again, that of all nacions in the worlde, that nacion onely beside England, speaketh the same language: and

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<sup>112</sup> *Ibid.*, p. 243.

<sup>113</sup> *Ibid.*, p. 238.

<sup>114</sup> *Ibid.*, p. 239.

as you and wee bee annexed and ioyned in one Islande, so no people so like in maner, forme, language, and all condicions as we are.<sup>115</sup>

Accordingly, he argued that the ‘twoo realmes should ioyne in mariage, and by a godly Sacrament, make a Godly, perpetuall, and moste frendly vnitie and concord’.<sup>116</sup>

Like Harryson before him, Somerset framed the prospect of Anglo-Scottish union in providentialist terms. He claimed that marriage between Edward and Mary was a ‘moste Godly purpose & enterprise’.<sup>117</sup> Not in eight hundred years, he said, had the respective thrones of England and Scotland been occupied by children of the opposite sex.<sup>118</sup> The lord protector proclaimed it a great marvel and miracle. Implicitly rejecting chance and fortune as pagan ideas,<sup>119</sup> he asked, ‘what can any wise or any Christian manne, that thynketh the worlde to be gouerned by Gods prouidence, and not by fortune, thinke otherwise, but that it was Gods pleasure it should bee so, that these twoo realmes should ioyne in mariage?’<sup>120</sup> Somerset speculated as to what God might say if he deigned to speak directly to the Scots at this moment in time:

[M]aie he not saie: I of my infinite mercie & loue to our nacioz, had prouided a Prince to the one, and Princesse to the other, to bee ioyned in my holy Lawes, and by the Lawe of nature, and the worlde, to haue made an vnitie, concorde, and peace, in the whole Isle of bothe the realmes: you refused it, you loued better dissencion then vnitie, discorde then agremente, warre then peace, hatered then Loue and Charitie.<sup>121</sup>

Who are you, he asked his readers, to defy the will of God?

As Harryson had done, Somerset chastised the Scots for having abrogated the Treaties of Greenwich, by which ‘the daughter of Scotland, was ... promised to the sonne and heire of Englande’.<sup>122</sup> Merriman termed this line of attack the “injured suitor” argument.<sup>123</sup> Recapitulating

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<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*, p. 240.

<sup>117</sup> *Ibid.*, p. 245.

<sup>118</sup> *Ibid.*, p. 240.

<sup>119</sup> See generally, A. E. Ward, ‘Fortune Laughs and Proudly Hovers: Fortune and Providence in the Tudor Tradition’, *The Yearbook of English Studies* 39 (2009), 39-57.

<sup>120</sup> Murray, *Complaynt of Scotlande*, p. 240.

<sup>121</sup> *Ibid.*, pp. 240-1.

<sup>122</sup> *Ibid.*, p. 242.

<sup>123</sup> Merriman, *Rough Wooings*, p. 268.

how marriage negotiations between Edward and Mary had broken down earlier in the decade, the lord protector argued that the Scots – and particularly the leaders of Scotland – had only themselves to blame for all the bloodshed that had ensued:

Who is the occasion of the warre? Who maketh the battailes, the brennyng of houses, and the deuastacion whiche shall folowe? CAN it be demed, but that we haue the great seale of Scotlande, graunted by the Parliament of Scotlande, for the mariage whiche should bee made, with assuraunces and pledges, vntil the performau~~nce~~? And this in the tyme that the late kyng of moste famous memorie, our souereigne Lorde kyng Henry the eight did reigne and in the tyme of the same your Gouvernor, who now is the erle of Arreigne, who then beyng a chief dooer and laborer therein, for the high & inestimable benefite of that realme. So sone as he was by the late Cardinall of S. Andrews and others, with certain vain feares & hopes, and gredines of dignitie peruerted, reuolted from his first agreement, and put al the realme to the losse of suche holdes and fortresses, as be now taken from you.<sup>124</sup>

Somerset also made the historically dubious claim that James V's death had been the 'iust iudgement of God' for these broken promises.<sup>125</sup> Leaving aside the possibility of divine retribution, the assertion is chronologically problematic. The king had died at Falkland Palace on 14 December 1542, when Mary was but six days old. No one had yet had time to entertain the prospect of Anglo-Scottish union, much less enter formal negotiations to bring it about. Moreover, with James a committed Catholic and a mere thirty years of age at the time of his death, it is scarcely conceivable that such negotiations would have taken place at all had the crown of Scotland not fallen to an infant girl. In other words, it was the king's demise that had led to the Treaties of Greenwich and not the other way around.

Somerset warned that even if Mary were to marry someone other than Edward, the English king's title to overlordship of Scotland would remain intact. No doubt conscious that many leading Scots were vehemently opposed to Anglo-Scottish union, and intending to find their young queen a husband either at home or on the continent, the lord protector appealed to

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<sup>124</sup> Murray, *Complaynt of Scotlande*, p. 241.

