# Chapter IV

# Richard Hooker

Like Le Roy, Richard Hooker was devoted to the cause of the reinvigorated, corrected, authentically Greek texts of Aristotle, especially the *Politics*. Like Le Roy, Hooker is an Aristotelian rather than a follower of Bodin, and the significance of this lies in the fact that Bodin's sovereign is simply an extension of Aristotle's "ruling part" of the constitution or *politeia*. As we have seen in Chapter 1, the *autarkia* of the ancient *polis* is echoed in the notion of the State being beyond the reach of any external political actor. By applying logic to such propositions Bodin transforms the ancient *polis* into the modern national or territorial State, and, like Aristotle, is able to see the State in a secular light. Hooker's enterprise, too, sweeps away medieval views of Christendom and makes the State, like Aristotle's *polis*, the focus of political philosophy. Thus, while Hooker is not a direct follower of Bodin he is an English Politique, and his reputation for judicious writing helped to make Politique views respectable in England.

Richard Hooker's *Of the Laws of Ecclesiastical Polity*, written just prior to the anti-Puritan campaign of 1593, aims to ensure the autonomy of positive law within states, including English common law. Based on the concept of an unchanging, preordained order of the universe, human values of self-improvement[1] replace religious imperatives as the

1 Hooker can be compared with that select group of Continental Humanists which includes Cujas, Hotman, Scaliger, Postel, Lipsius and Le Roy. Before Hooker, England had produced no

mainspring of politics and its product-legislation. From here, he was able to argue, as the earlier Politiques had already done, that in every State there must be an entity which is legally supreme, without conceding moral independence to the extent that Machiavelli had conceded it. In order to accept the autonomy of the State but also respect religion and conscience, the better writers hoped for, and perhaps to some extent found, a rational universe, with separate political and religious spheres preserved by higher laws. The eirenic appeal of the Greek metaphysical consciousness celebrated in Hooker's unobtrusive prose has made this without question the main text in political philosophy for the entire Elizabethan period, and among the recognised classics of English literary style, and it clearly deserves to have a Chapter of this thesis to itself.

The realist political theory of Aristotle's *Politics* and his *Rhetoric* (see above, Caps. 1 & 3) coexists, albeit awkwardly, with the metaphysical use of the Natural law idea to the extent that it is found in his writings, and Hooker approaches the problem of human rationality with the same combination of political realism and metaphysics. Understanding this permits us to understand the close link between cosmology and political thought in Elizabethan and Jacobean contexts, and presents Hooker, on the subject of the State, as an innovator rather than a traditionalist, in the same way that Bodin can be viewed as an innovator. In both cases the innovation lies in their mode of expression and analysis of what is, for them, a traditional sort of politics.

Although his political ideas were employed for polemical purposes, we are not concerned here with Hooker's views on church organisation, only his views on the State. It is the political theory that we are interested in, and the central part of his political theory is his philosophy of law, set out in Book I. This is confirmed and amplified by passages elsewhere, particularly in Book VIII, which deals with church governance and the royal supremacy, and in which there is at least one citation of Bodin's *Six Books* (1586 Frankfurt

edition).[2] But Book VIII is shrouded in mystery. Considering that there is no extant autograph MS of this Book, and that the earliest printed version was nearly fifty years after the death of the author, extreme caution is warranted. Happily, there is enough in Book I to make it unnecessary to resort to the potentially unreliable text of the latter book, although we will encounter similar problems of provenance with the works of Raleigh (below, Cap. 7).[3]

Hooker's attempt to demonstrate comprehensively the validity of establishing the Church meant going back to first principles, involving a theory of the origin and nature of laws. He chose a system superficially resembling that of Aquinas: a hierarchy of laws, beginning with divine law and ending with human laws in their various forms, and this has led some of his commentators to believe that he was reviving a discredited Scholasticism. Four of the leading students of Hooker, W. D. J. Cargill-Thompson, F. J. Shirley, Arthur McGrade and Christopher Morris, all maintain a healthy scepticism on this topic.[4] J. S. Marshall argues that it is not the contents of the text but rather its structure which is copied from Aquinas.[5] But another fairly notable group of scholars, including A. P. d'Entreves,

political philosophers since More (except perhaps the theologian Ponet), although for Scotland there were Buchanan and Knox. Hooker comes on to the scene so unexpectedly, yet he has to catch up from Colet's Erasmian Humanism to Scaliger's critical theoretical Humanism. Donald R. Kelley, *The Beginning of Ideology* (Cambridge,1981), p.219. The first five Books of *Ecclesiastical Polity* were reprinted in 1604, 1611, 1617, 1622 and 1632, making it a very successful and much read text.

2 Arthur McGrade (Ed.), *Hooker - Laws of Ecclesiastical Polity* (Cambridge,1989), p.189. Hooker cites Bodin's legal distinction of "citizen" and "alien" in terms of protective status in I,6.

3 See Raymond Houk, *Hooker's Ecclesiastical Polity: Book VIII* (N.Y.,1931), Introduction, pp. 83-144; C. J. Sisson, *The Judicious Marriage of Mr Hooker* (N.Y.,1974), pp. 96-111, and Arthur McGrade (ed), *Richard Hooker: of the Laws of Ecclesiastical Polity* (Cambridge,1989), pp. xiv, xx, xxiv-xxx and at p. 237. McGrade's Introduction says practically nothing on the suspect nature of Book VIII, preferring to regard the *Trinity* MS as an autograph. Sisson is probably right to suggest that no fair copy ever existed, except the original 1593 draft (pp. 90,91). If this draft was kept by the Cecils, as Houk thinks likely (p. 96), then its unmolested survival is almost out of the question.

4 W. D. J. Cargill-Thompson, "The Philosopher of the Politic Society" in Speed Hill (ed) *Studies in Richard Hooker* (Cleveland,1972), pp. 8,21. Christopher Morris, *Political Thought in England: Tyndale to Hooker* (London,1953), p. 175. F. J. Shirley, *Richard Hooker and Contemporary Political Ideas* (London,1959), pp. 60, 96. Arthur S. McGrade (ed), *Richard Hooker: of the Laws of Ecclesiastical Polity*, pp. xiv, xx-xxi.

5 J. S. Marshall, *Hooker and the Anglican tradition* (London,1963), pp. 66 ff.

George Sabine, Sheldon Wolin, Basil Willey, J. W. Allen and Peter Munz adopt the view that St Thomas Aquinas was Hooker's main inspiration.[6] One of the purposes of this Chapter is to refute such a view. While there may be an element of Thomism in this theory, the fact remains that Hooker's Natural law is the sort of rationalistic and metaphysical idea which one expects from a hellenist and Aristotelian, as opposed to a Scholastic. Hooker relegates God to a passive supervisory role which reminds one of Berkeley's quad, and reason, rather than Christian love, is the principle by which Natural law guides the human legislator. This extreme rationalism is a far cry from Aquinas, whose religious perspective caused him to invest Aristotle's God with interventionist characteristics. This medieval "view of Aristotle is hard to believe, for the main role of his [Aristotle's] God in the world seems to be merely that of a mover".[7] Hooker sees Divine law as a metaphysical entity, the perfection of the universe, which "God hath eternally decreed", and which makes Natural law principles eternal; fixed forever by the will of God and unchangeable, even by God.[8] In Hooker as in Aristotle the idea of immutability suffuses propositions of political philosophy with an aura which raises them above other propositions.

Before setting out the implications of this reading of Hooker, it is necessary to examine the possible reasons why late renaissance political thought needed so badly to revive Aristotle. This is a really enormous question, and an adequate treatment of it would require many volumes. But at the kernel is the need in early modern society to put the human will back onto centre stage, and this perspective is what makes Hooker, the Anglican

6 A. P. d'Entreves, *The Medieval Contribution to Political Thought* (New York,1959), p. 118. George Sabine (and Thorson), *A History of Political Theory* (Hinsdale,1973), p. 408. Sheldon Wolin, "Richard Hooker and English conservatism", *Western Political Quarterly*, VI,1 (1953), pp. 32-33. Basil Willey, *The English Moralists* (London,1964), pp. 102-103. J. W. Allen, *Political Thought in the Sixteenth Century*, p. 186. Peter Munz, *The Place of Hooker in the History of Thought* (London,1952), p. 130 ff. This ignores the Augustinian side of Aquinas.

7 Richard Sorabji "Infinite Power Impressed: the transformation of Aristotle's physics and theology" in J. Henry and S. Hutton (eds), *New Perspectives on Renaissance Thought* (London,1990), p. 148.

8 Richard Hooker, *Of the Laws of Ecclesiastical Polity* (London,1594), hereafter cited as *Laws*, pp. 49-50. For Aquinas see *Summa Theologica, Ia IIae*, Q. 91.

clergyman, a radical innovator.[9] Such a view seemingly contradicts the traditional argument that the Elizabethans were obsessed with cosmic order and hierarchy, yet the two concepts are indeed related. A "fabulous and even preposterous" cosmology, supplied by the Greeks via the Aristotelian-Ptolemaic system[10], and a secularised political philosophy, fill the vacuum created by the demise of Christendom. Indeed, without the innovation in cosmology, the innovation in political philosophy would hardly have been palatable. By returning the power to legislate to the political sphere, Hooker subordinates church to state just as surely as he separates the two.[11] His thought, containing a much greater disjunction between human law and higher law than in Aquinas, highlights the difference between the medieval world and the renaissance world.

Innovation and Aristotle go together at this time, and it is well to quote Charles Schmitt:

> The implicit assumption of many scholars who work on English intellectual history of the period seems to be that any doctrines, ideas, or methods from Aristotle or later Aristotelians must be regarded as retrograde. I cannot see the validity of such an assumption. Certain Aristotelian doctrines were fruitful for new developments, as the cases of Hooker or [William] Harvey show.[12]

During the long reign of humanism as the intellectual passion of Europe, interest grew from

9 Stephen Collins, *From Divine Cosmos to Sovereign State* (N.Y.,1989), pp. 92, 97. Collins rightly points out that the Elizabethan political debate was not between radical and conservative sides, "but rather it issued from the conflict between various shades of innovation", and arose "from the lack of a securing received order".

10 James Daly, *Cosmic Harmony and Political Thinking in Early Stuart England* (Philadelphia,1979), pp. 4-7. He refers to the work of A.O. Lovejoy and E.M. Tillyard.

11 See H. F. Kearney, "Richard Hooker: A Reconstruction", *The Cambridge Journal*, V (1952), pp. 310-311. Also cf Debora Shuger, her remarks upon secularisation and "desacralisation", *Habits of Thought in the English Renaissance* (Berkeley,1990), p. 142. On the other hand the advent of Divine Right theories is a "sacralisation" of rule.

12 C. B. Schmitt, *John Case and Aristotelianism in Renaissance England* (Kingston,1983), p. 43 n. 112.

the Latin authors to embrace the Greeks, so that from as early as 1506, Lefevre d'Etaples could say: "for knowledge of ethics, politics and economics, drink from the fountain of a *purified* Aristotle".[13] The availability of good manuscripts especially after 1453 and cheap printed editions around the turn of the century was followed by a veritable avalanche of books, culminating in no fewer than 61 separate editions of the *Politics* between 1501 and 1600.[14] As well as the text of the *Politics*, works like the commentaries of Louis Le Roy appeared, an important work in its own right, as discussed in the previous Chapter (above). We have seen (in the preceding Chapter) how, in a letter written in 1577 (or shortly thereafter), the Cambridge hellenist and poet Gabriel Harvey remarks that Aristotle was much read in his student days, as a political philosopher rather than as a metaphysician.[15] Others influenced by the *Politics* included Laurence Humphrey (who inspired Charles Merbury), Thomas Smith and William Harrison.[16] It should also be recalled that the *Politics* is the basis of Bodin's *Six Books* and La Primaudaye's *French Academy*.[17]

From the very beginning of the Greek Revival, writers like Marsilio Ficino and Pico

13 Eugene Rice, "The Humanist Idea of Christian Antiquity: Lefevre d'Etaples and his Circle" in Werner Gundesheimer (ed), *French Humanism 1470-1600* (London,1969), p. 163. Emphasis added.

14 F.E. Cranz and C.B. Schmitt, *A Bibliography of Aristotle Editions 1501-1600* (Baden-Baden,1984), passim. In the 1540s there were twenty editions, not including *Works*.

15 E.J.L. Scott (ed), *The Letterbook of Gabriel Harvey* (London,1884), pp. 78-79. (See above, Cap.III.)

16 Charles Merbury, *Discourse on Royal Monarchy* (London,1581), iii$^{v}$. James Daly, "The Idea of Absolute Monarchy in Seventeenth Century England", *The Historical Journal*, XXI, 2 (1978), p. 228. G. J. R. Parry, *A Protestant Vision* (Cambridge,1987), p. 116. Harrison altered his contribution to the 1587 edition of Holinshed's Chronicle to reflect the increasing vogue of the political Aristotle.

17 The university culture of sixteenth century Europe was increasingly neo-Aristotelian, and Professor Greenleaf has traced the influence of Aristotle on Bodin to the effect of Paduan scholars bringing the movement to the University of Toulouse. W.H. Greenleaf, *Order, Empiricism and Politics* (London,1964), p. 136. More recent work by Charles B. Schmitt confirms this trend, so that "the study of Renaissance Aristotelianism has taken on a new life", viewing Aristotle "as a predominant and positive influence on Renaissance philosophy". Eckhard Kessler, "The Transformation of Aristotelianism during the Renaissance" in Henry and Hutton (eds) *New Perspectives on Renaissance Thought*, pp. 142-145.

della Mirandola included Aristotle's political writings in the curriculum, and their strong emphasis upon Plato and the mystic tradition of Hermes Trismegistus did nothing to hinder the effort to transform Aristotle "from a speculative into an empirical philosopher".[18] Martin Luther says "Aristotle is to theology as darkness to light", referring to the Aristotle of Scholasticism, but he could have said the same of the Aristotle of the Humanists.[19] In any case, politics and rhetoric were never fully recognised by Scholastic writers and translators, whose attachment to universal religion blurred "the distinction between what was political and what was not".[20] The resurgence of interest in empirical reasoning can be blamed for the new attempt to systematise knowledge developed by Petrus Ramus (Pierre de la Ramée) at Paris, which was a serious threat to neo-Aristotelianism and became especially popular among Huguenots and Puritans.[21] However, it should not be supposed that Protestantism was uniformly hostile to neo-Aristotelianism, especially of the type which viewed things "with greater fidelity to the historical Aristotle". Although writers in this category, like Johannes Magirus (and of course Hooker) were active at the end of the century, one conspicuous early example is Philip Melanchthon.[22]

Despite the fact that Hooker's political philosophy is largely based on Aristotle, his special way of using the Stagirite has created an unfortunate resemblance to Aquinas, and

18 Myron P. Gilmore, *The World of Humanism* (N.Y.,1962), pp. 190-193.

19 Robert Faulkner, *Richard Hooker and the Politics of a Christian England* (Berkeley,1981), p. 54.

20 James Schmidt, "A Raven With a Halo: the translation of Aristotle's Politics", *History of Political Thought*, VII, 2 (1986), p. 312. Schmidt contrasts Moerbeke's translation with Bruni's renaissance humanist translation, which equates the polis with the early modern city-state (pp. 313-314).

