

The Nature and Function of
Historical Argument in the
Henrician Reformation

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Dissertation submitted for the degree of Ph.D.

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List of Abbreviations

B.I.H.R.	<u>Bulletin of the Institute of Historical Research</u>
B.L.	British Library, London
<u>Cal. Sp.</u>	<u>Calendar of State Papers, Spanish</u> , ed. Bergenroth et al., 13 vols., London, 1862-1954
<u>Corp. Ref.</u>	<u>Corpus Reformatorum</u> , ed. C.G. Bretschneider, et al., Halle, 1834 -
C.U.L.	Cambridge University Library
E.E.T.S.	Early English Text Society
<u>E.H.R.</u>	<u>English Historical Review</u>
<u>L.P.</u>	<u>Letters and Papers, Foreign and Domestic of the Reign of Henry VIII</u> , ed. J.S. Brewer, et al., 21 vols. and 1 vol. of Addenda, London, 1862-1932
P.R.O.	Public Record Office, London
P.S.	Parker Society
Rolls Series	<u>Rerum Britannicorum Medii Aevi Scriptores</u> , London, 1858-1895

Abbreviations

St. P.State Papers ... King Henry VIII,
11 vols., London, 1830-1852T.R.H.S.Transactions of the Royal Historical
SocietyW.A.Martin Luther, Werke,
Kritische Gesamtausgabe,
vols. 1 - Weimar, 1883 -

Preface

The reader may be forgiven for wondering whether both the Henrician Reformation and Tudor historiography have not received their full share of attention recently. The number of published studies on these subjects is indeed too great to make their particular rehearsal here practical; I freely acknowledge my indebtedness by citations of the more important of them in the bibliography and notes of reference. The advances in our knowledge have been considerable and cannot be ignored in any further enquiry, and yet I have come to think that in seeking the relationship of the two elements of this study, the historiography and the events of the Reformation, a fresh start is required. Historians of the Henrician Reformation have come upon phrases in the statute book, and pronouncements of the King and his ministers which hint, or more than hint, that history and precedent justify the new order in England. These brief and enigmatic passages have attracted attention because to understand the justification is, arguably, to understand the policy itself. At any rate, there is here some element of official thinking that needs to be investigated. The problem has been to identify the precedents that are being raised and to know what was understood by them. It has not proved easy. On the contrary, it has been the cause of a fair measure of disagreement among historians. Further progress, it seems to me, is only likely if the details are now given their place in a broad and general picture. For this reason I have endeavoured to discover as much as seemed relevant of the historical knowledge and outlook of Henry VIII and his ministers. Since to wade

straight into their historical ideas would involve endless diversions and delays along the way, I have studied the lie of the land first, by describing certain historical notions which either were, or were becoming, common currency in sixteenth century England. Some of these tended to lend support to the King's proceedings, some, undoubtedly, led their proponents away from his camp. Each, in their way, help us to understand why the Henrician Reformation took the form it did.

This may explain the form of this dissertation, but not quite its scope. When I began, I intended a relatively simple study of the historical notions of certain English Protestant authors and apologists for the Henrician Reformation, as they developed in the 1520's and 1530's. Quite apart from the light that might be thrown on events in England, there were, I had thought for some time, paradoxes to be explored. What value could reformers place on history when a Reformation, by its nature, must deny the force of recent, and probably much distant, precedent? How can extended historical argument co-exist, as it frequently does, with protestations of the sole-sufficiency of scripture as the rule of faith and practice? Now, thinkers sometimes take notice of the world around them, so I looked out for signs that English Protestant authors adapted, or refused to adapt, their thinking to the fact of the Royal Supremacy; Henrician propagandists could be expected to trim their historical ideas to the train of events. I was surprised, however, to find that ideas, and historical ideas particularly, had altered political circumstances in England, not merely in the general sense that any action must spring from a state of mind or of knowledge, but in that intentionally accumulated historical evidence had had a paramount and demonstrable influence on

the shape of government policy.

This conclusion is based principally on the interpretation of largely ignored collections of manuscript notes and other papers in the British Library and Public Record Office, and upon the re-interpretation (partly in the light of those collections) of a considerable number of printed and manuscript tracts and books produced as propaganda for the King's Reformation. A further conclusion from these materials is that there were broadly two Henrician theories of history and policies of Reformation which may be ascribed to identifiable parties within the King's Council. This was enough to persuade me that, having searched out obscure references and pursued the little twists of historical argument, I should go on to consider, in the light of these things, what and whose were the policies that secured the annulment of the King's marriage and the break with Rome. To do less would be to ignore the continuous interplay of policy and theory which was the real context of much historical writing in the Henrician Reformation.

If such an approach is found to be valid, it does throw some new light on important aspects of the times. It suggests the way in which significant legislation, particularly the Conditional Act in Restraint of Annates and the Act of Appeals, was framed. It helps to clarify the contribution and relative importance of individual ministers of the Crown and shows in specific instances how their authority was exercised with the King. The authorship and import of a number of books and papers is reassessed; it is surprising how many important pieces there are hidden and neglected behind the calendarers' sometimes unhelpful descriptions. It touches upon the contribution of

German reformers, notably Melancthon, to ideas and policies in England. Finally, it offers something to the resolution of an historical debate concerning the meaning of 'empire' in Henrician legislation.

I welcome the opportunity to acknowledge some of my great debts of gratitude. Many have been liberal with help and encouragement without which I doubt that this dissertation would have been completed. I must mention particularly my supervisors, Dr. H. C. Porter, who bore with me for two difficult years at the beginning of my research, and Prof. G. R. Elton, whose timely advice has been of the greatest assistance and a constant encouragement. The staffs of many libraries have assisted me with invariable courtesy and good humour, none more so than the staff of the Rare Books Room in the University Library, Cambridge; they have been troubled for too long by my wearisome requests for obscure and weighty tomes. The Master and Fellows of Clare College made a generous contribution to my travelling expenses. Mrs Moira Riggs and Mrs Margaret Dykes persevered to transform my cramped scribbles into typescript. Above all, my father and mother have been a steady and discreet support; without their selfless interest, affection and, indeed, material assistance this study would not have been undertaken or completed.

None of these persons, it hardly needs to be said, is in any way responsible for shortcomings and errors in this study; it is my own work and no part of it has been produced in collaboration with any other person.

Note

I have endeavoured as far as possible to retain original spellings in quotations, though in a few cases I have used modernised editions or modern translations. I have, however, substituted v for u where it is preferred in present-day usage and have occasionally amended punctuation, to avoid obscurities.

CHAPTER I

The Foundations

There was little novelty in the history being written in England in the decades prior to the Reformation. The tradition of the universal chronicle was moribund, though paradoxically more accessible than ever before through the printed word. History of this kind followed certain forms and interests that were long-established and familiar; a chronicler began at the Creation and ordered subsequent events into six or seven ages in imitation of St. Augustine. His theme was no less than 'the record of the acts of God in history',¹ the linear progression of spiritually significant events from the Creation to the incarnation and, most importantly, to the Last Judgement. It is true that medieval chroniclers often descended abruptly from the cosmic to the particular, rehearsing first a received tradition deriving from biblical narratives and classical histories and mythology, then repeating and extending monastic annals of the mainly recent and local past. The grand design faltered as the perspectives became shorter. But a failed masterpiece can never be mistaken for a successful pièce d'occasion. Compare two writers on the end of the Roman Empire. To Robert Fabyan, in 1516, it meant no more than the cessation of payments of tribute. The story is not so very different in Ranulph Higden's Polychronicon -

¹ John Taylor, The Universal Chronicle of Ranulph Higden (Oxford, 1966) p. 33.

in fact Fabyan derived much of his account from Higden.¹ The significance of the event is immeasurably heightened in Polychronicon, however, by Higden's exposition of Daniel's prophecy in Book III. Daniel appeared to prophesy the rise and fall of the ancient empires, including the Empire of Rome, and this, worked together with Augustine's periodisation of history and Eusebius of Caesarea's chronological tables of the ancient world, was a principle source of the universal history formulated by Otto of Freising and Vincent Beauvais.² Higden's reader was in touch with the hallowed Christian tradition of a single chronological framework in the history of all peoples, the pivotal point of which was Christ's incarnation. It was a splendid, stupendous scheme, and its hold on the popular imagination remained strong enough for it to be the spring-board for some Protestant and other anti-papal interpretations of history.

By the early years of the sixteenth century few historiographers raised their sights so high. It was still possible to begin at the Creation and to proceed through six or seven ages, but Fabyan (to take him as an example again) who employed both these devices in his chronicle, had a far more down to earth approach than this might suggest. Fabyan's interest in the Creation is purely chronological; he needs to establish its date in order to compute the year of the fall

1 E.g. Fabyan's account of the building of a wall to restrain the Picts and Scots, R. Fabyan, The newe Cronycles of Englande and Fraunce, R. Pynson, London, 1516, fol. xxvii^b, is derived directly from Higden: Polychronicon Ranulphi Higden Monachi Cestrensis, ed. C. Babington and J. R. Lumley (London, Rolls Series, 9 vols. 1865-1886) V, p. 224 ff.

2 Taylor, The Universal Chronicle of Ranulph Higden, p. 33-50.

of the city of Troy. It was from Troy, according to the well-established legend, that Brutus and his followers migrated to the isle of Albion to found a new nation. The history of this nation is Fabyan's chief concern. The criteria of the division of his book into seven parts are such important but mundane moments as the beginning of payment of tribute to the Romans, the Saxon and Norman Conquests. The history written by Fabyan and most of his contemporaries was not universal in either a temporal or spatial sense. In fact, Fabyan spilt very little ink on the earlier ages; the first four occupy 28 folios only, and well over half the book, 233 folios to be precise, is concerned with the period from the accession of Richard I to the death of Richard III. It is here in this more recent history that Fabyan's interest evidently lay, and those interests are often parochial. For each year he diligently records the names of the mayor and sheriffs of London. The pedigree of this part of the book stretches back through a whole series of city annals, beginning perhaps in official records of the thirteenth century, but at their fullest development in the fifteenth.¹ The surprise is that Fabyan manages to get more into his work, spreading himself over the materials that national chronicles such as the Brut carried. The success of his enterprise, the profusion of city chronicles, the frequent copying of the Brut suggest that they supplied a widely-felt need for history in English that concentrated on matters close to the experience of a lay public - city life, celebrated political scandals, military campaigns

¹ On the city annals and the place of Fabyan's chronicle in that tradition see the Introduction to A.H. Thomas and I.D. Thornley, eds., The Great Chronicle of London, London, 1938, and C.L. Kingsford, English Historical Literature in the Fifteenth Century, chapter IV, p. 70 ff.

in France, the more recent past in general. This was not secular history exactly. The spiritual significance of things is assumed rather than denied; omens, prodigies and the arcane are by no means vanquished by rationalistic explanation. Yet people and their actions are at the centre of the stage in a way they had not been in the universal histories.

The temptation to peer at the past with a moralising squint was strong, and for the most part unresisted. There is no evidence that the more modern historiographers, any more than the monastic chroniclers, appreciated that institutions and ways of thinking were subject to constant change and development. Past appeared very much like present. Examples and warnings could be drawn from history, especially from human action, bad as well as good. 'For certayne', Caxton claims, 'it is a greete beneurte unto a man that can be reformed by other and straunge mennes hurtes and scathes, And by the same to knowe what is requysyte and proufytable for his lyf',¹ and his opinion was widely shared. Those in England with some knowledge of Italian humanist historiography were no less fulsome in their praise of history. The initial tendency of Italian historical scholarship was not, as might be supposed, to promote the rigorous weighing of evidence and establishment of fact. Some, Valla and Biondo pre-eminently, did attempt these things, grasping the concepts of change and anachronism, appreciating the dissimilarity of the ancient world,²

1 W.J.B. Crotch, ed., *The Prologues and Epilogues of William Caxton* (London Early English Text Society, Orig. Series 176, 1928, p. 64. ('Proheyme' to *Polychronicon*, 1482)

2 On the contribution of Valla and Biondo, see below, p. 38, 43ff

but others, Bruni in particular, and Guarino, had Cicero's respect for history as rhetoric, for history which convinced as much by the beauty of its language as by the authority of its argument.¹ Just as Cicero favoured biographical history, from which one might deduce virtuous precepts, so in England Thomas Elyot held the biographical history of Plutarch in high regard and quoted him frequently.² The experience of others expressed in history is, Elyot argues, to be an example to the commonwealth and to the individual; but he goes so far as to claim that even if histories be interlaced with inaccuracies or legends - he refers to stories of Nestor, Ulysses, Menelaus - their didactic value is not impaired.³ Polydore Vergil, the demolisher of a good number of English historical myths, had a far more critical attitude to legends but the same respectful attitude towards history 'the only unique, certain and faithful witness of time and things, redounding as much to the glory of the author as to the usefulness of posterity'.⁴

Vergil develops to a high degree moreover the contemporary pre-occupation with persons and personalities. Kings are the first subject of the Anglica Historia and such changes as Vergil perceives in

1 See R. Sabbadini, Il Metodo degli Umanisti (Florence, 1922), p. 75-85, cited by D. Hay, Polydore Vergil, Renaissance Historian and Man of Letters (Oxford, 1952) p. 150.

2 See J. M. Major, Sir Thomas Elyot and Renaissance Humanism (Lincoln, Nebraska, 1964) p. 152-3.

3 T. Elyot, The Boke named The gouernor, T. Berthelet, London, 1531, Bk. III, chap. xxiv, fols. 243a ff: 'Of experience which have preceded our tyme, with a defence of Histories'.

4 See D. Hay, Polydore Vergil p. 152-3.

England are primarily the result of the action, inaction or moral standing of individual monarchs. Fate, or divine intervention, attends in the wings, it is true. Froissart's figure of Fortune is the judicious spectator of the rise and fall of the Plantagenets, from the reign of Edward II to the murder of Richard II. The balance was not so far tilted in Vergil's day towards the inevitability of all things that Fortune made a mockery of human effort; by their emphasis on human character as a force that shaped the affairs of the world, historians were able to emancipate their subjects to a degree. More's Richard III, for instance, or Caxton's nine worthy heroes of the world are far less the pawns of fate than the princes of Boccaccio's history - made known in England in Lydgate's translation.

It was possible, accordingly, to construct a highly didactic scenario of English history in which dynastic and personal ambition were the sufficient cause of civil commotion. Hall did so in his Union, pursuing cause and effect with great sophistication through an extended period of history. He offered a means of making sense of the tumultuous events of the fifteenth century which so puzzled and fascinated the English in the sixteenth century.

As kyng henry the fourthe was the beginnyng and rote of the
great discord and devision : so was the godly matrimony, the
final ende of all discencions, titles and debates.

The 'execrable plagues' which troubled the realm and which Hall puts down particularly to subverted lineages, are cured by the statesmanship, the 'politike governaunce', of the Tudors.¹

¹ Edward Hall, The Union of the Two Noble and Illustre Famelies of Lancastre and Yorke, R. Grafton, London, 1548; quoted here from Hall's Chronicle, London, 1809, p. vii, viii and 1.

Hall's celebrated history canonised the nationalist approach which shaped much Elizabethan historiography. Hall, and Fabyan before him, were reflecting the interests of an educated lay public and their awareness of city and national politics in which of course they, whether city burgesses or the middling gentry, were playing an increasingly important and vocal role.¹ Hall was a parliamentarian, so Parliament and its part in the making of national policy loom very large. There was patriotism of a rather older sort in Berners' preface to his translation of Froissart, undertaken at the command of a king, Henry VIII, who had already tried his hand at regaining lands in France. On a long view, Berners' fond regard for chivalrous enterprise and the good old days of Edward III was as anachronistic as Henry's territorial ambitions, but no less stirring for that. The popularity of the legendary accounts of the Trojan origins of the British people and of Henry's exploits was unabated - kept buoyant by the spirited support of Caxton, Leland and others against what was bound to become an overwhelming tide of commonsense and scholarly criticism. Theirs was a touchingly misplaced attachment which must count as some sort of evidence that historians were sensible of a national identity. The truth is that it becomes increasingly hard, in the latter part of the fifteenth century and the first years of the next, to find writers who raise their sights far beyond the boundaries of England. The other sort of history seemed to be going by default. As a result not only did English history appear more

¹ See D. Hay, 'History and Historians in France and England during the Fifteenth Century', Bulletin of the Institute of Historical Research, XXV (1962) p. 111-127, esp. p. 126.

important than it had, but increasingly sophisticated analyses of political life in the fifteenth century were widely available to the literate public.

* *

The idea of the growth of the Tudor myth has proved attractive to historians, no doubt because its place in the lineage of Elizabethan historiography is neatly demonstrable.¹ Considerably less attention has been devoted to the origins of a new type of religious historiography, one that shared much with contemporary non-religious historiography but which was rooted in religious dissent. Here was a broad view of the history of the Church and of its alleged decline which seems to have caught the imagination of many who were little attracted to doctrinal heresy. It is not hard to see why. It gave a sinister perspective to the high position of the clergy in the world - something that was already causing much concern inside and outside Parliament. On a slightly different level it meant that Henry's propagandists could rather facilely pin all manner of civil discord, past and present, on the papacy and its temporal ambitions - as they did in the preamble to the Act of Appeals.²

1 See, for instance, E.M.W. Tillyard, Shakespeare's History Plays (London, 1944).

2 See Appendix II, p.298ff (Draft of the Act of Appeals, 24 Henry VIII c. 12, Public Record Office, London, SP2/N fols. 78-90, esp. fols. 81, 84-85. No doubt one could also trace the entry of elements of this historiography into the work of John Bale, John Foxe and other Protestant writers of a slightly later generation, but that is really an undertaking beyond the scope of the present work. On this see two articles by Margaret Aston: 'John Wycliffe's Reformation Reputation', Past and Present, 30 (1965) p. 23-51; 'Richard II and the Wars of the Roses', in The Reign of Richard II, Essays in honour of May McKisack, ed. F.R.H. Du Boulay and C.M. Barron, London, 1971. See also K.R. Firth 'The Apocalyptic Tradition in early Protestant Historiography in England and Scotland 1530-1565', unpubl. Oxford D.Phil. thesis, 1971.

In the late 1520's a number of English religious dissidents took refuge on the continent. Between them the exiles were responsible for the publication of upwards of twenty volumes in the decade 1525-35, the majority being produced in Antwerp (including several with the false imprint 'Hans Luft, Marburg').¹ At one time or another William Tyndale, Robert Barnes, John Frith and George Joye were numbered among the exiles, these being men best known for their works of doctrine and exegesis. There were others, rather more shadowy figures perhaps, whose writings, though religious in the sense that they complain of the state of contemporary religion, contain little or no discussion of theology; these were Simon Fish, Jerome Barlow,² and William Roye, men with a relatively simple view of history. Their contribution began early, with the publication of Roye's A Breve Dialogue³ in August 1527, and was finished by 1530 without them coming under the influence of Luther in the way Tyndale and Barnes were to do.

The origin of the historical ideas of Roye and Barlow is indeed no mystery. They cultivate many of the assumptions of lay historians, particularly their obsessions with the analysis of the events of the fifteenth century, with the authors of sedition, with

1 For a bibliography of first editions see A. Hume, 'English Protestant Books Printed Abroad, 1525-1535: An Annotated Bibliography', The Complete Works of St. Thomas More, (Yale Edition, Vol. 1 - New Haven, 1963-) Vol. 8 pt. II, Appendix B, p. 1063-1091.

2 Here we must pass over the question of the identity of Jerome Barlow. T.F. Tout in the Dictionary of National Biography took Jerome Barlow to be one and the same as William Barlow, Bishop of St. Asaph's and St. David's. E.G. Rupp, Studies in the Making of the English Protestant Tradition, Mainly in the Reign of Henry VIII

the subversion of lineages and degree and with what might now be called English sovereignty. All these are recast, however, in a religious frame and for this their principal and avowed sources were Lollard tracts. Roye and Barlow published a pair of these in their volume A proper dyaloge betwene a Gentillman and a husbandman, subtitled An ABC to the spiritualite.¹ The first is the latter part of a tract - 'an olde treatyse' - against the temporal possessions of the clergy,² the second 'A compendious olde treatyse shewynge howe that we ought to have the scripture in Englysshe'. Though A proper dyaloge was put out anonymously its similarity to The buryall of the mass (sometimes known as Rede me and be not wrothe)³ in regard to its style - the fractured versification - and its matter can leave little doubt that it was the work of the same hands, of Jerome Barlow that is, with the collaboration of William Roye. Two further volumes of

Continued from previous page

(Cambridge, 1947) p.62ff tends to the view that Jerome Barlow was an English Observant and not William Barlow. See also I.B. Horst, The Radical Brethren: Anabaptists and the English Reformation to 1558, Nieuwkoop, 1972, p. 47 ff.

- 3 William Roye, (trans.) A Breve Dialogue bitwene a Christen Father and his stobborne Sonne J. Schott, Strassburg, 1527.

- 1 A proper dyaloge betwene a Gentillman and a husbandman ... An ABC to the spiritualite, 'Hans Luft Marlborow', i.e. J. Hoochstraten, Antwerp, 1530. E. Arber, ed., English Reprints, 8 vols. London, 1868, VIII, p. 129-184. The work is, as the title suggests, an imaginary conversation between two critics of the clergy, in the course of which two old treatises are recited.
- 2 The complete text is printed from Lambeth MS 551 in F.D. Mathew ed., The English Works of Wyclif Hitherto Unprinted (London, E.E.T.S., Orig. Series 74, 1880) p. 359-396; see Aston, 'Lollardy and the Reformation: Survival or Revival', History, LXIX (1964, p. 149-170) p. 153 n.4.
- 3 Jerome Barlow & William Roye, The treatys of the buryall of the mass, J. Schott, Strassburg, 1528; Arber, English Reprints, VIII, p. 119-124.

Lollard tracts were published in Antwerp, An examination of Master William Thorpe ... (and) of Lorde Cobham,¹ containing two separate pieces, and The praier and complaynte of the Ploweman.² Both these volumes were put out anonymously and their editorship has been the subject of speculation³ despite which there can be little doubt that they were Tyndale's doing.⁴

Now Tyndale's prefaces are interesting for what they do not say; there is no commendation of Lollard doctrine. The reader is directed to place the Lollard martyrs in the eternal scheme at which Tyndale hinted, to see in their condemnation only another episode of oppression

1 An examination of Master William Thorpe ... An examination of ... Lorde Cobham, 'Marburg', (i.e. J. Hoochstraten, Antwerp) 1530; E. Arber ed., An English Garner, (8 vols., London, 1877-1896) VI, p. 41-134.

2 The praier and Complaynte of the Ploweman unto Christe, probably M. Lempereur, Antwerp, 1532; in The Harleian Miscellany (8 vols., London, 1744-53) VI p. 84-106.

3 See A. Hume, 'A Study of the Writings of the English Protestant Exiles', unpublished London Ph.D. dissertation, 1961, Appendix, who suggests George Constantine as the editor of the Examination of Thorpe and Joye of the Praier and Complaynte.

4 Both Bale and Foxe ascribed the Praier and Complaynte to Tyndale; moreover the theme of the preface, the age-old conspiracy of those who aspire to lead the Church, from Pharisees to bishops and popes, to silence the teachers of the truth who are nevertheless raised up from time to time by God, no less than the use of the phrase 'practyse of our prelates' (Harleian Miscellany, p. 86) hark back to Tyndale's earlier historical work. Whoever edited this tract almost certainly edited the Examination of Thorpe. The preface of the latter shares this distinctive view of history and even some of the language: both prefaces compare the bishops of the Roman Church to 'their Fathers', bishops and priests of the old law, and both prefaces make mention of the execution of the priest Thomas Hitton at Maidstone in 1530, deliberately associating his death with martyrdom in apostolic times.

by the ecclesiastical authority.¹ By comparison Barlow and Roye adopt the argument of the Lollard texts as their own to a marked degree - indeed part of it is their own, for their second tract, the 'Compendious old treatise' contains interpolated passages composed by the editors.² It is here, in the work of those who instinctively recognised their kinship with the religious and social dissidents of an earlier age that the confluence of the old and new streams of protest can be seen to be taking place. These Antwerp publications were more than additional Lollard propaganda; the texts were presented or reworked in a definite attempt to apply the social and religious criticisms of the past to the present. They recognised the sorest grievances of the day, mortuaries, tithes, fees of all kinds, spiritual jurisdiction, those that were taken up in the Supplication of the Commons of 1532, and cast them in an ominous guise. The Antwerp writers gave dissent a history, turned clerical ambition into a plot and hinted that the integrity of the state would not be restored until evangelical religion returned.

How was this achieved? An element of Wycliffite thought that appealed strongly to the Antwerp pamphleteers was the primitive 'lex Christi', the law of God in the scriptures; this was first the criterion of doctrine but also, importantly, a guide to moral behaviour. Towards

1 On Tyndale's view of history, see below, p.18ff

2 It is possible to separate the old from the new with a measure of certainty. The full text of the original tract is in a Trinity College Cambridge MS. 333, Fols. 26-30b, see M. Deansley, The Lollard Bible and other Medieval Biblical Versions (Cambridge, 1920) p. 437-445, who prints the Trinity College MS. Passages in the 1530 printed version without warrant in this MS. may be assumed to be interpolation, and indeed these passages, where they are not patently anachronistic, tend to lose the point of the tract, which is the enumeration of precedents of translation of the scriptures.

the end of his career Wycliffe came to see the Christianity of the earliest and apostolic ages, when the Church embraced the scriptural law of poverty, meekness, disinterest in worldly affairs, as uniquely pure. To him and to others of his Oxford circle who were debarred from the Church's patronage there was no doubt a particular attraction in the notion that the wealth and power of the visible Church was recently-assumed and illegal. The idea also caught the imagination of Lollards of the next generation, predominantly drawn from the lower levels of society and now experiencing open persecution. In their literature, not excluding the tracts printed by English Reformers, these pious folk rather effectively contrasted the arrogance and power of the episcopacy with the simple spirituality of New Testament Christianity. The 'Olde Treatise' (in A proper dyaloge) has the comment, for instance:

Se howe playnly lordshippe is forboden to all apostles... He that is greatest of you se that he be made as younger in symplenes, and he that is fore goere loke he be as a servant. This is the forme of apostles lyfe, lordshyppes forboden and servys is boden.¹

Oldcastle's words elaborate the point.

'Since the venom was shed into the Church ye followed never Christ, nor ye stood never in perfection of God's Law'
Then the Archbishop asked him, 'What was that venom?'
The Lord [Cobham] said 'The Lordships and possessions. For then cried an angel, 'Woe! woe! woe! This day is venom shed into the Church of God. For before that time there [were] many martyrs of Popes; and since I can tell of none; but, sooth it is, since that time one hath put down another, and

¹ A proper dyaloge, Arber, English Reprints VIII, p. 151.

one hath slain another as the Chronicles tell; also of much more cursedness'.

According to the 'Old Treatise', a degree of economic provision had been established for all estates of men in Mosaic Law and in Christ's teaching. For the spirituality, tithes were to provide an income:

For he dealyd the lande amonge the laye people and he assygned the first frutes and tythes to the prestes and deakenes.¹

Nothing more ought to be allowed. The spiritual estate should own no land, not even if it is called 'perpetual alms', nor hold secular office. The perversion of this ordained order, the Antwerp pamphleteers argue, had resulted historically both in a decline of the clergy's doctrine and morals and in great social and economic hardship affecting all estates of men, the nobility above all.² A withdrawal of lands from the clergy would be no robbery, the writer argues, but a 'right-wise restitution'³ - a restitution in other words of divinely ordained degree.

The lesser Antwerp writers had developed the social aspects of the 'lex Christi' at the expense of its religious significance; what was left was a law of degree. First there was a golden age:

1 A proper dialoge, Arber ed., English Reprints, VIII, p. 155-6.

2 Ibid., VIII, p. 157

'For why, this almes that clerkes speake of here, made many wretches and it was geven to them that had no nede. And thus it is empeyrynge not only of one estate of the chyrche, but of all thre ...
By a mortesyenge of lordshippes the lordes be undone in great party'.

3 Ibid., p. 158.

First when englonde was in his floures
 Ordred by the temporal governoures
 Knowenge no spirituall iurisdiccion
 Then was ther in eche state and degree
 Haboundance and plentuous prosperite
 Peaceable welthe without affliction.
 Noblenes of blood was had in price
 Vertuousnes avaunced, hated was vyce
 Princes obeyd with due reverence¹

The clergy's power and possessions subvert this order. Why should priests and religions not possess worldly power? partly, again, because of the apostolic example of poverty.² There is just a hint, though, that such is their natural station in society since they are

The beggers sonnes most commonly,
 Their fathers scant worth a groate.³

Perhaps because they (as the Lollards before them) were liable to suspicion of sedition, the Antwerp writers found the threat to social order in another quarter. The exiles were quick to associate the disasters of the fifteenth century in England with clerical excesses. Tyndale led the way. Initially, in the Obedience of a Christian Man, Tyndale saw a simple if chronic contest between the

1 A proper dyaloge, ibid., p. 138

2 Ibid., p. 135:

They take upon them apostles auctorite
 But they folowe nothinge their profession
 Often tymes they preache of christes povertie
 Howe be it towarde it they have no affeccion.

The Antwerp writers shared Wycliffe's particular indignation at the worldliness of the mendicant orders. A further tract published by the exiles, The Summe of the holye scripture, Antwerp, 1529 (a translation of Oeconomica Christiana, attributed to H. Bomelius) is also very critical of the mendicants.

3 Buryall of the mass, Arber, ed., English Reprints, VIII, p. 61.

clergy and the Crown. When King John was proceeding to fulfil his duty by the punishment of a wicked clerk, the legate of the Church absolved the temporal lords of their natural allegiance, forcing the King to surrender his crown and kingdom to the Pope. Henry V, being ruled by his clergy, was despatched to France to fight for clerical liberties. Having made this point, Tyndale bemoans the decline of population, the decay of towns, the spilling of noble blood consequent on the clergy's ascendancy; only the Church prospers materially.¹

These two examples are taken up in A proper dyaloge; both John and Henry V are depicted as falling foul of the clergy because they set about to regain control of temporalities and jurisdiction.² This was not in itself an exceptional view of history. Fabyan and Wynkyn de Woorde in his continuation of Polychronicon both suggested that the spirituality sent Henry V to France for fear of an attack on their temporalities.³ 'Read the chronicles of England', Tyndale recommends, 'out of which yet they have put a great part of their wickedness; and thou shalt find them always both rebellious and disobedient to the kings'.⁴ And indeed the Cronicles of England (the Brut Chronicle) published by Caxton in 1480, for all the alleged distortions, does

1 William Tyndale, The obedience of a Christen man, 'Hans Luft, Marlborow', i.e. J. Hoochstraten, Antwerp, 1528; edited by H. Walter, Doctrinal Treatises and Introductions to Different Portions of the Holy Scriptures (Cambridge, Parker Society, 1848, p. 127-344): see p. 337-339.

2 A proper dyaloge, Arber, ed., English Reprints, VIII, p. 166-7

3 Fabyan, The newe Chronicles, Fol. CLXXVb. R. Higden, Polycronycon, P. Treveris, Southwark, 1527, Fol. CCCXXIXb

4 Tyndale, Obedience of a Christian Man, ed., Walter, Doctrinal Treatises, P.S. p. 338

record the facts of the interdiction of England in the reign of John very much as Tyndale has them.¹ The Antwerp writers had taken a long view, however, perceiving rather as Hall was to do, the levers of causation linking the present with the past. The defeat of King John was a notorious example, 'a cast of their common gyse' that had turned the natural order upside down.² The consequences of the subversion for the fifteenth century are more finely drawn; the clergy's determination to extirpate the 'the Gospell of Christ ... which at that time prospered fast' - their persecution of the Lollards and the vernacular scriptures, that is - was the direct cause of 'moste terrible plages of fearful vengeance'. With much loss of life the English were defeated in France, and thereafter fell to murderous and protracted civil war. 'The realme longe season in myschefe stood'.³

Disorder in society, then, is seen to derive at length from the heresy of the established Church in suppressing the law of God, the scriptures. As the full complexion of the secular role of the clergy becomes apparent, so the case for royal action against the spirituality is made explicit. Simon Fish's Supplication⁴ relates monetary exactions to political power in a rather sophisticated way, with a lawyer's grasp of ways and means. Despite the somewhat singular form in which the Supplication is cast, the influence of the Antwerp circle

1 The cronicles of England, W. Caxton, Westminster, 1480, sigs. i 1b - i 3a

2 A proper dyaloge, Arber, ed., English Reprints VIII p. 166-7

3 Ibid., p. 147-148

4 Simon Fish A Supplicacyon for the Beggars, n.p. n.d. (Antwerp, 1529)

is altogether apparent, not least in the extent of Fish's verbal borrowings from Tyndale's Obedience of a Christian Man.¹ He regrets the newly acquired wealth and power of the spiritual estate - 'Oh grevous and peynfull exactions thus yerely to be paied, From the whiche the people of your nobill predecessours the kinges of the auncient Britans ever stod fre'² - understands the role of pretended spiritual power (deriving from the doctrines of the mass and purgatory) in the financial and political ascendancy of the clergy, registers dismay at the treatment^{of} King John and the occupation of offices of secular government by clerks. All these and more reiterate the themes of other Antwerp writers. Most important of all though is Fish's concurrence in the analysis of Barlow and Roye (and to a limited extent of Tyndale, in the Obedience) that a political problem required a political solution - direct reform by the King. Deprive the clergy of their goods, Fish urges the King, and 'set these sturdy lobies a brode in the world ... to get theire living with their laboure in the swete of their faces according to the commaundement of god'.³

* *

Until about 1530 Tyndale was prepared to go along with this. He had affected to despise Barlow and Roye's lampooning style; 'it becometh not the Lord's servants to use railing rhymes,' he had written sententiously, 'but God's word, which is the right weapon to slay sin,

1 Hume, 'A Study of the Writings of the English Protestant Exiles'. p. 226-228 demonstrates the verbal dependencies and suggests that elsewhere Fish 'continues to borrow some of Tyndale's key ideas'.

2 Fish, Supplicacyon, sig. 2b

3 Fish, Supplicacyon, sig. 8a

vice and all iniquity.'¹ But in the Obedience of a Christian Man, having completed his exposition of the hierarchy of degrees in society, very much after the manner of Luther,² he reverts to a more markedly English accent for a section, headed simply 'Antichrist', of complaints against the extortions of the clergy. This was Tyndale capitalising on all the anti-clerical sentiments and niggling grievances, just as other Antwerp exiles were doing. 'A christian man must suffer all things,' Tyndale warns, '... neither is it lawful for him to cast any burden off his back by his own authority.'³ Kings were ordained, however, to protect their realms from oppression of this sort. They ought to direct part of the Church's income, Tyndale suggested, 'unto a common wealth' and put an end to the separate jurisdiction of the ecclesiastical courts for which there was no warrant in the ordinances of God. There should be no such thing as spiritual law, nor would there be, he protests, if the spirituality contented themselves with preaching the word of God and with the modest living that became their office.⁴

Yet in the very breath in which he utters his hope that kings would fulfil their duty, Tyndale seems to admit his despair - 'if they were Christians, which is seldom seen, and is a hard thing verily, though not impossible. For, alas, they be captives or ever

1 Tyndale, The Parable of the Wicked Mammon ed. Walter, Doctrinal Treatises, P.S. p. 41

2 See W.A. Clebsch, England's Earliest Protestants, 1520-1535, (New Haven, 1964) p. 151

3 Tyndale, Obedience of a Christian Man, ed. Walter, Doctrinal Treatises, P.S. p. 239

4 Ibid., p. 239-40

they be kings, yea almost ere they be born.'¹ The King's failure for the time being to provide a plain text of the Scriptures in English was the sticking-point for Tyndale, the thing that appears to have convinced him that he could not countenance Henry's Reformation by his return to England. A broader conviction was growing in him the while: neither the history of the Church nor its present troubles could be understood as a simple conflict of lay or royal interests against the ambitions of the clergy. The practice of prelates, he was to conclude, was not to oppose the crown but to engross its power; kings were puppets from whom independent action could hardly be expected.

If the full development of this idea took place in Tyndale's own mind, there are clear indications that he came under strong influence from several directions. It has long been recognised that Tyndale was willing to incorporate into his writings substantial sections of the work of others, sometimes changing the language or the emphasis a little, by no means always acknowledging his source. He was chiefly in the debt of Luther; there is in the Obedience an emphasis on the divine ordination of worldly offices to each degree of men which seems to owe its spirit to Luther, even though for once a precise verbal indebtedness is not apparent.² For Tyndale, as for Luther, the clergy had intruded into the realm of secular authority which pertained to the office of the prince. This alignment with

1 Tyndale, Obedience of a Christian Man, Walter, ed., Doctrinal Treatises, P.S. p. 239

2 See J.M. Headley, Luther's View of Church History, New Haven, 1963, p. 9 ff

Luther is important, as much for Luther's limits on the office of the prince as for those he places on the spirituality. A good deal of the detail was borrowed from elsewhere. One source for the Practice of Prelates, Tyndale's systematic historical work,¹ which has apparently gone unnoticed was Erasmus' Julius Exclusus. Written at an important stage in Erasmus' development in the years in which he was editing Jerome and preparing for his edition of the New Testament, Julius Exclusus reflects, for all its scurrillous lampoonery, Erasmus' growing preoccupation with the idea of Christian purity in the early Church, and his conviction that the philosophy of Christ had been squeezed out by power, riches and titles. Peter the fisherman confronts Julius the Renaissance magnate. Erasmus has Julius explain his foreign policy:

This was my major concern, to become thoroughly acquainted with the animating spirit, character, emotions, wealth, and strivings of all nations, and especially of all princes: who was at peace with whom; and then to make use of all these things for our own purposes.²

Here, some fifteen or sixteen years before the publication of the Practice of Prelates, Erasmus was suggesting that an episode in European history could be seen as an elaborate papal plot in which kings and princes were played off against each other. When Tyndale came to explain 'the cause of all that we have suffered these twenty

1 W. Tyndale, The Practyse of Prelates, 'Marborch' i.e. J. Hoochstraten, Antwerp, 1530.

2 P. Pascal trans., The 'Julius Exclusus' of Erasmus, Bloomington, 1968, p. 77

years'¹ he offered a similar analysis. Julius, for his own purposes, and particularly to regain patrimonial territories, united the princes of Europe against the Venetians,² but the French were more successful in Italy than he had anticipated. Their challenge was met by an alliance rearranged by papal diplomacy, which included the English and drew much of its finance from a gullible English parliament.³

Tyndale's growing distrust of royal authority extended to his interpretation of the important events of the fifteenth century. At about the time the Practice of Prelates appeared, or just before, Tyndale edited the Examinacion of Oldcastle from which it was evident that Henry IV had given leave for heresy charges to be brought against Oldcastle by Arundel and that the King had refused Oldcastle's appeal to intervene in the trial. Tyndale puts aside political explanations of the quarrel which led to Richard II's deposition. He concluded that Henry, in league with Archbishop Arundel, opposed Richard because the King had protected Wycliffe and his followers. Henry IV and his line were usurpers in Tyndale's eyes, and far worse, colleagues with the forces of Antichrist which persecuted the disciples of Christ.⁴

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- 1 Tyndale, Practice of Prelates, ed. H. Walter, Expositions and notes on sundry portions of the Holy Scriptures, together with the Practice of Prelates, (Cambridge, Parker Society, 1849) p. 310.
 - 2 Ibid., p. 299-300; Pascal, trans., Julius Exclusus, p. 58, 77.
 - 3 Pascal trans., Julius Exclusus, p. 77-79, cf. Tyndale, Practice of Prelates ed. Walter, p. 299-300. In a casual aside - 'as Erasmus sayeth' - Tyndale acknowledges his use of Erasmus: Tyndale The practyse of Prelates (1530) sig. F viia. The phrase is omitted from the Parker Society edition. For his earlier history of papal appropriations of secular authority Tyndale in the Practice of Prelates appears to rely on Judas Nazarei (pseud.) Vom alten und neuen Gott, Glauben und Lehre, n.p., 1521. Tyndale adopts the historical conception of this work (see below, p.39)

Continued

There was the pattern of history here; Tyndale sees spiritual situations recurring. 'Antichrist is a spiritual thing'¹ he wrote, and he perceived its appearance in every age, including his own. Many times the knowledge of the Gospel is suppressed and the body of believers reduced to a 'little flock'² but God always reserves a witness to the truth, a prophet or a preacher or a true Church which leaves the heretic body of the Church.³ This serves to provoke the 'hypocrites' to persecute God's word more fiercely still, not sparing to employ the rigour of secular justice. 'Who slew the prophets?' Tyndale asks, 'Who slew Christ? who his apostles? Who the martyrs and all the righteous that were ever slain? The kings and the temporal sword at the request of the false prophets.'⁴ But this brings the active vengeance of God upon a nation, as it had fallen upon the Jewish nation after the death of Christ,⁵ or upon England in the civil wars of the fifteenth century, which Tyndale clearly states

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much of the detail and the metaphor of the ivy (the pope's power) creeping up little by little to destroy the tree (the authority of princes).

4 Tyndale, Practice of Prelates, ed. Walter, Expositions, P.S. p. 295-6.

1 Tyndale, Parable of the Wicked Mammon, Walter, ed., Doctrinal Treatises, p. 42.

2 Tyndale, Obedience of a Christian Man, Walter ed., Doctrinal Treatises, P.S., p. 135. The phrase 'little flock' is also used in his Answer to Sir Thomas More's Dialogue, ed. H. Walter (Cambridge, Parker Society, 1850) p. 54.

3 Ibid., p. 45.

4 Tyndale, Obedience of a Christian Man, Walter ed., Doctrinal Treatises, P.S., p. 242.

5 Tyndale, Practice of Prelates, ed. Walter, Expositions, P.S. p. 240-41.

to be an example of the great wrath of God.¹

With more consistency than tact Tyndale went on to interpret the beginnings of the King's reformation in England in the same terms. The summoning of Parliament was a prelatical manoeuvre. The enacted reforms of mortuaries, probate and plurality were devices 'to blear men's eyes'.² The whole of Henry's foreign policy including his project for a divorce was firmly fixed in the Practice of Prelates as an extension of papal diplomacy. If this conspiracy of temporality and spirituality 'be of a set malice against the truth', Tyndale warned, '... ye shall see, even shortly, that God shall turn the point of the sword, wherewith they now shed Christ's blood, homeward to shed their own again, after all the ensamples of the bible'.³ It was a bizarre interpretation and not one to commend its author to the King. Besides, Tyndale's history could not be divorced from his ecclesiology; he was looking for the Reformation of the Church not by the King but by the word of God and its faithful, persecuted preachers.

* *

While Tyndale stood apart from the momentous events in England Robert Barnes, once a fellow-exile in Antwerp, returned in 1531 and was enlisted in the King's service. Thus began a long and not altogether silent struggle to reconcile his conscience and his duty to his King.⁴

1 Tyndale, 'Prologue to the Prophet Jonas', (1531) in Walter ed., Doctrinal Treatises, P.S., p. 458-9.

2 Tyndale, Practice of Prelates, Walter ed., Expositions, P.S. p. 336.

3 Ibid., p. 336.

4 By far the best full account of Barnes' life and works is J.P. Lusardi, 'The Career of Robert Barnes', The Yale Edition of the Complete Works of St. Thomas More, Vol. 8 part III, p. 1367-1415. See also E. G. Rupp, Studies, p. 31-46.

Barnes needed to be at the centre of things. He was remembered at Cambridge by Gardiner as 'of merye skoffynge witte ... a good felowe in company',¹ a man always ready to voice an opinion. His enthusiasm landed him in hot water soon enough. An impassioned and characteristically forthright sermon in Cambridge on Christmas Eve 1525 resulted, probably unfairly, in heresy charges against him. Some years later, in 1534, looking back at what he had said in Cambridge in 1525, Barnes commented that 'the truthe is, there was no great clerke this. CCCC. yeaes, that wrote any thyng, but hee complained vehemently against the living of the spiritualite',² which is to volunteer himself as a rank-and-file critic of the excesses of the clergy.

With his wider interest in history, Barnes manages, however, to extend the perspectives of his less adventurous colleagues. There was a hint of what was to come in the anti-clerical sermon of 1525:

Sure I am that they cannot by the law of
god have no iurisdiccio secular.³

By 1531 he had picked up most of the controversial issues of the day, questioning the whole of the potestas iurisdictionis⁴ - the legislation

1 J. A. Muller, ed., The Letters of Stephen Gardiner (New York, 1933) p. 165.

2 J. Foxe, ed., The Whole Workes of W. Tyndall, John Frith and Doct. Barnes, J. Daye, London 1572-3. Barnes' commentary on the affair of 1525-26 is in his Supplication of which there were two distinct versions: Robert Barnes, A supplicatyon ... unto the most excellent and redoubted prince, kinge henry the eyght, n.p. n.d. (Antwerp, 1531). This first edition of the work is cited hereafter as Barnes, Supplicatyon, 1531 to distinguish it from the 1534 edition, A supplicacion unto the most gracyous prynce Henry the viii, J. Bydell, London, 1534. In the present work, citations from the 1534 edition are from J. Foxe, ed., The Whole Workes of W. Tyndall, John Frith, and Doct. Barnes, J. Daye, London 1572-73. W.D.J. Cargill Thompson, 'The Sixteenth Century Editions of 'A Supplication unto King Henry

of the Church which seemed to derogate from secular law, Church courts, even the place of spiritual lords in Parliament.¹ He was proposing a simple and complete separation of the offices of the temporal and spiritual powers,² the violation of the distinctness of the regiments being the major theme of his history. Peter, Barnes remembered in his Supplicatyon of 1531, who drew his sword to defend Christ, was severely rebuked by his master and 'we never rede that ever he drewe yt after'; Pope Zacharias' deposition of the King of France to place Pepin in his stead was an instance, to continue with Barnes' image, of the clergy illicitly wielding 'bothe swerdes'.³ There was more history in the revised Supplication of 1534, expanding the idea that the clergy meddling in temporal affairs were and always

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the Eighth' by Robert Barnes, D.D. : A Footnote to the History of the Royal Supremacy', Transactions of the Cambridge Bibliographical Society, III (1959-1963) p. 133-142 was the first to point out the differences between the 1531 and 1534 editions and to show that the 1572-3 edition conflated the two early editions.

- 3 Barnes Supplicatyon, 1531, fol. xxviii. (The eighth article brought against Barnes in 1526.)
- 4 That is the power of judgement in matters considered spiritual, including the proving of testaments, the trial of heresy and, significantly for the course of English history, matrimonial causes.
- 1 Barnes, Supplicatyon, 1531, fols. iiia - b, vib, xiia f.
- 2 'Christ Jesus hathe devyded the offices of both powers in to their proper actes and in to dystincte dygnityes', ibid., fol. xvia. On the importance in Luther's understanding of history of the idea that the distinctness of the two regiments under which the world was ordered had been violated, see Headley, Luther's View of Church History, p. 3 ff.
- 3 Barnes, Supplicatyon, fols. va, ix a - b, xiib.

had been a subversive element in every realm - a point not out of step with some propaganda for the King's Reformation. But Barnes announced that he intended to try something more systematic, to show 'how this Caterpillar is come to be a Lorde and hath brought kings under his feet'.¹ The promise was at length fulfilled in the appearance of his Vitae Romanorum Pontificum.²

Barnes' Vitae is not an exciting work. It owes what little celebrity it has, and its reprint of 1555, to the fact that Luther wrote an interesting preface in which he reflected on his own approach to history - but we leave that aside here. One could say truthfully that it is the first Protestant 'Lives of the Popes', and yet Barnes' history is so derivative of earlier compilations (Platina's being the most widely known) as to be hardly distinguishable from them. For what it is worth, Barnes prints a list of his principal sources at the beginning of the work.³ Here and there, the rather dull fare is spiced with one or two anti-papal tales that had come Barnes' way,⁴ but his achievements in the book are of less interest than his intentions. He claims, in his prefatory epistle, to have passed over partisan Italian historians for 'Germanicos scriptores ... qui modestius et simplicius scripserunt'; the Germans - whom Barnes disdains to name -

1 Foxe, ed., Whole Workes, p. 199.

2 R. Barnes, Vitae Romanorum Pontificum, quos Papas vocamus, diligenter & fideliter collectae, J. Clug, Wittenberg, 1536. I have used the later edition, Vitae Romanorum Pontificum, Basle, 1555.

3 Vitae Romanorum Pontificum (1555) sig.β 4b.

4 See P. Polman, L'Élément Historique dans la Controverse religieuse du XVI^e Siècle, Gembloux, 1932, p. 187-88 for a discussion of one of the more important of these.

had put the record straight; Barnes would follow their lead and show that kings and princes were the real martyrs and saints of God while their persecutors, the Popes of Rome, were the Domitians, Diocletians and Neros of history.¹ Though he was let down badly by his historiographical technique, Barnes was surely responding to an assumption that was to be widely voiced: the decline of the Church sprang in large part from the papacy's gradual acquisition of a temporal role. Edward Foxe, writing official propaganda for the Royal Supremacy responded similarly:

Whosoever hath redde the stories of the bishoppes
of rome shal playnly perseave and see what tyme fyrst
they set theyr myndes to honour, dignite, and possessions :
and to have labored alwayes in that thinge that they might
come to the hiest and that they toke more hede and diligence
upon Temporal thinges than upon spirituall.²

Perhaps Barnes (and even Foxe) had in mind the analyses of a particular German - the author of the much-translated Vom alten und neuen Gott - who had indeed carried this theme through his history.³

It was not this, but Barnes' view of the limits of the King's authority that stood in the way of a full acceptance of the King's Reformation. Addressing the preface of his Vitae to the King in the customarily fulsome terms, Barnes declared that Henry might earn the

1 Barnes, Vitae Romanorum Pontificum (1555), sigs. 6b - 7a.

2 Edward Foxe, trans. Henry, Lord Stafford, The true dyfferens between the regall power and the Ecclesiastical power, W. Copland, London, 1548, fols. xlixb - 1a.

3 See below, p. 39

title 'Defender of the Faith' by outlawing the Pope and his usurpations 'quantum est in potestate politica situm.'¹ The qualification is revealing and all important. All Barnes' recorded statements (except perhaps his recantation before his death) support the view that he desired the temporal power to have unhindered authority in all temporal matters, to resist the imposition of obligations by falsely-claimed spiritual power, but that he did not envisage the prince settling the forms of religion. He advocated rather the availability of vernacular scripture and the toleration of 'true preachers'. The prince might be the defender of the true Church, but not its ruler. It has been argued recently that in the general revision of the Supplication for the second edition of 1534 the commonplace 'Mens constitucions which be not grounded in scripture bynde not the consciens of man under the payne of dedly synne' was omitted on the grounds that its prohibition of compulsive authority in matters of ecclesiastical tradition and practice, directed originally at the clergy, 'contained an implicit denial of the whole conception of the Royal Supremacy'. This is part of a more general thesis that in the revision of the Supplication Barnes was seeking to accommodate himself to the new situation in Church and State.² One can agree with this conclusion only with the important qualification that Barnes went no further to meet the King than his opinions allowed. Barnes did not abandon the principle of the commonplace 'Mens constitucions ... bynde

1 Barnes, Vitae Romanorum Pontificum (1555) sig. 1a-b.

2 Cargill Thompson, 'The Sixteenth-Century Editions of 'A Supplication', passim, esp. p. 140-141; Clebsch, England's Earliest Protestants, p. 64-5, Lusardi, 'The Career of Robert Barnes', p. 1398-99.

not the consciens', nor even pass over it in silence; in a new piece in the Supplication of 1534, he denied that chastity could be imposed upon priests, calling chastity one of the 'thinges that bee indifferent which can not, nor may not be chaunged into thinges necessary'.¹ It is worth remembering too that Barnes' opinion in this respect was never quite forgotten by the authorities, for it was brought up against him at his trial, and he was obliged to subscribe in his recantation to the idea that 'lawes and ordynances made by Christen rulers ought to be obeyed by the Inferyours and subjectes not only for feare but also for conscience, for whoo soo breakith them breakith Goddis commandments'.²

Barnes statements appear to mirror much of Luther's mature thought - the conception of the Church as a spiritual gathering, the resistance to the view that the Church could be located in a particular place, or fixed to a particular obedience.³ It has not been appreciated, however, that this commonplace is modelled on a section of Melanchthon's Loci Communes of 1521 concerning magistrates.⁴ It is now worth comparing the thinking of Barnes and Melanchthon on the magistrates' office, because where Barnes' ideas were rather

1 'That by Gods worde it is lawfull for Priestes that hath not the gift of chastitie, to marry Wives', Foxe, ed., Whole Workes, p. 309-339, esp. p. 313.

2 Foxe, Acts and Monuments, V, App. VII: From the register of Bishop Bonner. Barnes' 'Mens Constitucions ... bynde not the conscience' is noted as teaching otherwise.

3 See Martin Luther, Werke (Kritische Gesamtausgabe, vols. 1- , Weimar, 1883 - , hereafter cited as W.A.) 5, p. 451 ('Operationes in Psalmos')

4 Melanchthon, Opera Omnia, Bretschneider, C.G. et al. eds., Corpus Reformatorum Vols. 1 - , Halle and elsewhere, 1834 - , XXI, cols. 223-225.

rigid, Melanchthon's were capable of development and adaptation, especially to the circumstances of a Reformation led by a prince. Both Melanchthon in 1521 and Barnes in 1531 discuss the authority of the spiritual officers as a parallel to the powers of a king or prince, treating the two regiments¹ (a word that Barnes uses here but not Melanchthon) as though the spiritual and civil powers were quite distinct. Barnes takes the division of temporal and spiritual power to be the institution of God, but Melanchthon prefaces his exposition with the disclaimer that he follows the '*vulgarem divisionem*' for pedagogical reasons (*docendi gratia*), though in common with Barnes he argues that the prince was to protect the civil peace.² Increasingly, however, it fell to Melanchthon to represent German Protestantism inside and outside Germany. He led negotiations with the German princes at Augsburg and Ratisbon and was also the acknowledged spokesman of the League of Schmalkalden on all theological matters. The man and his thinking were well known in England as a result of his protracted discussions with Henry VIII's agents at Wittenberg in the late 1530's.³ This decade of discoursing with the temporal rulers of Christendom saw him modify his view of duties of the Christian prince. He supported the intervention of the Elector of Saxony in Church reform and co-operated in establishment of consistorial courts for the discipline of the clergy which derived their authority from the

1 Barnes, *Supplicatyon*, 1531, fol. Cxviii '... the other power which men call *spiritualle* ... is no power Nor none auctorite worldly but alonly a mynystracyon of the worde of God and a *spiritualle* regement'.