<sup>125</sup> *Ibid.*, p. 240.

the succession claim.<sup>126</sup> Whether Mary were matched with a Scottish nobleman or a European prince, claimed Somerset, the superior lordship of Scotland was a right vested indefeasibly in the English crown:

If you mary her within the realme, that *ca*not extynguish the title which we haue to the Croune of Scotlande: and what dissencion, enuie, grudge, and malice, that shall brede emonges you, it is easy to perceiue. You will mary her out of the Realme: our title remayneth, you be subiectes to a forein Prince of other Countrey, another language: and vs ye haue youre enemies, euen at your elbowe, your succours farre of from you.<sup>127</sup>

It is curious, then, that several historians have maintained that the *Epistle* was entirely devoid of the traditional English pretensions to Scotland. According to James A. H. Murray, Somerset ‘carefully avoided any allusion to the old English claims of supremacy’.<sup>128</sup> Similarly, Merriman – whose scholarship on the Seymourian pamphlets is rivalled only by that of Mason – asserted that ‘nothing was made of the claim to superiority’ in Somerset’s tract.<sup>129</sup> These judgments are demonstrably incorrect. And quite apart from his explicit assertions of the English claim to overlordship of Scotland, the lord protector frequently used hierarchical metaphors to imply the same: regard us, he said at one point, as ‘the father to the sonne, or thelder brother ... to the younger brother ... [or] as the louyng Phisicion ... to the mistrustfull and ignorauzt pacient’.<sup>130</sup> While Somerset resisted the temptation to crudely adumbrate the historico-legal case for English superiority *à la* Henry VIII’s *Declaration* or Harryson’s *Exhortacion*, it is clear that the age-old claim to Scotland – underwritten by the barely concealed threat of conquest – hung ominously over his entire *Epistle*.

Somerset cautioned the Scots against relying on the soldiery of a foreign prince (such as the king of France) to keep England at bay, urging them to consider what would become of their

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<sup>126</sup> See generally, P. N. Riesenber, *Inalienability of Sovereignty in Medieval Political Thought* (New York, 1956); E. H. Kantorowicz, *The King’s Two Bodies: A Study in Mediaeval Political Theology* (New Jersey, 1970), pp. 347-58.

<sup>127</sup> Murray, *Complaynt of Scotlande*, pp. 242-3.

<sup>128</sup> *Ibid.*, p. xv.

<sup>129</sup> Merriman, *Rough Wooings*, p. 274.

<sup>130</sup> Murray, *Complaynt of Scotlande*, pp. 238-9.

realm once they were at the mercy of one army within and another without. Alluding to the Galfridian tale of how the ancient Britons had called upon the Saxons for help only to be supplanted by them,<sup>131</sup> the lord protector warned that conquerors often come in the guise of liberators.<sup>132</sup> He suggested, however, that if Scotland and England were to unite under a single banner, their inhabitants would be capable of defending against all enemies:

If we twoo beyng made one by amitie, bee moste hable to defende vs against all nacions: and hauyng the sea for wall, the mutuall loue for garrison, and God for defence, should make so noble and wel agreyng Monarchie, that neither in peace wee maie bee ashamed, nor in warre affraied, of any worldely or forrein power.<sup>133</sup>

Is it not better, then, asked Somerset, to end all sorrows and battles through so honourable a peace as marriage?

If Harryson's *Exhortacion* had appeared to call for the creation of a unitary state, Somerset's *Epistle* expressed a clear preference for composite monarchy. While Harryson had spoken of his desire to see the island restored 'to the firste estate, to one Monarchy',<sup>134</sup> the lord protector's proposal implicitly affirmed Brutus's legendary partition. In other words, Somerset's British solution consisted of two monarchies – one north, one south – ruled by a common crowned head (*à la* the Anglo-Scottish union of 1603): 'for somuche as twoo successions cannot concurre and fal into one, by no maner of other meanes, then by mariage, whereby one bloude, one lignage and parentage, is made of twoo, and an indefecible right geuen of bothe to one, without the destruccion and abolishing of either'.<sup>135</sup> It was for this reason that he told his Scottish readers that we 'seke not to take from you youre lawes nor customes'.<sup>136</sup> This, of course, accorded with the terms of the Treaties of Greenwich, which had stipulated that 'Scotland shall continue

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<sup>131</sup> See *The Historia Regum Britannie of Geoffrey of Monmouth I: Bern, Burgerbibliothek, MS. 568*, ed. N. Wright (Cambridge, 1985), p. 129 ff.

<sup>132</sup> Murray, *Complaynt of Scotlaunde*, pp. 243-4.

<sup>133</sup> *Ibid.*, p. 245.

<sup>134</sup> *Ibid.*, p. 230.

<sup>135</sup> *Ibid.*, p. 239.

<sup>136</sup> *Ibid.*, p. 242.

to be called the kingdom of Scotland and retain its ancient laws and liberties'.<sup>137</sup> That Somerset felt the need to include these assurances in his *Epistle* would suggest that he well recognised the shortcomings of Harryson's unitary-state model. To assuage Scottish fears that Anglo-Scottish union would be conquest by another name, the lord protector employed the concept of composite monarchy to articulate a vision of ongoing Scottish independence. As J. H. Elliott has demonstrated, composite monarchies in the early modern period habitually took one of two forms: accessory, whereby one kingdom (the "lesser") was incorporated into another kingdom (the "greater");<sup>138</sup> and *aeque principaliter*, whereby both 'kingdoms continued after their union to be treated as distinct entities, preserving their own laws, *fueros* and privileges'.<sup>139</sup> What Somerset suggested was certainly of the *aeque principaliter* variety. And in an attempt to persuade his readers that union did not necessitate incorporation, he pointed to how both the king of England and the Holy Roman Emperor governed their respective dominions pursuant to diverse constitutional systems:

IN the realme of England, diuerse lawes and customes be, accordyng to the auncient vsage of the parties thereof. And likewise in Fraunce, Normandy, and Gascoigne, hath sundery kynd of ordres: Hath al the realmes and dominions whiche the Emperor now hath, one and one sorte of lawes? These vain feares and phantasies, of expulsion of your nacion, of chaungyng the lawes, of makyng a conquest, bee driuen into your heddes, of those who in deede, had rather you were all conquered, spoyled, & slain.<sup>140</sup>

'We intend not to disherit your Quene,' he said, 'but to make her heires inheritors also to England'.<sup>141</sup>

And yet, following Harryson's *Exhortacion*, Somerset urged the Scots to 'take up the indifferent old name of Britaynes again'.<sup>142</sup> That the lord protector included the adjective

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<sup>137</sup> See n. 34 above.

