Reconsidering Absolutism in Early Modern Europe : the Development of an Idea

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Throughout man's recorded history many rulers have possessed authoritarian ambitions. Furthermore, many people have believed that they lived under a regime of absolute power. As late as the mid-nineteenth century, a Russian commented to a distinguished foreign traveller that 'every country has its own constitution ; ours is absolutism moderated by assassination'.[1] 'Absolutism' is a misleadingly simple historical shorthand which describes a complex historical problem. It is not, properly speaking, an anachronism ; but it is certainly a neologism, a new term or historiographical image which conveniently describes certain common features of the subject in question. Absolutism is variously depicted as a conservative political philosophy and a form of political system. It is also used as a synonym for the entire *ancien régime* from c.1500 to 1789 (and to even later in certain countries such as Russia). Yet 'absolutism' was not consciously projected as an idea by any one individual at any one point in time. It should therefore be distinguished, for example, from a modern ideology such as totalitarianism, since the latter was a concept consciously fostered by one politician — Mussolini in 1922 — and subsequently adopted and modified by others. Absolutism should also be distinguished from two other terms, tyranny and despotism, with which it is often confused, though writers such as Machiavelli failed to recognize the distinction.[2]

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1. The Absolute Ruler and the Law : The Origins and Development of the Idea

We should pause to consider the significance of the fact that the neologism 'absolutism' only entered the French language in the last stages of the Revolution (in 1797 to be precise), while its first recorded English usage was somewhat later (in 1830).[3] It appeared, in other words, after the end of the phenomenon it purported to describe : it was a posthumous tag. The English language already possessed an appropriate word for this phenomenon, 'autarchy' (i.e. autocracy),[4] formulated by John Milton but later extended in scope — a word which was first used in 1692 in the sense of absolute sovereignty[5] — but it never made much headway in England and seems to have been virtually unknown in France. English political writers such as John Locke, however, tended to confound 'absolute power' with 'despotism', in what became (and sometimes remains) an unhelpful terminological confusion. Locke (writing in 1680-2, although his work was not published until 1689-90) talked of 'Absolute, Arbitrary Power' on at least seven occasions (and even 'Absolute, Arbitrary, Despotical Power' on another). Locke 'created the semantic tradition of identifying both arbitrary and absolute power as tyranny'.[6] Thus, in this English perception the French were somehow 'unfree' whereas the English were 'free' in their system of rule, a viewpoint which contemporaries in France would vigorously have repudiated. Locke considered that absolute monarchy could not be a properly constituted political authority because the ruler has 'all, both Legislative and Executive Power in himself alone', so that 'there is no Judge'.[7] Yet Locke conceded that 'even absolute Power, where it is necessary, is not Arbitrary by being absolute, but is still limited by that reason, and confined to those ends, which required it in some cases to be absolute...'[8] Bishop Bossuet commented that it was 'one thing for a government to be absolute, and another for it to be arbitrary'.[9] For many theorists on the Continent, at least until the last decade of the seventeenth century,[10] the two forms of rule were not to be confused at all. In 1640, Thomas Hobbes used the term 'the absoluteness of the sovereignty',[11] which serves to remind us that 'absolute' (unlike 'absolutism') was used adjectivally and not reified as a concept. It was possible, therefore, for one ruler to be 'more absolute' than another, or (in Hobbes' formulation) for there to be contrasts

in 'absoluteness'.

Yet if the term 'absolutism' was posthumous, and there was no alternative word that was widely available to contemporaries, this should not imply that the term 'absolute power' was not both known and used long before the eighteenth century. In its original Latin form of *potestas absoluta*, it had a wide currency in the Middle Ages.[12] What did contemporaries mean by the idea of absolute power? Jean Bodin was perfectly clear on this point, and defined the term potestas absoluta in 1576 in the sense of undivided legislative sovereignty. This definition needs some explanation in itself, but first we should ascertain whether Bodin's predecessors had any comparable understanding of the term, even if their views were articulated less clearly and less categorically.

For a Christian theologian of the later Middle Ages, God alone has absolute power. He has what Gabriel Biel, a fifteenth-century nominalist theologian who died in 1495, called the *potentia dei absoluta*. This has been described as the absolute power of God subject only to the law of non-contradiction. By God's absolute power, for example, natural laws can be suspended and miracles can take place. Rationally distinct from this, though necessarily part of a unified divine will, was what Biel called the *potentia dei ordinata*. This was the order established by God in this world : He has chosen to do things according to certain laws which He has freely established. He could have chosen another way of doing things, but He did not.[13] In the formulation of William J. Courtenay, 'God is not bound, save in the sense that he has bound Himself'.[14] However, the application of this theory of absolute power to the secular arena was the task of canon lawyers and other jurists, not theologians. For Jean Bodin, writing in the *Threatre of Universal Nature* (1596), God was 'freed from the necessary of nature' and made the world with his 'absolute power'.[15] Courtenay argues that the 'interpretation of absolute power, based on an analogy between divine power and human forms of sovereignty, entered discussion by the third quarter of the thirteenth century'.[16] In his judgement, 'the long-range legacy of *potentia absoluta* thinking in the realm of political thought, specifically in the sixteenth and seventeenth centuries, supported royal absolutism, the freedom of the ruler occasionally to act outside or contrary to

established laws'.[17] But, he adds, 'it also supported the "constitutional" principle that the relation of ruler and ruled was based on contract, that the ruler had bound himself to uphold the laws of the State, and that whenever he acted outside its laws, it should be for the good of the commonwealth.'[18] This polarity will be discussed further below.

The origin of the term *potestas absoluta* is not to be found in the Christian Middle Ages at all but in pagan antiquity, in two third-century dicta of the jurist Ulpian.[19] The first is the statement in Justinian's Digest (1.4.1), which attributes to Ulpian the sentence *quod principi placuit legis habet vigorem* ('what has pleased the Emperor has the force of a *lex*', that is, a law passed in assembly by the Roman *populus*).[20] The statement also appears in the *Institutes* (1.2.6), but it is not there attributed to Ulpian. The remark has been seen as fundamentally important for the development of the idea of sovereignty as derived from Roman law.[21] A crude sixteenth-century formulation by Loisel ('what the king wants the law empowers' ['qui veut le roy, si veut la loy']),[22] is merely a repetition of the statement. It is likely that Ulpian's original text was altered substantially by the compilers of Justinian's *Corpus Iuris*, and almost certainly in its original formulation it was not meant to give the Emperor absolute freedom of action.[23] Jean Bodin's translation of this passage in 1576 was that 'by a *lex regia* that was passed on the subject of [the prince's sovereignty], the people transfer to him and confer upon him the whole of their own sovereignty and power'.[24] The debate was whether, in what was taken to be the social contract establishing the ruler, the people transferred their sovereignty permanently and completely or whether they retained residual rights.

A second maxim, also attributed to Ulpian in the *Digest* (1.3.31), was also discussed at length by medieval lawyers. *Princeps legibus solutus est* ('the prince is freed from — absolved, or above — the laws'),[25] is perhaps the forerunner of the term *pouvoir absolu*, the term *absolutus* having become transliterated from *solutus*. Again, it is virtually certain that Ulpian did not write this precise text, and that the compilers of the Digest changed Ulpian's *lege* into *legibus*, in order to proclaim a new principle of sovereignty.[26] This maxim was

open to two different interpretations : 1) The prince is above the law, that is, immune from the law's norms ; or 2) The prince can legislate but is not free from legal norms.

What did the medieval lawyers make of their classical legacy? In their glosses, or interpretations, of Roman law, they sought to play down the absolutist implications of the classicists. The dictum that 'the prince is not bound by the laws' seemed to have an almost precise antithesis in another statement of Roman law (in Justinian's *Code*, 1.14.4) that it was 'worthy of the majesty of a ruler for the Prince to profess himself bound by the laws'. Accursius, whose gloss was completed in its first recension by about 1228, wrote that public law existed to preserve the state. His gloss on the maxim *princeps legibus solutus est* ran : [27]

> The Prince is loosed from the laws. That is, from laws founded by another... or by himself... Nevertheless, by his own will he subjects himself [to them]...

Accursius' view appears to have been that the Emperor in Roman times was not subject to legal coercion, since there was no magistrate superior to him. In a technical sense, the Emperor could not bind himself by his own laws since he could not, in any meaningful way, issue coercive commands to himself. The Emperor was 'loosed from the laws' in the sense that there existed no legal machinery for bringing him to justice if he broke them. However, unlike some later apologists of absolutism, who argued that every wish of the prince constituted a new law, Accursius appeared to believe that it was theoretically possible for the ruler to break the law. However, he did not usually do so in practice : 'by his own will, he subjects himself.' Moreover, the term *placuit*, 'please', in the dictum 'what has pleased the prince has the force of law' was itself subject to an important gloss : [28]

> Pleased. For the sake of making a common and general law... not every statement of the judge is a sentence. So too not every statement of the Prince is a law.

Accursius, then, did not give an absolutist interpretation to the constitutionalist maxims of

Roman law. Rather, he sought to extract a constitutionalist doctrine from a set of texts which had buttressed Justinian's theocratic absolutism. Later theoreticians, such as Bracton, went further and argued that *placuit* implied consultation with subjects : [29]

> [What has pleased the prince is law] — that is, not what has been rashly presumed by the [personal] will of the king, but what has been rightly defined by the *consilium* of the magnates, by the king's authorization, and after deliberation and conference concerning it...

How were the views of these medieval commentators on the Roman law conveyed to the early modern period? Papal claims to temporal power were not the medium for the transmission of the idea of undivided legislative sovereignty. For Innocent III, for example, the power he enjoyed over the Papal States and the authority which he possessed in other lands was circumscribed.[30] However, it is possible to argue that in the spiritual sphere the claims of the Papacy amounted to a modern theory of absolute sovereignty.[31] The publicist Augustinius Triumphus of Ancona (died 1328) cited *quod principi placuit* to justify acts of the Papal government simply on the grounds that the Pope willed them.[32] The Pope was *dominus absolutus*, possessor of total jurisdiction over both men and their possessions.[33] The Pope could not be bound by the enactments of his predecessors; he was *legibus solutus*, free from all legal restraints. The law could not be greater than the legislator.[34]

We now have to establish how this assertion of Papal sovereignty entered the secular arena, and became the preserve of the civil, not the canon lawyers. While its origins seem to lie earlier, the chief theoretical advance seems to have occurred in the fifteenth century, in the post-Conciliar period. Power had been bestowed on St. Peter personally, in a sense as God's vicar. There were no legal limits to it ; he was God's 'absolute vicar', and the Popes as his descendants inherited this power. The church could not tolerate two supreme powers, the Pope and the Council of the Church, because plenitude of power required a unitary sovereignty. Either the Pope or the Council had supremacy in all things, temporal as well as spiritual. The fifteenth-century Paduan thinker Roselli argued : [35]

> [The Pope] holds power from himself and directly from God... by his own right and no-one else's ; this is because he holds it according to the law by which [power] is principally founded and rooted in the person of the prince... jurisdiction is principally in him through himself.

Without one supreme ruler, just as in a kingdom, division and schism would arise in the church.[36] The great sixteenth-century theoretician of sovereignty, Jean Bodin, cited 'the canonists' and referred to Pope Innocent IV specifically as 'he who had best understood absolute power' in connection with the sovereign's ability to override positive laws. Many of Bodin's arguments for the need for absolute monarchical sovereignty seem to be anticipated in the writings of the Castilian Dominican Joannes de Turrecremata (Torquemada), whose *Summa on the Church (Summa de ecclesia)* was completed in 1449. In Turrecremata's writings there is indeed the elaboration of an abstract notion of sovereignty as necessary for all societies and the only source of legitimate power. However, the evidence for any direct link between Turrecremata and Bodin is lacking.[37] We will return later to the implications of papal sovereignty for the emergence of absolutist royal power.