2 Corp. Ref. XXI, col. 223. The rest of this paragraph and the next is partially dependent on Cargill Thompson, 'The Two Regiments' p. 85-97.

3 See below, p. 252 ff.

Elector. In the Loci Communes of 1535¹ and at greater length and detail in An Principes debeant mutare impios cultus, cessantibus aut prohibentibus Episcopis aut Superioribus Dominis² of 1537 he insisted that the temporal ruler did have a responsibility for the establishment and maintenance of pure forms of religion in his dominion. He extended the concept of the prince maintaining civil order to include a duty to prohibit and punish transgressions of the moral and religious law. The purpose of the state was the maintenance of the glory of God. 'Nam propter hanc causam Deus ordinavit politias ut evangelium propagari possit'. This was a proposition of the greatest significance; it meant that the prince could be expected to enforce both Tables of the Mosaic Law.³ In this light the rule of kings of Judah and Israel which enforced the whole law of Moses was to be considered not as appropriate only to specific circumstances but as an example for all times and places.⁴ Melanchthon did not hesitate to place Constantine, Valentinian and Theodosius among those princes who had undertaken this responsibility. It should be noted that here Melanchthon's argument presumes a dei gratia or 'descending' theory of the origin of political authority.⁵

In the same pamphlet Melanchthon advanced another justification

1 Corp. Ref., XXI, col. 553

2 Ibid., III, cols. 240 ff

3 Ibid., col. 242

4 Ibid., col. 243

5 I borrow the terms 'descending' and 'ascending', applied to theories of the origin of political authority, as a number of other writers have done, from W. Ullmann, Principles of Government and Politics in the Middle Ages, London, 1961.

for reform initiated by temporal rulers, an argument founded upon the priesthood of all believers. The outline of it had been advanced by Luther to justify the Electoral Visitation of the Saxon Church in 1527 which prima facie contravened his principle that the prince had no function in the spiritual regiment; though Luther continued to maintain that there was no authority vested in the prince ex officio he conceded that as a member of the Church and as a judicious and able Christian the prince might appoint an overseer or visitor to reform the Church.¹ Melanchthon's language was less reticent: he termed princes the 'praecipua membra ecclesiae' who might initiate the emendations of discipline which were the responsibility of the whole Church.² The power of the prince in this respect may be said to have 'ascended' from the whole body of Christian people which Melanchthon took to be coincident with the visible Church of all those within the realm who were baptised and not excommunicated.³ Both this 'ascending' view of political authority in matters religious and social, and the 'descending' view are represented in the literature emanating from government circles in England in the 1530's, not least in the period when Melanchthon was actively negotiating with the English. Though they appear in parallel in Melanchthon's tract they

1 Luther, W.A. 26 p. 195 ff

2 Corp. Ref. III, col. 244: 'Quinta ratio ab communi omnium membrorum in Ecclesia. Cessantibus Episcopis, aut si ipsi Episcopi falsa doceant, reliqua Ecclesia debet malos pastores ab officio remove, et in quolibet coetu praecipua membra coeteris praeire debent, et iuvare alios, ut emendetur Ecclesia. Principes et caeteri Magistratus debent esse praecipua membra Ecclesiae. Ergo necesse est illos, hanc emendationem inchoare et adiuvere. Maior est manifesta. Nam hanc praecepta pertinent ad totam Ecclesiam et singula membra'.

3 See below, p. 35 n.2 & 264

were, at least in the English experience, difficult to reconcile and, it will be argued, were elements of two distinct philosophies of Church and State.

There is an important piece of ecclesiology here. The comparison of his ideas and those of Barnes who could not accept the King as reformer is rather revealing. In the 1531 Supplication Barnes laboured long over his distinction between the 'visible' and 'invisible' Church:

This word Ecclesia, both in the new testament and the olde, is takyn oftyntymes for the hole congregacion and the holle multitude of the people bothe good and bad, ... this is not the churche that we wille greatly speke of ... But there is a nother holy churche of the which S. paule spekyth you men love youre wivys as christ hath louyd the churche and hathe gevyn hymselfe for hyr, that he myght sanctyfye hyr, ... to make her to hym selfe a glorious churche with out spot or wrynkill.¹

The novelty of Barnes' position, as it appeared to More, lay partly in his singular choice of terminology but chiefly in his ascription of inerrancy and the guidance of the Holy Spirit only to the elect or invisible Church. The form of Barnes' essay on the Church appears to have been inspired by Melanchthon's account in the Confession of Augsburg and the Apology² but there are significant differences

1 Barnes, Supplicatyon, 1531, fol. lvijb, from the commonplace 'What is holy churche, and who be thereof and wher by men may know her'.

2 Corp. Ref., XXVI, cols. 276-8, & XXVII, cols. 524-537. Barnes in 'What is holy churche', Supplicatyon (1531) fols. lvijb ff follows Melanchthon particularly in the scheme of an 'internal' Church of believers and an external Church which includes the impious, in the enumeration of the signs of the Church, and in details such as a citation from Lyra.

between them. Melanchthon maintains the distinction of the congregatio sanctorum - the company of the redeemed - and the visible Church in which good and bad are mingled. The first is made perfect by its redemption, but Melanchthon does not insist that this is the only inerrant Church or deny that in some manner the visible Church may be the guardian of truth. Indeed Melanchthon's background and education as much as his extensive use of patristic and conciliar writings in the definition of faith suggest that he did believe that the testimony of the Church had some value, at least as a witness to the historical continuity of scriptural doctrine.¹ Melanchthon proposed, moreover, that no attempt be made to separate the good and the bad in the 'external society' of the Church.² In this life the whole body of citizens were to be taken as the Church. These were

1 The subject of Melanchthon's attitude to the Fathers, early councils and creeds of the Church is discussed at length in P. Fraenkel, Testimonia Patrum: The Function of the Patristic Argument in the Theology of Philip Melanchthon, Travaux D'Humanisme et Renaissance, XLVI (Geneva, 1961). In this respect an important text is Melanchthon's 'De Signis Mostrantibus Ecclesiam quae alii notas nominant' (from the Loci Communes 1543) Corp. Ref. XXI, cols. 843-847, in which Melanchthon discusses the relationship between scriptural and apostolic doctrine, the 'donum' or 'lumen' which guides the believer in interpretation of scripture and the 'verae Ecclesiae testimonium'. This testimony need not be that of the multitude of the visible Church (indeed Melanchthon suggests that the Church has been for the most part an 'exiguus coetus') but he does appear to suggest that the testimony is historically continuous. One may suggest that Melanchthon's urge to discover a tradition of witness to scriptural doctrine lies at the beginning of one stream of Lutheran historiography, taken up by M. Flaccius Illyricus in his Catalogus Testium Veritatis and later in the Magdeburg Centuria; but that is really another study.

2 Corp. Ref., XXVII, col. 525, (Apologia Confessionis Augustanae):

Concedimus..quod hypocritae
et mali in hac vita sint admixti Ecclesiae,
et sint membra Ecclesiae secundum
externam societatem signorum Ecclesiae,
hoc est verbi, professionis, et sacramentorum,
praesertim si non sint excommunicati.

lines of argument which found considerable support from certain members of Henry's Council who wished to ascribe authority in spiritual matters, as in temporal, to Parliament.¹

Barnes, meanwhile, seemed unwilling to accept the sacraments of the 'externa societas ecclesiae'. In the Apologia Melanchthon had referred to the preaching of the gospel and the proper administration of the sacraments as signs or 'notae' of the presence of true believers or the 'communio sanctorum' within the visible Church, even where the sacraments are administered by unworthy men.² Barnes' term for these signs is tokens. In 1531 he makes no mention of the sacraments as tokens, only of the preaching of the gospel and living in accordance with its precepts.³ By 1534 an interesting revision has taken place; he has followed Melanchthon more closely and 'the sacraments orderly ministred' take their place as the second token.⁴ Does this suggest that Barnes was more ready to accept the ministrations of the visible Henrician Church? Almost certainly not. No statement was forthcoming from Barnes, on the lines of Melanchthon's irenic exposition, conceding that the clergy in England, despite their unworthiness, were ministers of Christ. He had made the sacramental practice of the visible Church the direct work of Antichrist; as More noted, he translated

1 See below, Chap. V

2 Corp. Ref., XXVII, col. 533 (Apologia Confessionis Augustanae).

3 Barnes, Supplicatyon (1531) fol. 1xvb.

4 Foxe, ed., Whole Workes p. 255.

Bernard's phrase 'Ministri Christi sunt et serviunt Antichristo' by 'They call themselves ministers of Christ but they serve Antichrist'.¹ He gives no indication that he thinks the sacraments were in fact 'orderly ministred' in the English Church. His declared position of 1531 denied it.² Barnes tokens were not in fact signs to be looked for in the visible Church of the whole Christian people but marks of grace among the elect, the secret congregations, the 'true preachers'.

* *

Melanchthon had found a theological basis for supporting the efforts of Christian princes to reform the Church. How far did his considerable historiography reflect his theology? By 1532, Melanchthon was already exploring the idea of the translation of empire. It was a concept that had roots in the classical world, originating, it has been argued, in Hellenic (and especially Stoic) notions of the civilising mission of the Greeks to the whole and essentially unitary human community, and further in the idea that the Empire embodying this central civilisation had passed from the Greeks to the Romans and latterly to the Christian Romans. This thinking was readily absorbed into the Judaeo-Christian scheme, derived from the 'prophecies' of the Book of Daniel, of four successive monarchies. The Christian Roman Empire came to be seen after Constantine as the culmination of a providential pattern of history and the instrument of both religious

1 More, Complete Works, 8, pt. II, p. 983-987 (My emphasis).

2 In that he condemned the communion under one kind: Barnes, Supplicatyon, 1531, fols. cxxiia ff.

and cultural advance.¹

This conceptual framework probably underlay most later medieval views of the Empire of Charlemagne and his successors, but it did not find much support in the sixteenth century. Certain practical developments had fundamentally altered the nature of Empire. Political fragmentation and the growing strength of extra-imperial states robbed the idea of a single civilisation of its strength; in practice the Emperor was he who was pre-eminent in power or prestige among the leaders of more or less autonomous states. The point was not lost on humanist historiographers. Bruni² and Flavio Biondo³ had demonstrated that the Roman Empire had effectively disappeared three hundred years before Charlemagne and that the contemporary structures of political authority could not be likened in a literal sense to what had existed in the ancient world. Luther himself came increasingly to reject any connection of the German and Roman Empires on critical historical grounds.⁴ Secondly, papal tradition had effectively challenged the authority in religious affairs that Emperors before and after Constantine had exercised. Indeed a further stage had been reached in which the Roman see claimed quasi-imperial powers in the West on the basis of the Donation of Constantine. Papalist theory as reiterated in the sixteenth century by Bellarmine had the empire transferred to

1 See R. Folz, L'idée d'Empire en Occident du V^e au XIV^e siècle, Aubier, 1953, p. 11-28.

2 See B. L. Ullman, 'Leonardi Bruni and Humanist Historiography' in Studies in the Italian Renaissance, Rome, 1955, p. 321 ff.

3 See R. Koebner, Empire, Cambridge, 1961, p. 48.

4 See Headley, Luther's View of Church History, p. 202 ff.

Lombardian
in the 10th
The 10th
the 10th
Charlemagne
empire was
created

Charlemagne solely by the authority of Pope Leo III.¹

Many early Protestant and humanist writers had dealt rather harshly with the concept of a physical, dei gratia translation of empire. For the former, the colourful and highly pointed tract, Vom alten und nñen Gott, was the principal pilot through the little-known waters of early medieval history.² The work is somewhat equivocal about the continuity of empire, for although the author traces a succession of authority from the fall of Rome to the accession of Charlemagne and beyond, his analytical theme is the improper usurpations and translations of authority by the papacy. The story is centred on the occasions when the papacy allegedly promoted political change for its own ends. Boniface III it was who first, in the reign of the Emperor Phokas, presumed to be lord and ruler. Zacharias and Stephen III deposed Childeric III and thereby made Pepin king. Leo III crowned Charlemagne. Lewis the Mild was persuaded to allow the consecration and investiture of popes and bishops without imperial consent. Finally John XII transferred the Empire to Otto so that where once the Emperor Constantine had made bishops of Rome, popes now made Emperors. A great deal of this analysis was made known in England (before the publication of the original work) by Tyndale, in

1 R. Bellarmine 'De translatione Imperii a Graecis ad Francos', 1584, in De controversiis christianae fidei adversus hujus temporis haereticos, 3 vols., Lyon, 1603, I, cols. 1629-1736. Cited in P. Polman, L'Élément Historique, p. 525-6.

2 See above, p.22-3. The work appeared in English as Of the Olde god and the newe, J. Bydell, London, 1534; William Marshall, possibly with financial assistance from Thomas Cromwell, had some hand in this publication: see J. S. Brewer, J. Gairdner and R. H. Brodie, eds., Letters and Papers, Foreign and Domestic of the Reign of Henry VIII, 21 vols. & 1 vol. of Addenda, London, 1862-1910, 1920, 1932, VII, 423.

the Practice of Prelates, and by Barnes who used the story of Zacharias, Pepin and Childeric as the most substantial of his examples of the papacy encouraging civil disobedience and insurrection.¹ In this reading of things the translation of empires was proof of subversion and misappropriation of powers, hardly evidence for the divinely-ordained supremacy of the emperor in matters of religion.

There was nonetheless a reading of the history of the Holy Roman Empire, one that seems to have recommended itself particularly to the more scholarly German Lutherans, which had the German emperors heirs to the honours or even the authority of the old empire by a providential design.² The originator of this view among the Lutherans appears to have been Melanchthon. It is to be found in outline in the chronicle of Jean Negelin of Tübingen, which is better known as Carion's Chronicle.³ It was composed and published under the aegis of Melanchthon at Wittenberg.³ In later years Melanchthon himself revised and expanded the work,⁴ and in this revision especially, Melanchthon's belief that the responsibility of the prince stretches to the moral and religious

1 See above, p.26

2 There was, for instance, a certain ambivalence of attitude in the Magdeburg Centuria. In the eighth Century the Centuriators pursue the theme of papal ambitions made manifest in the translation of empire; later, in the ninth they argue that empires are disposed in accordance with the divine will. In the case of Charlemagne military successes were the voucher of divine favour. This ambivalence is noted by Polman, L'Élément Historique, p. 230.

3 J. Carion, Chronica, G. Rhaw, Wittenberg, 1532.

4 Chronicon Carionis Expositum et Auctum Multis, et Veteribus Recentibus Historiis, Wittenberg, 1580. In this edition, which I have used, Melanchthon's expansion is continued by Peucer. Melanchthon's revised and expanded version of Carion was first published at Wittenberg in 1558.

as well as to the social aspects of the Decalogue helps to mould his historical analysis. This is most apparent in his interpretation of the reign of the Emperor Constantine - a crucial episode of course, in any historical argument for lay supremacy. Melanchthon defends the Emperor's convocation of the Council of Nicaea as an exercise of his duty by divine law to extirpate blasphemies and idols. It was a duty the Emperor shared with the Fathers of the Church as 'co-minister'.¹ Later Melanchthon maintains that the name and substance of empire were translated to the Germans by providential design.² The physical translation appears less important, however, than the translation of duties and responsibilities. God had picked out the German nation at a moment of crisis in Christendom to assume cultural, political and indeed spiritual leadership after the pattern of the ancient Empire.

It may be useful to us to consider that God adorned the German people with this honour that he should have wished it to hold the remnants of the Roman monarchy and to be the pre-eminent guardian of Europe. Nor is there any doubt that after the times of devastation healthful peace and proper civil order was restored to Italy by Charles and Lewis; by them Gaul and Germany were defended on the expulsion of the Saracens from Gaul and the Ungari from Germany. They adorned Churches and revived the study of theology when

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- 1 *Chronicon Carionis Expositum*, p. 203, 'Nec recte sentiunt, qui dicunt, hanc curam indicendi Synodos ad solos Episcopos pertinere: Quia lex divina, et politicae potestati, et Doctoribus praecipit tollere blasphemias et Idola ... Et subscripsit ipse Constantinus, qui ait, se adfuisse ceu unum ex ipsis: Ac valde laetor, inquit, Me fuisse vestrum comministrum.'
 - 2 *Ibid.*, p. 289: 'Ita cum nomine Imperatoris gubernatio Italiae ad Carolum Magnum translata est. Fuitque pulchra coniunctio Italiae, Galliae & Germaniae'.

the Churches in Egypt and Africa had been practically destroyed and the Saracens and Turks had advanced also into Asia, destroying Churches and learning.¹

Melanchthon referred again to the theme of a providential choice of reforming princes when, after the fall of Cromwell and the passing of the Six Articles Act by the English Parliament he wrote to King Henry, pleading with him to stand by the cause of reformed religion.² He had a vision of what might have been in England.

'... the storyes of all tymes do show that great Emperors and Prynces were often cruell agaynste the Churche, yet not the lesse some Prynces dyd God pluck from that hoste ... and would have them to knowe the true doctryne and servyce of God'.³

Melanchthon's examples of this pattern go back to biblical and classical rulers, including heathens who came to remit unjust decrees or cruelty against the Christians - an interesting inclusion which reminds the reader that the whole Mosaic Law is of universal application. The agency by which God did 'plucke from that hoste' is in each case a faithful preacher or prophet;⁴ Melanchthon, in addressing

1 Chronicon Carionis Expositum, p. 12: 'Sit autem grata nobis consideratio, quod Deus et Germanicam gentem hoc honore ornavit, ut reliquias Romanae Monarchiae eam tenere, et praecipuos esse custodes Europae voluerit. Nec dubium est, Italiae post longas vastationes, salutarem pacem et ornamenta civilia restituta esse Caroli et Ludovici virtute, et ab his defensam esse Galliam et Germaniam, depulsis a Gallia Saracenis, et a Germania Ungaris, ornatas esse Ecclesias, et excitata doctrinarum studia, cum in Aegypto et in Aphrica penitus deletae essent Ecclesiae, et in Asiam infusi essent Saraceni et Turci, qui ibi quoque delebant Ecclesias et literas'. My translation.

2 The Epistle of the famous and great clerke Philip Melanchthon made unto our late Sovereynne lorde Kynge Henry the eyght ... (translated by J.C. Weesel (R. Wyer, London?) 1547.) Corp. Ref., III, cols. 804-819. Cf. Melanchthon's letters to Henry VIII, ibid., cols. 671-2, 681-5.

3 Melanchthon, Epistle ... unto ... Kynge Henry, sig. Dii b.

4 Ibid., sigs. Aii a ff, Dii b ff.

the King, hopes of course to count himself in that number. Two circumstances heightened his expectations. The last times prophesied by Daniel were imminent; God had already 'raised up and purged the Church by true doctrine', but there would be great struggles with Antichrist before the end.¹ He looked to Henry to resist the expected counter-attacks - the Six Articles being one such - as the culmination of history approached. Secondly, and this was surely more than just flattery, he and others in Germany 'had conceyved an hope', he wrote, '... that your authorytye shulde also steare other kings at the last to leave of crueltie ... and to take a deliberacyon for redresse of errours'.² And so Melanchthon persisted with Henry despite the disappointments. The King of England might not be heir to the lands of the Roman Empire - not in Melanchthon's book at least, - but he might be brought to fulfil the duties incumbent on any ruler, and might, as a leader and example, come to occupy an important place in the wide perspective of sacred history.

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Meanwhile a start had been made in a new direction. When Erasmus published his momentous edition of the New Testament he confessed himself a disciple of Valla in the comparative study of Greek codices;³ earlier, he had written a defensive preface to the

1 Ibid., sig. Bii b.

2 Ibid., sig. A iv a, c.f. sig. Diii a.

3 D. Erasmus ed., Novum Instrumentum omne, diligenter ... recognitum et emendatum ..., I. Froben, Basle, 1516, sig. bbb 6b.

1505 edition of the Adnotationes in which Valla sought to correct the Latin text by reference to the Greek.¹ Valla was the doyen and example to a movement of scholarship that had developed a marked sense of identity and impetus. Valla was a philologist; philology, which had originated in the study of language, had become a discipline with a methodology that could be applied in many other fields of study. The essential principle was that forms of language had changed and developed, and belonged to a time and place. By extension of the method it could be said that forms of social and political organisation and of religion had also changed. The philologist, then, understood the uniqueness of periods and places and his method was bound, in the end, to emphasise the differentness of past and present.

This sense of historical period, sometimes called the sense of anachronism, was a powerful tool for the study of all manner of received texts. It could be turned with shattering force on fabrications of a less critical age - as Valla showed in his celebrated demolition of the Donation of Constantine by a battery of linguistic and historical arguments. In another field the new methods equipped Valla to undertake studies in Roman law, to begin the rescue of 'Romanitas' from barbarian and scholastic accretions and from the Byzantinism of the Digest through which the West chiefly knew the law of antiquity. In this he may be considered the fore-runner and inspiration of the French historical and philological school of law of the sixteenth century, in which Guillaume Budé and Andrea Alciato

¹ D. Erasmus, ed., Laurentii Vallensis ... in Latinam Novi testamenti interpretationem ex collatione Grecorum exemplarium Adnotationes ... J. Petit, Paris, 1505.

were pre-eminent.¹

The success of these legal studies sprang in part from an appreciation of the importance of Greek as the primary language, with an understanding of the ways in which texts could be subtly altered in translation. Perhaps more important still was the principle of adherence to the literal and historical sense of the text. Valla applied these precepts also to the study of the texts of the New Testament, just as Erasmus was to do, and in the process proposed numerous emendations of the received Latin translation of the scriptures, the Vulgate. This was, as both Erasmus and his detractors undoubtedly sensed, potentially destructive of the idea of a single, timeless and authoritative body of truth taught by the Church. One could take the prefaces to Erasmus' Novum Instrumentum as a text-book here, both for the matchless defence of the new critical methods and for Erasmus' fecund suggestion that doctrines had changed, developed out of unique situations, and become corrupted by scholastic systems far removed from the philosophy of Christ expressed in the text of Scripture.

The critical work of Erasmus and other humanist scholars on the Scriptures and the Church Fathers is really far beyond the scope of the present work. The bare facts are impressive nonetheless. By 1530 Erasmus had put out editions of Jerome, Augustine and Irenaeus, Beatus Rhenanus had published his John of Damascus, Gregory of Nyssa, Basil and Tertullian. A fairly complete edition of Origen appeared

¹ See D. R. Kelley, Foundations of Modern Historical Scholarship: Language, Law and History in the French Renaissance (Columbia, 1970), esp. chap. II (p. 19-50).

in 1512. Oecolampadius collected or edited works of a number of Greek Fathers in the 1520's, including Gregory Thaumaturgus, Gregory Nazianzenus, Chrysostom, Thalassius, Theophylact and Cyril of Alexandria. For all the mistakes and spurious pieces canonised by publication, knowledge of the early centuries of the Church no longer rested so heavily on compilations and collections, on fragmentary references in Gratian or the Church historians. Much remained to be done, of course. Very little was known of the Apostolic Fathers. The literature of the immediate post-apostolic period was mostly still unavailable in the 1530's. More became available in the 1540's and 1550's,¹ but the significant advance of the 1520's was in knowledge of the literature of the second and third centuries. Cyprian had always been known but the editions of Erasmus and Bildius made the important apologetics of Irenaeus and Tertullian against the Gnostic heresies available for study for the first time.

The latter period held a particular attraction for Erasmus who saw it as an age like his own, in which scholars were required to combat heresy with only their scholarship and the spirit of the Gospel.² He took Irenaeus to be in touch with the earliest apostolic tradition - to have heard Polycarp in Asia as a boy, Polycarp being the disciple of John the Evangelist who had related much of Christ's own testimony.³ Bildius, similarly, attached importance to Tertullian's

1 See S. L. Greenslade, The English Reformers and the Fathers of the Church, Oxford, 1960, p. 12-13.

2 See D. Erasmus ed., Opus eruditissimum Divi Irenaei ... (Adversus Haereses) I. Froben, Basle, 1534, sig. 2a.

3 Ibid.

writings as a record of doctrine before the great Councils of the Church.¹ The Gnostic heresies were something of a watershed, in fact, in the formalisation of Christian doctrine. Hitherto the post-apostolic Fathers and Greek apologists had held the basis of belief to be the direct teaching of Christ accessible to the Church through the Old Testament scriptures, and through apostolic witness. (The witness of the apostles was in part their letters and books, not as yet canonised, but freely quoted, and in part a body of teaching preserved in the preaching, liturgy and catechisms of the Church.²) In controversy, however, Gnostics exploited variant readings of the texts of scripture and claimed knowledge of a secret apostolic tradition to which they alone had access. This obliged Catholic writers to seek recognition of a canon of New Testament writings and to define the relationship of scripture and tradition. Irenaeus and Tertullian preserved the fundamental idea that tradition was the body of spiritual truth handed down from Christ to the apostles, and from them to the Church. They made of this teaching, which had been openly, not secretly, preserved in the succession of bishops to the great sees, the 'canon' of truth, or in Tertullian's phrase the 'regula fidei' -

1 Beatus Rhenanus ed., *Opera Q. Septimii Florentis Tertulliani*, I. Froben, Basle, 1521, title page: (Tertullian) 'floruit... vicinus Apostolorum temporibus, circa annum a Christo passo CLX. Quare boni consulenda sunt, huius scripta, si alicubi varient a receptis horum temporum dogmatis, cum omneis synodos antecessent, Apostolicis illis exceptis ...'

2 On all this see J.N.D. Kelly, *Early Christian Doctrines* (4th ed. London, 1968) p. 31 ff., J.N.B. van den Brink, 'La tradition dans L'Eglise primitive et au XVI^e siècle', *Revue d'histoire et de philosophie religieuses*, XXXVI (1956) p. 271-281, and M. Wiles, *The Making of Christian Doctrine* (Cambridge, 1967) p. 43.

the rule or criterion of the faith. All necessary belief was contained in this body of tradition; there was no place for any further tradition such as that claimed by the Gnostics.

Acquaintance with this literature seems to have confirmed Erasmus, Beatus Rhenanus and others in their prejudices concerning the middle ages. In certain circles it was coming to be a cardinal precept that the decline from the standards of the ancient world went beyond the corruption of Latin and the neglect of old learning. As Erasmus has it, when civil authority weakened, bishops neglected their office of teaching the tradition of the apostles to seek secular power; when ancient scholarship was forgotten the 'sophists' made summaries of the old authors, interpolating their own commentaries until the authority of the original text was quite usurped and forgotten.¹ The decay of doctrine was indeed a potent theme. It went, as Beatus Rhenanus recognised, against the premise of scholastic thought of a continuous approach to the full truth by dialectical processes.² Even more destructive of received notions was the implication that apostolic tradition was a fixed body, a deposit, contained in the scriptures as interpreted in the apostolic Church. It called into question not only unwritten and extra-scriptural traditions, but the whole notion of the active exercise of apostolic authority by a visible Church in elaborating necessary beliefs and forms of worship.³

1 D. Erasmus ed., *S. Hieronymi Lucubrationes Omnes ... multo quam ante vigilantius ... emendatae*, 9 vols., I. Froben, Basle, 1524-6, I, sigs. AA2a ff.

2 See Beatus Rhenanus, ed., *Opera ... Tertulliani*, sigs. a3b - a4a.

3 The whole subject of the relationship of scripture, tradition and the authority of the Church is discussed in G.H. Tavad, *Holy Writ or Holy Church: The Crisis of the Protestant Reformation* (London, 1959).

Writing in a preface to an edition of Gratian in 1512, Beatus Rhenanus saw another possibility: might not a critical study of the canons, which like the ancient patristic texts were encrusted in all manner of scholastic glosses, reveal the ancient constitutions of the Church?¹ Yet Beatus Rhenanus' call went largely unheeded, Valla's early success with the Donation of Constantine notwithstanding. The means of discovery existed, but not always the will. The Pseudo-Isidorean decretals, purporting to contain a series of papal letters from the earliest times, but which were couched in a barbarous ninth century Latin, went largely unchallenged until the latter part of the sixteenth century.² Investigations of sources and traditions were delicate; orthodox supporters of the papal supremacy perhaps sensed that this was not the time to press forward in the search for forged decretals and doubtful precedent. Antonio Agustin, a legal adviser to Cardinal Pole in Mary's reign apparently suspected the authenticity of the Pseudo-Isidorean decretals, but kept his doubts to himself. More

1 A. Horowitz and K. Hartfelder, eds., Briefwechsel des Beatus Rhenanus (Leipzig, 1886) p. 50-52

2 In the fifteenth century, Heinrich Kalteisen of Coblenz, Nicholas of Cusa, and Juan Torquemada challenged the decretals of Clement and Anacletus. Erasmus suspected the decretals as far as Siricius: E. Seckel in the New Schaff-Herzog Encyclopaedia of Religious Knowledge, (12 vols., New York, 1908-12), sub Pseudo-Isidorean decretals. Then the Magdeburg Centuriators combined a linguistic approach with an examination of the texts in historical terms which had hitherto been lacking. They were able to show that certain passages were plagiarisms from other sources and, most damningly of all, that the matter of the Decretals was irrelevant to the conditions of the time and place in which they were alleged to have originated; M. Flaccius Illyricus et al. eds., Ecclesiastica Historia ... per aliquot studiosos & pios viros in urbe Magdeburgica, 7 Vols. J. Oporinus, Basle, 1562-74, Vol. I, Cent. III cap. VII cols. 177-185

surprising, perhaps, is Alciato's rejection of Valla's findings on the Donation of Constantine on the grounds that the historical arguments against the Donation did not invalidate legal rights founded on the age-old belief and common opinion that Constantine had endowed the Church.¹

It may be as well to remember, in considering historical arguments of the 1530's, that the new studies had gone much further in breaking down the accepted view than in painting a new picture. The outline was there but almost all the details were missing. At one level, the old conception of a single body of ecclesiastical tradition, elaborated but unchanged, had been invalidated by critical examination of texts; very largely, however, the old view had been challenged as yet only by the principle of critical examination. It has been pointed out recently that Erasmus apparently knew almost nothing of the history of the exegetical practice of the middle ages and, indeed, to judge from his dismissive comments about medieval philosophising, understood very little of the medieval theological tradition. His sympathies and interest were elsewhere. He was intent on a clean break with the immediate past in order to return ad fontes. Scholastic tradition, insofar as it was considered at all, was assigned a place in a very schematic picture.² Besides, details of critical scholarship were notoriously slow to circulate, or were

1 Kelley, Foundations of Modern Historical Scholarship, p. 98.

2 L. Bouyer, 'Erasmus in Relation to the Medieval Biblical Tradition', Cambridge History of the Bible ed. G.W.H. Lampe, S.L. Greenslade et al., (3 vols., Cambridge, 1963-70) II, p. 492 ff.

remembered and forgotten capriciously. Quite commonly, in England as elsewhere, authors veer alarmingly from sophistication to credulity in their use of texts; for some years there was even confusion in Henry VIII's camp over the authenticity of the Donation of Constantine.¹ There is, indeed, little evidence that the details of the new scholarship contributed much to the historical arguments advanced in support of the Henrician Reformation, and none at all that ministers of the Crown engaged in the spade-work of philological research. The precepts and principles of the tradition of Christian humanism in which Erasmus stood, on the other hand, were far more easily grasped: the rule in matters of doctrine and wider practice was to be the tradition of the early Church, especially as contained in scripture, and the body of 'traditions' of later ages represented a decline from that first paradigm. These assumptions colour most if not all the historical and canonical arguments produced for Henry's cause in the 1530's. One must doubt whether, in the absence of this conceptual revolution stemming from the philological method of the Renaissance, the King's men in England could have constructed an historical case which laid aside the immediate precedents in favour of the practice of antiquity.

Important and well-publicised as the work of Erasmus and other humanist scholars was, it was not the exclusive vehicle for the dissemination of this mode of thought; in one important respect canon law had already been subjected to a form of historical analysis. Conciliar theory, while perhaps diverting attention away from the critical examination of texts for a time, was a child of the Renaissance in that

¹ See below, p. 222-3

it rested on the idea of an ancient law of the Church and in that its proponents resorted to a significant extent beyond Gratian's digest to the original sources.

The attraction of conciliarism for Henry VIII's ministers was two-fold. In its long and diverse history the conciliar movement had produced a great deal of literature which could be plundered in an opportunist fashion for arguments and precedents. The printing press had done much to keep the conciliarist idea afloat; even after the high-water mark of the Council of Basle, when the papal cause was in broad advance, the canonist Nicholas de Tudeschis (Panormitanus) made a summation of the legal basis of conciliar supremacy, and his arguments, contained in his commentaries on the decretals, were kept before the learned public by numerous printings in the final quarter of the fifteenth century, to be cited frequently in the controversial literature of the early Reformation period. There was a second wave of conciliarist publication early in the sixteenth century. This was in part a propaganda exercise in support of Louis XII's anti-papal Council at Pisa in 1511,¹ but among those who looked for a Council at this time were many orthodox supporters of the papal supremacy who despaired of the leadership and values of the Renaissance papacy. The need for reform was commonly assumed and publications of conciliarist texts were no mere academic or antiquarian exercise. In Aeneas Sylvius' Commentary on the Council of Basle, put out by Froben in 1525, a document of the first importance was made public.² A

1 See below, p. 140, 149-50

2 Aeneas Sylvius, Commentariorum ... de Concilio Basileae celebrato libri duo I. Froben, Basle, 1525.

highly suggestive collection of documents of a conciliarist hue was published by Ortwin Gratius in 1535; Gratius attributed the spread of heresy and disquiet in the Church to the failure of the papacy to adhere to the reforming decrees of the Councils of Constance and Basle.¹ Equally significant but less well-known was the Conciliorum Quatuor Generalium Tomus, put together by Jacques Merlin,² which was extensively used in England, as we shall see. The title is somewhat confusing as this was the editio princeps of the Pseudo-Isidorean decretals to which had been added further matter relating to the Councils of Constance and Basle. The book contained a unique record of conciliar and synodal decisions, particularly valuable in that they were detached from the familiar context of the Decretum and decretals.

Secondly, there were certain aspects of conciliarism which, with a little development, could make a significant contribution to the theoretical basis of the Henrician Reformation. The first is represented in the writings of Nicholas of Cusa and others in the fifteenth century who maintained that in ancient practice (as witnessed by early synodal canons) there was no papal jurisdictional supremacy but an equality within the episcopacy with final authority vested in a General Council. At the root of this interpretation was the dispute between Pope Stephen I and the African Church, at the time when Cyprian was bishop of Carthage (248-258), a dispute that was remembered by Henry VIII's apologists.³ There were conflicting opinions on the baptism of

1 Ortwinus Gratius, Fasciculus rerum expetendarum et fugiendarum, Cologne, 1535.

2 J. Merlinus ed., Conciliorum Quatuor Generalium Tomus Primus ... Secundus, 2 vols., Cologne, 1530.

3 See below, p. 106 ff

Novatian heretics; Cyprian argued resolutely that converted heretics should be re-baptised, while Stephen, opposing him, claimed to represent the Roman tradition and insisted on unqualified obedience to it. Cyprian in turn accused Stephen of destroying the unity of the Church and of its ministration of the sacraments; unity should rest, he argued, not on the primacy of Rome, but on the unity of the episcopacy:

Hoc erant utique & caeteri apostoli quod fuit
 Petrus, pari consortio praediti & honoris &
 potestatis, sed exordium ab unitate proficiscitur,
 ut ecclesie una monstretur.¹

The special importance of this quotation, which is just one of a number of passages to the same purpose, derived from its inclusion in the *Decretum*² which secured its continuing easy availability. From there it was adopted by the early conciliarist writers John of Paris and Gulielmus Durandus the Younger, men well-grounded in canon law.³ Later Nicholas of Cusa, who had read Durandus and had made a collection of manuscripts of Cyprian,⁴ took up Cyprian's notion of Unitas in concordia, insisting that all bishops were equal, because they received an equal share of the apostolic commission.⁵ It is true that Nicholas drew back from denying the papal primacy completely,

1 *Divi Caecilii Cypriani ... opera*, ed. D. Erasmus, I. Froben, Basle 1530, p. 163, 'Tractatus ... de Simplicitate Praelatorum'.

2 *Distinctio* 21.

3 P.E. Sigmund, *Nicholas of Cusa and Medieval Political Thought*, (Cambridge, Mass., 1963), p. 82, 87.

4 *Ibid.*, p. 28, 86.

5 *Ibid.*, p. 129.

even in the 'De Concordantia Catholica';¹ but here was the basis nonetheless - Cyprian compressed into a legal definition - of the episcopacy-centred conciliarism of Durandus and D'Ailly, a programme which demanded, at the very least, that Rome's authority should not infringe the integrity of the episcopacy and be subject to the laws of the Church made by the bishops in the General Council.²

There was, in Cyprian's controversy with Rome and indeed in the long series of (mostly genuine) canons of provincial councils contained in the Pseudo-Isidorean decretals, scope for a rather different construction of the independence and equality of bishops, into the principle of the determination of most causes within the province. The whole Church gathered in a General Council might be a final but, in this context, a rather distant place of appeal. It was a line of argument which, as we shall, see recommended itself greatly to Henry's ministers in England.

Finally, it had become apparent that in conciliar theory there was a means of deflecting the authority of the pope in a way that allowed national control of the Church to develop, especially in such matters as taxation and appointments. Pierre le Roy, speaking for the French King against Benedict XIII in the national council of 1398 and again in 1406, proposed, at a time of schism, that the government of the ancient church had been subject to synodal authority. Le Roy showed not only how the members of the Church might reform the head,

1 M. Watanabe, The Political Ideas of Nicholas of Cusa, (Travaux D'Humanisme et Renaissance, LVIII, Geneva, 1963), p. 72-3.

2 Sigmund, Nicholas of Cusa, p. 86, 130.

but also that within the ancient canons of the Councils a theoretical justification might be found for the removal of the obedience of the French Church from the papacy. In the primitive Church, it was argued, the Churches of each province guarded their rights of election to benefices¹ and were thus not obliged to obey the Pope 'circa dispositionem, vel exactionem & usurpationem huiusmodi pecuniarum'.² This withdrawal of obedience and withholding of annates was remembered at the Gallican Council of 1511-12 and again, in England, in 1531-32.³

1 H. Bourgeois de Chastenet, Nouvelle Histoire du Concile de Constance (Paris, 1718) sect. II, p. 169 ff.

2 Ibid., p. 173.

3 See below, p. 140 ff

CHAPTER II

The Makings of a Case

The arguments for the Henrician Reformation and the Royal Supremacy were not principally historical, but scriptural. There was a battery of texts with which the reader of the controversial literature of the period soon becomes familiar. The most frequently quoted passage from the New Testament ^{was} ~~is~~ probably the injunction of Romans 13 to obedience to the powers ordained of God. The Old Testament furnished a variety of examples of godly kings of Israel, whose duties, it seems, ^{were} ~~are~~ to be taken as directly analogous to those of a King of England. This was (pre-eminently) an age of the proof-text, as it was an age of line-by-line confutations and fierce partisan controversy, ^{but at} ~~At~~ the root of what too often became sterile argument, there was, ~~nonetheless~~, a general and not ignoble sentiment, that through a closer adherence to scripture old truths might be recovered and the Church restored to the purer ways of antiquity. Stephen Gardiner expressed it well in words that prefaced what was a frankly propagandist tract:

... very many thinges, which (whether it were longe of men or of times) have bene of longe season confusely iombled together somthinges blemished, and somthinges decayed, and almost turned quite upside downe, were by the perfite lyne and plummet of Goddes worde, called again, layde a newe, and restored unto the auncient

foundacions of Goddes worke ...¹

We have already seen that men of a variety of persuasions were proposing reform of the Church by the principles of scripture, but it is important immediately to draw some distinctions between them.

*
to p. 60

If it is suggested that there were three views of the authority of scripture among those associated with the English government in the early years of the Reformation, it is to be assumed that these are broad generalisations which do not account for the diversity and individuality of opinion on a crucial and complex issue. They do, however, nonetheless, represent distinct perspectives which generated, it will be argued, conclusions about the nature and government of the Church which were difficult, perhaps impossible to reconcile.

SP Thomas More, defending Erasmus' New Testament, ^{in 1515,} could argue that scripture, albeit as expounded by the ancient interpreters and confirmed by the common practice and sacred decrees of the Church, contained all that was necessary for salvation, without the casuistries of five hundred years of schoolmen.² ^{His} Here the rule of faith was scripture, but scripture preserved in the authoritative tradition of the Church. Very different sentiments were expressed by Thomas Cromwell and his protégé Alexander Alesius in a

1 Stephen Gardiner, De vera obedientia oratio, T. Berthelet, London, 1535; printed in Janelle, Obedience in Church and State, (Cambridge, 1930, p. 68-171) p. 69; this translation is from the so called 'Rome' edition of 1553.

2 Letter to Dorp, 1515; E. F. Rogers ed., The Correspondence of Sir Thomas More, (Princeton, 1947) p. 27 ff.

conference of 25 divines in 1537.¹ Cromwell is said to have enjoined the assembly to argue from scripture alone, since the King would only accept doctrine determined thus;² Alesius asserted that the faith was adequately revealed in the canon of scripture, that scripture was the judge of the Fathers' writings and doctrines. Quite contrary to More he held that the Church was now burdened with false doctrine and was to be judged by scripture.³ There was a major distinction here between a conservative view that the import of scripture could not be separated from the life and teaching of the universal Church, and the opinion that the scriptures were an independent testimony.⁴ The latter view may not have originated in the Protestant reform movement of the sixteenth century, but was of the greatest importance to it.

SP There was ~~A~~ third position ~~on this question of authority, began,~~
 The premise, again, ^{with} is the rule of scripture. It ~~is~~ assumed
 that a tradition of ^{scriptural} belief and practice had been maintained by
 the Church - but not necessarily by the papacy. On this

1 The proceedings are recorded in Alexander Alesius, Of the auctorite of the word of god agaynst the bisshop of London, n.d. n.pl. (1537?). Alesius may not have recorded all the arguments advanced objectively, but he can be trusted to express his own views.

2 Ibid., sig. Avi a - b.

3 Ibid., sigs. E iia ff, E iva, F iib - iifb. The signatures are very confused: the second and third of these references are near the end of the book.

4 The distinction is explored and its origins sought by G. H. Tavard, Holy writ or Holy Church.

ground the Glasse of the Truthe,¹ an early and important propaganda tract, was able to argue a case (for the determination of the King's Great Matter within the English realm and province of the Church) claiming that

... here you have no new allegation of man's invention or imagination but only taken of the scripture of God, of the counsels and ordinances of the Church universal, of most ancient popes and other holy doctors' writings, with the fact and authorities of blessed men besides, without writhing or wresting of any of them.²

* Add here from p. 58 N.P.

^{22P} Of these three ~~broad~~ views of authority the first, that of a conservative, such as More, does not much concern us here. Of the second we shall hear more anon. It is the third view which underlies the arguments which first helped to extricate Henry ~~from a sticky position in the late 1520's, when all that could~~ ^{the impasse of 1530. Until then} be advanced in support of his desired divorce from Queen Catherine was a somewhat unconvincing canon law case, and ^{which} put him on the road to the break with Rome and the Royal Supremacy. ~~but we see how this~~
The position is exemplified in the major treatises of Stephen Gardiner and Edward Foxe. Foxe, the King's almoner, later Bishop of Hereford, and employed almost ceaselessly on diplomatic missions and other business arising from the King's Reformation, begins his De vera differentia with scripture as his standard,

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1 A Glasse of the Truthe, T. Berthelet, London, n.d., printed in N. Pocock, Records of the Reformation, the divorce 1527-1533 (2 vols., Oxford, 1870) II, p. 385-421. A Glasse of the Truthe was published in 1532: see G. R. Elton, Policy and Police (Cambridge, 1972) p. 176.

2 Pocock, Records, II p. 385-6.

intending (in a phrase fit to please a Luther or Erasmus) 'to marke well and conside whether al thinges be consonante unto the rule of the verite, that is to saye to the testimonye of scripture'.¹

But he and Gardiner (who ^{we have seen, took a similar} ~~took just as uncompromising a~~ stand at

the beginning of De vera obedientia with scripture as the 'perfitte lyne and plummet') run rapidly into ^{the} a problem of ^{the relative value of} methodology.

scripture & history.

Breaking off from a line of ^{Old Testament} examples of godly Hebrew kings who

exercised a lay supremacy, Gardiner claims that, God's law being constant, a single ^{scriptural} citation would serve to prove his case, against

which the Bishop of Rome could bring only the New Testament - had it superceded the Old in this respect.² The insistence on the

sufficiency of scripture appears to call the value of history or precedent into question, and causes both Foxe and Gardiner to

hedge uncomfortably. 'Surely' Foxe writes, 'Justinian wolde not have done [this] onles he had had example of his predecessors or onles he had verelye thought that they pertained to his office and authoryte'.³ And then he gives way to conclude, rather lamely no

doubt, that the argument of the book 'hath not his vertue and stablishement bicause men wrote so but they wrote so bicause it is

1 Opus eximium, de vera differentia regiae potestatis et ecclesiasticae, et quae sit ipsa veritas ac virtus utriusque, T. Berthelet, London, 1534. The book was reprinted by Berthelet in 1538, and translated by Henry, Lord Stafford, The true dyfferens between the regall power and the Ecclesiastical power, W. Copland, London, 1548. Foxe's name is not on any of the editions and the ascription rests on Bale, Scriptorum Illustrium maioris Brytanniae...Catalogus, I. Oporinus, Basle, 1557. There seems no reason to doubt Bale, and there is some circumstantial evidence, below p. and p. supporting Foxe's authorship.

2 Janelle, Obedience in Church and State, p. 129-131.

3 Stafford, trans., Foxe, The true dyfferens, fol. lxxxa.

treuth'.¹ Gardiner is caught up even more sharply by the logic of his own method. Having argued that examples, precedents and the evidence of human law are 'pertinent' if not comparable with the testimony of scripture, he runs squarely into the facts of more recent practice. History cuts both ways: 'and if it be ynough to teache dedes for the profe of the right, so as what so ever is apparauntly done, we must confesse it to be done rightefully: than doubtles the Bishoppes of Romes cause shalbe on the better hande'.²

Foxe and Gardiner find two principles by which to extricate themselves from this quandary, and these are ~~in a sense~~ the basis of their historical arguments. Firstly they examine and reject the scriptural ground of the tradition of papal supremacy. Gardiner, who by no means discounts the notion of a primacy of honour, writes at some length to demonstrate that that primacy might not be construed, as it sometimes was, as a supremacy over kings in temporal matters or a coercive authority over other bishops. The office of vicar of Christ requires subjection in this world.³ The Church is a corporation; the commission to hold the keys of the kingdom of heaven, to feed Christ's flock - a spiritual power only - was given to Peter in the name of all.⁴

1 Ibid., fol. C vi b.

2 Janelle, Obedience in Church and State, p. 117, 121.

3 Ibid., p. 131-159.

4 Janelle, Obedience in Church and State, p. 135.

'Where...our lord doth geve unto peter this power of binding and lowsing of a trewth it is not to be doubted', Foxe asserts, 'but in peter which bare the figure of the church it was geven unto all thapostles...' ...'all bysshoppes and preestes have equal aucthoryte with Peter'.¹ At one stroke, then, the papal supremacy, the precedent of which can hardly be denied, is shown to have false foundations, and the warrant for an alternative tradition of the authority of the whole Church is displayed.

Secondly they find that - in Gardiner's translator's rather picturesque phrase - 'a certain light of the truth hathe alwayes peeped out'.² The truth has never been extinguished in the historical process. Papal powers had continued to be challenged. Gardiner touches on many of the examples that had by this time been fully worked out elsewhere - the princes who renounced allegiance, the ancient emperors who made laws for the Church, the kings of England who were known as saints or legislated against papal pretensions, the Council of Constance that deposed three popes.³ The historical argument of Foxe and Gardiner answers in effect the awkward, inevitable question: 'Where was your Church before Henry?'. Henry's Church stands in the tradition, chiefly perceived in its opposition to the overbearing ambitions of Rome, that had always maintained scriptural precepts for the life and

1 Stafford trans., Foxe, The true dyfferens, fols. xii b - xiii a, xv b.

2 Janelle, Obedience in Church and State, p. 121 - 123.

3 Janelle, Obedience in Church and State, p. 117 - 127.

government of the Church.

It is probable that this form of historical argument developed in the first place out of the canon law case advanced in support of Henry's proposed divorce, or rather out of the difficulties the King's apologists encountered. When Henry decided to divorce his Queen, and who first aired the suggestion that his marriage was and always had been improper, is difficult to say.¹ Certainly, at an early stage Henry himself latched on to the idea that in living with Catherine, who had formerly been his brother's wife, he was breaking the law of God as expressed in certain texts in the book of Leviticus.² This was and remained the ground for the termination, or properly the annulment, of the marriage. The lawyers and divines whose duty it was, at the King's insistence, to construct a case upon this principle faced formidable opposition - and not just from the distinguished company who wrote in defence of Catherine's cause.³ The question whether the prohibition of sexual relations between a man and his brother's wife contained in Leviticus could be abrogated, as a text from Deuteronomy seemed to suggest,⁴ in the event of an elder brother dying without issue by his wife, had long been debated. The weight of canonist opinion held

1 The evidence on these points is discussed by J. J. Scarisbrick, Henry VIII, London, 1968, p. 147 ff.

2 Leviticus 18. 16; 20. 21.

3 The canon law arguments for and against the divorce are discussed by Scarisbrick, Henry VIII, chapter 7, p. 163 ff.

4 Deuteronomy, 25.5.

that it could, that the Pope might therefore legitimately dispense from the impediment - and that, by implication, Julius II had acted properly in granting a dispensation for the marriage of Henry and Catherine. Henry's men stuck to their guns, nonetheless, and assembled a case for the contrary proposition, which, if not strong, could not be dismissed out of hand. Some of the authorities they brought forward - the Fathers, canonists, the decisions of provincial synods - do not (and did not) stand up to examination, some were of dubious relevance and some did indeed support Henry's cause. The crucial and undeniable fact was this: popes had acted as though Henry's case was unfounded. Innocent III had allowed converts to retain the wives that they had married in accordance with the precept of Deuteronomy. Martin V had dispensed from the impediment of affinity even in a case that was not covered by the Deuteronomical law. Other similar precedents could be cited. The fact of dispensation was the strongest proof that to dispense was within the papal ^{powers} ~~plenitudo potestatis~~; to the papalist lawyer, at least, the judgements of Roman pontiffs were the ground and interpreter of the canon law.

Henry's case, ~~if pursued, was bound to~~ challenged that principle. Since the precedents could not be denied, their value and, indeed, the whole exercise of the plenitude of power would have to be called into question. And so it was; by 1531 or thereabouts, when the pursuit of the canon law case was ^{near its} ~~at the end of its~~ ^{the} course, ^{Ph} [|] 'A Confutation of Abel's Answer'¹ a tract which rehearses at

¹ SP1/61 fols. 1 ff : 'A Confutation of thanswere whiche Maister John Abell prest lately made against the boke of determinacions of thuniversities'.

length the arguments that had been raised on the King's behalf, ~~throwing back all that John Abel had found amiss~~, runs at the last into the objection that overshadows everything else. What of the authority of Innocent, Martin, Julius and the rest? 'We noder woll ne canne take upon us to defende all actis of popes',¹ Henry's scholar asserts, and does what he can to isolate these judgements from the tradition or 'hole consent of the church'.² He insists particularly ~~that~~ (despite Abel's assertion to the contrary) ~~& that a~~ Council of the Church, at Agde, had forbidden just such a marriage as Henry's as incestuous.³ The Glasse of the Truthe chips in with the idea that 'the prophetical and holy scripture is not of man's interpretation', and so the tangled knot of the Levitical and Deuteronomical law is to be unravelled by the ancient authors (no names given), the Councils and the 'Determinations' of the universities; their judgement is a 'whole acceptation of the Church of Christendom', to deny which is damnable.⁴ It is a brave attempt, no more. The argument is weak because for the most part the consent of the Church ran against Henry, as his opponents had all too ably demonstrated.

But by this time another line of attack had been opened. Was there not a tradition of the Church concerning the place of judge-

1 Ibid., fol. 224a; c.f. the very similar statement in another treatise against Abel's work, SP1/60, Fol. 290a.

2 SP1/61, fol. 62b.

3 Ibid., fol. 176.

4 Pocock, Records, II p. 396-7, 400.

ment of a cause, and who should be judge? It was a proposition that challenged the papal plenitude of power just as surely as the arguments for the divorce; since the position of Rome as the fountain-head of all ecclesiastical jurisdiction and place of final appeal was firmly entrenched in all recent practice.

The gradual discovery of the possibilities of this train of thought saved the day for Henry. *— Stumbled towards Rome in desperate race against time* Things had not been going his way. His attempt to have his case decided quietly, indeed stealthily, in a legatine court at Blackfriars in the summer of 1529 mis-fired completely; Catherine appealed to Rome for judgement and in due course Henry was cited to appear there. At this, Henry adopted a policy that had hitherto been Pope Clement's preserve - equivocation and endless delay. William Benet, who was in Rome for the official opening of the case at the Rota early in June 1530, had received instructions to use whatever means were necessary to prevent progress;¹ Edward Carne was there to act as the King's 'excusator', a ploy that proved wonderfully effective in fixing the court's attention on preliminaries and technicalities when the case threatened to get under way at last in 1531.² With them for a while was Thomas Cranmer whose idea it was (according to Foxe) to consult the universities of Europe for their opinions on the divorce.³ He pressed for the papal prohibition of the enterprise

1 L.P., IV, 6462.

2 On this see Scarisbrick, Henry VIII, p. 282.

3 John Foxe, Acts and Monuments, VII, p. 6 ff.

to be lifted. Somewhat surprisingly, Clement agreed on August 4, and the English agents were free thereafter to harry and cajole the Italian canonists and divines to speak out for the King.¹

But these tactics of prevarication and pressure never amounted to more than half a policy. The case could not be delayed for ever. Nor did the 'determinations' of the universities or the searching of old libraries do much (beyond arousing a good deal of suspicion) to alter the case Henry was in; there was too little leverage in opinions, texts, assertions to prevent a judgement being given, in the fulness of time, and almost certainly against Henry, at the court of Rome.