<sup>138</sup> Elliot, 'Composite Monarchies', p. 52.

<sup>139</sup> *Ibid.*, pp. 52-3.

<sup>140</sup> Murray, *Complaynt of Scotlande*, p. 242.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, p. 241.

“indifferent” reveals an attempt to dissuade his readers that the British terminology carried with it implications of English hegemony. But this was far from his only attempt to assuage Scottish concerns about Anglocentric language. At one point in his *Epistle*, in what was a subtle but significant shift in English rhetoric, Somerset referred to the ‘Islande of greate Britayn’.<sup>143</sup> Harryson’s *Exhortacion* had referred copiously to the empire and kingdom of “Britain”, but by 1548, “Great Britain” had become the designation of choice among the Seymourian pamphleteers. The terminological evolution was very much a conscious one, as Merriman demonstrated through his analysis of an unpublished tract entitled *The Godly and Golden Book*.<sup>144</sup> The author of that work tellingly crossed out the term ‘bryttain’ before replacing it with the ostensibly more inclusive ‘Grait bryttain’.<sup>145</sup> It is notable that this new name for the island was strikingly similar to the one that the Scottish theologian, John Mair, had assigned to it several decades earlier in his *Britannia Major*.<sup>146</sup> Yet it is not altogether clear how Somerset intended to reconcile this denomination with the tenets of union *aeque principaliter*. While the adoption of a British terminology was not *ipso facto* antithetical to the type of composite monarchy proposed by the lord protector, it did pose some conceptual problems. If Scotland and England were to remain as two independent realms following the marriage of Edward and Mary, would pan-insular appellations such as “Great Britain” and “Britons” have any juristic significance? The answer is not readily apparent, but correspondence from Odet de Selve, a French diplomat, suggested that they might. Selve wrote that Anglo-Scottish union would see the inhabitants of the island discard the names “Scots” and “English”, as two realms were encompassed within one

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<sup>143</sup> *Ibid.*, p. 239.

<sup>144</sup> See Merriman, *Rough Wooings*, p. 284, fig. 11.5; for the text of the tract, see *Calendar of the State Papers Relating to Scotland and Mary, Queen of Scots, 1547-1603*, ed. J. Bain, 13 vols (Edinburgh, 1898), i, 140-5.

<sup>145</sup> Merriman, *Rough Wooings*, p. 284, fig. 11.5.

<sup>146</sup> See generally, Constable, *History of Greater Britain*.



empire called “Great Britain”, which would be governed by a single ruler entitled “emperor of Great Britain”.<sup>147</sup> Again, the example of the Holy Roman Empire appears instructive here.

Drawing his work to a close, Somerset encouraged those Scots who supported the prospect of Anglo-Scottish union to present themselves to his army, promising that they would be received in friendship and defended from enemies. Having come into possession of much of southern Scotland following the Battle of Pinkie several months earlier, the lord protector had an effective means of shielding “assured Scots” from their anti-union countrymen.<sup>148</sup> Therefore, quite apart from any offensive advantage which the so-called ‘King’s Lordship of Scotland’ conferred, the occupied area enabled Somerset to offer safe haven to those northerners who were sympathetic to the English cause.<sup>149</sup>

Who so willethe the mariage to goo forwarde, who myndeth the peace and tranquillitie of both the Realmes, who willethe no conquest to bee had, but amitie and loue to bee established betwixte vs, wee refuse no manne: let hym bryng his name, and his pledge of good seruice in this querell, he shal not onely be receiued to y<sup>e</sup> amitie, but shal haue sufficient defence agaynste aduersaries.<sup>150</sup>

The lord protector claimed that neither low birth nor high office would prevent any Scot supportive of union from being received.<sup>151</sup>

Concluding his tract, Somerset declared that the realms of Scotland and England would soon be united whether ‘by force & superioritie whiche is conquest, or by equalitie & loue, whiche is parentage and mariyng’.<sup>152</sup> England would, if necessary, ‘pursue the battaill chastice the wicked and malicious, by the angrie Angelles of GOD, the Fire and Sworde’.<sup>153</sup> And if you were to drive

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<sup>147</sup> ‘*Que en l’assemblée susdicte des estatz d’Escosse sera consenty et accordé que, en faisant ledict mariage dans lesdicts troys ans et lors que ladicte royne d’Escosse sera menée et conduite en Angleterre, sera fait suppression et extinction tant du nom d’Escosse et d’escossoys que du nom d’Angleterre et d’angloys, et seront les deux peuples et les deux royaumes unys et reduictz en ung empire quy sera dict et nomme tous-jours l’empire de la Grande Bretaigne et le prince dominateur d’icelluy empereur de la Grande Bretaigne: Correspondance Politique de Odet de Selve, Ambassadeur de France en Angleterre (1546-1549), ed. P. G. Lefèvre-Pontalis (Paris, 1888), p. 269.*

<sup>148</sup> See generally, Merriman, ‘Assured Scots’.

<sup>149</sup> See generally, Merriman, *Rough Wooings*, pp. 232-64.

<sup>150</sup> Murray, *Complaynt of Scotlande*, p. 242.

<sup>151</sup> *Ibid.*, p. 245.

<sup>152</sup> *Ibid.*, p. 244.