The idea of *potestas absoluta* received a warm reception among the European monarchies in the later Middle Ages. Alfonso V of Aragon used the term 'the fullness of our royal, lordly and absolute power',[38] but then Alfonso V was a king of Naples who had won a war of succession, sworn no coronation oath and thus he could behave as a *princeps legibus solutus*.[39] Writing in fifteenth-century, Sir John Fortescue distinguished between the form of rule in England, which he called a *dominium politicum et regale and that prevailing* in France, which he called a *dominium* regale. Under a *dominium regale*, Fortescue commented, 'the king may rule his people by such laws as he makes himself. And therefore he may set upon them such taxes and other impositions as he wishes himself, without their assent'.[40] The term *puissance absolute* (*sic*) was used in the Netherlands in the sixteenth century,[41] where in 1543 a tax was levied on the basis of the Emperor's 'absolute power', that is to say, without the consent of the provincial states.[42] There is no doubt at all that French political theorists of the Middle Ages accepted the

notion *quod principi placuit*, although acceptance was sometimes linked with a rather different — and less venerable, though still well-established — formula, 'the king is emperor in his kingdom (le roy est empereur en son royaume)'.[43]

Thus the terms *pouvoir absolu* and *autorité absolu* were well known to fifteenth- and sixteenth-century Frenchmen. Some, such as Jean Juvenal des Ursins, writing in the 1430s, had sought to moderate the impact of *quod principi placuit* by arguing that it was an even greater thing to submit to reason and the laws of the kingdom ('est encores plus grant chose de soubzmettre à raison et aux loys le royaume...').[44] Similarly, Charles Guillart, a president of the *Parlement* of Paris, exhorted the king of France in 1527 that 'he should not or should not wish to do all that lies in [his] power, but only that which is good and equitable, which is nothing other than justice' ('...vous ne voulez ou ne devez pas vouloir tout ce que vous pouvez, ains seulement ce qui est bon et equitable, qui n'est autre chose que justice').[45] Francis I of France (1515-47) and his authoritarian Chancellors Duprat and Poyet, had other ideas.[46] For a European monarch, absolute power in practice meant that when the king was sufficiently powerful that he could, in certain circumstances, act free from institutional restraint.

2. The absoluteness of sovereignty: Bodin and the 'pure monarchy' of France contrasted with other states

Thus it was that Jean Bodin contrasted 'pure monarchy' in France with other political systems such as those of the Burgundian Netherlands (later, the Dutch Republic and the Spanish Netherlands), which lacked a strong central authority, and Poland, which had an elective monarchy.[47] In 1582 the duke of Anjou's advisers had tried to insist on the title *souverain* being added to that of 'prince et seigneur' of the Netherlands, which was about to be bestowed on him. The Dutch deputies protested that if the term *souverain* was interpreted as someone who held absolute power, then they were prevented 'by their laws, customs and privileges' from making any such concession. In the event none was made, and

Anjou was offered a titular sovereignty over the Netherlands which was less extensive than that enjoyed by Charles V and Philip II, and which remained a constant irritation during the short-lived French alliance.[48] Henri IV was later of the opinion that 'under a prince all difficulties could be resisted better than under the government of the states', but the argument never prevailed in early modern Dutch history, in spite of the important role played by the House of Orange as *stadholders*.[49]

It is often said that Bodin, who was one of Anjou's councillors (*maîtres des requêtes*), was responsible for raising the issue of sovereignty with the Dutch deputies. In fact, he may not even have been present when the issue was discussed.[50] Nevertheless, it is clear in the debates at Plessis-lès-Tours, which led up to the treaty of 1 February 1582, that the terms 'sovereignty' and 'absolute power' were seen by the Dutch representatives as virtually interchangeable. It would have been tactless to mention the name of Philip II, since the States General had rejected his rule in their recent edict of abjuration or act of dismissal. But even mention of the Emperor Charles V was omitted from the final text, for reasons that Marnix made clear : the Emperor, it was alleged, was the cause of 'all our calamities', since he had issued the repressive legislation against heresy by his absolute power ('de sa puissance absolute [*sic*]').[51] Here then is a statement that the exercise of the Emperor's absolute power in 1521 was the provocative act that led ultimately to revolt in the Low Countries. In omitting mention of the name of Charles V, article one of the treaty avoided mentioning a precedent which might have been interpreted as authorizing the prince to enact ordinances without the knowledge — and presumably, consent — of the States General.[52]

Legislation should be shared by the prince and the representative institution : the Dutch implicitly rejected Bodin's principle that undivided legislative sovereignty should rest with an absolute ruler. But did they do so explicitly? In other words, were they aware of a new concept of sovereignty — which they knowingly rejected — or were they simply lacking any understanding of the meaning of the term? The matter has been disputed, but it is clear

both from William of Orange's letter of acceptance of the supreme governance and sovereignty of Holland and Zeeland in 1580[53] and the title offered to Henri III in 1585 ('their sovereign lord' [*leur souverain seigneur*])[54] that the Dutch did at times use the term 'sovereign' when it suited them. Under Anjou's regime, it was stated clearly that absolute sovereignty rested neither with the estates nor with the prince, but was to be held jointly. Later, in 1590, it was defined as resting with those who constituted the estates, that is the towns.[55] All of which went to show that the political traditions were very different in the Low Countries from France. They had 'never been governed as an absolute monarchy or kingdom',[56]

> where the Lord of the country would have been allowed to manage the affairs of the country at his will and pleasure, without minding its laws or rights. On he contrary, the country has always been managed and administered with right and justice, through a republican or rational civic policy, in such a way that the lord of the country has been like a servant or professor of the country's rights, laws and regulations, whose task it is to serve all, be they poor or rich, noble or common, with equal laws, justice and judgement...

Such a political theory was the reverse of *princeps legibus solutus est.* Instead,[57]

> all princes and governors ought to stand under the laws of the country, and are tied to the laws and to their oath.... For as long as our princes and lords of the country, holding the Low Countries with the titles of Duke and Count, have been subject to the rights and laws of the country according to their oath, with the counsel and advice of the States, and have not governed with wilfulness or violence, but with right and justice, so they have shown their subjects love and fidelity...

It was precisely because of such limitations on princely power that Bodin later condemned the Anjou treaty.[58] Bodin could not accept the objective of the Dutch delegates as either legitimate or desirable. He agreed with the defenders of Papal power, that unitary sovereignty was essential : split sovereignty was a logical impossibility in his scheme of things.[59] For their part, the Dutch had no difficulty about split sovereignty, since this was what they had experienced in practice for much of their history, owing obligations as they had both to the Emperor and the count of Holland : it was merely that the political situation

had changed.

Almost in Weberian fashion, Bodin attributed to the ruler alone the monopoly of the use of legitimate force. The tremendous success of his *Six Books of the Republic* (*Les six livres de la République*), which experienced eight reprints in the 1570s, seven more in the 1580s, and a further five in the 1590s, suggests that it was his view — and not that of the Dutch defenders of the revolt — which prevailed. With the publication of his great work in 1576, the term 'absolute power' took on a new significance. What Bodin did was to reassert the old maxims free from the medieval restraints, providing a much more succinct definition of absolute power than hitherto and, moreover, claiming for it a permanency which had not previously been emphasized. Bodin's importance in the development of political theory lies in his definition of absolute power as 'sovereign and perpetual power' ('la puissance absolue & perpetuelle d'une Republique')[60] relative to the subject and in his equation of this power with the concept of undivided legislative sovereignty.[61] (Bodin understood 'perpetual power' to be an authority which lasted 'for the time of the life of him that hath the power' ;[62] on the other hand since, for example in France, a new king assumed power immediately on the death of his predecessor, the power of the state, too, was perpetual.)

Whereas the medieval king had been viewed as a judge with a number of specific attributes of power — the French theorist Barthelemy Chasseneux had enumerated 208 of them in 1529 — Bodin's sovereign was elevated to the position of legislator. Under this mantle all other attributes were subsumed : sovereignty was defined as the power of 'giving laws unto the subjects in general, without their consent' ('le poinct principal de la maieste souveraine, et puissance absoluë, gist principalement à donner loy aux subiecets en general sans leur consentement...')[63] Bodin's argument was not without its contradictions — perhaps echoing Seneca, Bodin argued that although the king was, in theory, absolute, he ought to refrain from exercising his full power. For example, he should not violate the goods and property of his subjects, whose welfare was the supreme law : to do so was to act tyrannically. Even in a monarchical state, the right of levying taxes depended upon the consent of the estates,

or representative institutions. This right of consent formed a crucial part of Bodin's moral philosophy. 'The property and possession of every man's things' was, he believed, 'reserved to himself'. Natural law allowed the king's subjects to hold property and, by extension, it enshrined their right to consent to taxation.[64]

Bodin's vision was not of an authoritarian, let alone a despotic state, but of a commonweal in harmonic proportion reflecting the divine order, in which 'one sovereign prince' was necessary, and on whom all others depended.[65] It was open to a moderate, traditional interpretation : we find this in the famous speech of Omer Talon, advocate-general in the *Parlement* of Paris, as late as 31 July 1648, when he argued against the excesses of governmental power.[66] But it also lent itself to a harder-line interpretation, which proceeds through Loyseau[67] to Cardin Le Bret.[68] One could be a good theoretical 'absolutist' and yet either support or oppose the government — both in the political upheaval of the Fronde (1648-53), and in the constitutional crises of the eighteenth century up to the outbreak of the Revolution.

In this respect, the doctrine of the *arcana imperii*, the secrets of state, is of considerable importance. The king alone, and his few chosen advisers acting in secrecy, could know the true secrets of state. For Omer Talon, even the king's motives for the arrest of a leading politician was a matter which was covered by state secrecy.[69] As Keith Baker expresses it, 'the king, alone among his subjects, sees the whole and can take counsel for the whole ; his alone is a truly public will... There can be no useful public discussion of political questions, since there is no public apart from the king'. The view expressed by Louis XV in the famous *séance de la flagellation* in the *Parlement* of Paris on 3 March 1766 that in his sole person resided sovereign power, that his was a legislative power which depended on no-one else and could not be divided, that there was no independent right of association within the kingdom and that he was the sole guardian of public order, was thus technically correct.[70] Only gradually, in the course of the eighteenth century, was this acceptance of the sole right of the king to be a public person undermined and, at the same time, were concepts of 'public

opinion' and 'the nation' gradually brought into the political vocabulary and, ultimately, into the political arena.[71]

3 How absolute a ruler? : Despotism, constitutionalism and resistance theories

Louis XIV's power was criticized towards the end of his reign (1643-1715) as 'despotic' ; [72] but by the mid-eighteenth century, the idea of a 'legal despotism' was advanced by reformers influenced by Physiocratic ideas.[73] Historians occasionally call eighteenth-century rulers 'enlightened despots' ; but in general, the term 'enlightened absolutism' is greatly to be preferred to 'enlightened despotism'.[74] William Barclay, writing in refutation of contemporary notions of 'tyrannicide' in 1600, considered the tyranny of a legitimate ruler to be a logical impossibility because the prince was above any human laws by which his acts might be judged.[75] Such a proposition, though generally believed at the time, may seem laughable to us now ; but the notion of 'absolute power' had always incorporated the proposition of just cause : the ruler did not use his absolute power without just cause, and therefore could not act tyrannically. Barclay's tract, which was directed against Buchanan, Brutus, Boucher 'and other monarchomachs',[76] argued that 'kings are constituted by God, that kings reign through God... God bestows on kings lawfully constituted, whether by divine inspiration or permission [of] the peoples this prerogative of authority, which is superior to all power of the people...' He added : 'what the monarchomachs say - that the king is subject to the laws, and that he can be forced into an observation of them - ... is repugnant to written, divine and human laws.'[77] For Barclay, both natural and divine law required obedience to kings 'and all other sovereigns' ; the only difference between an absolutist monarchy and any other polity, in his view, was that this form of sovereignty was instituted directly by God ; all other forms of polity were instituted by God indirectly via the intermediary of man. Even if a king was elected, there was a 'great difference between the power to elect a king and the power to establish him'.[78]