21 *Laws*, pp. 58-59, where Hooker attacks "Ramistry". See also Perry Miller, *The New England Mind: the Seventeenth Century* (Cambridge, Mass.,1967), pp. 494-495.

22 Richard Tuck, *Natural Rights Theories* (Cambridge,1979), p. 45. This should not be confused with the Thomism revived by Vittoria et al., for which see Bernice Hamilton, *Political Thought in Sixteenth Century Spain* (Oxford,1963), passim. Hooker actually criticises De Soto and Bellarmine in a pamphlet: *Answer to a supplication by Mr Travers* (Oxford, 1612), pp. 16-17. For Thomist influences at Corpus Christi (Hooker's college) see C. B. Schmitt, *John Case and Aristotelianism in Renaissance England* (Kingston,1983), p. 65.

indeed Thomas Cartwright failed to distinguish between the two in his famous attack.[23] Yet Hooker himself gives most of the credit to Aristotle, describing him in his anti-Ramism passage as "the very first man that to any purpose knew the way we speak of and followed it"; who "hath alone thereby performed more very near in all parts of natural knowledge, than since in one part thereof, the whole world besides hath done".[24] Another indirect source for the predominance of Aristotle over Aquinas comes from the citations which Hooker scrupulously set down in the ample margins of Book I. Here we find but four references to Aquinas, usually coupled with other citations, and another two to Duns Scotus. By contrast there is an avalanche of references to Plato, Augustine and Hermes Trismegistus, along with 24 references to Aristotle, many of which quote the original Greek text.[25]

It is in the substance of Hooker's philosophy of law that his separation from the Thomist position is most apparent, and it is to this that we will now turn. He sets out the theory of natural and man-made law very carefully and systematically (unlike Aquinas), and begins with Divine law. Although it is dangerous "to wade far into the doings of the Most High", he nevertheless does paddle about in the shallows. He finds that the metaphysical entity of oneness is the key contribution of Divine law to the universe, and he relates this to the "first cause" or prime mover of the Greeks. He buttresses the argument by citing a gaggle of pagan authors: Homer, Plato, the Pythagoreans, Anaxagoras and the Stoics; and only then does he proceed to his Biblical sources.[26] When one first reads this argument, expecting to find the traditional religious cosmology, it is a shock to find instead a deism that

23 Thomas Cartwright, *A Christian Letter of Certaine English Protestants* (Middelberg, 1599), pp. 42,43. According to the updated entry in the Revised edition of *S.T.C.* this text was actually written by Hooker himself. The reasons for such an attribution are not given.

24 Hooker, *Laws*, p. 58. See also Robert Faulkner, "Reason and Revelation in Hooker's Ethics", *American Political Science Review*, LIX (1965), p. 682. Elsewhere he "copied almost literally" from Aristotle; (p. 686).

25 For citations of Aquinas see Hooker, *Laws*, pp. 52, 54, 67 and 83; and pp. 82 and 86 for Scotus. A typical citation of Aristotle is at p. 74. It is significant that Hooker was using original Greek texts.

26 Hooker, *Laws*, pp. 49-50. Following Augustine, Aquinas sees Eternal law in less rational, more voluntaristic terms; *Summa Theologica, IaIIae*, Q. 91. See above, n. 12.

would not be out of place in the writings of William Blake:

"This law therefore we may name eternal, being that order which God before all ages hath set down with himself, for himself to do all things by."[27]

Although this superficially resembles the definition in *Summa Theologica*,[28] Aquinas qualifies the deist aspect by reminding his readers that the will of God and the Son of God are so pre-eminent that they must be identical with the *lex aeterna*.[29]

Hooker's next move is to separate the laws of natural phenomena which we would call laws of science, from Natural law, whilst at the same time noting how the laws of natural phenomena confirm and strengthen belief in the orderly aspect of Divine law, and therefore in Natural law.[30] Reason is supreme in his thought at two levels: the universe (macrocosm) is ruled by hidden yet unchanging laws, and the person (microcosm) is ruled, through the soul, by intellect (see below). Not only does his faith in the regularity of nature place him in the cosmological mainstream of Elizabethan culture, but it also anticipates subsequent developments in early science, notably in the writings of Francis Bacon.[31] It is to this category, rather than that of Natural law, that he assigns the law "which touches them as they are sociable parts united into one body, a law which bindeth them each to serve unto

27 Hooker, *Laws*, p. 51. The idea of One is associated with Christian Cabalism and the circle of Alencon, brother of the French king and patron of Bodin (above, Cap. 3). See Frances Yates, *The Occult Philosophy in the Elizabethan Age* (London,1979), pp. 65-67. This sits well with Hooker's eirenic approach, of uniting the two wings of Protestantism by means of an intensely rationalist approach to ultimate meaning.

28 Aquinas, *Summa Theologica, IaIIae*, Q. 91, Art. 1.

29 *Ibid.*, Q. 93, Art. 4.

30 Hooker, *Laws*, pp. 52-53. Here is his much quoted passage: "Now if nature should intermit her course... etc.", which he sources to Psalm 19, yet is similar to Arnobius, *Adversus Gentes*, I, 2-3. Lee Gibbs "The Source of the Most Famous Quotation from Richard Hooker's Laws of Ecclesiastical Polity" *Sixteenth Century Journal*, XXI, 1 (1990), pp. 77-85.

31 Anthony Quinton, *Francis Bacon* (Oxford,1980), p. 10. A brief account of Bacon's writings on the State is given at the end of Cap. 7.

others' good, and all to prefer the good of the whole" ahead of self-interest.[32]

Before moving on to the category of Natural law which promises to be the centrepiece of his philosophy, Hooker turns aside to discuss the law of the angels or celestial law. The combined effect of this is to draw the sting of the puritan theology of conscience and, in keeping with Pythagorean and Aristotelian traditions, to fill in the epistemological void between the prime mover and human intellect.[33] Celestial law can thus be understood as an analogy for the puritan theology of conscience, compartmentalised in order to reduce its effect. His suggestion that we consider closely the Lord's Prayer where it says "on earth as it is in Heaven" compares with the notion of William Ames (above, Cap.I) that conscience is that part of the soul which links an individual to the heavenly existence; an Augustinian idea.[34] This category of law is absent from Aquinas, who maintains that Natural law is directly connected to Eternal law, even to the point of being Eternal law.[35] Hooker's theory drives a wedge between the two. His spirits and angels represent a type of "higher" intellect, not unlike that of the Hermeticists, and betray a hierarchical world view which is not prepared to allow the human direct access to the divine.[36]

Hooker moves immediately to the law of reason or Natural law, beginning

32 Hooker, *Laws*, p. 55. Contrast Hooker's argument, with his echoes of Aristotle's politikon zo'on (*Politics*, 1253a), with the complicated reasoning of Aquinas; *S.T., IaIIae*, 90, 2. See also Louis LeRoy *Aristotle's Politiques or Discourses of Government* (London, 1598), p. 12. See above, Cap. 3.

33 See John Warrington (ed.), *Aristotle's Metaphysics* (London,1956), pp. 345-350. "Hooker's thought is 'rational', that is, produces a gap between mind and not-mind and then endeavours to negotiate that space by rational method"; Debora Shuger, *Habits of Thought in the English Renaissance,* p. 19; and also see pp. 25-26.

34 William Ames, *Conscience, With the Power and Cases Thereof* (London,1639), pp. 6,7. St Augustine, *City of God*, XXII, xxiv. On the instability of Aristotelianism alongside Augustinian theology and seventeenth century physical science, see Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame,1988), pp. 209-210. For a fuller account of this theology see above, Cap.II.

35 Aquinas, *Summa Theologica, IaIIae*, Q. 91, Art. 2.

36 Hooker, *Laws* p. 63: "The rule of ghostly or immaterial natures as spirits and Angels, is their intuitive intellectual judgement".

teleologically by subordinating reason to the end of goodness, and recalling the Greek notion that the attainment of wisdom makes men, "though not Gods yet as gods, high, admirable and divine".[37] Reason places humans above animals in the chain of being, and makes it possible to "come at length to be even as the Angels themselves are".[38] Complementing will, reason makes the attainment of the good possible and neutralises "that inferior natural desire which we call appetite".[39] Setting religion aside, there is a "natural way, whereby rules have been found out concerning that goodness wherewith the will of man ought to be moved in human actions" which is Natural law. He recognises two ways of knowing Natural law: by precept, which is difficult; and empirically, which is easy; but the former is the only certain way. Unfortunately for the Elizabethan populace, "with this present age Full of tongue and weak of brain ..., into the causes of goodness we will not make any curious or deep inquiry".[40] This is clearly intended as a rebuttal to those contemporaries who had been seduced by Machiavellian amoralism, which would have been no less repugnant to a hellenist than to a Puritan.

Hooker's central idea of reason (as noted above) is the Pythagorean concept which so influenced Plato and Aristotle in their metaphysical views of the cosmos, and Natural law represents the interface with the human psyche. Since Natural law is so important for his argument, one may well ask whether it is found in Aristotle. Stoic Natural law could also be mentioned, considering the Tacitean renaissance which challenged neo-Aristotelianism in the

37 See W.D.J. Cargill-Thompson in Speed Hill (ed), *Studies in Richard Hooker*, p. 25, where he sets out Hooker's system of laws. See also *Laws*, p. 56 and Warrington (ed), *Aristotle's Metaphysics*, p. 55.

38 Hooker, *Laws*, p. 58. "The first principles of the law of nature are easy: hard it were to find men ignorant of them"; p. 83.

39 Hooker, *Laws*, pp. 59-60. To succumb and obey the dictates of appetite rather than reason "cannot be done without the singular disgrace of nature, and the utter disturbance of [the] divine order."; p. 61.

40 Hooker, *Laws*, p. 62. Like Hooker, Aristotle praises the knowledge of causes: "what we ordinarily call wisdom is concerned with first causes or principles ... we consider an experienced man wiser than one who has only sensation ...", Warrington (ed), *Aristotle's Metaphysics*, p.53. In spite of his 'refusal' to examine causes which occurs in this passage (see McGrade (ed), *Richard Hooker: of the Laws of Ecclesiastical Polity*, p. xxi.), Hooker's discussion in the pages following is far from superficial.

Seventeenth century, although reason of state supplanted Natural law in this later movement.[41] His stoicism is Ciceronian (neither Tacitus nor Seneca is cited), holding God to be the author and avenger of unchangeable moral rules, although much of this discussion is couched in terms of good conscience rather than "external actions", which are judged by "such as being above us ... have this authority".[42] Hooker's emphasis on unchanging truths which govern all of nature and revelation places his thought in the eirenic tradition of Bodin's *Colloquium* (see above, Cap. 1). Both writers share this tendency with the Hermetic and Humanist occult writers of the period such as Giordano Bruno, John Dee, and even Philip Sidney, who attempted to provide a solution to the profound religious discord of the time by searching for transcendent ideas.[43] Hooker's use of Hermes (above) is characteristic of this "habit of thought", in which "the radical questioning of tradition and the development of historical, empirical, and rationalist inquiry" coexists with "patristic, Neoplatonic [and] occult ... thought".[44] The eirenic urge to "rethink the whole [Anglican vs Puritan] problem in the light of reason" is another link to Bodin and his theory of Natural law, especially since it is not used to contradict Hooker's use of "pragmatic history" in the empirical sense, which he borrows from Machiavelli and Guicciardini.[45]

It has to be admitted that as far as Aristotle is concerned, "the law of nature does not play an important role in his political theory".[46] Yet in the *Rhetoric* he sets out a rough plan

41 Peter Burke, "Tacitism, scepticism and reason of state" in J.H. Burns (ed) *The Cambridge History of Political Thought 1450-1700* (Cambridge,1991), p. 498.

42 Hooker, *Laws*, p. 69. (He uses an unattributed quotation from Cicero *On Laws*, but a better one would be *Res Publica*, III, xxii.) I suspect that he is more of a Platonist than a Stoic, given his predilection for Hermes Trismegistus, as well as the apocryphal *Wisdom of Solomon,* (e.g. at *Laws,* p. 61).

43 Stephen L. Collins, *From Divine Cosmos to Sovereign State: An Intellectual History of Consciousness and the Idea of Order in Renaissance England* (New York,1989), pp.10-11, 140ff..

44 Deborah K. Shuger, *Habits of Thought in the English Renaissance*, p.21.

45 Arthur Ferguson, "The Historical Perspective of Richard Hooker: A Renaissance Paradox", *Journal of Medieval and Renaissance Studies*, III (1973), pp.22-23.

46 Richard Mulgan, *Aristotle's Political Theory* (Oxford,1977), p. 141.

of his theory of law, in which law "is either special or general", and includes "by general law all those unwritten principles which are supposed to be acknowledged everywhere".[47] A little further on he says: "By the two kinds of law I mean particular law and universal law. Particular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of nature."[48] He goes on to quote from the drama of the burial of Polyneices in Sophocles' *Antigone*.[49] The distinction Aristotle makes between positive and Natural law does not negate legislative creativity, but it does mean that "framing the laws involves considerable deliberation", a point not lost on Hooker.[50]

Hooker's idea of Natural law, then, involves postulating a set of normative underpinnings relevant both to individual actions and legislative programmes. The purpose of his Natural law reasoning can be glimpsed here, and it is nothing less than the re-education of the population, away from the bible-based dictates of Puritans or the pleasure seeking of secular libertines, to a strictly rational curriculum of moral improvement.[51] Natural law overshadows other varieties of law because this is Hooker's way of exalting the oneness of reason. It means that "God being the author of nature, her voice is but His instrument. By her from Him we receive whatsoever in such sort we learn".[52] His humanism is equally apparent when he argues the case for self-knowledge, which is "the mother of all those principles which are as it were edicts, statutes and decrees in that law of

47 Aristotle, *Rhetoric*, I, 10(1368b). Quotations are from the *Works*, Ross edition, (Oxford,1948). See also *Nicomachean Ethics*, 1098a. The rationalistic view of higher law is apparent in the discussion of natural and legal justice in the *Nicomachean Ethics* at 1134-1135a.

48 Aristotle, *Rhetoric*, I, 13 (1373b). Hooker cites this passage at *Laws*, p. 70.

49 Coincidentally, Hooker too cites Antigone, quoting the very same passage; *Laws*, p. 66.

50 Fred Miller, "Aristotle on Natural Law and Justice" in D. Keyt & F. Miller (eds), *A Companion to Aristotle's Politics* (Oxford,1991), p. 303.

51 Arthur Ferguson, "The Historical Perspective of Richard Hooker", p. 22. See also Muntz, *The Place of Hooker in the History of Thought*, p. 53; and Morris, *Political Thought in England: Tyndale to Hooker*, p. 196.

52 Hooker, *Laws*, p. 63.

nature, whereby human actions are framed", or more specifically that the "soul ... ought to conduct the body, and the spirit of our minds the soul", thereby elevating intellect.[53] It is important to stress the point that Hooker places intellect above soul instead of vice versa, as this strongly reinforces his eirenic hellenist position.[54] The political implication of this type of Natural law which distinguishes it from Thomist political theory is that it reduces considerably the potential for resistance to secular authorities on religious grounds. Instead of partaking of Eternal law, it is reduced to the Platonic idea of a type of moral philosophy, the exact nature of which is beyond the ability of the Church to pronounce.[55]

The first of all political considerations arising from Natural law is that we need human society to live "such a life as our nature doth desire".[56] There are two fundamental bonds which originate this political society: the social instinct (as in *politikon zoon*); and secondly, "an order expressly or secretly agreed upon, touching the manner of their union in living together".[57] This second bond, a rudimentary social contract, corresponds to the fundamental law or *leges imperii* of Bodin and to the constitutions or *politeia* of Aristotle.[58] It is "the law of a common weale" and "the very soul of a politic body, the parts whereof are

53 Hooker, *Laws*, pp. 64-65. Hooker refers to the passage in the *Politics* where Aristotle speaks of "the rule of intelligence over desire" (1254b).