<sup>153</sup> *Ibid.*, p. 246.

us to conquer, Somerset menacingly asked his Scottish readership, who then would be guilty of the bloodshed?

### 5.3 Nicholas Bodruga's *Epitome of the King's Title to Scotland*

The third and final Seymourian pamphlet – a text which has attracted comparatively little historiographical attention – was likely published in closing months of 1548, by which time the Scots had formally agreed to betroth Mary to Henry II's son and heir (*dauphin*) in return for French military assistance against Somerset's army.<sup>154</sup> Entitled *An Epitome of the title that the Kynges Maiestie of Englande, hath to the souereigntie of Scotlande, continued upon the auncient writers of both nacions, from the beginnyng*,<sup>155</sup> the tract was authored by the English parliamentarian, Nicholas Adams, under the *nom de plume* of Nicholas Bodruga. Armitage has (inexplicably) called the *Epitome* the 'most elaborate exposition of the Tudor claim to the Scots throne',<sup>156</sup> but with the exception of a few memorable expressions – 'the *mpire* of greate Briteigne',<sup>157</sup> for example – it was a short, simplistic, and highly derivative work. In form it resembled the nuanced pan-insular vision of Harryson's *Exhortacion*, in substance it recalled the naked Anglocentricity of Henry's *Declaration*. The *Epitome* also lacked the poetic character of previous Seymourian pamphlets; the author was not merely being modest when he declared in his preface that 'it was not my mynde to trifle with the fine flowers of Rethorike'.<sup>158</sup> And in terms of its ability to persuade sceptical Scots of the merits of Anglo-Scottish union, it paled even in comparison to Somerset's *Epistle*. Indeed, there is a sense in which Bodruga's *Epitome* simply abandoned any hope of using language to convert the northerners to the English cause. So tone-

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<sup>154</sup> See generally, Merriman, *Rough Wooings*, pp. 292-348

<sup>155</sup> For Bodruga's *Epitome*, see Murray, *Complaynt of Scotlande*, pp. 247-56.

<sup>156</sup> Armitage, *Ideological Origins*, p. 39.

<sup>157</sup> Murray, *Complaynt of Scotlande*, p. 250.

<sup>158</sup> *Ibid.*, p. 249.

deaf were aspects of the tract that some historians have presumed (erroneously) that it was written with a wholly English audience in mind.<sup>159</sup> Spoken in the tired and embittered voice of a suitor scorned, the *Epitome* carried with it an admission that the lord protector's ambitious war of words would very likely end in failure.

Although Bodrugan dedicated his tract to that 'mooste noble Prince', Edward VI,<sup>160</sup> his most flattering words were reserved for Somerset. Invoking the succession claim, he dubiously asserted that the lord protector was a descendant of an ancient and famous Briton by the name of Eldulph de Samour:

So hath his Godhed signified no lesse fauour to your highnes, vouchesauyng to nobilitate thesame, in the persone of your maiestie, conserued vnto this youre tyme the noble house of Seymour, whose auncester Eldulph de Samour beeyng then Erl of Gloucester, many hundredth yeres a gone, in the tyme of kynge Aurelie Ambrose slewe Hengest the Saxon capitall enemy of the Briton nacion: by whiche noble seruice like as this Realme was deliuered from the tyranzy of Saxons, and restored the whole Empire & name of greate Briteigne; so we youre obedient and louyng subiectes truste, that the right noble duke of Somerset, and the lorde Seimour of Sudeley, your graces high Admirall, your Maiesties dere vnckles, shall, in the seruice of youre highnes, for the like restitution of the name and Empire of greate Briteigne vnto your highnes, shew themselves the worthie successors of such an auncester.<sup>161</sup>

Bodrugan's attempt to assign so illustrious a lineage to Somerset served a distinctly providentialist function, for it sought to demonstrate that God himself had tasked the lord protector — just as he had once tasked his ancestor — with resurrecting the empire of the Britons. Fittingly, the author — whose sycophantic phrases were perhaps intended more for the eyes and ears of the king's regent than for those of the king — professed his belief in Somerset's ability to fulfil his dynastic destiny.

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<sup>159</sup> See Merriman, *Rough Wooings*, p. 288.

<sup>160</sup> Murray, *Complaynt of Scotlande*, p. 248.

<sup>161</sup> *Ibid.*, pp. 248-9.

Bodrugan's stated purpose was to elaborate Edward's right to superior lordship of Scotland. Accordingly, he sub-titled his work 'The Kynge's Title to Scotlande'.<sup>162</sup> Merriman characterised this shift in rhetoric as a 'return to overlordship',<sup>163</sup> but in truth the age-old English claim to the northern realm had animated all previous Seymourian pamphlets in one form or another; the *Epitome* was simply cruder than what had preceded it:

Although I knowe right well (mooste noble Prince) that there be diuerse whiche bothe by their couzsaill and wrytyng, do to their vttermoste powers swade the vnion of Scotlande vnto youre highnes, by the mariage of their Quene, a meane thereunto bothe honourable and Godly: Yet neuertheles, the same study and funder declaracion of your maiesties title to the superioritie thereof semeth vnto me to bee so indifferently pertainyng to all menne, whiche doo professe obedience to youre highnes, that no mannes studie ought to be taken as vain or vnthankfull, whiche humbly bryngeth furthe to that common vse, whatsoever iudgement, profite, or knowledge, he supposeth to haue founde, either by studie, or inquisicion.<sup>164</sup>

Imbued with connotations of English hegemony and, perhaps, Henrician imperial kingship, Bodrugan's tract declared that the Scots presently 'fight against the mother of their awne nacio<sup>n</sup>: I mean this realme now called Engla<sup>n</sup>de the onely supreme seat of the m<sup>p</sup>ire of greate Briteigne'.<sup>165</sup> Gone were the appeals to brotherhood and the offers of friendship.