Then, in the early autumn of 1530, with the opening of the Rota imminent, the King's agents in Rome were told to sing a different tune. They were to assert Henry's immunity from papal jurisdiction with the principle of a privilegium regni, which was 'ne Angli extra Angliam cogantur'.² No doubt this was a rather too cryptic expression for so momentous a proposal - Benet and the rest seemed less than sure of its meaning - but the change of approach was to be no flash in the pan. In the weeks that followed, the papal nuncio and the Emperor's ambassador in London were treated to a series of lectures on the King's determination to have his divorce settled within the realm, by the Archbishop of Canterbury, or the clergy of the realm.³ It is interesting to notice too that

1 J. Ridley, Thomas Cranmer, (Oxford, 1962), p.31 f.

2 L.P., IV, 6667; St. P., VII, p. 261. Henry to Ghinucci, Benet and Casale, 7 October 1530.

3 Calendar of State Papers, Spanish, ed. Bergenroth, Gayangas and Hume, (1862 - 1954) IV, 429, 433, 445.

Mention here
publication of
the Determinations

many of the most important ministers were expressing the new sentiment: Norfolk and Gardiner spoke to the nuncio on the matter early in September,¹ while Wiltshire and Suffolk followed a few days later with words that must surely have taken the nuncio aback. They told him that they had nothing to fear in England from Pope or Popes, even if they resuscitated St. Peter, because the King was Emperor and Pope, absolute in his own realm, and added that unless the Pope acceded to the King's request they would achieve wonders.² The gauche, altogether undiplomatic enthusiasm of these words suggests that Wiltshire and Suffolk had picked up a new and exciting idea, but one that they had neither quite understood or digested. What was the idea exactly, and whence did it spring?

The first mention of the privilege of England was in a letter of the King to his agents at Rome, a letter that is not extant, but which can be reconstructed from their reply of 17 September 1530.³ It evidently caught Henry's men on the hop, for it enjoined them to employ a number of novel and contentious arguments against the Pope's authority, which for one reason or another they did not dare present in Rome. If for instance, the Pope refused to grant

1 Ibid., 433.

2 Cal. Sp., IV, 445.

3 L.P., IV, Appendix, 262. The sequence of letters between London and Rome, dealing with the privilegium regni, was:

1. Henry to his agents in Rome: not extant; about late August 1530.
2. Agents to Henry, 17 September. (L.P., IV, App., 262 is a transcript, deciphered and abbreviated, of this letter. Scarisbrick, Henry VIII, p. 261, n.3, is in unnecessary difficulty in reconstructing the sequence of letters, by assuming that this letter of 17 September is not extant.
3. Henry to his agents, 7 October; L.P., IV, 6667, St. P., VII, p. 261.
4. Benet to Henry, 27 October; L.P., IV, 6705.

a commission to the Archbishop of Canterbury, or to three bishops, then they should protest that justice was denied and draw up an appeal to a future General Council. Or they might impugn Clement's personal authority by alleging his illegitimacy, or by hinting at simoniacal practices. Politely, patiently, they pointed out in their reply the manifold and patent difficulties: an appeal to a future General Council was prohibited by the bulls of Pius II and Julius II, of which they sent copies; many popes had been illegitimate, and there was a bull of Julius II concerning simony which could not be ignored. And they were no happier about the privilege of the realm that Henry urged on them because, they said, doctors to whom they had mentioned it had been full of scepticism. Therefore, they admitted, they had not yet put it forward.

In short, Henry was told that his instructions were inappropriate, and none was so surely wide of the mark as this argument of the privilegium regni. It was intended, initially at least, as a threat, a hint that Henry might take independent action. Clement understood perfectly, it seems, and told Benet that he could prove his jurisdiction better than the King his custom.¹ But as a threat it was singularly inept, not least because it was incredible. The case appeared to rest only on national custom; against him the pope claimed a God-given universal jurisdiction, which incidentally Henry himself had customarily accepted. It was inconceivable, even for Henry, to leave such an argument unanswered and appear to be

¹ L.P., IV, 6705; B.L. Add. MS. 25114, fol. 45a.

flouting the law of God. Moreover, arguments drawn from English history proved largely unintelligible to foreigners, even to well-informed men like Chapuys, who admitted that he had never heard of King Arthur and greeted the news (from Norfolk) of his stupendous territorial exploits with incredulous levity.¹ The task of Benet and the others therefore, was to convince an Italian and largely hostile audience of a tendentious immunity by reference to customs of which they had never heard. A further difficulty was a shortage of detailed information. Henry's letters were suspiciously more full of assertion than proof, and since nowhere do the ambassadors report that they had cited chapter and verse, it must be presumed that the vital information was never sent. Certainly they seemed unable to substantiate their claim when it was challenged by the Pope.² No wonder then that they hesitated.

The King's reply³ urged them again to announce that by the custom of England no Englishman was compelled to go out of the realm for litigation. Then, as if to meet the objections his agents had raised, as though he had seen the weakness of his case, the King went on to assert that this privilege was founded on just and firm reasons⁴ - though once again he failed to name them, at least not specifically. Should the Pope enquire further, (as he

1 L.P., V, 45.

2 L.P., IV, 6705.

3 L.P., IV, 6667; St. P. VII, p. 261 ff.

4 'que firmis et solidis rationibus subsistant, ac vera et justa fundamenta habeant'.

could scarcely fail to do), he was to be warned off with hints that close investigation of origins would call other long-accepted things in question. Here Henry was about to break new ground. Whence came the claim of the Roman Church to exercise imperium¹ over other churches?; and by what authority may the pope deal as he does with a prince and King, one who is constituted by that office to know no superior on earth? A little later, on a different tack, Henry asserts that his privilege agrees with the canon law limiting citations extra diocesim.² = 1215; not absolute, but of Nicaea.

Just
Yes — Here — the indefeasible superiority of a King to all human jurisdiction, and the canon law principle of provincial independence. The 'custom of the realm' argument had proved a false start from which the King, taking sober advice no doubt, extricated himself rapidly. It was not entirely forgotten of course, but it would henceforth be dependent on larger premises. | Kings were struggling towards general principles.

It is true that these higher principles had only been hinted at so far, in a manner deliberately vague in order to sound the more menacing; but we know that the King and his ministers were actively searching out a theoretical basis for their new claims.

1 The L.P. calendar translates this 'supremacy', which is different.

2 'consuetudo et privilegium nostrum hujusmodi etiam hiis consonum est, quod Pontificis alioqui suis canonibus diffinierunt, et presertim illi parti ne quis ultra duas dietas extra diocesim in litem trahatur'.

= (Magna Carta, clause 12 of 1215). This showed distinction made between privileges granted 1231, Clarendon, Henry III, + 1215

The men who had tirelessly combed the libraries of Europe for anything that supported Henry's divorce case, were given a new commission. On the 31 August 1530 Croke reported apologetically from Venice that he had not yet found the 'compilations' of Innocentius, but he had some hopes that a friend would send them to Stokesley.¹ They heard then that what they wanted was to be found in the library of the Servites in Bologna, but the prior, becoming suspicious, whisked the decrees of Innocent away and hid them.² So attention turned to the Vatican library, with rather more success. Benet and Carne managed to obtain notarially attested copies of three bulls of Innocent III.³ Yet all this trouble came to nothing: the bulls merely authorised judges-delegate to hear ecclesiastical causes in England and in no way exempted the English church from papal jurisdiction.

The search went on. Henry wanted his agents to sift through all the papal registers in the Vatican library for evidence of his 'imperial' status.⁴ Benet balked at the sheer magnitude of the task, and complained of the delays they suffered at the hands of suspicious librarians.⁵ Nor did he have good news for Henry

1 L.P., IV 6595.

2 L.P., IV, 6607. These searches on the continent have been well described by Scarisbrick Henry VIII, p. 266-7, and in 'Henry VIII and the Vatican Library', Bibliothèque d'humanisme et renaissance, XXIV (1962), p. 211 ff.

3 L.P., IV, 6602, 6605.

4 Scarisbrick, 'Henry VIII and the Vatican Library', p. 212-214.

5 B.L. Add. MS. 40, 844, fols. 31-31a, 36b: two letters from Benet and Carne to Henry dated 18 October 1530.

*Compilations of Innocent III - prob the privilege of 2 deacons who
priv. of reader seem to agree with*

at the end. Nothing they had found suggested that Clement's dealings in the matter of the divorce were anything but legitimate and in accordance with long custom; and the imperial authority of past English Kings had mysteriously left no mark on the papal archives.

All these energetic searches on the continent had failed to produce a single shred of evidence for Henry's claims. But another search, a far more successful and lengthy operation, was going on at home. There is no evidence in the form of letters to or from the King for it, nothing to show who was engaged in it, to indicate what principles were to be established or how - nothing, that is, beyond the collections of historical materials themselves. These collections are important not only because they supply some of the background thinking to the government's policies and pronouncements in the Reformation period - and in this instance, it will be contended, show more clearly than is otherwise possible the grounds on which Henry began to deny he was answerable to papal jurisdiction - but because they can also help to determine what those policies were, and how and by whom they were framed.

The consuetudines regni which Henry had so far failed to enumerate, are to be found perhaps in two small collections of historical texts preserved in the Public Record Office.¹ One of

*These show
how the policy
idea developed
piecemeal*

¹ SP1/236 fol. 204f; L.P., Add. I, 673. This collection is endorsed 'Quaedam pertinentia ad regis officium', and is cited hereafter as 'Quaedam pertinentia'.
SP1/238 fol. 238f.; L.P., Add. I, 912 (1). It is endorsed 'Non Cont'd.

*Further
Search for precedent goes among transcripts for
general principles of a non-papal tradition
and immediate grounds to delay divorce hearing*

these, endorsed 'Quaedam pertinencia ad regis officium' has already been used by historians to illuminate the King's 'imperial' ideas, who take it on trust that these few unexplained folios of historical notes belong somehow to the policy-making centre of the government mind. In fact, their surmise can be shown to be correct. Both these small collections, 'Quaedam pertinencia' and 'Non est novum Regem esse vicarium dei in terris' are in the rather neat hand that reappears in a much larger collection of texts,¹ the 'Collectanea satis copiosa'; moreover the texts in the two small collections all reappear in the 'Collectanea satis copiosa' which can be positively shown to have circulated at court for inspection, and to have been consulted in the drafting of legislation.²

Presumably then, the compiler of the 'Collectanea satis copiosa' was working from his earlier piecemeal notes, drawing them together in a single place. This hypothesis allows an approximate date to be assigned to 'Quaedam pertinencia' and 'Non est novum', for, as we shall see, by about the end of 1531, the 'Collectanea

est novum Regem esse vicarium dei in terris', and is cited hereafter as 'Non est novum'.

The first of these has been noted by R. Koebner, 'The Imperial Crown of this Realm'. Henry VIII, Constantine, and Polydore Vergil', Bulletin of the Institute of Historical Research, XXVI (1953) p. 29-52, see p. 37 ff, and Scarisbrick, Henry VIII, p. 264 and n.3., but their conclusions are somewhat different from mine.

1 B.L. Cleopatra E.VI, fols. 16-135; L.P., VII, 892. This collection, briefly noted by J. Strype Ecclesiastical Memorials, Vol. I, part 1, p. 283-285, appears to have been neglected by later historians. In the Catalogue of Manuscripts in the Cottonian Library, (London, 1802), it is accurately, if unhelpfully, entitled 'Collectanea satis copiosa, ex sacris scriptis et authoribus Catholicis de regia et ecclesiastica potestate'. Hereafter it will be cited as 'Collectanea satis copiosa'.

2 See below p. III ff

satis copiosa' had been completed, then substantially expanded, not once but twice, and used in the preparation of the Conditional Act in Restraint of Annates.¹ This supplies a terminus ante quem for the 'Collectanea satis copiosa'; it is safe to assume that the process of gathering so large and varied a corpus of texts was put in hand at least some months earlier, quite possibly as early as the autumn of 1530.

In the 'Quaedam pertinencia', the consuetudines regni are named at last. They are the bald statement from Aelred that King Edgar reproved clerical morals, asserting that judgement pertained to him,² the sentences of the Constitutions of Clarendon and Northampton, which, to judge from the same references in the 'Collectanea satis copiosa', the compiler had garnered from William of Malmesbury and the 'Abbreviationes Chronicorum' of Ralph de Diceto,³ and the assertion (which rested on no more authority than Ralph de Diceto) that because of the scandal and dissension brought into the church by the partisanship of two rival popes, Urban and Clement, the English church had refused to be placed under or to obey the pope since the death of Gregory Hildebrand.⁴

1 See below p. 81ff, 139ff & App. I

2 SP1/236, fol. 204b; Ailredus Abbas Rievallensis, 'Genealogia Regum Anglorum' in R. Twsyden, ed., Historiae Anglicanae Scriptores Decem (London, 1652) cols. 360-362.

3 SP1/236, fol. 205. c.f. 'Collectanea satis copiosa', Cleo. E. VI, fols. 37a, 40a.

4 SP1/236, fol. 204b; a fuller form of the text, paraphrased here, is given in the 'Collectanea satis copiosa' Cleo. E. VI, fol. 36a; see W. Stubbs, ed., Radulphi de Diceto Decani Londiniensis Opera (London, 1876) in the series Rerum Britannicarum Medii Aevi Scriptores (London, 1858-1895, hereafter cited as Rolls Series), Vol. I, p. 216 f.

1 Stephen Gardiner, De vera obedientia oratio, T. Berthelet, London, 1535; printed in Janelle, Obedience in Church and State, (Cambridge, 1930, p. 68-171) p. 69; this translation is from the so called 'Rome' edition of 1553.

This is scarcely an impressive list,¹ but wiser counsels having prevailed, it is presented only as particulars of a general case, into which the paper plunges at once with quotations from the Fathers.² It is to be wondered, begins the first (from St. Augustine), why Christian princes do not act against the 'detestandos dissipatores' of the Church: if they do not, how will they make account to God for their 'imperium'?³ Then from Gregory (so it is said)⁴, we hear that the office of the prince is to care for the salvation of his subjects, to which end he has received coercive power. This makes sense of the mention of King Edgar reproofing and judging his clergy that follows: the king's God-given office, his imperium, requires him to extend his authority over religious affairs. Lest it be thought that this is scarcely more than a statement of the impeccably ordinary medieval principle that the exaction of punishment belongs to the secular arm, it would be well to glance here at the paper 'Non est novum'.

1 It is just possible that the 'Quaedam pertinencia' as we have it is incomplete.

2m The first two references are less than clear:

'Aug. para.9 tract.11'

'Grego. in Regist.libro 3^o'.

Some patristic citations in the 'Collectanea satis copiosa' have similar references, including 'Polyautheon', and 'Tabula Originalium Scrip.'. It seems reasonable to suppose that the author was working from patristic catenae, but I have not been able to trace any which correspond to these references.

3 '... quomodo redderent rationem de imperio suo, deo.'

4 This quotation does not obviously correspond to anything of Gregory's: but when the same text reappears in the 'Collectanea satis copiosa' the reference is given correctly: St. Thomas, 'De Regimine Principum', li.1 cap.15.

There are three quotations from Bracton here, and a fourth - evidently an afterthought - from Britton. As the endorsed title suggests, the paper has but one purpose, to show it is no new thing for the King to be called the vicar of God on earth. The first quotation makes the point: the law, Bracton seems to be saying, sits in the place of the King, as if on the throne of God, ruling the nations for the King, as if for Jesus Christ; for the King is the 'vicarius dei' and his rule is of God.¹ The words of the second entry are more familiar perhaps:

'Parem autem non habet rex in regno suo quia par
in parem non habet imperium'.

The term imperium is used here in a general sense, of the power that a superior has over an inferior, that he would not possess over an equal. The King therefore may have imperium in this sense, within his realm: there is no assumption in medieval civilian law that an Emperor must be ruler over more than one realm.²

But cf.
later, etc.

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- 1 '...in sede ipsius regis quasi in throno dei...vice Ihesu Christi, cum rex sit vicarius dei. Iudicia enim non sunt hominis sed dei'!
- 2 A point that has been generally agreed: R. Koebner, Empire (Cambridge, 1961) p. 50 ff.; G. R. Elton, England under the Tudors (London, 1955) p. 161-162; G. L. Harriss, 'Medieval Government and Statecraft', in Past and Present No. 25 (July 1963), p. 9 f. Otherwise, there has been mainly disagreement on the meaning of the term imperium, and its significance in the 1530's. For earlier discussion see Koebner, Empire, p. 43ff., and 'The Imperial Crown of this Realm', *passim*; G. R. Elton, England under the Tudors p. 160-162; Harriss, 'Medieval Government and Statecraft', p. 10-12; G. R. Elton, 'The Tudor Revolution: A Reply', in Past and Present No. 29 (1964) p. 26 - 49 ; G. L. Harriss, 'A Revolution in Tudor History?' in Past and Present No. 31 (1965) p. 87-94; G. R. Elton, 'A Revolution in Tudor History?: A Rejoinder', in Past and Present No. 32 (1966) p. 103 - 109; G. R. Elton, 'King or Minister?: The Man behind the Henrician Revolution' in History New Series, Vol. XXXIX (1954) p. 216-232, especially p. 226-228; G. R. Elton, 'The Political Creed of Thomas Cromwell', in

Cont'd.

This is the drift of the quotations in the paper 'Non est novum', but the interpretation of them is bound to lead into the troubled waters of unresolved debate. Some things can be agreed. The King's office and its powers were granted by God; this was a claim that had been made before by Kings of England when obliged to defend their authority against incursion by foreign powers, particularly the papacy, in 1301, 1393 and 1399.¹ The imperium of the English Crown was a commonplace of medieval legal thought, a recognition of the fact that in temporal matters the ruler had no superior in earth,² except in the sense that he voluntarily placed himself under the law, without which, it was argued, he could exercise no power.³ That the terminology of Empire had a considerable medieval ancestry has to be admitted; that Henry used, or at least had in mind that terminology is, in the light of these quotations from Bracton, self-evidently true. But the central question is ultimately untouched by all this: what did Henry or his ministers mean in 1530 and the

Transactions of the Royal Historical Society, Fifth Series, Vol. VI (1956) p. 69-92, especially p. 88; Scarisbrick, Henry VIII, p. 268-273.

What follows, while building on all this, is my own position, based on a good deal of previously unused material. Implicitly, of course, it must confirm or deny what has gone before; but it may, too, suggest a via media: that there were a number of ideas about 'empire' in the wind at the time, none of which held the stage unchallenged.

- 1 Harriss, 'Medieval Government and Statecraft', p. 10.
- 2 Ibid., p. 9; Elton, 'The Political Creed of Thomas Cromwell' p. 88.
- 3 'Ipse autem rex non debet sub homine sed sub deo et sub lege, quia lex facit regem'. Bracton, De Legibus et Consuetudinibus Angliae, ed. G. E. Woodbine, (4 Vols., New Haven 1915-42), Vol. II p. 33.

years to follow when they spoke of 'empire'? It was after all possible to use familiar, time-honoured language to clothe, perhaps even to disguise new, contentious ideas. The objection that has been raised, that the old terms would necessarily conjure up the old ideas, and were thus un-serviceable,¹ is very much an a priori argument. Harriss notes how the claim that the King's right of empire includes authority in spirituals was twice specifically excluded from the drafts of the Act of Appeals;² but the argument can be turned the other way: the authority of the King in spirituals was twice specifically included in his right of empire, once indeed by the King's own hand. There were at least some, then, who thought 'empire' could extend to spirituals, who were willing to claim that spiritual jurisdiction derived from the imperial crown.

But back to the texts: the search into Bracton did not go very far,³ but the searcher had a clear idea of what he wanted - texts that would uphold a high view of royal authority derived from God, that would associate the King's rule in earth with Christ's.⁴ Likewise the principle of selection for the 'Quaedam pertinencia' (or rather the first part, which has been considered so far),⁵ called

1 Harriss, Medieval Government and Statecraft, p. 11.

2 Ibid., and see G. R. Elton, The Evolution of a Reformation Statute, in The English Historical Review Vol. LXIV (1949), p. 174-197, esp. p. 184-185.

3 The first two references are found respectively in the 'Introductio' and in the first chapter, 'De personis' of Bracton.

4 'Et quod sub lege debeat, cum sit dei vicarius, evidenter apparet ad similitudinem Ihesu Christi, cuius vices gerit in terris'. 'Non est novum', SP1/238 fol. 238a.

5 The second part of 'Quaedam pertinencia' concerns itself with the independence of each province of the Church: see below p. 94

for texts supporting the God-given responsibility of the King for the good of the Church, for the mores of his clergy, for the heavenly beatitude of his subjects. This is medieval language, like the term imperium, but it does not express a balanced view of medieval thought. The compiler is simply arguing a case, adducing everything that extended, rejecting all that limited the King's authority. If he had not yet quite clinched his point, it was only because the materials to hand so far were a trifle disappointing.

How many more papers like the 'Quaedam pertinencia' and 'Non est novum' were drawn up it is impossible to say, but there may have been quite a number. By the time the 'Collectanea satis copiosa' had been assembled, a lot more sources had been plundered, a lot more thought given to the organisation of the material. The compiler's outlook and objectives will become apparent as his collection is studied in some detail.

The 'Collectanea satis copiosa' consists of an index, followed by well over two hundred sides of mainly brief citations from the scriptures, the Fathers and medieval authors, arranged under heads. A glance at these heads as printed by Strype¹ is enough to show that the central question is the relative extent of royal and ecclesiastical power; but Strype, by simply copying the titles from the index, failed to include those sections added after the index had been made. This disparity between index and contents,² when

1 Strype, Ecclesiastical Memorials, I pt. I, p. 283-5.

2 In addition to the heads omitted, some heads are indexed out of order at the end.

added to the number of different hands and types of paper to be found, even to the marked differences in the source materials cited, must mean that there were several stages in the making of this book. It is important to distinguish between them, but the process of proof, being lengthy and somewhat tedious, is relegated to an appendix, to which reference will be made.¹

In its original form, the 'Collectanea satis copiosa' proceeds to establish, from scripture first and then from a variety of authors, certain principles of Kingly power; then it retraces its steps to show how those principles have been employed by past English Kings in their dealings with the Church and clergy. Occasionally the compiler draws a point from his material for explicit comment; for example, on the first folio² after biblical texts of Old Testament Kings who 'made' and sometimes 'unmade' high-priests, is written 'Sic semper ad principes pertinebat summi sacerdotii collatio et translatio'. But by and large such comments are neither offered or needed; the argument is admirably clear.

Here add from p. 57 the examples & principles from Scripture.

The Kings of Israel, according to the texts, were judges of the divine law, putting down abuses of worship, reforming the clergy, encouraging the people in the fear of the Lord. To give two examples: King Hezekiah destroyed the bronze serpent which Moses had set up at God's command, because it had become an article of idolatry;³ here the compiler thinks fit to include a gloss: if a

¹ See Appendix I.

² i.e. Cleo. E. VI, fol. 22a.

³ Ibid., fol. 24b. The text is from 2 Kings 18.

King can abrogate what had once been ordered by God, how much greater is his power over mere human precepts. King Jehosaphat, like Hezekiah, rapidly became a favourite with the writers of King Henry's party, perhaps because he it was who led the whole people of Israel back from apostasy. But the means are most important - he did it by appointing judges (*constitut...iudices*) in each city, to exercise the judgement of God. Moreover he appointed priests and others to decide disputed cases or appeals at Jerusalem.¹

The pointing of this argument is provided eloquently by the texts which follow: the power given to magistrates is power given by God.² The King's office as '*sicut deus in mundo*' requires him to ensure that the precepts of God are kept.³ But the really telling shots have yet to be fired, and they come, surprisingly from English experience. The letter of Pope Eleutherius purports to tell Lucius, the newly converted King of Britain, to rule by the law that is above the law of Rome or Caesar:

*Suscepistis enim nuper miseratione divina legem et
fidem Christi. Habetis penes vos in regno utramque.*⁴

Here is perhaps the most straight-forward attribution of spiritual jurisdiction and supremacy to the King that the compiler had found and he repeats it under several heads. But the next quotation is a necessary exposition of how that supremacy should be practised. In

1 '*Collectanea satis copiosa*', Cleo. E. VI, fol. 24a. The text is from 2 Chron. 19.

2 *Ibid.*, fol. 26b: '*Ex quadrivio Ecclesie cap. 55.*'

3 *Ibid.*, fol. 26b: '*Sanctus Thomas de regimine principum li I ca. (blank).*'

4 '*Collectanea satis copiosa*', Cleo. E. VI, fol. 27a/b.

the reign of Aethelstan, Malmesbury recorded, relations between Pope and King flourished. For while the pope was allowed to expound and declare the things of the faith by virtue of authority 'borrowed' from the King, the King when necessary exercised coercion.¹

This idea of borrowed office is most important in the 'Collectanea satis copiosa'. It was obviously a nonsense to suggest the Church had never legitimately exercised jurisdictional or coercive authority; it did so day by day in the courts christian, and when it enacted constitutions in Convocation - both of which were activities recognised and accepted by the Crown from time immemorial. Rather the compiler makes out a case - already implicit in the example of Jehosaphat appointing lay and clerical judges - for the God-ordained sovereignty of the King, a part of which authority he may from time to time 'lend', without loss of rights, to the priesthood.

Predictably, the discussion begins to centre round the 'two swords'; this theory of the two powers of Church and State was defined for the middle ages by Pope Gelasius I.² It provided the language, if not always the precise content, of orthodoxy. The existence of separate spheres of authority, the 'two swords', was the largely unchallenged premise of theoretical discussion throughout the middle ages; what was challenged from time to time was the disputed boundary

1 Ibid., fol. 27b. '... dum mutuis officiis iste exercet in dei rebus eloquium, ille (si necesse esset) vibraret gladium.' The reference I have not found; other references to Malmesbury are similarly elusive. Perhaps the compiler was working from a wrongly attributed manuscript.

2 See F. Le Van Baumer, The Early Tudor Theory of Kingship, (New Haven, 1940), p. 15-17.

territory, where Gelasius' insistence on the independence of the Church appeared to threaten the interests of the secular authority. In England, notably, the statute books bore witness to the periodic skirmishes between the two swords.

The compiler goes to the medieval authors, and first of all to Hugo of St. Victor in whose 'De Sacramentis' he finds a rigid separation of the lay and clerical spheres, on the Gelasian pattern. To the lay is given the ordering of all things necessary to the earthly life, to the clerical the care of all things good to the spiritual life. Each estate has its head, the King and the summus pontifex.¹ All impeccably orthodox so far, but imprecise; a note in the margin shows the way the argument will go: no power is needed in the spiritual realm, except for discipline, which is a matter for the King.² Or as Origen affirms, the princes of the Church are not to imitate the princes of the world, but to make Christ accessible and to wash the disciples' feet.³ From Gervase of Tilsbury comes a more explicit statement: Moses as the figure of a King, did not enter the holy of holies, nor accept the sacerdotium, but he anointed Aaron and invested him with his ornamenta pontificalia, and the King, not the high priest, declared the laws of God to the people. Here the

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- 1 Hugo of St. Victor, 'De Sacramentis' 11.2, pars. 2, cap. 4; J. - P. Migne, ed., Patrologia Cursus Completus (Paris, 1844-) Series Latina, CLXXVI cols. 417-18. 'Collectanea satis copiosa' fol. 60a, under the head 'Regia et Ecclesiastica Potestas seu Gladii duo'. The next head (fol. 64a) is 'Regia et Ecclesiastica Potestas seu Gladii duo in Anglia'.
 - 2 Cleo. E. VI, fol. 60a; this note is intended, it seems, as a quotation from another authority, but the reference is illegible.
 - 3 Ibid., fol. 60b/61a. The reference given is 'Origen in Math. OmT. 12'.

clerical estate is limited to the 'mere spiritual', the exercise of strictly sacerdotal functions. Again the power to proclaim the truths of divinity is given to (though not necessarily exercised by) the King.¹

All other powers the clergy enjoy must devolve from the King, and to prove it the compiler cites (still from Gervase) the Donation of Constantine, though interpreting it in a somewhat surprising manner. The Emperor it is recalled, granted power in the western part of the Empire to Sylvester; but he retained the name and dignity of Emperor for himself and his successors; moreover, the eastern part was made the higher in the Empire. The vital question is asked: 'Quis ergo maior in terrenis: qui dat an qui accipit?'.² The Donation therefore, far from justifying the papal claim to temporal lordship, proves that no earthly kingdom was, or indeed could be granted to the Church. Instead Constantine (and other Emperors) granted certain sources of wealth and income of their own largesse. The Church should live on these alone.³ If this may be glossed (as the compiler glosses it) by a subsequent reference,⁴ the

1 Ibid., fol. 61a/b.

2 Ibid., fol. 61b.

3 Ibid., fol. 132b - 133a. The compiler returns twice to the Donation of Constantine in material added later, (fols. 73a, 132b - 133a); he continues to interpret it in a way that implicitly recognises the Donation's historicity. Moreover this approach is out of line with the subsequent government-inspired publication of Valla's treatise. A treatise of the donation given unto Sylvester pope of Rhome, (T. Godfray, London, 1534?). See below, p. 222-23

4 Cleo. E. VI, fol. 62a-63a Hugo of St. Victor 'De sacramentis' li. 2, pars 2, cap. 6, 7, 8, Migne P.L., CLXXVI, cols. 419-22.

ruler's concession of goods to the Church may, if he wishes, carry with it certain powers - though never the power of earthly jurisdiction. Such is the origin of the Church's spiritual jurisdiction, of its authority to define and declare doctrine; yet these are powers which may never be alienated finally from the King's divinely-granted prerogative.

Such a high, theocratic view of Kingship inevitably calls in question all the visible expressions of papal power. There is a perfunctory protest against legatine authority, and the reiteration of the English immunity from papal jurisdiction '*propter consuetudines regni*' with the references already found in the '*Quaedam pertinencia*' and a few more of a similar kind from the English chroniclers.¹ Significantly though, the whole matter is now prefaced by William Rufus' claim that the Kings of England enjoy the same privileges as the Emperor in the Empire - the *privilegium regni* being no less than the *privilegium imperii*²; and Henry I's refusal to admit any legate other than the Archbishop of Canterbury is said to be '*propter antiquam consuetudinem*', which is the canons of the Council of Nicaea.³

There is an airing too for that old chestnut, the right of provision to vacant sees. The German Emperors and English Kings, it appears, never conceded the investiture contest: they renounced

1 Cleo. E. VI, fols. 35a et seq.

2 Ibid., fol. 36a: Matthew Paris, *Historia Anglorum* (*Historia Minor*) ed. F. Madden, 3 vols., *Rolls Series*, London 1866-1869, I, p. 50.

3 Cleo. E. VI, fol. 38a; reference given as 'Malmesbury 190'

neither the right to confirm the election of the bishops of their provinces, nor the right to depose the bishop of Rome.¹ It is not altogether clear from the 'Collectanea satis copiosa' whether the King's rights proceed from God or from a time-honoured concession by the church.² The examples from English history even appear to recognise that the bishop's pallium is to be sent from Rome; but then the consecration and investiture of bishops was not yet in dispute.

There remained the question of excommunication and interdiction, the papacy's final spiritual weapons. The compiler found the example of an English King who prohibited any sentence of excommunication to be promulgated until he had overseen the case and settled what pertained to secular justice in his courts, and of other Kings who themselves threatened interdiction and excommunication 'quantum rex potest', against any who infringed the liberties of a royally-endowed church.³ This was not to deny the essential right of the Church to discipline its own membership, to exclude the unworthy from the sacraments, but it did call into question the use of excommunication to achieve ends that were not wholly spiritual.

A further limitation to be imposed on the ecclesiastical power bears the stamp of the fifteenth century conciliarist movement. Since all authority in the Church has been ordained by God for good, it

1 Ibid., fols. 30b-32b, 35a/b, 37a/b.

2 e.g. Cleo. E. VI, fol. 31b; ('Martinus dist 63'): Adrian and the synod of Rome are said to have given power of elections to the Emperor.

3 Cleo. E. VI, fol. 41a. The references given are 'Malmesbury 84' and Gerardus, 'Vaticinale historie 11.1'.

must be used 'in edificationem'; or as Simon da Cassia has it:

Nulla est concessa a deo potestas aut autoritas adversus
veritatem legis & mandatorum dei, atque sanctorum morum,
quia autoritas quae veritas est, adversus seipsam non est.¹

It is an approach that puts the good of the Church above mere legalism. But how was that good to be defined? The conciliarist answer was clear: whatever was decreed by a legitimately convened General Council, representing the whole body of the Church, was to be accepted as a rule of faith and binding on all Christians. The compiler of the 'Collectanea satis copiosa', however, manages to slip out of this awkward corollary, which would implicitly question the Christian prince's final authority, to side-step into the smaller principle of provincial immunity. When the pope wishes to make laws or exercise judgement, the bishop can oppose him by saying 'non conveniunt consuetudini regni'.² Sentences of excommunication, the compiler insists, made within one province, are to be observed by the church everywhere.³ Thus for the moment at least, the principle of conciliar supremacy is excluded, and the integrity of the Christian emperor's authority within his realm is not compromised.

A short while after these texts had been neatly transcribed into the 'Collectanea satis copiosa', more material was added, interleaved with the original where it seemed most appropriate. It was laid out

1 Cleo. E. VI, fol. 96b; Simon da Cassia, Egregii evangelicae veritatis enarratoris...opus in IIII Evangelia, E. Cervicornus, Cologne, 1533, p. 433.

2 Cleo. E. VI, fol. 96a.

3 Ibid., fol. 98a, quoting the 5th canon of the Council of Nicaea.

under heads, and with important phrases in larger writing, just as before; only the hands were different.¹ For the most part it expands the points that had already been made, using only one new source - Higden's Polychronicon.

There is more material on the German investiture contest,² and a drawing of parallels with the English situation.³ Whereas when similar material had previously appeared the emphasis was on the King's right to provide to vacant episcopal sees, the central issue is now the King's sole right of investiture within the realm. It is a right based in part on the precedent of the German Emperors and English Kings - of which the compiler gives a long list, drawn from the chroniclers - and in part on the vetus consuetudo which the Roman see had no authority to change. This last note is brought in, significantly, by Ivo of Chartres.⁴ It was Ivo who proposed the practical compromise which resolved the investiture contest in England.⁵ Investiture was strictly the symbolic surrender of a fief by the lord to his vassal. When the fief was an ecclesiastical benefice the symbols used were a crosier and a ring. But the significance of these symbols was ambiguous. Ivo distinguished between the concession of temporal property, which he permitted, and the grant of ecclesiastical jurisdiction, which he could not. In the accord

1 See Appendix I.

2 Cleo E. VI, fols. 43a - 46b.

3 Ibid., fols. 47a - 49a.

4 Cleo E. VI, fol. 45a; for an interpretation of Ivo's term 'vetus consuetudo' see below p. 105-6

5 A. L. Poole, From Domesday Book to Magna Carta 1087 - 1216, (2nd edition, Oxford 1955), p. 179 - 180.

reached between Anselm and Henry I in 1107 an oath of vassalage was substituted for lay investiture with crosier and ring.

The compiler, however, happily uses Ivo's words 'Dispensationes rerum temporalium regibus attributi sunt'¹ to affirm exactly what Ivo wished to deny - the dependence of ecclesiastical jurisdiction on the secular power. This is possible because the 'Collectanea satis copiosa' has pushed forward the limits of the temporal sphere to include all coercive authority. Ironically, therefore, Ivo appears to be supporting investiture with crosier and ring, insisting that ecclesiastical authority is conferred by the King. With the same legerdemain Hugh of St. Victor's 'De Sacramentis' is made to support the King's jurisdictional monopoly; for its altogether orthodox exposition of the 'two powers' is glossed by the compiler's note:

'... dominium seculare et imperium etcetera spiritualia non sunt sed corporalia...'²

The compiler has also found additional material from the conciliar epoch to emphasise the authority of the whole Church.³ Attention is drawn (from ...

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- 1 Cleo E. VI, fol. 28b. 'Ivonis epistola 62 ad Senonensem archiepiscopum'; Migne, P.L. CLXII, col. 174, Epistola CLXXI.
 - 2 Cleo E. VI, fol. 68b, commenting on words from Hugh of St. Victor, 'De Sacramentis' li. 2, pars 2. cap. 4; Migne, P.L. CLXXVI, cols. 417 ff.
 - 3 Cleo. E. VI, fols. 55a - 59a. N.b. the first two quotations under the head 'Ex concilio Constantiensis de Potestate Concilii', written in the margin, are later additions; their emphasis on conciliar authority is not the emphasis of the original quotations under this head.
There is also a long section dealing with the status of the clergy once all jurisdictional power has been taken from them: Cleo. E. VI, fols. 66a - 75b, 77a - 92b.

Gerson) to the tradition of the Church - to its content, that is the scriptures, especially the Gospels, and apostolic tradition, and to its transmission:

... deductae sunt de generatione in generationem
usque ad nos per observationem legitimam.¹

There is, then, a law preserved and followed by the Church, to the exclusion of mere human tradition. This is the highest law, the law of Christ; it must be the criterion by which all matters and all men, including the pope, are judged. Accordingly the pope, writes Panormitanus, is not the head of the Church, for that is Christ, 'sed ministerialem seu politicum'.² These ideas were shortly to take an important place in the English government's propaganda campaign.

The 'Collectanea satis copiosa' and the other dependent collections do appear to propound the theory of royal supremacy in spirituals, including spiritual jurisdiction, as early perhaps as the autumn of 1530. But there was another idea in the wind - the jurisdictional independence of each province of the Church. Perhaps it had been broached when Chapuys wrote that Henry was saying that his people would never consent to the trial of his case outside England, for it had been enacted by several ancient popes - a reference to canon law surely, not the privileges of the realm - that no cause begun in the country should be advoked elsewhere; to which end he had recently sent to inform the pope of his privilege,³

1 Cleo, E. VI, fol. 55b.

2 Ibid., fol. 58b.

3 Referring presumably to the now lost letter of the King to his agents in Rome, about the end of August 1530.

AP 2 1215
Hornell.
This refers to
the other... Yes

with the request that the Archbishop of Canterbury be allowed to proceed.¹ This is not an attempt to reconstitute the legatine court in England. The bulls of Innocent III transcribed from the papal registers would have provided justification for that, but something more was required. Henry wanted the Archbishop of Canterbury, or two or three bishops, or the upper house of Convocation - he never seemed quite sure who it should be - to have carte blanche to judge his cause. But paradoxically he wanted the pope to agree to the arrangement, even to the point where he would suggest to Clement that what he could not allow openly, he might wink at, refraining from sending inhibitions or revocations.² Henry wanted a divorce, but he wanted too to remain a good son of the Church. So he seems for the moment to have preferred the argument for provincial independence to the more radical claim for the jurisdictional supremacy of the secular ruler. The first was the practical proposition, the second a potent threat. On 6 December 1530, Henry wrote both to Pope Clement and to Benet and Carne. His agents were told to say nothing to compromise 'suche remedies as we maye attayne here at home', to hint at 'our dignities and prerogatives Royal'.³ But the Pope was to hear none of this from the King himself. Henry contended that the case ought to be heard in England because the Councils and St. Cyprian and St. Bernard had so ordained it, with the formula 'ut in eo loco terminetur ubi primum nata est'.⁴

1 Chapuys to Charles V, 20 September 1530, Cal. Sp. IV 433.

2 'Articuli' of a letter intended for Francis I to write to the Pope. L.P., V, 326 (ii); Pocock, Records II, p. 286.

3 Henry VIII to Benet and Carne, L.P., IV, 6760, St.P. VII p.269 ff.

4 L.P., IV, 6759; G. Burnet, ed. N. Pocock, History of the Reformation, (7 vols., Oxford, 1865) VI, p. 41 ff.

Whole -
i.e. on judges
delegate
LP IV 6602
6605

Field note
not pr.
indep. came
later.

This was the note sounded too by the citations in the latter half of the 'Quaedam pertinencia'; the councils from Nicaea seem to be prohibiting appeals out of the province in any judicial case.¹

Henry himself was soon asserting regularly and confidently that the Council of Nicaea proved his case ought to be decided within England.² Yet it was not strictly true. The statement in 'Quaedam pertinencia' that 'Ex Niceno consilio: Potestas vel confirmatio pertinebat per singulas provincias ad metropolitanum' was a wide and fundamentally misleading paraphrase of what the canons of Nicaea actually decreed. Even if the King believed it (and of course he wanted to believe it), whoever wrote the propaganda tract A Glasse of the Truthe³ knew better. The author understood that the references to the Councils from 'Quaedam pertinencia', and others of a like sort, had to be woven into a coherent argument.

There were some twenty canons of the Council of Nicaea known in the sixteenth century, and none of them contained either the oft-repeated formula or the makings of a case for it. But interest centred on canon V, the one cited in the 'Collectanea satis copiosa'⁴ that the decision of a provincial council was to be accepted universally by all Christians. The Glasse of the Truthe says about as much

1 'Quaedam pertinencia', SP1/236, fols. 204b f.

2 See the letter of Mai to Los Covos, 21 April 1531, L.P., V, 203, and of Henry VIII to Benet, 10 July 1531, L.P., V, 327. The point was evidently made by Benet to the Pope: L.P., VI, 139.

3 A Glasse of the Truthe was an early effort to clothe the King's argument in literary garb, a brief and moderately entertaining dialogue between a Lawyer and a Divine. See above, p.60

4 See above, p. 89

as can be for the canon as it stands:

'By this it may well appear that there is or ought to be a special jurisdiction or power within every province in ecclesiastical observations and deciding of causes'.¹

But the text could be glossed in a manner hallowed by time and apparently unimpeachable authority. From Isidore Mercator, better known now - but not then - as the Pseudo-Isidore, the ninth century compiler of the False Decretals, the author picks up the tradition that there had been more canons of the Council of Nicaea, among them an explicit statement that causes were to be decided in the province in which they had arisen. The existence of these additional canons was to be deduced from a number of later papal letters and conciliar decrees, which Isidore cites in his preface, and the author in turn gives in the Glasse of the Truthe.²

No doubt Henry's men lighted on Isidore's interpretation as a God-send. The authenticity of Isidore's work was still largely unchallenged, though there can be no doubt at all that humanist scholars had long possessed the philological techniques to explode its ninth century Frankish Latin. But just as surely, Henry's scholars were unwittingly beguiled by Isidore's long-spent propaganda purposes. The decretals were forged, or rather compiled, for they were an enormous mosaic of plagiarisms from the literature of the early Church, including the scriptures, about the year 850, in the western part of the Frankish Empire. It was a moment of weakening central authority and

Shirked

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- 1 Pocock, Records, II, p. 402 - 403. The author cites canons IV, V and VI. .
- 2 Merlinus, ed., Conciliorum Tomus, I, sig. B viib - B viiib: 'Nam quod plura quam viginti capituli sint Niceni concilii, in multis invenitur locis...'; c.f. Pocock, Records, Vol. II, p.403.

Shuffled
Necessity?

social upheaval. Charlemagne's strong hand had ensured a period of harmony between Church and State. But it was he who revived the idea of Metropolitan archbishops with jurisdictional authority in their provinces, who, in the difficult days that followed under Louis the Pious and his sons, assumed a role of considerable political and territorial importance. They became, indeed, another of the dissident parties with designs on the independence and property of the Church. Isidore's intention was to protect the interests of the bishops against the metropolitans, the spiritual life of the Church against the mercenary and political motives of the secular powers. The imperial authority was unlikely and unable to help, so he threw into the balance the weightiest part of the Church's own tradition, the testimony of the early Church and the spiritual authority of the papacy. The picture, as he paints it with his mixture of largely false papal decretals and largely genuine conciliar decrees,¹ has the bishops untroubled by the jurisdiction of the metropolitans, and the whole clerical estate out of the reach of laymen, consecrated to God. Most importantly, he set up a procedure for the trial of bishops - a critical point this, as several had been deposed and more driven from their sees by fear in the preceding troubles. Isidore's aim was, no doubt, to hedge the procedure around with so many details and prohibitions that the condemnation of a bishop became very difficult; certainly the decision was placed in the hands of the provincial synod, the great bulwark in Isidore's system against local

¹ See E. Secker, New Schaff-Herzog Encyclopaedia sub Pseudo-Isidorean decretals for a summary of what is and is not genuine in the decretals.

pressures. A final appeal could be made to the Pope, who could appoint a place for the case to be ended.

To support his argument Isidore was eager to discover a new interpretation of the canons of Nicaea. Nicaea's authority was unchallengeable: some of the eastern authorities, Isidore claimed, 'testati sunt se vidisse concilium Nicenum habens potiozem quatuor evangeliorum magnitudinem'.¹ Somehow its weight had to be turned behind the provincial synods. To do it, Isidore was obliged to fabricate the story of the missing canons, and then to substantiate their existence with forgery and a fair amount of deceitful glossing of texts.

The task of Henry's scholars was superficially similar; they too had to find some pathway through the morass of canon law to the all-important principle of provincial independence. With evident gratification they soon came upon the stepping-stones that Isidore had put down long before, neglected and overgrown perhaps, but still very serviceable.

Recent humanist endeavour came to their aid. Isidore's work had been printed for the first time, in Paris, in 1524, by Jacques Merlin, an enthusiastic if uncritical scholar, whose stock-in-trade was the publication of the work of reforming spirits of the past, among them Peter of Blois, Gullielmus Duranti the Younger, and in 1512 the first tolerably complete edition of Origen. Merlin's simple purposes were set out in his preface to Isidore's work. He wanted the leaders of Christendom, kings, bishops, popes, to awaken to the dangers of

1 'Prefatio Isidori': Merlin, Conciliorum...Tomus, (1530) sig. Bviiib.

heresy; he wanted them to learn from the ancient precepts and godly practice which 'beatus Isidorus', as he called him, had laid before them. Let the authorities read, and act.

They did. Merlin's outspokenness had won him little favour at court, and when, in 1527, he allowed himself a further liberty and in person criticised courtiers of the King whom he suspected of new opinions, he rapidly found himself imprisoned in the Louvre. After two years, he was exiled to Nantes; then some form of reconciliation was patched up. A new edition of his book of the Councils was published in Cologne in March 1530, from which the offensive preface had been excised, and in June of that year Merlin was allowed to return to Paris to become Archdeacon of La Madeleine.¹ Merlin had learnt, in a severely practical way, the truth already known to many another humanist and reformer, that the princes of Europe would not tolerate reform they did not control. His experience nicely illustrates the sad fact that reform would not be based upon the archetype of true and ancient religion rediscovered by the scholars, but upon whatever the authorities chose to make of that discovery.

So it was in England. Merlin's book fell under the eye of someone at Henry's court, someone moreover who knew about, or very likely had helped to compile the 'Collectanea satis copiosa', and so was aware of the collecting of propaganda materials going on behind the scenes. For, inserted after folio 98a of the 'Collectanea satis

¹ On all this see H. Quentin, J. D. Mansi et les Grandes Collections Conciliaires, (Paris, 1900); S. Williams, Codices Pseudo-Isidorianae. A Paleographico-Historical Study, (New York, 1971; Monumenta Iuris Canonici, Series C: Subsidia, Vol. 3.); Biographie Universelle (Michaud) Ancienne et Moderne, (Nouvelle édition, Paris 1843 - 1865), sub Jacques Merlin.

copiosa', beginning on a spare side of paper (fol. 98b), continuing thereafter on added sheets, is a section of quotations taken from Merlin's book.¹ Here and in the preceding five folios is the material used by the author of the Glasse of the Truthe to make his case for provincial independence.²

Now that we know how and from where the author of this propaganda treatise collected his materials, his argument (and with it the basis of the King's claim of provincial immunity) will become clearer. And so unfortunately will its inherent flaw.

'The Divine. Ye name the Council of Nyce and other also. Now I pray you, let us hear how they speak herein, that we may be the more sure.'³

The lawyer replies with the inconclusive canons of Nicaea and then launches into his case 'that this our purpose and position is plainly contained among the chapters of the Nycene Council, if it were wholly

1 Cleo. E. VI, fols. 98b - 109b. See Appendix I.

2 Pocock, Records, II, p. 402 - 408. There is one quotation from an earlier section of the 'Collectanea satis copiosa', Cleo. E. VI, fol. 55b from Gerson, (see above p.92) which is used in the Glasse of the Truthe, p. 407.

A good deal of this material had already appeared in print, in fact, in the final section (from fol. 147a) of the Determinations of the universities, printed first in Latin as Gravissimae atque exactissimae illustrissimarum totius Italiae et Galliae Academicarum censurae..., then in English as The determinations of the mooste famous and mooste excellent universities of Italy and Fraunce..., T. Berthelet, London, 1531. It seems likely that this section, which introduces a radically new note so late in the book is a last-minute addition. The argument is not so fully worked out as in the Glasse of the Truthe, being particularly tentative on the place of General Councils in the government of the Church.

3 Pocock, Records, II, p. 402.

had'.¹ Of the proofs that Isidore offers in his preface for his assertions about the Nicene canons,² the author cites just two, the epistle of Pope Innocent I to Victorious and a decree of the Council of Constantinople.³ Of these the epistle of Pope Innocent is a forgery by Isidore Mercator; the decree of the Council of Constantinople,⁴ clearly refers not to a missing canon but to the extant canon V of Nicaea. But as Isidore hastens to point out, many more corroborating sentences could be found in the body of his work. The author finds them, but only because Isidore had planted them there, or had shown how to point their meaning.

'The Council Affricane to Pope Boniface much maketh for the same'⁵ :

the text for this assertion has to be supplied from the 'Collectanea satis copiosa'. With the letter of the African Council (Carthage c. 423) to Pope Celestine, it introduces what is perhaps the most promising line of argument, from the dispute between the Papacy and the African church in the early fifth century, over Rome's claim to hear appeals from other provinces.⁶ In 418 Pope Zosimus I entertained

1 Ibid., p. 403.

2 Merlin, Conciliorum...Tomus, (1530), sig. Bviii a/b.

3 Pocock, Records, II, p. 403.

4 Merlin, Conciliorum...Tomus, (1530) fol. LXIX: canon III. ...'per singulas quasque provincias provincialis synodus administrare et gubernare omnia debeat, secundum ea quae sunt in Nicaea definita.'

5 Pocock, Records, II, p. 403, 'Collectanea satis copiosa', fol. 105b. It is the letter of the Council of Carthage (419) to Pope Boniface I.

6 On this see The Cambridge Medieval History, ed. H.M. Gwatkin and J. P. Whitney, (Cambridge, 9 Vols., 1911 - 1936), I, p. 179 ff; J. Chapin, in the New Catholic Encyclopaedia, (New York, 15 Vols., 1967), sub Zosimus I, Boniface I and Celestine I.

the appeal of an African priest Apiarus, who had been deprived of his cure by his bishop, and sent legates to Africa to argue his opinion that a bishop could appeal from his province to Rome, and a priest to the bishops of neighbouring provinces, with sentences from what he claimed were the canons of Nicaea. The African Church, gathered at the Council of Carthage in 419, after Zosimus' death, searched their copies of the Nicene canons, both in Greek and Latin, for evidence of Zosimus' claims, and found nothing.¹ But in a spirit of moderation they agreed for the time being to release Apiarus from excommunication, while they sent to compare Zosimus' canons with the copies held at Constantinople, Antioch and Alexandria. The refractory priest Apiarus meanwhile appealed again at Rome, to the new pope, Celestine I, who despatched him back to Africa in the company of a papal legate with authority to decide the case. At Carthage however, Apiarus suddenly broke down and confessed his faults. Word had come too that the canons cited by Zosimus were the canons of Sardica, not Nicaea, whereupon the African bishops directed a stern rebuke to Celestine.² They reminded him of the ruling of Nicaea in cases of excommunication, and requested that no more legates a latere be sent, for they found no warrant for them in the canons of Nicaea. This was as much as the incident could yield - a reiteration of the canons of the Council of Nicaea - except perhaps for the comment of the bishops

1 'Epistola Africani concilii ad Bonifacium papam', Merlin Conciliorum...Tomus, (1530), the folio following fol. LXXXIIII. (The folios are misnumbered.) 'Collectanea satis copiosa', Cleo. E. VI, fol. 105b.

2 'Epistola Africani concilii ad Celestinum', Merlin, Conciliorum...Tomus (1530), fol. LXXX Vb.

that it was most prudent and conducive to justice that causes be decided in the locality, where they were best understood. The Glasse of the Truthe slips in this appeal to reason and convenience a couple of times;¹ but then all propagandists hope to appear reasonable.

The same criticisms can be applied equally to the rest of ^{the} citations in the treatise. The Councils of Carthage, Milevum and Antioch all expound canon V of Nicaea;² but with the decree of Pope Eginus the author gets into even worse difficulties, the difficulties engendered by borrowing another's argument. The spurious decretals of Eginus perfectly met Isidore's purpose: the pope is seen to disallow the judgement of the metropolitan of a province without the agreement of all the co-provincial bishops; he also forbids judgement to outsiders ('peregrina negotia & iudicia') as unfitting. But to turn this to the King's purpose, the author has to paraphrase furiously, both in the 'Collectanea satis copiosa' and in the finished work.³ His aim, after all, is not to prohibit the jurisdiction of the metropolitan in the King's divorce, but to prove it; not to establish the final authority of the pope but to deny it. This has been a weakness in the argument throughout: Isidore's material has provided a mass of evidence in support of the provincial council, and very little besides.

1 Pocock, Records, II, p. 405, 418.

2 Ibid., p. 405.

3 Ibid., p. 405; Merlin, Conciliorum...Tomus (1530), fols. XXIVb - XXVa; 'Collectanea satis copiosa', Cteo. E. VI, fol. 105a. The paraphrase in the Glasse of the Truthe reads:

'Eginus the Pope decreeth also 'That if for overmuch farness, unmeteness of time, or soreness of the way, it be grievous and painful to bring a cause to the See of Rome, that it be had to the primate'.'