Barclay's viewpoint takes us to the heart of the debate between the proponents and critics

of absolute power, which rested on the origins of the authority of the sovereign. For most theoreticians (Pufendorf, with his two pacts and an additional 'decree' was an exception),[79] there were explicitly or implicitly two contracts or a double covenant. The first, the contract or covenant of piety, was between God and the people. The second, the contract or covenant of justice, was between the ruler and the ruled. Both covenants were to be found in the Hebrew Scriptures. The covenant between God and his people was evident from the special agreement between God and Abram (subsequently renamed Abraham), which carried with it the promise of a land and progeny (the future nation of Israel) : 'I will make my covenant between me and thee, and will multiply thee exceedingly' (Genesis 17 : 2). The second covenant was the origin of royal power in Israel, from which it was evident (at least for some theorists), that sovereignty resided with the people, as was attested in the Hebrew Scriptures in Deuteronomy (Deut. 17: 14-20) and the first book of Samuel (1 Sam. 8 : 5).[80] For Jews, covenant theology was not particularly important except in the context of the obligation of the Chosen People to keep the Torah. For Christians, however, it became of critical importance, for the Hebrew Scriptures were read in the light of the idea of previous covenants leading to, and being superseded by, the 'New Covenant' or 'New Testament' of Christ. However, on issues concerning the body politic, with the exception of St Paul's teaching that the powers that be are ordained of God (Romans 13 : 1), the key texts remained the Hebrew Scriptures and the pact or contract of mutual obligation (*berit*).[81]

Many, though not all, theorists accepted that in the original covenant or social contract, the king was established by the people : 'the people made the king, and not the king the people', affirmed the most controversial of the monarchomach treatises of the sixteenth century, the anonymous *Defence of Liberty against Tyrants* (*Vindiciae contra tyrannos*, 1579). Therefore, 'the one purpose of command (*imperium*) is the people's welfare.'[82] The king was the 'instrument of the law', its servant rather than its master. '...In all well constituted kingdoms the king receives from the people the laws which he is to protect and observe. But if he does anything contrary to them or to their detriment he should be judged unjust.'[83]

What followed upon this was the crux of the debate. Did there follow a 'mutual obligation' (*mutua obligatio*) between ruler and ruled, as the *Vindiciae contra tyrannos* maintained, such that no law issued by the ruler or act of violence emanating from him could rescind it? If so, then if the ruler acted against the interests of the nation, its people, or its faith, then he might be declared and adjudged an enemy of the nation and of the public weal.[84] Thus John Mair had declared in 1521 that 'the king... exists for the good of the people, and not the people for the good of the king'.[85] It was a dictum repeated by the Habsburg kings of Spain, who were resolutely contractualist in their thinking,[86] as indeed were the prominent Spanish theorists. The Jesuit Mariana in 1599 argued that the community was the source of political power and denied the absolutist interpretation of *princeps legibus solutus est.*[87] Similarly, Suárez rejected the absolutist interpretation of the *lex regia* in 1613, arguing that the precondition of the contract was just rule : kings held their power directly from the people and only indirectly from God.[88]

For the Calvinist Althusius, writing a decade earlier (the *Politica Methodice Digesta* was first published in 1603 and was revised in final form in 1614), the contract was essentially a limited one : superior magistrates were elected 'with the consent of all the people', but the rights of the people were not alienated definitively thereby. If the superior magistrate revealed himself to be unworthy of his position, he could be deposed. Althusius criticized Bodin and Barclay and argued that *potestas absoluta* or *plenitudo majestatis*, that is, an authority encompassing the 'totality of power' was a denial of the contracts of justice and piety.[89] He reversed Bodin's definition of sovereignty, by vesting it in the people as a whole. For Althusius, this is what made the good polity a *respublica* or commonwealth. Yet it also made possible a *consociatio consociationum,* a *universitas* composed of *collegia*, since the people could delegate the exercise of sovereign power to different bodies as they pleased (according to their sovereign will), which made possible a federal constitution. Althusius understood political sovereignty as the constituent power. This was at once a narrower and more republican definition of sovereignty whose plenary character was harnessed as the power to constitute government - a power which was vested in the organic body of the

commonwealth, that is, the people. Moreover, once the people acted, their sovereignty was located in the *jus regni*, the fundamental right / law of the realm, namely the constitution.[90] Inspired by the example of the Dutch revolt (he became mayor of Emden in 1604), Althusius thought that 'the spirit of liberty is retained through [the] right of holding assemblies' such as the States General.[91] He also valued certain aspects of the German constitution, claiming that the Imperial election 'capitulations'[92] - the privileges conceded by the Emperor to the electors as the price of his election - were covenants guaranteeing the rights of subjects, who only gave their obedience to him conditionally. He saw the electors as administrators ('ephors') whose task was to prevent the tyranny of the Emperor.[93]

Yet in opposition to this viewpoint was the permanent alienation theory, associated with the name of Thomas Hobbes but by no means solely confined to his writings. Richard Hooker had earlier recognized that 'kings by conquest make their own Charter', and added that 'Kings by God's own special appointment have also that largeness of power, which he doth assign or permit with approbation'.[94] This recognition that sovereignty could be located in any one of several types of polity, and that within their range fell types which subordinated subjects totally to their sovereign, is found too in Hugo Grotius. With Grotius in 1625 we meet an argument for total subordination different from the right of conquest (though he did not deny the latter). He supposed that people could make themselves totally subordinate to their rulers on a *voluntary* basis. Grotius recognized that 'each people can chose what form of government it likes', and asked why, if a man could make himself a slave, should not a whole people do the same?'[95] (As Richard Hellie has demonstrated, they did indeed do so in Muscovy, where until 1725 people who found themselves heavily in debt voluntarily sold themselves into servitude.)[96]

For John Locke, writing in 1689, the state of nature before the social contract was a reign of 'perfect liberty' and 'equality' regulated by reason (the state of nature was regulated by the law of nature in chapter 6 of Locke's *Second Treatise of Government*).[97] For Thomas Hobbes writing nearly forty years earlier in 1650[98] (*Leviathan*[99] was published in 1651 but

was sent to the printer in December 1650) it was a state of war, 'that dissolute condition of masterless men without subjection to laws and a coercive power to tie their hands from rapine and revenge'.[100] The consequences of the covenant were outlined in chapter 18 ('of the rights of sovereigns by institution') : [101]

> they that have already instituted a Commonwealth, being thereby bound by covenant to own the actions and judgements of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in anything whatsoever, without his permission. And therefore, they that are subjects to a monarch cannot without his leave cast off monarchy and return to the confusion of a disunited multitude ; nor transfer their person from him that beareth it to another man, other assembly of men : for they are bound, every man to every man, to own and be reputed author of all that already is their sovereign shall do and judge fit to be done ; so that any one man dissenting, all the rest should break their covenant made to that man, which is injustice : and they have also every man given the sovereignty to him that beareth their person ; and therefore if they depose him, they take from him that which is his own, and so again it is injustice.

Hobbes's innovation in this respect lay not in the notion of voluntary servitude (as he took care not to call it), but in his insistence that this transaction was the only way in which a commonwealth genuinely so-called, could come into existence. Even in discussing the right of conquest, he insisted that the resulting sovereignty by acquisition, as he termed it, arose not from the conqueror's sword but from a voluntary submission of the conquered to the conqueror (chapter 20). In this scheme of things, as Hobbes made clear in chapter 28 ('of punishments and rewards'), any attempt to renounce the contract was an act of rebellion which could be viewed as an act of war : [102]

> For all men that are not subjects are either enemies, or else they have ceased from being so by some precedent covenants. But against enemies, whom the Commonwealth judgeth capable to do them hurt, it is lawful by the original right of nature to make war... because the nature of this offence consisteth in the renouncing of subjection, which is a relapse into the condition of war commonly called rebellion ; and they that so offend, suffer not as subjects, but as enemies. For rebellion is but war renewed.

However, the obligation of loyalty of subjects to their ruler existed only for as long as, and no longer, than the sovereign was capable of protecting them.[103] Hobbes vigorously repudiated the idea that the sovereign could be subject to the civil laws of the kingdom, or that sovereign power could be divided.[104] Thus Hobbes and Althusius were at the two polarities of the inferences which could be drawn from contract theory. Given his interest in geometry ('the only science that it hath pleased God hitherto to bestow on mankind'),[105] it is surprising that Hobbes did not cite the aphorism formulated by Cardin Le Bret in 1632, that sovereignty was 'no more divisible than the point in geometry'.[106]

4 The Absolute Ruler and Property Rights : Absolutist theory and the Enlightenment discussion of Oriental despotism

Did the king of France 'own' the state? There were some statements of kings which might suggest that this was so, most famously the alleged dictum of the young Louis XIV in 1655 ('I am the state' or more correctly, 'the state is mine' [*l'état c'est à moi*]). But the implications of 'proprietary dynasticism'[107] were never fully worked out in France : instead, the 'domain' tended to be seen as synonymous with the territory of France, and was inalienable. This was in contrast with the king's patrimonial lands, that is the domain pure and simple, which had been 'alienated' (leased out or sold off) by the sixteenth century. Although some historians, such as Richard Pipes for Russia,[108] have accepted Bodin's definition of 'seigneurial' or 'lordly' monarchy, it requires refinement. Just as there many types of absolutist regime in Europe, so there were many different types of 'seigneurial' regime in Asia. Some of the definitions within the model of types of fiscal regime are appropriate for making such distinctions. 'Oriental despotism', a type of regime that has worried some Marxist theorists who have seen it as a consequence of a particular mode of production ('hydraulic societies') seems in origin to be a variant of tribute states in which the tribute is highly centralized under bureaucratic control.[109] The Ottoman state (explicitly founded on conquest) in which all were, in principle (though not in practice), slaves of the Sultan was at one end of the spectrum ; the individualistic world of Roman *latifundia* worked by slaves (who were

generally the booty of war) was at the other. The contrast between France and the Ottoman State may be taken to illustrate the distinction. In France, at his accession in 1589, Henri IV was already king of Navarre. His lands of Navarre and Bearn were his patrimony ; only gradually were they incorporated into the kingdom of France, with the final incorporation occurring in 1620, ten years after his death. In contrast, some 87 per cent of Ottoman land was state property (*miri* land) in the 1520s and the whole arable and pastoral territory of the Ottoman state was deemed to be the personal property of the sultan.

Bodin's definition of absolutism omitted the 'eastern' experience of Muscovy and the Ottoman State. Bodin distinguished between what he called monarchical, tyrannical and seigneurial regimes. He thought both Muscovy and the lands of the Ottoman Turks examples of 'seigneurial monarchy' (*la monarchie seigneuriale*), where the prince ' is become lord of the goods and persons of his subjects... governing them as a master of a family does his slaves...'[110] Bodin added that, though there were only two such regimes in Europe, they were common in Asia and Africa. The people of western Europe, he thought, would not tolerate this kind of government. Neither Muscovy nor the Ottoman lands had received the western European experience of feudalism, which entrenched property rights, enshrined in law, without which there could be no definition of absolutism as undivided legislative sovereignty.[111] Yet such arguments deny the importance of Islamic law within the Ottoman state. Islamic Law based on the Qur'an and Sunnah was equally accessible to all and equally applicable on members of the society from the lowest to the highest, without any distinction or discrimination. Contrary to the views of Bodin, all the personal, civil, political, social, cultural and economic rights of an individual were guaranteed under Islamic law. All people had equal rights and each and everyone who was not a member of the religious minorities was equally responsible before the law. It was the obligation of the rulers to ensure that each member of the society, particularly the weak, was given his due rights. Furthermore, the rulers are not provided with any arbitrary power. Although in the concept of 'Oriental despotism', there is no sense of a separation of powers or structures limiting the power of the ruler, such unlimited power was not available to leaders

in classical Muslim societies. This is demonstrable both in the Islamic law of political structures and in actual historical experience. The entire corpus of the Islamic law evolved outside the corridors of political power and, once established, the ruler was as much subject to it as was the commoner. Esposito and Voll acknowledge : 'It was the consensus of those scholars and not the commands and rules of the Caliphs, that provided the basis for formal law.'[112]

Law logically preceded sovereignty, since sovereignty was a product of law : the legislative acts of the prince deserved obedience precisely because a *lex* had been enacted conferring on the Emperor the authority to legislate. The Emperor's obligation to obey the law, according to Accursius, rested on exactly the same foundation as the subject's obligation to obey the Emperor. The very idea of a *lex*, a positive or human law to protect natural rights, was alien to both to eastern Europe and the Orient, where the idea of 'law-centred kingship' found no real response. In China, private law scarcely existed, and its absence implied that all disputes, no matter how trivial, automatically lay within the public realm. Moreover, there was no distinction between a civil and a criminal offence in China. Recourse to law, therefore, necessarily ended in the assignment of guilt and punishment to one of the parties involved. The law itself discouraged the formal adjudication of disputes. Complex institutions specializing in the administration of justice did not emerge, and instead rulers relied principally upon military and other non-legal institutions to enforce their power. In the Orient, it has been argued, there could be no concept of undivided legislative sovereignty resting with the monarch.[113]

Was there a typology of political power related to different types, and especially sizes, of states? Bodin had thought that 'seigneurial monarchies', within his definition, were more stable than true monarchies on the west European model.[114] Henry Parker, writing in 1644, claimed that absolute monarchy was necessary to govern large and warlike states, but not small nations at peace.[115] The supreme exponent of such forms of reasoning was Montesquieu, for whom the large states of Asia were the natural home of despotism and civil

servitude. Whereas monarchical states should be of medium size,[116] Asia had always seen great empires and 'power should always be despotic in Asia'.[117] 'Despotic government has fear as its principle ; and', he asserted, 'not many laws are needed for timid, ignorant, beaten-down people.'[118] 'Despotism is self-sufficient', he contended, 'everything around it is empty. Thus when travellers describe countries to us where despotism reigns, they rarely speak of civil laws.'[119] The principle of despotic government was 'endlessly corrupted' because it was 'corrupt by its nature'. Despotism could maintain itself only 'when circumstances, which arise from the climate, the religion,[120] and the situation or the genius of the people, force it to follow some order and to suffer some rule'.[121] Montesquieu considered that 'moderate Government is better suited to the Christian religion, and despotic government to Mohammedanism' (part 5 chapter 3).