It is profitable, at this juncture, to address Dale Hoak's revisionist contention that Bodrugan's *Epitome* was targeted primarily at a French audience, and that the tract was intended to contribute to a diplomatic offensive which sought to persuade Henry II's court that overlordship of Scotland was a right vested indefeasibly in the English crown.<sup>166</sup> The same scholar has argued that 'with the French in Scotland, mere assertions were no longer sufficient; it would be necessary to "prove" the validity of Edward VI's title to the Scottish crown, and to present

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<sup>162</sup> *Ibid.*, p. 250.

<sup>163</sup> Merriman, *Rough Wooings*, p. 287.

<sup>164</sup> Murray, *Complaynt of Scotlande*, p. 248.

<sup>165</sup> *Ibid.*, p. 250.

<sup>166</sup> See generally, D. Hoak, 'Sir William Cecil, Sir Thomas Smith, and the Monarchical Republic of Tudor England', in *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson*, ed. J. F. McDiarmid (London and New York, 2016), pp. 37-54.

such proof to the King of France and a sceptical international audience'.<sup>167</sup> In support of his argument, Hoak has observed how certain parts of the *Epitome* appeared to refer to arguments that had previously been articulated. At various points, Bodrugan wrote, 'This haue I declared & proued vnto you',<sup>168</sup> 'I haue also proued vnto you',<sup>169</sup> and 'I haue likewise proued vnto you' without actually having done so in his tract.<sup>170</sup> For example, he claimed at one point to have proved 'howe the generall iurisdiccion ecclesiastical of Scotland many hundreth yeres after y<sup>e</sup> beginnyng was subiected to y<sup>e</sup> dioses and rule of tharchebishoppe of Yorke in Englande',<sup>171</sup> even though this was the very first time that he had broached the topic and the sum total of all that he had to say about it. Evidently, the English parliamentarian was alluding to something extraneous to the *Epitome* itself. But to what exactly? Hoak has suggested that these passages referred to various forms of historico-legal evidence that the English presented to the French in two diplomatic meetings that took place in London and Paris in December 1548 and January 1549, respectively.<sup>172</sup> Yet, by Hoak's own (quite plausible) judgment, Bodrugan's work was published in October or November 1548.<sup>173</sup> How, then, could the tract have referred to meetings that had not yet occurred – and, from the vantage point of October or November 1548, might never occur at all – in the past tense? The contention is patently unsound. The *Epitome* was undoubtedly intended for a Scottish readership, as the imaginary speech from Britannia to the Scots – detailed below – makes abundantly clear. Moreover, that Hoak has failed to recognise that the extraneous arguments to which Bodrugan referred were in fact Harryson's betrays an unfamiliarity with the Scotsman's *Exhortacion*, a document which the legislator demonstrably took as his model. After all, the *Epitome* was an epitome – that is, a recapitulation of what had already been said in

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<sup>167</sup> *Ibid.*, p. 48.

<sup>168</sup> Murray, *Complaynt of Scotlande*, p. 251.

<sup>169</sup> *Ibid.*, p. 252.

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> Hoak, 'Tudor England', pp. 49-50.

<sup>173</sup> *Ibid.*, p. 48.

previous Seymourian pamphlets. None of this, however, should be taken to mean that English did not wage a parallel war of words against the French in order to legitimate their claim to Scotland.<sup>174</sup>

As Harryson had done before him, Bodrugan pledged to construct a narrative from a diverse historiography. Yet, to an even greater extent than the author of the *Exhortacion*, his account was firmly grounded in the British History. He recapitulated the story of Brutus, complete with the Edwardian Emendation, with only minor variations:

THE auncient writers of the Histories of this whole Isle of greate Briteigne, confesse that after our firste progenitor Brutus, the yere from the beginnyng of the worlde iiii. M. xxvii. had arriued in this Isle, and after his awne name had called it Briteigne, he had issue thre sonnes, Locryne, Albanactus, and Camber, betwene whom, after his deathe thei agreed in this particio*n*, that Locryne had this first and worthiest part, whiche now is called England, Albanactus the second part, now by the Scottes possessed, by hym called Albania, whiche their awne writers confesse: and to Camber chau*nc*ed the third part now called Wales: the two better partes to be holden of the firste, as of the worthiest of the bloud, accordyng to the Troyan lawe, from whence thei were discended, whiche superioritie also by their different bearyng of the Armes of the father, leuyng the entier cote in the eldest brother, is suffici*en*tly testified vntill this daie.<sup>175</sup>

He then continued to adumbrate the traditional Galfridian chronology of the island before pausing suddenly to pose a rhetorical question: ‘what nede I to examyne the intermission of our claime by any length of tyme, since this superioritte passed the consentes of all Scotlande by their solempne acte of Parliament’?<sup>176</sup>

In another example of how the *Epitome* imitated Harryson’s *Exhortacion*, Bodrugan included an admonishment from Great Britain personified, ‘the common parent to vs all’.<sup>177</sup> Yet while Harryson’s Britannia had chastised all of the island’s inhabitants more or less equally,

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<sup>174</sup> See Merriman, *Rough Wooings*, pp. 287-8.

<sup>175</sup> Murray, *Complaynt of Scotlande*, p. 250.

<sup>176</sup> *Ibid.*, p. 251.