The author of the Glasse of the Truthe goes on of course to strengthen his case with other arguments; but before these are considered, it would be as well to see what other authorities were brought forward for provincial independence. The King's letter to Pope Clement contains mention of St. Cyprian and 'S. Bernard ad Eugenium'.¹ The first of these is the more perplexing, for as it stands the reference is anything but precise. The King's other reference, though again inexact, must refer to Bernard's 'De Consideratione libri V ad Eugenium III', a homiletic piece that the Abbot of Clairvaux addressed to the first of his order to become pope, shortly after his election. The work was well known: its inclusion in a new edition of Bernard's works in 1530 was at least its seventh printing.²

St. Bernard did seem, at first glance, to lend support to the King's wish to have his divorce case settled within England by the bishops, and to weigh against Catherine's appeal to Rome - and that quite specifically. He argued, to Eugenius, that the existing system encouraged frivolous and anticipatory appeals, which were merely a means for the malicious to escape justice. Eugenius ought, therefore to disallow unjust appeals, that is, any that were not from a judicial sentence.³ This would strengthen the hand of the provincial bishops who were now not able to dissolve unlawful marriages or prohibit them

1 L.P. IV, 6759, Pocock ed., Burnet's History of the Reformation, VI, p. 41.

2 Opera Bernardi, Lugduni apud Iohannem Mareschal, 1530, fols. 253b - 264a; Migne, P.L., CLXXXII, cols. 727 - 808.

3 Migne, P.L., CLXXXII, col. 761: 'Appellandum a sententia'.

for fear of appeal.¹

So far the argument held. No judgement had yet been given in England from which Catherine could appeal. Bernard, however, who characteristically showed more concern for the spirit than the letter, allows her a loop-hole: an anticipatory appeal before sentence might be justified where some wrong was clearly going to be done.² Henry worked hard, and no doubt in vain, to convince the world that judgement in England would be impartial.³ More damaging still was the stark fact that Bernard's opinion was not 'ut in eo loco causa terminetur ubi primum nata est'. As Bernard knew it, the system of appeals was firmly rooted in the canon law; he accepts, implicitly, that there is no question of the pope's final right of judgement. Bernard was calling in question not its existence but its abuse, hoping indeed to rescue it from the contempt into which it had fallen.⁴ The text really did not prove that this particular case ought to be heard in England, or Henry's wider claim for independence of Roman jurisdiction. At best it supported a general principle that justice was normally and most conveniently effected within the province. The argument was not strong therefore, and hardly to the point now, for it emphasised England's subjection to Rome. Little wonder that this cryptic reference was not elaborated in Henry's letter, or that we hear nothing more of St. Bernard in the months and years of argument

1 *Ibid.*, col. 762: 'Denique appellantur episcopi, ne illicita audeant matrimonia solvere vel prohibere'.

2 *Ibid.*, Col. 761: 'Appellandum a sententia. Ante sententia improbe omnino, nisi ob manifestum gravamen praesumitur appellatio'.

3 For example, see *L.P.* V 327; and Henry's effort to persuade Clement that England was a 'locum tutum', despite Catherine's allegations; Pocock, ed., *Burnet's History of the Reformation*, VI, p.43, (*L.P.* IV, 6759).

4 Migne, P.L., CLXXXII Col. 761: 'Appellatur de toto mundo ad te: id quidem in testimonium singularis primatus tui'.

to follow.

Even so, in 1530 Bernard's opinion was evidently considered to lend further, independent weight to the King's case. Nothing apparent connected it with Nicaea and the rest; it was another string, however slack, to the bow. But without imputing any further bad faith to the King's scholars, it is probably true to say that Bernard's opinion was part of the same argument and shared its misconceived foundations. Bernard's protest at the abuse of appeals was not entirely novel, even in his own day. A generation before him, another French divine, Ivo of Chartres had also perceived the threat to episcopal jurisdiction in the deputed authority of papal legates. The remedy that he proposed in his Panormia, (by far the most successful of his three canon law collections), was exactly that adopted by Bernard: that there should be no appeal to the court of Rome until the bishop had given sentence.¹ The Panormia was a digest, popular no doubt because it offered a precise and terse encyclopaedia of canon law; before Gratian, it brought together existing collections under well-organised heads, each entry bearing a reference to its original source. Thanks to this commendable thoroughness on Ivo's part, there is no great difficulty in discovering the ground of his position on appeals. And almost all the texts in the head 'De appellationibus'² can be found in the False Decretals of the Pseudo-Isidore. It is

1 Migne, P.L., CLXI, cols. 1038-1343, especially cols. 1207, 1210, 1211-2, 1220. On all this see B. Jacqueline, Papauté et Episcopat selon Saint Bernard de Clairvaux, (Saint-Lo, 1963), p. 113, and C. Munier and J. Leclercq, in The New Catholic Encyclopaedia, sub 'Ivo of Chartres'.

2 Migne, P.L., CLXI, cols. 1207-1212.

pertinent to note, moreover, that where Ivo is cited in the 'Collectanea satis copiosa',¹ he is upholding the 'vetus consuetudo', and the 'statuta patrum', which obliged a papal legate to allow the election of the metropolitan by the bishops of that province, and to acknowledge the limits of his own authority there. This again surely, is unwittingly dependent on the tradition of the Pseudo-Isidore.

To return then to Cyprian: did the mention of his name represent a hint, at least, of a different approach? And is there anything of it in the Glasse of the Truthe? To both these questions the answer must be yes, even though the reference to Cyprian in the King's letter is so enigmatic. In the context - the King was informing Pope Clement of the right of jurisdiction within his realm - Cyprian's name could only take the reader's mind back to the dispute between Stephen I and the African Church, at the time when Cyprian was bishop of Carthage. The mention of Cyprian's name in 1530 must be seen, therefore, as an oblique questioning of Roman primacy. This interpretation may seem to derive a great deal from one inexplicit reference, but just this line of thought is to be found in essence in another, small collection of quotations.² There is, as usual, no date attached to it; nor is there anything in the hand or lay-out of the texts to connect it with the 'Collectanea satis copiosa' or the Glasse of the Truthe. But from its contents it cannot be other than a Government-inspired document. It begins with a section of Cyprian's address to the bishops gathered at the Council of Carthage in 256, on

1 Cleo. E. VI, fols. 45a, 95a.

2 S P. 1/105, fols. 90-91.

the baptism of heretics.¹ Cyprian urges each bishop to put forward his opinion, without judging those who think differently, or seeking to exclude them from excommunication. For, he goes on, in what could only be a rebuke to the assumption of Pope Stephen, none of us sets himself up as the bishop of bishops, to compel obedience by tyranny. After this come texts from the early councils, from Nicaea especially, demonstrating that anciently the bishop of Rome was held to be no more than one of a number of independent provincial metropolitans.² In any case, the bishop of the first see was not to be called the prince of priests or the summus sacerdos; he held only a primacy of honour. These quotations show the Councils defining the structures of power in the Church; those that follow - they are the sentences of deposition pronounced against John XXIII and Eugenius IV by the Councils of Constance and Basle - have the General Council defending those structures in the name of the whole church.³

Evidently, then, someone understood how the authority of the

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- 1 Erasmus, ed., Divi Caecilii Cypriani...opera, p. 334; the collection has the section of the speech from 'Superest ut de hac...' (line 7), to 'de actu nostro iudicandi.' (line 15)
 - 2 In particular quoting canon VI of Nicaea, cited in the Glasse of the Truthe, Pocock, Records, Vol. II, p. 402: 'The old and antique custom let it be kept throughout Egypt, Lyby, and Penthapoly, so that the Bishop of Rome have the power of them; for there is a like custom of the city of Rome. Likewise at Antioche also and other provinces let their customs and privileges be kept within their churches'. Luther cited canon VI of Nicaea to similar effect in the Leipzig debates, claiming that the special 'solicitude' that the Church of Rome possessed for other Churches in Italy was no more than that held by the see of Alexandria in Egypt, and was by old custom, not iure divino: Luther, W.A. 2, p. 287-8.
 - 3 The deposition of Eugenius by the Council of Basle raised the larger question of the legitimacy of the continuing Council of Basle and its decrees after Eugenius had declared it dissolved. For the attitude expressed in the Henrician propaganda materials, see below, p. 151ff

papacy could be undermined by the idea of the unity of the episcopacy. But are we to believe that the adoption of a full-blown theory of conciliar supremacy, with the inconvenience that it would tie the King's hands at home, was under serious deliberation? Probably not; but there was a more subtle, more flexible use for these ideas.

We have noted already that some material from the conciliar epoch found a place in the 'Collectanea satis copiosa', but that the corollary of conciliar supremacy was carefully avoided. These same texts¹ were used in the writing of the Glasse of the Truthe. This time, however, some weight has to be given to the authority of the Councils, or else the whole argument of the book, which rests rather heavily on conciliar decrees, would fall to the ground.

The need is first recognised in the 'Collectanea satis copiosa'. The first of the references added in preparation for the Glasse of the Truthe, is marked 'Conciliorum omnium et maxime quorundam autoritas in constan. Concil. confirmata'²: it records that the Pope (Martin V) at his election promised to uphold the Catholic faith 'secundum tradiciones apostolorum generalium conciliorum et aliorum sanctorum conciliorum universalium'; that furthermore, he agreed to obey the decrees of Constance and institute whatever reforms it demanded.

But when this comes to be paraphrased in the Glasse of the Truthe,³ the pope is said to have vowed to do 'nothing...against the

1 Cleo. E. VI, fols. 94-98a.

2 Cleo. E. VI, fol. 98b.

3 Pocock, Records, II, p. 406.

law of his mother the Church universal'. Elsewhere we read that the laws of the councils 'are and ought to be taken for the laws established by the assent of all Christian men... which must stand and take effect.'¹ The supremacy of the Council is not denied, but the emphasis is on the authority of the whole Church.

This is the all-inclusive, ^{was actually} beautifully nebulous concept for which the compilers and authors have been struggling, and which colours the whole approach of the Glasse of the Truthe. The whole Church has an unchangeable law, (wider than just conciliar law, for the argument of the Glasse of the Truthe clearly embraces the sentences of the Fathers). It does not impinge on the ^{jurisdictional} authority of the province; indeed when glossed in the fashion of the Pseudo-Isidore it seems to uphold it vigorously. But it must be a severe limitation on the exercise of papal authority. The Pope must observe the old customs, his laws must conform to the law of the church and the decrees of a General Council.² His primacy may be intact as yet - the Divine admits that he has 'none superior in spirituality',³ - but it is only such as the conciliarists of the fifteenth century might have granted; he has become the minister, obliged to execute the Church's commands.⁴ His actions are subject to the corpus of old custom and tradition against which 'the authority of the See of Rome can nothing do ne change'.⁵

1 Ibid., p. 402.

2 Pocock, Records, p. 406-7.

3 Ibid., p. 406.

4 Ibid., p. 407, quoting Gerson; c.f. 'Collectanea satis copiosa', Cleo. E. VI, fol. 56a.

5 Pocock, Records, II p. 406-7; Ivo of Chartres, 'Epistola 60' (Migne, P.L. CLXII, col. 71, Epistola LX, quoting Zosimus); quoted in 'Collectanea satis copiosa', Cleo. E. VI, fol. 95a.

The Glasse of the Truthe airs another awkward subject - the possibility, which could not have escaped many thinking men, that Henry might be excommunicated. In its way it was as sensitive a topic as whether Catherine had been carnally known by Prince Arthur. It says much for the author's grasp of reality, and of what was needed from a piece of propaganda, that he decided to discuss both questions frankly: no veil of propriety could stop the ale-house gossip. The book falls back on the texts already assembled in the 'Collectanea satis copiosa' against 'unjust' excommunication.¹ Justice, it is proved there, is what is consonant with the good of the Church; but that is safeguarded by the freedom of the provincial bishops to resist exterior authority. And so it is in the Glasse of the Truthe. The law of God and of the Church is supreme, and a line of (highly respectable) English bishops have upheld it against unjust papal sentences.²

for the moment,
Here, ~~then~~ is the end of all the talk of Councils, the unity of the episcopacy, of 'potestas in edificationem ecclesie' and the law of the Church - in the authority of the provincial bishops to resist the pope. Of conciliarism proper, there is not a word. Its ideas and its literature might be plundered, it might be dangled, in the form of an appeal to a future General Council, as a distant but insidious threat to papal authority, but nothing finally would move the King from his intention to have his cause tried within the realm. *Richard Kike also allows spiritual supremacy having been taken from Pope, to be retained by clergy, away from King*

1 See above, p. 22 f.; (Cleo E. VI, fols. 96a - 98a).

2 Glasse of the Truthe, p. 410 f.; c.f. 'Collectanea satis copiosa', fol. 104a.

CHAPTER III

Theory and Policy

Some important questions about the collections of historical and patristic materials, and particularly about the 'Collectanea satis copiosa' remain. Part of that book, we have seen, was used in the writing of a piece of Government propaganda, the Glasse of the Truthe. But what of the rest: was that too but a source book for other literary endeavours?¹ The very appearance of the 'Collectanea satis copiosa' must make that unlikely. In the original sections of the book especially,² the references are set out with a neatness and care well above the ordinary, markedly out of character with the mean scribble in which students of history habitually record their notes.³ Even more revealing perhaps, are the attempts of the third writer, (hand C), to adapt his rather ill-formed style to the layout adopted by the two clerks who did the bulk of the writing.⁴ Why should a fair copy of notes already neatly written out⁵ be made at all? The answer must be that the book was for presentation to the King; his hand is to be found on it in 46 places (not including sundry underlinings and scratchings which may or may not be his), recording his comments in brief marginal notes. A good number of these entries

1 It was patently not intended as a literary draft, as Strype, Ecclesiastical Memorials, I, i, p. 283-285 suggests, since many of its quotations are repeated several times in a fashion no author could allow, and a good deal of work needed to be done to frame a coherent argument round such an unwieldy mass of material.

2 See Appendix II.

3 Cf. the scarcely legible jottings on conciliar history in P.R.O., SP1/105, fols. 84-85, L.P., XI, 124(6).

Continued

simply note the content of the head - on one page, for instance, we find only 'de carolo rege', 'de investituris' and 'sententia excommunicationis';¹ in other places there is no more than a casual 'bene nota'. Nowhere, it should be said, does Henry show that he is working out arguments for himself from the notes of others. It seems much more likely that the 'Collectanea satis copiosa' was made to enable Henry to look over his scholars' arguments at leisure, to query, to approve, and in the fulness of time to adopt as his own. This interpretation accords, at least, with the more substantial of his annotations, with entries such as 'nota diffinitionem nicene concilii',² and 'ubi orta ibi terminandi',³ - observations which, as we have noted, he repeated publicly on a number of occasions, with the somewhat puzzled response 'nota et perquiri', against a sentence about the granting of the keys of heaven to Peter,⁴ and with the more enthusiastic 'pulcherimum privilegium' that he placed opposite the head 'Rex Anglie excommunicare & interdicere prohibet'.⁵ Despite the brevity of his comments, the king read the book with unwonted thoroughness, for apart from a few skipped pages here and there, the whole book bears the marks of his diligent if not particularly

4 See Appendix I.

5 e.g. in 'Quaedam pertinencia' and 'Non est novum'.

1 Cleo. E. VI., fol. 32a.

2 Ibid., fol. 38a.

3 Ibid., fol. 97b.

4 Ibid., fol. 69a.

5 Ibid., fol. 41a.

perceptive study.¹

The king accordingly saw the references that were subsequently embodied in the Glasse of the Truthe, as is evident from the notes that he placed on the relevant pages of the 'Collectanea satis copiosa', in the normal way. At the time of its publication the Glasse was regularly referred to as the King's book, both privately and in public; it is most unlikely in any case that intimate details of the King's family life could be put about without his consent.² And yet the doubt expressed at the time by persons unnamed at Oxford, that 'his Highnes lackethe leasure so profoundly to serche and bulte ouzt a mater off so greate difficultye', has quite properly persisted.³ A comparison of the texts annotated by the King in the 'Collectanea satis copiosa' offers no conclusive proof that his participation extended actually to picking out which references were to be used in the Glasse of the Truthe. On the other hand, it does seem very probable now that the project was submitted for Henry's general oversight and approval in its early stages, and thus became 'his' book, even though everything else was entrusted to other hands.

Who, then, was responsible for the ample harvest of texts, laws, decrees, on which the King's propaganda appear to rest? The task of gathering references from continental libraries was evidently under-

1 The abrupt cessation of the king's comments at fol. 119b suggests that the book ended there when Henry saw it, and that the rest, or part of it concerning the cessation of the payment of annates was added later. See below, p. 145

2 Elton, Policy and Police, p. 176-7.

3 A letter of Croke to Cromwell: H. Ellis, Original Letters illustrative of English History, (11 Vols. in 3 series, London, 1823-46), III, ii, p. 198.

taken chiefly by Croke and Stokesley, with Gardiner and Foxe perhaps issuing instructions from London.¹ Croke and Stokesley were joined by Benet and Carne later in 1530 in the search for evidence of the privileges of the realm and Henry's imperial status.² But of course these efforts were more than a little disappointing in their results, at first hampered by the unwillingness of librarians to open their doors, then by an almost total lack of evidence for Henry's claims in the papal archives. By comparison the labours of scholars at home were both brilliantly successful and obscurely documented; we can be sure only that such a large and diverse collection of materials must have been the work of more than one man.

There is nevertheless a considerable amount of circumstantial evidence which points to Edward Foxe, the King's almoner, as among the prime-movers in these matters. From the beginning, Foxe's public career was closely linked with the King's divorce. Early in 1528, while serving as Wolsey's secretary, he went with Stephen Gardiner to Orvieto, to persuade Clement and his advisers to grant a commission for the hearing of Henry's case. To strengthen their arguments, they took with them what they referred to as the 'King's book', and shewed it to the Pope and others. It was prefaced by an epistle from the King to Wolsey and other prelates, then - unsurprisingly - it argued the legal case for the King's divorce and for a

1 See *L.P.* IV, pt. iii, *passim*, especially Croke's letters in the first half of 1530 and *L.P.* IV, 6232, 6235.

2 See above, p. 73 and n. 4

commission.¹ It was no doubt rather similar in its approach to the good number of tracts on the divorce which still survive. Some years later, Thomas More, recalling his own part in the divorce proceedings, recorded an incident which must have taken place shortly before Gardiner and Foxe departed. More had just returned from Amiens on the King's business, to learn from Henry himself that the case rested not on faults in the papal dispensation, but on the prohibition of the laws of God, of the Church and of nature. Henry asked for More's opinion; More spoke his mind. Whereupon, he records, 'his Highnes... commaunded me to commune ferther with Mr. Fox, now his Gracis Almyner, and to reade a booke with hym that than was in makynge for that mater'. Some little while later the King assembled at Hampton Court 'a good nombre of very well lerned men' who agreed on the form of the book and later discussed its contents with Wolsey, in his chamber at York Place.² This fits very well with the description of the book presented at Orvieto, explaining the presence of the preliminary epistle from the King to his clergy - surely rather a strange beginning for a book presented to the pope? - and why Foxe, as the overseer of the work, was chosen to argue its contents at Orvieto. The episode shows Foxe coming to prominence through the divorce, already trusted to write and speak in the King's name. The divorce proceedings called in fact for the peculiar blend of intellectual ingenuity and skill in diplomacy that Foxe could well supply.

1 L.P., IV, 4119.

2 Rogers, ed., The Correspondence of Sir Thomas More, p. 493-495, (L.P., VII, 289).

The works that announced the new direction of things, the Determinations and the Glasse of the Truthe, both derived their texts in support of provincial independence ultimately from Merlin's Conciliorum...Tomus. It is pertinent to ask, therefore, whether any of the King's ministers is known to have possessed a copy of that work. A memorandum from Reginald Pole to Thomas Starkey is helpful here.¹ Pole had been given the King's leave to study in Paris, but shortly after his arrival he received instructions to press for opinions on the divorce in the University. Pole found the prospect distasteful. Pleading his incompetence he asked for the assistance of someone more learned in such questions, and Edward Foxe was despatched to join him in Paris.² The memorandum appears to be a request for items of luggage to be brought to them from England. There was to be bedding, books and virginals for Pole, and for Foxe two black chests. Of the contents of those chests we know only one item, and that is marked in the margin as if for special attention: 'Item to demaunde off mons^r de langy³ ii bokis for mr. Fox. librum conciliorum. Et librum mercatoris' - none other, surely, than Merlin's edition of the Isidorean decretals and later councils.⁴

1 L.P., IV, 6004, (SP1/94, fols. 98-99).

2 Reginald Pole, Pro Ecclesiasticae Unitatis Defensione, (W. Rihel, Strassbourg, 1555), fol. 55b.

3 Guillaume du Bellay, on embassy in England with his brother, Jean du Bellay. Du Bellay's part in this remains obscure; had he brought the book to Foxe's attention, or had Foxe lent him his copy?

4 Volume one of Merlin's book contained the Pseudo-Isidorean decretals, volume two the acts of fifteenth century councils.

Four years later, at a time when Henry's propaganda requirements were changed but scarcely diminished, leading members of the King's council were pressed to take up their pens and defend the royal supremacy. A number responded, including Richard Sampson and Stephen Gardiner. Edward Foxe chose to write up the 'Collectanea satis copiosa' into a treatise. The texts were shuffled, sorted and pruned, the argument filled out, the whole thing turned into Foxe's elegant Latin prose, and 'Opus Eximium' inscribed on the title-page. None of this can hide for a moment the ^{bare skeleton} ~~angular frame-~~ ^{work} beneath, or do much to turn the De vera differentia into a convincing piece of literature; the ugly duckling had become an awkward sort of swan.

The adaptation from notes to propaganda is, however, done in a way which suggests the author was fully at home with his sources. Innovations in the argument are few but details are expanded and new proof-texts and examples included.¹ In one instance it is possible to show how Foxe discovered additional material for his book; this incident also reveals that he was the man to consult on matters of learning, tradition and history. At an important meeting in December 1533 the Council drew up proposals for dealing with its most pressing problems.² Foxe was assigned two tasks. With Sampson and others he was to search his books and answer whether by the law of God the pope was above or below the General Council of the church,

1 E.g., De vera differentia, fol. 48a/b, has Canute legislating in various spiritual matters; the 'Collectanea satis copiosa', Cleo, E. VI, fol. 37a, records only that Canute protested against the payment of large sums of money to Rome for the 'pallium'.

2 See minutes of the Council, L.P., VI, 1486-7; St.P., I, p. 411 f.

and whether the bishop of Rome had more authority in England than any other foreign bishop. It seems the government wished to prepare a theological justification for its forthcoming legislation which could be approved by a large part of the episcopate. He was also to draw up a letter to the Pope from the temporal and spiritual lords; but first he was to exhibit to the Council a copy of the letter recently sent to Clement VII¹ and of a letter sent to the Pope in the reign of Edward I. The 'Collectanea satis copiosa' has references to Edward I's claims to overlordship in Scotland, but it omits the all-important declaration by the nobility at the Parliament of Lincoln in 1301² that the King of England 'ex libera praeeminencia...et consuetudinibus' is not obliged to answer for his temporalities in any court. This Foxe printed in his De vera differentia,³ even though the Council's plan for a new letter 'declaring the wronges, injuries and usurpacions used ayenst the Kingis Highnes, and this realme' appears to have lapsed.⁴

We shall see Foxe from time to time defending the King's authority with ideas very similar to those in the 'Collectanea satis copiosa'.⁵ Whether he was indeed the leader of the King's scholars, or merely the mouthpiece, it is impossible to say with absolute

1 L.P., IV, 6513.

2 Cleo. E. VI, fols. 41b-42b. See M. Powicke, The Thirteenth Century, (Oxford, 2nd ed., 1962), p. 705. In fact this letter of 1301 is not mentioned in the chronicle sources cited by the 'Collectanea satis copiosa', which may explain its omission.

3 De vera differentia, fol. 58a/b.

4 The minute is marked in the margin 'Not yet done, ne can welbe, before the Parlyament'.

5 See below, p. 130-32, 134 ff

certainty, but Foxe understood at least how history and learning could be used in the King's service.

No doubt such questions are far less important than the fact that the ideas, the methodology, sometimes even the words of the 'Collectanea satis copiosa' and other similar collections were the foundation of much of royal policy after 1530. Their influence is by no means confined to propaganda tracts, important though these were as an expression of purposes and intention. Nor did they only provide evidence for the principle of provincial independence, as they did for the Glasse of the Truthe and the additions to the Determinations; this was in fact out of line with the main theme of the historical and patristic collections, which was the supremacy of the prince in spirituals. Indeed there are signs that the author of the Glasse of the Truthe considered making a statement of that supremacy, coupled with a blistering attack on the papal primacy, for these ideas are to be found in the sections of the 'Collectanea satis copiosa' used as a text-book. Under the head 'Proprium Officium pontificis'¹ are quotations which leave the papacy no public duty beyond teaching Christian doctrine as defined by the Emperor,² and which exclude the clergy from all secular office.

1 'Collectanea satis copiosa', fols. 100a-101a.

2 In the Determinations, fol. 147a, the pope's power is said to be 'restreynd and drawn in, to the thinges, whiche belonge to the pastorall or sheperdy cure of soules'. The quotations in the 'Collectanea satis copiosa' appear to encroach even on that limited supremacy by ascribing the power to define doctrine to the prince.

These are followed by further quotations, including a series from the Tripartite History¹ which not only reject the idea of a universal bishop as head of the whole church, but go so far as to suggest that in the early church, Antioch or Alexandria or Jerusalem was accorded a primacy of honour. One can only conjecture the reasons for these omissions. Perhaps such ideas were considered needlessly controversial for a propaganda tract. Perhaps Henry still hoped against hope for an acceptable outcome at the Rota, or shrank from open defiance while he was still unsure of Francis I's support and was otherwise diplomatically isolated. But these immediate considerations ought not to obscure the wider questions of why, considering the King's urgent desire for a speedy remarriage, the government was so tardy in grasping the nettle of absolute independence of Rome, and in what way the idea of royal supremacy in spirituals was related to the campaign for a divorce.

There were some early indications of which way the King's mind was working. Late in 1529, after ominous words in praise of Luther, Henry told Chapuys that the need for reform of the Church was manifest and that the duty lay with the Emperor in his realms, as it lay with the King in England; the only power that the clergy possessed over laymen was to absolve from sin.² Similar ideas were repeated, even more publicly, in May 1530 at a conference of the archbishop of

1 The Historia tripartita, of which there were a number of early printed editions, was a collection of extracts from three church historians, Socrates, Sozomen, and Theodoret, translated from the Greek by Epiphanius Scholasticus and arranged as a continuous narrative by Magnus Aurelius Cassiodorus. Quoted in the 'Collectanea satis copiosa', fol. 101a/b.

2 Cal. Sp., IV, 224 (p. 349-50).

Canterbury, other bishops and representatives of the universities, whom Henry had called together to consider the growing problem of heretical books. Henry ordered preachers to go abroad, warning the people that the King 'most chiefly regarding the welthe of their soules' had condemned the books and their errors, and would punish any who refused to surrender up their copies. This is an interesting statement of the prince's duty, though once again the right of the clergy to the 'cure and charge of your sowles' is reserved.¹ A little later, in October of that year, Henry once again stated his intention to act firmly against the Lutheran heresies, this time in a conversation with the papal nuncio.²

The government's change of policy towards the process at the Rota - the new claims to jurisdictional immunity announced in the early autumn of 1530 - coincides remarkably with the first offensive against the English clergy. A charge of praemunire, laid first against fifteen clerics, was then turned, perhaps by the middle of October, against the whole clerical estate;³ the substance of the charge (eventually at least) was that the very exercise of jurisdiction by the spiritual courts constituted a praemunire.⁴ Recent

1 D. Wilkins, Concilia Magnae Britanniae et Hiberniae, (4 vols., 1737), III, p. 727-737.

2 Cal. Sp., IV, 460. Chapuys to Charles V, 15 October 1530.

3 See Cromwell's letter to Wolsey, 21 October 1530: 'The prelattes shal not appere (in the) premunire. Ther ys Another way deuysyd'; R.B. Merriman, The Life and Letters of Thomas Cromwell, (2 vols., Oxford, 1902), I, p. 334; L.P., IV, 6699.

4 This is the charge mentioned in the statutory Pardon of the Clergy, (22 Henry VIII, c. 15, Statutes of the Realm, III, p. 334). It is possible the bill as first discussed in Parliament indicted the whole clergy with abetting Wolsey's praemunire offence, but this reading is based on Hall, Chronicle, (London, 1809), p. 774

Continued

study¹ has distinguished the successive stages of the affair, leading up to the partial submission and pardon of the clergy, and has emphasised the extent and success of Convocation's resistance to the King. It has also, less happily, rather separated this attack on the clergy's position from the general story of Henry's pursuit of a divorce, ^{and the supremacy.} Without that context the praemunire affair, like the other major attack on the clergy's jurisdictional power, the events leading up to the Submission of the Clergy in May 1532,² is difficult to interpret, first because it is not clear what the king could hope to gain from it beyond a certain amount of money, (he was expecting a clerical subsidy in any case), and secondly because if the king's policy still centred on the hope that the Pope would allow the English clergy to judge the divorce,³ it was an absurd error to demonstrate the dependence of the clergy on the will of a party to the case. The assault on the church becomes an 'extraordinary manoeuvre' and 'like so much of royal policy in these years ... full of uncertainty'.⁴

and Chapuys, Cal. Sp., IV, 615, neither of whom can be assumed to be reliable here: see J. J. Scarisbrick, 'The Pardon of the Clergy', C.H.J., Vol. XII, (1956) p. 22-39, esp. p. 28n.

- 1 i.e. J. J. Scarisbrick, in the above article.
- 2 This too has been re-interpreted in a way that minimises its part in the King's pursuit of a divorce: see M. Kelly, 'The Submission of the Clergy', T.R.H.S., Fifth Series, 15, (1965), p. 87-119. See below, p. 134ff
- 3 Thus Scarisbrick, 'Pardon of the Clergy', p. 37-39; though in his Henry VIII, p. 289-291, Prof. Scarisbrick seems to suggest that Henry's dealings with Rome from 1531 onwards were designed primarily to obtain delay.
- 4 Scarisbrick, Henry VIII, p. 274-5.

* This a very important set back
 (No only on Chapuys testimony)
 so a difficult piece to assess

shows ideas of suppressing
 1/2 worked out, blocked by
 Church & lawyers. 123

The key to the government's thinking at this moment may well lie

V. early
 on

Perhaps because
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 the kingdom not
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 case.

And Church
 unbowed -
 would not
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 as p. 138

etc. etc.
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 was
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in a meeting between the King and certain lawyers and divines, some time before the middle of October 1530.¹ Henry asked whether in virtue of the privileges of the kingdom, Parliament could and would enact that the King's cause be heard by the Archbishop of Canterbury, the pope's prohibition notwithstanding. The effects of this scheme do not differ greatly, on the slight evidence available, from those of the rejected draft legislation to submit the divorce to the judgement of the metropolitans of England,² or even of the Act of Appeals itself. But in 1530 the idea was flatly rejected, for what reasons we are not told; it had evidently not yet been established that the ^{King's} powers of the King over the Church (argued at length in the 'Collectanea satis copiosa' and elsewhere) ^{or that Henry} could be exercised in Parliament. Orthodox views of parliamentary competence still held the field. On this, in a choler, Henry postponed the session of Parliament until January, and for the time being, the simplest and ultimately most effective solution to Henry's problems ^{was} were laid aside.

In the next few days, by the time Cromwell informed Wolsey about the 'other way devised' for the praemunire, something else was afoot. Chapuys reported discussion of the praemunire in the Commons when Parliament met in January 1531.³ Perhaps this was meant to

1 Reported by Chapuys to Charles V: Cal. Sp., IV, 460.
 2 L.P., VI, 311(4); SP2/N, fols. 155-162.
 3 Cal. Sp., IV, 615, (L.P., V, 62).

unsettle the clergy; certainly the attack was turned swiftly against them as soon as Convocation assembled a few days later. On the 24 January, the two houses of Convocation voted Henry a subsidy of £100,000.¹ The exact form of the demands that produced so handsome a sum is not known, but shortly afterwards, from the beginning of February, Convocation is seen to be bargaining with the King over the terms of the agreement.² One of Henry's demands, according to Chapuys, which almost caused the clergy to withdraw their offer, was the stipulation that in the event of war the clergy would be obliged to pay their subsidy more quickly than had been agreed. The King eventually gave way on this point, but it was by no means the only, or most important issue of the negotiations. Convocation wanted three concessions; the restoration of their old privileges, by which was meant the protection of the laws and immunities which guaranteed the existence of the clergy as a community outside the King's jurisdiction; the restoration of their 'volition' - presumably their right to exercise their jurisdiction in the courts christian; and a definition of the scope of the statutes of praemunire, so that the conditions under which they could use their jurisdiction in the future would be known.³

The King granted only the second of these demands, and thereby,

1 Wilkins, III, p. 725. On all this see Scarisbrick, 'Pardon of the Clergy', p. 28 ff.

2 Cal. Sp., IV, 635, (L.P., V, 105), Chapuys to Charles V, 14 Feb. 1531.

3 I have expanded the three demands of the clergy (Chapuys, Cal. Sp., IV, 635) by reference to the 'Petitio Cleri Cantuariensis Provincie', (B.L. Cleo. F II, fol. 240), which Prof. Scarisbrick, 'Pardon of the Clergy', p. 32n, has convincingly ascribed to this time.

Chapuis reported, the affair was half-settled ('a esté moyenne rabillié'). Henry's partial concession was well judged. It acknowledged the existence of ecclesiastical jurisdiction yet refused to guarantee his recognition of its legality while it rested on immunities, while it stood apart from the King's law, while it had some other head than the King. Then Warham was summoned to a secret conference with certain of the King's councillors; when he returned to Convocation on 7 February he brought with him the King's final demands in the form of five articles.¹ The King was to be taken as the protector and supreme head of the English church and clergy.² Henry's representatives wanted a declaration of this principle first, before further discussions, but the full import of that title can only be gauged from what followed. The third article proposed to allow only such clerical immunities as did not detract from the powers of the King or the laws of his kingdom - which hardly sound like immunities at all. The others - and here was the sting in the tail - would be confirmed and defended by the King.³ In other words, the strength of clerical jurisdiction and other privileges was their sanction by the King. The second article, even more shockingly, and even more clearly indicating the King's conception of princely authority, claimed for Henry the cure of his subjects' souls.⁴

1 Wilkins, III, p. 725.

2 *Ibid.*: ...'Ecclesiae et cleri Anglicani, cujus protector et supremum caput is solus est'.

3 *Ibid.*: 'Privilegia et libertates ejusdem, quae regali suae potestati et legibus regni sui non detrahunt, confirmando defendit.'

4 *Ibid.*: 'Quem metum atque periculum rex noster invictissimus depulit et curavit ut in quiete et secura pace Deo ministrare et curae animarum eius majestati commissae et populo sibi commisso debite inservire possumus.'

At this overt caesaropapism the clergy rallied.¹ When the argument had reached its fourth day, the King proposed a compromise wording of his 'title' though not one that indicated a change of stance;² on the following day Convocation assented, without enthusiasm it seems, to a wording that contained the further saving-clause 'quantum per Christi legem licet'. The clergy no doubt saw in these words a vital reservation and mental refuge, and at Fisher's insistence they were included in the grant.³ Ironically, the phrase may well have been introduced to the discussion in Convocation by one of the King's councillors whose interpretation of the law of Christ must have differed greatly from Fisher's.⁴

In fact few believed that even with the further compromise of the King over articles 2 and 3,⁵ such a form of words would really protect the independence of the church. Fisher had expressed his

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- 1 Scarisbrick, 'Pardon of the Clergy', p. 34-5, writes that this was 'an early statement of the later Henrician caesaropapism and an annihilation of the two swords'. If my interpretation is correct in linking the findings of Henry's scholars with government policy there is no 'early' and 'late' with Henrician caesaropapism - it was a constant principle throughout. Strictly, too, Henry did not annihilate the doctrine of the two swords; it is rather important that he adopted its formulae to his own purposes. See 'Collectanea satis copiosa', Cleo. E. VI, fols. 60-65, and below, p. 128
 - 2 Wilkins, III, p. 725: 'Cujus protector et supremum caput post Deum is solus est'.
 - 3 Richard Hall, The Life of Fisher (London, 1921) p. 79; but one should not place any great reliance on Hall's evidence, where unsupported.
 - 4 Ibid.; and see S. E. Lehmborg, The Reformation Parliament, 1529-1536, (Cambridge, 1970), p. 113-4.
 - 5 The King's 'cure of souls' was deleted from article 2, by an astute manipulation of case-endings; article 3 was omitted from the final form of the grant: Scarisbrick, 'Pardon of the Clergy', p. 34.

fears during the negotiations: 'What yf he should shortly after chaunge his mind and exercise indeed the supremacie over the church of this realm?'.¹ Chapuys was equally gloomy; he told the Emperor that the restriction imposed by the clergy was, as far as the King was concerned, 'null and void', as no-one would dare to dispute the point with him.² He reported too that the leaders of the conservative party, More and Fisher, were extremely alarmed by the turn of events. The King, it is true, denied the nuncio's contention that he had set up a 'nouvelle papauté' in England, but in a way that must have given more cause for concern than relief. But most important of all is Chapuys' belief, to which he returns regularly in his letters, that the declaration of the King's supremacy had advanced the campaign for a divorce and was thus a victory for Henry despite the clergy's resistance. If they were called upon to start proceedings against the Queen, he believed the clergy would do whatever they were ordered.³

No doubt Chapuys was too quick to think the battle lost, but he was echoing the Queen's own fears.⁴ He saw that the praemunire proceedings were not merely intimidation, and at no time more clearly than in June 1531 when he heard that Norfolk and others of the Council had paid Catherine an evening visit. Their complaint was the citation of the King to appear at Rome, their aim to persuade

1 Hall, Life of Fisher, p. 79.

2 Cal. Sp., IV, 635, (L.P., V, 105).

3 Cal. Sp., IV, 641, (L.P., V, 112).

4 Cal. Sp., IV, 635.

Catherine to withdraw her appeal. Norfolk (in what sounds like a prepared speech) told her to consider that the King could not be dragged to judgement, for he was 'entirely sovereign chief in his kingdom, as well in regard to temporality as the spirituality, as had been lately recognised and approved by the Parliament and clergy of England'.¹ The King was now the highest point of both jurisdictional systems in England, or claimed to be; no appeal could go further. The corollary - Chapuys missed it perhaps - was that the spiritual courts in England could now function legitimately, and judge the King's case, without reference to the pope. This was only possible because the dual nature of the prince's authority, religious and secular, had been recognised. The two swords had not been abolished; they had both been handed to the King.

Henry's intentions at this point can ^{again} be illustrated by what he was saying and doing. At the height of negotiations for the pardon of the clergy, on 3 March, the suspect religious views of a number of prominent churchmen, among them Dr. Edward Crome, were discussed in Convocation. Crome was widely (and correctly) held to be a Lutheran sympathiser, and this was to be by no means his final brush with the ecclesiastical authorities. His case aroused a good deal of interest, especially when he refused to give answer to the Archbishop of Canterbury without the presence of lay members of the Council, and then appealed to his sovereign.² On 11 March Henry came in person to York Place to preside over the interrogation of Crome on such matters

1 L.P., V, 287.

2 L.P., V, 148: a letter from Chapuys to Charles V, 22 March 1531.

as the existence of purgatory, the intercession of saints, the nature of the sacraments and the value of ceremonies.¹ But the first article against Crome was struck from the roll of alleged heresies; to say the pope was not head of the church, Henry protested, was no heresy but altogether true and certain. Crome was dismissed to his house, and Chapuys, on whose report much of the detail of the case depends, expressed fears about Lutheran influence at court and the King's pleasure in Crome's anti-papal sentiments.² In one typically brusque public gesture, Henry had asserted his right to sit above his bishops, and dismissed the papal supremacy out of hand.

The conservative resistance to Henry in Convocation had almost certainly been depleted by the absence of Cuthbert Tunstall. His translation to the see of Durham had effectively excluded him from influence in London, but he nevertheless entered a vigorous protest against the new royal title when it was proposed in the Northern Convocation.³ He condemned first the vagueness of the wording; but if the style was to be interpreted 'prout verba sonant' to mean that the King's overlordship extended to spiritual matters, he would oppose it, for it did not agree with the teaching of the catholic church. This challenge, subsequently expressed in a letter to the King⁴ obliged the government to define its position and defend the

1 L.P., V, 129; Foxe, Acts and Monuments, V, App. XVI: an extract from Tunstall's episcopal register.

2 L.P., V, 148.

3 Tunstall's protest, recorded in the register of Convocation, is printed by Wilkins, Concilia, III, p. 745.

4 Tunstall's letter of 6 May is not extant; the King's reply is printed by Wilkins, Concilia, III, p. 762 - 765.

newly won ground.

The detailed and carefully worded reply may, with some confidence be ascribed to Foxe, partly because of the general similarity, as will appear, of the letter and the ideas of the 'Collectanea satis copiosa', partly because of the rather exact way the letter fore-shadows the argument and language of the De vera differentia, some three years before its publication.¹

'The truth cannot be changed by words' the King's letter declares; 'we ought onely to regard and consider the expression of the truth in convenient speech and sentences, without overmuch scruple of superperverse interpretations, as the malice of men may excogitate'. The tone smacks of sophistry perhaps, but by the nature of the case, the argument is bound to turn on nice distinctions. Tunstall's first premise is correct, the King concedes: there is a distinction between spiritual and temporal. But Tunstall's texts do not prove that a prince may concern himself only with the temporal. On the contrary, though the ministration of the sacraments and the office of preaching are things spiritual, the prince is responsible for reform and reproof

1 Compare the following passages from the letter and the De vera differentia; they share a very cautious attitude to the value of precedent.

'For what meant Justinian the emperour to make laws 'De episcopis et clericis', and such other spiritual matters, if he had not been perswaded 'Illi esse curam ecclesiae a Deo mandatam?' (Wilkins, Concilia, III, p. 764).

'Iustinianus Romanorum imperator nihil fere praetermissit cavere, quod ad divinorum pietatem pertinet. Itaque de fide et haereticis, de sacrosancta ecclesiis, de episcopis et clericis ... statuit Quod certe idem Iustinianus non fecisset, sine maiorum suorum exemplo, et nisi id sui muneris fuisse persuassimum habuisset.' (De vera differentia, fol. 47b).

NA There are two important Names here.

NA The grounds for the recent charges against the clergy, and for the subsequent restoration of their jurisdiction upon their acknowledgement of the King's headship had now been made explicit. The King claimed, as the texts of the 'Collectanea satis copiosa' prompted, that all legitimate jurisdiction derived from the prince. This was the ground for the recent charges against the clergy and the subsequent restoration of their jurisdiction upon their acknowledgement of the King's headship. Going further the writer puts the word 'emperor' into the King's mouth, so that he likens his powers in the Church to those of Justinian. It is said that the emperor had the care of the church vested in him by God, though it is also said that each Christian prince is the 'supremum caput' of the congregation of the church in his realm. Some devolution ... →

where the administration of them is a cause of public scandal. The letter then proceeds to 'prove' these assertions about princely power with a string of examples, the tendentiousness of which is not obscured by a series of rhetorical flourishes. Did not Justinian legislate on spiritual matters? Is not Convocation assembled by the King's authority? Do not bishops acknowledge themselves to be the King's subjects? And do not the clergy exercise their jurisdiction by the sufferance of kings, who may reserve - as some Emperors and princes have reserved - the judgement of all matters to themselves?

← There are two important themes here. ^{By this} The claim that all legitimate jurisdictional authority derived from the prince, which had, of course, been the burden of the 'Collectanea satis copiosa', ^{now made explicit} the grounds for the recent charges against the clergy, ^{had now been made explicit} and for the subsequent restoration of their jurisdiction upon their acknowledgement of the King's headship. Secondly Foxe, if he was the writer, puts the word 'emperor' into the King's mouth, so that he compares himself both to Justinian and to 'other princes' who had exercised like powers. It is said, on one hand, that the emperor had the care of the church vested in him by God, on the other that each christian prince is the 'supremum caput' of the congregation of the church in his realm. ^{Some devolution, or 'translatio imperii' has occurred; how this was said to have occurred will be considered later.} ~~so, and whence came the idea is a separate issue.~~ What is important here is that Henry's power, as the supreme head of the church in England, was the power of an emperor, of a christian emperor by whom (so the argument went) the

1 See below, p. 246-7

church had always legitimately been governed.

* *

We have seen how much of the material for the Glasse of the Truthe came from Merlin's Conciliorum ... Tomus. But there was much more information about the government of the early church in Merlin's work, a point that did not escape the compiler of the 'Collectanea satis copiosa'. The notes he made from Merlin (the main group of which now stand at the front of the collection¹) are of particular significance. In the Pseudo-Isidorean decretals the false was, of course, mixed with the authentic. The argument for provincial independence had led to Isidore's fabrications; the compiler's search for evidence of royal authority in ecclesiastical affairs led him to the authentic. In particular he lighted upon the decrees of the early provincial synods of the church and on the letters of Pope Leo I. The Pseudo-Isidore had included about 50 letters of Leo², but Merlin printed almost double that number, his edition following exactly the version printed in Paris in 1511.³ These notes re-emphasise high views of kingship, granting the guidance of all the affairs of men on earth to the prince, who is answerable to no law but the law of God. The main emphasis here, however, is on the manner in which emperors and kings have actually exercised their 'potestas jurisdictionis', and inevitably (given the nature of the

1 'Collectanea satis copiosa', Cleo. E. VI, fols. 18b - 21b. Other notes from Merlin are marginal additions throughout the book; some of the material on annates, fols. 119a - 132a, are from Merlin.

2 See P. Hinschius, Decretales Pseudo-Isidoreanae, (Leipzig, 1863). p. 569-630.

3 Leonis papae Epistolae .. Edidit J. Faber Stapulensis, (J. Petit, Paris, 1511).

source) the king is seen to work through and to dominate provincial and general councils of the bishops. Firstly, it is said that the convocation of a synod belongs to the prince, inspired by divine command. This is as true of the councils of Toledo, where the bishops gathered at the command of Wambar - 'rex ecclesiasticae disciplinae nostris seculis instaurator' - and other Spanish Visigothic kings of the seventh century,¹ as of the councils which, according to the canons of the first council of Carthage,² the emperor Constantine ordered to be held in every province as a 'votum unitatis' of the church. It appears that such synods are called in order that the church may hear and assent to discipline imposed by the king. If edicts and laws are made, they are made at his command and subject to his confirmation - the authority of the synod is the authority of the prince. The implementation of all such decrees, and the punishment of the refractory belongs to him alone.³

The six quotations here from the letters of Pope Leo do not add substantially to these ideas, but they do help to confirm the impression that the compiler was principally interested in provincial synods, not general councils. The negotiations of Leo with the eastern emperors for a general council in Italy, in which to settle the controversies over Eutyches and his heresy, could have provided

1 'Collectanea satis copiosa', Cleo. E. VI, fols. 18b, 19b, 20a; the canons of twelve councils of Toledo are printed in Merlin, Conciliorum ... Tomus, fols. CIIIIa to CXXXVIIIa.

2 'Collectanea satis copiosa', Cleo. E. VI, fol. 20b; Merlin, Conciliorum ... Tomus, fol. LXXVIa.

3 'Collectanea satis copiosa', Cleo. E. VI, fols. 19b-20a; quotations from the third, eighth, eleventh and twelfth councils of Toledo, as numbered by Merlin, and from the preface to the Council of Chalcedon, (Merlin, Conciliorum ... Tomus, I, fol. LXXIb-LXXIIb).

much ready evidence for the imperial 'ius concilium convocandi', and for the dispensability of papal and even clerical participation in a council; indeed in another collection of notes from the letters of Leo, (endorsed 'Councell Mantua'), exactly these points are made.¹ In the 'Collectanea satis copiosa', however, the compiler is content to draw out more generally the prestige of imperial authority and the modest pretensions of the papacy in the early church. This is all as one would expect it; the convocation of a general council was not yet in prospect, but the independent legislative authority of the clergy was a pressing concern.

The importance of these materials from Merlin's work is that they furnished examples of emperors and kings who actually exercised a supremacy in the church, while hitherto the argument of the 'Collectanea satis copiosa' had been somewhat theoretical. In particular there had been little made of the means by which the supremacy could be expressed. Now that deficiency had been supplied, and the means proposed bear a remarkable similarity to the substance of the demands advanced in Convocation by Foxe, on the King's behalf, in May 1532. In preceding sessions of Convocation, in April, the clergy had been obliged to frame successive replies to the Supplication of the Commons against the Ordinaries.² The first, drawn up by

1 'Collectanea ex Epistolis Leonis olim Pontificis Romani', B.L. Cleopatra, E. VI, fol. 320-321. ~~Materials~~ Materials relating to the project for a general council are discussed below, chap. V.

2 The origins and use of the Supplication have been discussed in detail by G. R. Elton, 'The Commons' Supplication of 1532:

Continued

Gardiner,¹ was confident in tone and expected that the King would 'facilly discharge' the Commons' complaints. But by the end of the month it was becoming clear that the King, far from quietening the anticlericalism of his lay subjects, was adopting and adapting it to his own ends. The ordinaries' full answer to the Supplication - which Henry dismissed as 'very slender' - was rather more moderately phrased, and made a plea for the King's protection.² A third answer followed quickly,³ and by now the ordinaries seem to have perceived where the King's real interests lay; their letter dealt only with their legislative rights. Despite their conciliatory language, on every point the clergy stood firm: the 'spiritual jurisdiction' of the ordinaries had been exercised and admitted 'throughout all christian realms'; they had power to legislate for the preservation of the faith and order of the church; their laws were binding on all christian people, and did not require the assent of the secular ruler. In short, the King's pretensions to authority over the provincial

Parliamentary Manoeuvres in the reign of Henry VIII', E.H.R., LXVI (1951), p. 507-34; J. P. Cooper, 'The Supplication against the Ordinaries Reconsidered', E.H.R., LXXII (1957), p. 616-41; M. Bowker, 'The Commons Supplication against the Ordinaries in the light of some Archidiaconal 'Acta' ', T.R.H.S., 5th Series, 21 (1971), p. 61-77. Kelly, who argues that the Supplication may not be closely related to the campaign to secure the Submission, claims that the Submission 'was dictated by no master-plan; it was a function of the King's choler and vacillation, a series of royal requests and modifications goaded both by clerical and anti-clerical counsel': 'The Submission of the Clergy', p. 119. The interpretation of the Submission that follows necessarily conflicts with this view.

1 Wilkins, Concilia, III, p. 750-752.

2 Ibid., p. 753-754.

3 H. Gee and W.J. Hardy, Documents Illustrative of English Church History, (London, 1896), p. 154-176. On all this, see Kelly, 'The Submission of the Clergy', p. 109-11.

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accept that
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- Kelly seems to
think it

synod were utterly rejected.

Henry replied in a manner that finally laid aside any pretence of acting in response to the grievances of the Commons. On 10 May, Foxe exhibited three articles 'quibus rex omnes subscribere voluit'; that in future clerical legislation would require the royal assent, that existing 'constitutions provincial' be examined and where found objectionable suppressed, and that all other canons which 'stand with God's laws and the king's' should remain in effect, with the assent of the King.¹ A fourth was added, as an aside to the first, on the morning of 15 May, to the effect that Convocation could only be assembled by the King's commandment.²

See below
At the same time there was a plan to secure the submission of the clergy by parliamentary means. The Supplication against the Ordinaries, in its final form, contained a request for legislation against the abuses of the clergy, of which the first named was the independent legislative power of Convocation.³ There is a draft bill, with alterations by Cromwell and at least one other,⁴ which after a preamble enacts that, to avoid usurpation of royal authority, laws passed in synods are to be of no avail without express confirmation by parliament. The preamble proceeds in a manner rather similar to the Act of Appeals, though in somewhat less clouded

1 Wilkins, Concilia, III, p. 749.

2 Kelly, 'The Submission of the Clergy', p. 114-115; F. Atterbury, The rights, powers and privileges of an English convocation (2nd ed., London, 1701) p. 546-7.

3 The Supplication is printed in English Historical Documents, 1485-1558, ed. C. H. Williams, (London, 1967) p. 732-736.

4 L.P., V, 721 (1), SP2 /L, fols. 78-80. Kg. May 10 order for Parly submission (Kelly p 113-115) - Cromwell putting into Parly form the clerical programme - not really in charge.
Cant. prefers conciliar submission; Parly ac. following.

language: the church of England has been amply endowed by the King and his nobles, by their statutes and customs, to fulfil its office of service to God by teaching and example. But other degrees of men have each their office - the nobles and chivalry to defend the realm, the common people to till the soil. All these subjects, spiritual and temporal, are

but one body polytyke lyvyng under the alegyens obedyens tuycion(?) & defens of the kyngis Royall mageste being there allonly Supreme emperyall hede and soverayn of whome all Lawes compulsory be to be made ordeynde executyd within this Realme takyng there vigour Soule lyff and effect next god onlye of his highnes and of none other and to hym belongeth to make all lawes statutes and ordenencis¹.

The theory clearly enunciated here is that the King is the source of all legislative authority whether spiritual or temporal. It is made absolutely plain too that this power is not in any way derived from the 'imperial', or independent, realm of England; the King is described as the true minister and vicar of God. Cromwell understood the distinction: in the passage of the draft act just cited, Cromwell deleted words that required parliamentary assent to be given to the King's law-making, and noted that all laws took their vigour from his highness 'and of none other'.¹

1 SP2/L, fol. 78b. This alteration of the draft raises a question: was Cromwell's own opinion represented by the text as first framed? The revised text, which has all jurisdiction and law-making derived from the personal authority of the King, maintains the position of the collections of texts we have considered. The original version of the draft, restricting the King's authority by the requirement of Parliamentary consent, introduces an alien note in this context. Could it be that the disapprobation of the King or other of his ministers forced Cromwell to back down and make the change? This seems a likely interpretation in the light of the revisions made by Cromwell, the King and others to drafts of the Act of Appeals, which are discussed below, Chapter IV.

A further light is thrown by noting that Cromwell, 10 May, as alternative to a similar submission. This, including 'imperial' King is Foss's plan. Imperial King's submission on 10 May 1530, Act of Appeals 1530.

See below.
Cromwell's note
made in the light of
ideas of the King
was 10 May 1530
Act of Appeals 1530
all of which
passed.