These views were clearly unsophisticated and inaccurate in a theorist who is taken seriously as a constitutionalist. Later on in the Enlightenment other theorists recognized that Montesquieu's views were open to serious qualification, if not outright rejection. Nicolas-Antoine Boulanger argued in 1761 that despotism was moderated in China and that God himself could have been the sovereign legislator there (thus dismissing the argument that there was no rule of law).[122] This approach was taken further in the treatise on Persian, Turkish and Indian law by Abraham-Hyacinthe Anquetil-Duperron (1731-1805), which was published in 1778.[123] In this work, the author went much further than Boulanger and systematically criticized Montesquieu's thesis, seeking to demonstrate that despotism in the Orient was a misnomer, since the rule of law and rights of private property existed there.[124]

5 The Absolute Ruler against External and Internal Challenges : the Authority of the Papacy and Religious Unity in the State

It has been observed earlier that the assertion of the sovereignty of the Papacy preceded that of most absolute rulers in western Europe. Paolo Prodi claims that 'the period from the Reformation to the close of the Counter-Reformation was precisely characterised by the

fusion and penetration of the two aspects [of Papal power], religious and political, which had hitherto always been regarded as separate'.[125] Pope Pius V (1566-72) was of the view that 'his authority extends over all states, and that he can command in almost everything...'[126] In 1570, he excommunicated Elizabeth I, which carried with it the right of deposition by an intervening Catholic ruler such as Philip II of Spain, had his armada of 1588 proved successful as a launching pad for invasion. In September 1585, Sixtus V (1585-90) issued a bull excommunicating Henri of Navarre and Henri of Condé and depriving them of any rights of accession to the French throne. In May 1589, after pressure from the relatives of the murdered Guise brothers, Sixtus V postponed a decision on excommunicating Henri III of France and depriving him of his rights to the throne, in the hope that he would beg for absolution ; but this did not stop the Sorbonne from deposing the king in its own right. Further action against the king was prevented because of his assassination.

The two assassinations of French kings within a generation (Henri III on 1 August 1589 and Henri IV on 14 May 1610) proved the turning point with regard to the attitude of secular rulers towards Papal claims of sovereignty. The first of the assassins, Jacques Clément, was a Dominican monk ; the second, François Ravaillac, was a layman. For reasons which arose from their oath to the Papacy, and their prominence as political theorists against tyranny, the Jesuits were blamed for nurturing the ideas which made the assassinations possible. In 1594, following Jean Chastel's assassination attempt on Henri IV, the *Parlement* of Paris demanded the expulsion of the Jesuits in 1594 as 'corrupters of youth, disturbers of the public order, enemies of the king and the state'. In 1610 and 1614 it condemned the works of three Jesuit authors, Bellarmino's *Treatise on the power of the sovereign pontiff in temporal matters against G. Barclay* (26 November 1610), Suárez's *Defensio Fidei* (26 June 1614) and Mariana's *De Rege* (8 June 1610). Mariana had argued that tyrannicide might be exercised by 'any private person whatsoever who may wish to come to the aid of the commonwealth'. The assassination of Henri III was a 'detestable spectacle' but served as a reminder to princes that impious actions 'by no means go

unpunished'. In his most notorious passage, Mariana spoke of the action of the assassin Jacques Clement as being 'an eternal honour to France, as it seemed to many', a comment which was excised from the second edition in 1605.[127] Although it did not become government policy, the declaration of the third estate at the Estates General of 1614 was a refutation of 'tyrannicide' theories as also, implicitly, of the right of the Papacy to involve itself in the internal affairs of the French kingdom by dispensing subjects from their allegiance to the crown.[128] Subsequently, in 1663, the Sorbonne published a declaration, the substance of which was reaffirmed by the Assembly of the French Clergy in 1682 in the formula known as the Four Gallican Articles. The first of the four articles denied that the Pope had dominion (*puissance*) over things temporal and affirmed that kings were not subject to the authority of the Church in temporal and civil matters or to deposition by the ecclesiastical power, and refuted the view that their subjects could be dispensed by the Pope from their allegiance.

The implication of rejecting Papal sovereignty, as Thomas Hobbes asserted, was that 'every Christian prince... is no less supreme pastor of his own subjects than the Pope of his...' What policy should he adopt towards subjects as 'supreme pastor'?[129] For John Locke, in his Essay on Toleration of 1667, religion and the state were parallel rather than connected structures : in such a scheme, toleration became conceptually possible for all except atheists (Locke excluded them on the grounds that the word, contract or oath of an atheist could not be taken as 'stable and sacred'),[130] though such a scheme was realized in England only in 1689, and then with exceptions. Yet apart from 'republican' Venice and the United Provinces, elsewhere in Europe religion was seen as the basis of support for monarchy in the early modern period, on the pattern of the traditional French maxim 'one faith, one law, one king'.[131] This was true of both Catholic and Protestant absolute monarchies.[132] For one of the main founders of the Counter-Reformation tradition of statecraft, Giovanni Botero, religion was 'the foundation of all princely rule'. Christians were bound in conscience to obey even unworthy rulers, except where a command stood in opposition to the law of God. Botero considered 'Christian law' as uniquely favourable to rulers, since 'it subjects to them not

only the bodies and property of their subjects, where this is suitable, but also their minds and consciences, and it binds not only their hands but also their affections and thoughts ; it requires that they obey not only disciplined princes but dissolute ones, too, and suffer everything rather than disturb the peace."[133] For another key theorist of the period, Justus Lipsius, a single religion was essential in the state. There had never been such vicious wars as in the later sixteenth century, when in the Netherlands and France each side claimed to be fighting on the side of God and the 'true' Christian religion. The prince should therefore, both in the view of Bodin and Lipsius, forestall any religious innovation or departure from religious tradition. Lipsius published *On One Religion* in 1591, but only in the second edition of 1596 was it clear that his commitment was explicitly to Catholicism. He proposed a hierarchy of punishments to be meted out by the civil authority where it was realistic to attempt to suppress dissent. Where it was not, Lipsius advocated toleration for dissenters who practised their faith quietly and without disrupting the unity of the state.[134]

There was no keener issue of political debate than whether the prince could issue a temporary concession to religious dissent (there could never be a permanent concession to heretics) without there being a threat to the state or a tacit approval of their views. Michel de L'Hospital, Chancellor of France between 1560 and 1573 (he was disgraced in 1568) argued that temporary concessions were perfectly acceptable and no challenge to royal authority, since the tie of fidelity did not depend upon religion alone ('permission was not approbation').[135] But this was a minority viewpoint. The settlement of Nantes of 1598, which appeared to accept two Christian denominations within the French kingdom, though one was referred to as 'the so-called reformed Religion' (RPR or *religion prétendue réformée*) was regarded by Catholic opinion as no more than a temporary measure of pacification extorted under duress.[136] The formal rescinding of all concessions by Louis XIV in 1685 came as no surprise to Catholic opinion ; many wondered why it had taken the king so long to restore unity to the kingdom since absolute monarchy required a single faith and several religions were more appropriate to republican regimes. In this respect, there was a link between Henri III's revocation of all privileges to the Huguenots in 1585

and its centenary in 1685, with the promulgation of the edict of Fontainebleau.

For Bishop Bossuet, writing to Pope Innocent XI about the education he was providing the Dauphin (the then heir of Louis XIV), the purpose of a history course taught on Charles IX and the St Bartholomew massacres was to recognize the faults of kings, and to observe 'the terrible upheaval which heresy has caused in all the bodies of the state, in weakening the royal majesty and reducing a formerly flourishing kingdom to the last extremity ('les épouvantables mouvements que l'héresie a causés dans tout le corps de l'État, en affaiblissant la puissance de la majesté royale et en réduisant presque à la dernière extremité un royaume si florissant, sans qu'il ait pu reprendre sa première force qu'en abattant l'héresie').[137] Bossuet's interpretation explicitly condemned the actions of Charles IX from the inception of the plot against Coligny on 22 August 1572 through to the massacres on 24 August and their bloody aftermath in the provinces. In this account, there was no attempt to conceal the dreadful truth, as Bossuet saw it, from the heir to the throne. Yet this 'truth' was being inculcated at the very moment when Louis XIV's government was turning towards active persecution of the Huguenots, including the coercion of conscience by securing the forced abjurations of Protestants which would be the prelude to a century of persecution.[138]

One would have expected some justification of Charles IX's actions for a greater good. Yet the Bossuet / Dauphin account itself is historical and not teleological : the grand designs of 1585 and 1685 are not seen as justification for the actions of 1572. There is, in other words, a clear sense of the moral purpose of kingship and that the monarchy itself could be undermined if the wrong motivation was left to determine policy. For Bossuet there could be no justification such as Charles IX's being motivated by a higher ideal.[139] What was necessary was a good education of the king on the correct principles : the queen mother, Catherine de Médicis, had neither prepared Charles IX for government nor had she been prepared to surrender ultimate control of the education of her son.[140] Regencies in early modern Europe were periods of weakness for monarchy.[141] Even if no formal limitations

were imposed upon the exercise of royal power during a minority, the king needed to be inculcated into how to exercise his *plenitudo potestatis* once he was of age to rule. Only in the seventeenth century, during the regency of Anne of Austria (between 1643 and 1651, in the minority of Louis XIV) was the argument advanced that there could be no interim state in the absolute exercise of the king's sovereign powers : if the king could not himself act as an absolute sovereign, then his powers had to be exercised by the Regent on his behalf.[142]

Yet there were other theorists who saw no such moral purpose for the conduct of monarchical power. In his *Considérations politiques sur les coups d'estat* (1639), the future librarian of Cardinal Mazarin, Gabriel Naudé, justified Charles IX's authorising of the St Bartholomew Massacres as 'the most outstanding *coup d'état*, and the one carried out with the greatest subtlety, of any that has ever taken place in France or elsewhere'. However odious it had seemed to posterity, he considered that the action was both just and remarkable. The Huguenots had broken faith with the crown by trying to seize the king and the royal court at Meaux in 1567. With so many political leaders of the Huguenot faction assembled at Paris for the marriage of Henri of Navarre in the summer of 1572, it would have been a serious political fault *not* to have carried out the massacre, which in any case resulted in less loss of life than the set-piece battles of the civil wars. Charles IX had been forced by 'very just and very powerful reasons of state' to take the action, which had resulted in the decimation of the Huguenot political and military leadership. The only possible disadvantage in the longer term was not the moral opprobrium which tainted Charles IX's regime for the rest of his life but the fact that in 1589 the provincial towns which had joined in the massacre were among the first to reject the accession of Henri IV and instead, fearing Navarre's revenge, joined the Catholic League in opposition to him.[143]