<sup>177</sup> *Ibid.*, p. 255.

Bodrugan's Britannia, coloured by the Anglocentric prejudices of her author, lambasted only the Scots:

Ah Scottishemen, how long shall I beare your vnaturall cruelties, howe long will ye remaine rebellious children, when shal there be end of your malice? Alas what wickednes is it among christen men, and those the neighbors in one kyngdome, that the greater part cannot be contented with the best thyng, but by the light argument of euil leaue the way that leadeth to perpetuall tranquillitie ... who of you by reason or otherwise is able to desist my persuasion of this vnion, except he will say that that the worst warre is better than the best peace, malice meter for Christian men then loue, and generally al discorde better then concorde, whiche thynges how different they be, God knoweth, and I perfutely fele. Can England offre you more reasonable, more honorable, more godly condicions of peace then she doeth: except she had that from God which maketh all his Godhedde called perfeccion: can menne offre more then your lawfull libertie, peace, tranquillitie and amitie: do not these bryng forth wealth, securitie, and perpetual concorde; and do not all thinges in the worlde, yea, and the worlde itselfe stand and agree together by concorde: where is your reason, where is y<sup>e</sup> loue that Plato & Cicero require in you to be borne to me your countrey?<sup>178</sup>

The fair and beautiful nymph – as Anthony Munday referred to the erstwhile Graeco-Roman goddess in his Jacobean pageant, *Triumphs of Reunited Britannia*<sup>179</sup> – concluded her long and rather meandering diatribe with a literary flourish that brought together many of the seminal elements of the Seymourian pamphlet campaign: 'I do require the whole membres of all great Briteigne, that like as these many hundredth yeres ye haue prosecuted eche other with fyre, sworde, and slaughter, that so ye do from hensfourth prosecute eche other with amitie, loue, and frendship'.<sup>180</sup>

Bodrugan closed his *Epitome* by promising his Scottish readers that union with England would usher in a period of peace and prosperity the likes of which their country had never seen. He urged them, therefore, not to forgo such an opportunity simply out of spite:

Spurne not against knowledge, rebell not against your wealth, more honor is offered vnto you then euer chaunced to the Scottishe nacion, the tyme serueth it,

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<sup>178</sup> *Ibid.*

<sup>179</sup> A. Munday, *Triumphs of Reunited Britannia*, in *Jacobean Civic Pageants*, ed. R. Dutton (Keele, 1995), pp. 117-36.

<sup>180</sup> Murray, *Complaynt of Scotlande*, p. 256.

reason requireth it, the consent of all good men desire[th] it, and God pityng my long affliction hath offred the occasion, which beyng of your partes thankfully receiued, bringeth wealthful securitie to your selves, your wyues, children, your goodes, & all your posteritie, and wherby you shall auoid calamitie, misery exilement or death, whiche otherwise by the iniustice of your cause, will vndoubtedly folow; therefore in this choise, let it be no harde thyng to make you consent to your owne wealth.<sup>181</sup>

Yet, pursuant to the “carrot and stick” approach that characterised all of the Seymourian pamphlets, the English parliamentarian added, ‘if profite & quietnes that is in peace cannot moue you, yet let trouble & horror that is in warre with the iniustice of your cause feare you’.<sup>182</sup>

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The Seymourian Moment argued that the succession claim was deployed in service of Lord Protector Somerset’s campaign for Anglo-Scottish union in the mid-sixteenth century. During 1547 and 1548, the lord protector and his penmen produced three pro-union tracts, each of which was intended to persuade sceptical Scots that consolidating the crowns of England and Scotland within a single royal person would be to their great benefit. Although the Seymourian pamphleteers took Henry’s *Declaration* as a model, theirs was, by and large, a much more sophisticated attempt to bring Scotland under English rule. In the first place, they framed the revolutionary political project in which they were engaged as an effort to restore the *status quo ante*. They repeatedly emphasised that it was not their aim to create a new political entity, but rather to resurrect an ancient island-empire by the name of (Great) Britain. Utilising the succession claim in a unique way, the pamphleteers argued that while the overlordship of Scotland was a right vested indefeasibly in the English crown, it was better for both sides that the

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<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*, p. 254.



inheritance be secured through the sacrament of matrimony rather than by a war of conquest. They claimed that the prospect of marriage between Edward and Mary presented a unique opportunity to transform English “feudal” superiority, which naturally demanded inferiority and servitude of Scotland, into Anglo-Scottish union, which would instead create equality and fellowship between the two kingdoms. This “carrot and stick” approach characterised all three Seymourian tracts, even if the balance increasingly shifted from reward to punishment as time went on and the chances of success dwindled.

It may fairly be said that the Seymourian Moment represents something of an artificial terminus to this *longue-durée* intellectual history. The lord protector’s ambitious push for Anglo-Scottish union ended in failure, but it would not be the last such campaign to animate the Atlantic archipelago. When James VI of Scotland became James I of England in 1603, he quickly sought to transform his newly established composite monarchy into a unitary state called Great Britain. His efforts, like Somerset’s, would prove unsuccessful. Indeed, it would not be until 1707, during the reign of Queen Anne, that the kingdoms of England and Scotland would merge to form a single realm comprehending the entire island. In each of these pivotal periods – both of which were intellectually indebted to the Seymourian Moment – the succession claim would be used by historical agents variously to legitimate and to delegitimize the case for political union.<sup>183</sup> Why, then, does this *longue-durée* intellectual history not include a Jacobean Moment (c. 1603) or an Annean Moment (c. 1707)? As was noted at the outset, this thesis is a selective (and representative) rather than comprehensive account of the succession claim. Moreover, it is intended to be the first – and not the last – substantive work on the intellectual tradition. It must therefore fall to others to trace the trajectory of the succession claim beyond the mid-sixteenth century.