54 Robert Faulkner, *Richard Hooker and the Politics of a Christian England*, pp. 85-86. The Thomist notion of synderesis "is absent from Hookers' works", possibly due to his "distrust of anything like the reformers' internal light" of conscience.

55 In the third book of *Laws* (at p. 153), Hooker quotes with approval Tertullian's support for Plato. A universal conceit among humanists in the Sixteenth century was that Moses taught Hermes Trismegistus; who taught Pythagoras; who taught Plato. See Walter Scott, *Hermetica* (Oxford,1924) , Vol. I, p. 32.

56 Hooker, *Laws*, p. 70. Recall the following: "while the state came about as a means of securing life itself, it continues in being to secure the good life.", (Aristotle, *Politics*, 1252b).

57 Hooker, *Laws*, p. 70. See Aristotle's *Politics* at 1278b and 1279a.

58 Jean Bodin (Knolles edition), *The Six Bookes of a Commonweale* (London,1606), p. 95. Louis LeRoy, *Aristotle's Politiques*, p. 187 (*Politics*, 1279a). Mulgan, *Aristotle's Political Theory*, p. 56.

by law animated".[59] It resembles closely the social contract of Hobbes which, once formed, becomes utterly binding,[60] and this is also very similar to the account of the origin of the State in Bodin's *Six Books* (above, Cap. 1). It is at this point in the argument, then, that Hooker introduces human, positive law, with the social contract forming a rhetorical bridge between it and Natural law. The contract does not entirely remove Natural law from the argument, and reason continues in theory to dictate the terms for the making of ordinary law, as set out for example in the principles of reward and punishment.[61] The contract also does not locate the sovereign permanently, and it is spelled out clearly that the people themselves are to remain free to alter the type of regime at any time thereafter.[62] It is one of the ironies of Elizabethan political thought that Jesuit writers were working with similar Ciceronian *cum* Aristotelian ideas in the late Sixteenth century. Writing in about 1593, Robert Parsons (Persons) combines the social context with a mild version of monarchomach theory, in which the constitution is so much in the hands of the people that, despite the fact that once enthroned the prince is supreme, yet if tyrannical he or she may be deposed or killed (see below, Cap. 5).[63] Like Bodin, Hooker accepts the contractual origin of States without

59 Hooker, *Laws*, p. 70. See LeRoy, *Aristotle's Politiques*, p. 148, where the translation reads "... for the rule and administration ... is called policie in Greek and in English a Commonweale".

60 Thomas Hobbes, *Leviathan* (Cambridge,1904), II, xviii; pp.120-121. Like Hooker, Hobbes is greatly indebted to Aristotle; Leo Strauss, *The Political Philosophy of Hobbes* (Chicago,1963), pp. 35ff. Hobbes may also be indebted to Hooker. For example, Hooker (*Laws*, p. 71) anticipates the "state of nature" argument. Bodin also uses the argument (see above, Cap.I), although more sketchily. This Hobbesian idea is not contradicted by the *politikon zo'on* passage (see above, n. 36). People are social by nature in the sense that the good life is possible only in communities, not in the sense that humans automatically coagulate into relatively harmonious collectivities. LeRoy's quote from Cicero on the state of nature (*Pro Sestio*) sits comfortably with Aristotle's theories (see *Politics*, 1278b), contrary to the opinion of Richard Tuck in an excellent book: *Natural Rights Theories* (Cambridge,1979), p. 44.

61 Hooker, *Laws*, p. 73. Aristotle, *Nicomachean Ethics*, 1180a.

62 Hooker, *Laws*, p. 72. He cites the *Politics*, 1252a, but 1279a would have been better: "as we have seen, 'constitution' and 'citizen-body' mean the same thing". Hooker here endorses the characteristic Aristotelian position that the state is a collection of households, which we also saw in Bodin (above, Cap.I.).

63 For a concise account of the Ciceronian resurgence see Richard Tuck, "Humanism and Political Thought" in Anthony Goodman and Angus MacKay (eds), *The Impact of Humanism on*

conceding popular sovereignty.

Hooker's faith in higher laws is in itself a kind of limit upon positive law, because "if things be simply good or evil, and withal universally so acknowledged, there needs be no new law to be made for such things".[64] Yet this is not as limiting as it seems, and he is at pains to point out that in most situations the good is concealed to such an extent that positive law is necessary, provided it does not conflict with Natural law. To this end, laws "do not only teach what is good but they enjoin it; they have in them a certain constraining force", which is similar to Bodin's claim (above) that positive laws are "puissant", being based on command. Hooker's positive laws are enforceable due to the authority which ultimately derives from "the same entire societies".[65] But there is nothing Lockean about this contract: "Laws they are not therefore which public approbation hath not made so. But approbation not only they give who personally declare their assent by voice, sign, or act, but also when others do it in their names by right originally at the first at the least derived from them." He explicitly refers to "parliaments, councils and the like assemblies".[66] It is at this point that he fully develops the idea of tacit consent, both in the sense of common law, and in the sense of absolute power to enact a new law or to enforce a statute from generation to generation. Regarding that body of law which is command, he states that "to be commanded we do consent, when that society whereof we are part hath at any time before consented,

*Western Europe* (London,1990), pp. 53-57. On resistance, see Robert Parsons (Persons), *The Next Succession to the Crowne* (n.p.,1594), pp. 3-7, 36-37, and also the characterisation of Belloy's position, which resembles that of Hooker (p. 64). (Parsons is discussed below, Cap.V.) The term "monarchomach" was originally coined by William Barclay, to apply to radical Calvinists like George Buchanan; see Skinner, *Foundations of Modern Political Thought*, II, p.301.

64 Hooker, *Laws*, p.72. He cites the second part of Aristotle's *Rhetoric*, (1421b), another 'natural law' passage.

65 Hooker, *Laws*, p. 73. See Aristotle, *Politics*, 1287a. This position could be described as constitutional, in the sense both of limiting arbitrary rule, and of 'constituting' the coercive state.

66 Hooker, *Laws*, pp. 73-74. Locke's grant of power to the individual via natural law transcends the limits of Hooker's state of nature explicitly. Peter Laslett (ed) *John Locke's Two Treatises of Government* (Cambridge,1963), pp. 314-318. (Large quotes from the 1676 edition of *Laws* are present at pp. 310 and 318).

without revoking the same".[67]

Hooker's final discussion of positive law contains some additional remarks which are also compatible with Bodin's Politique theory of sovereignty.[68] Commenting on the variation of positive law from nation to nation, he follows Aristotle's argument that laws must be tailored to fit the regime, pointing out that the main factor is in whose hands "the helm of chief government be". Reason's dictates need not be offended if the laws of popular states differ markedly from those of monarchies or aristocracies.[69] In Book III, where he discusses the limits imposed by scripture upon regimes, natural law is ignored and the framing of positive laws is also insulated from the Mosaic code, with the Decalogue serving as "moral" and not "positive" law.[70] Some laws, it is true, are still based on Natural law, as where "corrupt and unreasonable custom doth happen to have gotten the upper hand of right reason with the greater part" of the people, so that positive law is enlisted to restore sanity. But mostly positive laws are "merely human", and contain a rational element only to the extent that "the matter of them is any thing which reason doth but probably teach to be fit and convenient", which is another way of saying that they do not contradict natural law.[71] When this comment is taken together with the idea that positive law codes are determined by

67 Hooker, *Laws*, p. 74. It is hard to read this passage without recalling Aristotle's deliberative element; see *Politics*, 1297b and f. Further down the page he talks of the laws of Pittacus, drawing heavily on *Politics*, 1274b.

68 See H.F. Kearney, "Richard Hooker: A Reconstruction", pp. 310-311. Curtis Johnson has argued that Aristotle, too, can be regarded as a sovereignty theorist, in respect of the constitutional function of the deliberative element; *Aristotle's Theory of the State* (London,1990), p. 129. F.H. Hinsley, however, rejects the idea that any writer in the ancient world could possibly develop a coherent theory of sovereignty; *Sovereignty* , Ch. 2 passim. It is better to characterise Aristotle as the classical theorist who comes closest to the sovereignty thesis, in the sense of Richard Mulgan "Aristotle's Sovereign", *Political Studies*, XVIII, 4 (1970), pp. 518-522, which concludes that he is close to the modern notion, but his word *kurios* is used beyond its normal sense of ratification when it is applied to a supreme institution. Either Aristotle is using it outside its normal meaning or we are, if we read it as "sovereign".

69 Hooker, *Laws*, pp. 74-75. He borrows examples freely from book five of the *Politics*.

70 Hooker, *Laws*, III, pp. 156-157

71 *Ibid.*, pp. 75-76. See Aristotle's *Nicomachean Ethics*, 1180a. The remaining parts of the discussion concern the positive law of the Anglican church, the law of nations, and law based on Holy Writ; none of which concerns us here.

the constitution, it is arguable that in Hooker we have a Bodinean disjunction of positive and Natural law which is masked by his imputed Thomism.[72]

The overall effect of Hooker's view of law is considerably more positivist than that of Aquinas, and concerns itself with strict legality rather than the "moral force of the law". He argues instead that "civil law, being the act of a whole body politic, doth therefore overrule each several part of the same body".[73] But the flavour of the text is often Thomist. For example, in his preamble to the section on scripture laws, Hooker says that all laws (i.e. laws of individuals in the state of nature, laws of commonwealths, and the *jus gentium*) are of two sorts; "the one grounded upon sincere, the other built upon depraved nature", implying a limited use of natural law to determine human laws.[74] Aquinas suggests that "to depend on natural law is of the essence of human law" and that "*jus gentium* [is] drawn ... from the premises of Natural law".[75] The relationship between positive law and Natural law in Hooker is not the same as in Aquinas, but equally there is some overlap between their theories, and it would be a mistake to go too far, for instance by characterising Hooker as an anti-Thomist. This is especially true when considering Hooker's theory of church law, outlined at the end of Book I of *Laws*. At one point he says that when "supernatural duties are necessarily exacted, natural are not rejected as needless", which is a restatement of the cardinal tenet of Thomism: grace does not abolish nature, it perfects it.[76] Of equal or greater concern is the common law element of the theory, which is not easy to reconcile with sovereignty, as can be seen from the debate on the "ancient constitution", and Fortescue's

72 This is also H.F. Kearney's conclusion (see above), although he overlooks the significance of Hooker's Aristotelian tendency.

73 Aquinas, *Summa Theologica, IaIIae*, 95, 2; (See note on p.104 of the Blackfriar's edition). Thomas and Hooker often use the same sources. Next see Hooker, *Laws*, p. 77. This passage is nearly a definition of "sovereignty".

74 Hooker, *Laws*, p. 77.

75 Aquinas, *Summa Theologica IaIIae*, Q. 95 Art. 4.

76 Hooker, *Laws*, p. 83. Hooker is able to quarantine church law from general positive law, but for Aquinas, living in the thirteenth century, such a thing would surely have been anathema.

account of the English State (see above, Cap. 2).[77]

In examining the core components of Hooker's philosophy of law one is impressed by the number and variety of the Aristotelian inputs. His methodology is teleological throughout, and his epistemology involves a metaphysical view of a rational cosmos in which even God, assigned the role of prime mover, cannot change the rules. Consequently, he recognises politics as an autonomous form of existence. He buttresses the argument with Pythagorean constructs, and a view of human nature in which perfectibility via reason is an actual pedagogical possibility. While he places the intellect above the soul, he also affirms the social tendency (*politikon zo'on*). His treatment of positive law focuses on constitutions (*politeia*), and he tends to equate constitution and citizen body. He stresses the force of law, and though he makes the deliberative element supreme, argues that laws ought to be tailored to fit regimes. Aristotle and Hooker also share "a positive conception of sovereignty" similar to that of Bodin and Hobbes, bearing in mind that Aristotle did not actually discuss sovereignty as such.[78]

In the final analysis, there is enough evidence of Aristotelian underpinnings in Hooker's political thought to confirm H. F. Kearney's assessment of Hooker as "a Hobbesian masquerading as a Thomist".[79] In his theory no less than in Machiavelli's we find "that spirit of later projects of Bacon and his secretary Hobbes, of Locke (the great populariser) and of Harrington and Bolingbroke".[80] It is easy to see that the newly found

77 J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge,1987), pp. 30ff. Pocock himself fails to appreciate fully the vast bulk of common law literature of the period, for which study the copious citations in John Cowell's *Interpreter* (London, 1607), passim (see below, Cap. 7).

78 Curtis Johnson, "The Hobbesian Conception of Sovereignty and Aristotle's Politics", *Journal of the History of Ideas*, XLVI, 2 (1985), p. 327. Nowhere in this interesting paper does Johnson mention Bodin, who is even closer to Aristotle than is Hobbes.

79 Robert Eccleshall, *Order and Reason in Politics* (Oxford,1978), p. 130. Eccleshall is wrong to label this as a "bizarre interpretation", especially on such flimsy evidence as Hooker's routine sixteenth century observation that statutes cannot be contrary to Natural law. See also David Zaret, *The Heavenly Contract* (Chicago,1985), p. 136.

80 Robert Faulkner, *Richard Hooker and the Politics of a Christian England*, p. 24. The realism of Machiavelli is an amplification of the realism of Aristotle, and helps us understand Bodin, as

"positive temporal and secular identity" of Elizabethan England, and the movement towards legislative autonomy in parliament (see below, Cap. 7), correspond well to the way in which he "makes essentially Christian the politeia, the regime or rulers and ruling way of life that is the chief theme of Aristotle's *Politics*".[81] This is especially true considering the deist nature of Hooker's eirenic and rationalistic God. While Sheldon Wolin has read him as the originator of Burkean conservatism, it is equally valid to read him as the first major English theorist to approach the problem of the State, and a forerunner of liberalism.[82] The richness and complexity of Hooker's text belies the neglect of his political ideas in favour of such currently fashionable writers as Hobbes and Machiavelli, and invites further considerations of other late Elizabethan theorists.

By fusing politics and metaphysics, Hooker's contribution to England is similar to Bodin's contribution to France. What makes them so similar is that each recognises that in order for the state to come into being, the "deliberative element of the constitution" must become established, and that whether this element is monarchic or parliamentary, it is supreme. In a word, for the political community to be, it must deliberate as a political community. Both Bodin and Hooker distinguish sharply between positive law created by a legislative process, and Natural law. They both relate Natural law to sublime reason in terms of metaphysical arguments of an eirenic type, and both use Aristotle's account of the origin of the *polis*. As far as English sovereignty theory is concerned in this grand enterprise, Hooker's adoption of Bodinean theory with regard to legal positivism limited only by rationalist "higher laws", whether direct or through the Humanist Politique strand of Continental writers, shows that the English mind had, by 1593, begun to get comfortable with the idea of a determinate locus of legally supreme executive power in every legitimate State. Hooker was the first English theorist to understand the Politique (and Aristotelian)

demonstrated in Cap.I..