Whereas, for other Catholic theorists, reason of state could not be taken as an excuse for perpetrating injustice otherwise it would become 'injustice of state',[144] Gabriel Naudé defined reason of state in purely secular (and thus amoral or at least morally neutral) terms as 'the

knowledge or science of the means necessary to establish the foundations of a lordship, to conserve it and to extend it'.[145] Naudé sought to refute the views of Arnold Klapmar, who had written on the 'secrets of state' (*arcana imperii*) in 1605.[146] Whereas Klapmar had enumerated numerous types of state 'secrets', Naude preferred to call these 'maxims of state'.[147] For the French bibliophile the essential characteristic of *coups d'estat* was the process of carrying them out : secrecy was essential, but it was also the case that only two or three people at most could be involved. *Fidelité* to the prince was the single most important characteristic of such an adviser,[148] for whom the model (paradoxically, since he was an advocate of a provisional form of religious toleration) was taken to be Chancellor de L'Hospital : he had possessed greater force of spirit than any other who had preceded or followed him.[149] The need for a Cardinal de Richelieu figure for a king to become, like Louis XIII, 'Louis le Juste et le triomphant' was self-evident to Naudé.[150] The supreme examples of *coups d'estat* were taken to be Charles IX's authorization of the St Bartholomew Massacres in 1572, Henri III's assassination of the Guises in 1588 and Louis XIII's coup against Concini,[151] masterminded by the new favourite, Luynes, on 24 April 1617. Richelieu's survival on the Day of Dupes (11 November 1630) was not discussed at all, probably because Louis XIII was more of a passive witness to events until the ultimate denouement, rather than the original instigator of the political crisis. The common feature of all such events was that the public would not necessarily know in advance the king's reasoning as to why a particular course of action was needed, that the kingdom had reached a position where 'necessity knew no law' (*necessitas legem non habet*): the *coup d'estat* was necessary in such circumstances for the safety of the kingdom itself, since the safety of the people was the supreme law.[152] The intended act had to be kept concealed ; there could only be a post-facto justification. Unlike the mountain of political pamphlets which were the common currency of ordinary political debate, however, these royal statements, when they were finally issued, had an authoritative character because of their extraordinary nature.[153] Prudence was a moral and political virtue, and a well-conceived *coup d'estat* revealed extraordinary prudence on the part of the ruler.[154]

6 The new Justinian : the Absolute Ruler as Legislator and Codifier

One of the central ideas in the early years of the personal rule of Louis XIV was that the king should become a new Justinian, and demonstrate his legislative sovereignty by the 'great plan' (*grand dessein*)[155] of 1665 to reform existing French legislation. 'Sovereign power in this kingdom', declared Colbert (the king's controller-general of finance), echoing Bodin and Le Bret, 'resides in the sole person of the sovereign'.[156] Indeed, in October 1665 the sovereign courts (*Parlements, Cours des Aides* and so on) were renamed 'superior courts' to demonstrate the point, and the title of 'sovereign courts' was only restored after the king's death in 1715.[157] Colbert was the instigator of a council of justice which met regularly from mid 1665 to January 1667 and produced a revised code of civil procedure. After this ordinance was issued in April 1667, the council of justice was reduced in size, but continued to meet until early 1670, when a revised code of criminal procedure was formulated. 'Throughout the entire process of preparing the ordinances, the magistrates in [the *Parlement* of Paris] were excluded from the council's sessions."[158] Henri Pussort, Colbert's uncle, was the driving force behind this process of reformation of justice : '... a prince has no need of antiquity to compose new laws for his state', Pussort asserted.[159] The two ordinances on civil and criminal procedure were not in themselves the whole answer to what needed to be done.[160] Perhaps this is true of the other attempts at codification of legislation under Louis XIV. But nevertheless a start had been made at reducing 'into a single corpus of ordinances all that what necessary to establish a fixed and certain jurisprudence'.[161] The reforming ordinances of Colbert remained the basis of all subsequent legislation in the eighteenth century, despite the intervening amendments by decrees of the council. And the absolutist design is clear : 'The king in the rulings which he enacts must speak with an absolute authority (*doit parler absolument*)..."[162]

The example of Louis XIV as sovereign legislator proved to be the inspiration to other European monarchs in the codification of their legislation in the period of enlightened absolutism in the eighteenth century. Under the rule of Maria Theresia in the Austrian

Habsburg lands, a civil code (*Codex Theresianus*) was published in 1766 and a criminal code (*Nemesis Theresiana*, 1769) three years later.[163] In Hungary there was a proposed revision of the *Corpus Juris Hungarici*.[164] We find a clear influence of both Enlightened and Cameralist thought in the Instructions drafted by Catherine the Great of Russia for a new law code in 1765-8, in which the size of the size of the state provided a partial justification for an absolutist state structure : [165]

> 8. The Possessions of the Russian Empire extend upon the terrestrial Globe to 32 Degrees of Latitude, and to 165 of Longitude.
>
> 9. The Sovereign is absolute ; for there is no other Authority but that which centres in his single Person, that can act with a Vigour proportionate to the Extent of such a vast Dominion.
>
> 10. The Extent of the Dominion requires an absolute Power to be vested in that Person who rules over it. It is expedient so to be, that the quick Dispatch of Affairs, sent from distant Parts, might make ample Amends for the Delay occasioned by the great Distance of the Places.
>
> 11. Every other Form of Government whatsoever would not only have been prejudicial to Russia, but would even have proved its entire Ruin.
>
> 12. Another Reason is : That it is better to be subject to the Laws under one Master, than to be subservient to many...

Conclusion. The Absolute Ruler and Practical Constraints on the Exercise of Power

Nearly fifty years ago, Fritz Hartung and Roland Mousnier suggested that absolutist political theory was in part a response to the practical constraints and limitations on the exercise of power by monarchical government.[166] This viewpoint has been recently repeated.[167] The argument of 'necessity' was developed to deal with immunities and privileges which stood in the way of the defence of the realm at a time of emergency.[168] Though France was a unified kingdom and therefore, in principle, possessed a stronger

state structure than many states in Europe it was invaded on numerous occasions : the crisis years of 1597 and 1636 were engraved on the political memory. To some extent, absolute theory was forged in time of war and determined by the imperative of war.[169] Yet there must be caution before a single, overarching, cause for the emergence of absolutist theory is proposed. Royal control over the army remained weak in the first half of the seventeenth century ; if the French army grew in size considerably during the personal rule of Louis XIV, this was because the crown's administrative and fiscal power had strengthened, not *vice versa*. Rulers might seek a standing army as an early sign of absolutist pretensions ; but the idea of 'army-led absolutism' is a misconception for France and in all probability for other European states. More autocratic administrative structures, which evaded the institutional constraints on revenue extraction, had to precede the rise in the size of the army which was the most evident sign of the growth in royal power.[170] The English and Dutch took it for granted that, even though the French kingdom was in crisis in the years 1709-10, the absolutist governing structure would permit Louis XIV to levy an emergency tax, the *dixième*, which would allow him to place yet another army in the field against the Allies. Jonathan Swift argued in *The Conduct of the Allies* that an absolute government could support a long war, while in general this was ruinous for a 'free country', that is, a limited monarchy.[171] Yet Louis XIV propelled the institutional structure of the monarchy as far as it could go : under Louis XV, at least until the Maupeou coup of 1771, there was a distinct reversal of policy with limited political powers returning to the *Parlements*. In this respect, if the definition of the king's absolute power is taken to be 'freedom of the monarch in practice from institutional checks on his power', that is, a regime where the ruler is not limited by institutions outside the kingship itself,[172] it is itself a dynamic process.[173] Louis XIV's personal rule (1661-1715) marks the apogee of this phenomenon in France.

To those revisionist historians who deny any validity to either the concept or practice of absolutism we can only suggest that greater attention be paid to the origins and discussion of *potestas absoluta* in the late medieval and early modern period. There was a 'paradox' in a form of government which, as David Parker has expressed it, was 'always in the making

but never made',[174] but the fact that recourse to the principle of undivided legislative sovereignty was rare does not in itself disprove the argument that it was the controlling idea of a monarchical state which called itself 'absolute'. An idea can be seminal without being frequently cited.[175] It can simply become an accepted opinion, which has no need to be restated precisely because it is accepted. Only when absolutist ideas were challenged in the eighteenth century do we find the issue frequently referred to, and then often in the pejorative context of 'despotism'.

If monarchy in early modern Europe was limited in practice, but for the evident oxymoron, there might be much to be said for Robert Knecht's description of the practice of absolute rule as 'limited absolutism'.[176] Certainly, there was 'relative absolutism'[177] in relation to other forms of state structure since, as Fortescue had recognized in the fifteenth century, it is largely by comparing the more limited structure of royal power in England (which he called a *dominium politicum et regale*) with that of France (which he called a *dominium regale*) that the state structure of both is elucidated.[178] In Hobbes' expression, 'the absoluteness of the sovereignty' was more limited in England than in France. This was not just a question of the survival or demise of representative institutions, or estates, though this was clearly an important issue because of consent to taxation or otherwise.[179] Nor was it necessarily a question of the greater fiscal capacity of some types of states rather than others : an absolute kingdom, such as France, could be more effective than its rivals in the seventeenth century, but less effective in the eighteenth century. Rather, it was the capacity of the monarchical state to continue to operate around certain principles of action which could not be denied or limited under the existing constitutional rules or, as they were called in France, *lois fondamentales*. Louis XV defined these 'sacred and immutable maxims' clearly on 3 March 1766 in the *discours de la flagellation* : [180]

> Sovereign power resides in my person alone... it is to myself alone that legislative power belongs, without any dependence [on others] or [any] separation [of power]... public authority [*l'ordre public*], in its entirety, emanates from me. I am its supreme guardian. My people are as

one with me and the rights and interests of the nation (which some dare to claim are separable from the monarch), are necessarily united with my own [rights and interests] and rest in my hands...

1 *Oxford Dictionary of Quotations*, 3rd. edn. (Oxford, 1979), 5.

2 In the eighteenth-century Enlightenment, Condorcet distinguished between despotism and tyranny : M. Turchetti, *Tyrannie et tyrannicide de l'Antiquité à nos jours* (Paris, 2001), 694. For classical tyranny : ibid. 162. For the arrival of despotism : ibid. 305. For Machiavelli's confusion of tyranny and absolute power : ibid. 351.

3 H. H. Rowen, 'Louis XIV and absolutism', *Louis XIV and the craft of kingship*, ed. J. C. Rule (Columbus, Ohio, 1969), 312. It was first used in French as 'le regime du pouvoir absolu' by F-R. de Chateaubriand, *Essai sur les révolutions* (1797). The first English usage, in 1830, was by General Perronet Thompson.

4 Turchetti, *Tyrannie et tyrannicide*, 151, for its classical origins.

5 Milton adapted the Latin *monarchia* to *autarchia*. The usage in 1692 was in the sense of absolute sovereignty.

6 N. Henshall, *The Myth of Absolutism* (1992), 130. However, in chapter 15 of the *Second Treatise* Locke distinguished despotism from absolutism and in chapter 18 he distinguished tyranny from absolutism.

7 Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge, 1988), 120, 326.

8 Ibid. 361.

9 J-B. Bossuet, *Politics drawn from the very words of Holy Scripture*, ed. and trans. P. Riley (Cambridge, 1990), li.

10 F. Cosandey and R. Descimon, *L'absolutisme en France. Histoire et historiographie* (Paris, 2002), 246-7. This is a good recent summation, with an excellent bibliography and full citations.

11 T. Hobbes, *The Elements of Law Natural and Politic* (1640), 2.8.8. I owe this reference to Dr I. C. Harris. 'The fourth opinion (viz.) : that subjects have their *meum, tuum*, and *suum*, in property, not only by virtue of the sovereign power over them all, distinct from one another, but also against the sovereign himself, by which they would pretend to contribute nothing to the public, but what they please, hath been already confuted, by proving the absoluteness of the sovereignty ; and more particularly, Part II. chap. XXIV, sect. 2 ; and ariseth from this : that they understand not ordinarily, that before the institution of sovereign power *meum* and *tuum* implied no propriety, but a community, where every man had right to every thing, and was in state of war with every man.' <www.religionanddemocracy.lib.virginia.edu/library/tocs/Hob2Ele.html>

12 J. H. Burns (ed.), *The Cambridge History of Political Thought, c.350-c.1450* (Cambridge, 1988), ch 15, 426, 431 for Ulpian ; Idem, *Lordship, Kingship and Empire. The Idea of Monarchy, 1400-1525. The Carlyle Lectures, 1988* (Oxford, 1992). Idem, 'Absolutism : the history of an idea', Creighton Lecture, University of London (10 November 1986).