Perhaps
a little
verbose

Thus revised, the preamble's notion of royal authority follows the thinking of the text-collections; the important innovation is the use of Parliament to declare and give effect to jurisdiction and legislation in spiritual matters whose author is the King. Parliament, in effect, has its authority extended to spiritual things by association with the King's religious supremacy. A year later Parliament ~~exerted itself in spiritual matters to declare~~ that the King's case might be heard by the Archbishop of Canterbury, thereby legislating in the very manner for which the privileges of the kingdom alone had been judged insufficient authority in the autumn of 1530. But in the event this draft legislation was put aside. The time was not yet ripe. The reasoning of the preamble presupposed that the spiritual authority of the prince was an established fact; but this was not the belief of all, or even (to hazard a guess) of a majority of the clergy. More importantly, the English church had never committed itself to such a principle. The act would thus have been open to the objection that it was beyond the competence of the King or Parliament to legislate for the spirituality. The passage of such a bill would surely have been a grave error, likely to precipitate a bitter confrontation between laity and clergy. Instead the King pressed on for a submission by Convocation, the only way he could proceed, pursuing further the project begun with the praemunire process of 1531, to have the clergy admit and declare his supremacy. This he achieved; the manner was questionable, the victory nonetheless resounding.¹ Though

¹ See Kelly, 'The Submission of the Clergy', p. 116-119: examining the likely voting figures in the upper and lower houses, Kelly concludes that the Submission was enacted by a 'Rump Convocation'.

* Add We know, in fact, that the government had to fight hard for the passing of bill, and was forced to debate the legality of these proposals. In the end the King resorted to intimidation of the Commons, coming in the chamber himself and suggesting a form of division. Only thus was assent to the bill obtained.² We know too that at an early stage in the debates and in keeping with the fiction of popular agitation... →

the clergy had forced important qualification of the terms of their pardon in 1531, they accepted the King's articles of submission without gaining any significant concession.¹

* *

In the same session Henry's government introduced a bill for the cessation of the payment of annates, and began the identification of Parliament with the campaign to abolish papal prerogatives in England. From the beginning of the affair, Henry maintained that the measure was moved by the people, but it was a story that became ever more clearly a fabrication as first the Lords, then the lower house offered stout opposition. ^{Add} Nevertheless, ~~in keeping with the fiction of popular agitation,~~ a paper was drawn up in the form of a petition to the King, purporting to come from the Commons. Despite some speculation, there can be no doubt that this paper was a government production.³ ~~Detailed and recherche points of ecclesiastical history in the paper do not sound like the cut and thrust of parliamentary debate; in any case,~~ It is possible to show how the argument of the 'Paper concerning annates' was extracted from notes in the 'Collectanea satis copiosa', ^{with this knowledge, we can reconstruct a} and how in turn it left its mark on the bill as it was good deal of the story of the bill, and see why over

- 1 The 'Instrumentum super admissione cleri', (L.P., V, 1023), is printed in Wilkins, Concilia, III, p. 754-5, from Warham's register.
- 2 L.P., V, 832, ⁸⁷⁹886, 898. Henry was especially anxious that the story of popular agitation reach the Pope's ears, evidently hoping to appear the one force who could keep the anti-clerical populace in check, and therefore not a man to be crossed lightly.
- 3 L.P., V, 721 (5), B.L. Cleopatra E. VI, fol. 274. Printed by Wilkins, Concilia, III, p. 760; cited hereafter as the 'Paper concerning annates'. Lehmborg, Reformation Parliament p. 135, suggests that the paper 'probably represents the outgrowth of the Commons' debates'. Merriman, Life and Letters, I, p. 133 ff. attributes the paper to Cromwell, but his evidence is too circumstantial to be wholly convincing.

it proved so contentious,
~~enacted.~~

The paper, having
 Having awakened all manner of nationalist prejudices with an emotive but largely irrelevant account of the monies extracted by the court of Rome to the deplorable decay of the realm, the paper proceeds to argue that the payment of annates is illegal. The main evidence for this remarkable claim is the declaration of the 21st session of the Council of Basle, made in 1435 at the height of conciliar power, that no payment ought to be made to Rome for any investiture, collation or presentation to a benefice. The petition makes a concession, however: the salaries of the writers of bulls and registers could be met with a payment of a twentieth part of the annates. In the 'Collectanea satis copiosa' this declaration of the Council of Basle is brought up twice, once from the book Libellus Apostolorum nationis Gallicanae, attributed to Nicolaus de Clemangiis,¹ and once, in all probability, from Merlin's Conciliorum...Tomus.² In the second instance the notes go on to quote at some length from the gloss of the canonist Johannes Andreae;³ Andreae, as represented here, argues that though payment for a specific ecclesiastical service, such as a presentation or collation was prohibited in order to prevent

1 Nicholai de Clamengiis, De lapsu & reparatione iusticiae libellus. Eiusdem disputatio super materia concilii generalis. Item Libellus apostolorum nationis Gallicanae cum constitutione sacri concilii Basiliensis, & Arresto Parlementi, super annatis non solvendis, Basle, 1519, p. 114-5. The first edition was printed at Basle in 1512.

2 Merlin, Conciliorum...Tomus, II, fol. CLXIIIa; (c.f. 'Collectanea satis copiosa', Cleo. E. VI, fol. 115b).

3 'Collectanea satis copiosa', fol. 122b-124b. The marginal reference clearly states the gloss to be by Andreae, but I have not found the text.

simony, the payment of the normal salaries of the clergy of the curia was not. He suggests therefore, that a twentieth part of the amount of the annates could be paid to defray the expenses of the curia and maintain the pope. The clause evidently passed almost word for word from the 'Collectanea satis copiosa' into the 'Paper concerning annates', and from there found its way into the Act itself: for the writing, sealing and lead of bulls of consecration was to be allowed 'fyve poundys sterlyng for and after Rate of the clere and hole yerely value of every hundreth'.¹

The final section of the 'Paper concerning annates' draws attention to the dispute in which the French clergy, who wanted both the Roman and Avignonese popes to resign as a prelude to a settlement of the schism, first deprived the papacy of all sources of revenue, including annates, then withdrew their obedience to Benedict XIII.² The record of this too was found in the Libellus Apostolorum nationis Gallicane. The King of England, the paper declares, might act 'in like caas'. In fact in the 'Collectanea satis copiosa', shortly after the notes on this Gallican defiance, are the makings of a conscious English parallel.³ For a beginning the compiler has the protest of King Canute at Rome in 1027; it had been used before in the 'Collectanea satis copiosa',⁴ but now the

1 23 Henry VIII, c. 20.; Stat. Realm, III, p. 387.

2 'Paper concerning annates', Cleo. E. VI, fol. 274b-275a.

3 Cleo. E. VI, fols. 116a - 118a.

4 Ibid., fol. 37a.

passage is carefully abbreviated to exclude all mention of Canute's exhortation to his subjects to continue the payment of 'the pence which ye owe to St. Peter's at Rome'.¹ Then, somewhat nearer at hand, he has the example of the Parliament of Carlisle which, like the Parlement of Paris, resisted papal demands for taxation. He retails, in something approaching a connected narrative, how Clement V, losing the support of the aristocratic factions at Rome, urgently needed to find alternative sources of finance and therefore laid claim to all provisions and first fruits in England, Wales, Scotland and Ireland; how in 1307 the King and Parliament refused to allow the wealth of the church, given for alms and hospitality, to be diverted to other uses; how the discussion turned to other oppressions of the Roman see, especially papal provisions; and how a statute was made, by the whole consent of Parliament, to forbid all such abuses which derogated from the dignity and jurisdiction of the King of England.

Is any of
this in the
paper concerning
annates?

We are fortunate, in this instance, to be able to trace the exact manuscript from which the compiler was working. He gives as his reference 'Ex historia qui incipit ab Henrico tertio'. This is far from precise, but there is an incomplete copy of the chronicle of Walter of Guisborough, donated to the Cambridge University Library by Archbishop Parker, which begins at the first year of Henry III, and continues to the end of Edward I's reign.² That this is the

1 L. M. Larson, Canute the Great, (New York, 1912) Appendix II, p. 345-7, prints Canute's proclamation of 1020, quoted here.

2 C.U.L. MS. Dd.2.5. cf. The Chronicle of Walter of Guisborough, ed. H. Rothwell, London 1957, Camden Series, Vol. LXXXIX). Rothwell refers to this manuscript as 03.

manuscript consulted by the compiler is evident from the page references he gives at one point in the 'Collectanea satis copiosa',¹ and more conclusively from the fact that all the passages which go to make up the narrative about the Parliament of Carlisle in the 'Collectanea satis copiosa', (and no others), are boldly marked in the margins of the manuscript.² The exaction of Clement V in 1305, recorded by Walter of Guisborough as a fraudulent claim for finance for the recovery of the Holy Land,³ became for the compiler of the 'Collectanea satis copiosa' the beginning of papal annates.⁴ The idea travelled thence, either through the parliamentary debates or through the deliberate drafting of a propagandist preamble, into the Act itself, though it lost some of its detail on the way:

the said Annates have risen grown and encreased by an uncharitable custome grounded uppon no juste or good title...which Annates or first fruyttes were first suffered to be taken within the same Realme for thonelye defence of Cristen people ayenst thin-fideles, and nowe they be claymed and demaunded as mere duetie onely for lucre ayenst all right and conscience...⁵

Again the legislators had shown a diligent, almost naïve devotion

1 Cleo. E. VI, fol. 42a, citing the proceedings of the Parliament of Carlisle, refers to 'historia qui incipit ab Henrico tertio charta 232'; C.U.L. MS. Dd.2.5, fol. 232b has the passage cited.

2 i.e. passages from fols. 231b et seq. of C.U.L. MS. Dd.2.5.

3 Chronicle of Walter of Guisborough, p. 376.

4 The conclusion that annates began with demands for money for a crusade is noted in the 'Collectanea satis copiosa', Cleo. E. VI, fol. 133a.

5 23 Henry VIII, c. 20; Stat. Realm, III, p. 386.

to the 'authorities' of historiography and learning.

It is clear then, that the 'Paper concerning annates' was a careful piece of propaganda, one of a number worked out with some ingenuity and resource within government circles; it is not a genuine petition, nor, we may be sure, did it represent the sentiments of the Commons. ~~We know, in fact, that the government had to fight hard in both houses for the passing of their bill, and was forced to debate the legality of their proposals.¹ In the end the King resorted to intimidation of the Commons, coming into the chamber himself and suggesting a sort of division. Only thus was assent to the bill obtained.²~~

At this point it would be as well to compare the 1532 Act restraining annates with the propaganda materials we have considered. In its final form the act neither forbade the payment of annates - by virtue of the clause in section III which suspended the effect of the act - nor prohibited the bringing in of papal bulls for the consecration of bishops; it enacted simply that if the consecration of a bishop was delayed, it might be effected within the realm by an archbishop or two bishops. There is some reason to believe that this represents a toning down of the government's original intentions. The 'Paper concerning annates' is considerably tougher: it accuses the papacy of simony; it proposes, should the pope seek reprisals against the realm (presumably by refusing to issue bulls for consecration) to withdraw obedience altogether, and by citing an extremely

¹ See the letters of Chapuys to Charles V, L.P., V, 879, 898.

² L.P., V, 898.

Pope as minister
of justice
Papal government
gave no other
authority.
Important to be able
to get a decision
made in clergy
jurisdiction by the
Kings.

controversial decree of the Council of Basle must have raised in many minds the spectre of conciliarism. Could it be that the 'Paper concerning annates' caused such a storm of protest that the government was obliged to argue its case, and in the end word its bill in a much less offensive manner?

Let us examine first the way the notes in the 'Collectanea satis copiosa' were built up. There appear to have been five stages. Six folios of general notes on annates, which cannot be shown to have had a direct bearing on the Act or on the 'Paper concerning annates',¹ are followed by the substance of that paper and the English parallel to the Gallican withdrawal of obedience.² Next comes one folio that was probably added separately, as its watermark differs from that on the folios immediately before and after.³ It has brief extracts from the canons of the councils of the church, and is headed 'De annatis ex epistolis pontificum quae una cum Conciliis edite sunt' - clearly a reference to Merlin's Conciliorum...Tomus. This is the last folio to bear an annotation by the King, though his annotations appear regularly before this. It seems very likely that at least some of the rest of the notes were a late addition - after the King had perused the book. The next six folios are, to judge from the watermarks and hand, all of one piece, and since they contain a

1 'Collectanea satis copiosa', Cleo. E. VI, fols. 110a-115b.

2 *Ibid.*, fols. 115b-118b. One detail of the 'Paper concerning annates' is not here. The gloss of Johannes Andreae is in the fourth section of notes, on fols. 122b - 123a. It may be surmised that originally the source materials for the 'Paper concerning annates' were all in one section, but were separated by the subsequent insertion of fol. 119.

3 *Ibid.*, fol., 119a/b. For details of hands and watermarks, see Appendix 1.

detail of the 'Paper concerning annates', presumably date from about the same time as the rest of the source material for that paper.¹ But thereafter the change of emphasis is marked; the propaganda points against annates give way to reasoned arguments on rather different matters.² It is probably safe to say that the notes in this fifth and final section were written at a later stage, when circumstances demanded a new approach.

The most likely interpretation is that whereas the first four sections of these notes on annates were drawn up in preparation for the 'Paper concerning annates' and for the introduction of the measure in Parliament, the fifth was added when the extent of the opposition was known, and was part of the government's answer to that opposition. This is a conjecture supported by the one piece of information we possess about the way the case was argued in the Commons - Chapuys' statement that after the house had refused to pass the bill, the King or his agents asserted that annates were not paid in Spain and other places.³ In the final section of notes is the head 'Annates Romano denegare Pontifici, fidei Christiane non repugnare'.⁴ In keeping with Chapuys' report, the head proceeds to give examples, beginning with the 'kingdom of Spain', of realms which had never paid annates or had at some time prohibited their payment, but had not in consequence been held to have departed from the faith.

1 Ibid., fols. 120a - 125b.

2 Ibid., fols. 126a-133a.

3 L.P., V, 898.

4 Cleo. E. VI, fol. 123a.

It seems very likely that we have here a record - rare for the period - of what was actually said in the Commons. The members were reminded that the King of Spain allowed no right of papal taxation, but he was known as the Christian King, and his people renowned for their piety; that Charles VII and Louis XII of France, and the secular rulers of Italy had refused such exactions, but were all accounted Christians.¹ Moreover, the Council of Constance which had condemned annates was not held to be an infidel assembly for that. After these examples the argument is filled out: free elections are a bulwark against simony;² if we seek to be obedient to the Church, we may uphold only what has no evil in it;³ the usurpations and exactions of Rome, grounded narrowly on rights and prescription, cannot be tolerated, and the prince has a duty to defend his people from them.

Thus far these notes are principally addressed to the fear that the cessation of the payment of annates meant a break with the body of Christendom. But there is another reason for thinking that here was the great sticking-point in the parliamentary debates. In the Act itself, the enacting clause is prefaced with the words:

'And albe it that our seid Soveraign Lorde the Kyng and all his naturall subjectys aswell spirituall as temporall ben as obedient devoute catholique and humble children of God and Holie Churchē as any people be within any Realme cristened;

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- 1 Marginal references in the 'Collectanea satis copiosa' attest that at least some of these examples were taken from the Libellus Apostolorum nationis Gallicanae, p. 102.
 - 2 Quoting from Ivo of Chatres, Epist. 60; Migne, P.D., CLXII, cols. 70-75; cf. 'Collectanea satis copiosa, Cleo. E. VI, fol. 45a.
 - 3 Here again is an echo of the theme that only power which is 'in edificacionem ecclesiae' is legitimate: see above p. 28-9. It is interesting to note that across the passage, Cleo. E. VI, fol. 96b

Continued

Yet the seid exaccions of Annates or first fruyttes be so intollerable and importable to this Realme that it is considered and declared by the hole bodye of this Realme now represented by all the astatys of the same assembled in this present parliament, that the Kynges Highnes before Almyghty God ys bounde as by the duetie of a good Christen Prynce for the conservacion and preservacion of the good astate and commyn welth of this his Realme to doo all that in hym ys to obvyate repressse and redresse the said abusions and exaccions of Annates or first fruytes.¹

One may doubt how much comfort the members derived from such a guarded statement. Nevertheless, the government had been obliged to offer an assurance and had gone as far as to include it in the Act.

The rest of this head in the '*Collectanea satis copiosa*' deals summarily with a couple of questions that one might have expected to have come up in the course of debate. To take the less complicated first: there is a brief note at the very end to the effect that it was correct to assert that annates had their beginning in a war to drive the Turks from the Holy Land. No doubt someone had taken exception to the preamble and received a passage or two from Walter of Guisborough's chronicle in reply. It may not have been so easy to brush off the question of how the Roman see should finance itself if annates were prohibited. It was to enjoy by right the possession of those things granted to it by Constantine and Phocas and other emperors, with the revenue of its own diocese. In cases of necessity

where this idea is set out, a later note is added: 'He [*sic*] quas vocant provitiones non sunt in edificacionem sed in manifestissimam destructionem'.

¹ Stat. Realm, III, p. 386.

it might request, but not demand, aid from Christian people. This was an answer full of unsubtle hints about the status of the papacy. One wonders whether it raised more tempers than it settled, since the government did not venture to include anything so radical in the text of the Act.

Before we consider the rest of the final section of notes on annates, it is important to record the extent of the debt of the government's propaganda to the Libellus Apostolorum nationis Gallicanae. This tract, or rather this collection of tracts and documents, printed in 1512, was intended to justify the events of the 'conciliabulum' of Pisa and Milan. In a sense, therefore, the simple borrowings of historical precedents and the like by Henrician scholars are the reworking of an earlier propaganda campaign. It was, on the face of it, a rather obvious ploy, for Louis XII's circumstances and purposes were not so very different from Henry's. There is, however, a particular vigour in the criticisms in the Libellus, because they are seen to spring from the radical principles of church government espoused by the Council of Constance and which representatives of the King and clergy of France adopted as their own at Pisa in 1511-12.¹ The force of this was already beginning to shape the government's position as early as the 'Paper concerning annates'; as we have hinted before, the citation of the decree of the Council of Basle was full of wide implications which could hardly have escaped the wary in Parliament. The decree was contentious on a number of grounds. It spoke of the pope as the minister and subject of the Council. The

¹ See H. Jedin (trans. E. Graf), A History of the Council of Trent (London, 1957) I, p. 106 ff.

pope whom the Council defied never confirmed it. But the decree was more than just a symbol of conciliar supremacy; it was a measure which would have reduced the powers and revenues of the papacy to the point where papal government as it had existed since Hildebrand would have withered away. When we look again at the last section of notes on annates in the 'Collectanea satis copiosa', we find a long and detailed defence of the validity of Basle and of conciliar theory; now this seems altogether out of place unless we assume that the passage in the 'Paper concerning annates' occasioned a storm of protest in Parliament, which the government was obliged to counter with reasoned argument, and that what we have here is, like the material that follows it, the preparation for a speech or speeches in Parliament. The resulting writing would not have appeared incongruous as an appendix to the Libellus Apostolorum nationis Gallicanae.

The government does not appear to have been in any way embarrassed by theories of conciliar supremacy, even if it had neither anticipated nor relished the vehemence of the opposition. Its vindication of the Council of Basle and its decree is spirited and uncompromising, and worked out with a great deal of care. Firstly, the notes in the 'Collectanea satis copiosa' argue that the proceedings of the Council were strictly legal, even by the admission of the papacy. The notes, which cover the period of the reforming councils more or less chronologically, begin with the fortieth session of the Council of Constance and the reforming canons to which it agreed to bind a future pope. Foremost among these were proposals to reform the financial affairs of the papacy, including the collection of annates, and the papacy's part in the distribution of benefices, 'secundum

equitatem & bonum regimen ecclesiae'.¹ The notes next record Martin V's acceptance of these and of the rest of the decretals of the Council,² which included, of course, the decree 'Frequens'. 'Frequens' made the regular convocation of a general council obligatory, and ordained that each council should determine the place where the next would meet. This decree is the cornerstone of the argument for Basle's legality³: Martin V obeyed the law of Constance by calling a council after five years, and another, the Council of Basle, seven years after that. Eugenius IV, his successor, tried at first to evade his obligations by refusing to recognise the Council of Basle, and by attempting to move it to another place. With a certain relish the compiler points out that at this early stage the leadership of the Council was effectively in the hands of the secular rulers - the Emperor Sigismund and other Christian princes who had indicated their acceptance of the Council by the presence of their representatives. At length Eugenius capitulated to the force of events and recognised the Council, thereby removing the last shadow of doubt about its status.

In the second part of his story, the compiler records the lapse of secular control on the death of Sigismund, and the attempts of Eugenius to subvert the Council by the establishment of a rival conventicle at Ferrara (later at Florence). Now comes the end of the Council - its transference to Lausanne (in 1448), and its return

1 Cleo. E. VI, fol. 120a; Merlin, Conciliorum...Tomus, II, fols. CXXIXb - CXXXa.

2 Cleo. E. VI, fols. 120b - 121a.

3 What follows is a summary of the head 'Narratio brevis Concilii Basiliensis ex Aenaea Sylvio, Naclero, Platina.', Cleo. E. VI, fols. 126a - 127b.

to the Roman obedience. There is no problem in the Council's recognition of Nicholas V, for (to speak strictly), the Council elected him, and he in turn issued a bull, which these notes cite, in confirmation of the decrees of the Council.¹ But the compiler is evidently anxious to establish that the return to the Roman obedience was not a recognition of the validity of Eugenius' actions, nor of his council at Ferrara. The majority, he stresses, which included the King of England, remained loyal to the Council of Basle and its principles to the end.

A second argument for the validity of the Council of Basle pursues this point further on openly conciliarist lines.² The Council at Ferrara was not legitimate - that is the burden of the argument - because the removal of the Council from Basle stood condemned by the Church. Firstly, the person was wrong; Eugenius, by virtue of his opposition to the Council was not fit to be pope, for as the familiar conciliarist argument went,³ even the apostle Peter was told to 'Dic Ecclesie' - that is to seek and abide by the judgement of the whole Church. Moreover, Eugenius was suspect of heresy for not approving the decrees of the Council, and for refusing its correction. Secondly, the means were wrong, for when Eugenius joined the Council of Basle in 1434, he approved a decree of the

1 Ibid., fol. 125a; Merlin, Conciliorum...Tomus, II, fols. CXCIIIb - CXCVIa.

2 What follows is a summary of 'Collectanea satis copiosa', Cleo. E. VI, fols. 128a - 131a.

3 An argument much quoted by Henry's scholars; see ibid., fol. 59a, De vera obedientia, fol. 9b.

eleventh session forbidding the removal of a council 'sine ipsius concilii expresso concensu'.¹ Thirdly, the place was wrong: only a council could specify the place for its future meeting - a principle established at Constance in the decree 'Frequens', and confirmed at Basle.

By discrediting the Council of Ferrara and Florence, the compiler has discredited the papal renunciation of conciliar theory. In other words, the bull 'Laetentur coeli', (6 July, 1439), which defined that the pope as the successor of Peter held full power from Christ to govern the whole Church, and the bull 'Moyses vir Dei', (4 September, 1439), which challenged the ecumenicity of Constance in decreeing conciliar supremacy, and condemned Basle for daring to depose the pope, became the worthless edicts of a schismatic Council. The argument is, therefore, as the head announces, a 'Concilii Constantiniensis Confirmatio'; it sought to maintain - somewhat against the run of later events - that the authority of General Councils had never been discredited, nor dismissed as an expedient cure for temporary ills, but that it remained an essential constituent of legitimate Church government.

If Henry's agents did venture to place such a justification of their ideas before Parliament, it can only have confirmed the members' worst fears. They heard, for the first time probably, the full extent of the King's theory of the Church. The religious supremacy of each Christian prince in his realm - the idea elaborated in the King's letter to Tunstall - went hand in hand with a form of

¹ Merlin, Conciliorum...Tomus, II, fol. CLa.

conciliarism, just as it did in the Gallican propaganda of the Libellus Apostolorum nationis Gallicanae. It was, to be sure, conciliarism under the aegis of the secular powers, which in the context of the fragmentation of religious life in the 1530's was a principle which ensured that a council would not meet. But the concept was the thing: the King of England could look to a rule of faith that was at once of pious motive, unlikely to restrict his freedom of action greatly, and supported by a century or so of historical precedent, or - if one glossed conciliarism as the expression of the authority of the universal church - might even be stretched back to the days of the great emperors and councils of the Christian Roman Empire.

If this reconstruction is sound, we have seen how, with a remarkable adherence to the letter, at least, of its texts, the government constructed proposals for parliamentary action against the payment of annates; how it argued the case for the King against an unexpected volume of opposition, and how in so doing, it was led (perhaps in part by the nature of its source material) into endorsing conciliar theory and questioning the status of the papacy. If hard words were intended to silence criticism, the intention undoubtedly miscarried. The government was forced to back down: no trace of conciliarism, no mention of the Council of Basle even, can be found in the Act. Nothing suggests that England might withdraw its obedience from Rome, the matter of annates excepted. The sole complaint of the Act's preamble is the miserable decay of the realm on account of huge and unjust payments to Rome; of simoniacal practices nothing is heard. A further moderation of language is found by comparing a draft

of sections III and IV of the Act with those clauses as enacted.¹ It is probably correct to assume that the purpose of the delay in the Act's coming into effect (provided in section IV of the Act) was to give the King an effective lever in his dealings with the Pope. This is the way the draft clause reads - allowing Henry time to seek the Pope's 'confformytte', before the threat is realised. In the Act, King and Parliament declare their distaste for 'extremyte or violens' and seek delay in order that 'gentill curteyse and frendely wayes' may be attempted; the effect was the same, no doubt, but the pretext was rather different.

The government had appeared to surrender a lot of ground. The Act was less radical in its language than the 'Paper concerning annates', considerably less so than the arguments put forward in the heat of debate. Even so, the success of the opposition was largely illusory; it had forced the government to prune from its proposals only the needlessly controversial allusions, observations and corollaries. The main stem, the calculated political use of financial expropriation, was untouched. It can hardly be wondered that, as the evidence suggests, opposition to the measure persisted to the last. This episode illustrates, then, both the strength and the weakness of parliamentary opposition to the royal will. It perhaps came closer at this moment than at any other to openly rejecting the King's programme; it certainly could not be silenced by stern rhetoric and empty assurances. Moreover there was a certain propa-

¹ B.L., Harleian MS. 6849, fols. 60-61, (not in L.P.). See G. R. Elton, 'A Note on the first Act of Annates', B.I.H.R., XXIII, (1950), p. 203-4. It should be admitted that the stage at which this draft was drawn up, and when, in revised form, it was added to the bill, cannot be determined exactly.

ganda value in the resistance, which effectively discredited Henry's scheme to frighten the pope with news of popular disaffection. Yet the victory was Henry's, beyond any doubt. The Act was passed, in essence as he wanted it. Well-aimed criticism had kept the statute book free of theories of Church and State, but it had not, and probably could not erase those theories from Henry's mind. On the contrary, they had a long future in front of them.

CHAPTER IV

The Imperial Crown and the Act of Appeals

Criticism of anti-clerical policy was not confined to Parliament. Until May 1532 there was resistance within the Council¹ and here the neat distinction between government and opposition breaks down. There were a number of parties clamouring for the King's ear. Sir Thomas More, the Chancellor, was the leader of one, but he had become isolated from the currents of power well before his resignation. Conviction barred him from the close counsels of the King in the matter of the divorce; he was virtually powerless too to resist another ominous development - the flirtation of Cromwell and the King with Luther, with Robert Barnes as go-between.² For More the affair came to a galling climax when Barnes, whom he regarded as a particularly dangerous heretic, arrived in England towards Christmas in 1531 under the King's safe conduct.³ More had his movements watched, but could not touch him; he had to be content to fight Barnes with the pen. For a time Gardiner resisted the onslaught on the clergy vigorously,⁴ but when the clergy had submitted and his cause was lost, he apologised abjectly to the King, seeking to regain

1 See G. R. Elton, 'Sir Thomas More and the Opposition to Henry VIII', B.I.H.R., Vol. XLI, (1968), p. 19-34, especially p. 31-33.

2 Clebsch, England's Earliest Protestants, 1520-35, p. 51-3.

3 L.P., V, 593.

4 See above p. 134-5

his favour.¹ More refused to compromise and resigned; when he went it was clear that the conservatives on the Council were beaten.

Even so, it would be a mistake to assume that radical policies had now triumphed utterly. // The main propaganda publication of the summer of 1532, the Glasse of the Truthe, still draws back, as the Determinations had done, from harsh words against the papal primacy and gives no hint of schism.² Had the King and his ministers learned caution and determined to proceed in a manner that would not excite another storm of opposition? Or was Henry still reluctant to commit himself finally and irrevocably to a policy which would end all hopes of favourable judgement at Rome, and plunge him into a difficult and uncertain adventure? Wherever the truth lies, it seems likely that // even after More's resignation no one party in the Council had Henry's undivided attention. One of the aims of this chapter is to suggest that ... important differences of opinion about history, tradition and authority in the church which separated members of the King's council, led them to pursue different and sometimes incompatible political objectives, and that this conflict, this rivalry for the King's ear continued at least until the passing of the Act of Appeals.

The new man was Cromwell. Sometime before the end of 1530 he became a member of the Council; thereafter his influence was rapidly felt in wide areas of government business, and nowhere more decisively

1 See Gardiner's letter to the King, in Wilkins, Concilia, III, p. 752; Muller, ed., Letters, p. 48-49.

2 See above p. 119-20

Irrelevant

than in parliamentary affairs. Before the session which began in January 1532, Cromwell was already preparing an ambitious programme of reform, including legislation on treason, apparel, wards and primer seisin, forestalling and regrating, and the regulation of the trade in wine and textiles.¹ His association with each of the measures in this session which touched the state of the church is well known - his redrafting of the Supplication of the Ordinaries,² his authorship of the conditional clauses in the Act restraining annates,³ his correction and likely authorship of the abortive act for the submission of the clergy.⁴

But here caution is necessary. Cromwell's devotion to statute is not in doubt, nor is his close involvement with the legislation which brought uncertainties and delays to an end; yet this does not allow the conclusion that the ideas which underlie the Divorce and the Supremacy were wholly his,⁵ nor that his entry into the King's service marks the advent of decisive policy where only confusion reigned before. Such a view does no justice to the importance of the religious theories worked out, ~~it seems~~, between 1530 and 1532; without these no amount of sophisticated legislation could have

1 B.L. Titus B.I, fols. 481-3, (L.P., V, 394).

2 See above, p. 134 n.2

3 See above, p. 154-5 and n.1

4 See above, p. 136 ff

5 cf. G. R. Elton, 'The Political Creed of Thomas Cromwell', p. 70: '...the ideas underlying the Reformation emanated from Cromwell rather than the King, and ... the Reformation legislation embodies his views of Church and State.'

supported the huge doctrinal edifice of royal supremacy and provincial independence. ^{It should be remembered that the} ~~The~~ Act of Supremacy is a declaratory act which proceeds from a stated theological proposition; so is the Act of Appeals, insofar as it pursues the premise that the King is furnished by God with powers of jurisdiction in all manner of causes which begin in his realm. An assessment of Cromwell's contribution to the Reformation legislation must begin ^{therefore} by distinguishing what he adopted from what he built anew, and by recognising that the growth of Cromwell's power did not remove other men and other policies at a stroke. For these reasons it would be unwise to treat the preambles of Reformation statutes, especially up to and including the Act of Appeals, as text-books of Cromwell's political theory.¹ There are ample signs in the statute book and in the many preliminary drafts of legislation of this period that it took time for the precise statutory formulas of Henry's Reformation to emerge from a ~~some what~~ diverse collection of theological and political notions. Far from sweeping all else aside, Cromwell's influence, exerted late in the day, could be seen as something which modified the form of reformation already well under way. The legislation was, as the whole of Henry's Reformation patently was, a necessary compromise. ~~This is not to suggest that~~ ^{may have been no} In Cromwell's own mind there ~~was~~ ^{was} confusion about how the precepts of theology and politics were to be combined in legislative measures. The uncertainty was whether his approach would become the official, that is to say the King's policy.

¹ c.f. ibid., p. 86: 'That the acts exemplify Cromwell's policy and thought is patent from his work on them'.

Henry's own participation in the making of policy is hard to assess. No branch of learning interested him half so much as theology, and the matters of theology which touched his own person most closely were his divorce and his supremacy. He spoke of them often, read and annotated papers relating to them, even - as is now well-known - gave his close attention to the text of the Act of Appeals.¹ On the one hand then, his interest was keen and his grasp of the issues reasonably acute, but on the other his public pronouncements and private scrawlings furnish no convincing proof that he was the originator of the policies his ministers pursued. He spoke loosely and inaccurately of the Council of Nicaea when his advisers were working out the importance of early conciliar theory;² he ordered a futile search through the papal archives for the privileges of the realm when, it may be surmised, a few texts to the purpose had been unearthed from the English chroniclers by scholars already engaged in much weightier business;³ he had a tract put out as the King's book though it was, as far as we know, entirely the work of his divines,⁴ and then had the Glasse of the Truthe passed off as his own when his contribution was probably no more than a brief glance at some of the texts;⁵ even his alterations to the Act of Appeals were swept aside.⁶ Yet Henry could not be ignored. His

1 His revisions of the act are discussed in Elton, 'The Evolution of a Reformation Statute'; but see below, p. 180 ff

2 See above, p. 94

3 See above, p. 73-4

4 See above, p. 114-15

5 See above, p. 113

6 See Elton, 'The Evolution of a Reformation Statute', and below, p. 203-4

* Between the by-now-familiar concept of the personal supremacy of the King and Cromwell's preference for wide-ranging reform by parliamentary means.

authority alone was sufficient warrant for action or inaction and the very evidence that points to his lack of originality proves that he had to be informed, consulted, shown the merits of each scheme, his sometimes rather fatuous comments endured; in short, he had to be persuaded.

The most credible interpretation of the admittedly circumstantial evidence is that in the year or so from the opening of the third session of Parliament in January 1532 to the passing of the Act of Appeals, Henry held the balance between two policies or sets of ideas, between ^{See opposite} Cromwell's preference for wide-ranging reform by parliamentary means and ^{and} the by-now-familiar concept of the personal supremacy of the King. ^{and} Henry's own inclination was perhaps mostly towards caution, towards delaying the implementation of the radical advice he was receiving on all sides, at least until the discovery of Anne Boleyn's pregnancy made further delay unattractive. Nevertheless ^{he} ~~the King~~ did appear to favour ^{first} ~~at first~~ the ^{second} approach with its emphasis on his personal prerogatives as king. The rights of English monarchs had obviously captured his enthusiasm in the autumn of 1530, and he never quite relinquished that straw in the wind. ^{N.P. In the two and half years prior to the} ~~Before the~~ Act of Appeals Foxe and others had, ~~for all that,~~ begun to translate their theological ideas of the supremacy into action. Their texts spoke of the exercise of royal supremacy in synods or convocations, and the Church had been persuaded to accept the King's personal oversight of their deliberations. This project for a synodal submission was preferred to the parliamentary submission sponsored by Cromwell, and for good reasons. ¹ ~~Moreover~~ ^{Nor can} Cromwell

¹ See above, p. 136 ff.

cannot be credited with the sole management of parliamentary affairs. He did not initiate the measure to confiscate annates; the 'Paper concerning annates', the device intended to prepare the way for the introduction of a bill, was not his, nor were the arguments used to defend it.¹ Of the text of the act itself, it is important that we can ascribe a portion to Cromwell - the sections of clauses III and IV contained in the draft in his hand - and can with equal confidence conclude that the rest was not his creation. This is not only because the matter of the greater part of the act was prefigured elsewhere,² but also because the language and form of the bill lack the features which came to be characteristic of Cromwell's drafting - above all his consciousness of the political relationships of King, Parliament, Commonwealth and Church. It is noticeable that the annates bill, though it touches on matters of the greatest moment, speaks of authority in general phrases only, scarcely more than commonplaces: 'the auctorite of this present parliament', 'the duetye of a good Christen Prynce', 'the auncient lawes and customes of this Realme and the Kinges prerogative Royall'.³ Cromwell's contribution to this bill, as to the Submission of the clergy, was as an executant, one qualified by special political skills to devise means to give effect to policy and to outflank the opposition. He

1 This does not rule out the possibility that Cromwell presented the arguments in the Commons, a task that the divines could not perform. But how much did Cromwell know of the Annates Bill at the outset? See his letter to Gardiner, L.P., V, 723, when the Bill had been introduced in the Lords: 'To what ende or effecte it will succede surelie I know not'.

2 See above, p. 139 ff.

3 23 Henry VIII, c.20 Stat. Realm., III p. 385-8.

certainly had ideas of his own, but in religious matters he had to be content for a while to use them to mitigate the political deficiencies of other people's projects.

This scheme of 'parties' within the Council has taken no account of the men who are normally supposed to have directed the King's personal affairs in the period immediately following Wolsey's fall. In one account Norfolk, Suffolk and Wiltshire presided over an uneasy interregnum, prosecuting the divorce in a desultory and ~~rather~~ aimless fashion until Cromwell came up with the ideas and the means to resolve a situation which was beginning to make Henry despair.¹ This clearly will not do, for in these years many of the vital concepts of the Henrician Reformation were formulated, though by the divines, not the great peers of the realm. The Duke of Norfolk has, nevertheless, attracted a good deal of attention from historians, chiefly on account of a conversation he held with Eustace Chapuys in January 1531.² Remarks that he made on that occasion about early English history have been taken to explain the references to 'dyvers sundry old authentike storyes and cronicles' in the preamble to the Act of Appeals,³ and even to suggest that Norfolk had some responsibility for the main lines of the bill.⁴ This is a theory which needs to be investigated, for it touches on the sources and interpretation of what is perhaps

1 See for instance A. G. Dickens, Thomas Cromwell and the English Reformation (London, 1959), p. 35-36; Elton, England under the Tudors, p. 122 ff, Merriman, Life and Letters of Thomas Cromwell I, p. 84, 89 ff.

2 L.P. V, 45.

3 24 Henry VIII c. 12, Stat. Realm., III, p. 427.

4 See Lehmborg, Reformation Parliament, p. 164.

* sentence boundaries ^{edition}

* Norfolk treated his listener to an exposition of Geoffrey of Monmouth's version of English history, and evidently thought to demonstrate by it the King's political rights. He spoke of Arthur and Brennus, and a line of English kings going back to Constantine

check with text

on L.P.

the most significant of all the Reformation statutes.

One of the difficulties of interpreting Norfolk's conversation is that only Chapuys' record of it survives, in the report that he despatched to Charles V, and Chapuys confesses himself unable to understand the significance of Norfolk's history lesson, though there is some reason to believe that he reports Norfolk's words with reasonable accuracy.¹ ^{ADD *} Chapuys reaction, after bewilderment, was wry amusement. He began to poke fun at the Duke. This is important, in a way, for it confirms the impression that the ambassador had a very low opinion of Norfolk's learning; on a similar occasion when Norfolk had fired off another salvo of ill-assorted references, Chapuys began 'to jest at his having become so great a doctor, telling him it appeared well what he had heard said of it'.² From Chapuys' reports, then, we have a picture of a man who picked up ideas that were in the air and repeated them in a slightly garbled fashion, a man prone, perhaps, to grasp the wrong end of the stick.

Even if allowance is made for the possibility of personal animus on Chapuys' part, Norfolk's public pronouncements do not ~~allow one to believe that he was a policy-maker.~~ ^{inspire} confidence. His remarks of January 1531 should not be taken (though they usually have been) out of the context of a number of other occasions on which he expatiated on the political or religious rights of his master, ~~and this at the time when, as we have seen, new ideas were being worked out by other servants of the King.~~ In November 1530, for instance, Norfolk and Wiltshire argued hotly with

1 See below, p.171 n.3.

2 L.P., V, 308.

Chapuys that the '*ius convocandi concilium*' belonged to secular princes - an assertion which implied some devolution of imperial rights upon the rulers of individual nations. But when Chapuys challenged this, the noble gentlemen were unable to substantiate it, and Chapuys concluded that it must have been something recently discussed in the King's Council.¹ On another occasion, in February 1532, Norfolk told an invited gathering first that the Pope had treated the King reprehensibly by not remitting the divorce case to England in acknowledgement of the privileges of the kingdom, and later, on a rather different tack, he explained that the king was emperor within his realm and claimed a right of jurisdiction. These boasts, if not necessarily acceptable to his audience, had probably by now grown familiar; but what was to follow was utterly shocking and novel, not to say ridiculous. Norfolk claimed that it was the opinion of some doctors that matrimonial cases belonged to the temporal, not the spiritual jurisdiction. It is hard to see what evidence could have been offered for this statement; Chapuys report of the meeting mentions none. It was a suggestion which would have short-circuited the whole of the lengthy negotiations with the papacy, the entire campaign against the independence of the Church in Convocation and Parliament, perhaps the very progress of the reformation in England. But matrimony was a sacrament of the Church. Neither Henry, nor even his most radical advisers had dared to deny that his divorce was a spiritual cause. The Duke was, to put it gently, out

¹ Cal. Sp., IV, 492. Again it may be necessary to make some allowance for Chapuys' party interest: he was fond of saying that he had won the argument and dumbfounded his opponents. On this occasion, according to Chapuys, Wiltshire did most of the talking.

of step with the rest of the government. He was also very confused.

To return then to his celebrated interview with Chapuys in January 1531: ~~there can be no doubt that Norfolk treated his listener to an exposition of Geoffrey of Monmouth's version of English history, and that he thought to demonstrate by it the King's political rights. But it would be rash indeed to be categorical about the way the Duke's mind was working.~~ ^{did Norfolk} ~~Did he~~ mean that the line of English kings had inherited their imperial status from the Empire of Rome, through the conquests of Brennus and the English birth of Constantine? This interpretation is given force, it has been claimed, by the publication of Polydore Vergil's Anglica Historia in 1534; this work was revised, so the argument goes, in order that it should harmonise with Norfolk's political ideas, ^{which in turn would suggest} ~~suggesting~~ that his interest in Constantine and Arthur was indeed of some importance to Henry's Reformation. It should be noted that no evidence has been advanced to connect the publication of the Anglica Historia directly with political events in England.¹ Nevertheless attention has been drawn to a passage in Vergil's Anglica Historia² which has no counterpart in the earlier manuscript version:

'Quamquam postea haud perdiu in Constantini domo imperium mansit; ita cito humanae opes cadunt: tamen decus ipsius imperii non potuit cadere, cum etiam nunc reges Angliae more maiorum, diademate imperiale utantur ut munere ab imperatore Constantino in suos posteros collato'.

1 See Koebner, 'The Imperial Crown of the Realm', p. 44: 'No direct information seems to exist as to what passed between Henry's advisers and the archdeacon of Wells in the years 1531-3'.

2 Polydore Vergil, Anglicae Historiae Libri XXVI, Io. Bebelius, Basle, 1534, p. 46.

One may doubt whether this sentence does in fact speak of the imperial crown as the legacy of Constantine. It would run counter to the normal humanist understanding of 'imperium', not as something 'translated' from Rome - for the Roman Empire had lapsed and was long dead - but as sovereign authority exercised by princes and communities who were no longer subject to a feudal suzerain.¹ But the matter turns on the interpretation of two words: 'decus', that is anything that adorns or ornaments - one might translate as 'high esteem', 'honour' or 'glory',² - but which does not unmistakably refer to the authority of the empire; and 'ut' which could be translated legitimately as 'as if' or 'as though'. The sentence may thus be read as an acknowledgement of a current belief, derived from Geoffrey of Monmouth, that English kings wear an imperial crown - which does not commit the writer to the theory of an actual succession to Constantine's throne, particularly as a literal 'translatio imperii' seems to be ruled out by Vergil's statement that the empire did not long remain in Constantine's line. The meaning is, at least, ambiguous. We may compare Vergil's treatment of King Arthur.³ For himself, Vergil says almost nothing; he concentrates entirely on Arthur's fame, and it is a tradition which he likens to the stories that 'ar commonlie noysed of Roland'.⁴ Furthermore he writes in

1 Koebner, Empire, p. 43 ff.

2 Thus the Oxford Latin Dictionary, (8 Fascicles, Oxford in progress).

3 Anglica Historia, p. 57-8.

4 The phrase is from a sixteenth century translation of the Anglica Historia: H. Ellis ed., Polydore Vergil's English History, (London, 1846, Camden Society Vol. XXXVI), p. 121.

language hovering between scepticism and sarcasm. On balance, therefore it seems safer to take Polydore Vergil's accounts of Constantine and Arthur as a guarded gesture of deference to the misguided fancies of his English audience, than as evidence of the nature of the political theories which animated Henry's reformation.

This does not quite dispose of patriotic legends, even if it absolves Polydore Vergil from the charge of writing propaganda for the Henrician Reformation. The Anglica Historia obliquely recognises the force of the popular belief that English Kings were in some way heirs to the glories of a remote past; a less sophisticated, less sceptical exposition of the theory can be found, for instance, in a popular digest of received wisdom, the Chronicon Chronicarum abbrege et mis par descentes et Rondeaulx,¹ which Cromwell begged Stephen Vaughan to obtain for him in Antwerp in 1530.² The work traces the succession of kings, emperors and popes with the help of diagrams and pictures; as far as the early English kings are concerned, it is an abbreviation of Geoffrey of Monmouth's history. It brings out graphically the descent of Arthur from Constantine, but it emphasises too the unfortunate breaks in the line thereafter. The first comes at the accession of the Saxons on the death of Cadwalader, the last Briton to be king,³ and the second at the Norman Conquest.⁴

1 Chronica Chronicarum abbrege et mis par descentes et Rondeaulx, J. Ferrebouc for J. Petit and F. Regnault, Paris, 1521.

2 L.P., IV, 6429; alternatively Vaughan could have been looking for the original and unabridged version, the Liber Cronicarum of Hartmann Schedel, Nuremberg, 1493: see R. J. Schoek, 'The 'Cronica Cronicarum' of Sir Thomas More and Tudor Historians' B.I.H.R., XXXV (1962) p. 84-86.

3 Chronica Chronicarum..., sig. k.

4 Ibid., sig. m.

Now these lapses in the succession from Constantine were not irremediable; the Tudors were able to trace their lineage through Owen Tudor's Welsh ancestry back to Cadwalader, and thence, following Geoffrey of Monmouth's history, to Arthur and Constantine. But though there is evidence of an interest in the distant ancestry of the Tudors in the early years of Henry VII's reign, for instance in some of the genealogies of that period and in the Historia of Bernardus Andreas, it was a brief enthusiasm which faded once the Tudor succession was securely established, and which does not appear to have survived into the reign of Henry VIII.¹ Certainly, no such explanation of lineage was to be found in the Chronica Chronicarum - no more than it was in the genealogies of Henry VIII's reign² or the pages of Polydore Vergil's history. Arthur was remembered, but not principally as the progenitor of the Tudors. Polydore Vergil's assessment of his importance was probably very near the mark: he was the English manifestation of a near-universal type - the patriotic hero whose exploits are indeed legendary.³ It is reasonable, then, to suppose that Norfolk's remarks to Chapuys reflect a popular belief in the renown of the English race, and do not necessarily imply a strict descent of the Kings of England from Constantine.

1 See S. Anglo, 'The British History in Early Tudor Propaganda', Bulletin of the John Rylands Library, Vol. 44 (1961-2), p. 17 - 48, which considerably modifies the earlier views of C.B. Millican, Spenser and the Table Round, (Cambridge, Mass., 1932), and E. Greenlaw, Studies in Spenser's Historical Allegory, (Baltimore, 1932).

2 Anglo, 'The British History...', p. 26.

3 Compare Caxton's eulogy of Arthur as one of the nine worthies of the world - that is as a paragon of chivalry and virtuous deeds, and as a native hero. Prologue to Kyng Arthur, 1485; see W.J.B. Crotch ed., The Prologues and Epilogues of William Caxton, p.92-5.

apparently
 A gatherer of received ideas like Norfolk can be expected to pick up something of whatever is new. We can perhaps find fleeting references in his reported conversations to two ^{apparently} ~~some~~ contradictory lines of thought that were being put forward in government circles. First he told Chapuys in January 1531 that the King had a right of empire in his kingdom and recognised no superior. He spoke in similar terms on another occasion.¹ Phrases such as these have been said to demonstrate a reliance on the definitions of Roman and French jurisprudence,² but one need look no further than Bracton's sentences on the authority of the king, quoted in the paper 'Non est novum' and the 'Collectanea satis copiosa', to find very similar words and ideas, commonplaces of legal language in England. But Norfolk was also anxious to bring to Chapuys' notice the inscription on the seal of Arthur: 'Patricius Arcturus, Britanniae, Galliae, Germaniae, Daciae Imperator',³ which Chapuys took to be a boast of the extent of English dominion, remarking disparagingly that it was a pity that Arthur was not also entitled 'Imperator Asie', as he might have left Henry successor to that vast territory.

this second point
 If Chapuys had understood correctly, Norfolk was near to making 'empire' a matter of an aggregation of kingdoms, rather as in the usual modern sense of the word. Because this clearly does not in itself represent the full meaning of 'empire' in the reformation

1 L.P., V, 805.

2 Koebner, Empire, p. 55 n.2.

3 Koebner, Empire, p. 53 n. suggests that Norfolk was quoting one of Caxton's proofs of the historicity of Arthur in his prologue to Kyng Arthur; see Crotch, Prologues and Epilogues of William Caxton, p. 93.

statutes, it would be easy to dismiss the reference as another meander of the Duke's unchannelled imagination. But some remarkable passages on the 'imperium' of the English crown in the 'Collectanea satis copiosa' suggest that Norfolk may just have caught on to something important. They appear under the head 'Regum Angliae in Walliam Hiberniam et Scotiam ditio' - a curious topic in itself since in general the notes in the collection define the spiritual and temporal function, not the physical limits of the king's power. The first of these passages is an extract from the Liber Custumarum, a compilation of around the end of the thirteenth century. The whole of the unique manuscript of this book belonged once to the City of London, and was kept in the 'book-house' of the Guildhall; it was there, complete, in the reign of Henry V. At the end of the sixteenth century, however, it was noticed that this book was missing from the Guildhall and had been for sometime. Sir Robert Cotton, into whose hands part or all of it had passed, received a number of delegations from the City authorities requesting its return. But by this time the book was no longer in one piece. A section had been extracted, and though the Guildhall managed to recover the greater part of its property, the extracted section evidently remained in Cotton's hands, or was subsequently acquired by him from another source, ^{and} ~~for~~ it ultimately became part of the Cottonian collection at the British Library.¹ The first entry in this detached section of the Liber

1 B.L. MS Claudius D. II fols. 1-135, 269-80. On all this see H.T. Riley ed., Munimenta Gildhallae Londoniensis; Liber Albus, Liber Custumarum et Liber Horn (3 vols. in 4 parts, London, Rolls Series, 1860-1862), II ff, Introduction, p. xvi ff.

Custumarum is also the first of the head 'Regum Angliae in Walliam Hiberniam et Scotiam ditio' in the 'Collectanea satis copiosa'. Subsequent folios of the Liber Custumarum are quoted elsewhere in the 'Collectanea satis copiosa', but also in Foxe's De vera differentia and (it will be argued) in some drafts of the Act of Appeals. It seems beyond reasonable doubt that the extraction of this portion of the book was effected for the furtherance of Henry VIII's political purposes. Why else should the manuscript have been sundered at this page? And how was it that the City authorities allowed it out of their custody at all if not at the insistence of an eager searcher who boasted the authority of the King himself?

~~What was so exciting about this section of the book that Henry's servant should actually tear it out?~~ Here, in what purport to be the laws of Edward the Confessor, but which were in fact a compilation of John's reign ^{drawing} ~~which drew~~ its inspiration and much of its information from Geoffrey of Monmouth,¹ is an unambiguous statement of the imperial status of the English crown, a status derived from, or demonstrated by, its authority over a number of realms:

De numero provinciarum et patriarum et Comitatum et insularum quae de jure spectant et sine dubio pertinent corone et dignitati regni Britanniae scilicet quod modo vocatur Regnum Anglorum in tribus divisorum consuetudineque tres leges dicuntur scilicet Essexenelaga Mircenelaga et Denelaga verum de jure potius appellari potest et debet excellentia illustrissime predictae corone imperium quam

¹ See Walter Ullmann, 'On the influence of Geoffrey of Monmouth in English History' in C. Bauer, L. Boehm & M. Müller eds., Speculum Historiale, München, 1965, p. 257-263, and see below p. 171 n.3.

regnum.¹

The 'crown' is, of course, an ambiguous term, because well before the sixteenth century it had come to reflect the ambiguities of the constitution. When Sir John Fortescue wrote in the fifteenth century of the monarchy's power as 'politicum et regale' he coined a phrase which balanced two accepted political doctrines; English kings were, on the one hand, recipients of power from above, but on the other, ruled by the assent of the community. The Crown, then, had come to be distinguished from the person of the monarch;² it was understood to be a symbol of the imprecisely defined, but recognisable and above all effective political authority of the realm.³ Earlier, however, the crown had been the personal insigne of the monarch, 'representing a body of special rights, 'leges, jura, consuetudines, placita - omnes consuetudines quas rex habere potest''. Thus, to give an illustration, the inheritance of the 'crowns' of both England and Normandy united in one person a body of private rights which far surpassed that enjoyed by any other in those realms.³ Now clearly the evidence for the imperial status of the English crown in the 'Collectanea satis copiosa' is a recital of the feudal and customary rights of the kings of England, and builds on this earlier idea of the 'crown'. Thus the crown can be said not only to be imperial, but, as the laws of Edward the Confessor have it, to be an 'empire'.

1 B.L. MS Claudius D. II fol. 1a; cf. 'Collectanea satis copiosa', Cleo. E. VI, fol. 41b.

2 A distinction between the crown and the person of the king may be found as early as the Declaration of the magnates of 1308: see B. Wilkinson, Constitutional History of England 1216-1319, (3 vols., London, 1948-58), Vol. II, p. 11-13, III.

3 J.E.A. Joliffe, Angevin Kingship, (Second ed., London 1963), p. 19-20.

The argument runs from the personal status of the king to the consequent nature of his crown; in the 'Collectanea satis copiosa' at least, empire is no less an attribute of the king's personal authority than ^{is} his supremacy in spirituals.

This, there is good reason to hold, was both the traditional meaning of empire in the English political vocabulary, and the way it had been used hitherto in Henry VIII's reign. It may be true that 'in the fourteenth century some exponents of the Roman Law concluded that any state which did not acknowledge a superior was an Empire',¹ but Roman law had never been received in England, and when Henry's men wanted legal formulas they quoted Bracton - exactly as one would expect. The sentence of Bracton's that they selected, 'Parem autem non habet rex in regno suo quia par in parem non habet imperium', can only mean that the king possesses 'imperium'. It will be recalled that, at his deposition, Richard II renounced his 'empire' as one of the attributes of his kingship.² Similarly, the most familiar phrase of Bracton on this subject, 'rex superiorem non recognoscens in regno suo est imperator', describes primarily the status of the king, not of his kingdom.