81 Stephen Collins, *From Divine Cosmos to Sovereign State*, pp. 81-88. Faulkner, *Politics of a Christian England*, pp. 153-154. "As regards laws made by men, change is always possible, either to increase their effectiveness in achieving a desired end, or to lay them aside when a specific end is achieved or no longer desired". Strauss and Cropsey (eds), *History of Political Philosophy* (Chicago,1987), p. 360.

82 "Hooker was a very great political philosopher judged by any standards", Morris, *Political Thought in England: Tyndale to Hooker*, p. 198.

emphasis on the State, although he did not systematically apply it to the specific case of the English constitution, and therefore can only be said to have gone halfway towards an English theory of sovereignty. Before Hobbes, only Raleigh (below - Cap. 7) was able to go further.

# Chapter V

# James I and The Succession Controversy

We can now say with certainty that the theory of sovereignty was circulating in England before 1603, and that Politique and Aristotelian political thinking was being seriously advocated by England's leading political philosopher at this time. But as we saw in some of the pre-sovereignty texts, the existing English constitution was markedly different from the French system, which had a less circumscribed monarch and a legal tradition based on Roman law rather than common law. The relationship between parliament and the Crown was not well understood, but consensus had already been emerging on the special role of the queen-in-parliament. While the reception of the theory of sovereignty in the 1580s and 1590s can be demonstrated, it is quite another thing to show English writers applying it to their own political institutions in a systematic way. In the remaining part of the thesis I propose to investigate the latter proposition; that the English were able to use the theory of sovereignty to advance their understanding of the English constitution as a combination of legislative and executive institutions of exceptional power.

Whereas the previous chapter dealt with one text and belonged to the same reception period as the preceding one, it is now time to introduce the post-reception period covering the third and fourth decades of the *Six Books* in English political thought. As we saw in the case of La Primaudaye, the circulation of a Huguenot-Politique version of the theory of sovereignty in England before 1603 in the vernacular can be inferred from printing evidence, even though the direct influence of Bodin before 1603 is less than some have assumed (see below, Conclusion). This is not to say that there was no influence earlier than Merbury and La Primaudaye, at the time of Bodin's visit to the English Court for example. But it leads us to consider whether any other writing from the period of the 1590s, or from the decade or so after 1600, contains Politique or Bodinean ideas of the English State. I shall look at three types of writer for this overall period; writers of the succession

controversy, writers of the Court (especially the aristocratic opposition), and individual royalist writers of no definite category such as James I and Edward Forset. This Chapter will examine the succession controversialists and James I, and the next Chapter will examine the Court writers and Forset, and other writers in general, in search of ideas of sovereignty. By looking at texts written by a variety of ideologically different partisans it will be possible to evaluate how widespread the new theory was at the time of its post-reception circulation through the English body politic, and how much it was able to cross party lines.

The first part of this Chapter is concerned with a rare public debate which began in the 1580s, was significantly boosted in 1594, and not concluded until after the ascent of James I to the throne in 1603. Three pivotal texts are dealt with in detail. The first two display examples of the partial influence of Politique views of the State upon writers from alien traditions (Jesuit and Puritan respectively), whereas the third is an English adaptation of Bodin's theory of sovereignty. A common concern which ties the three texts together is their preoccupation with one of Bodin's *leges imperii*, the law of succession, and this brings all three writers to discuss the English constitution and the English State. The three texts are: *A Conference About the Next Succession to the Crown of England* (1594) by Robert Parsons; *A Pithy Exhortation to Her Majesty for Establishing Her Successor ... whereunto is added a Discourse* (1598) by Peter Wentworth; and finally *An Answer to a Conference Concerning Succession* (1603) by John Hayward. The first two both emphasise a contractual view of the State, with Parsons stressing full resistance and Wentworth parliamentary supremacy, and in both cases this is a much stronger use of contract than we have seen in Hooker. Hayward rejects contractualism and lawful resistance using arguments similar to those of Bodin and Hooker, but a constant tension exists in his defence of sovereignty between constitutionalism and Divine Right approaches not found in Bodin, which partly undermines his case.[1]

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1 Gordon Schochet argues that Hayward's reply and Parsons' original broadside are a plausible starting point for the debate on patriarchalism that culminated in Filmer's works on the subject; Schochet, *Patriarchalism in Political Thought* (Oxford,1975), p. 47. This may very well be true, but influences like du Belloy and Botero, and of course King James himself, are worth noting.

Robert Parsons (or Persons) was a Jesuit missionary born in Somerset and one of the leading lights of the movement to reverse the English reformation.[2] In 1585, some years before writing the *Conference*, he wrote to the Pope and Philip of Spain as follows:

> There is now no orthodox Catholic in the whole realm [of England] who supposes he is any longer bound in conscience to obey the Queen. Books for the occasion have been written and published by us [i.e. the English Jesuits], in which we prove that it is not only lawful for Catholics, but their positive duty, to fight against the Queen and heresy when the Pope bids them; and these books are so greedily read among them that they are certain to take arms.[3]

This theme of resistance is the core motivating idea behind the *Conference*, in which Parsons is concerned to point out the weaknesses in the theory that neither the succession nor the incumbency of hereditary princes may be disputed or rejected. He is not entirely opposed to Bodin's notion of sovereignty, although he is explicitly against du Belloy's use of it, in which it is combined with an idea of Divine Right.[4] Because Politique and resistance theories are liable to crop up in this Jesuit text, analysis of the central ideas needs to be cautious. In the bitter conflict of ideological warfare it was even possible for texts of one side to become a basis of other texts from the other side, with sections modified to produce the correct propaganda effect, as in the case of the infamous tract *Leicester's Commonwealth*, which Peck suspects to be a modification by Seminarists of an authentic Politique fragment, although not necessarily one written by Leicester or any of his circle.[5]

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2 A detailed account of Parsons is in *D.N.B.*

3 J. A. Froude, *English Seamen in the Sixteenth Century* (London,1911), p. 151.

4 For an example of his use of du Belloy see Parsons, *A Conference About the Next Succession* (n.p.,1594), pp. 64-66. See also J. H. M. Salmon, *The French Religious Wars in English Political Thought* (Westport,1981), p. 35 : Belloy was "his principal opponent".

5 D. C. Peck, *Leicester's Commonwealth - The Copy of a Letter Written by a Master of Art of Cambridge (1584) & Related Documents* (Athens Ohio, 1985), pp.36,185ff..This original fragment may have been English, or equally it could have been French.

The first move of Parsons is out of Aristotle (and Aquinas), and it is the same move which Hooker makes: to show that the human being is *zo'on politikon*.[6] This is predicated upon the tenet that "government [is] ordained for the benefit of the weale public and not otherwise".[7] In consequence, and against Belloy's idea of automatic succession, conditions or laws exist which "must be aligned and limited out by some higher authority than is that of the prince himself, who is bound and limited thereby".[8] Since constitutions vary considerably in both time and space, and have varied long term political outcomes, it cannot be said that any form of government or succession is so ideal as to be included beneath the "laws of nature" rubric.[9] Therefore, some original understanding or compact would have been required to establish each political society; a contract which is reversible as opposed to the irreversible contract of Bodin and the Politiques (and later, Hobbes). In other words, we find the social contract philosophy, familiar in the subsequent writings of Suarez and Locke.[10] Bodin, as we have seen, was unable to endorse the concept of a rigid compact existing between sovereign and people, preferring to subordinate the sovereign to "divine and natural law", rather than active consent (above, Cap. 1).

The social impetus in human nature which spurs originalism in Parsons' political philosophy is similar to Bodin's (and Aristotle's) union of households, except that for the family he has substituted the individual. Nevertheless, in a later passage he notes the familiar sequence: family: village: town: city.[11] But the Contract in Bodin is unenforceable, while for Parsons it is a two-way thing, and enforceable by Holy resistance. Both agree on sovereignty, but in one it can be irreversibly transferred from the original people, and in the other the people reserve the right to resist, so that ultimately sovereignty remains with the people. For Bodin, as we have seen, the people may have the ability to resist but not the

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6 See Stephen Collins, *From Divine Cosmos to Sovereign State* (N.Y.,1989), p.103. See also J. W. Allen, *A History of Political Thought in the Sixteenth Century* (London,1960), p.260.

7 Parsons, *A Conference About the Next Succession*, p. 1.

8 Parsons, *Conference*, p. 2. (as in Bodin's *Leges Imperii*)

9 *Ibid.*

10 Parsons, *Conference.*, pp. 2-3. Of course, Catholic writers had begun to embrace a monarchomach position in France in the reign of Henry III. But the "thomist" school of Spain avoided specific references to a "state of nature". Quentin Skinner, *The Foundations of Modern Political Thought*(Cambridge,1978), 2 Vols, II, pp. 155,160-161.

11 Parsons, *Conference*, pp. 3-7. He quotes Aristotle's famous passage on p. 4.

right to resist, and historical factors (and cosmic factors) determine whether such resistance will bring in a new regime or constitution, or whether the old regime or constitution continues.

Parsons' next move is the confirmation of the rule of "magistrates" as a fundamental base of civilized political life. He argues that "government also, superiority, and jurisdiction of magistrates, is likewise of nature ... seeing that it is impossible for men to live together with help and commodity of the one, to the other, except there be some magistrate or other to keep order among them..."[12] Even New World tribes, he notes, have primitive magisterial institutions, to which he adds the ringing endorsement of Romans 13.[13] Authority comes from God alone, however, so that the abuse of power counts as a great sin, and justifies resistance. This is a combination of ideas: that rule consists in legislative and judicial activity, and that wicked and sinful statutes are void, regardless of their immediate source.[14] He finishes by summarising the argument thus far in one concept: the State and the rule of law are both "of nature".[15]

Resistance for the sake of order and the restoration of constitutional government in the face of tyranny and usurpation of sovereignty makes very good propaganda but here it goes further than that, because Parsons tries to justify it on the basis of an account of constitutions. His next move is to show how the typologies of constitutions (monarchy, aristocracy, oligarchy, etc.) vary from place to place and time to time. This is an excellent strategy for Parsons. If the type of state can alter from time to time, then how much easier it is for the type to remain monarchical but for the succession to change.[16] Thus, he comes back to his earlier position, that all rule is based on consent.[17] In essence it is the position of the constitutionalist, opposing any idea of personal rule, and in this sense there is no great gulf between Parsons and Bodin. The point has been made that Parsons and his critics (like

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12 Parsons, *Conference,* p. 7.

13 *Ibid.*, p. 8. He refers as well to the *ius gentium.*

14 *Ibid.*, p. 8-9.

15 *Ibid.*, p. 9.

16 *Ibid.*, pp. 12-14.

17 Christopher Morris, *Political Thought in England - Tyndale to Hooker* (London,1953), p. 135.

Hayward) have a lot more in common than they would be "willing to admit",[18] and if we view both as followers of continental legal traditions then we can see how this might have occurred. Stephen Collins remarks that "Doleman [i.e. Parsons] appreciated that man was responsible for his own political and social order", and the Greek flavour of this fits well with the prevalence of Humanist (hellenist) epistemologies noted in previous Chapters.[19]

The similarities and differences between Parsons and Bodin come out in the second chapter, which deals with monarchies, notably the English monarchy. He starts by stating that this is a subset of "supreme government in general", which suggests that he does not see consent encroaching on the power of command.[20] A praise of monarchy follows which is much the same as that found in Bodin (and indeed, in most political tracts of the period).[21] He rehearses the usual analogies: God in heaven, the sun in the sky, the bees, that "do choose unto themselves a king" and then live under "him".[22] The next section, in which he denigrates alternative forms of government, is also filled with echoes of Bodin and other royalist authors. Democracy is "a beast of many heads", full of dissension and weakness, and verging on civil war.[23] Party and faction are no less destructive when the state is an aristocracy or oligarchy.[24] Returning to the prince, he acknowledges that a ruler is "subject to errors in judgement [and] passionate affections of his will" so that "it was necessary that the commonwealth, as it gave him this great power over them ... should assign him also the best helps", which are the Rule of Law and the advice of a council.[25]

It is here that the similarity to Bodin's notion of sovereignty is most noticeable, for in the law state, the legislative function is preeminent among all the powers. Not only ought

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18 J.W. Allen, *Political Thought in the Sixteenth Century.*, p. 261.

19 Stephen Collins, *From Divine Cosmos to Sovereign State*, p. 104.

20 Parsons, *Conference*, p. 15.

21 Parsons, *Conference*, pp. 15-16. Bodin (Knolles edition), *The Six Bookes*, pp. 713ff.

22 Parsons, *Conference*, pp. 16-17. Entomology had not yet progressed very far.

23 *Ibid.*, pp. 18-19. Bodin (Knolles edition), *The Six Bookes*, pp. 700-709.

24 Parsons, *Conference*, pp. 19-20.

25 *Ibid.*, p. 21. (For Bodin's support of rule of law, see Bodin (Knolles edition), *The Six Bookes*, p. 490.)

the prince to rule by law, but a prince should also conform to the laws of the realm, although being under no binding obligation to do so.[26] The notion of advice provides the opening for a discussion of parliament, in the context of a theory of mixed government of the type which Bodin categorically rejected.[27] The king, the council, and parliament are co-ordinate, not combined as in Fortescue's theory of a government "politique et royale"[28] or Smith's idea of the queen-in-parliament.[29] The co-ordinate nature of English mixed government means that for Parsons the two non-monarchic elements are "limitations of the Prince's absolute authority [which] do come for the common wealth, as having authority above their Princes for their restraint to the good of the realm".[30] Having run parallel to Bodin on the legislative function, he has now diverged on the crucial point of divisibility, which is held to be impossible in the orthodox theory of sovereignty (see above). He is bound to do this in order to remain consistent. If authority is on temporary rather than permanent loan from the people, then such popular institutions as do exist must be allowed a share, unlike the position noted in Hooker (above, Cap. 4), where the social contract was irreversible and the Crown thereby becomes coterminous with the body politic, as in Bodin.

Parsons turns to examples of limitations placed upon monarchies throughout history. But instead of a general discussion on constitutionalism, he seizes the opportunity to resume the polemic about variations in the rules governing succession. The Roman kings were chosen by the senate and people. The Spartan kings were able to be deposed by the ephors. The Romans finally changed their constitution from an elective monarchy to a republic.[31] He then returns to the kingdoms of Europe in order to show "that every kingdom and

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26 Parsons, *Conference.*, pp. 22-23. The authorities he cites are Aristotle's *Politics*, Cicero's *Offices*, and the Old Testament.

27 The view here is essentially the same as the one which Job Throckmorton set out in a speech in the Commons in 1587. Michael Mendel, *Dangerous Positions - Mixed Government, the Estates of the Realm, and the Making of the Answer to the XIX Propositions* (University, Ala.,1985), pp. 76-77.