13 H. A. Oberman, *The Harvest of Medieval Theology. Gabriel Biel and late Medieval Nominalism* (Cambridge, Mass., 1963), 36-39 and 473. I am indebted to Dr Alistair Duke of the University of Southampton for originally drawing this point to my attention.

14 W. J. Courtenay, *Capacity and Volition. A History of the Distinction of Absolute and Ordained Power* (Bergamo, 1990), 76.

15 A. London Fell, *Origins of Legislative Sovereignty and the Legislative State. III. Bodin's Humanistic Legal System and Rejection of 'Medieval Political Theology'* (Boston, Mass., 1987), 113.

16 Courtenay, *Capacity and Volition*, 92.

17 Here Courtenay cites the work of Francis Oakley, notably *Omnipotence, Covenant and Order. An Excursion in the History of Ideas from Abelard to Leibniz* (Ithaca, NY, 1984).

18 Courtenay, *Capacity and Volition*, 195.

19 T. Honoré, *Ulpian* (Oxford, 1982).

20 Dig.1.4.1pr. Ulpianus 1 inst. Quod principi placuit, legis habet vigorem : utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat : <www.gmu.edu/departments/fld/CLASSICS/digest1.html>

21 F. H. Hinsley, *Sovereignty* (1966), 42.

22 W. F. Church, *Constitutional thought in sixteenth-century France. A study in the evolution of ideas* (Cambridge, Mass., 1941), 333.

23 F. Schulz,'Bracton on kingship', *English Historical Review*, 60 (1945), 154-5. Schulz commented: 'we cannot reconstruct Ulpian's text with any certainty, but he must have written something like this : quod principi placuit, legis habet vicem...' The compilers of the *Digest* remodelled this text, 'adapting it to the constitutional law of their own times.'

24 Fell, *Origins of Legislative Sovereignty and the Legislative State. III. Bodin's Humanistic Legal System and Rejection of 'Medieval Political Theology'*, 170. Turchetti, *Tyrannie et tyrannicide*, 179.

25 Dig.1.3.31 Ulpianus 13 ad l. iul. et pap. Princeps legibus solutus est : augusta autem licet legibus soluta non est, principes tamen eadem illi privilegia tribuunt, quae ipsi habent : <www.gmu.edu/departments/fld/CLASSICS/digest1.html>

26 Schulz, 'Bracton on kingship', 158. In other words, Ulpian was talking about a specific *lex*, the *lex Papia*.

27 B. Tierney, '"The prince is not bound by the laws." Accursius and the origins of the modern state', *Comparative studies in society and history*, 5 (1963), 387 [reprinted in idem, *Church Law and Constitutional Thought in the Middle Ages* (1979)]. The statement in Justinian's Code is given ibid., 391 and n. 29. K. Pennington, *The Prince and the Law, 1200-1600. Sovereignty and rights in the Western Legal Tradition* (Berkeley, Los Angeles, Oxford, 1993), 83-5.

28 Ibid., 397.

29 E. H. Kantorowicz, *The King's Two Bodies. A study in Medieval Political Theology* (Princeton, N. J., 1957), 152. See also B. Tierney, 'Bracton on government', *Speculum*, 38 (1963), especially

297-298, reprinted in idem, *Church law and Constitutional Thought in the Middle Ages* (1979). Charles McIlwain commented : 'It is worth comparing Justinian's statement of the principle with this later gloss of Bracton. Where the former says the prince's will has the force of a *lex* "because" (*cum*) the people by a *lex regia* have conceded to him the whole of their authority, Bracton says it has the force of a law "in accordance with a *lex regia* (*cum lege regia*) which had been made". In the *Institutes* the *cum* is a particle introducing a clause which gives merely an historical reason for a complete and arbitrary authority actually in the emperor ; whereas in our Bractonian text the *cum* is a preposition governing a noun in the ablative. Justinian says the prince's will is law, because (*cum*) the people have conceded all their power to him ; the existing text of Bracton says the prince's will is law together with, or if in accordance with the *lex regia* (*cum lege regia*) ; and this *lex regia* admits of nothing beyond a true definition of what the law already is, promulgated by the king's authority only after discussion with the magnates and on their advice. Justinian's is a doctrine of practical absolutism ; Bracton's seems to be a clear assertion of constitutionalism. In the one the prince's will actually is law, in the other it is only an authoritative promulgation by the king of what the magnates declare to be the ancient custom. No doubt Bracton was acquainted with the true wording of the original text, and his own book is conclusive proof of his skill in the Latin tongue ; and yet our text of Bracton, in quoting this plain statement of absolutism, turns it into an assertion of constitutionalism by such heroic means as changing a causal conjunctive into a preposition and omitting entirely the reference in the original to the concession of the people's whole power to the prince.' C. H. McIlwain, *Constitutionalism : Ancient and Modern* (rev. edn. Ithaca, NY, 1947) <www.constitution.org/cmt/mcilw/mcilw.htm>

30 B.Tierney,'The continuity of Papal political theory in the thirteenth century. Some methodological considerations', *Medieval studies*, 27 (1965), 237.

31 M. J. Wilks, *The Problem of Sovereignty in the later Middle Ages : the Papal Monarchy with Augustinus Triumphus and the Publicists* (Cambridge, 1963).

32 Ibid. 154.

33 Ibid. 170.

34 Ibid. 173.

35 A. J. Black, *Monarchy and Community. Political ideas in the later Conciliar controversy, 1430-1450* (Cambridge, 1970), 70-71.

36 Statement of Bologna University for Eugenius : ibid., 74.

37 Ibid. 84. 'Et tout ainsi que le Pape ne se lie iamais les mains, comme disent les canonistes : aussi le Prince souuerain ne se peut lier les mains, quand ores il voudroit... Celuy qui a mieux entendu que c'est de puissance absolue, & qui a faict ployer les Rois & Empereurs sous la sienne [Innocent IV], disoit que ce n'est autre chose que deroger au droit ordinaire : il n'a pas dit aux loix divines & naturelles...' : J. Bodin, *Les six livres de la republique...* (Paris, 1583, repr. Darmstadt, 1977), 132-133. Idem, *The six bookes of a commonweale*, trans. R. Knolles (1606), ed. K. D. McRae (Harvard, Mass., 1962), 92. There is a shortened version : Bodin, *On Sovereignty*, ed. J. H. Franklin (Cambridge, 1992). Franklin (ibid. xiii) argues that Bodin's notion of indivisible

sovereignty was 'seductive but erroneous'.

38 Black, *Monarchy and community*, 82.

39 A. Ryder, *The kingdom of Naples under Alfonso the Magnanimous. The making of a modern state* (Oxford, 1976), p. 31. Ibid. 31, n. 18, Ryder cites an example from Oct. 1451 of the king issuing a pardon by virtue of *nostra dominica potestate legibus absoluta.*

40 Sir John Fortescue, *The governance of England*, ed. C. Plummer (Oxford, 1885), 109. The significance of this passage has been contested by historians, but forms an early statement on what would become the debate between 'limited monarchy' and 'absolute monarchy' in later periods. Turchetti, *Tyrannie et tyrannicide*, 311-12. Joaquin Varela Suanzes, 'Sovereignty in British Legal Doctrine', *Murdoch University Electronic Journal of Law*, 6 (1999), comments that 'in England, contrary to France, the monarch was subject to the law that he himself approved with the two Chambers of Parliament, the consent of which was also required to levy taxes... In this way Fortescue established an inextricable link between "the rule of law" and the legislative supremacy of Parliament, [upon] which the so-called dual-estate monarchy was based in the binomial King / Kingdom, the latter represented by the House of Lords and the Commons' : <www.murdoch.edu.au/elaw/issues/v6n3/suanzes63.txt>

41 E. H. Kossmann, 'Popular sovereignty at the beginning of the Dutch *ancien régime', The Low Countries' Yearbook* [*Acta Historiae Neerlandicae*], xiv (1981), 5, 12. The particular phrase was used in the debate over Anjou's powers in 1582 : G. Griffiths, *Representative Government in Western Europe in the sixteenth century* (Oxford, 1968), 497.

42 J. D. Tracy, *A Financial Revolution in the Habsburg Netherlands. Renten and Renteniers in the county of Holland, 1515-1565* (Berkeley and Los Angeles, 1985), 33

43 A. Bossuat, 'La formule "le Roi est empereur en son royaume". Son emploi au xv^{e} siècle devant le Parlement de Paris', *Revue historique de droit francais et étranger*, 4th. ser.,39 (1961), 371-381. English trans. in *The recovery of France in the fifteenth century*, ed. P. S. Lewis (1971), 191. The formula *rex Franciae in regno suo princeps est* was well known by 1256, and it is not certain that Jean de Blaniot invented it : R. Feenstra, 'Jean de Blaniot et la formule "Rex Franciae in regno suo princeps est"', *Études d'histoire du droit canonique dédiées Gabriel Le Bras*, 2 vols. (1965), ii. 894. Guillaume Durand, writing in 1271-2, employed the term : M. Boulet-Sautel, 'Le princeps de Guillaume Durand', ibid., ii. 810.

44 P. S. Lewis, 'Jean Juvenal des Ursins and the common literary attitude towards tyranny in fifteenth-century ' *Medium Aevum*, 34 (1965), 108. Idem, *Later medieval France. The polity* (1968), 87.

45 R. J. Knecht, 'Francis I and the *lit de justice*. A "legend" defended', *French History*, 7 (1993), 66. R. J. Knecht, *Renaissance Warrior and Patron. The Reign of Francis I* (Cambridge, 1994), 526. However, Guillart noted that the king was 'above the laws and that the laws and ordinances' could not constrain him and that no coactive authority bound him to them ('les loix et ordonnances ne vous peuvent contraindre, et n'y estes contrainct par puissance coactive') : ibid. To use absolute power regularly however 'pertains to a nature that is brutal rather than reasonable'.

46 Knecht, *Renaissance Warrior and Patron*, 49, 538 ; R. J. Knecht, *Francis I* (Cambridge, 1982), 21, 361. There was a softening of Knecht's position on absolutism between 1982 and 1994, talking as he did in 1994 (*Renaissance Warrior and Patron*, 537-40) of 'limited absolutism'. We shall return to this issue at the end of this article.

47 Jean Bodin distinguished the 'pure monarchie' of France from Denmark and Sweden ('la noblesse pretend qu'ils ne soit rien que les Princes, & qu'ils ne sont pas souverains...'), the Holy Roman Empire ('c'est un estat Aristocratique') and Poland after the Henrician articles of 1573 ('qui semblet [*sic*] deroger aux droits de la maieste d'un Monarque') : Bodin, *Les six livres de la republique*, 264, 302, 321, 540. Idem, *The six bookes of a commonweale*, ed. McRae, 192, 221-2, 236, 435.

48 *Texts concerning the revolt of the Netherlands*,ed. E. H. Kossmann and A. F. Mellink (Cambridge, 1974), 33-34. M. P. Holt, *The Duke of Anjou and the Politique Struggle during the Wars of Religion* (Cambridge, 1986), 135.

49 J. den Tex, *Oldenbarnevelt* (2 vols., Cambridge 1973), i. 270. For the absolutist pretensions of the House of Orange : H. H. Rowen, *The Princes of Orange. the Stadholders in the Dutch Republic* (Cambridge, 1988).

50 Holt, *The Duke of Anjou and the Politique Struggle*, 135 n. 98.

51 G. Griffiths, 'Humanists and representative government in the sixteenth century : Bodin, Marnix and the invitation to the duke of Anjou to become ruler of the Low Countries', *Representative Institutions in Theory and Practice* [Studies presented to the International Commission for the History of Representative and Parliamentary Institutions, 39] (Brussels, 1970), 75. 'Rapport fait au prince d'Orange et aux Etats Generaux par les ambassadeurs qu'ils avoient envoyes au duc d'Anjou', *Correspondance de Guillaume le Taciturne*, ed. L. P. Gachard (Brussels, 1854), iv. 421-472. This is conveniently abstracted in Griffiths, *Representative government*, 497-504.