A number of casual references to 'empire' from the early years of Henry VIII's reign have been collected,³ though perhaps not too much should be made of them. Henry at one time maintained in his

1 Elton, England under the Tudors, p. 161.

2 See S.B. Chrimes, English Constitutional Ideas in the Fifteenth Century, (Cambridge, 1936), p. 6; cf. Harriss, 'Medieval Government and Statecraft', p. 10.

3 By Koebner, in 'The Imperial Crown of the Realm'.

navy ships rejoicing under the names 'Henry Imperial' and 'Mary Imperial', a curious use of words which, if it has any significance at all, reflects a young king's pride in the exalted station of his family and himself. William Roper records that in a conversation about the King's book against Luther, More protested that the work's fulsome support of papal authority was imprudent, but Henry replied that he could not allow too much honour to the See of Rome 'for we receaved from that Sea our crowne Imperiall'.¹ One may wonder quite what view of the world Henry held at that time; whatever it was it did not persist, and the book became (though not for reasons More could have foreseen) something of an embarrassment to the government. The immediate interest of the story lies elsewhere, in Henry's assumption that the imperial crown was an honour granted to the king by an outside authority, which excludes the alternative premise that it derived from the sovereignty of the realm. When, in the autumn of 1530, Henry and his ministers began to speak of the King as Emperor and ransacked the Vatican library in search of evidence of his 'auctoritie imperryall', there were, mixed with the revolutionary, traditional - not to say archaic - notions of the king's personal regality. True, there was also talk of the 'consuetudines regni'. The government never managed to assemble much of a case for these, but a careful examination of the evidence it did put forward suggests that the 'consuetudines' derived their force, if not from the canon law principle of provincial independence, then from the king's 'imperium' and the duties of discipline that fell upon him as supreme head of

¹ William Roper, *The Lyfe of Sir Thomas Moore, knyghte*, ed. E. V. Hitchcock, (London, 1935, E.E.T.S., Original Series, No. 197), p. 68.

the church in his realm.¹ Why was the historical evidence for the 'consuetudines regni' so feeble? Was it not that a concept of 'imperium' unrelated to the king's personal prerogatives was alien to the political tradition of the middle ages?

To turn to the second entry under this head in the 'Collectanea satis copiosa': the reference here is 'Ex libro gest. pont. Dunelm', but none of the historians of the church of Durham have a corresponding passage. Either the compiler made a simple mistake, or he possessed perhaps some history of the church of Durham bound up with other works and referred loosely to the whole volume as the 'Liber gestorum pontificum Dunelmensis'. In fact the passage appears to be taken from an historical survey prepared for Edward I in 1301, to accompany the letter of protest to the Pope in the name of the nobility of England, in defence of the King's overlordship of Scotland.² A number of monastic houses which kept historical records were requested to supply evidence for Edward's claim, and the resulting mixture of fact and fantasy³ showed how for centuries - indeed from the remote days of Brutus - English kings had been lords of Scotland and had received homage from the kings of that realm. The text of this survey, together with the letter of the nobility, is included in Rishanger's chronicle, which the compiler of the 'Collectanea satis copiosa'

1 See above, p. 72, 74ff.

2 See above, p. 118.

3 The fantasy of the early English kings coming once again from Geoffrey of Monmouth, via the so called 'Leges Anglorum', which, like the laws of Edward the Confessor, were a compilation of the reign of King John. See Ullmann 'On the influence of Geoffrey of Monmouth in English History'.

certainly knew, and is repeated in Walsingham's Historia.¹ It was thus readily available. It offered apparently impressive confirmation that the authority of the English crown extended over other realms, and that the sum of the king's feudal rights amounted to a right of Empire.² All this is, in effect, to argue with the celebrated opening words of the Act of Appeals that 'by dyvers sundrie olde autentike histories and cronicles it is manifestly declared and expressed that this Realme of Englande is an Impire, and so hath ben accepted in the worlde...'.³

It is worth noticing that Foxe's De vera differentia also contains passages about the claims of the English to Scotland.⁴ At first sight, this material seems as out of place here as in the 'Collectanea satis copiosa'; it breaks into a sustained theological argument. But its relationship to the rest of the book is not really in doubt, and may be compared to that of the opening lines of the preamble to the rest of the Act of Appeals; it describes rather economically the political structure of England within which the royal supremacy works. The English crown, it is claimed, receives

1 H. T. Riley, ed., Willelmi Rishanger, Quondam Monachi S. Albani et Quorundam Anonymorum, Chronica et Annales (London, 1865, Rolls Series), p. 200 ff; H. T. Riley, ed., Thomas Walsingham, Quondam Monachi S. Albani, Historia Anglicana, (2 Vols., London, 1836-44 Rolls Series), I, p. 87 ff.

2 The substantiation of the king's right of empire is taken further by the next entry in the 'Collectanea satis copiosa', Cleo. E. VI, fol. 42a, taken from Walter of Guisborough, C.U.L. MS. Dd.2.5. fol. 232, (cf. Chronicle of Walter of Guisborough, ed. Rothwell, p. 375), recording how the claims to Scotland and Wales were maintained by King and Parliament at Carlisle in 1307.

3 Stat. Realm., III, p. 427.

4 De vera differentia, fol. 58a/b.

tribute from the kings of Scotland and owes it to none. In other words, it has no feudal overlord. It possesses in fact a '*libera praeeminentia*' from remote antiquity. The kings of England, therefore, were not to make answer to any for their powers or possessions, forbidden equally by the nature of their own kingship and by the declared will of Parliament.

There is here, perhaps, not only an echo of the preamble of the Act of Appeals, but a reminder of the claims about the privileges of the kingdom that Henry and his ministers were making in the autumn of 1530. '*Reges Angliae de statu regni coram nullo litigare coguntur*' Foxe wrote in the margin of his work¹ - just the kind of statement that had seemed so rash four years earlier.² Now, in the *De vera differentia*, as in the '*Collectanea satis copiosa*', it was hedged around by two stronger theological arguments - the principle of provincial independence and a long exposition of the spiritual supremacy of a secular prince, more especially English kings. Now these principles were an essential part of Foxe's argument that the jurisdictional immunity of an English king extended even to spiritual causes. While the evidence that he gives of the king's authority in Scotland extends only to rights over temporalities, it follows hard upon Foxe's confident and indeed central assertion that the secular prince does have authority '*in rebus sacris: vel divina concessione, vel humanae permissione*'.³ Henry's error in the autumn of 1530 had

1 *De vera differentia*, fol. 58b.

2 See above, p.68ff

3 *De vera differentia*, fol. 34a.

been to proclaim the privileges of his kingdom without Foxe's all-important gloss; naturally those to whom he addressed his remarks, both in England and at Rome, who were accustomed to accept the absolute prerogative of a king in temporals, but no more, were bemused and unimpressed. But Henry soon made good his mistake, explaining that his privilege was dependent on wider principles, hinting in fact at precisely those that are expounded by Foxe in the De vera differentia and the 'Collectanea satis copiosa'.¹ In much the same way, the preamble of the Act of Appeals combines secular empire with spiritual supremacy and provincial self-determination; if it were not so, all the brave talk of 'empire' in the Act, and indeed on the King's own lips, would have been no more than 'resounding verbiage'.²

A number of plausible conclusions may be drawn from all this. Henry, no less than Norfolk, was a catcher of straws in the wind, and what he heard and repeated in a slightly less than coherent version was Foxe's carefully documented theories of Church and State. Secondly, there existed as early as 1530 the germ, at least, of a theory of 'empire' to which the King's first ill-chosen words about the privileges of the kingdom were quite closely related.

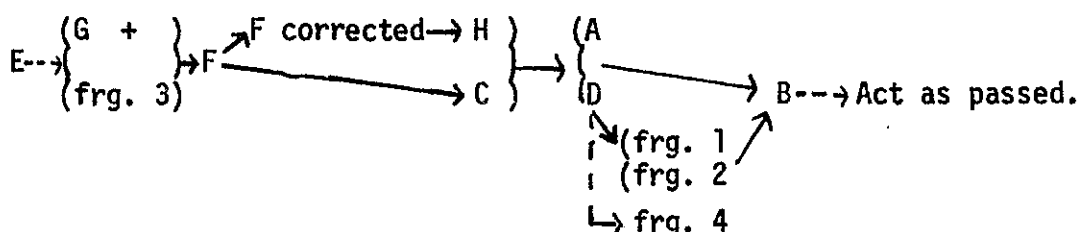
It appears moreover that the empire idea of 1530 was remarkably similar to the empire theory of the Act of Appeals. Fortunately we

1 L.P., IV, 6667; see above, p. 71 ff

2 This is the verdict on the preamble of G. L. Harriss, 'A Revolution in Tudor History?', p. 88, who does not see the process which rid the idea of 'Empire' of its limitation to temporals.

can assess the contribution of Foxe's ideas to the Act quite precisely by studying a number of surviving drafts of the bill. Some of these are corrected by Cromwell, the King and others. They tell us much about the origins and development of this important legislation.¹ We do not possess the first draft of the bill. The earliest of the eight drafts and four fragments which survives is evidently a fair copy of a still earlier version: there was a word that the clerk who transcribed it could not read, and he left a blank which was filled by whoever went over the text correcting the grammar and minor mistakes.² Nevertheless this draft is probably from an early stage in the evolution of the bill, being marked by an extreme prolixity and repetitiousness which later revisions moderated. It is not, moreover, written on the large sheets of paper used for all the other drafts. Nor is it corrected by Cromwell; indeed it contains a

1 The drafts have been studied by G.R. Elton, 'The Evolution of a Reformation Statute', E.H.R., LXIV (1949), p. 174-197. I have adopted his system of lettering the drafts, as follows: A: SP2/N, fols. 32-44; B: *ibid.*, fols. 45-54; C: *ibid.*, fols. 55-65; D: *ibid.*, fols. 66-74, 76-7; E: *ibid.*, fols. 78-90; F: *ibid.*, fols. 91-102; G: *ibid.*, fols. 103-8; H: B.L. MS. Cleopatra E. VI, fols. 179-202; fragment 1: SP2/N fols. 109-111; frg. 2: *ibid.*, fols. 112-113; frg. 3: SP2/Q fol. 137; frg. 4: SP2/N fols. 75-6. Elton expresses the sequence of revision thus, (a broken line indicating where a 'word-for word demonstration of descent is not possible, but where the sequence is established beyond doubt by a comparison of individual passages and the general tenor'):



This seems to me to be correct, and in general in what follows the extent to which I rely on Elton's reconstruction of the process of revision will be apparent. The interpretation of those revisions is nevertheless my own.

Prof. Elton has drawn my attention to the existence of a further draft, P.R.O. E. 175/8 which he places between draft B and the

Continued

number of important ideas that, to judge from his corrections elsewhere, Cromwell consistently opposed. In tone and content the bill differs considerably at this early stage from the act as it was passed, with the marks of Cromwell's involvement very much upon it. Nevertheless, the language of this draft may be thought similar to Cromwell's style, particularly in the persistent and needless elaboration of words such as '... so that no wordely (sic) lawes ordinauncis or auctorite ... was practiced experimented or put in execucion ...'.¹ Possibly at this stage in the bill's development Cromwell had some hand in the drafting, but principally as one who knew how to give political effect to the theories of others - as a parliamentary manager, but not as an omniscient minister.

This early draft begins with the appeal to the authority of 'dyvers sundry old autentike storyes and cronicles',² an opening which survived all subsequent revisions and passed into the Act. The chronicles declare first that England is an Empire. It has been suggested already that the unspecified historical evidence could well have been the collection of extracts from the chronicles made by Edward I in support of his claims in Scotland and the extract from the Liber Custumarum; but this by no means exhausts the number of statements in this draft preamble which have their origin in 'old autentike storyes and cronicles'. The sense and the grammar is ambiguous, but a large part of the preamble, which speaks of the laws and practices of the realm in a past tense, probably derives

1 SP2 / N, fol. 79.

2 Ibid., fol. 78.

Continued from previous page:

Act as passed: see G.R. Elton, Studies in Tudor and Stuart Politics and Government (2 vols., Cambridge, 1974) II p. 105n.

2 SP2/N fol. 85

its force from this opening phrase. A section which survived until the final revision¹ asserts that the kings of England were, in epistles sent from the 'sea apostolik', reputed the vicars of God in their kingdom, and in times past exercised their authority to make laws and ordinances in matters spiritual and temporal, consonant to the laws of God. This seems a clear enough reference to the letter of Pope Eleutherus to King Lucius, found, significantly, in the detached portion of the Guildhall's Liber Custumarum, and quoted a number of times in the 'Collectanea satis copiosa'. This fabrication of John's reign is supposedly the reply to a letter which (according to an older tradition) Lucius wrote to Eleutherus, requesting a mission to convert the realm:²

Petistis a nobis leges Romanas et Caesaris vobis transmitti, quibus in regno Britanniae uti voluistis. Leges Romanas et Caesaris semper reprobare possimus, legem Dei nequaquam. Suscepistis enim nuper, miseratione summa, in regno Britanniae legem et fidem Christi. Habetis penes vos in regno utramque paginam ex illis, Dei gratia. Per consilium regni vestri sume legem, et per illam de patientia vestrum rege Britanniae regnum. Vicarius vero Dei estis in regno...'³

1 Ibid., fols. 78-79; see Elton, 'The Evolution of a Reformation Statute', p. 184.

2 The story of Lucius' letter to Eleutherus originated apparently in a late recension of the Liber pontificalis, the Catalogus Pontificum Romanorum of c. 530. Thereafter it was repeated by Bede, Nennius and Geoffrey of Monmouth: see A. W. Haddan and W. Stubbs, eds., Councils and Ecclesiastical Documents Relating to Great Britain and Ireland, (3 vols., Oxford, 1869-78), I, p. 24-26.

3 Claudius D. II fols. 32a - 33a, Cleo. E. VI, fols. 27a-b, 35a etc. This reply to Lucius' letter is again part of the 'Laws of Edward the Confessor'. The phrase 'consilium regni' perhaps calls for some comment. These laws, so called, were apparently Continued

The draft preamble then pursues the claim that such powers were indeed exercised by kings of England:

'So that no wordely lawes ordinauncis iurisdicion or auctoritie of any person at the begynnyng of the catholik faith nor long after was practised experimented or put in execution within the same (realm) but such as was deryved and depended of the Imperiall crown of this realme'.

The Liber Custumarum, in the folios preceding the letter of Eleutherus, recites at length the laws of sundry pre-Conquest kings - Ina, Aluredus or Ethelred, Aethelstan, Canute and others¹ which might be construed to demonstrate that point. These are not quoted in the 'Collectanea satis copiosa', but they are rehearsed in Foxe's De vera differentia, suggesting strongly that Foxe was closely involved with the ideas in this early draft.² Indeed, in his book, Foxe introduces his little history of royal legislation in spiritual matters in England with words which might have stood well at this place in the draft preamble of the Act of Appeals:

Si in exemplis versari libet, constabit plane, reges Angliae imperatoris privilegiis regnum moderantes, curam sibi assumpsisse: ut de sacrorum et spiritualium observantes populo praescriberent.³

fabricated as part of an attempt to restrict the rule of King John. The expression 'consilium regni' in fact found its way into article 12 of Magna Carta. (See Ullmann 'On the influence of Geoffrey of Monmouth, p. 261). It clearly did not refer to Parliament. The preamble of the draft Act of Appeals (draft 'E') speaks of the King's right to legislate as vicar of God without mention of the participation of Parliament or of a Council. Evidently then the compiler of this draft conveniently ignored the original intention to restrict the king and certainly did not understand the passage as giving legislative rights to Parliament.

1 Claudius D. II, fols. 2a - 24b.

2 De vera differentia, fols. 48a-50a. This is followed, fol. 50a/b, by the letter of Eleutherus.

3 Ibid., fol. 48a.

This is the essence of the historical argument of this draft preamble; it looks back consciously to an ancient (and therefore pure) ideal of a personal royal supremacy protected from foreign usurpation by the king's imperial rights. It is, of course, said to be a divinely ordained supremacy; but the reconstruction of the distant past, of 'the begynnyng of the catholik faith', as the preamble has it, allows the relationship of king and Church to be examined in a quasi-historical manner, and seems indeed to lend the weight of early Christian tradition to the Henrician interpretation of church government.

In this early draft, all jurisdictional authority is described as 'deryved and depended of the Imperiall crown of this realme', but in the final revision of the Act, as is now well known,¹ such words were suppressed wherever they had occurred. It ought not to be assumed, however, that the dependence of the spiritual jurisdiction from the king or the imperial crown is entirely abandoned. The statute ascribes to the king the authority, instituted by God, to render justice in all manner of causes arising within the bounds of the realm. ~~On the face of it,~~ Such an all-encompassing authority would seem to include spiritual jurisdiction, and to be scarcely less than that exercised, according to the early draft preamble E, by the first Christian kings in England. The Act then speaks of the knowledge, integrity and sufficiency of the English church to fulfil all the offices of the spirituality 'without the intermeddling of any exterior person or persons'. One recent interpretation takes

substantively
 Christian power
 interpretation
 offices of spirituality
 = God given offices
 of spirituality

¹ See Elton, 'The Evolution of a Reformation Statute', p. 184.

this to be a claim for, after all, 'a traditional jurisdictional autonomy for the English church' and as proof that the opening flourishes of the Act, the talk of Empire and the authority of the supreme head, were strictly irrelevant to the content of the Act, employed in a propagandist fashion, simply because 'its emotive force was more important than its technical limitations'.¹ We should remember the purpose of the Act, however. It was to prevent appeal to a foreign court. The sufficiency of the English church was primarily its ability to render justice without recourse to Rome; the King of England was no 'exterior person', but the supreme head - as the first line of the Act declares, as the clergy had agreed in 1531 and 1532. The independence of each province of the church - for this is what the sufficiency of the English church amounts to - was in no way incompatible, in Henry's book, with the spiritual supremacy of a Christian prince.

In the preamble to the Act, some seemingly casual words follow:

For the due admynystracion whereof (of the spiritual jurisdiction) and to kepe them frome corruption and synystre affection the kinges moost noble progenitours, and the antecessours of the Nobles of this Realme, have sufficiently endowed the said Chunche both with honour and possessions.

These phrases have an important history. In the 'Collectanea satis copiosa' the goods of the church are a major preoccupation. The compiler's references suggest not only that the munificence of kings and nobles is the origin of all ecclesiastical endowment, but that the transfer of goods has a rôle in the devolution of God-given

¹ Harriss, 'Medieval Government and Statecraft', p. 11-12.

powers from the prince to the clergy.¹ A prince may, if he chooses, transfer part of his lands and goods to the spirituality, and with them certain rights of coercive jurisdiction. But these rights remain inalienably in the prince's possession, and he may resume them at will; in the meantime the clergy exercise them in his name as his legitimate deputies. It may be that such an interpretation of the endowment of the Church explains a correction made by Henry to a draft of the Act of Appeals. Cromwell, correcting an early draft,² had amplified a statement of the basis of ecclesiastical jurisdiction in certain matters by the addition of the words 'the grauntes of the Kynges most noble progenytors'. The King struck this phrase out,³ so that such jurisdiction had its origin only in the 'goodenes and long sufferance of princes of this realme and by the lawez and customes of the Same', a reading which made it clear that the Crown had not transferred its rights irrevocably. More importantly perhaps, this interpretation of the preamble makes it possible to reconcile the seemingly contradictory ideas within it - the divinely ordained 'plenary hole and entier power' of the King, with a Church 'sufficient and mete of itself', and both with the endowment of the Church for the 'due admynystacion' of spiritual jurisdiction.

Why then, if there was no substantial retreat from the

1 See, for example, Cleo. E. VI, fol. 80a/b; and see above, p. 83-4

2 SP2/N fol. 94; Elton's draft F: see 'The Evolution of a Reformation Statute', p. 183.

3 In Elton's draft H, Cleopatra E. VI, fols. 189-90.

principles of the earliest draft, were a number of explicit statements of the dependence of spiritual jurisdiction on the Crown, of the king's position as vicar of God, of past royal legislation in matters spiritual removed from the Act? We know that at a stage before the final revision, the government had considered the bill ready for Parliament. We know too that just after the new session of Parliament had opened, on 5 February 1533, a meeting of leading churchmen and lawyers was convened by one of the King's council, probably Cromwell. It has been suggested that at this meeting criticisms of the bill were voiced that caused Cromwell to make further revisions, thus delaying the introduction of the bill in Parliament until the following month; this is said to account for the removal from the bill of the explicit claims for the royal origin of the spirituality's jurisdiction, and for the substitution of the archbishop's court or convocation as the final court of appeal in place of a commission appointed by the King.¹

Unfortunately, our direct knowledge of the purpose and proceedings of this meeting is fragmentary, imprecise and possibly misleading, being only Chapuys' hearsay report. He told Catherine in a letter that the discussion had been of the divorce, that certain papers had been examined and the conclusion reached that the King should seek a release from his marriage by the authority of the Archbishop of Canterbury.² There is thus the possibility, but no

1 Elton, 'The Evolution of a Reformation Statute', p. 187-192, offers this explanation for the final revision of the bill.

2 L.P., VI, 142.

certain proof, that the final amendments of the bill were proposed on this occasion. There is, however, a list of 'names of certain byshopes and abbotes' from Cromwell's papers which, in all probability, records who were present at the meeting.¹ If so, this was, for the most part, a gathering of loyal political servants of the Crown, many of whom had been active in the campaign for the King's divorce; it would be altogether surprising if such a group had refrained from discussing the bill in restraint of appeals. Yet it is hard to believe that such as Cranmer, Longland, Foxe, Oliver, Tregonwell and Rowland Lee, if they had doubts about the bill, really regretted the high authority ascribed to the King. At most, one could imagine them advising such changes for expediency's sake.

Further doubts about the role of this meeting in the making of the Act are raised by the process of revision itself, insofar as it can be reconstructed from the surviving drafts. The first attempt to tone down the claims about the authority of the Crown occurred well before the final revision of the bill. In draft F a number of important passages were marked for omission: firstly phrases which claimed that the law administered in spiritual courts derived from the king's authority,² secondly a defence of the makers of the new law against a possible charge of heresy,³ and finally words which claimed for the English church the correction of sins, that is the right to judge purely spiritual causes, especially heresy,

1 SP1 / 74, fol. 170; L.P., VI, 150. See Elton, 'Evolution of a Reformation Statute', p. 185.

2 SP2 / N fol. 92 & ff

3 Ibid., fols. 92 - 94.

independently.¹ These cancellations were very probably Cromwell's work, for other revisions to this draft which tend to moderate the high claims for royal authority, are in his hand. At first these cancellations were rejected. The King himself restored the explicit statement of the derivation of spiritual jurisdiction from the imperial crown at the next stage in the revision of the bill;² the other proposed omissions reappeared too after the King had perused the bill.³ Thus all the major changes to be found in the final revision of the bill, (leaving the proposed course of appeals aside, for a moment), are foreshadowed earlier. Someone - almost certainly Cromwell - had doubts about the form of the bill from the beginning. He had, perhaps significantly, taken exception to the term 'Empire' already, striking it out from a draft of the Supplication of the Commons, where it first appeared;⁴ and in the final version of the Supplication, references to the king's 'Imperiall jurisdiction' are suppressed.⁵ And, we may surmise, Cromwell's first draft of a bill for a 'parliamentary' submission of the clergy hedged about the King's personal legislative authority with the requirement of parliamentary consent.⁶ Cromwell, we need not doubt, had strong and

1 Ibid., fol. 94.

2 Cleopatra E. VI, fol. 185; Elton's draft H.

3 The passages which spoke of the king as vicar of God etc., and of the correction of sins were not omitted in subsequent drafts and survived until the final revision, i.e. the revision of draft A. The defence against charges of heresy reappears in draft C, SP2 / N, fols. 57-58.

4 See Elton, 'The Commons Supplication of 1532', p. 522n. Prof. Elton doubts whether the appearance of imperial ideas in the Supplication can be ascribed to Cromwell's influence, as A. Ogle, The Tragedy of the Lollards' Tower: the case of Richard Hunne

coherent ideas of what needed to be done, but the obstacle to their implementation was not, primarily at least, the protests of affronted lawyers and divines, but the attachment of some members of the Council, which Henry apparently shared, to a thorough-going theory of royal supremacy and imperial prerogatives.

In the earliest surviving draft, there is no mention of the course of appeals through the courts, but in the second¹ it is proposed that a case should pass from the archdeacon's court to the bishop's, thence to the Archbishop's court and finally to the determination of a commission of 'Indifferente Iudges' appointed by the King himself. This is an arrangement in keeping with the high authority ascribed to the king's prerogatives elsewhere in the bill at this early stage. It is interesting to note that the original brief apology for the establishment of such an order speaks of 'the greate lycens to lyve in libydine and Syn whiche at this houre & time is uncorrected within this Realme by reason of Appeles dayly Sued to the sayd See of Rome'. This, which can really only refer to appeals in cases of matrimony, is exactly the complaint raised by St. Bernard and cited by the King in the autumn of 1530.² But whence

with its Aftermath in the Reformation Parliament 1529-32, (Oxford, 1949), p. 312, supposes.

5 See Koebner, 'The Imperial Crown of this Realm', p. 43.

6 See above, p. 137 n.

1 Draft G. SP2 / N, fol. 107.

2 See above, p. 103ff.

did the proposed order of appeals itself come? Once more the government was ready with chapter and verse. Indeed there is nothing in the early drafts of the Act of Appeals that could not be supported with prepared argument. Perhaps the draughtsman appreciated that Parliament was most likely to demand proof of all the startling and esoteric assertions of the bill; and he would certainly have to convince the King. The evidence of early church practice in appeals is to be found near to the end of the notes made for the Glasse of the Truthe.¹ That matter relating to the Act of Appeals should be found there can hardly be a surprise. One presumes that by the time it was published, probably some time in the late summer of 1532, work had begun on schemes to reserve the case to judgement in England by means of a declaratory statute. The tract itself hints that this is the way forward:

'Marry I think that the way might be found well enough,
if the whole head and body would set their wits and good
will unto it'.²

But the tract is not quite explicit about the course that appeals should follow through the courts. Its suggestion that '...the king's highness and his parliament should earnestly press the metropolitans of this realm... to set an end shortly in this',³ suggests the writer still had in mind a proposal for a bill to submit the divorce to the Metropolitans; a draft of such a bill survives,⁴ and reads like a

1 'Collectanea satis copiosa', Cleo. E. VI, fols. 108a ff.

2 Pocock, Records of the Reformation, I, p. 418.

3 Ibid.

4 SP2 / N fols. 155-162; L.P., VI, 311(4). C.f. the draft bill setting out that Convocation had declared Henry's marriage illegal and enabling him to marry again: SP2/N, fols. 163 ff; L.P., VI, 311(5).

fore-runner of the Act of Appeals. This is how the government's intentions probably stood at the publication of the Glasse of the Truthe: for a limited enactment to declare the right of the archbishop's court to judge the King's case. But more precise references to an order of appeals appear at the end of the notes for the Glasse of the Truthe. There is no mention of ecclesiastical jurisdiction below a bishop's court, simply, one suspects, because that was not where the doubts on the matter lay. The compiler was looking for the tradition of the Church, not in a disinterested spirit exactly, but for once without suppressing all evidence which did not support a single preconceived position. His first impulse, we may assume, was to prove that spiritual causes should terminate in the king's court. He proposed, in outline at least, the order of appeals as it first appears in the drafts of the Act of Appeals - from bishop to Metropolitan to King. But the evidence for this was far from compelling. Two canons from the Pseudo-Isidorean decretals are more impressive when paraphrased in the 'Collectanea satis copiosa' than in the full text. The first in particular - if the marginal reference is correct¹ - is so grossly misrepresented that the sense is quite reversed. The primary intention of both these canons is to protect the authority of ecclesiastical jurisdiction against those who appealed to the secular authorities. The one instance of a successful appeal to the secular power cited here

1 The reference is to the eighth Council of Toledo (as numbered in the Pseudo-Isidorean decretals). If this is correct, and there must be some doubt that it is, it can only refer to canon X. The second passage is an edited version of canon IX of the Council of Calcedon.

- that of Cyril, bishop of Jerusalem, whose case was heard by the Emperor Constantius after he had been condemned and deposed - is rendered of no account by the accompanying remark by the historian Socrates:

Hoc itaque solus & primus preter ecclesiasticam regulam
Cyrillus fecit episcopus: ut sicut in publicis iudiciis
libellis uteretur appellatoriis.¹

So in the end, the case for the royal oversight of appeals rested on no firmer tradition than the provisions of the Constitutions of Clarendon;² Foxe, who takes upon himself to defend this principle in his De vera differentia, rehearses the relevant chapter of the Constitutions, and still has nothing more to offer.³ The extreme fragility of the case must have been apparent to the government. It wavered and drew back for the moment, though in 1534, with the divorce out of the way, it quietly restored the last word in appeals to the king.⁴

There is support, in these notes on appeals, for an alternative scheme for the resolution of the King's matrimonial problem, one that was certainly discussed before the government proceeded with the bill to restrain appeals. It was embodied in draft legislation.⁵ The

1 Historia Tripartita, lib. 5 cap. 34; Cleo. E. VI, fol. 108b.

2 Quoted in the 'Collectanea satis copiosa', Cleo. E. VI, fol. 40a.

3 De vera differentia, fols. 47b-48a. See W. Stubbs, Select Charters, (9th ed., revised by H.W.C. Davis, Oxford, 1913), p. 161 ff, esp. 'Caput viii: De appellationibus si emerint'.

4 The Act for the Submission of the Clergy (25 Henry VIII, c. 19) provided that an appeal could be taken from the archbishop's court, where it rested finally according to the provisions of the Act of Appeals, to the king in Chancery, whereupon a commission would be appointed by the king under the great seal.

5 SP2 / N, fols. 163-4; (L.P., VI, 311 (5)).

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case was to be referred to Convocation - probably only to the upper house - for a final decision. The Act of Parliament would follow, but only to confirm that Convocation had sufficient authority to give judgement, and to set up penalties against any who by 'actuell dede' sought to subvert the consequences of the settlement, principally the succession. The references under the head 'Concilii provincialis potestas et iurisdictio'¹ in the 'Collectanea satis copiosa' give support to the principle implied in such a scheme. They follow lines of argument that were by now fairly well worn: the old tradition of Nicaea, recently reasserted (such seems to be the implication) by the Council of Constance when it bound a future pope to reform the abuses of appeals to Rome.²

But the government laid aside this approach for the broader and more tendentious formulas of the early versions of the Act of Appeals. Since it was intended that the Act should assert unequivocally the jurisdictional supremacy of the king, it served the cause of consistency to allow the right of the king's commission to hear the final appeal. Throughout the long process of revision of the drafts, these two principles stood or were struck out together.

Cromwell, having resisted over-large claims for the royal prerogative in the preamble to the Act, resisted them too in the proposed order of appeals. From the draft from which he first struck out the derivation of the spiritual jurisdiction from the king's imperial crown, he also removed all mention of appeals from

1 Cleo. E. VI, fol. 108b.

2 Council of Constance, session 40; Merlin, Conciliorum... Tomus, 1530, II, fols. CXXIXb - CXXXa.

the archbishop's court to the king's commission.¹ He proposed instead that in cases concerning the king an appeal could be heard by the next provincial council, which is to say by Convocation; in all other cases there was to be no appeal from the judgement of the archbishop's court.² But these changes suggested by Cromwell were not adopted, at least not immediately. Just as Cromwell's other alterations to this draft were rejected when the King scrutinised the text, so Cromwell's proposed order of appeals was modified in the interests of the royal prerogative at the same stage, though in this instance by Cromwell's own interlineation.³ There seems every likelihood that this revision, which partially restores the process Cromwell had earlier rejected, was forced upon him by Henry, who was now accustomed to hear himself described as God's deputy on earth. The result was that in cases which concerned only subjects the King regained the final word; there was a small change too in the process in cases which touched the king's person: the final court of appeal was now to be the upper house of Convocation. Thus the proposed course of appeals once more confirmed the royal derivation of spiritual jurisdiction, in keeping with the changes in the rest of the draft, but avoided the obvious injustice of allowing the king to appoint judges in his own cause.

This was still not the order contained in the bill presented to

1 Draft F: SP2 / N, fols. 100-102.

2 Ibid., fol. 101a: this is a sheet added by Cromwell, on which he set out the new procedure.

3 Draft H: Cleo. E. VI, fol. 202.

Parliament. In the final stages of revision all mention of the king's commission was removed, so that in cases which did not concern the king, the archbishop's court was the court of last appeal, just as it had been in Cromwell's first revision of the clause. If we take it that Cromwell was reluctant from the start to overstate the authority of the king, the omission of the king's commission was a victory for him. So, in all probability, was the comparatively moderate language of the preamble. But how was that victory achieved? Unfortunately there is little direct evidence of the final process of revision which took place after the bill had seemed ready.¹ Three fragments² of drafts show how the order of appeals was further revised,³ but not the preamble or other clauses of the bill. Cromwell, in a revision to draft D, introduced the stipulation that the king's commission should consist of 'spirituall lerned persones, whereof on at the lest to be a bushop'.⁴ The provision seems designed to meet a charge that the jurisdiction of the English Church was not free from influence from above. Any uncertainty on that score would be bound to throw doubt on the decision about to be given on the King's divorce. || This must surely have been a prospect most unwelcome to a government which, with Henry's over-hasty marriage to Anne Boleyn solemnised in secret on 25 January, desperately needed a swift and

1 I.e. the process which turned drafts A & D into the bill as presented to Parliament, draft B.

2 Fragments 1, 2 and 4.

3 See Elton, 'The Evolution of a Reformation Statute', p. 187-8; Elton argues, p. 176 and n., that the matter of fragment 4 and the hand of fragment 2 suggest outside influence at work.

4 SP 2 / N, fol. 74

sure resolution of the King's case. Nor could the government afford to stir up once more the volume of opposition that had met its bill to restrain annates. Cromwell had already tried to make the bill a little more attractive to Parliament by spelling out the 'dyvers and sondry inconvynences' - the costs and delays especially - which the existing system engendered. He had appealed, in other words, beyond abstract principles of theology and political theory to the Commons' self-interest.¹ But more importantly, he had sought all along to moderate the inflated claims for the king's prerogative, and (as we shall see),² sought to remove the weight of contentious theological abstractions which added nothing to the effect of the bill. Prudence was on Cromwell's side. Could it be that the leading lawyers and divines that he assembled a few days after the King's wedding were now ready to be convinced of the need for both speed and caution, for a bill which played down matters which could prove unnecessarily controversial? Somehow, before the measure was introduced in the Commons on 14 March,³ the king was persuaded to accept significant modification of the terms in which his powers were described, the very ones that he had previously resisted. Was the weight of learned and undeniably loyal advice now enough to change his mind and secure the victory for Cromwell's policy?

If the King did not give up any fundamental principles as a

1 The point was well judged, for, according to Chapuys, the principal opposition to the bill in the Commons stemmed from the fear of monetary loss through retaliatory action by Catholic princes against English trade: L.P., VI, 296.

2 See below, p.200 ff.

3 Lehmborg, Reformation Parliament, p. 174.

result of all these revisions, the bill presented to Parliament did at least appear rather different from the earliest draft, which was the important thing. And indeed there was an important difference of emphasis. What had begun as a carefully constructed, largely theological, apology for the resumption of an attribute of the royal supremacy, became a political document that skirted around the theological implications of its provisions. The change is best illustrated by comparing parts of the earliest and final drafts. Draft E refers frequently to the papacy, calling it always the 'see apostolic'; in contrast to the final version of the Act which has almost nothing to say on the matter, it discusses the failings and usurpations of Rome for about a quarter of its length. This is propaganda, of course, being a highly-charged statement of the alleged abuses the bill was to rectify, and it dwells on the lurid and the scandalous. For all that, these accusations are important evidence of Foxe's attitude to the papacy, for he was not given to loose gibes that he could not substantiate; the implications of these comments will be mentioned later.¹ But when the censure is done, the pope still is in some sense the leader of Christendom. The preamble looks back to the pope's 'good predecessours which nothing els desired but the advauncement of the lawes of god thencrease of the catholik faithe and of vertue good example and good life in the people'.² This conception of the papacy probably still leans heavily on the mildly conciliarist ideas expressed in the

1 See below, p. 249ff.

2 Draft E, SP2/N, fol. 81.

Glasse of the Truthe, that the pope was first the minister of the Church; there is the same sense there of the need for a return to the ancient forms. In a similar way, the '*Collectanea satis copiosa*' harks back repeatedly to the less corrupt state of the Church in the days of Silvester and Gregory when bishops quietly devoted themselves to their pastoral cures, and popes eschewed the great exactions and worldly estate of their successors. The Roman see, it appears, enjoyed then a primacy of honour because the purity of its doctrine and the virtue of its bishops commanded universal respect.

By contrast, the final version of the Act of Appeals offers none of this possibly gratuitous comment on the decay of apostolic purity at Rome. The invective has gone. The complaints of the Act against Rome are strictly limited to its political interference in the realm. Appeals to Rome and the attendant costs and delays are now nuisances which King and Parliament are minded to disallow, not betrayals of the ancient faith and tradition of Christendom. There is no hint that a religious reformation is needed, or implied in the Act; The Act proceeds to suggest a political solution; it implies that the new restrictions are only an extension and necessary revision of existing parliamentary law protecting the integrity of the imperial crown. Now this was patently a falsehood, for the anti-papal legislation referred to in the preamble amounted to no more than an attack on certain specified activities of the papacy in England, especially its exercise of patronage, and did not touch on the wider proposal, now on hand, to ban all appeals to Rome.¹ But this stretch of the

¹ See Ogle, *The Tragedy of the Lollard s' Tower*, p. 358-9, and Elton, '*The Evolution of a Reformation Statute*', p. 196.

historical imagination points to the working of the legislator's mind. The newly-risen dangers are said to be 'not provyded for playnly by the sayde former actes';¹ the phrase is Cromwell's interlineation, showing clearly whose idea it was to associate the new measures with the old. This was a device for glossing over the enormous theological implications of the Act that the earlier drafts had met head on. For the purposes of the Act, the see or court of Rome - such are the titles now employed - is indistinguishable from any other foreign power whose political ambitions were a threat to national sovereignty. //

Rewrite
to join
up

With so much of its theological presuppositions pruned away, ~~there was no need for the defence against possible accusations of heresy.~~ The passage, which Cromwell had marked for omission once before, only, it seems, to be frustrated by the King's adherence to the forms and ideas of the early drafts, disappeared in the final revision.² Another revealing change at this point, was the omission of the 'correccions of synnes' from the list of causes reserved to the jurisdiction of the spiritual courts of the realm. It has been pointed out that when the King sent Benet and Carne to search the registers in Rome, he asked them to find evidence that the kings of England were not subject to papal jurisdiction except in matters of heresy, and that Norfolk, in his long outburst to Chapuys in January

1 Draft C, SP2/N fol. 58

2 The passage was crossed out in draft F, but was retained in the following drafts until the final revision. Elton, 'The Evolution of a Reformation Statute', p. 182, suggests that Henry probably insisted on its restoration after reading draft H which lacked it.

1531, also suggested heresy was the one cause that the pope could judge.¹ There is good reason to doubt, however, whether either of these pronouncements represented the mainstream of the government's thinking. At the time of the first, the search for material relating to the rights of the king and kingdom had only just got under way, and nothing in Norfolk's rambling speech is really to be relied upon. In fact, from about the beginning of 1530, Henry seems to have made a point of emphasising his duty to repress heresy, condemning heretical books, promising action against Lutheranism, presiding over the trial of Edward Crome.² By this time Henry's scholars were already marshalling their evidence for the Royal Supremacy and the King can hardly have been unaware of their findings. It is clear that they did not intend to concede the judgement of heresy to Rome; on the contrary, they made much, in their definitions of the office of the prince, of the association of early Christian emperors with reformers and reforming councils of the Church. Henry's apologists could point to the undoubtedly genuine tradition of secular rulers who exercised considerable theocratic authority in both parts of the Empire in the centuries after Constantine. It could be shown, from sources readily available in the sixteenth century, that part of the emperor's charge was understood to be the maintenance of true forms of worship, and that he could legitimately use force to that end. Heresy, in those circumstances, was a challenge not only to the authority of the emperor, but also to fundamental preconceptions of

1 Scarisbrick, Henry VIII, p. 315 and n. 3.

2 See above, p. 120-21, 128-29

the purpose and origin of the state. The Henrician royal supremacy, being modelled from the first on an idealised picture of the past, was bound to share something of this; and where, in the early drafts of the Act of Appeals, the king's supremacy is stressed, it is to be expected that he should be called the vicar of God, and that it should be claimed that in establishing the forms of religion in his realm, and correcting sin, he was discharging the divinely-ordained duties of his kingship.¹

If Henry's revisions of the bill seem to uphold such principles, Cromwell's tend to remove explicit claims about the religious powers of the supreme head. In the earliest surviving draft, the causes reserved to the jurisdiction of the imperial crown are not specified, but only, it seems, because it was intended to allow no exception to the rule of judgement within the realm:

... all causes aswell spirituall as temporall and myxt...
shall have their full proces examynacion fynall and diffinytif
sentens and determynacion within the precinctys of the imp-
eriall crowne of this realme...²

A list of causes first appears in draft F, but the correction of sins is immediately marked for omission, along with much else which elaborates the spiritual authority of the king. For some reason this intended cancellation was ignored in the following drafts, and the

1 For the evidence, collected by Henry's men, of imperial authority being used to enforce the faith and extirpate heresy, see 'Collectanea satis copiosa', Cleo. E. VI, fols. 185 - 21b. C.f. the letter of Sir Thomas Denys to Cromwell, 21 January 1538, (L.P., XIII, 120). Denys was attempting to exonerate himself from the suspicion of being a papist; he says that Cromwell himself, three years earlier had bid him read in Bracton that the king was 'vicarius dei', 'wherefore I do rekyn a papiste and a traitour to be one thing'.

2 Draft E, fol. 87-8.

phrase is retained in the draft which Henry saw and corrected. It is possible that the retention was at Henry's own command, though we can not be sure; in any case, the King tacitly accepted that his royal jurisdiction extended to purely spiritual causes. But once again, in the final revision moderation and political good sense triumphed, and this and many another contentious claim were removed before Parliament was asked to consider a measure that, by virtue of careful framing, purported to put an end to foreign jurisdiction only where it was the cause of frustrations and delays to the King's subjects in their temporal affairs.

[// It can, perhaps, be said that the changes which were made in the bill between its first and final form amount to a victory for one political and religious philosophy over another. One opinion, with which we have identified Edward Foxe, held the king to be the source of all authority, be it political or spiritual. // The Act of Appeals, in its early forms especially, makes the point explicitly and repeatedly. The premise of the bill was thus that the jurisdiction of the Roman see had always been illegal on these three counts: it was an offence against the divinely-instituted supremacy of the prince, it derogated from the King's imperial privileges, and it subverted the principle of provincial self-determination. The stated purpose of the measure was therefore restorative, being the

Reintegracion of the auncient auctorities liberties pre-hemynencis and prorogatyves of the imperiall crown of this realme and of iurisdiccions spirituall and temporall depending of the same which hath uniustly be (sic) taken awaye by negligent sufferance and usurpacion...¹

¹ Ibid., fols. 86-7.

Foxe applies his idea of a true tradition of the Church to current institutions, political and religious. His extremely severe criticisms of the contemporary papacy in the earliest draft of the Act of Appeals spring directly from his notions of the nature of the papacy and the episcopacy in the ancient world, and their position vis à vis the emperors. In short, it means that the existing powers of the papacy are insufferable, but it does not mean no papacy, no teaching church, no magisterial episcopacy. Foxe seems to have envisaged a benign secular head administering a reformed Catholicism, on the lines of the Constantinian church. One sees this most clearly in the 'Collectanea satis copiosa', but even where the need for anti-papal propaganda obtrudes to some extent, in the drafts of the Act of Appeals and in the De vera differentia, Foxe does not wholly abandon what was, in the circumstances, a defensive and relatively conservative position. It is arguable, at least, that the Submission of the Clergy to the King was in a measure a victory for his policy; it secured a new status in the Church for the King, but it also established, for the Church, a direct relationship to the King which seemed to offer protection against lay anti-clericalism, and did, in the immediate turmoil of May 1532, save the Church from a parliamentary bill attacking its liberties. If we read it aright, the Act of Appeals, in its early forms, carried the same policy forward, confirming the restored relationship of the church to the King, announcing the ancient rights of jurisdiction within the province and the intention to resume them. Parliament's contribution would be only to declare, to confirm, to fix appropriate penalties.

Unfortunately, Foxe's ancient precedents, when pushed into use

as political terminology, discounted some centuries of constitutional development, ignored the recent history of relations between Church and State, made doubtful statements about the origin of law. Had the appeals bill ever come to be debated in its original form, it could only have appeared, to parliamentarians and common lawyers, to be a shocking novelty. To understand Cromwell's objections to the bill we should perhaps first consider the received thinking with which the bill conflicted. One is all but obliged to begin with the formulas of Sir John Fortescue, since his works stand virtually alone in the fifteenth century in their systematic thinking about political structures. Fortescue described the authority of an English king as a 'dominium politicum et regale'; in such a state there was a single hereditary head without whose consent the people could not legislate, but he, in turn, could not change the law or impose taxation without the assent of his chief subjects. The interpretation of Fortescue's words has been debated at some length. Professor Chrimes,¹ setting aside the earlier view of Plummer,² claims that 'dominium politicum et regale' is not constitutional monarchy limited by Parliament, but absolute monarchy under the rule of law - the law established by consent as a form of contract when (as Fortescue supposed) Brutus and his followers inaugurated the political authority of the realm. Another scholar, however, has more recently concluded that there is nothing in Fortescue's text to support such a view, for though the

1 See the thorough discussion of Fortescue in S.B. Chrimes, English Constitutional Ideas of the Fifteenth Century, p. 304 ff.

2 C. Plummer, ed., The Governance of England, Oxford, 1885, p. 82 ff.

people are said to have established a political society by their consent at one moment in the past, there is no reason why they could not continually exercise that will thereafter.¹ He tends, moreover, to discount the importance of the restraints of customary and natural law which Chrimes had seen in Fortescue, and concludes that 'if Parliament could do whatever it thought just, there seems little reason to dispute Plummer's translation of Fortescue's 'dominium politicum et regale' as a constitutional or parliamentary government. Fortescue was thinking of England as governed by a king in co-operation with the estates by means of laws made in Parliament by the king and the estates together'.²

Fortescue excepted, few were so concerned - as Chrimes recognises - with a theory of the state as with 'governance' and how it might be effected; current political language reflected, in such terms as 'body politic', 'respublica Angliae' and 'the whole weal public' an interest in something beyond the king's personal rule.³ Claims put forward in the early fourteenth century, in the 'Modus Tenendi Parliamentum' - now at last cleared of the suspicion of political origins⁴ - for the authority of the 'whole realm in Parliament', had been largely established by the beginning of the fifteenth. Knights and burgesses had

1 R.W.K. Hinton, 'English Constitutional Theories from Sir John Fortescue to Sir John Eliot', in E.H.R. Vol. LXXV, (1960), p.410-425, esp. p. 413.

2 Ibid., p. 415-417.

3 Chrimes, English Constitutional Ideas, p. 304-5.

4 N. Poonay and J. Taylor, 'The Use of the 'Modus Tenendi Parliamentum' in the Middle Ages', B.I.H.R., Vol. XLVII (1974) p. 11 - 23.

come together in one house apart from the Lords; the principle of assent to taxation was established and the right of Parliament to censure, and later to impeach the king's ministers asserted. The depositions of 1327 and 1399 inevitably helped to undermine the personal regality of the king. Parliamentary procedure in the fifteenth century enshrined the principle of participation in law-making, and acts began to be made 'by authority of Parliament'.¹

We could thus aptly, if anachronistically, speak of the sovereignty of the king in Parliament in the fifteenth century, were it not for the existence of a separate legislature and judiciary which claimed to be, within its area of competence, independent of the king. To be sure, there was a good deal less to the independence of the Church in practice than the theory allowed; by and large, Church and State worked together in England. Where Convocation legislated on purely spiritual matters there was normally no conflict with the royal prerogative. But where spiritual jurisdiction touched on the temporal rights of the Crown or of lay subjects, it was established de facto that statute could modify canon law and afford protection against spiritual censures.² The 1393 statute did just this, since Pope Boniface IX intended (so the preamble claimed) to use excommunication and the translation of bishops according to canon law in retaliation against clergy who co-operated with the king's court in the enforcement of the statute of provisors.³

1 On all this see B. Wilkinson, The Later Middle Ages in England, (London, 1969) p. 378-383.

2 Harris, 'Medieval Government and Statecraft', p. 14.

3 W.T. Waugh, 'The Great Statute of Praemunire', E.H.R., Vol. XXXVII, 1922, p. 173 ff, esp. p. 178-9.

Henry VIII's matrimonial cause was another instance of purely spiritual jurisdiction clashing with the interests of the state; lawful marriages condemned and unlawful sanctioned created first uncertainties of succession and then - in the highly-coloured language of the earliest draft preamble - 'great discord disension dyvysion and effusion of cristen blode'.¹ But in one important respect this was a new situation; the 1393 act claimed that causes of ecclesiastical patronage belonged to the king's temporal courts, but divorce was indisputably a spiritual cause. To resolve this difficulty, the Act of Appeals builds on the revolutionary premise of the royal supremacy to place the king at the head of the spiritual jurisdiction; the very exercise of papal jurisdiction thus becomes a usurpation, not merely its use to frustrate the temporal affairs of the realm. This solution is as much a part of the final version of the act as of the earliest draft. But whereas the bill at first went on to elaborate the God-given powers of the king, recalling a perfect world that never was, after Cromwell's revisions it reasserted the traditional role of Parliament in defending the temporal interests of the realm. It deliberately likened the purpose of the bill to that of earlier legislation which limited foreign jurisdiction.² The important and reasonable corollaries of the preamble's high view of the king's religious and political powers were excised before the bill was presented to Parliament. Conventional limits of parliamentary competence were observed, moreover, when Cromwell deleted the

1 Draft E, fol. 84.

2 It refers to statutes made in the reigns of Edward I, Edward III, Richard II, Henry IV, 'and other noble kings of this realm'. (Stat. Realm, III, p. 427).

'correction of sins' from the list of causes encompassed by the Act.

Though we cannot now, knowing Foxe's use of the term, equate 'empire' in the Act of Appeals with national sovereignty, and though even in the final version of the Act the Crown is not freed from foreign jurisdiction by the authority of statute, but free by virtue of the king's own status, Cromwell's idea of law nevertheless does not seem so very far from a notion of national sovereignty exercised in Parliament. England is bound, he was to argue in the Dispensations Act,¹ by no human laws but those made within the realm, and foreign laws allowed by the sufferance of the Crown and the assent of the people. This is reminiscent of Fortescue:

Sed caveat semper rex politice dominans ne ipse leges regni sui justitia gravidas repudians, leges novas inconsultis regni proceribus condant, vel inducat peregrinas, quo ipse politice deinceps vivere recusans jure regali obruat populum suum.²

Fortescue can only have been fully aware of an exterior law administered daily in the church courts, and of the precedents which established the relationship of canon to statute law. Cromwell's insistence that human law - in which he includes 'all humayne lawes uses and customes... in all causes which be called spirituall'³ - are subject finally to

1 25 Henry VIII c. 21; Stat. Realm, III, p. 464-71.

2 De Natura Legis Naturae, I c. XXIV.

3 25 Henry VIII, c. 21, Stat. Realm, III, p. 464: C.f. the Heresy Act of 1534, 25 Henry VIII, c. 14; this act declares that certain heresies and punishments for heresies ordained in canon law upon the authority of the bishops of Rome, are but 'humayne', and therefore rightly matters for the royal prerogative and statutes of the realm. This observes the distinction between the enacted law of the Church and the law of God (i.e. that derived from scripture and apostolic tradition) embodied in canon law. See Harriss, 'Medieval Government and Statecraft', p. 23.

*Pope had
v. consistent
authority of
Church in England*

statute, seems to place him in Fortescue's school. The King was now pope in England, but that was neither Cromwell's doing nor Parliament's. The Act of Supremacy¹ did not 'make' the King supreme head; it provided only that the King be 'takyn acceptyd and reputed' supreme head, a statement of what was alleged to be a spiritual truth and implying, at least, that his authority was received of God. One may doubt whether Cromwell agreed, in fact, with this 'descending' theory of ecclesiastical authority,² but for the moment it had carried the day. 'Pure spiritual' authority was said to be the King's alone, and Henry often appeared to exercise it personally or through his 'vice-gerent', issuing injunctions³ and declaring the truths of scripture without the advice of Parliament. But it was established, at least, that whatever impinged upon the safety of the realm, the prosperity of the King's subjects and the punishments of the courts, was the province of the highest political authority of the state, the King in Parliament.

Inevitably the final form of the Act of Appeals is marked by a certain inconsistency of argument. Some writers have sensed this before, but none has suggested a plausible explanation. The truth is that the Act of Appeals is a less than happy combination of two schools of thought. It is possible to identify them in 1533 with

1 26 Henry VIII, c.1.

2 See below p.216ff

3 See the 'Injunctions' of 1535 (Pocock, ed., Burnet's History of the Reformation, VI, p. 410-13) which proceed on the principle that spiritual power depends or derives from the King.

two leading members of the King's Council, Foxe and Cromwell. In the next chapter the wider influence of these ideas on the men and doctrine of the Henrician Reformation will be assessed.