28 John Fortescue, *A Learned Commendation of the Politic Laws of England* (London,1567)., fol.25$^{v}$.

29 Thomas Smith, *De Republica Anglorum* (London,1583), pp. 34-35 (Although Smith does not use the phrase).

30 Parsons, *Conference*, p. 24.

31 Parsons, *Conference.*, pp. 25-28. The last point is a return to the argument that changing the succession is much less radical than changing the constitution .

country hath his particular laws prescribed to their kings by the common wealth, both for their government, authority, and succession in the same".[32] Thus, Germany (the Holy Roman Empire), Poland and Bohemia are elective monarchies in which the powers of the head of state are circumscribed by parliamentary institutions, whereas in England, Spain and France "the privileges of kings are far more eminent", especially regarding succession.[33] His following remarks on the Spanish succession, and on the Salic law, can be glossed over, noting that the Salic law, if anything, weakens his argument. But his next move is a sudden assertion of the position of the Calvinist monarchomach texts, such as the *Vindiciae, Contra Tyrannos*. He claims that "not only ... hath the common wealth authority to put back the next inheritors [of the throne] upon lawful considerations, but also to depose them".[34] An important precedent of Catholicism co-opting the theory of the monarchomachs had already been set by the French League theorist Jean Boucher in 1589, and as Professor Salmon reminds us, Popes had long held that they could depose monarchs.[35] While Parsons was, to be sure, advocating the deposition of tyrannical rulers, he was more interested in the removal of rulers who could be termed infidels (i.e., anti-Catholic).[36] Given that Bodin developed the theory of sovereignty to avoid such sectarian qualifications on rulers, it is not easy to reconcile Parsons' position with his Bodinian tendencies noted above. Bodin, it will be recalled, insisted that princes rule according to natural and divine law, and failing this, gave the magistrates nothing more than the power to refuse to enforce a command. The notion of resistance being legitimate was abhorrent to him. In the *Vindiciae* on the other hand, "kings are made by the people", and Languet's resistance was not restricted to an elective principle at the beginning of a king's "office".[37] So great were the implications of popular sovereignty that by the turn of the century Parsons had come around

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32 *Ibid.*, p. 28. (He seems to refer to "leges imperii".)

33 *Ibid.*, pp. 28-29. Although he goes on to make the point that England is less so than the other two, because of the requirement of parliamentary consent.

34 *Ibid.*, p. 32. See also p. 72. The idea of deposing an anti-Christian monarch is found in Aquinas, *Summa Theologica,* IIaIIae, 10, 10.

35 J. H. M. Salmon, *The French Religious Wars in English Political Thought*, p. 35.

36 Morris, *Political Thought in England - Tyndale to Hooker.* p. 136. By contrast, the protestant monarchomachs were concerned to portray rulers who were not protestant, as tyrants, as the title of the *Vindicae* suggests.

37 George Garnett (ed.), *Vindiciae, Contra Tyrannos* (Cambridge,1994), p.68.

to the non-resistance point of view, so that "the books of the previous decade were now an embarrassment to him".[38] His change of position on on this question may have been nurtured by a more reflective appreciation of Bodin, and the urgings of a beckoning State, but was also expedient, in light of Henri IV's conversion and the peace between England and Spain.

For Parsons the idea of resistance is not as trenchant as that of the protestant monarchomachs, being based on a clear apprehension of the need for stable and legitimate political rule, and he takes the opportunity of reaffirming his opposition to all forms of civil discord. He is "far from the opinion of those people ... who make so little account of their duty towards princes [and] for every mistake of their own they are ready to band against them". He therefore reaffirms his view that once the coronation has taken place and the office has been filled, the will of the prince has the force of law, and is binding on individuals.[39] Returning to the idea of legislative sovereignty, he says that "every man is bound to settle his conscience to obey the same [prince] in all that lawfully he may command", according to the divine injunction of obedience to rulers.[40] But in a sudden twist of Parsons' logic this "quiet obedience" which follows an interregnum does not universally apply, and Parsons is quick to condemn those Divine Right theorists "that yield too much power to princes".[41] Such theoreticians, according to Parsons:

> affirm princes to be subject to no law or limitation at all, either in authority, government, life or succession, but as though by nature they had been created kings from the beginning of the world, or as though the commonwealth had been made for them and not they for the commonwealth, or as though they had begotten or purchased or given life to

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38 Peter Holmes, "The Authorship of *Leicester's Commonwealth*", *Journal of Ecclesiastical History*, XXXIII, 3 (1982), pp. 426-427. Already by 1594 the French *Ligue* was all but finished politically, and since the *Ligue* was the principal source of Catholic resistance theory, this backpedalling by Parsons is timely, although it did not save him from having to distance himself from the text in later years. Bodin himself joined the *Ligue* in the apocalyptic year 1588, only to lose interest in its methods during 1593, as his letters attest. See Summerfield Baldwin, "Jean Bodin and the League", *Catholic Historical Review*, XXIII, 2 (1937), pp. 166, 180-181.

39 Parsons, *Conference*, pp. 33-34. For the extreme protestant account of resistance cf Skinner, *The Foundations of Modern Political Thought* (Cambridge,1978) II, p.343.

40 Parsons, *Conference*, pp. 34-35.

41 *Ibid.*, p. 35 (in the margin).

> the weal-public, and not that the weal-public had exalted them or given them their authority, honour and dignity.[42]

Belloy's Divine Right view of kingship, he continues, contains propositions which "do destroy all law, reason, conscience and commonwealth" and remove the "equity [which] is held between the prince and the people."[43] He concludes by referring to his previous remarks on the importance of obedience, advocating a golden mean between license and servility, so that any resort to resistance can only be an utter last resort, come at by reasoned deliberation.[44]

The thing which made this text radical from a Catholic resistance theory standpoint was that it "set out the right of resistance without reference to the doctrine of papal political power".[45] The theoretical discussion in Chapter II of his book, emphasising legal contract theory, demonstrates this, and so too does the list of historical examples (largely English) in Chapter III, where Parsons shows that monarchs have been lawfully removed, and that few costs and many benefits have resulted in the cases cited. This allows him to return, after a historical interlude, to theoretical matters in Chapter IV, and examine more closely the nature of the monarchic sovereignty which he proposes.

His main purpose is to defend the limited resistance theory of Chapter II from the extreme anti-resistance position of Belloy and the rest of the Divine Right school. The contractual basis of civil society is admitted by Belloy, but only as an original compact, so that from the first ruler onwards society can no more depose the monarch than it can remove its own original undertaking.[46] Parsons begins his attack on two fronts. First, he complains that in Divine Right theory "a king is nothing so restrained in his power or limited to law ... but rather that his law is his own will", a criticism which can be applied to Bodin

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42 *Ibid.*, He singles out Belloy in this context.

43 *Ibid.*, p. 36. I take the latter to be a reference to popular sovereignty.

44 *Ibid.*, pp. 36-3 7.

45 Peter Holmes, "The authorship and early reception of *A Conference about the next succession to the crown of England*", *The Historical Journal*, XXIII, 2 (1980), p. 424.

46 Parsons, *Conference.*, p. 64. This is familiar from the previous chapter on Richard Hooker, and Parsons ascribes it to Aristotle (in part). Belloy supports this with a quote from the Prophet Samuel, reproduced in Parsons (*Conference*, p. 65).

almost as easily as it can be applied to Belloy.[47] But then he moves quickly to his second argument, which is that Divine Right kingship involves a dual theory of property, with a residual proprietary right resting in the king; a theory of property explicitly rejected by Bodin and also by the monarchomachs.[48] He returns briefly to the first argument, only to conflate it with the second: if kings, being the source of law are thereby above law, then nothing can prevent kings from becoming "public murderers, ravishers, thieves and spoilers".[49] He then embarks on a long refutation of Belloy's dual theory of property in which he cites both Cicero and Aristotle in addition to scripture.[50] After a short digression on the notion of tyranny as divine retribution, as in Samuel's speech at I Samuel 8:4-5, he returns to his main thesis. He reaffirms the idea that

> God doth approve that form of government which every commonwealth doth choose unto itself, as also the conditions, statutes and limitations which itself shall appoint unto her Princes ... [because] all law both natural, national, and positive, doth teach us that Princes are subject to law and order, and that the commonwealth which gave them their authority for the common good of all, may also restrain or take the same away again, if they abuse it to the common evil.[51]

This section of the text raises an intriguing question. Does Parsons refute Belloy's Divine Right theory alone, or is he also refuting the doctrine of sovereignty on which Divine Right is partly constructed? If it is read as a theory of lawful resistance, then it does seem to contradict sovereignty, yet if it is read as a commendation of Natural law, then it is consistent with Bodin's ideas on the subject.[52] In other words, Parsons is concerned not to contradict

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47 Parsons, *Conference.*, p. 65.

48 Parsons, *Conference.*, p. 66. As we saw in Chapter 1, Bodin uses the concept of "natural and divine law", as well as community rights in the state of nature, to advance constitutionalism. For similar property rights in the *Vindiciae, Contra Tyrannos*, see George Garnett (ed.), *Vindiciae* (Cambridge, 1994), p.119.

49 Parsons, *Conference.*, pp. 66-67. cf. Bodin's First Book, in which he distinguishes between political units and bands of "robbers and pirates"; Bodin (Knolles edition), *The Six Bookes*, p. 1.

50 Parsons, *Conference.*, pp. 67-70.

51 *Ibid.*, p. 72.

52 Bodin (Knolles edition), *The Six Bookes*, p. 113. See also Beatrice Reynolds, *Proponents of Limited Monarchy* (New York, 1931), p. 186.

the theory that in each state a determinate locus of supreme authority exists, but to connect to this locus of authority the proposition that the people as a whole possess a special power which transcends the constitution to the extent necessary to alter the succession of princes.

This reading is strengthened by the sense in which Parsons holds the prince to be subject to law, and by the careful way in which he approaches the idea of the body politic. Like Hooker,[53] he stresses the point that individually, people are under the Prince, but collectively, the Prince is under the people.[54] Although this is a possible basis for legitimising resistance, on its own it is not much of an "ideology of political resistance",[55] except insofar as a potential rebel can plausibly claim to have the support of the entire population. On the question of the Prince being subject to law, the contract is again invoked. Thus, "the power and authority which the Prince has for the commonwealth is ... a power delegate, or power by commission from the commonwealth, which is given with such restrictions caveats and conditions ... as if the same be not kept, but wilfully broken, on either part, then is the other not bound to observe his promise neither".[56] Again, individual subjects are not concerned, only the whole "commonwealth" or polity.

It is here that Parsons begins winding up his theoretical discussion and prepares the reader for the next chapter, which is a study of coronation oaths. It is worth noting that he is not at all sympathetic to Bodin on this subject, for Bodin (as we have seen) takes the view that oaths are not binding on Princes, but serve an exhortatory function. Rather, the sovereign is free to declare law without consent, providing it is equitable and respects private property.[57] Parsons makes a parting shot at Divine Right theory by citing Aristotle's saying — that the good monarch is the best of all governments, but the bad monarch (tyrant) is by

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53 It is the subject of Book VIII, Chapter 2 of Hooker's *Laws*. On the difficulty of using Book VIII see above, Cap. 4. The same point arises in the *Vindiciae*. G. Garnett (ed.), *Vindiciae, Contra Tyrannos* , p.172,

54 Parsons, *Conference.*, pp. 72-73. The power of the people is inalienable.

55 Peter Holmes, "The authorship and early reception of *A Conference about the next succession to the crown of England*", *The Historical Journal*, XXIII, 2 (1980), p. 425

56 Parsons, *Conference.*, p. 73.

57 Bodin (Knolles edition), *The Six Bookes*, pp. 92-93. Given the highly general nature of the formulas normally used as coronation oaths, the difference between the two positions is more imagined than real.

far the worst.[58] He finishes by praising the example of the Emperor Trajan. He would give a sword to each new governor and say, "Take this sword, and if I do reign justly, use it for me, and if not, then use it against me."[59] Once again, there is no specific bridle on the ruler, only the broad concept of what is "just", and the sword of resistance is wielded by the magistrate, not by the subjects. Parsons ends the chapter by reiterating the point that he is only concerned with righteous rebellion, "and this not so much by private or particular men ... as by the commonwealth, upon urgent necessity and due deliberation".[60] The rest of the book[61] concerns the specifics of succession, with chapters dealing with such subjects as coronation, right to the throne, cases of altered succession, apostasy and so forth. Bodin emphasises the Aristotelian view of kingship in which laws rule, not men, and this assumption yields a vastly different, more sympathetic, reading of Parsons to one based on du Belloy's less circumscribed idea of prerogative rule. At the end of the day this remarkable tract is destined to remain an oddity, however, as it temporarily uses the ideas of the opposite side to further the interests of the pro-Spanish party with uncommonly little thought for the usual ideological stance of religiously mediated resistance which one associates with the Counter-Reformation. It could have been a major work, but lacks the vision and philosophical breadth of Hooker's *Ecclesiastical Polity*, and sacrifices consistency in its contrived, propagandistic effort to upset the Jesuits' opponents.

It is rare in early modern political thought to find three fairly contemporaneous texts representing Catholic, Anglican and Puritan views of major political questions. One of the best things about Parsons' *Conference* is that it led to two celebrated refutations, and that these allow a comparison of the thinking in the three major camps of the English intelligentsia of the period. Let us now see how Peter Wentworth (a Puritan) and John Hayward (an Anglican) defend the succession of James VI of Scotland to the English throne against Parsons' arguments.

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58 Parsons, *Conference.*, p. 78.

59 *Ibid.*, pp. 79.

60 *Ibid.*, pp. 80-81.

61 At p. 93 (misprinted "39") he cites Bodin's *Six Books*, referring to the very section on the Polish coronation oath which contains the famous "leges imperii" passage; Bodin (Knolles edition), *The Six Bookes*, p. 95.

Peter Wentworth, Puritan member of parliament and outspoken conscientious objector, wrote an attack on the theory of Parsons, whom he refers to as Doleman. *A Treatise Containing Mr Wentworth's Judgement Concerning the Person of the True and Lawfull Successor to These Realms of England and Ireland* (*Treatise* for short) was written in the Tower in 1595, but not printed until a year after his death (in the Tower) in late 1597.[62] Given Wentworth's background as a Puritan political crusader, it is a surprise to find him attacking the monarchomach position,[63] albeit a Jesuitical version. As Neale says:

> It may seem strange that the most radical parliamentarian of his age should be refuting a pamphlet that exalted parliament's powers. But Wentworth's pamphlet is a *livre de circonstance*, not a systematically developed political philosophy. His theory of divine hereditary right, tempered as it is by a half-veiled right of deprivation, inevitable to a puritan who could not possibly contemplate the accession of a papist, is as frankly utilitarian as [Parsons'] theory of popular rights.[64]

Neale is no doubt correct to advise caution in approaching Wentworth as a Divine Right theorist, but nevertheless his book does raise a couple of questions. The first question is the obvious one for us — did Wentworth rely upon current theories of political sovereignty in his polemic against Parsons? The second question is prompted by Neale's historical dismissal of the *Treatise*[65] as a *livre de circonstance*. Did Wentworth reconcile sovereignty

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62 J. E. Neale, "Peter Wentworth", Part II, *in* E. B. Fryde and E. Miller (eds), *Historical Studies of the English Parliament* (Cambridge,1970), II, p. 292. The two biographical studies of Wentworth by Neale were originally published in the *English Historical Review* (vol. XXXIX). The *Treatise* was written in the Tower.