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<sup>183</sup> For but one example from each period: see J. Bristoll, *The Joiefull and Blessed Reuniting the Two Mighty & Famous Kingdomes, England & Scotland into Their Ancient Name of Great Brittain* (Oxford, 1604); W. Atwood, *The Superiority and Direct Dominion of the Imperial Crown of England Over the Crown and Kingdom of Scotland* (London, 1704).

# CONCLUSION

*The Complaynt of Scotlande, wyth ane Exortatione to the Thre Estaits to be vigilante in the Deffens of their Public veil* was published during 1549 in response to the Seymourian pamphlets.<sup>1</sup> Composed anonymously in Middle Scots, the lengthy tract was intended to refute the English claim to overlordship of Scotland and reaffirm the same kingdom's independence. Tellingly, the *Complaynt* began with a chapter on the 'mutations of monarches':

AS the hie monarchis, lordschips, ande autoriteis, ar stablit be the infinite diuynne ordinaxce, and menteinit be the sempeternal prouide<sup>rs</sup>, siclyik ther ruuynne cummis be the sentence gyffin be the souerane consel of the diuynne sapiens, the quhilk doune thringis them fra the hie trone of ther imperial dominations, and garris them fal in the depe fosse of seruitude, ande fra magnificens in ruuynne, ande causis conq<sup>u</sup>erious to be conq<sup>u</sup>est ... Ane pottar vil mak of ane masse of mettal diuerse pottis of defferent fassons, & syne he vil brak the grite pottis quhen thai pleyse hym nocht, ande he makkis smal pottis of the brokyn verk of the grite pottis, ande alse of the mettal ande mater of the smal pottis he formis grit pottis. *this exempil may be applyit to the subuertions ande mutations of realmis ande dominions, ande of al varldly prosperite. childir that ar neu borne grouis & inressis quhil thai be ascendit to the perfyit stryntht of men : bot ther efter, tha begyn to decresse ande declinis til eild ande to the dede. siklyik lordschips ande digniteis hes inressing, declinatione, ande exterminatione. the mutations of euerye varldly thyng is certane.*<sup>2</sup>

The writer went on to enquire rhetorically as to the fate of Nineveh, Babylon, Troy, Thebes, Sparta, Athens, Carthage, and Rome. Availing himself of a strand of Scottish political thought that stretched back to 1301,<sup>3</sup> the author of the *Complaynt* deployed the concepts of mutability and temporariness in a bid to undermine the English view of a single inalienable royal office stretching back to the time of Brutus. Implicitly taking aim at both elements of the succession claim, he disputed the idea that the kings of England were heirs to the kings of Britain and

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<sup>1</sup> *The Complaynt of Scotlande wyth ane Exortatione to the Thre Estaits to be Vigilante in the Deffens of their Public Veil, 1549*, ed. J. A. H. Murray (London, 1872), pp. 1-188.

<sup>2</sup> *Ibid.*, pp. 19-20 (emphasis added).

<sup>3</sup> In response to Edward's 1301 letter to Pope Boniface VIII, the Scots argued as follows in their *Instructiones*: 'For, granting that these forgotten stories of long ago, touched upon by that king, about Brutus and the Britons and the Saxons, had any truth in them at the time, still they cannot claim to apply to modern times or relations of lord and vassal, as having been swept away by the alterations, changes and innovations of later events and times; nor is it just for that king to carry on any traditions of the Britons by these high-handed acts of his which have lately taken place in these days about the aforesaid constitution of the kingdom of Scotland': *The Book of Pluscarden*, ed. F. J. H. Skene, 2 vols (Edinburgh, 1877-80), ii, 142.

contested the notion of a sempiternal crown. '[N]a thyng,' he declared, 'remains lang constant in ane prosperus stait'.<sup>4</sup>

This perceptive critique serves as a reminder that the succession claim was a superlatively ambitious form of historico-legal argument. After all, it assumed the existence of a royal office, established shortly after the creation of the world, that was impervious to the corruption of time. Such ideas must surely rank among the very boldest in the history of western political thought. The succession claim contended that the various forms of regalian property that had been accumulated (and subsequently lost) between the reign of the first British monarch, Brutus, and that of the last, Cadualadrus, belonged *de jure* – if not *de facto* – to the kings of England. Invented at the turn of the thirteenth century, the historico-legal argument was predicated on the view that the kings of England were the juristic successors to the kings of Britain, and, as such, were entitled to preserve or recover – as the case may be – the rights and lands which had once been enjoyed by their eminent predecessors. According to this logic, if certain British rulers had once enjoyed overlordship of the island then it followed that the English were subsequently entitled to recover these territories at their pleasure. Likewise, if certain British rulers had once wielded caesaropapal power then it followed that their English successors were entitled to restore this authority at will. It mattered not that the English were not the British, nor that much time might have passed since such rights or lands had last been possessed.

The notion of a single inalienable royal office stretching back to the foundation of Britain relied on a complex synthesis of historiographical and constitutional thought. This synthesis was formulated for the first time in the *Leges Anglorum* (c. 1210). The intellectual origins of the succession claim lay, on the one hand, in the English appropriation of Geoffrey of Monmouth's *Historia Regum Britanniae* and its successor works and, on the other hand, in the emergence of the concept of the royal office in English constitutional theory. Composed around 1138, the

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<sup>4</sup> Murray, *Complaynt of Scotlaunde*, p. 21.