The story of the Act of Appeals has a twist in the tail. There was opposition in the Commons which, according to Chapuys, persisted almost to the end of the session,¹ but the King's will was not to be thwarted, and the bill had cleared both houses by 7 April, when Parliament was prorogued.² Nevertheless, while Parliament was still sitting, doubts had arisen (so Hall records) whether the act met the circumstances of Catherine's case at all. Its purpose was to allow Cranmer to pronounce a final and speedy determination of the King's cause, and to prevent Catherine challenging and delaying the process by an appeal to Rome. The text of the act specifically included in its scope causes, such as the King's, which were 'already commenced', so that the archbishop clearly acted within the law in declaring the marriage null and void on 23 May 1533. However Catherine never made and, in all probability, never contemplated an appeal from the sentence of a court whose competence she refused to acknowledge, even by her presence.³ But she had already appealed to Rome four years earlier, not of course from the King's jurisdiction but from Campeggio's legatine court. Since the act prohibited only future appeals there

1 L.P., VI, 296.

2 Lehmborg, Reformation Parliament, p. 175.

3 Cal. Sp., IV, 1072.

was room for the contention, at least, that it did not invalidate that pre-existent appeal. No doubt the government could have resolved the point by the addition of a short clause to the bill; but it did not. Was time too short? Was the government afraid that so pointed a provision would antagonise the Commons? Quite possibly. Hall recites what happened:

This question was well handeled in the Parliament house, but muche better in the Convocation house, but in both houses it was alleged, yea, and by bokes shewed, that in the Counsailes of Calcedone, Affricke, Toletane, and diverse other famous Counsailes, in the primitive Churche, yea, in the tyme of saint Augustine, it was affirmed, declared, & determined, that a cause risyng in one Prouince, should be determined in thesame... which thynges were so clerkely opened, so connyngly set furthe to all intentes, that every man... might plainly se that all appeles made to Rome, were clerely void and of none effect.¹

So the government resorted to the old, old story of provincial independence and to the materials it had garnered from the Pseudo-Isidorean decretals. Presumably it was Foxe, who spoke regularly for the King on important matters, who handled the question so well in Convocation, but another, perhaps even a layman, who lacked Foxe's knowledge of the sources, who did his best in Parliament. Here, at the eleventh hour, was a throw-back to principles which Cromwell's devotion to statute had seemed to sweep aside. Not the law of Parliament but the law of the Church - albeit a carefully edited version of it - invalidated Catherine's appeal. The incident provides

¹ Hall, Chronicle, p. 795-6.

a timely reminder that the Reformation in England was built upon a foundation of theological principles; that was how it appeared to most people, and that, for the most part, was how the government attempted to explain it.

CHAPTER V

The Supremacy and the Rule of the Clergy

By the spring of 1533 the principal objectives of the campaign against the Church had been realised. The King had been freed from his wife and the clergy had submitted to him as their head on earth. It was an astonishing victory; and yet even in its winning the foundations of theory on which the Royal Supremacy stood were shaken. From the autumn of 1530 the King's clerical advisers were telling him that jurisdiction in clerical matters was his by divine grant. Henry grasped the point readily, as his alterations to drafts of the Act of Appeals and his later annotations of the Bishop's Book and other doctrinal papers show.¹ Parliament's role in the Reformation was only to confirm and declare the consequences of the King's personal Supremacy. One may argue, certainly, that Parliament's involvement added weight and prestige to the Reformation. The Royal Supremacy and all that it entailed became the law of the land requiring obedience, and once law it could only be rescinded (as it was in Mary's reign) by Parliament. But this did not itself modify the 'descending' theory of authority on which the statutes were built. This is well illustrated by the Act of Supremacy itself. The King is said to be supreme, to have the powers of the head of the Church 'annexed and unyted to the Ymperyall Crowne of this

¹ See below, p. 262-3, 269-70

Realme' - in other words to possess all the powers and profits of his position by personal right and divine concession - whereas Parliament acts for 'corroboracion & confirmacion thereof' and to lend the strength of the law to 'represe ... abuses heretofore used in the same'.¹

In the revisions of the Act of Appeals, however, some resistance was expressed to the highest claims made on the King's behalf, and the abortive 'Parliamentary' submission of the clergy of 1532 initially ascribed the authority to make laws not to the King alone but to the King and his Parliament. One can point to three statutes of a little later in the reign which came near to expressing an ascending theory of authority in spiritual matters. Of the first not too much should be made; in the Act of Six Articles,² Parliament is said to have considered and consented to the articles which it will now enforce, but this participation was only at the King's particular behest and dispensation. By an act of 1539³ the King was empowered to create new dioceses under the Great Seal, by authority of Parliament. Later, Parliament granted Henry the power to prescribe Tyndale's translations of the scriptures and other heretical books,⁴ a duty which had been the province of King and Convocation alone a decade earlier.

1 Statutes of the Realm III, p. 492.

2 31 Hen. VIII c. 14 Stat. Realm III, p. 739 ff.

3 31 Henry VIII c. 9 Stat. Realm III, p. 728.

4 34 & 35 Henry VIII c. 1 Stat. Realm III, p. 894 ff.

Evidence of the 'ascending' theory of authority is also to be found in the literature of this period. William Marshall had a translation of Marsiglio's Defensor Pacis¹ published with Cromwell's financial assistance. He who pays the piper calls the tune, and it may be taken that Marshall's consistent translation or glossing of Marsiglio's citizen legislative body as Parliament was Cromwell's wish.² In disallowing the exercise of spiritual authority by a distinct clerical estate, Marsiglio rested his case partly on the scriptures, partly on the positive law deriving its strength and enforceability from the will of the people. As law-givers the people were to be concerned with ordering of this life and were not to enforce patterns of religion or morality. In the new situation in England, however, where the headship of the Church and State was combined in one person, it was possible to conceive of the supreme legislator, the King in Parliament, making laws concerning religion. To extend the function of Parliament in this way, it was necessary to argue that the Church was (in a loose analogy to the nature of the state) the sum of all Christian people, able to exercise God-given authority in matters spiritual, not excluding the definition of the faith. This authority might be delegated to representatives - to Parliament, to the King or to a General Council; the power of these persons or bodies 'ascended' from the people, just as that of the Marsiglian legislator in temporal affairs.

¹ Marsiglio, trans. W. Marshall, The Defence of Peace, R. Wyer, London, 1535.

² See Elton, 'The Political Creed of Thomas Cromwell', p. 85-86.

Support for this view came in the writings of Christopher St. German, though it must be said that his treatises cannot be shown to be connected with the Government's own campaign of propaganda. He was not Cromwell's man; and yet at each step he applied his considerable legal mind to seek out a philosophy, legal and other, which would accommodate the Government's Reformation legislation and its consequences. As a result his treatises are a valuable record of intelligent contemporary opinion. In a later treatise, the Power of the Clergy, probably published shortly after the passage of the Act of Supremacy, St. German hints at a distinction made by Marsiglio between the priesthood and the whole Church.¹ Marsiglio (in Marshall's English translation) held that 'all faythfull chrysten men are and ought to be called men of the church, as well those whiche be not preestes, as those whiche be preestes'.² St. German offers an array of historical arguments, none of them anything but familiar, to establish that the bishop of Rome had never anciently been taken to be 'the heed of the unyversall church of Christ, that is to saye of the whole congregation of christen people'; he might perhaps be claimed to be head of the bishops and clergy.³ The extension of this line of thought (in St. German's

1 Christopher St. German, A treatyse concerninge the power of the clergie and the lawes of the Realme, (? 1535), sig. Diiia-b; c.f. An answer to a letter, sigs. Giiiib-va. See Baumer, Early Tudor Theory of Kingship, p. 48. G. R. Elton, Reform and Renewal: Thomas Cromwell and the Common Weal, Cambridge, 1973, p. 74 n. 21 doubts whether the Power of the Clergy is St. German's; but in the present context it is important only that these ideas were current.

2 Marsiglio, trans. Marshall, The Defence of Peace, fol. 45 b.

3 St. German, Answer to a letter, sigs. Bia - b & ff

last treatise the Answer to a Letter) is that the Church is embodied in the whole people of the realm: why then, he asks, should not the parliament which represents the whole Catholic Church expound the scripture rather than the convocation which represents only the state of the clergy?¹

Cromwell and his advisers were taking pains, independently, it will be argued, to prove just that proposition, but the balances were weighted against them. In the years that followed the 'recognition' of his Supremacy by Parliament, Henry acted vigorously on his sole personal authority as Supreme Head, authorising statements of faith, issuing injunctions and governing the life of the Church generally through his Vice-Gerent. At this point Henry was enjoying a very considerable freedom of action and the Royal Supremacy was, perhaps, at its zenith. It was no easy or light matter to contradict Henry on so personal a matter as his own powers, and any evidence of dissent in government circles has a particular significance. Dissent there was but in the main it did not, because it could not, impugn the King's Supremacy directly. It challenged rather the position of the clergy under the King. Criticism was levelled particularly at the ability of the clergy to make laws binding the King's lay subjects, jurisdiction here being understood in the broadest sense, including authority in doctrine, the interpretation of scripture and recognition of heresy. Secondly, critics of clerical influence attacked the claim that the clergy represented the whole Church in a General Council, this being an issue that was

1 St. German, Answer to a letter, sig. G vi a - b.

brought to life by Paul III's convocation of a Council to Mantua. In these forms the broader and more fundamental question was put: what is the origin of the spiritual authority now exercised by the clergy? Does it 'descend' from God by Christ's commission to the apostles and thence to a distinct clerical estate under the lay head? Or does it 'ascend' from the whole people, being vested, like temporal authority, in the King in Parliament?

Perhaps we should first consider briefly how the clerical members of the Council understood the status of the clergy in the context of the Royal Supremacy. One notion can be disposed of immediately; Henry's supporters were agreed that there was no divinely-ordained distinction between the office of bishop and priest. The jurisdictional powers of bishops, which were the principal marks of their office, were accordingly of human origin only. The argument was historical; Luther had quoted Jerome at the Leipzig debate as the evidence for the equality of all bishops, and of bishop and presbyter in the early Church.¹ These texts of Jerome were the mainstay of the Henrician response whenever the matter was raised.

The clergy, according to Foxe in De vera differentia, received authority to govern the Church by divine commission, but the 'dominium', the coercion to give their authority effect, had to come from the prince.² This would seem also to be the implication

1 Migne, P.L., XXII, p. 1191-5 (Jerome, Epistle 146 to Evagrius); ibid., XXVI, p. 563 (Jerome, Commentary on Titus 1 v. 5). See Headley, Luther's View of Church History, p. 172-3.

2 Foxe, De vera differentia, fol. 22a-b: 'Confirmant quidem
Continued

Sufficiency
= spiritual power
of office
+ poss. independence
(in circumstances)
see 126

of the passage in the preamble of the Act of Appeals which speaks of the sufficiency of the spirituality to determine any cause of the divine law or question of spiritual learning while the rendering of justice rests with the King.¹ This principle is extended beyond the bounds of England in a tract on General Councils of about 1536, which will be discussed later; looking back to the Code of Justinian the author finds that the spiritual estate, comprised of clergy and emperor, made decisions on spiritual matters in a Council, which were afterwards to be published and enforced by the Emperor's authority.²

Under the King, ~~however~~, the clergy continued to have its positive jurisdictional and legislative function. It has already been suggested that Foxe and others saw in the Submission of the Clergy of 1532 a protection against lay anti-clericalism and a means to avert the threat of a parliamentary bill against the liberties of the Church. To refer back once more to the Act of Appeals: the Church, it is said, is 'sufficiently endowed by the kingis most noble progenitours and the auncestours of the nobles of

praedicta potestatem ecclesiasticam, sed dominium negant: tribuunt auctoritatem, non iurisdictionem. Admonere, hortari, consolari, deprecari, docere, praedicare, sacramenta ministrare, cum charitate arguere, increpare, obsecrare, certissimis dei promissis spem in domino augere, gravibus scripturarum comminationibus a vitiis deterrere, eorum sit proprium, qui apostolis succedunt, et quibus etiam dictum est: Quorum remiseritis peccata &c. Leges autem, poenae, iudicia, coerciones, sententiae et caetera huiusmodi, Caesarum et Regum ac aliarum potestatem.

1 Statutes of the Realm, III, p. 427.

2 Hatfield MS 46 (vol. 137 fols. 36-75). See below, p. 248ff.

this realme aswell in honour as possessions for the due declaracon and admynystracon of the (laws of Almighty God)'.¹ The clergy's jurisdiction and indeed its whole temporal standing is bound up with and vindicated by the King's grant of lands and goods; we have seen a similar idea expressed in the 'Collectanea satis copiosa' where the origin of ecclesiastical jurisdiction is found in the Donation of Constantine.² This reading of things depended, of course, on the acceptance of the authenticity of the Donation of Constantine. Rather than deny that and seem to discredit by implication all coercive jurisdiction by the clergy, the compiler of the 'Collectanea' fell back on an earlier anti-papal interpretation. Marsiglio, unable to discredit the Donation, had argued that if Constantine had granted the Roman Church its pre-eminent jurisdiction and temporal powers they could not have been granted by divine ordinance - as some bishops of Rome had subsequently claimed.³ Similar statements are to be found in A Little Treatise against the muttering of some Papists in corners and in Sampson's Oratio, though in both works there is a certain hedging of bets. The powers of the papacy were either the gift of kings or - lest that seem to legitimise the status quo - were acquired by usurpation and tyranny.⁴

1 Act of Appeals, Draft 'E', SP2/N, fols. 79-80; the phrase remained virtually unchanged in the act as passed.

2 See above, p. 86

3 Marsiglio, Defensor Pacis, I. XIX. 8; II. XI. 8.

4 A Little Treatise against the muttering of some Papists in corners, in Pocock, Records of the Reformation, II, p. 540.

~~Though~~ This interpretation upheld both the superiority of the King and the ^{privileged} position of the clergy ^{under him, but} its foundations were unsure. Valla's refutation of the Donation, achieved in 1440, was just coming to be widely known; it may be said to have been made public by Ulrich von Hutten's edition of 1518. An English translation of Valla's treatise and of other pieces relating to the Donation was published by Godfray in 1534.¹ It is known that William Marshall was the translator, and his sponsor in some (probably financial sense) was Cromwell; their correspondence concerning the publication survives.² This was enough to sink the older interpretation without trace and one hears little more of the grant of lands and possessions by kings and nobles in times past.

Predictably, all this had little or no effect on the thinking of the more clerically-minded members of the Council. The strength of their position, and its implications for Parliamentary authority were causing alarm to Cromwell and his associates. Gardiner recalled some heated exchanges with the Chancellor, Thomas Audley, over the praemunire charge brought against John Voysey, Bishop of Exeter. Gardiner told Audley that 'it semed to me straung that a man autorised by the King (as, sence the Kings Majesty hath taken upon him the supremacy, every bishop is such one) should fall in a premunire', Audley saw that by this doctrine the clergy could escape the force and consequences of Parliamentary law - in this instance the statutes

1 A treatyse of the donation gyven unto Sylvester, pope of Rhome,
T. Godfray, London, n.d. (1534).

2 SP1/83 fol. 57.

of praemunire - by appealing to a separate spiritual jurisdiction. 'Looke the Act of Supremacy' he protested, 'and there the Kingis doinges be restrayned to spiritual jurisdiction; and in a nother acte it is provided that no Spirituall Lawe shall have place contrary to a Common Lawe or Acte of Parliament. And this wer not you bishops would enter in with the Kinge and, by meanes of his supremacie, order the layty as ye listed'.¹

The position of the clergy was raised in Cromwell's circle for further, urgent consideration in two memoranda.² To judge from the matters raised (especially questions of the form of convocation and membership of a General Council) and from other internal evidence³ the memoranda date from about 1535 or 1536. Both are anonymous but

1 Muller, ed., Letters, p. 391-2.

2 L.P., XI, 83, SP1/105 fol. 56: 'Thynge necessary as it semethe to be remembered before the brekyng up of the parliament'; (there is another copy of this memorandum, B.L. MS Cleo. E. VI, fol. 330 - see below p.245). For convenience this is referred to hereafter as the first memorandum. L.P., XI, 84, Cleo. E. VI, fols. 232-33: 'Whether your lordship think convenient that we should endeavour ourselves to prove these articles following ...'; this is referred to hereafter as the second memorandum.

3 Particularly the reference in a paper 'Of divers heresies which have not been taken for heresies in time past' (L.P., XI, 85, SP6/1 fols. 105-122, which may be seen to answer points raised in the second memorandum, see below p.226-3) to the Heresy Act 27 Henry VIII c 20. Lehmborg, The Reformation Parliament p. 114 states that the paper which answers the first memorandum, 'The question moved' (L.P., V 1022, SP6/2 no. 9, fols. 94-96) was introduced in Convocation in 1531, but he does not state the source of his information. The inclusion of a question on the General Council in the second version of this first memorandum, Cleo. E. VI, fol. 233, and its similarity with the second memorandum make a later date most probable.

their authorship will be considered later. One may assume that both the memoranda were addressed to Cromwell himself, one being directed to 'your lordship' and both concerning themselves with the management of Parliament, legislation and propaganda. Seeing the clergy making a stand for their authority the memorandists wanted clear statements of principle put out. Only a small proportion of the propaganda material prepared reached print, however, and projects for Parliamentary declarations came to nothing. In consequence this initiative has not received the attention given to the published propaganda of the period. These were, of course, tentative proposals. Some are rough drafts, some explore possible lines of argument and policy and were never intended for publication. They have their value nonetheless, for such pieces can sometimes reveal more of the writers' mind than the polished treatise. They point, certainly, to a coherent body of opinion that was denied full, public expression in Henry VIII's reign.

The first memorandum ^{questions} ~~raises the fundamental issue of~~ the source of authority in spiritual matters. Suspicions were aroused by clerical interpretations of two texts, 'Sicut misit me Pater et ego mitto vos' (John 20) and 'Attendite vobis et universo gregi in quo vos posuit Spiritus Sanctus episcopos regere Ecclesiam Dei quam acquirit sanguine suo' (Acts 20), ~~which, the memorandist alleges, were taken by many of the clergy to prove their authority to be above that of Kings and princes. When the clergy's interpretations of the texts are given in more detail, however, it appears that the anxiety is rather~~ that the clergy (albeit under their head, the godly prince) ^{claimed} ~~claim~~ by these texts a power derived from divine commission so that their right to exert

authority or legislate for the Church 'whiche is the hoole peple' is separate from the normal political power of the realm. To counter this dangerous influence the memorandists suggest a public statement of the import of the texts by clergy disposed 'to declare the truth therein'. If the first memorandum touches on the principle, the second addresses itself to details and consequences. The memorandists here seek Cromwell's leave to 'prove' certain articles or propositions which undermine the clergy's presumption of God-given legislative authority, and hint at the case that can be made for Parliament's right to participate in spiritual affairs. It is suggested, for instance, that the King, having the cure of his subjects' souls as of their bodies, may make laws touching both by his Parliament,¹ and that King in Parliament may determine and limit the matters that could be heard in the spiritual courts. In addition the question was raised, as an after-thought in the first memorandum,² of the membership and purpose of General Councils. Spiritual legislation and jurisdiction in its broad sense, and clerical dominance of the Councils - these were the crucial matters, and when Cromwell gave the word, as he evidently did, his propagandists began to construct their counter-arguments around a rather surprising picture of the early Church.³ Authority had been exercised then, it

1 My emphasis

2 This question is only put in the second copy of the first memorandum, Cleo. E. VI, fol. 330.

3 From the first memorandum (L.P., XI, 83, SP1/105) a paper was derived, L.P., V 1022, SP6/2 fols. 94-96, which suggests an interpretation of the texts raised ('Sicut misit', John 20, and 'Attendite nobis', Acts 20). The second version of this memorandum, B.L. Cleo. E. VI, fol. 330, suggests questions be put to

appeared, not by a clerical estate but by the whole Christian people.

The 'Doctor and Student' dialogue, derived from the second memoranda, opens the issue of the spiritual jurisdiction of the clerical estate by asking 'What we be bounde to byleve as thyngs necessary to salvacon and what not'. The Doctor, a theologian, doubts whether the Fathers and their opinions were accepted by all Christians and casts slights on chronicles, tradition and common

the clergy on General Councils; this appears to have been done and their answers are discussed below, p.245ff. From the second memorandum (L.P., XI, 84, Cleo. E. VI, fols. 232-33) several pieces were derived, it seems. They explore the matters raised along lines suggested by the memorandists. The proof of the derivation is really in the whole tenor of the pieces, and this will appear to an extent as they are discussed in the following pages. Article 5 offers a distinctive interpretation of familiar texts which is easily recognisable: 'Quodcumque ligaveris' (Matth. 16) gave the apostles authority jointly to make laws and hold councils until a convenient number of lay people were converted, whereupon that text was superseded by 'Quodcumque ligaveritis' (Matth. 18) which gave the whole Church those powers.

The papers are:

- 1) A treatise on General Councils, Hatfield MS 47 which was the basis of
 - 2) Anon., A Treatise concernynge generall councilles, the Bishoppes of Rome and the clergy, T. Berthelet, London, 1538 (On the relation of this and the above treatise see P.A. Sawada, 'Two Anonymous Tudor Treatises on the General Council', Journal of Ecclesiastical History, XII (1961) p. 197-214, esp. p. 197 and n. 2.
 - 3) 'Of divers heresies which have not been taken for heresies in tyme paste', L.P., XI, 85, SP6/1, fols. 105-22.
 - 4) 'A Dialogue between a Doctor and a Student' (thus entitled in L.P.) L.P., XI, 86, SP6/2, fols. 45-85.
 - 5) A draft declaration of certain texts by the King in Parliament, of which two slightly different versions exist: L.P., XII, ii, 1313 (1), SP6/4 fols. 106-22 and L.P., XII, ii, 1313 (2); SP6/4 fols. 123-132.
- Some of the many similarities between these papers are noted in the following pages.

opinion.¹ The tone of this, as of the other treatises and papers deriving from the memoranda, is distinctly evangelical. Scripture was to be the only rule of faith, scripture understood after the intention of the Holy Ghost, its inspiration.² But this, the authors well realise, could not be the end of the matter. If the familiar interpretations of the Church could not be accepted, whose could? Who defined the extent of the canonical scriptures? How was true doctrine recognised before the scriptures were written?³ Thomas More (in the Confutation) had taxed Tyndale and Barnes with just such questions as these. Perhaps this helped Cromwell's men to anticipate objections to sola scriptura; they did not discount the witness of the visible Church in the way Tyndale and Barnes did, and so were more able to frame a coherent defence in historical terms. Certainly the Student puts the obvious leading questions. Could not, he asks, a case be made for 'suche things as have been agreed among doctours concernyng the faithe, and that have ben also accepted of the people thoroughe all Cristen realmes to be things necessary to be beleved that they aughte without contradiccon to be beleved of all Cristen men though they be not expressed in scripture ne cannot be directlie dirived oute therof ...'?³ At first the Doctor answers specifically. Traditions of the authority of the clergy and the bishop of Rome are contrary to the power of kings spoken of in scripture. Other traditions are not necessary

1 SP6/2 fols. 45b-46a, 47a-b.

2 Ibid., fols 58a - 60b and SP6/1 fol. 106a ('Of divers heresies')

3 Ibid., fols. 47b - 48a.

Want to
knock down
leading church
without allow-
ing a face for
all

items of faith. But then the Student objects that scripture had long been taken to refer to more than the canonical books, to signify the whole revelation of God as accepted by the Church;¹ moreover,

from the tyme of Adam to Noe, and likewise
from Noe to the law written, all the faithe
of the incarnaccon and of the last iugemente,
contynued by relaccon from oon to an other ...
And so likewise after the passion of Criste
there was no scripture written of the newe
lawe, and yet were many people then
converted to the faithe whiche were bounden
to bileve as they were taught ...²

*d. More in
Constitution*

Was there not, the Student asked, a magisterial church before there was scripture?

Interestingly enough the Doctor does not contend that there had never been authority in matters of doctrinal definition and Church government; nor do the related treatises. In the beginning, he admits, the apostles had the power of binding and loosing and were heads of the Church.³ Similarly in the treatise on councils⁴ and in 'Of divers heresies'⁵ it is accepted that the apostles had power to make laws in the primitive Church. But this was a temporary authority until laymen were converted. As soon as possible the apostles joined the 'seniors' of the people - the word is used in

1 Ibid., fols. 49b - 50a.

2 Ibid., fol. 54a.

3 Ibid., fols. 62a ff.

4 Hatfield MS 47 chap. 5 (unfoliated).

5 'Of divers heresies', SP6/1, fol. 109a.

two of the three treatises - to themselves in the government of the Church and in the definition of doctrine.¹ At this point the validity of the text 'Quodcumque ligaveris' (Matt. 16), spoken to Peter instead of the apostles, ceased and Matt. 18 'Quodcumque ligaveritis' a text directed to the whole Church took effect. This restrained the peculiar authority of the apostles to make laws and summon councils.² From the association of clergy and laity in the government of the Church the author of 'Of divers heresies' concludes that the supposed distinction of spiritual and temporal laws was not grounded in scripture nor on the practice of the past.

Important -
stress more

In the period, then, before the New Testament Scriptures were written and canonised the responsibility of guarding the faith fell not to the bishops and clergy alone but to this Church of all Christian people. While the apostles had had authority their teaching was held in great estimation, but only for its truth, which was recognised because the Holy Ghost moved the hearts of the people to perceive it and because it was confirmed by miracles. This special presence of the Holy Ghost among the early Christians enabled the Church to define and establish doctrine and the canon of the scripture.

... thus was the lawe of the newe
testamente first canonised in the heart

1 Ibid., fol. 109a-b; Hatfield MS 47, chap. 5. 'Seniors' of the people are also mentioned in a similar sense in a draft parliamentary declaration of the interpretation of certain texts, SP6/4 fol. 127a, see below, p. 240f

2 This whole line of argument is first suggested in the memorandum to Cromwell, Cleo. E. VI. fols. 232-33.

of the people, so that it neded non other
 witnes, but after by a full assente and
 calling on of the people for thenstruccon
 of theym that shulde come aftere, it was
 put in writing and canonyed by the
 universall chyrch¹

At first the author wrote not 'universall chyrch' but
 'universall people'. To him the terms are evidently synonymous.
 The Doctor argues that the full assent to the scriptures which
 arose among Christian people was sufficient canonisation, just as
 the scriptures of the old law were taken as authoritative without
 a record of their formal reception.² Uncertainties about the date
 or form of canonisation do not worry him for, as he puts it, 'the
 contynuell assente of the people thereto supplyethe that wantethe
 of the knowledge when or by whom it was done'.³ Now this idea of
 the continual assent of Christian people to the revealed scriptural
 truths of religion is an important plank of the Doctor's thesis but
 the Student enquires whether the same continual assent had not been
 given to non-scriptural teachings of the Church.⁴ The Doctor's
 reply suggests that canonisation marked the end of an era. Since

1 'Doctor and Student' SP6/2 fol. 63a-b. Cf *Ibid.*, fol. 83a:
 "... the tyme of the primative churche when scripture was
 canonised was the most holy and blissed tyme, that hath ben
 si the begynnyng of the worlde, and that the operaccon of
 the holy ghoste moste specially appered then in stablissinge of
 the faith, and that that tyme beganne most principally at the
 incarnaccon of Criste and contynued till scripture was canon-
 ised ..."

2 'Doctor and Student' SP6/2 fol. 75b.

3 *Ibid.*

4 *Ibid.*, fol. 72b.

the Holy Ghost had moved men to write down as much or as little as was necessary to salvation, it was not lawful to teach anything additional or at variance with the scripture; the tradition of unwritten knowledge was abrogated, the Doctor surmises, because all teachers however holy shared the fallibility of men and might introduce falsehoods by assumed authority.¹ Moreover, though a knowledge of the truth was poured out on certain chosen persons at Pentecost and from time to time since then, the normal experience of Christian men was less dramatic. For them a written, certain record was indispensable. There was still a place for decisions by general consent in a properly constituted assembly² - whose form we shall discuss below - but that was in the maintenance of those truths of scripture which the spirit-guided Church had already espoused. The author evidently intended that in practice decisions would be given on the canon, on the exposition of doubtful scriptures and the determination of heresies.³

Another fundamental change came upon the Church, and here the pamphleteers were touching on the origin of the Supreme Head's

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- 1 Ibid., fol. 56b. He draws a parallel with the process by which a pharasaical belief in a second unwritten law given to Moses became the voucher for later Judaic traditions which were ultimately enshrined in the Talmud.
 - 2 See Hatfield MS 47 Chap. 5: The apostles, it is argued 'toke the Senyors of the people with theym in Counseilles in the name of the hole church' in accordance with Matt. 18, 'Quodcumque ligaveritis'. This command to the whole Church 'is the very ground and warrant of the keping of the catholique generall counsailes and shalbe to the ende of the worlde'.
 - 3 See below p. 240-41 & 241 n. 2, 254 ff

authority. Emperors and kings were converted. Spiritual authority, which had passed from the sole possession of the apostles to the whole Christian people devolved further. In the words of the treatise 'Of divers heresies'

... true it is that senyours and Rulers
governed the churche till kyngs and prynces
were converted, and then the governance was
devolute to them accordyng to the Auctorite
geven them by scripture and by the lawes
and customes of their contreis and realmes¹

The tract on the General Council also uses the word 'devolute' in this way to describe the power of Christian kings,² though herein lies a paradox. The governance of a king, it appears, is to accord with both 'the auctorite geven them by scripture and the lawes and customes of their countreis and realmes'. The standard scriptural texts (such as Romans 13) suggest a dei gratia kingship (reflecting Judaic notions of kingship and political authority) but the 'laws and customs of countries and realms' a kingship granted or at least limited by the governed. One may perhaps see a parallel of a sort here with the dominium politicum et regale of the hereditary head who governs with and for the community.

A similar tension marks a tract that was composed in response to the first memorandum. The argument of 'The question moved whether these textes ensuinge perteyne especially to spirituall prelates or to temporall princes'³ is not always perfectly lucid. The piece

1 'Of divers heresies', SP6/1 fols. 108a - 109b.

2 Hatfield MS 47 chap. 5.

3 L.P., V 1022, SP6/2 no. 9, fols. 94 - 96.

reads as if it is a first attempt at adapting some received and rather fixed ideas to a novel situation. Its initial premise is, however, familiar enough in literature of this kind - the 'two maner of kyngedoms'.¹ The chief function of the worldly kingdom is the suppression of evil doers and where they fulfil this duty Christian and heathen rulers equally are to be obeyed and honoured. It is to this regiment that the text of Romans 13 of the divine origin of all authority is directed. The other kingdom, though spiritual, is said to have outward offices and officers which (quoting Paul's Epistle to the Ephesians) are 'primum apostoles, deinde prophetas, tertie doctores, deinde potestates'. We are given the examples of Josias 'and other moe which were princes temporall named, yet...executed sprituall administracion in setting forth the worde of god, in depressinge idolatrie, and advancinge gods only glorie'.² But what is the ground of the temporal prince's authority in spiritual matters? At this point the treatise steps off into some deep theological waters: the old priesthood of Aaron has been ended by Christ, whose perpetual priesthood 'ys represented by Melchisedech Kynge of Salem qui erat rex et sacerdos by whom all christen people are made sacerdotes'. This priesthood of all believers (which really consists of partaking vicariously in the accomplished priesthood of Christ) besides devaluing the sacramental function of the spirituality suggests an equality of spiritual status among believers which does not easily comprehend the idea of a divinely-

1 Ibid., fol. 94a.

2 Ibid., fol. 95a.

ordained superior. Rather, as the tract continues 'none maye be esteamed so mete in the spirituall kyngdome of Christ which ys the church ... to be chief ruler and supreme heed, as a christen prince of godly zeale'.¹ Similarly in 'Of divers heresies' the spiritual cure of souls is said to be given to all men, though especially to kings and princes.² In referring both to the priesthood of all believers and to the office of the king as principal member of the Church, the tract appears to use concepts also being developed by Melanchthon at this period, as he attempted to justify the participation of Lutheran princes in Church reform.³ There is, moreover, clear evidence, as we shall see, that Melanchthon's writings were closely scrutinised by Government propagandists.

This may be the moment to pause to consider who was responsible for the memoranda and treatises we have been considering. It is probably not possible to establish the identity of all those who had a hand in framing this initiative but a good case has been made for the attribution of a published treatise on General Councils to Alexander Alesius, the expatriate Scot whom Cromwell introduced to a conference of divines in 1537 as the King's scholar.⁴ This work, A Treatise concernynge generall councilles, the Byshoppes of Rome and the Clergy⁵ was a development of Hatfield MS 47 on Councils

1 Ibid., fol. 96a. My emphasis.

2 'Of divers heresies' SP6/1 fol. 115b. My emphasis.

3 See above, p. 32 ff.

4 See above, p. 58f. The attribution is made by P.A. Sawada, 'Two Anonymous Tudor Treatises on the General Council'.

5 A Treatise concernynge generall councilles, the Byshoppes of Rome and the clergy, T. Berthelet, London, 1538.

which, we have suggested, was written in response to the second memorandum. There is powerful corroborative evidence of Alesius' involvement with this and the other related treatises. He made his stand for the sufficiency of the scriptures against 'unwritten verities' in his account of the conference of 1537, touching there on the scope of the canon, and on the role of the Holy Ghost as a witness of the truth in scripture.¹ Twenty years later Alesius was to be found in a new country of adoption at Leipzig where he spent most of the latter part of his life teaching and writing. A tract put out by him there, his De Perpetuo Consensu Ecclesiae², covers much of the same ground as the treatises we have been considering by the same rather singular route - turning on its head the conventional argument of the continual assent of the Catholic Church to its teaching tradition. The 'perpetuus consensus Ecclesiae' has always rested, he argues, in the sacred letters and in the Apostles Creed which is the 'summa eorum quae traduntur in sacris literis'.³ What was revealed of the truth by the Son of God was written down by the Church.⁴ The canon of scripture was decided by universal and perpetual consent. Non-scriptural tradition - the canons of the Apostles are mentioned, and the epistle of Clement - cannot claim this undoubted consent; nor, patently could the writings of

1 Alesius, Of the auctorite, sigs. C iv b ff.

2 Alexander Alesius, De Perpetuo Consensu Ecclesiae, Disputatio in celebri Academia urbis Lipsiae, G. Hantzsch, Leipzig, 1556.

3 Ibid., sigs. A2a, A5b.

4 Ibid., sig. A3a.

Dionysius the Areopagite whose authenticity was suspected at the time of Apollinarius.¹ The perpetual consent of the Church is in fact indicated by canonical status. Lack of that status indicates that consent is not perpetual and non-canonical writings cannot therefore be held to contain essentials of the belief of the Church.

It is arguable that Alesius is connected with a further document of some relevance to the origins of a 'Cromwellian' view of Church and State. At the Public Record Office, bound up in the series of Theological Treatises, is a paper of careful notes from Pierre D'Ailly's 'Tractatus de Ecclesiae'. The calendarers' description - 'A fragment or notes for a treatise of General Councils and government of the Church'² - is unfortunately misleading. There is an intriguing clue to the maker of this précis. A compendious list of books is appended to the notes, being the first version of an alphabetical index to what one assumes to be the personal library of a man primarily interested in theology. A later, fair copy is to be found elsewhere.³ It is an impressive collection, particularly strong in the newly published editions of the Church Fathers and containing enough authors of advanced or controversial views to suggest the owner's own persuasions. He has works by Luther, Pomeranus, Oecolampadius, Zwingli, Melancthon,

1 Ibid., sig. A7a ff.

2 L.P. VI 1489 (1); SP6/13 No. 11 fols. 128-139. Italics mine. D'Ailly's 'Tractatus de Ecclesiae' is in L.E. Du Pin ed., Joannis Gersonii ... Opera Omnia, 5 vols. Antwerp, 1706, II, cols. 925-960.

3 SP6/9 No. 15

as well as Erasmus and 'Johannes Roffensis contra Lutherum'.¹

Unexpectedly the list ends with a catalogue of medical works, not just the odd handy work of reference but a substantial collection of standard texts. Who, then, close enough to the centre of things to have his personal jottings fall in with the Government papers, combined a well-informed Protestantism with interest or even experience in medicine - who if not Alexander Alesius, the self-avowed student of 'doctor Nicolas' and for some while himself a practitioner?² And who more likely to be taking notes than a man who later called D'Ailly (without irony) the most learned of the scholastics?³

The notes themselves follow a distinctive train of thought with a close affinity to the tracts we have been considering. D'Ailly's treatise proposes that while the spiritual powers of the priesthood were granted by Christ to his apostles and disciples and to their successors, all office, or what the note-maker terms the 'gubernatio ecclesiae' derives from the community. This principle takes a particular force from D'Ailly's analogy of civil and ecclesiastical authority, or 'gubernacio', which is represented in these notes in a diagram:

Gubernacio	(Regalis	Rex	Moyses	Summus Pontifex
	(aristocratica	Seniores	lxxii	Collegium cardinalium
	(Tymocratica	Populus	Rectores	Concilium.
			extribulis	generale 4

1 Some of these authors are found only in the fair copy of the list.

2 Alesius Of the auctorite, sig. Aiiij b.

3 Alesius, De Perpetuo Consensu Ecclesiae, sig. B2b calls Gerson 'omnium scolasticorum post Altiacensem doctissimus'.

4 SP6/13 fol. 130b.

It was, as E. F. Jacob has put it, 'D'Ailly's particular distinction to have applied to the Church constitutional doctrines which political philosophers used in connexion with the State and to have done so in a way which both supported the General Council in its claim to superiority over the Pope, and at the same time upheld the dignity of the papacy.'¹ The diagram expresses in fact a concept of mixed monarchy in both Church and State. The head, be he King or Pope, while truly possessing authority to govern, is elected by the community, or by its leaders the aristocratic part. In the government of the Church, as D'Ailly has it, the power of the head is limited both by the authority of all the parts of the Church, effectively expressed by a General Council (the 'exemplum' or 'speculum' of the Church²) and by the requirement to govern according to virtue (secundum virtutem).³

ph. The relevance of D'Ailly's analogies to the English situation and to Pope Paul's proposals for a Council at Mantua can hardly have escaped the note-maker. It may well be that the terminology used by D'Ailly was made known to and taken up by those in Cromwell's circle charged with expressing government policy at this juncture.

1 E. F. Jacobs, Essays in the Conciliar Epoch (3rd edition, Manchester, 1963) p. 14.

2 Du Pin ed., Gersonii .. Opera, II col. 951.

3 Ibid., II col. 946:

Sed ad regulandum usum plenitudinis Potestatis, & excluendum abusum eiusdem, considerare convenit, quod non expedit Ecclesiae (quae habere dicitur Regale Sacerdotium) quod ipsa regatur regimine Regio puro, sed mixto cum Aristocratica & Democratia; & capitur hic Democratia generaliter, pro Principatu populi, & non stricte, prout contrariatur Politiae quae est species quaedam regiminis, vel Principatus temperati, secundum virtutem, ut capit Aristoteles, in Politicis ... etc.

'Populus', 'seniores' and 'rex' were D'Ailly's terms for the elements of a kingdom. They were not, of course, conventional terms in which to describe the government of the Church or state in England. To a conservative Churchman their very blandness made them offensive; More, for instance, objected strongly to Tyndale's use of the word 'senior' for *πρεσβύτερος*, sensing that it implicitly denied the special status of the spirituality. Similarly 'populus' might seem a very pointed term where 'laici' would not. 'King', 'seniors' and 'people' are nonetheless the terms used repeatedly in the various draft treatises which answered the points raised in the memoranda to Cromwell.

In Christendom the 'populus' would be represented by the General Council. Within the realm it could only adequately be represented by Parliament. Proposals to involve Parliament in the definition of necessary belief there certainly were. One of Cromwell's memorandists tacked onto his 'thynges necessary to be remembered before the brekyng up of the parliament' certain items of doctrine 'late confessed to be abused in tyme past' to be 'playnly confermyd by parliament or hooly prohibite'.¹ He is seeking a declaration of some uncompromising Protestant watchwords, which suggests again the quarter from which such initiatives might spring. Somewhat more measured, though still advanced in its doctrinal sympathies and bearing all the marks of connection with

¹ Cleo. E. VI, fol. 330 b.

the memoranda is a draft declaration of certain texts in Parliament by the King.¹ The declarations are to be made with parliamentary assent but at the conclusion of the interpretation of the first text one comes to a qualification:

This declaracion and prohibicion to stande in effecte till a generall counsaile gathered and ordeyned by the power of kings and princes may be had ...

To the judgement of this Council King and Parliament subject their interpretations, but until then their interpretations will stand.² The King in Parliament appears in this role rather as a lower house or provincial assembly of the General Council. It appears then that the proposed Parliamentary declaration is the final stage in an elaborate but fruitless project to supplant popish doctrine and clip the power of the ecclesiastical hierarchy at one stroke.

We must now ^{more on} turn to a question which came to be of more-than-academic interest in the latter part of the 1530's: what constituted a General Council of the Church? Against all the expectations of earlier years, Paul III summoned a Council to meet at Mantua in 1537. The danger of diplomatic isolation for Henry was dangerously increased. At worst, the Lutherans might be reconciled to Rome,

1 L.P., XII, ii, 1313 (1); SP6/4 fols. 106-122 and L.P., XII, ii, 1313 (2); SP6/4 fols. 123-132.

2 Ibid., fol. 124a.

This is very similar to the scheme of things suggested by the conclusion of the tract 'Of divers heresies'; the author of that paper hopes to see the King or his commissioners correct teachings which are plainly against scripture but suggests that doubts ought to be resolved by the King in Parliament or in a General Council: SP6/1 fol. 119.

Structure
Add para
see Chap V
notes 2b-3a.

leaving the English Church very much out on a limb; only slightly better, for Henry, was the more probable outcome of a public condemnation of both English and German schisms. Suddenly it seemed important to find common ground with the Germans. To achieve this, to add his voice to their rejection of the Council, Henry was obliged to accommodate in some measure Lutheran, or perhaps more accurately Melanchthonian, ideas on the structure of the Church, on the nature and membership of a General Council and the place of the princely head. In public statements, at least, the divinely-granted powers of the monarch came to be tempered somewhat with the authority of the whole Christian Church. Circumstances, if not conviction, led Henry a little way from his clerical advisers and towards Cromwell and the proponents of a German alliance.

[This particular story began elsewhere of course.] By 1530 if not earlier, Henry understood that talk of a reforming Council might be the best way to scare the Pope, but an actual Council would be a dreadful embarrassment. For one thing the Emperor stood to gain too much from such an enterprise. Charles was looking for help and concerted action against the Turks - looking in vain for the most part, since in Western Europe the vision of a united crusading Christendom was dead and beyond recall. When told by Chapuys that a Council was necessary if the West was to halt the Turk, Henry is said to have replied that everyone must try to defend his own and God would be the protector of all.¹ From the despatches of Chapuys it is tolerably clear that both Charles and

1 Cal. Sp., IV, 492, p. 801.

the Pope (through his Nuncio) were hinting broadly in late 1529 and 1530 at the possibility of a Council, hoping the threat would restrain Henry's enthusiasm for a new marriage. Such talk brought some characteristically blunt and impatient replies from Henry. In one instance he told Chapuys that Charles ought to look to the reform of the Church in the Empire and he would take care of the Church in England¹ adding, in a similar conversation some months later, that there was no hope of the correction of the clergy in a Council which they dominated under the Pope.² This latter remark may have struck Chapuys as a pointed reference to what the proponents of a 'free Christian Council' were saying in Wittenberg³ - especially when Henry in an off-hand style (no doubt calculated to shock the earnest ambassador) dismissed Charles' plea for help against the Turks with the assertion that the sins of Christendom were so evident that God would not help until amendment was made.⁴ Luther had said just as much, if in a more ^{evidently} convincingly sincere

1 Cal. Sp., IV, 435, p. 724.

2 Ibid., IV, 492, p. 803.

3 Luther, in 'An den christlichen Adel deutscher Nation' 1520 (W.A. Vol. 6, p. 404-469; Pelikan, J., and Lehmann, H.T., Luther's Works, 55 vols., Philadelphia and St. Louis, Vol. 44, 115-217) proposed a 'recht frei concilium' of the whole body of Christendom; it was to be called by any who was able to do so, and most conveniently by the temporal authorities. Though Luther later abandoned the belief that a Council or any other body could represent the Church in Christendom, his earlier ideas as developed by Melancthon became the basis for the stand of the Schmalkaldic League against imperial and papal proposals in the 1530s: see below, p. 252ff

4 Cal. Sp., IV, 492, p. 801-2.

manner.¹

Despite these hints at Lutheran sentiments, and though Henry's government never relaxed its antipathy to the meeting of a Council, for a period of three or four years before Paul III's convocation of a Council to Mantua, public statements reflected Foxe's conciliarist thinking. The King's letter to Benet at Rome, of about 1532,² for instance, argued for a law or tradition of the Church concerning appeals, founded upon the canons of Nicaea but confirmed by other decretals; in the light of this ruling of the whole Church the question was put whether the pope alone could, as Pius II had done in his bull 'Execrabilis', prohibit appeals from papal or episcopal judgement to a future General Council. Significantly Benet was referred to a book that Henry had forwarded earlier, which sounds most likely to have been the Glasse of the Truthe. In this letter, certainly, the Gersonite conception of the corporate authority of the Church and the ministry of the pope, espoused by Foxe, is understood. One could point equally to another paper or short tract dating from late 1533 or 1534. One of the three surviving copies is endorsed, possibly by Tunstall, with the words 'Off the general counsel'. A more revealing title is offered by the

1 See Headley, Luther's View of Church History, p. 244-5. Chapuys persuaded himself, for all this, that Henry's motives were political - because the Emperor proposed it for his own benefit, and because the divorce would be discussed: Cal. Sp. IV 492, p. 802. One might add that Henry's anti-conciliar policy at this period was pursued in concert with Francis I of France, as P.A. Sawada 'Das Imperium Heinrichs VIII und die erste Phase seiner Konzilspolitik in Reformata Reformanda (Festgabe für Hubert Jedin), (Münster, 1965) has shown.

2 L.P., V, 1493.

endorsement of the earliest copy 'Capita verum [sic] The declaracions that a generall counsaill may be kept Provinciaill'.¹ Such talk of a council was a convenient ruse, part of an argument designed to remove the King's divorce from papal jurisdiction, an argument which led in fact to the principle of provincial independence.

When representatives of the Churches were actually summoned to Mantua the need for a new response was evident; but this was also the signal for positions to be manned. The Government elicited opinions; papers were drawn up. Though the initiative here appears to have been Cromwell's² the strength of the older ideas was by no means spent. A number of questions on the Council were posed in the second version of the memorandum 'Thynges necessary as it semethe to be remembered before the brekyng up of the parliament'.³ The clergy (whose opinions in this point were to 'be only certefyed to the kyng and his counceill') were to be asked who possessed authority to gather a General Council, for what causes it might be convoked,

- 1 The order of the three versions can be deduced from internal evidence. It is:
SP6/5 fols. 43-44 (apparently uncalendered); SP1/83 fols. 86-7, L.P., VII, 462 (endorsed 'Off the general counsel'); B.L. MS Cleo. E. VI, fols. 332-335, L.P., VII, 2. Mention is made in the paper of the Princess Elizabeth (b. 7 Sept. 1533) and of Pope Clement (d. 25 Sept. 1534).
- 2 Note the request for a statement on the 'ius concilium convocandi' in the memorandum L.P., XI, 84 addressed to Cromwell, and the preface to the tract Hatfield MS 46, in which the author acknowledges Cromwell's invitation to write on the General Council even though the body of the tract offers only lukewarm support for the direction of Henry's Reformation (see below, 248ff).
- 3 B.L. MS Cleo. E. VI, fol. 330, i.e. the second version of L.P., XI, 83.

and who should have a voice in it. The answers, signed only by Cranmer, Tunstall, Clerk and Goodrich are in a paper marked 'Ffor the general Counsaill',¹ and were controversial. Few in Henry's camp would have argued with the principle that councils were to be called by or with the assent of the Christian princes, but the reasoning of the prelates was somewhat pointed:

Though that in the olde tyme, when the Empyre of Rome had his ample dominion over the moost parte of the worlde, the first foure generall counsaillles, which at all tymes have ben of mooste estimation in the Church of Christe were called and gathered by the Emperours commandement yet now forsomoche that the Empire of Rome and the monarchie of the same hath no suche generall dominion, but many Princes have absolute power in their own Realmes and an hole and entire monarchie, no one prince may by his Authoritie call any general counsaile.

The full tenor of this may be appreciated when read in conjunction with the prelates' response to the third question:

In all the auntyent counsaillles of the church in matires of faith and interpretaccon of scripture, no man made diffinitive subscription, but bisshopes and preists forasmoche as the declaration of the wourde of godde perteignyth unto them.

Here then was a double blow at the theory of the devolution of authority from the congregation of all Christian men. A 'translatio imperii' had occurred. The political authority of the Roman Empire was shared now by sovereign kings and princes; with that 'empire'

¹ Lambeth MS 1107, fol. 163. (The L.P. calenderers mistakenly took this to be a copy of the paper 'Of the General Council' L.P., VII, 42).

they had inherited a spiritual function of the Christian Roman Emperors, the right to summon a General Council. Secondly, the identity of two estates under a common supreme ruler is carefully maintained by the exclusion of a lay voice in the Council, very much against Alesius' ideas of common assent in the early Church, and indeed against the concept of a free Christian Council on the Lutheran pattern.

The history of these questions and answers was by no means ended. When a copy was made¹, an answer to a fourth question was included. It was an interpretation of that ticklish text from John 20 'Sicut misit me pater et ego mitto vos'. Once again the integrity of the priesthood was defended. The text, it was claimed, referred not to the power of kings but to the clergy's ordination to preach the word of God and administer the sacraments; the duty of the prince was to see that the bishops were not negligent. This is in marked contrast with the exegesis of the paper, 'The Question moved' which held the mandate to be most appropriately directed to the Christian prince, as the chief in a priesthood of all believers.²

The copy of the answers was signed by a further nine prelates and other clergy. This seems to have been a final preparation for the discussion which took place in Convocation on 20 July 1536, and here differences of opinion must have come into the open. Five

1 L.P., XI 124 (2), SP1/105 fol. 78.

2 See above p. 233ff.

questions were mooted on that occasion, on similar lines to those already posed, but only one received an answer and that in a rather cursory manner. The lack of progress may be explained by the presence of Cromwell's signature alongside Cranmer's and those of the other clergy who had already made their opinions plain. It was agreed, on the first count, that neither the bishop of Rome nor any one prince might summon a council by his own authority without the assent of other sovereign Christian princes.¹ This much, this conclusion, was unobjectionable but ambiguous, evading as it did the nature and origin of the supreme power, both political and spiritual, that the princes wielded. That it is a formula of compromise is suggested by the lame conclusion:

... and this to be true, we be induced to think by many and sundry, as well examples as great reasons and authority, the which, forasmuch as it would be over long and tedious to express here particularly we have thought good to omit the same for this present.

A few days earlier the prelates had managed to express themselves succinctly enough. But sufficient had been said. The Council summoned to Mantua was by implication declared void. There was no pressing reason for statements on the remaining points and a debate which could only have revealed more of the substantial disagreements among Henry's ministers had, perhaps, been avoided.

Cromwell's search for influential opinion went further than this. One writer, whose identity remains unknown, was requested

¹ Wilkins, Concilia, III, 808-809.

by him to scan the canon law for arguments against the principle of papal headship in the General Council.¹ Twice in his prefatory remarks the writer declares the 'redynes of my heart to doo youre commandement'; but he protests over much. The bland assurances are belied by some brave words towards the end of the tract:

I can no lenger refrayn but nowe I must
 tell you what I have thought a gret while.
 Never shal the shepe retorn agayn unto there
 folde that nowe are strayed awaye, And I deare
 saye more yet they that be nowe in the folde
 will not there contynue except there be made suche
 a shepeherd whose liff be lik Christis peters and
 thappstolis. Lett there be a shepeherd that care
 for nothing elles but that his shepe do well and
 that can feed them with the word of god and good
 and good [sic] example of lyving. (At oon worde)
 Lett hym be the man that every man shuld love
 for his goodnes and I deare Jeoperdy my lif
 he shal have a greate folde and well replenished
 so that the world shall see that men be brought
 to obedience more by love than feare or penaunce
 of never so grete power or auctorite for so did
 the apostollis bring the World unto the obedience
 of Christ.²

1 Hatfield MS. 46 (Vol. 137 fols. 36-75).
 The treatise begins 'My Lorde. I have don as ye commanded me
 and that with right good will'. Sawada, 'Two Anonymous Tudor
 Treatises', p. 210-11 puts a case for the authorship of Henry
 Cole, a canonist, suggesting that this was the tract that
 Henry wished his ambassadors show to the Emperor in 1538
 (L.P., XIII 695 (1)). This is not altogether convincing. The
 tract is far from a finished piece - rather a statement of a
 researcher's findings - and (as will appear) is anything but
 an unreserved endorsement of the course of the Reformation.

2 Hatfield MSS Vol. 137, fols. 65b - 66a.

This outburst is a key to the writer's mind. He does not stand against the King's supremacy and yet his assessment of the pope's position is conspicuously similar to what had been suggested in the earliest draft of the Act of Appeals.¹ The corrupt manners of Rome are regretted and its assumption of political and spiritual powers condemned in tract and draft act alike. This leaves the Roman papacy, however, with a primacy of honour, a moral and spiritual leadership - if it would but assume it. The note had in fact been sounded before the Act of Appeals in the draft treatise 'A Dialogue between Raphael and an Englishman':

So long as the chyrche of Chryst followyd hys
steppes yn poverte, and allso humilyte, so longe
dyd all the world honour the mynysters theyr off ...
but syns that the sayde mynysters have followyd
the rychesse of the woorld, and applyed theyr mynde
to pryde all the world hath all most forsaken theym ...²

In the next breath 'Raphael' reveals a 'mystery': that God has allowed the call of the King of England to answer his case at Rome as a means to begin the reformation of the Church after the ordinances of the Fathers.³ This seems to be close to the attitude and hopes of the author of Hatfield MS 46 and perhaps of many conservatives; the whole Church (and each Church in its province) must put

1 The preamble of draft 'E' of the Act of Appeals (see Appendix II) regrets that the 'see appostolik' has been occupied by those most ambitiously aspiring to be supreme lordis of all the world forgetting the holy steppes and examples of their good predecessours which nothing els desired but the advauncement the lawes of god thencrease of the catholik faithe and of vertue good example and good lif in the people'.

2 SP1/83, fol. 235a.

3 Ibid., fol. 236a.

itself in order, must reform the see of Rome and reduce its pretensions - but out of the painful process it might find a new spiritual leadership at Rome and a new sense of direction. There was no necessity for the pope to be head of the Council, and the writer of Hatfield MS 46 comes out strongly against his headship of the next Council in which the faults of the papacy would be discussed. Yet he might be head, ~~clearly~~, if the Church so chose.¹ The surprise is not the existence of this attitude to the papacy but that it should have survived in government circles well after the Act of Supremacy.