63 It is inappropriate to portray all Puritans and Puritan sympathisers as monarchomachs. Most were content to settle on a more libertarian position, centred on the inviolability of individual conscience. Take the case of the polemical play *Sir Thomas More*, written circa 1593 by a group including Anthony Munday, Henry Chettle, Thomas Dekker, Thomas Heywood and William Shakespeare. In the play, More's martyrdom is not depicted as an exemplary piece of Catholic loyalty, but as a statement of the nobility of conscientious objection. This relates closely to the puritan idea of the supremacy of conscience (above, Cap.I), but through passive rather than active resistance. See Vittoria Gabrieli and Giorgi Melchiori (eds), *Sir Thomas More*, pp. 15-16.

64 J. E. Neale, "Peter Wentworth"., p. 290.

65 The *Treatise* appears with an earlier work on a joint title page under the variant title: *A Discourse Concerning the Author's Opinion of the True and Lawfull Successor to her Majesty* (or *Discourse*), but the two works are one and the same. Peter Wentworth, *A Pithy Exhortation* (London, 1598) Facsimile (N.Y.,1973). All references are to this edition.

and Puritan ideas of opposition and if so, then to what extent would Bodin have been acceptable to Puritans? In the attempt to address these two questions we can probe the most important aspects of the political theory of the *Treatise*, in its elegant conflation of popular sovereignty, and the need for unity and stability in the constitution.

It has been observed that the view of parliamentary supremacy in the *Treatise* is reminiscent of the theories of Thomas Smith, rather than any French writer of the period, and considering Wentworth's parliamentary experience this seems likely.[66] On the other hand, parliamentary supremacy is unmistakably couched in the language of sovereignty, demonstrating at least some influence from Bodin and the Politiques on English Puritan discourse. Parsons' attack on du Belloy acts, then, as a stimulus for the public endorsement of the sovereignty theory which he opposes, but in a form acceptable to English audiences who have been suckled on Fortescue and Smith.[67] Parsons' use of ideas normally associated with Huguenot tracts such as Languet and du Plessis-Mornay's *Vindiciae* or Hotman's *Francogallia* draws Wentworth into a sideways condemnation rather than a frontal attack. The book "is wisely suppressed ... because our people are weak and simple in this question", even though the question of succession "is the foundation and pillar, on which the Realm and Religion doth rest". The broad principles are not questioned by Wentworth. He is more concerned with "some things which he hath craftily foisted in ... that he may the more forcibly persuade the doubtfulness of the right of succession, and so distract us".[68] His disgust of the book by Parsons is so great that Wentworth refuses to discuss any part of it, and moves quickly to endorse the succession of James VI of Scotland to the English throne at the appointed time.[69]

Like Parsons, Wentworth believes that all rule must be divinely sanctioned, and also that the people as a whole (the body politic) is the ultimate source of legitimacy, after God. The "power of the Parliament" is:

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66 J. W. Allen, *Political Thought in the Sixteenth Century.*, p. 267.

67 The analogy with Bodin is that his own *Six Books* was itself the product of a concern over theories of resistance which circulated after the 1572 massacre. Bodin (Knolles edition), *The Six Bookes*, p. A69.

68 Peter Wentworth, *Treatise*, pp. 6-8. On the lack of published responses to the *Conference* before 1603, see the prefatory epistle "To R. Doleman" in Haywood, where he suggests the subject was unsafe under Elizabeth, which is confirmed by Wentworth's imprisonment.

69 Wentworth, *Treatise*, pp. 5-7.

> most sacred, most ample and large, and hath prerogatives and pre-eminence far above any Court whatsoever ... [However] the power and authority which it hath, is straightly stinted and designed within the limits and meeres of justice and equity: and is appointed by God, as the power next to himself to ... redress wrongs and ... by good and wholesome laws to procure the peace and wealth of the Realm.[70]

To complicate matters, the rule of parliament is co-ordinate with the administration of the Crown with which it must coexist. The sovereignty of the king-in-parliament involves both making and enforcing the law, and the Prince has a divine sanction "to minister Justice according to the good and wholesome laws of [the] land", so that "the religious and wise king of Scots" is expected "to govern us according to our own laws".[71] In other words, the legislative power is ultimately parliament's but sovereignty is also vested in the Crown.

This belief in parliament's legislative pre-eminence is balanced in Wentworth's account by a view of the social contract which agrees with Bodin's position on the state of nature. He puts the following as a "sure and sound principle":

> If all the people of the whole Realm by common and voluntary consent, for themselves and their posterity, do transfer and surrender the government of themselves and their state into the hands of some chosen man, according to such laws as they shall agree upon, ... they cannot in reason (if he be willing to preserve their laws) think that that power doth yet rest in themselves ... .[72]

The "laws" Wentworth is referring to are those of writers such as John Hooker and Thomas Smith; that is they are the constitutional laws empowering Parliament to legislate and limiting the king-in-parliament as in common law rights. The *Treatise* can be seen as a statement from the Puritan side about how far they would be prepared to allow the future King to rule against the wishes of Parliament, and that they are prepared to abandon resistance theory in favour of a Politique position, provided the regime is constitutional. As we shall see

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70 Wentworth, *Treatise*, p. 45.

71 *Ibid.*, pp. 46-47.

72 *Ibid.*, pp.49-50.

(below), this issue was to be a particularly divisive one in 1610, when parliament could accuse James I of not being "willing to preserve their laws".

The second critic of Parsons' theory, the historian John Hayward, is about as far removed from Wentworth's parliamentary Puritanism as it is possible to be. Hayward had already demonstrated a fashionably Tacitean bent in his 1599 history of Henry IV (1599) and the deposition of Richard II which so outraged Elizabeth, and he is now regarded as an early exponent of partial Divine Right.[73] Considering that Parsons' monarchomach position resembled the position of those whom the Politique writers opposed, it would not be surprising if Hayward took a Politique stance. Nevertheless, it is interesting that Hayward actually uses Bodin in his *An Answer to A Conference Concerning Succession* published in London in 1603. Although we shall not be looking at his work in any detail here, Thomas Craig's manuscript *The Right of Succession to the Kingdom of England* also uses Bodin, as does Edward Forset (below) three years later.[74] Hayward, like so many late renaissance authors, delights in naming sources and in annotations, and using these it is relatively easy to get a profile of his taste in books, and to hunt for influences. There is, as far as I can discover, but one reference to Bodin's *Six Books*, which occurs at p. 21 in a discussion of the Roman *lex regia*. This single acknowledgment is less than we would expect from Mosse's assertion that this text is "virtually a paraphrase of the *République*" of Bodin.[75] Classical sources, including Aristotle's *Politics*, feature prominently though, which should serve to alert the reader that here we may find a more sophisticated political theory than the epithet "Divine Right" suggests.[76] Two other points about the references stand out for particular mention, these being first, the use of long lists of legal references (of post-

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73 John Bruce (ed.), *John Hayward: Annals of the First Four Years of the Reign of Queen Elizabeth* (London,1840), p. xiv. J. P. Sommerville, *Politics and Ideology in England 1603-1640* (London,1986)., p. 26. Stephen Collins, *From Divine Cosmos to Sovereign State.*, p. 106. J. H. M. Salmon, (*French Religious Wars.*, p. 111) does not say Hayward is a Divine Right theorist, but agrees that he was one of the principal influences on Robert Filmer. Allen suggests that Hayward is only partially a Divine Right theorist, compared with the views of James I, (*A History of Political Thought in the Sixteenth Century*, p. 251). Schochet (*Patriarchalism in Political Thought.*, pp. 48-50) finds his lack of patriarchalism significant.

74 Salmon, *French Religious Wars*, p. 156. Forset's book will be studied in the next chapter.

75 George L. Mosse, *The Struggle for Sovereignty in England* (N.Y.,1968), p. 37. For Bacon's amusing statement on Hayward as a plagiarist see Bruce (ed.), *John Hayward: Annals*, p. xiv.

76 Hayward, *Answer*, $B1^{v}$, $B2^{r}$.

glossators and legal Humanists), and secondly, the recurrence of references to Romans 13.[77]

Like Bodin, Hayward is concerned only to shield kings from deposition, not to exalt the rule of kings to the point where rule becomes arbitrary and dictatorial. His first move in establishing the absolute and perpetual nature of sovereignty is to show that the laws of God and nature, although supreme, are not always obvious, so that helps such as scripture, civil law and the works of philosophers and historians must be consulted.[78] He agrees with Parsons that people are social by nature, but not that nature is indifferent as to constitutions. This is where the resemblance to Bodin emerges. Hayward states that it is most natural that "one state, be it great or small, should rather be commanded by one person" and that: "Supreme rulers may differ in name ... and yet in government neither differ nor change".[79] In other words, "the very sinews of government do consist, in commanding and in obeying."[80] Sovereignty cannot be shared, and he gives examples such as the fate of the unlucky Mustapha, the sun in the sky, and the sociable creatures.[81] He dismisses Athens and the early renaissance city-states, and excludes the Roman republic, to confirm the "naturalness" of monarchic government.[82] Then, following a long discussion of the literature on succession by propinquity of blood, Hayward comes to the point that in cases where the people have a power over the constitution, this power is (usually) relinquished.[83] Apart from the case of recent conquest, the methods of transferring the original power are by explicit grant, or by the "establishment" of laws and customs of governing, and Hayward

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77 Hayward, *Answer*, p. 17 ($D1^r$: pagination is sporadic) for a typical legal list. For citations of Romans 13 see pp. 28 ($E2^v$), 42 ($G3^r$), $L3^v$, $T2^v$, $T4^r$, $V3^r$ and $V4^r$.

78 Hayward, Answer, $A3^v$-$B1^v$.

79 *Ibid.*, $B3^{r-v}$.

80 *loc. cit.* (There follows, at $B4^r$, a digression on the Pythagorean cult of the One). For Bodin on sovereignty as command, see above, Cap. 1.

81 *Ibid.*, $B4^v$. The last two are standard (see above, Cap 2). Mustapha provided the theme for Fulke Greville's dramatic poem of the same name. See G. Bullough (ed.), *Poems and Dramas of Fulke Greville* (London,n.d.), II, pp. 63ff.

82 Hayward, *Answer*, $C1^r$-$C3^r$.

83 Hayward, *Answer*, p. 21 ($D3^r$). This is Hooker's position and also becomes that of Hobbes.

makes it clear that it is the second of these two which is of the greatest importance.[84] This argument is buttressed by 19 references, all but one of them to civil law texts.

In the second chapter Hayward rejects Parsons' assertion that laws and councils are imposed upon rulers by the people. On laws, he gives a potted history of English law: conquest by Romans, Saxons and Danes results in the Confessor's laws. These are superseded by the laws of the Norman invaders, and nowhere is popular involvement to be seen.[85] Parliaments, he continues, "in all places have been erected by kings" for the sake of providing advice only, and he rejects the notion "that the power of kings hath been bridled by their subjects".[86] He then condemns the idea of mixed government, accusing proponents of the theory of being "Utopical state-writers ... mellowed in idleness, and having neither knowledge nor interest in matters of government".[87] The rest of the chapter is a tirade against resistance theory, which as we have seen is only partially adopted by Parsons in the first instance. Hayward himself acknowledges this, but takes the view that even a limited allowance of the right of deposition is still resistance, and that any theory of lawful resistance is a contradiction of the inviolability of the crown.[88] He says that he "never heard of a christian prince who challenged [ie. claimed] infinite authority without limitation of any law, either natural or divine". He goes on to say of Parsons: "you have omitted to express what these just considerations [for deposition] may be"; and that "it is a matter of dangerous consequence, to leave these considerations undetermined and at large." He accuses Parsons of deceit: "you do it out of policy, that you may upon every particular occasion declare such

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84 *Ibid.*, pp. 21-24. Under the first heading of direct grants of power to monarchs, he says "so have our people many times committed to their king the authority of the parliament"; which is unsourced. It is a strange statement — one wonders what the new King would have thought of it.

85 *Ibid.*, pp. 33-34. In fact, Anglo-Saxon laws may have been partly of communal origin, and there is also the fact of the Witan Gemot or council of elders. See Harold Berman, *Law and Revolution* (Cambridge, Mass.,1983), pp.51-52. See also F. Liebermann, *The National Assembly in the Anglo-Saxon Period* (Halle,1913), Facsimile (N.Y.,n.d.), *passim.*

86 Hayward, *Answer*, pp. 34-35.

87 *Ibid.*, p. 36. Similar sounding statements by both Machiavelli and Bodin are, of course, very well known to students of the renaissance.

88 *Ibid.*, pp. 40-41.

causes to be sufficient as you please".[89] Unequivocal opposition to both mixed government and lawful resistance is a point of a major area of agreement between the respective positions of Hayward and Bodin.

Hayward's main point here is that princes are only subject to Divine and Natural law, and that transgressions can only be punished by God.[90] He goes on to say of princes that "all jurisdiction within their realm is derived from them, which their presence only doth silence and suspend", which is no different from Bodin's idea that the sovereign is the fountainhead of law and administration, and the final appeal.[91] Princes, he argues, are like fathers and their kingdoms like houses, where the children can never for any reason (even for a seemingly good reason) do violence to the *paterfamilias*.[92] Parsons' resistance theory, therefore, attempts "to cut in sunder the reins of obedience, the very sinews of government and order".[93] This inevitably leads to bloodshed:

> Go to, sirs, go to; there is no Christian country, which hath not by your devices been wrapped in wars. You have set the Empire on swim with blood: your fires in France are not yet extinguished: in Poland and all those large countries, extending from the north to the east, you have caused of late more battles to be fought, than had been in 500 years before.[94]

In his closing remarks to this Chapter, Hayward comes pretty close to the mark, when he charges that Parsons, unable to see the aims of the Counter-Reformation achieved by arms, is using his book to bring about the maximum confusion and fragmentation, by persuading

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89 *Ibid.*, pp. 41-42. When it comes to finding scriptural defences of sovereignty, Hayward places some stress on Romans 13 (p. 42).

90 "The whole force of this argument rests on the proposition that a sovereign cannot bind himself." Francis Wormuth, *The Royal Prerogative 1603-1649* (N.Y.,1967), p. 23.

91 Hayward, *Answer*, p. 45. He points out that Jesuits regard the Pope in the same way. For comparison see Bodin (Knolles edition), *The Six Bookes*, p. 309.

92 Hayward, *Answer*, p. 46. Citing Cicero, Quintillian and Baldus de Ubaldus.

93 *Ibid.*, p. 47.

94 *Ibid.*, p. 49.

people to question the succession.[95] Succession was no longer a major issue after the coronation of James I, when Hayward published his book, but Parsons' original treatise had been timed to coincide exactly with the period of maximum uncertainty, and also in the hope that Elizabeth would be dead before the succession had been settled. In early 1595 the Queen showed a copy of the book to the Earl of Essex, to whom it was maliciously dedicated, and he "was so worried ... that he fell ill and took to his bed".[96]

The rest of the book is a detailed analysis of the succession in support of James I, devoid of more general political discussion, but the ninth and last chapter does contain some political theory, discussed in the course of the recapitulation of the folly of resistance. One argument he uses here is that Parsons is a concealed democrat, resembling a "true follower of the Anabaptists in Germany".[97] He continues:

> In what miserable condition should Princes live, if their state depended upon the pleasure of the people ... how could they command? Who would obey? ... Who knows a people, that knoweth not, that sudden opinion maketh them hope, which if it be not presently answered, they fall into hate?[98]

He follows this idea that the will of the people can never be known, with the idea that popular desire would sometimes be split, resulting in civil war. But he follows with a cryptic remark: "In matters of this moment, the orderly course of proceeding is only by Parliament", which requires the royal writ to assemble and the royal assent to its acts.[99] This is tantalising. It hints at a significant role for parliament in constitutional questions, without conceding the sovereignty of the Crown, and Hayward almost stumbles across one of the crucial constitutional issues of the future Civil War.