*Historia* was intended to endow the Britons with an illustrious national history populated by such memorable heroes as King Arthur. Initially suspicious of Geoffrey's epic for political and historiographical reasons, the English began assimilating the *Historia* into accounts of their own history from the late twelfth century. Before long, the political, ethnic, cultural, and geographical differences denoted by the terms "Britain" and "England" were forgotten as the romantic tales of Brutus and Arthur were converted into a glorious prehistory of the Anglo-Saxon and Anglo-French peoples. The legal component of the succession claim presupposed the inalienability of regalian property. It assumed that that which belonged to the realm — as opposed to the king in his private capacity — could never truly be lost. Even those rights and lands which had been forfeited in the conventional sense of the term were said to remain the kingdom's on a *de jure* basis. This type of constitutional thought was existentially dependent on the concept of the royal office and on its most powerful symbolic representation, the crown. Over the course of the twelfth and thirteenth centuries, the crown increasingly came to be understood as sempiternal, and therefore above and beyond any natural person. This important development served to recast the king as the impermanent occupant of an immortal office, who was bound by his coronation oath to prevent and revoke alienations of the regalian property over which he transitorily exercised authority.

The succession claim was a potent and highly versatile form of historico-legal argument, a fact evidenced by the wide range of political programmes to which it contributed. It was episodically deployed throughout the medieval and early modern periods by English historical agents who sought to frame revolutionary objectives as efforts either to conserve the *status quo* or to restore the *status quo ante*. This thesis has documented four moments — two from the medieval period and two from the early modern — in which the succession claim was mobilised in support of foreign and domestic policy. The Johannine Moment (c. 1210) examined how the historico-legal argument was used to legitimate baronial resistance to King John in the early

thirteenth century and delegitimate Angevin conceptions of monarchy. The Edwardian Moment (1291–1301) explored how the succession claim was used to justify Edward I's overlordship of Scotland and weaken Scottish assertions of independence. The Henrician Moment (1530–1542) investigated how the historico-legal argument was used to legitimate Henry VIII's caesaropapism and delegitimate the Roman Church's authority in the king's realm and dominions; as well as how the succession claim was used to validate Henry's war against Scotland. The Seymourian Moment (1547–1548) examined how the succession claim was used to bolster Lord Protector Somerset's campaign for Anglo-Scottish union and undermine Scotland's case for a politically segregated island.

By constructing a narrative which ranges across some three-and-a-half centuries, this thesis has attempted to prove that numerous periods of English history which are ordinarily considered discrete were in fact linked by a common diachronic context. While maintaining the synchronic specificity of the Johannine, Edwardian, Henrician, and Seymourian Moments, the dissertation has been keen to stress both the existence and importance of conceptual connections between them. It has sought to demonstrate that even as historical actors worked to achieve solutions to their particular contemporary problems, they were engaged in a larger, multi-century conversation with one another. Arguably the two clearest examples of this transtemporal dialogue come from the Henrician Moment, which saw the Tudor monarch redeploy the early thirteenth-century *Leges Anglorum* in support of his imperial kingship throughout the 1530s, and repurpose Edward I's 1301 letter to Pope Boniface VIII in service of his claim to sovereignty of Scotland during the early 1540s.

This project has proceeded from the conviction that there is enormous value in taking the utterances of historical actors seriously – which ought to be understood as distinct from regarding them as truthful or even sincere pronouncements. Far too often, accounts of Henry VIII's break with Rome – to select but the most prominent example – have explicitly or

implicitly dismissed historical expressions of principle as epiphenomenal. That the present work is the first to analyse systematically the rhetoric of the English reformation statutes – texts which were at the very heart of one of the most consequential events in both English and European history – is proof enough of this fact. Nevertheless, the thesis has barely scratched the surface when it comes to the value that intellectual-historical analysis could bring to various sub-fields of medieval and early modern English history. More than fifty years after the “Cambridge School” was established, the movement still has the ability to open up untold numbers of fruitful lines of scholarly enquiry.

Although this *longue-durée* intellectual history hopes to have brought a little-known tradition into focus, and to have shed new light on old problems in the process, it is not without its limits. Future work could usefully situate the succession claim in the larger context of medieval, early modern, and modern English appeals to the past. It would also be worthwhile exploring in detail the effect that the succession claim had on the intellectual activity of England’s archipelagic neighbours. Historians of medieval and early modern Scotland are well aware that a good deal of Scottish political thought was formulated in response to England.<sup>5</sup> To what extent did the succession claim stimulate the creation of past-oriented intellectual traditions in Scotland, Wales, and Ireland? There would be equal merit in examining whether the succession claim was merely an English version of a universal practice. As was demonstrated in the Edwardian Moment, both the Roman Church and the kingdom of Scotland deployed similar historico-legal arguments in support of their various claims. Might there, then, be grounds for a European<sup>6</sup> if not a global intellectual history of something approximating the succession claim?

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<sup>5</sup> See generally, D. Broun, *The Irish Identity of the Kingdom of the Scots in the Twelfth and Thirteenth Centuries* (Woodbridge, 1999); R. A. Mason, ‘Scotching the Brut: Politics, History and National Myth in Sixteenth-Century Britain’, in *Scotland and England 1286-1815*, ed. R. A. Mason (Edinburgh, 1987), pp. 60-84.

<sup>6</sup> Such a history might well complement Robert Bartlett’s new monograph, which examines the various ways that Europe’s royal families sought to perpetuate their dynasties throughout the medieval period: see R. Bartlett, *Blood Royal: Dynastic Politics in Medieval Europe* (Cambridge, 2020).

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