We should notice also the continuing strength of the idea that only the clerical estate had anciently and therefore now possessed authority in the government of the Church. This view was found in the prelates' response to the Government's question on Councils² but it was only a continuation of the position of around 1532, in 'Raphael and an Englishman', which has communal decisions made jointly in the early Church by all prelates.³ The real need, for what we might loosely call the clerical party, was for an interpretation of early practice which would preserve both the powers of kings and the liberty of the spirituality. The canonist author

1 See Hatfield MS 46, Vol. 137, fol. 47a-b

2 See above, p. 245 ff.

3 SP1/83, fol. 228b

of Hatfield MS 46 attempts this. ^{He admits} ~~Whilst admitting~~ that Christian people used to gather together by 'oon assent' to determine doubts of the faith, he argues that a Council could only be called General when the fathers were called to it, by a prince who was the ruler of Christendom. It is specifically denied that the status of a General Council derived in some way from the presence of all Christian people¹ and later the writer implies the exclusion of the laity from the Council by the conclusion that 'it is better that worldly matters be defined by worldly men and spretual by them that be spretual'.² This tendency is perhaps to be expected in treatises deriving so much of their strength from conciliarist ideas, since, as Walter Ullmann has pointed out, the fifteenth century conciliarist movement, in binding together the interests of secular authority and ecclesiastical hierarchies tended to limit the participation of lay and popular movements in ecclesiastical reform.³

In the meantime, events on the continent had been running against the clerical party. On 25 February 1537 a papal nuncio, van der Vorst, delivered the bull of convocation of a Council at Mantua to the Elector John Frederick of Saxony at Schmalkalden, where the League was meeting, but the Elector

1 Hatfield MS Vol. 137, fol. 40a

2 Ibid., fol. 62b

3 Ullmann, W., A History of Political Thought: The Middle Ages, p. 223-225

refused to accept it.¹ The League was already negotiating with Matthew Held, the imperial vice-chancellor, who had been charged by the Emperor to negotiate on a religious settlement. Part of Held's task was to ascertain whether the papal council at Mantua was acceptable to the League or whether some other kind of Council - even one without the pope's presence - might be a means to an entente. It does not appear that the English were properly represented at Schmalkalden though evidently letters had reached Melanchthon from Christopher Mont, a German frequently and for many years employed by the English government as a diplomatic agent. The English King's anxiety that an accommodation with Rome might be arranged had been made known, and Henry had offered to discuss central doctrinal questions, no doubt to stiffen resistance to concessions.² In this Henry need have had no fears, for at the instigation of the Elector, Luther, Melanchthon and other divines drew up a list of the doctrines - the Schmalkaldic Articles - which set Rome and Wittenberg apart. The mood at the Diet was intransigent and the Council of Mantua was firmly rejected.

At this difficult moment Henry and his government were anxious

1 Jedin, History of the Council of Trent, I, p. 317-318.

2 L.P., XII, 541: an anonymous letter to Foxe from one describing himself as a friend of Melanchthon. In the negotiations between Henry and the League 1535-36, conducted for the King by Foxe, Heath and Barnes, (of which there is a succinct account in E. G. Rupp, Studies in the making of the English Protestant Tradition, mainly in the reign of Henry VIII (Cambridge, 1947) p. 95) the English consistently insisted that the parties to the League should agree on doctrine as the only basis for concord and for entry into a General Council. As Henry was the only prince who had not accepted the Augsburg Confession, it appears that such talk of unity of doctrine was principally a blind and a means to delay acceptance of a Council.

to maintain a united front with the Germans. The King was sent formal notification of the outcome of the meeting at Schmalkalden on 26 March 1537¹ and despite his lack of representation he also received copies of several documents produced in the course of the negotiations with Held. A number of these were translated on arrival, as befitted their importance. Among them was the formal reply of the evangelical princes to Held setting out the grounds for their refusal to accept the Council at Mantua. It contains few surprises² but it does appear to have been the principal model for the King's own response, the Sententia de Concilia put out shortly after, in May 1537.³ In this fashion Lutheran theories first appeared in print as the policy of the English government. This short tract was perhaps composed by Richard Morison whose hand appears frequently on the documents and translations relating to the negotiations at Schmalkalden. The piece also appeared in English as A protestation that neyther his hygheness nor his prelates is bound to come to Mantua.⁴ The Germans' practical

1 L.P., XII, 745.

2 Versions of this reply are calendared in three places in L.P.: (1) L.P., XIII, 1308 (3) (Latin) found at the end of Melanchthon's treatise 'De potestate et primatu papae', SPI/134 fols. 79-85; (2) L.P., XII, i 564 (2), B.L. MS Vit.B. XXI fols. 198-199 (English translation of version of the reply to Held, given to the papal nuncio); (3) L.P., XII, i 564 (1), Corp. Ref., III, cols. 301-8.

3 Illusrissimi [sic] ac potentissimi regis, senatus, populi que angliae sententia de eo concilio quod Paulus episcopus Rom. Mantuae futurum simulavit, T. Berthelet, London, 1537.

4 A protestation that neyther his hyghenes nor his prelates is bound to come to Mantua, T. Berthelet, London, 1537. The Protestation appeared again the following year annexed to An epistle to the Emperours maiestie, T. Berthelet, London, 1538.

Continued

objections to Mantua as a site were picked up in the English tract; the chief complaint was the danger in an Italian Council not only to the physical safety of the participants but also to their cause in an assembly packed with the pope's local support.¹ Both parties ^{at the pope} protested against the inequity of the pope presiding in a council in which, as all Christendom expected, the errors and abuses of the head as well as of the members of the Church were to be corrected.² But the heart of the matter was the definition of who should be called to a council and by whom. The Germans wanted a general, free and Christian Council in Germany - such as had been demanded by the estates and accepted by the Emperor in 1532.³ Henry, according to the statements now put out in his name, would have a council 'franke and free where every man without fear, may say his minde' - a general council at a time and place which allowed all to attend.⁴ 'In tyme paste' the King's writers continued 'all councilles were appointed

Ph. suggests
a variation
between
German and
English

which was a similar response to the ensuing proposal for a Council at Vicenza. The Sententia is discussed by P.A. Sawada, 'The Abortive Council of Mantua and Henry VIII's Sententia de Concilio 1537, Academia xxvii (1960) Nanzan University, Nagoya, Japan.

- 1 A protestation, sigs. Aii b f, Biv b ff; Corp. Ref., III Col. 306.
- 2 A protestation, sigs. Bia ff; Corp. Ref., III cols. 305-6.
- 3 Corp. Ref., III, col. 302: 'Itaque ex gravissimis causis nunc Tocum tenens Imperatoris et eius Oratores una cum Electoribus et aliis Principibus atque ordinibus Imperii decretum fecerunt, in quo testabantur, opus esse generale, libero, et christiano concilio celebrando in Germania'.
- 4 A protestation, sigs. Avib ff.

by thauctoryte, consente and commaundemente of themperour, kingis and princis'.¹ (This was to push forward again the by-now-familiar Byzantine precedents; Morison did in fact have a copy of a German opinion on Constantine and early councils).² Similarly, the princes, in reply to Held, spoke of the pope having forfeited the right to call a council and to preside there, and directed a plea to the Emperor for a council of impartial, learned and holy men whose choice rested with 'Caesar Maiestas et caeteri reges, principes et potentatus'.³

It would seem that while the Germans and English had preserved a broadly uniform front, neither party had quite spoken its mind. Political tact suggested that all the theological niceties need not be spelt out, especially where they concerned the origins of the powers of the prince. The Germans reminded the Emperor's vice-chancellor, somewhat apologetically, that the whole Church has the 'cognitio Doctrinae'.⁴ But certain things apparently were not to reach the Emperor's ears. The version of the princes' reply to the imperial chancellor given to the Nuncio has been said to be a copy.⁵

1 *Ibid.*, sig. A viiia. Though, it is said, Henry would welcome a General Council he considered it unlikely to come about, and suggested that each prince might call a provincial council in his realm: *ibid.*, sigs. Cvb-Cva.

2 B.L. MS. Cleo. E. VI, fols. 316-18, in Morison's hand.

3 *Corp. Ref.* III, col. 306.

4 *Corp. Ref.*, III, col. 307: 'Et oramus cum debita reverentia C.M., ut pro sua excellenti et heroica bonitate et pro sua pietate erga veram religionem non inclementer accipiat hanc nostram commemorationem de periculis non solum nostris, sed totius Ecclesiae, quae habet opus libera et vera cognitione doctrinae.'

5 See Jedin, *History of the Council of Trent*, I, p. 318.

but is in fact an elaboration; the list of those entitled to choose the members of the Council is longer here than in the original. It includes 'Emperor, kings, princes nobles and commonalties'; it further elaborates with the assertion that the judgements of synods are the judgements not only of bishops but of the whole Church.¹ In Melanchthon's 'De potestate et primatu papae', written as an appendix to the Schmalkaldic Articles and which is found both in Latin and in English translation in the government papers,² it is argued that the scandal of abuses and heresies ought to be submitted to the whole Church, while the duty to provide a remedy fell upon the 'praecipua potestates' (in some versions 'membra') 'Ecclesiae Reges et Principes'. Melanchthon continues:

Cum autem iudicia Synodorum sint Ecclesiae
iudiciae non Pontificum³: praecipue Regibus
convenit, coercere Pontificum licentiam ...⁴

This idea of kings as principal members who could most conveniently instigate reform on behalf of the Church was worked out in more detail the same year in 'An principes debeant mutare impios cultus'.⁵

Though English writers certainly knew of this line of argument, and, to judge from the memoranda and treatises discussed earlier in this chapter, had sympathy with it, they made little of it in their

1 No Latin version of the version of the reply given to the nuncio is known to me but B.L. MS. Vit. B XXI, fols. 198-99 is an English translation of it. Italics mine.

2 L.P., XIII 1308(1), SP1/134, fols. 79-85 (Latin); L.P., VII, 1602 (5), SP1/fols. 1-8. (English), Corp. Ref., III, cols. 272-286.

3 The original, no doubt, of the phrase used in the princes' reply to the nuncio.

4 Corp. Ref., III, col. 281.

5 Corp. Ref. III, col. 240-258; see above p. 33

immediate response to the convocation of the Council at Mantua.

The 'populi' appeared only fleetingly - in the title of the Sententia de Concilio; they have vanished by the time the treatise is translated.

Perhaps Henry (like the Emperor) was not yet ready for the idea that the power of his office derived from the community. The following year, however, the treatise on the General Council derived from the memoranda to Cromwell¹ was published as A Treatise concernynge generall councilles, the Byshoppes of Rome and the Clergy, and here the now-familiar paradox is made public: the commonplace texts of scripture 'prove', it is claimed, 'that kinges have their power immedyatly of god', and yet the power to execute the testament of Christ which had been exercised by apostles and 'senyors' of the people was 'devolute' to Christian Kings and princes.² The treatise goes some way to resolving this (as the other tracts derived from the memoranda had) by keeping jurisdictional and pure spiritual power strictly distinct. The former, granted to kings by scripture, included the authority to make bishops, to visit, to exact punishment and to summon and preside in General Councils. Pure spiritual powers (other than the priestly function of consecrating the eucharist) could be exercised by any man, the laws of the bishops of Rome notwithstanding.³ These powers included the right to gather in Council. The origin of Councils supposed as much, for the apostles 'toke the

1 i.e. 'A treatise concernynge general Counsellis', Hatfield MS 47 (Vol. 238).

2 Hatfield MS 47 chap. 5

3 Ibid., chaps. 2 & 3. Laymen, that is to say, could (inter al.) administer the sacraments and preach.

senyors of the people with theym in Counseilles in the name of the hole church'.¹ The Council, then, representing the universal Church which is 'the congregation of all ffaythful people'² has the duty to declare the canon and interpretation of scripture and of preserving the unity of the faith; but powers of enforcement belong to kings. This last is a happy circumstance for Henry, as an example in the treatise rather pointedly shows: the Council might declare that a King was living in contravention of a scriptural law, but it had no authority to punish him or do anything else in prejudice of his power or laws.³

This did not dispose of all the difficulties, however. What credence was to be given to declarations of faith made by Councils? It was all very well for one of Cromwell's associates to write (in 'Of divers heresies') that the General Council properly constituted had the authority to make expositions of the scripture which 'eny man is bounden to believe even as the gospell'. But, as the author concedes, almost all recent and not so recent Councils had been called by the bishops of Rome and dominated by clergy of his allegiance. What was to be made of this body of teaching and regulations? What authority did it have? Clearly, some well-defined, published statement of necessary belief was required. Thomas Starkey,

1 Ibid., chap. 5. Cf. the discussion of the origin of councils in 'Doctor and Student', SP6/2 fols. 64a ff: Kings are said to have authority to call councils as heads of the universal church, as Constantine had granted licence to the Christian people to meet at Nicaea; but the authority of their meetings is by virtue of texts of authority (Quodcumque ligaveritis etc.) spoken to the whole Church.

2 Ibid., chap. 6.

3 Ibid., chap. 5.

in his Exhortation to Unity and Obedience made decisions of Councils things indifferent, just as the fictitious Doctor of the Henrician tract tells his student that a man might 'speke ... without offence of conscience, thoughe it be againste legende cronicles or seynge of doctours, or againste the comon oppynyon, so his saying be not against scripture...'¹ Starkey qualifies his statement however by saying that conciliar regulations were of no authority until, confirmed by the King and 'common counsell'², implying, perhaps, that these were matters of temporal significance which ought to be resolved by the constituted temporal authority. But there remained the problem of definitions of necessary belief or of interpretations of scripture, which Starkey faced in a brief unpublished paper 'Of prechyng'.³ For a 'certayn rule of Iugement' in difficult places of scripture, he suggests the interpretations of the ancient doctors, but where these are not open and plain he enjoins the preacher to follow the 'consent and laudabul custume of the church of england'. Starkey was probably right to fear wild and provocative novelties in religion, but his rule seems vague and timorous compared with the firm suggestion in, for instance, 'Of divers heresies' that Parliament should declare which of the traditional teachings of the Church including the decrees of its Councils were necessary belief and that

1 SP6/2 fol. 47a.

2 Thomas Starkey An Exhortation to the people instructing them to Unity and Obedience, T. Berthelet, London, n.d. (1536) fol. 9.

3 L.P., IX 1160, SP1/100, fol. 130.

none should then vary from its declaration.¹ The opinion appears to have been current, among certain of Cromwell's associates at least, that when meeting as the embodiment of all believers, Parliament, as much as any General Council, had the presence and guidance of the Holy Ghost.²

The questions about the rule of the clergy that had been brought into focus by the convocation of the Council to Mantua continued to be debated in England and with the Germans for some years to come.

NP It should be remembered that at all times Henry stood above or perhaps beyond the discussions. He could be malleable and yet stubborn, loyal and capricious by turn. For three years he dallied and dithered in an exasperating fashion. He would not be coerced into the doctrinal agreement on which the Germans insisted, nor would he rebuff his allies. In this devious game the King appeared to seek not so much agreement as time, and this he achieved best by allowing, perhaps quietly encouraging the in-fighting between men of different convictions.

SP ^{His} ~~The King's~~ ambivalence towards the Germans showed, perhaps, in ^{the} ~~his~~ choice of Foxe as his principal agent in negotiations. With Heath and Barnes, Foxe pursued his thankless task in Wittenberg in 1535-36, then presented the Ten Articles in Convocation in July 1536 and wrote the preface to the Bishops' Book in 1537; one can probably discern

1 SP6/1 fol. 119a.

2 See the conversation between Cromwell and John Mores, quoted in Elton, Reform and Renewal, p. 67.

his influence in the doctrinal formulations of the last work.

Melanchthon did not take to Foxe, however. He found him too much a favourer of prelatical religion.¹ Barnes, Foxe's companion of the hour also sensed that not all would run smoothly: 'we (Barnes and Foxe) do not agree 'in omnibus articulis religionis' he confided in Cromwell in December 1535, 'but I trust at length there will be no great varyance, for he is gentle, and may abide all manner of honest communication so that I doubt not to draw him at last to me'.² The negotiations were indeed not easy, and John Frederick pointedly sent Foxe home in April 1536 without the customary leave-taking.³

Henry's response to the products of these negotiations was highly enigmatic. The Wittenberg Articles which his ambassadors had agreed with the Germans in 1536 He refused to sanction. He then resumed his task of overlooking papers submitted to him. He probably scrutinised the Ten Articles, making minor alterations to Convocation's text,⁴ certainly studied and made copious revisions of the Bishops' Book⁵ -

- 1 Corp. Ref., III, col. 37: 'ὁ ἐπίσκοπος ἔχει τὸ σύνθημα τῶν ἀρχιερέων'; c.f. Melanchthon's letter to Camerarius, *ibid.*, col. 35 in which he says Foxe and interestingly enough Barnes had not tasted 'ἡμετέρας φιλοσοφίας' (our philosophy) and that he avoided their company as much as he could.
- 2 Barnes to Cromwell 28 Dec. 1535; L.P., IX, 1030; B.L. MS Vit. B. XXI, 123. I am indebted to Mr. R. L. Williams for this reference.
- 3 See the account in Rupp, Studies p. 95 ff.
- 4 Burnet, ed. Pocock, History of the Reformation, IV, p. 272 n.
- 5 Vere The institution of a Christen man, T. Berthelet, London, 1537; C. Lloyd, ed., Formularies of Faith put forth by authority during the Reign of Henry VIII (Oxford, 1825) p. 21-211. For the King's revisions see Cox. ed., Miscellaneous Writings and Letters of Thomas Cranmer (London, Parker Society, 1846) p. 83 ff; see Scarisbrick, Henry VIII, p. 405 ff for a discussion.

* His role was to dally and dither for three exasperating years. He wished neither to be coerced into the doctrinal agreement on which the Germans insisted, nor to rebuff his allies. In this devious game Henry sought not so much agreement as time, and this he achieved by allowing the arguments to continue.

but only after the book had been published without his having read it. He also scrawled his comments - mainly 'nota bene' and 'bene' - on documents relating to the German legation to England of 1538.¹ These jottings testify to Henry's interest, even diligence, but suggest that he was still at this point allowing others to take the initiative in ~~the broad field of~~ doctrinal argument. * Add opposite

These on B's Book
contain d historical
arguments on
role of clergy
nature of Church.

Church of elect
retain with

Mel. a wider

Church amenable
to state discipline

Guidance which

is compared

between

& Luther

If this reading is correct, the Bishops' Book is the pre-eminent | Ph
and by no means negligible product of inauspicious times. It is the
work of a committee and it contains a number of uneasy accommodations.
And yet this was recognisably the English way. Firstly, the embryo of
an Anglican conception of the Church had been formed from diverse
elements. In the Bishops' Book a two-fold nature of the Church is
proposed, the distinction being fundamentally that recognised by
Tyndale or Barnes between the Church or congregation of the elect
and the wider congregation of good and bad. In describing the first
the bishops might almost be echoing Barnes: they refer to the
possibility of sin among the members of the Church which yet remains
'without having any spot or wrinkle',² and insist it is 'very necessary
for all true Christian men to learn and know the certain notes and
marks whereby the very true Church of Christ is discerned from the
Church or congregation of the wicked'.³ But the bishops are following
Melancthon when they teach that the bad - 'very weeds and chaff, evil
fish and goats' - are not to be judged in this world,

1 SP1/135 fols. 151 ff and 179 ff.

2 Lloyd, Formularies, p. 78 ; c.f. above, p. 34 for Barnes' position.

3 Lloyd, Formularies, p. 77, c.f. above, p. 36-7.

yet forasmuch as they do live in the common society or company of those which be the very quick and living members of Christ's mystical body, and outwardly do profess, receive and consent with them for a season in the doctrine of the gospel, and in the right using of the sacraments, yea and oftentimes be endued with right excellent gifts of the Holy Ghost, they be to be accounted and reputed in this world to be in the number of the said very members of Christ's mystical body, so long as they be not by open sentence of excommunication precided and excluded from the same.¹

This was to accept the theological implications of Protestant ecclesiology while retaining, as Melanchthon did, a visible structure that was amenable to the discipline of the constituted authorities of the Church and the state. It was possible to insist that the Church was both Catholic - 'dispersed and spread universally throughout all the world'² - and yet divided into 'particular' or national,³ or as the King's Book of 1543 has it, 'known particular' Churches.⁴

Secondly, there emerged in the Bishops' Book an exposition of the ^{powers of the clergy} ~~sacrament of orders~~ which seems to owe much to Melanchthon and yet which preserves the essential principle that the clerical estate

1 Ibid., p. 54. See above, p. 35 on Melanchthon's position.

2 Lloyd, Formularies, p. 54.

3 Ibid., p. 55.

4 Ibid., p. 248; The King's Book is properly A Necessary doctrine and erudition for any Crysten Man, T. Berthelet, London, 1543; Lloyd, Formularies, p. 213-377.

possesses a '~~potestas iurisdictionis~~' and that it was granted by God. In Melanchthon's principal statements on this point having direct bearing on the discussions with the English he was cool towards episcopal jurisdiction. In the Confessio (which was translated and published in England in 1536) he argued that the bishop's office encompassed no civil power, nor the authority to alter the commandments or gospel.¹ Similarly in 'De potestate et iurisdictione episcoporum' (part of the tract 'De potestate et primatu papae' produced in the convention at Schmalkalden and subsequently translated into English²) Melanchthon is concerned with the excess of spiritual jurisdiction and suggests the civil magistrate might legislate to correct them.³ Even here in these public statements Melanchthon is far from abandoning the discipline associated with an episcopal hierarchy,⁴ but in relatively private discussions with Foxe and the

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- 1 Corp. Ref., XXVI, cols. 320-334. The Confession and Apology of Angsburg was translated and published as R. Taverner, trans., The confessyon of the faythe of the Germaines ... London, 1536. At the beginning of negotiations in Germany in 1535 the Duke of Saxony put forward the Confession and Apology as the basis for further discussion.
- 2 See above, p. 257 n. 2
- 3 The argument is historical: Melanchthon sees no difference of degree between priest and bishop in the early Church and (following Jerome, see above, p. 220) takes distinctions of authority in orders to have been established by men. The origin of certain further powers, especially in ordination of ministers, he finds in ceremonies attributed to Dionysius and later 'doctors'.
- 4 Melanchthon Apologia, Corp. Ref., XXVII cols. 310-11. 'Habent Episcopi possessiones, habent Imperia concessa iure humano, Nos nihil istorum cuiquam eripimus Sed aequum est, ut non solum de opibus suis, sed etiam de officio seu ministerio sollicitos esse, quales haberent Ecclesiae pastores, quales sacerdotes ordinarentur, ut pura doctrina Evangelii traderetur in scholis et Ecclesiis, quae fidem et caritatem aleret in animis hominum, ut sacramenta religiose tracterentur, ut vicia publica censuris ecclesiasticis

Continued

English negotiators, away from the hearing of political rulers, we may take it that he expounded his ideas in his characteristically systematic and balanced manner. In his 'Disputatio de Politia Ecclesiae seu ministerio et ordinationibus', for instance, Melanchthon writes of a 'ministerium divinitus ordinatum' of which the functions are five-fold: the 'ius vocationis' (the right of electing and ordaining ministers, which he reserves to priests) preaching, remitting sin, administering the sacraments and jurisdiction - 'hoc est ut excommunicentur obnoxii criminibus'. In addition the discipline of the Church was expressed in 'ordinationes factae humana auctoritate Episcoporum aut Synodorum' which were to be obeyed without being allowed as essentials of the faith.¹

Taken together these functions correspond quite closely to those expounded in the Bishops' Book; but probably more interesting than the similarities are the subtle but telling differences. The Bishops' Book extends the scope of the jurisdiction granted by God to include the authority to make 'certain positive rules and ordinances' concerning matters of form and worship that are not expressly determined in scripture.² Now this statement is tempered by some important qualifications. Such rules were made with the consent of

notarentur et emendarentur ut ordinationes ecclesiasticae ad aedificationem non ad destructionem proparentur ut disciplina Ecclesiastica ita retineretur ne iniustis oneribus conscientiae piorum gravarentur ut scholae bonarum artium, quae sunt utiles Ecclesiae, conservarentur'.

1 Melanchthon 'Disputatio de Politia Ecclesiae seu ministerio & ordinationibus', Corp. Ref., XII, cols. 489-491.

2 Lloyd, Formularies, p. 107 ff, esp. 110-11.

the Christian people, before the conversion of kings, and afterwards with the authority and consent of kings and their people. Indeed Christian princes 'did not only approve the said canons ... but did also enact and make new laws of their own concerning the good order of the Church'.¹ It appears then that while the potestas iurisdictionis is granted by God, its immediate recipient is now the godly prince, as a sort of lay bishop; the separateness of the clerical estate is maintained however.² The people, it is true, are said to have consented to these laws, but the text is carefully framed to avoid the appearance that they had had a hand in their enactment. Their consent is rather subtly turned in support of the authority of ecclesiastical tradition and canon law rather than in support of the principle of lay (or even Parliamentary) involvement in the government of the Church.³ To make the matter clearer, the Bishops' Book does refer to the 'further power and jurisdiction in certain other temporal and civil matters' granted the clergy by kings or by custom or by laws of a region; these might be revoked by kings and princes 'with the consent of their parliaments' - but not those 'assigned unto priests and bishops ... by the authority of God and his gospel'.⁴

Consent does
not imply
participation

Henry's attitude to the idea of an English clergy independent of

1 Ibid., p. 112-113.

2 'Item That this power, and authority was committed and given by Christ and his apostles unto certain persons only, that is to say, unto priests or bishops, whom they did elect, call, and admit thereto by their prayer and imposition of their hands' Ibid., p. 104.

3 Ibid., p. 111-112.

4 Ibid., p. 113-114.

both Rome and the political authority of the realm had been ambivalent from the beginning. On Warham's death in August 1532, Henry clearly preferred to have his new archbishop provided by the pope, no doubt wanting the orders of the man who was about to absolve him from his marriage to be of unimpeachable legitimacy. So the recent Conditional Act in Restraint of Annates was forgotten for the moment. Henry offered to pay all the requisite dues himself;¹ Cranmer was proposed in Consistory by Campeggio, accepted by the pope and in March 1533 consecrated in England in the normal way by virtue of papal bulls. Shortly after, however, the King wrote to Cranmer, referring to his institution as archbishop by God and the King.² There is a draft treatise, ^{probably of this period,} ~~of doubtful origin,~~ which argues for the King's sole right to elect and invest bishops. The case is partly historical, citing the 'gyfte and graunt' of popes Adrian and Leo to the emperors 'as touching thauthorite which they have in thelection and investuryng of bishops' adding that 'the same power and authoritie hath our most gratiouse lorde the kyng of England over his bisshops'. It is also scriptural, a direct parallel being drawn between the appointment of Levites to teach in the cities of Judah by the 'good kyng Josaphat' and the appointment of a bishop by a Christian king.³

1 L.P. VI, 89; quoted by Scarisbrick, Henry VIII, p. 310

2 L.P., VI, 332; St.P., I, 392 f.

3 L.P., XII, ii, 408; SP6/3 fols. 191-2. The cryptic reference to Adrian and Leo may be explained by episodes related in Vom alten und neuen Gott and repeated in Tyndale's Practice of Prelates

* Add opposite: Henry's annotations

SP When the King, studying the Bishops' Book after its publication, came upon the passage recalling that Christ and the apostles gave spiritual office and its authority 'unto certain persons only, that is to say, unto priests or bishops whom they did admit thereunto by their prayer and imposition of their hands' he commented in the margin 'Note, that there were no kings Christian under whom they did dwell'.¹ This was to couch the issue in the form that it was to take for some years to come. All parties seemed to recognise the importance of the period before Constantine but there were differences on the question of whether or not the extensive powers then exercised by the apostles could now belong to the clergy. The potestas iurisdictionis is retained in the Bishops' Book, though the godly prince becomes the lay head of the spirituality; and, as we have seen, in certain of the treatises and memoranda prepared for Cromwell the apostles' authority was held to have devolved onto the whole Christian people and thence to the King. Henry cannot be said to have endorsed either view. ~~His annotations on the Bishops' Book suggest that, whatever the implications of the policy framed by his ministers in legislation and propaganda, his own imagination had not stretched far beyond the personal, dei gratia supremacy of the king.~~ The bishops in their book taught that the governance of the Church was placed by Christ in the hands of the civil powers and certain other ministers and officers, but Henry with a slight but telling stroke of his pen removed 'other' and relegated the clergy to an inferior station.² The King insisted that the spiritual charge of christian people belonged as much to

1 Ibid., p. 97

2 Ibid., p. 96

himself as to bishops and preachers.¹ The making of rules of ceremony and liturgy which the Bishops' Book takes to be within the 'jurisdiction committed unto bishops and priests by the authority of God's law', was in Henry's judgement 'thought requisite and right necessary'² - a rather less elevated warrant. The King was unhappy too with the phrase 'power authority and commission under Christ' applied to the clergy and he altered it to 'cure, authority, power, administration, given by God unto them ... they being according to the laws of every realm elect and constitute'.³

In these matters Cranmer was the King's ally - whether willingly or not is hard to say. In 1540 the primate circulated a questionnaire on the sacraments in which ~~questions on orders were couched in the terms to which the King had already alluded.~~ ^{he asked whether} Did the powers of the apostles, especially in appointing successors to orders, ~~arise~~ ^{arose} only from necessity in the absence of Christian kings? Cranmer's replies to his own questions are instructive. In that era, he suggests, bishops were sometimes ~~chosen~~ ^{chosen} (of necessity) by the people. Sometimes the apostles or others particularly endowed with wisdom and the spirit made the choice, but the nominations were not accepted for any vested authority but because the Christian people were willing to accept good counsel. This seemed to discount boldly any idea ~~of~~ ^{that} divinely-

1 Ibid., Where the Bishops Book had taught it 'convenient that all bishops and preachers shall instruct and teach the people committed unto their spiritual charge' Henry made the passage read 'committed unto our and their spiritual charge'.

2 Ibid., p. 98.

3 Ibid., p. 96.

ordained potestas iurisdictionis devolving ^{ed upon the King} either from the Christian people or from the clerical estate, ~~to the King~~. Rather, as Cranmer maintained, all Christian princes 'have committed to them immediately of God the whole cure of all their subjects, as well concerning the administration of God's word for the cure of souls, as concerning the ministration of things political and civil governance'. In both spheres the King was to have inferior officers assigned and elected by himself.¹

Where is
Cranmer's
ground for
this

From here Cranmer was pushing on to radical conclusions. The three functions of the clergy's potestas iurisdictionis as defined by the Bishops' Book are all dismissed by him. The first, the power to 'rebuke and reprehend sin'² by excommunication he treats as deriving only from the positive laws of a region where they permit it, being neither commanded nor forbidden in scripture.³ Of the third, the authority to make rules and canons no mention is made in either Cranmer's question or in the discussion of orders in the King's Book. The second power, to approve and admit persons nominated to a spiritual office was more difficult. In two carefully framed hypothetical questions, Cranmer puts the extreme case; if a Christian king

1 Ibid., p. 116-117. It may be remembered that the response to questions on General Councils, signed by Cranmer, while granting sole authority to Emperors and their successors in the convocation of the clergy to a Council, also assigned the declaration of scripture in a Council solely to the clerical estate (see above, p. 246). While Cranmer may not have agreed with more conservative Henricians regarding the origin of the clergy's potestas iurisdictionis he stood up for right of the clerical estate to exercise alone such authority as was granted to it.

2 Lloyd, Formularies, p. 108.

3 Cox, ed., Miscellaneous Writings of Thomas Cranmer p. 117 (Question 16).

conquered an infidel land with none but 'temporal-learned' with him, or if all the bishops and priests of a region were dead, might the King, by the law of God 'make and constitute priests and bishops'? Cranmer concludes, of course, that he might, and moreover 'that there be histories that witnesseth, that some christian princes, and other laymen unconsecrate have done the same'.¹ The matter could not end there, however, because orders were traditionally held to be a sacrament, and the consecration of a priest or bishop might be held to be a part of the 'potestas ordinis'. Dr. Redman, in answer to one of Cranmer's questions, was prepared to accept that the Christian prince might appoint to an office, but consecration was vested exclusively in the apostles and their successors.² To another question, only one of those replying agreed with Cranmer that appointment alone without some form of consecration was sufficient to make a priest or bishop.³ Yet Redman's distinction which reserved the clergy's potestas ordinis in this respect was given short shrift by the King.⁴

Cranmer was stepping with some care however. He did not grant the supreme head the power to consecrate a priest or bishop, but held that consecration was unnecessary.⁵ He did not say that the King

1 Ibid., p. 117 (Questions 13 & 14).

2 Burnet, ed. Pocock, History of the Reformation, IV, p. 469-70.

3 'Whether in the New Testament be required any consecration of a bishop and priest, or only appointing to the office be sufficient': Ibid., IV p. 478-481.

4 B.L. MS Cleo. E. V. fol. 42.

5 Cox, ed., Miscellaneous Writings of Thomas Cranmer, p. 117 (Question 12).

Make it
clear that
Cranmer was
dragging over
the King against
Cranmer.
Cranmer was
not co-acting
with the
King.

should administer the sacraments in the absence of the clergy, but that he might appoint a clergy to do it.¹ The effect was to deny the King the potestas ordinis.² At the same time he removed much of the mystique of the spiritual office; he does not appear to believe, even in 1540, that order was a sacrament.³ Any Christian man might occupy the spiritual office - any, that is, that had been appointed to it by the King. The rule of the clergy was to be only such as the godly prince, in the tradition of the great Christian Emperors and the Kings of Israel, allowed.⁴

Maybe don't
believe in
Cranmer's (+ King's)
idea only

-
- 1 Ibid., (Question 14). Several of the bishops and divines responded that the King and laymen might baptise in case of necessity.
 - 2 Though he granted that in a case of necessity a King might preach. Ibid., p. 117 (Question 13).
 - 3 Cox ed., Miscellaneous Writings of Thomas Cranmer, p. 116 (Question 7): 'Of the matter, nature and effect of the other three, that is to say, confirmation, order and extreme unction, I read nothing in the scripture as they be taken for sacraments'.
 - 4 In the King's Book of 1543 all the powers of the office of an 'ecclesiastical minister', preaching and administering the sacraments included, are said to be used only as 'the laws of every Christian realm do permit and suffer': Lloyd, Formularies, p. 278-9.

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APPENDIX I

The Compilation of the 'Collectanea satis copiosa'

B.L. Cleo. E. VI, fols. 16 - 135

Reference has been made in the foregoing pages to the manner in which the 'Collectanea satis copiosa' was expanded, in the course of two or three years perhaps, by the piecemeal addition of texts, marginal comments etc. The sequence of compilation is not immediately evident, and it may not be possible to be confident about its every detail on the evidence available. The outline of the sequence needs to be established however, since it is the chief means of knowing which were the compiler's first and which his afterthoughts. It is a clue, in other words, to the development of policy. Accordingly it seems important to avoid, as far as possible, a priori reasoning from the received understanding of how the policies of the government were developed to the process of compilation.

The evidence is largely the evidence of the document itself. It is fourfold.

1) The Hands: The main text is written in three hands, here referred to as Hands A, B and C. About half the document is in Hand A, including, as an example, the main text of fols. 22-42. It is a neat, well-formed secretary script. Hand B is a less fluent hand, not in all probability the hand of a professional scribe, but in layout of the text it imitates the style adopted by Hand A. Most, if not all the marginal notes, other than the King's, are in Hand B, but here in

the main it is less neat. The main text of fols. 77-92 is an example of Hand B. Hand C is very similar in size and style to Hand A, but individual letters are formed differently. It is the least common of the three hands. The main text of fols. 43-50 is in Hand C.

The marginal notes and references in Hand B may suggest that the writer supervised the whole project in some sense, but one cannot be sure. None of these hands has been identified by me; Hand A is responsible, however, for the similar but detached papers, '*Quaedam pertinencia*' and '*Non est novum*'.¹ Hands A and C indeed, being in formal secretary style, are rather unlikely to be identified. Hand B has more individual characteristics and seems, therefore, a more hopeful case.

2) Watermarks: There are two watermarks in the paper used in the '*Collectanea satis copiosa*'. One, the more common, is a hand and flower, the other a pot. A few leaves have no watermarks and so could belong to either batch of paper, or to neither.

3) The index: There is an index on fols. 16-17. It was printed by Strype,² but is incomplete since it does not record the first section of the text as it now stands, i.e. fols. 18b - 21b. One must presume that this section was not in the book when the index was made, the presumption being borne out by the layout and subject matter of fol. 22a which was beyond doubt the original beginning of the text. There is also a single unindexed sheet at fol. 119, clearly an insertion since its pot watermark differs from the marks on the sheets

1 See above, p.

2 Strype, Ecclesiastical Memorials, I, p. 283-85.

before and after. It is marked 'de annatis ex epistolis Pontificum que una cum Conciliis edite sunt'. This is a reference to Merlin's Conciliorum ... Tomus; it is as if the compiler finds it necessary to give a reference to a source he has not used before. Elsewhere Merlin's work is quoted extensively without acknowledgement so it is likely that this single sheet was inserted before other sections which use Merlin.

Though it records most of the contents in the order in which they appear, the index records two sections from the body of the book at the end. The first, a single sheet, fol. 76, is of little significance, but the second is a lengthy section, fols. 98b - 109b, a major part of the source material for the Glasse of the Truthe. Again it seems virtually certain that this section was not in the book when the index was originally made, especially in the light of the change of paper (from hand and flower to pot mark) at fol. 99 - the scribe economically beginning his additions on a spare side of paper before broaching his fresh supply.

It follows further that the index was not written in one piece but revised after additions had been made. Even in this revision the indexer seems to have forgotten the new first section of the book. That section, since it is derived from the same source (the Conciliorum ... Tomus) as the majority of the texts in the added section relating to the Glasse of the Truthe, was probably inserted at about the same time.

4) The King's marginal notes: The King read, or at least glanced through the texts of the 'Collectanea satis copiosa' when it

was not far from complete. His annotations begin at fol. 19b, that is on the second folio of the text, and continue to fol. 119b. There are two quite large gaps, between fols. 49b and 64b, and 78b to 97b, but as there is nothing else to suggest that these sections are late additions (indeed the evidence points the other way) there is probably little enough significance in them. Henry, not a particularly diligent scholar, no doubt became bored with what are in fact less important parts of the compilation.

One cannot be so sure that the King saw everything after fol. 119b where his annotations abruptly cease. Indeed there are other reasons for thinking that some at least of what follows was a later addition in response to a developing political situation.¹

An hypothesis of the sequence of compilation needs to be found which will take account of all this evidence. When the first version of the index was made, the text opened at fol. 22a with a methodical exposition of the nature and powers of kingship according to the Old and New Testaments. This section, as far as fol. 42 is in Hand A on hand and flower mark paper; Hand A, in fact, appears mainly on hand and flower paper and the sections in which it appears on the other paper can be shown to be later or almost certainly later additions (i.e. fols. 99-109, indexed out of order, fol. 119, not indexed, fol. 134, the penultimate folio, part of material apparently prepared to meet opposition in the Commons to the Annates bill).

¹ See p.

It is reasonable to suppose that everything in Hand A on hand and flower mark paper was part of the earliest version of the compilation; but was anything else so early? There are sections, not in Hand A and on a variety of papers, which are nevertheless indexed in the ordinary way and bear the King's annotations. They might have been in the book from the beginning but one could argue that inconsistency of hands and paper does suggest piecemeal additions. Possibly, too, this material deals less than the definitely original sections with the fundamental idea of the King's supremacy and more with the secondary issues - investiture rights, the power of the Councils of the Church, ecclesiastical possessions and the judicial function of the episcopacy. The probability is, therefore, that these sections, that is fols. 43 - 50, 55 - 59, 66 - 75 and 77 - 92 were entered in the manuscript later, but not a great deal later than the original matter. At this stage an index was made.

The rest of the material in the 'Collectanea satis copiosa' appears to differ from these early sections in that it is irregularly indexed or not at all, or in that it lacks the King's annotations. It is true, too, that it draws many of its quotations from a source not used before, Merlin's Conciliorum ... Tomus. One could argue also that it is related to specific issues which arose during the campaign to establish the King's supremacy - but this kind of argument we have already determined to avoid.

The remaining material is of two kinds - that which is part of the source material for the Glasse of the Truthe (fols. 98b - 109b), and that which appears to be related to the Government's annates bill

of 1531. Some of the annates material, from fol. 110 to at least fol. 118 is evidently original. Fol. 119 is a later addition, but early enough to have been annotated by the King; he annotated nothing thereafter. There is some ground for thinking that fols. 120 - 125 are of one piece with or not much later than the original section of annates material in the fact that both contain matter used in the Paper concerning annates.¹ From fol. 126 on, however, there is nothing to connect the notes with what has gone before and the subject matter changes considerably. These sections on annates may very well, therefore, have been added piecemeal as policy and circumstances changed.²

The Glasse of the Truthe material is annotated by the King but the later annates sections were not. This suggests that the former was the earlier to be inserted in the 'Collectanea satis copiosa'. The evidence of the index, however, appears to point the other way since the Glasse of the Truthe material is (with the exception of fol. 76) the last item indexed. The likely explanation is that the annates sections were indeed added later than the Glasse of the Truthe material, after the King had inspected the book, but that it was found most convenient for the sequence of the index to be continued from fol. 118 or 125 to the end before the inserted material at fols. 98b - 109 was recorded.

The probable sequence of the compilation of the 'Collectanea satis copiosa' can therefore be summarised thus:

1. The original material was in Hand A on Hand and flower paper,

1 See above, p.

2 See above, p.

- i.e. fols. 22-42, 51-55, 60-65, 94-98a, 110-118.
2. Fols. 43-50, 55-59, 66-75, 77-92 and perhaps fols. 120-125 were added shortly afterwards.
 3. The index was compiled.
 4. Fol. 119 was added, before other sections which use Merlin's Conciliorum ... Tomus.
 5. The additional material for the Glasse of the Truthe, i.e. fols. 98b-109 was inserted; at or about the same time the sections which now stand at the front of the compilation, fols. 18b-21, were added.
 6. The King annotated the compilation.
 7. Additional material on annates was added at the end - fols. 126 (or 120) to the end.
 8. The index was revised.

No account has been taken of fol. 76, a late addition since it is indexed at the end; but there is no evidence to allow one to be more specific about its place in the sequence. Otherwise all the materials of the 'Collectanea satis copiosa' have been placed in a sequence of compilation - the only one, I believe, that is consistent with the evidence.

APPENDIX II

Draft of the Act of Appeals
 (24 Henry VIII c. 12)
 SP2/N Fols. 78 - 90

This appears to be the earliest of the extant drafts of the Act, but is a copy or revision of a still earlier draft or drafts. It is draft 'E' in the scheme of lettering adopted by G. R. Elton, 'The Evolution of a Reformation Statute'.

Words added to the text in a later revision are given between double lines, thus // ... //. Alterations where merely of spelling are omitted.

(Fol. 78) 'Wher by dyvers sundry old autentike storyes and cronicles it is manifestlie declared and expressed that this realme of England is an Impier and so hath byn accepted in the world governed by one supreme hedde having the dignitie and roiall estate of the Imperiall crowne of the same under whom a body politik compact of all sortis and degrees of people devided in termes of spiritualtie and temporalitie bere and owen to bere next to god a naturall and humble obediens And is also instituted and furnisshed by the goodnes and sufferance of almyghtie god with plenary hole and intier power prehemynence auctoritie prerogatyf and iurisdicion to render and yeld iustice and finall determynacion within hit self and of hit self to all

resiauntis within the same in all causes matters debatis and contentions happynyng to occur [Insurge or begyn within the lymytis thereof without restraynt apeale // or provocacon // to any foryn pryncis or potentatis of the worlde Insomych that dyeurs the kingis most roiall

(Fol. 79) progenitours kingis of this said realme and Impier by (79) the epistolis from the sea apostolik have be named called and reputed the vicars of god within the same and in their tymes have made and devised ordinauncis rules and statutis consonant to the lawes of god by their // princely // power auctorite and prerogatyve royall aswell for the due observyng and executyng of thingis spirituall as temporall within the lymytis of the Imperiall crown of this realme, So that no wordely [sic] lawes ordinauncis iurisdicion or auctorite of any person at the begynyng of the catholik faith // nor // long after was practised experimented or put in execucion within the same but such as was deryved and depended of the Imperiall crown of this realme. For the lawes of almyghte god in any questions thereof // movyd // or happenynge was declared and shewed by that part of the saide bodye politik called the spirituale now called the Englissh church which is sufficiently endowed by the kingis most noble progenitours and the auncetouris [sic] of the nobles of this

(Fol. 80) realme as well // in // honour as (80) possessions for the due declaracion and admynystracion of the same without corrupcion or affeccion And the lawes temporall for triall of propertye of landis and goodis and for the conservacion of the people of this realme in unite and peace without raven or spoile was and yet is admynistred adiudged and executed by sundry iudges and mynystres of the other part of the saide body politik called the temporalte

and both their auctorites and iurisdiccioni // ys deryved & dependyth
 from and of // the same Imperiall crown of this realme And some tyme
 conjoyn together ether to help other in due admynstracion of iustice
 in thingis myxt, And in this maner of wise procedeth the iurisdiccioni
 spirituall and temporall of this realme of and from the Imperiall
 crown of the same. And albeit the kingis most roiall progenitours
 and the nobilite and comens of this realme at dyvers and sundry
 parliamentis aswell in the tyme of king Edward the first Edward the
 (Fol. 81) iii^{de} Richard the ii^{de} Henry the iii^{jth} and other (81) noble kingis
 of this realme made sundry ordinauncis and provisions for the entier
 and sure conservacion of the prerogatyves and prehemynencis of the
 saide imperiall crown of this realme and of the saide iurisdiccioni
 spirituall and temperall depending of the same from the Anoyauce
 aswell of the see appostolik as of other forayn potentatis attempting
 the dymynisshing enlessyng and violacion thereof, as often and from
 tyme to tyme as any such anoyauce or attempt myght be knowen or
 espied yet nevertheless dyvers fforeyn princis and in especiall
 such as have exercised the see appostolik most ambitiously aspyryng
 to be supreme lordis of all the world forgetting the holy steppes
 and examples of their good predecessours which nothing els desired
 but the advauncement of the lawes of god thencrease of the catholik
 faithe and of vertue good example and good life in the people, have
 now within fewe yeres devised and practysed aswell to amplifie their
 (Fol. 82) wordly [sic] honor (82) and possessions as their auctomite power
 prehemynence and iurisdiccioni nott only within this realme but in
 many other sundry provincis and contreyis of the world, attempting
 to make // colacionis & provisions // of all Bisshoprikkis prelaces

and other spirituall promotions of this realme and to have the ffirst frutis of the // temporaltis of the // said Bisshoprikkis and prelaces accepting of the spirituall persones that shuld have the same a corporall othe of obedience and subieccion to the see Appostolik contrary to their naturall dutie of obedience and alegiaunce that they shuld and owen to be [sic, for bear] to the kingis of this realme having the imperiall crown of the same, pretending also to here and determyne the spirituall causes of contencion incept and begon within this realme aswell by personall citations as by apeles by reason whereof the subiectis of this realme byn daily and comenlye inter-

- (Fol. 83) rupted to have a finall ende (83) of their pursutis in any the spirituall courtis of the same enclaymyng also visitacions and correccions of the clergie and in monasteryes for lucre and advauntage takying of theym secretly great yerely revenues presumyng also for corrupcion of money to conioyne and unyte Bisshoprikkis Abbacis monastreyes denryes prebendis and other spirituall promotions of this realme by the papall auctorite into one manys handis together And furder attempting to have power and auctorite to declare and adiudgge when mariagis of this realme shalbe lawfull and unlawfull by which it hath byn sene in tymes past when the primatis and prelatis of this realme have adiudged a mariage lawfull yet nevertheles by reason of pursute to Rome their iudgementis hath byn repealed and ~~the~~ [~~crossed through~~] // unlawfull // mariages contynued by the power of the see appostolik agaynst the lawes of god and determynacion of our englisshe church of this realme who owen to be iudges of the
- (Fol. 84) same And by this and by (84) sundry other wayes abusions and usurpacions great summes of money is and of long tyme hath byn removed

out of this realme to the great impoverisshing of the same and to the proffitt and advauntage of the said see Appostolik And finally they be nott abashed ne asshamed to take uppon theym the hole power and auctorite to declare and adiudge the succession & procreacion aswell of princis and potentatis as of all other subiectis of the world so that whosoever they adiugge legittimate and hereditabe shuld inherite And whosoever they adiugge base and nott legittimate shalbe so reputed and interrupted of his succession by the which as by some storyes appereth hitt hath byn seen that ether they have made great discord disension dyvysion and effusion of cristen blode in syndry provincis and countries amongis theym selfis for titles Auncestrell aswell of the succession of the superiorite of a realme as for lower successions or els by power and polycis they have

(Fol. 85) conveid (85) such superiorite of realmes and provinces to the houses of strangers for corrupcion and affecion or els to theym selfis for the encreas of their wordely [sic] glory pompe and honor And as it // now // lately comen to the knowlegge of the kingis highnes his nobles and comens of this realme the popes holynes [blank] ensuyng the ambitious steppes of such his said predeces-
souris which nothing els coveted but wordly honor and riches most presumptuesly claymeth to be the suppreme hede and to have the suppremite preemynence and roiall estate of this realme accompting our most dread soveraign lord to be his obediencer and subiect and to be bounden to all his proces callingis iudgementis and determyn-
acions to the great dishonor and reproche of the said soveraigne lord // & // to the derogacion of his imperiall crown & dignite roiall of this realme and to the importable damagis inquietude

vexacions and impoverisshing of all the subiectis of the same if
hitt shuld be suffered and nott resisted In considderacion and
for [blank] // Reintegracion apparently // of the auncient
(Fol. 86) auctorities (86) liberties prehemynencis and prorogatyves of the
imperiall crown of this realme and of iurisdiccions spirituall
and temporall depending of the same which hath uniustly be [sic]
taken away by negligent sufferance and usurpacion, the nobles and
comens of this realme assembled in this present parliament calling
to ther remembraunce the great division which hath byn hertofore in
this realme for dyversite of titles to the crown of this realme for
the uncertenty of the posterite and succession of the kingis of
the same to the great effusion and destruccion aswell of // A gret
number of // the nobilite as of other subiectis inheritours in the
same And that now thankis be to allmighty god // all the titles //
whereof variaunce ensued // or mought ensue // be now lynyally comen
descended and conioyned in the Kingis most roiall person without
question or ambiguite And yet nevertheless if the see appostolik
shuld be suffered to usurpe to declare and adiugge his posteryte
and succession at his pleasure hitt shold then be very lik the old
devision to be revived or els such to be preferred in the supreme
(Fol. 87) estate and dignite (87) roiall of this realme which shuld nott be
honorable nor yet proffitable for the welth of the same do therefore
most humbly beseche the kingis highnes that it myght pleas his grace
to ordeyne & enact by the assent of the lordis spirituall & temporall
& the comons in this present parliament assembled and by auctorite
of the same that no maner of summons citations inhibicions suspencions
excomunicacions nor any other proces sentence or iudgement of what

kynde nature qualite or condicion so ever hitt shalbe or by what name or names it shalbe called touching or concernyng any act or actis commensed done suffered admytted decreed adiudged or executed or to be commensed done suffred admytted decreed adiudgged or executed within this realme or within any the kingis dominions or marches of the same shall nott be accepted alowed nor obeid by our said soveraign lord nor his successors nor by any the subiectis or resiauntis within his said realme and dominions or marches of the same but that all causes and matters aswell spirituall as temporall and myxt // incept movid or comyng in contencion // done admytted // adiudged or determyned or hereafter to be done admytted adiudged or determyned // within this realme or within any the kingis dominions or marches of the same (in any maner of wise (88) moved shall have their full proces examynacion fynall and diffinytif ~~ende~~ ende crossed through // sentens & // determynacion within the precinctis of the imperiall crowne of this realme in such courtis spirituall or temporall as the natures of the causes shall require by the auncient custumes of this realme without having respect to any person or any inhibicions apeles or other restrayntes or impedimentis from the see appostolik or any other foryn princis or potentatis of the world // to the lett or impedymment thereof //

And that all maner citations inhibicions suspencions interdiccions excomunicacions & all other proces sentencis iudgementis & eny other thing & thingis what so ever that shalbe provoked moved done attempted executed or sett forthe to the derogacion lett hinderance or impediment of any proces examynacion sentens iudgement or determynacion done or to be done within the power & lymyttis of the

imperiall crown of this realme shalbe void and of none effect
 And that it shalbe lawfull to the king our sovereign lord and to
 (Fol. 89) his successours & to all other subiectis & (89) resiauntis within
 this realme aswell to pursue execute have and enioye the effectis
 of all such process sentencis iudggementis and determynacions done
 or to be done in any courtis spirituall or temporall within the
 power of the imperiall crowne of this realme as to have use mynister
 and doo all sacramentis devyne servicis and all other thingis as
 catholik & cristen people owen to doo, any process inhibicion
 suspensacion [sic] interdiccion excommunicacion or any other //
 proces // thing or thingis from the see Appostolik or any other
 foreyn prince to the contrary hereof notwithstandinge And it is
 furder inacted that if any person or persones subiect or resiaunt
 within this realme or within the kingis said dominions or marches
 of the same // of what condicion or kynd (?) so ever they bee //
 at any tyme hereafter attempt move or procure from the see appostolik
 or from any other foreyn Court of any outward prince or potentate
 any maner of proces thing or thingis of what nature kynde or qualyte
 (Fol. 90) it bee (90) or execute any such proces thing or thingis to the lett
 impediment hindaunce or derogacion of any proces sentens iudgement
 or determynacacion had,made,done or to be had,done or made in any
 courte of this realme that then eny such person and persons so
 doing and ther ffawtours eydours comfortours abbeters procurers and
 counsailours being convict of the same shalbe fromhensforth adiugged
 highe traytours and have such paynes of deth and penaltie and losses
 of their goodis possessions and inheritauncis as they shuld have had
 if they were convicted of highe treason And that such title and

interest as they shall happen to have or use or possession of any landis rentis or hereditamentis at the day of any such offense committed or any tyme after shalbe forsaite to the kingis highnes that is to say if the offender have interest intaile or for terme of life that then to forsaite first interest for terme of life of the offender only and no longer and if he have interest in ffee simple then to forsaite all such inheritaunce whereof he hath such interest in ffee simple in use or possession to the kingis highnes for ever Saving always to the lordis of the fees thereof their rentis & servises due and accustomed