The bulk of this final chapter is a Politique rebuttal of the assertion that a Prince needs to be chosen on the basis of religion, especially the willingness to enforce religious

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95 *Ibid.*, p. 49. This passage would have been most welcome to James.

96 G. B. Harrison, *The Life and Death of Robert Devereux, Earl of Essex* (Bath, 1970), p.90.

97 *Ibid.*, T1$^{r}$.

98 *Ibid.*, T1$^{v}$.

99 *Ibid.*, T2$^{r}$.

conformity. After some arguments out of scripture,[100] Hayward comes to toleration. He suggests that "religion is of power sufficient for itself", and that combining it with statecraft is a doctrine of those "whose heads entertain no other object but the tumult of realms".[101] It is much better "to use the ordinary means both of maintaining and propagating the truth, and to commit the success thereof to God", than to enforce religious orthodoxy.[102] His last word, then, is reserved for the condemnation of Parsons for compromising his vocation. He asks: "what have you to do with reasons of state? This is the Eagles Feather which consumeth your devotion ... You take upon you the policy of state".[103] If Hayward's book is remembered for anything, it should not be for its half-hearted Divine Right theory, but for this early and extremely timely advocacy of religious tolerance. The Politique position is strongly maintained in this text, with ideas of sovereignty being applied to the English constitution instead of only being stated generally.

Setting Parsons aside, the comparison of Wentworth and Hayward reveals some important differences in their approach to the English State. Hayward is reluctant to allow parliament more than an advisory role, and little legal power, while Wentworth sticks to Fortescue's distinction between French and English kingship. Parliament was clearly a problem for a thinker like Hayward with his Humanism and his awareness of the Politique idea of indivisible rule, whereas Wentworth began with the idea of the legislature as supreme. Wentworth and Hayward represent two different aspects of sovereignty theory; Wentworth represents the idea of the lawmaking power and its pre-eminence; Hayward represents the idea of a constitutional monarchy in which power descends from the Crown. The chief difficulty preventing the application of Bodin's theory to the English constitution was in finding some way of combining the elements which make parliament sovereign, with the rest of the theory, which empowers the Crown.

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100 Among these we encounter the succinct statement:

> "In successive kingdoms wherein the people have no right of election, it is not lawful for private man upon this cause [religion] to offer to impeach, either the entrance or continuance of that king, which the laws of the State [the constitution] do present unto them ... because disorderly disturbance of a settled form in government" leads to civil strife. (Hayward, Answer, $T3^{v}$).

101 *Ibid.*, $V1^{r}$. He refers to the religious wars in France and Germany.

102 *Ibid.*, $V3^{v}$. Locke was later to use similar arguments.

103 *Ibid.*, $V4^{r}$.

James VI of Scotland came to the throne as James I in 1603, and two short pieces he wrote himself before this date (i.e. in the post-reception period of Bodin's influence) were adopted from Scottish to English political theory just as their author was translated to the English throne. The first text by James I is his *Basilikon Doron* ("Gift of the King"), published in 1599 and again in 1603; and the second is his *True Law of Free Monarchies*, first published (in limited numbers) in 1598 and re-published in 1603.[104] The re-publication of both of these texts in London in 1603, coinciding with Hayward's book on succession, makes this year a significant one for the English adoption of Bodin's ideas which, as we shall see, are much used by James. The *Basilikon* is a short piece on monarchy, addressed to his son (the ill-fated Henry, Prince of Wales) and suggesting that he was particularly worried about his own mortality and wished to pass instructions to his son in the event. It exhibits less of the strident absolutism of later writings, although the tendency is already evident. It has already been observed that the young James possessed a copy of the *Six Books* as early as 1577 (see above, Cap. 3) and the two works in question both demonstrate Bodinean influences. In the *Basilikon* the principal debt to the Frenchman is in James's insistence that the principal attribute of sovereignty is the power, not merely to discover the law, but to make it. In earlier times it was believed that statutes made in parliament could only declare the law.[105] Sovereignty, in this respect, is divided because although he says:

> the government of your subjects, by making and putting good laws into execution, I remit ... to your own discretion ... [yet] remember that ... parliaments have been ordained for making of laws.[106]

But parliament is fickle and may be captured by factions, so James goes on to advise Henry to "hold no parliaments, but for necessity of new laws" which should not arise very often.[107]

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104 All references are to C. H. McIlwain (ed) *The Political Works of James I.* (N.Y.,1965). The date of composition of the *Basilikon Doron* is unknown, but must be before 1598.

105 C. H. McIlwain, *The High Court of Parliament* (Hamden, Conn.,1962), p. 70.

106 James I, *Basilikon Doron*, p. 19

107 James I, *Basilikon Doron*, p. 20

Even at this early stage in his writings, James is firmly within the Bodinian camp of trenchant opposition to the monarchomachs. In her recent book on Elizabethan perspectives of tyranny, Rebecca Bushnell groups these two together as theorists who, in the end, dismiss the importance of the notion of tyranny.[108] James introduces his son to this argument by asserting that the commoners in any realm will be subjected to demagogues who, imagining themselves "*tribuni plebis*" will strive for "a democratic form of government" (in theory), "by leading the people by the nose".[109] This tends to confirm both the growing interest in more republican (if not democratic to our eyes) forms of constitutionalism, and the continuing vulnerability of "democracy" to censure, reminiscent of the condemnation of "democracy" by Aristotle and Plato.

The remaining parts of this short pamphlet mostly concern practical matters of kingship in a late renaissance courtly setting, yet a few points are of interest. For example, James exhorts his son to make a public show of keeping to the laws even though, as sovereign, he cannot be subject to law.[110] In another place he confirms the importance of the mark of sovereignty which relates to the ruler as the point of final appeal.[111] A few pages further on, James displays the effects of his Calvinist upbringing when he enjoins his son to godliness and says that the "light of nature" is the divine part of every soul. This combining of divine and natural law is, he claims, the reason why the pagan Romans can be considered great examples of virtue.[112] As sovereign, the king's son should avoid "the suffering of any contradiction [because it] diminisheth the majesty of your authority".[113] James concludes with encouraging words which, as time went on, were to expand into the Jacobean doctrine of Divine Right. The kingship is "your office, for the which you are

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108 Rebecca Bushnell *Tragedies of Tyrants: Political Thought and Theater in the English Renaissance* (Ithaca,1990), pp. 73,78. They do not deny the possibility of it, but seem to regard any remedies as outside the area of settled politics and law, with which they are primarily concerned.

109 James I, *Basilikon Doron*, p. 23.

110 *Ibid.*, pp. 29-30.

111 *Ibid.* pp. 37-38.

112 *Ibid.*, p. 42. Although there is a resemblance to Hooker (and Bodin) in this passage it would be futile to speculate. The reference to Roman virtue is suggestive of classical republicanism, which is discussed in the next chapter (see below)

113 James I, *Basilikon Doron*, p. 47

ordained", and even for which "God hath ordained you", clearly imbuing it with a divine glow, descending through it to the apparatus of state. The final word is a restatement of the idea of sovereignty as a monopoly of legitimate violence: an "office" to which "only the sword belongeth".[114]

Whereas the *Basilikon Doron* is is addressed to the young prince Henry, *The True Law of Free Monarchies* is addressed to a much wider audience, and consequently it does a great deal more to flesh out and justify the Scottish king's political theory. Given the timing of the monograph — it was written in 1598, when James was negotiating with the English to secure his succession[115] — it can be read partly as a statement of pure theory and partly as an elaborate job application. The treatise is an attempt to set out his theory of sovereignty logically and coherently, and at the outset he says that "I have chosen ... to set down ... the true grounds of the moral duty, and allegiance betwixt a free and absolute monarch, and his people...".[116] It becomes apparent from the outset, then, that what he is offering his readers (and presumably the people of England) is a continuation of the strong, stable and centralised monarchy established by the Tudors, and it will be noted that although he is restating Bodin's theme of "absolute" rule, the classical language of humanism (as in Richard Hooker) has been replaced by a more didactic and clumsy local idiom.

The evolution of Divine Right out of general sovereignty theory can be argued in the case of some late Sixteenth century writers such as Belloy, who was criticised in the succession controversy by Parsons (see above), but Bodin's theory is too constitutional to be placed alongside the Divine Right theory later developed by Robert Filmer.[117] Glenn Burgess reminds us that a certain form of Divine Right coexisted with constitutionalism in

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114 *Ibid.*, p. 52.

115 Although his chief point of contact with the English was the Essex faction, which had replaced the Leicester-Walsingham axis as unofficial "opposition" at court, James also enlisted the passive support of Robert Cecil, who in 1593 had succeeded his father Lord Burghley as the Queen's principal adviser and minister. Mervyn James, *Society, Politics and Culture* (Cambridge,1986), p.441. See also Roger Munden *in* Kevin Sharpe (ed.) *Faction and Parliament: Essays on Early Stuart History* (Oxford,1978), p. 49.

116 James I, *True Law of Free Monarchies*, p. 54.

117 Divine Right is based on a denial of the deliberative nature of political society and the separation of constitution from regime. It is just as inadequate from the monarch's point of view (as a legitimating argument) as it is from the point of view of the free subject, for whom rule is a matter of law and rhetoric, and not arbitrary.

the Elizabethan era, but the two became separated under James and Charles.[118] There was a common tendency to argue for the divine "authorization" of both monarchs and magistrates along the lines of Romans 13[119], and it is not surprising that the first move of James is to combine divine sanction (which is not the same as later ideas of Divine Right) with a theory of law. Scripture informs us that "monarchy is the true pattern of divinity", and this is confirmed "from the fundamental laws" or leges imperii and also "from the law of nature" in that order. "Kings are called Gods by the prophetical King David, because they sit upon God's throne on earth".[120] James also derives his version of the marks of sovereignty out of Scripture — to establish laws, to enforce laws, to procure the peace, to render judgement, to reward good and punish evil.[121] Despite the excessive reliance on Scripture as a sanction of monarchic rule, he is yet to actually state the Divine Right theory in political terms.

A few pages further on, James crosses the Rubicon, in the context of the first book of Samuel, where kings enter the Old Testament tradition.[122] Because it is God who, through providence, establishes kings, "he that hath the only power to make him, hath the only power to unmake him, and you only to obey".[123]. He uses the list of royal abuses which is a feature of the Biblical passage to proscribe the sovereign powers of war, eminent domain and taxation, and goes so far as to say that "all that you possess shall serve his private use" if he wills it.[124] Having established Divine Right in this manner, he then moves on, almost as an afterthought, to what we would recognise as political theory. Thus, he examines the concept of the irreversible social contract, which we have already found in the work of Hooker, claiming that, "yourselves have chosen him unto you, thereby renouncing

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118 Glenn Burgess, The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603 - 1642 (London,1992), p.105.

119 Burgess, *The Politics of the Ancient Constitution*, pp.130-133.

120 James I, *True Law*, p. 54.

121 *Ibid.*, p. 55.

122 For the idea of I Samuel as a decidedly ambivalent statement on statehood, see Bernhard Anderson, *The Living World of the Old Testament* (London,1988), pp. 208-210.

123 James I, *True Law*, p. 57.

124 *Ibid.*, p. 58.

for ever all privileges, by your willing consent out of your hands".[125] James establishes absolutist rule without at any point conceding a role for Natural law, and less still for any consent other than tacit. However, as James Daly reminds us, he at no stage countenanced arbitrary rule, although commentators sometimes confuse the two.[126]

When reading James's early works, it is most important to be aware of the debate about the origin and nature of Divine Right theories. Stephen Collins takes issue with Professor Greenleaf's position that it is an extension of early Tudor concerns with rule as order, and correctly notes the intent of Divine Right polemics to refute the same monarchomach theories which Bodin refuted with the sovereignty idea.[127] But whereas Collins tries to insulate these two responses, and asserts that "divine right theory ... never fully articulated any concept of sovereignty"[128], it is more a case of divine right theorists digesting sovereignty, and moving beyond it in order to ensure that only legitimate monarchs could ever possess the sovereign powers. This infusion of Bodin's position, along with the anti-resistance theme, is evident in James's advice to subjects towards "obeying his commands in all things, except directly against God", and suffering occasional instances of what might be seen as tyranny "without resistance".[129] In order to reinforce the argument that rule of the one was the only type of rule possible for Scotland (and by extension England), James breaks with the more Aristotelian Bodin and blatantly asserts the finality of conquest. He moves from a general inquiry into "the first manner of establishing the laws and form of government among us", to the observation that "a wise king coming in among barbarians, first established the estate and form of government, and thereafter made laws".[130] Although it has been asserted that such a king could be deprived by his subjects if

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125 *Ibid.*, p. 59. Perhaps it is too harsh to judge James on his attitude to his Scottish subjects, given his experiences as a child as retold in his *D.N.B.* entry.

126 James Daly, "The Idea of Absolute Monarchy in Seventeenth-Century England", *The Historical Journal*, XXI, 2 (1978), p. 248.

127 Stephen Collins, *From Divine Cosmos to Sovereign State*, p. 110.

128 *loc. cit.*

129 James I, *True Law*, p. 61.

130 *Ibid.*, pp. 61,62.

he seized all their property, this is purely academic since "either of them is unlawful, and against the ordinance of God",[131] reminding us of Bodin's Divine law.

Despite this tendency to manipulate sovereignty into an exclusively monarchist theory (and it must not be overlooked that Bodin was, in spite of his constitutionalism, a staunch monarchist), James still had to come up with a convincing account of the relationship between king and parliament in order to satisfy his readers, although one is never too sure whether he means his present colleagues in the Scottish parliament or his future colleagues in the English parliament. He begins by confessing that the assent of parliament is required for the making of any new law. So it is that, "in the Parliament ... the laws are but craved by his subjects, and only made by him [the king] at their rogation, and with their advice". But he immediately reserves "statutes and ordinances" to the royal prerogative, and then goes on to make the claim that "it lies in the power of no Parliament, to make any kind of Law or Statute, without his Scepter be to it, for giving it the force of a law."[132] In other words, the king-in-parliament possesses legislative sovereignty, but a large area of public administration is reserved to the royal court under prerogative powers the exact nature of which remains undetermined. This is not inconsistent with the idea that James was importing aspects of a more powerful monarchic element under the rubric of prerogative. In this passage James sees parliament as having a counselling responsibility, but with the royal veto freely applied to any proposed legislation.

Having made the telling admission that a modern parliament does indeed possess a power to advise and consent, James spends the next few pages outlining the king's personal authority.[133] After an aside on the conquest of England in 1066, and a brief mention of Crown rights in treasure trove and reversions, he states that a king is "master over every person" in the territory because he has "power over the life and death of every one of them".[134] What is more, "the king is above the law" in the sense that the author of a law cannot be bound by it. This gives him a right of final appeal and granting pardons and

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131 *Ibid..*, p. 62.

132 *loc. cit.*

133 This results in a division of sovereignty between the king and the king-in-parliament which would have dismayed Bodin.