52 Griffiths, 'Humanists and representative government', 75.

53 Griffiths, *Representative government*, 506 : the Dutch expression *hooge overigheid en regeringe* was rendered in French as *la souveraineté et gouvernement.*

54 E. H. Kossmann, 'Popular sovereignty at the beginning of the Dutch *Ancien Régime', Acta Historiae Neerlandicae*, 14 (1981), 12. *Texts concerning the revolt of the Netherlands*, ed. Kossmann and Mellink, 42-3.

55 N. G. Parker, *The Dutch Revolt*, 243.

56 *The Dutch Revolt*, ed. M. van Gelderen (Cambridge, 1993), 85. M. van Gelderen, *The Political Thought of the Dutch Revolt, 1555-1590* (Cambridge, 1992), 134.

57 *The Dutch Revolt*, ed. van Gelderen, 107. van Gelderen, *The Political Thought of the Dutch Revolt*, 135.

58 Griffiths, *Representative government*, 505. Idem, 'Humanists and representative government', 77.

59 B. Tierney, '"Divided sovereignty" at Constance : a problem of medieval and early modern political theory', *Annuarium Historiae Conciliorum*, 7 (1975), 251-252, reprinted in idem,

Church Law and Constitutional Thought in the Middle Ages (1979).

60 Bodin, *Les six livres de la republique*, 122. Idem, *The six bookes of a commonweale*, ed. McRae, 84.

61 Ibid : 'majesty or sovereignty is the most high, absolute and perpetual power over the citizens and subjects in a Commonweal...'

62 Ibid. 85 : 'sovereignty is not limited either in power, charge or time certain.'

63 Bodin, *Les six livres de la republique*, 142. Idem, *The six bookes of a commonweale*, ed. McRae, 98.

64 Bodin, *Les six livres de la republique*, 287, 500-501. Idem, *The six bookes of a commonweale*, ed. McRae, 210, 384-385.

65 D. Parker, 'Law, society and the state in the thought of Jean Bodin', *History of Political Thought*, 2 (1981), 253-285.

66 This point was originally stressed by E. H. Kossmann, *La Fronde* (Leiden, 1954), 27-28. Cf. also idem, 'Popular sovereignty at the beginning of the Dutch *ancien régime*', 6. For Talon: J. Cornette, *La mélancolie au pouvoir. Omer Talon et le procès de la raison d'état* (1998).

67 H. A. Lloyd, *The state, France and the sixteenth century* (1980), 163-166. Idem, 'The political thought of Charles Loyseau, 1564-1627', *European Studies Review*, 11 (1981), 69. Loyseau was prepared to tamper with his Roman law source, in order to stress an absolutist interpretation, substituting 'the prince by his words' for 'the people by its vote' : C. Loyseau, *A Treatise of Orders and Plain Dignities*, ed. H. A. Lloyd (Cambridge, 1994), xviii, 79.

68 G. Picot, *Cardin Le Bret (1558-1655) et la doctrine de la souveraineté* (Nancy, 1948). V. I. Comparato,*Cardin Le Bret, 'royaute' e 'ordre' nel pensiero di un consigliere del secento* (Florence, 1969). In *De la souveraineté du roy* (1632), Le Bret followed Bodin on the indivisibility of sovereignty. Sovereignty, he stated, was 'no more divisible than the point in geometry' : Le Bret (1632), 69-73.

69 Cornette,*La mélancolie au pouvoir*,102: '...un prince ne doit jamais entrer dans un éclaircissement si particulier avec ses sujets es choses qui regardent *arcanum imperii*, la conduite des affaires d'État, qui doivent être couvertes par le silence...'

70 R. J. Bonney, *L'absolutisme* (1989), 121. Michel Antoine called this Louis XV's political testament : M. Antoine, *Le dur métier du roi. Études sur la civilisation politique de la France d'Ancien Régime* (1986), 287. Idem, *Louis* XV (1989), 852.

71 K. M. Baker, *Inventing the French Revolution* (Cambridge, 1990), 114.

72 Turchetti, *Tyrannie et tyrannicide*, 613. This was a notion subsequently refuted by Voltaire : ibid. 627.

73 The term was criticized by Morellet as an abuse of language : Turchetti, *Tyrannie et tyrannicide*, 658-60.

74 Cf. J. Meyer, *Le despotisme éclairé* (Paris, 1991). However, the term is authentic and not a neologism : Turchetti, *Tyrannie et tyrannicide*, 610 n. 1.

75 William Barclay, *The Kingdom and the Royal Power*, trans. G. Moore (1954), 145.

76 Literally, 'king-killer', a term coined by Barclay : R. E. Giesey, 'The monarchomach triumvirs : Hotman, Beza, Mornay,' *Bulletin d'humanisme et Renaissance*, 32 (1970), 41.

77 Barclay, *The Kingdom and the Royal Power*, 268.

78 Turchetti, *Tyrannie et tyrannicide*, 514-15.

79 Ibid. 573.

80 Ibid. 437. Both cited in *Vindiciae, Contra Tyrannos : or, concerning the legitimate power of a prince over the people, and of the people over a prince*, ed. G. Garnett (Cambridge, 1994), 20. Ibid. 68 : 'Samuel anointed Saul : for all these procedures pertained to the election of a king made at the request of the people.'

81 *The Jewish Religion. A Companion*, ed. L. Jacobs (Oxford, 1995), 103-4.

82 Turchetti, *Tyrannie et tyrannicide*, 437. *Vindiciae*, xxxii, 93. Ibid. 74 : 'So, as kings are constituted by the people, it seems definitely to follow that the whole people is more powerful than the king...' There has been much discussion of the authorship of 'Stephanus Junius Brutus, the Celt' ; the most recent editor of the *Vindiciae*, George Garnett, opts for 'some form of close collaboration between Languet and Mornay' : ibid. lxxvi.

83 *Vindiciae*, 99.

84 Turchetti, *Tyrannie et tyrannicide*, 440.

85 Ibid. 398. 'Yet Mair's theory is, fundamentally, one in which authority to rule is based on the consent of the community ; and that consent, given for the good of the community, may be withdrawn if power is tyrannically abused. The oppressive ruler may be removed from office - not by the mob or by indiscriminate tyrannicide, but by the coherent action of those who represent the people as an organized body'. J. H. Burns, 'Institution and Ideology : The Scottish Estates and Resistance Theory' : <www.ihr.sas.ac.uk/projects/elec/sem14.html>

86 R. J. Bonney, 'Bodin and the development of the French Monarchy', reprinted as ch 2 in Bonney, *The Limits of Absolutism in ancien régime France* (Aldershot, 1995), ii. 60.

87 Turchetti, *Tyrannie et tyrannicide*, 474, 476.

88 Ibid. 544-5.

89 Ibid. 555-6.

90 J.Althusius, *Politics Methodically Set Forth, and Illustrated with Sacred and Profane Examples...* (1603), trans. F. S. Carney (1965), 117, where Althusius denounces absolute power as 'wicked and prohibited'. The whole passage is worthy of citation : 'The supreme magistrate exercises as much authority (*jus*) as has been explicitly conceded to him by the associated members or bodies of the realm. And what has not been given to him must be considered to have been left under the control of the people or universal association. Such is the nature of the contractual mandate. The less the power of those who rule, the more secure and stable the *imperium* remains. For power is secure that places a control upon force, that rules willing subjects, and that is circumscribed by laws, so that it does not become haughty and engage in excesses to the ruin of the subjects, nor degenerate into tyranny... Absolute power, or what is called the plenitude of power, cannot be given to the supreme magistrate. For first, he who employs a plenitude of power breaks through the restraints

by which human society has been contained. Secondly, by absolute power justice is destroyed, and when justice is taken away realms become bands of robbers, as Augustine says. Thirdly, such absolute power regards not the utility and welfare of subjects, but private pleasure. Power, however, is established for the utility of those who are ruled, not of those who rule, and the utility of the people or subjects does not in the least require unlimited power. Adequate provision has been made for them by laws. Finally, absolute power is wicked and prohibited. For we cannot do what can only be done injuriously. Thus even almighty God is said not to be able to do what is evil and contrary to his nature. The precepts of natural law (*jus naturale*) are to "live honourably, injure no one, and render to each his due". Law is also an obligation by which both prince and subjects are bound... The forms and limits of this mandate are the Decalogue, the fundamental laws of the realm, and those conditions prescribed for the supreme magistrate in his election and to which he swears allegiance when elected.' <www.constitution.org/alth/alth_19-20.htm>

91 Althusius, *Politics Methodically Set Forth*, 181 (where he praised Hotman). In general, Althusius commended the history of the Dutch revolt against Spain, which 'offer[ed] examples of this care and defence by ephors' : ibid. 10-11, 101.

92 Ibid. 121-3, where he reprints Charles V's election capitulation, in the form given by Johannes Sleiden (Strasbourg, 1555).

93 Ibid. 187. He mentioned the rights of the electors conceded by the Golden Bull : ibid. 95. The ephors (that is, the electors in Germany) elected the supreme magistrate : ibid. 118.

94 *Lawes of Ecclesiastical Polity*, VIII.ii.11 in *The Works of... Richard Hooker*, ed. John Keble, rev. R. W. Church and F. Paget, seventh edn., 3 vols. (Oxford, 1888), iii. 350. The author owes this reference and the Grotius reference below to Dr I. C. Harris.

95 H. Grotius [Hugo de Groot], *De Jure Belli acPacis*, I.III.viii.2, 1, ed. William Whewell (3 vols., London, 1853), i. 114, 115. R. Tuck, *Natural Rights Theories : Their Origin and Development* (Cambridge, 1979), 77-79. R. Tuck, *Philosophy and Government*, 1572-1651 (Cambridge, 1993), 193. An earlier statement on this was Étienne de la Boétie's, *Discourse on voluntary servitude* (1548) : <www.constitution.org/la_boetie/serv_vol.htm>

96 R. Hellie, *Slavery in Russia*, 1450-1725 (Chicago, 1982).

97 'For law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law' : Locke, *Two Treatises of Government*, ed. Laslett, 305.

98 Thus in a year of civil war in 'Britain' because of the Scots' support of their king, Charles II. Writing a decade earlier, in the *Elements of the Law*, Hobbes had already stated that the sovereign was 'no less absolute in the commonwealth than before the commonwealth every man was absolute in himself to do, or not to do what he thought good' : Tuck, *Philosophy and Government*, 308.

99 As Tuck observes, 'the title... refers to the sea-monster in the book of Job that could not be restrained by any human power' : ibid. 323. Job 41 : 1 : 'Canst thou draw out leviathan with an hook? Or his tongue with a cord which thou lettest down?' In modern Biblical translations,

leviathan is usually translated as the whale, the largest mammal. However, though the title page of Hobbes' first edition cites Job ch 41, it depicts the king as a giant holding a sword and staff of office,with the people constituting his body:Thomas Hobbes, *Leviathan*, ed. R. Tuck (Cambridge, 1991), lxxiv. Hobbes cited Job 41 : 33-34 in ch 28 : ibid. 221.

100 Hobbes, *Leviathan*, ed. Tuck, 128.
<www. infidels. org/library/historical/thomas_hobbes/leviathan. html> The contrast between Hobbes and Locke on the state of nature is made by Turchetti, *Tyrannie et tyrannicide*, 603.

101 Hobbes, Leviathan, ed. Tuck, 122.

102 Ibid. 219.

103 Ibid. 153.

104 Ibid. 224-5.

105 Ibid. 28.

106 C. Le Bret, *De la souveraineté du roy* (1632). R. J. Bonney, *Political Change in France under Richelieu and Mazarin, 1624-1661* (Oxford, 1978), 26. Cosandey and Descimon, *L'absolutisme en France*, 284, 294. For these authors, Le Bret 'porte la théorie de l'absolutisme à son sommet'.

107 A term used by H. H. Rowen, *The King's State : Proprietary Dynasticism in Early Modern France* (New Brunswick, N. J., 1978).

108 R. Pipes, *Russia under the old regime* (New York, 1974), 22-23, 65-66. However, the emergence of a governing elite or governing class in Russia in the seventeenth and eighteenth centuries seems to belie this : J. P. LeDonne, *Absolutism and Ruling Class : the formation of the Russian Political Order, 1700-1825* (Oxford, 1991).