134 James I, *True Law*, p. 63.

privileges, to the extent that "laws made publicly in parliament, may upon known respects to the king by his authority be mitigated".[135] This is reminiscent of the account of "marks" of sovereignty in I,10 of Bodin's *Six Books* (see above - Chapter 1). It is followed by a string of analogies: vassals are subject to lords; scholars to schoolmasters; citizens to magistrates; children to fathers and the members of the body to the head.[136] This discussion of the lawful personal powers of the monarch is not inconsistent with the Rule of Law, except that he does not indicate the circumstances which would trigger such powers, and thus gives the impression of powers greater than those appropriate in a constitutional monarchy.

The final part of this text consists of four pages (in McIlwain's transcript) devoted entirely to refuting the monarchomachs. These writers believe "That every man is born to carry such a natural zeal and duty to his commonwealth" that when it seems "rent and deadly wounded ... by tyrannous kings, good citizens will be forced [to resist]".[137] In other words, duty to the commonwealth outweighs allegiance to the Crown. His immediate response is that resistance can never be justifiable, but he also uses the argument that rulers are "ordained" to rule and citizens to be ruled, before returning to the argument that the cure is worse than the disease, and results in constitutional collapse and mob rule.[138] The second aspect of monarchomach theory which concerns him is the appeal to theology. Interestingly, he tries to dispose of this religious justification by referring to the social contract. He lamely asks of these theorists: "What lawful power have they to revoke to themselves again those privileges, which by their own consent before were so fully put out of their hands?".[139] That James should use this particular argument here reveals a sense of aporia in coming to grips with the implications of Calvinism, forcing him to fall back on an established but theologically irrelevant argument, suggesting that the Calvinist version of resistance may well have been a blind spot for James. The third argument, which he refutes easily, is the notion that republics have flourished - he deals with this by simply stating that the outcome

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135 *Ibid.*

136 *Ibid.*, p. 64. This is followed on p. 65 by the usual animal examples.

137 *Ibid.*, p. 66.

138 *Ibid.* Again he quotes Du Bartas. "James ... takes the works of Bodin and others to their logical conclusion: the antithesis between a good king and a bad tyrant is so undermined that it collapses...". Rebecca Bushnell, *Tragedies of Tyrants*, pp. 74-75.

139 James I, *True Law*, p. 67.

of a contest is no indication of right or wrong.[140] The fourth argument of the monarchomachs centres on coronation oaths. During such ceremonies, according to these theorists, "there is a mutual pact, and contract bound up, and sworn, between the king and the people"[141] He begins by denying that a coronation oath is a binding contract at all, then suggests that even if it were, only God could judge upon it.[142] His final rejoinder is that any contract which may be entered into at the coronation is between two parties: "the king is the one party, and the whole people in one body are the other party".[143] The obligation of the king is to one party as a whole, not the individuals who may feel aggrieved, and since the king would never seek the destruction of his people, they should never seek his destruction.[144] It is hard to know whether James is admitting the existence of a contract or not. He certainly does not make explicit use of Bodin's other argument, that coronation oaths merely confirm the obligation of all princes to obey the laws of God and nature.[145]

James finishes the treatise by reaffirming the concept that "the duty and allegiance, which the people swear to their prince, is not only bound to themselves but likewise to their lawful heirs and posterity" and therefore overrides all other considerations.[146] His reference in this passage to the established laws of succession is probably based on his determination to acquire England upon the demise of Elizabeth.[147] He also reaffirms his previous point that kings can and should be punished for any wickedness, but only by God. Thus, the "further a king is preferred by God above all other ranks ... of men ... the greater is his obligation to his maker".[148] The text ends with an admission that he expects republicanism

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140 *Ibid.*

141 *Ibid.* This is a reference to Parsons' *Conference* (See above, Cap. 5)

142 James I, *True Law*, p.67. The denial of the binding nature of the oath along these lines is also in Bodin - see above, Cap. 1.

143 *Ibid.*, p. 69.

144 *Ibid.*

145 Bodin (Knolles edition), *The Six Bookes*, p. 89.

146 James I, *True Law*, p. 69.

147 By the time this was written James had secured the support of key members of the English administration, including Robert Cecil.

148 *Ibid.*, pp. 69-70.

to persist for some time, and with a didactic statement about the mission of kingship, the public good, and the duty of subjects.

James I achieves the limited purpose of a plausible-sounding defence of monarchic sovereignty in a world where alternatives to monarchy were, thanks partly to the portability of the idea of sovereignty itself, becoming increasingly attractive. Where James differs from Bodin's theory of sovereignty is in his belief that "kings did have an absolute power, essentially mysterious, that was not legal in nature".[149] This further dimension of absoluteness contrasts with the notion that the sovereign is located by the constitution and performs a purely legal function, and that concepts of divine sanction such as Romans 13 legitimate secular rule itself and not only monarchic forms of rule, much less the rule of a particular monarch.

By the time he had been on the English throne for seven years James I had changed his position, moving closer to Bodin's legal emphasis and going part of the way towards maintaining those "laws" of limited monarchy which Peter Wentworth had alluded to from the Tower in 1595 (see above). His speech to the Parliament in March 1610 is repentant to a point, as it pursues the objective of securing supply by mollifying the suspicions of the Commons MPs, although it should be remembered that the Subsidy was only one of several sources of income for the Crown at this time.[150] In the speech James promises to honour his coronation oath and abide by the basics of the constitution, including parliament and the common law. But in addition James continues to insist that sovereignty is royal and includes a plenary grant to himself of powers centred on the law maintaining role of his office. Onlookers must have been confused by this speech, with its combination of absolutist propaganda and clearly stated constitutionalism, and if it was supposed to be a backdown by James then it was a very prickly and resentful one. It is not surprising that in the same 1610 session of Parliament James Whitelocke used the idea of sovereignty familiar from Bodin, not to accede the sovereign power to the king but to advocate "a parliamentary sovereign".[151] As we shall see in Chapter 7 (below), Whitelocke's idea of Parliament is

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149 Glenn Burgess, *The Politics of the Ancient Constitution*, p.154.

150 John Miller, "Absolutism in Seventeenth-century Britain", J. Miller (ed.), *Absolutism in Seventeenth-Century Europe* (London,1990), p.208.

151 C. H. McIlwain, *Constitutionalism and the Changing World* (Cambridge,1969), pp.76-77.

essentially the same adaptation of Bodin which we discover in Walter Raleigh's authentic works.

After a few prefatory remarks James begins his argument with a theory of sovereignty, asserting that the "state of monarchy is the supremest thing upon earth".[152] Like Bodin, he uses the analogy of the *paterfamilias* and the parallel between the State and the household: "Kings are also compared to fathers of families, for a king is truly ... the politique father of his people", and James also uses the concept of the body politic at this point.[153] A page later, having upheld his claim to absolute power, he announces his intention to rule according to the settled English constitution, and creates a fundamental distinction between "the general power" of a king and "the settled and established state of this crown and kingdom".[154] But from here James switches back to his earlier theme of absolutism by arguing firstly that the original kings in history were absolute, and secondly that various analogies suggest absolutism and freedom of action. This is then followed by a return to the constitutionalist argument in which he asks his audience to "distinguish between the state of kings in their first original, and ... the state of settled kings and monarchs, that do at this time govern in civil kingdoms". Accordingly, James agrees that "a king governing in a settled kingdom" can be branded as "a tyrant, as soon as he leaves off to rule according to his laws".[155]

By this time James is near the central part of his long speech, which attempts to clarify the position of the government on common law versus civil law. He argues that he has no intention of replacing common with civil law, merely of using it in appropriate jurisdictions such as those which concern the laws of other European powers. James compares common law with other national codes based on customary law, including the French municipal laws (as in Hotman), and the jurisdictions he mentions are "the Ecclesiastical Courts, Court of Admiralty, Court of Requests, and such like", but no mention is made at this point of a court of Chancery, which, as Oakley points out, would become

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152 Johann P. Sommerville (ed.), *King James VI and I: Political Writings* (Cambridge,1994), p.181.

153 *Ibid.*

154 *Ibid.*, p.182.

155 *Ibid.*, p.183.

known by 1616 as "the court of the King's *absolute power*".[156] On the other hand, all constitutional matters are based on common law, "reserving ever to the Common Law to meddle with the fundamental laws of this Kingdom, either concerning the King's Prerogative or the possessions of Subjects".[157] James goes on to suggest a very thoroughgoing reform of the common law based on three principles; first, that the archaic Law French maxims and precedents be translated; second, that a skeleton form of the common law be enshrined in Statute form; and thirdly, that the Reports and Statutes be edited and areas such as penalties be reviewed and updated.[158] Setting aside the reform proposals as a diversionary tactic, this is a policy of coexistence put in such a way as to take the wind out of Parliament's sails but leave an opening for the further growth of civil law, which as we saw above (Cap. 1) contains maxims supporting Bodin's theory of sovereignty.

Following the section on civil law the speech deals with prohibitions and grievances. In the section on prohibitions James admits that he has followed a course of trying to reduce them and thereby reduce the multiplication of cases resulting, giving the example of a deserving clergyman forced to be absent from his parish who is deprived of the benefice by such an action.[159] But the most interesting thing about this section of the speech is his reference to a personal intervention in two judgements. In France this royal intervention in the judicial sphere was a crucially important prop for monarchic authority known as the *Lit de Justice*. Sarah Hanley has brilliantly analysed the symbolism of the *Lit de Justice*, in which:

> The King is the husband and political spouse of the *chose publique* , which brings him ... the domain as the dowry of his crown; and the royal children are children of the French people and of the *chose publique*. As a political analogue ..., the family metaphor did not fail the monarchic state as early as did other representations, such as divine right, which could not survive the desacralization of kingship after 1610; or

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156 Francis Oakley, "Jacobean Political Theology: The Absolute and Ordinary Powers of the King", *Journal of the History of Ideas*, XXIX, 3 (1968), p.343n.

157 *Ibid.*, p.185.

158 *Ibid.*, pp.186-187.

159 *Ibid.*, pp. 187-189.

> the beehive, whose king when subjected to scientific scrutiny turned out to be a queen.[160]

When James complains in his speech that "at two several occasions" he "spent three whole days in ... labour" before presiding at "a large hearing", he cannot resist alluding to the "Marriage" theme so prevalent in the French version of such a hearing. He claims that the constitutional justification for his interventions arises from his "office" of kingship, which requires him to restore the judicial system so that each jurisdiction keeps "within [its] own limits".[161] There is nothing in this section of the speech which would suggest these English *Lits de Justice* were likely to stop, and common law lawyers in the audience must have found this distressing.

The other matter dealt with before he returns finally to his desire for supply is the issue of grievances. Here James confines his thoughts to the House of Commons, as he sets out limits for the raising of grievances by the MPs, either individually or collectively. The main target of royal displeasure is the large number of such grievances directed against the high Commission and senior Bishops, no doubt emanating from the Puritan side of the House. As before, James begins by vehemently confirming the place of grievances in the constitution and championing Parliament's "ancient Orders". He agrees that members of the Lower House, by "representing the Body of the people, may ... present your Grievances unto me", and later adds that every MP has an obligation "to your Countries that trust and employ you" to voice a genuine grievance, noting that "true Plaints proceed not from the persons employed, but from the Body represented".[162] But what is a "true" grievance for James is strictly defined, especially where he denies any possible greivance which would "meddle with the main points of government", in particular grievances aimed at the legal validity of the high Commission, which must have raised the hackles of many of those present in his audience. He finishes this section of the speech by remarking that his own

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160 Sarah Hanley, "Engendering the State: Family Formation and State Building in Early Modern France", *French Historical Studies*, XVI, 1 (1989), pp.26-27.

161 Sommerville (ed.), *King James VI and I: Political Writings*, p.188.

162 *Ibid.*, pp.189-190.

grievance is that parliament does not cull all of the partisan and vexatious grievances before sending them to him, especially the grievances on issues of ecclesiastical government.[163]

The final part of the speech raises the issue of supply. As in the case of grievances, James addresses his most earnest advice to the Commons MPs, declaring to them that "the Lower house is but the representative body of the Commons", and that "what you give, you give it as well for others, as for yourselves".[164] To the extent that taxes upon the subject are part of the supply and not prerogative duties, the power of taxation belongs to the representative institution, and this accords well with the allocation of the taxing power to parliament by writers such as Thomas Smith and John Hooker (above, Cap. 2). The argument which James advances is not that parliament must grant supply, but that the Parliament would be unreasonable not to cover the Crown's expenditures in areas of public necessity or public good. He returns to his notion of office, claiming that "if the King want, the State wants, and therefore the strengthening of the King is the preservation and the standing of the State".[165] At the end of the speech a few pages later, James restates his claim that if the Parliament ends "without the repairing of my State" by a large subsidy, then "what can the world think, but that the evil will my Subjects bear unto me, hath bred a refusal". On the same page James terminates the speech, and once again he uses a sovereignty analogy when he refers to himself as "your Head" and the audience as "the Body".[166] This is the essence of his position of 1610; that even though parliament controls at least partially the lawmaking and taxing powers he is head of the executive and sovereign in virtue of his office and vocation as king, and subject to limitations of the constitution.

The importance of the speech is not its tendency to confirm the Elizabethan constitution, but in the many provisos and limitations applied by James to this confirmation. James refuses to concede anything to the point where his own freedom of action could be subject to political controls, in keeping with his belief in civil law and his concern for his own sovereignty. This is the link with his earlier texts, and it continues during his reign, as in the simple Divine Right sloganizing of John White in 1624:

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163 *Ibid.*, pp.191-192

164 *Ibid.*, p.193.

165 *Ibid.*, p.195. Note the modern use of "the State".

166 *Ibid.*, p.203.

> Your Highness is more than an ordinary man: God hath set his own image, as it were upon his gold, in an eminent manner upon you, which he hath not done upon other men: your cause is God's cause, your zeal and constancy is for God's truth; they are God's inheritance and peculiar people you defend, it is your right you stand for; and a blessed government you maintain.[167]

Instead of basing sovereignty on the social contract as in Hooker and Bodin, James relies on a contract with God, and while sacralizing kingship might be a good tactic against the Pope, it runs counter to the separation of church and State implicit in a rationalistic account of abstract sovereignty.

The single greatest error of James I and also of John Hayward is the failure to adapt sovereignty to the unique aspects of the English polity. Peter Wentworth knew from his time as an MP in the Commons just how powerful parliament had become, but Hayward and James applied the concept of sovereignty to the monarch alone, as in France. This was a retrograde step, as John Hooker and Thomas Smith (above - Cap. 2) had already made the crucially important move of attaching constitutional supremacy to the king-in-parliament (or queen-in-parliament as it was in their day). Both royal sovereignty and the sovereignty of the king-in-parliament are positions which refute the monarchomach idea of a residual popular sovereignty which Parsons uses so effectively in his opportunistic text. But when sovereignty is with the king-in-parliament the idea of representation which this entails is an excellent riposte to those who would argue for popular sovereignty, as it provides the people with an alternative to extra-constitutional political action. Representation in parliament could be viewed as a surer way of changing laws than illegal resistance, as long as the Crown could be depended upon to promulgate the Acts. At the time of James's accession the adaptation of Bodin's theory to English conditions was still in its early stages, and we shall now see how other writers in England at this time used Politique and related ideas.

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167 Quoted by Margaret Judson, *The Crisis of the Constitution: An Essay in Constitutional and Political Thought in England 1603 - 1645* (New Brunswick,1988), Reprint, p.179.