109 Here the author refers to the Bonney-Ormrod model : *Crises, Revolutions and Self-Sustained Growth. Essays in European Fiscal History, 1130-1830*, ed. W. M. Ormrod, M. M. Bonney and R. J. Bonney (Stamford, 1999), 11-12 and table 2. For balance sheets of the Ottoman State at the death of Suleiman I, Mughal India at the death of Akbar and early Tokugawa Japan : R. W. Goldsmith, *Premodern Financial Systems. A historical comparative study* (Cambridge, 1987), chs 6, 7, 8. For hydraulic society : Karl A. Wittfogel, *Oriental Despotism : a comparative study of total power* (New Haven, 1957), 18-19. A more measured historical approach is taken by F. Venturi, 'Oriental despotism', *Journal of the History of Ideas*, 24 (1963), 133-142.

110 Bodin, *Les six livres de la republique*, 273. Idem, *The six bookes of a commonweale*, ed. McRae, 200.

111 'According to Ottoman theory, all subjects and lands within the realm belonged to the sultan. This principle abolished all local and inherited rights and privileges in the Empire, and it was formulated essentially in order to confirm the sultan's absolute authority and to show that all rights stem[med] from his will' : H. Inalcík, 'Ottoman methods of conquest', *Studia Islamica*, 2 (1954), 103-129 at 112.

112 J. L. Esposito and J. O. Voll, *Islam and Democracy* (New York, 1996), 47.

113 T'ung-Tsu Ch'u, *Law and society in traditional China* (Paris-The Hague, 1961), especially 26-57

on the debate as to whether punishments should be heavy or light. For a rejection of the applicability of sovereignty to China : R. H. Lowe, *The origin of the state* (New York, 1927, repr. 1962), 46.

114 Bodin, *The six bookes of a commonweale*, ed. McRae, 204.

115 Tuck, *Philosophy and Government*, 231.

116 Montesquieu, *The Spirit of the Laws*, ed. A. M. Cohler, B. C. Miller, H. S. Stone (Cambridge, 1989), 125.

117 Ibid. 283.

118 Ibid. 59.

119 Ibid. 74.

120 For the role of Islam in the Ottoman State, which he called 'fear added to fear' : ibid. 61. Ibid. 468, where Islam was said to inculcate 'laziness of the soul'.

121 Ibid. 119.

122 N-A Boulanger, *The Origin and Progress of Despotism, in the oriental, and other empires, of Africa, Europe, and America* ... (Amsterdam, 1764 ; original French edn., Geneva, 1761). Montesquieu had argued that the legislators in China 'confused religion, laws, mores and manners... the precepts concerning these four points were what one called rites' : Montesquieu, *The Spirit of the Laws*, 318.

123 A-H. Anquetil-Duperron, *Législation Orientale, Ouvrage dans lequel, en montrant quels sont en Turquie, en Perse et dans l'Indoustan, les Principes fondamentaux du Gouvernement, on prouve : I. Que la maniere dont jusqu'ici on a représenté le Despotisme, qui passe pour être absolu dans ces trois Etats, ne peut qu'en donner une idée absolument fausse. II. Qu'en Turquie, en Perse & dans l'Indoustan, il y a un Code de Loix ecrites, qui obligent le Prince ainsi que les Sujets. III. Que dans ces trois Etats, les particuliers ont des Propriétés en biens meubles & immeubles, dont ils jouissent librement* (Amsterdam, 1778). There is a useful discussion of this writer in Venturi, 'Oriental despotism', 130, who notes that Anquetil-Duperron pointed out that 'the idea of despotism had served to justify the violent intervention of Europeans in the East', while the idea that there was no private property there 'had proved of considerable use in supporting the claims of those who favoured the confiscation of all native territory'.

124 Turchetti, *Tyrannie et tyrannicide*, 625-6.

125 P. Prodi, *The Papal Prince. One Body and two Souls : the Papal Monarchy in early modern Europe* (trans. S. Haskins, Cambridge, 1987), 167.

126 Ibid. 178.

127 G. Lewy, *Constitutionalism and Statecraft during the Golden Age of Spain : a Study of the Political Philosophy of Juan de Mariana SJ* (Geneva, 1960), 35, 69, 139, 140.

128 J. M. Hayden,*France and the Estates General of 1614* (Cambridge,1974). Bonney, *L'absolutisme*, 120. Turchetti, *Tyrannie et tyrannicide*, 517-26, who links this debate with the views of James I of England.

129 Hobbes, *Leviathan*, ed. Laslett, 400-1 ; cited in a different edition by Prodi, The Papal Prince, 17.

Hobbes' discussion in chapter 42 of *Leviathan* was directed in part against the arguments of Bellarmino.

130 I. C. Harris, 'Tolérance, Église et État chez Locke', *Les fondements philosophiques de la tolérance en France et en Angleterre au XVII^e siècle. I. Études*, ed. Y. C. Zarka, F. Lessay and J. Rogers (Paris, 2002), 215 n 2.

131 An overview of this theme is provided by P. K. Monod, *The Power of Kings. Monarchy and Religion in Europe, 1589-1715* (New Haven and London, 1999). Much more impressive detail for France from J. McManners, *Church and Society in Eighteenth-Century France* (2 vols., Oxford, 1998).

132 For the Prussian 'religion of civil servants' (*Beamtenreligion*), that is, pietism : F. Eyck, *Religion and Politics in German History* (Houndmills, 1998), 348. R.L.Gawthorp, *Pietism and the Making of Eighteenth-century Prussia* (Cambridge, 1993, repr. 1999), 9.

133 R. Bireley, *The Counter-Reformation Prince. Anti-Machiavellianism or Catholic Statecraft in Early Modern Europe* (Chapel Hill and London, 1990), 61.

134 Ibid. 75, 89-90. Bireley calls Lipsius another the founders of the Counter-Reformation tradition of statecraft.

135 L. Petris, *La Plume et La Tribune : Michel de L'Hospital et ses discours, 1559-1562* (Neuchâtel, 2002), 305. Cf. D. Crouzet, *La sagesse et le malheur. Michel de L'Hospital, Chancelier de France* (Paris, 1998).

136 R. J. Bonney, 'The obstacles to pluralism in early modern France', *The Adventure of Religious Pluralism in Early Modern France*, ed. K. Cameron, M. Greengrass and P. Roberts (Bern, 2000), 209-229.

137 *Charles IX. Récit d'histoire par Louis Dauphin et Bossuet*, ed. R. Pouzet (Clermont-Ferrand, 1993), 270.

138 B. E. Strayer, *Huguenots and Camisards as Aliens in France, 1589-1789 : The Struggle for Religious Toleration* (Lewiston, NY, 2001).

139 For example, Denis Crouzet's construct of a neo-Platonic *roi d'amour* : Crouzet, *La nuit de la Saint-Barthélemy. Un rêve perdu de la Renaissance* (Paris, 1994).

140 *Charles IX. Récit d'histoire par Louis Dauphin et Bossuet*, 260.

141 A. Corvisier, *Les régences en Europe. Essai sur les délégations de pouvoirs souverains* (Paris, 2002).

142 Bertier de Montrave, 'La régence ou l'autorité des reynes régentes' (12 November 1649): Archives des Affaires Étrangères, Mémoires et Documents, France 1632, fos 459-74. Bertier de Montrave was first president of the *Parlement* of Toulouse.

143 G. Naudé, *Considérations politiques sur les coups d'estat* (Paris, 1639), 179-91. <www.gallica.bnf.fr/scripts/ConsultationTout.exe? O=0005583>

144 Turchetti, *Tyrannie et tyrannicide*, 489.

145 Naudé, *Considérations politiques*, 100 n 1.

146 Ibid. 64-5. Turchetti, *Tyrannie et tyrannicide*, 497-8.

147 Turchetti, *Tyrannie et tyrannicide*, 488.

148 Naudé, *Considérations politiques*, 70, 329.

149 Ibid. 324-5. A view, it must be said, that was at variance with opinion at the time. De L'Hospital was disgraced in 1568 following accusations of weakness and being a closet Huguenot. What is now regarded as a remarkable degree of statesmanship in the Chancellor was thus vilified at the time.

150 Ibid. 301.

151 Ibid. 73-4, 115-16, 123. For the coup against Concini as Louis XIII's seizure of power at the expense of the Queen Mother : Cosandey and Descimon, *L'absolutisme en France*, 85.

152 Naudé, *Considérations politiques*, 129.

153 Ibid. 112, 282 (on the 'infinité de libelles').

154 Ibid. 58, 63.

155 Murat in *Dictionnaire du grand siècle*, ed. F. Bluche (Paris, 1990), 345 ; the plan itself was said to be the king's : Boulet-Sautel in *Un nouveau Colbert : actes du Colloque pour le tricentenaire de la mort de Colbert*, ed. R. Mousnier (Paris, 1983), 121.

156 Boulet-Sautel in Mousnier (1983), 123.

157 Bonney, *Political Change*, 420 ; Harouel in *Dictionnaire du grand siècle*, ed. Bluche, 423.

158 A. N. Hamscher, *The Parlement of Paris after the Fronde, 1653-1673* (Pittsburgh, 1976), 156.

159 Ibid. 177.

160 Ibid. 194, 200.

161 Boulet-Sautel in Mousnier (1983), 122.

162 Ibid. 131.

163 H. M. Scott, 'Reform in the Habsburg Monarchy, 1740-90', *Enlightened Absolutism. Reform and Reformers in later Eighteenth-century Europe*, ed. Scott (Houndmills, 1990), 159.

164 R. J. W. Evans, 'Maria Theresa and Hungary', ibid. 200.

165 I. De Madariaga, 'Catherine the Great', ibid. 292. Though the Legislative Commission proved unsuccessful, there was a codification of legislation under Catherine : ibid. 294, 300. The Instructions are to be found in *Documents of Catherine the Great : The Correspondence with Voltaire and the Instruction of 1767 in the English Text of 1768*,trans.W.F. Reddaway (Cambridge, 1931), 216-17, 219, 231, 241, 244, 256, 258.
<www.fordham.edu/halsall/mod/18catherine.html>

166 F. Hartung and R. Mousnier, 'Quelques problèmes concernant la monarchie absolue', *Comitato Internazionale di Scienze Storiche. X Congresso Internazionale di Scienze Storiche*,Rome (1955).

167 Ran Halévi (2000), cited by Cosandey and Descimon, *L'absolutisme en France*, 268.

168 Bonney, *Political Change*, 26-28, 115-16. Cosandey and Descimon, *L'absolutisme en France*, 49.

169 Cosandey and Descimon, *L'absolutisme en France*, 156-7, citing J. Cornette, *Le Roi de guerre. Essai sur la souveraineté dans la France du Grand Siècle* (Paris, 1993).

170 At the risk of oversimplification, this summarizes the different viewpoints of D. A. Parrott, *Richelieu's Army: War, Government and Society in France, 1624-1642* (Cambridge, 2001), where the author stresses the structural weakness of royal power, including the royal finances ; and J.

A. Lynn, *Giant of the Grand Siècle : the French Army*, 1610-1715 (New York, 1997), though Lynn does accept (ibid. 601) that instead of acting as the means of increasing royal power, the growth in army size after 1661 followed the earlier triumph of royal power. He does, however, antedate the growth in French army size.

171 *The Correspondence 1701-11 of John Churchill first Duke of Marlborough and Anthonie Henisius Grand Pensionary of Holland*, ed. B van 't Hoff (Utrecht, 1951), 528. J. Swift, *Political Tracts, 1711-1713*, ed. H. Davis (Oxford, 1951), 60.

172 Bonney, 'Absolutism : what's in a name', 94, reprinted in Bonney, *The Limits of Absolutism*, ch 1. Cosandey and Descimon, *L'absolutisme en France*, 280, 287.

173 Cosandey and Descimon, *L'absolutisme en France*, 282.

174 D. Parker, *The Making of the French Absolutism* (London, 1983), xvi.

175 D. Parker, 'Sovereignty, Absolutism and the Function of the Law in seventeenth-century France', *Past and Present*, 122 (1989), 71. Cosandey and Descimon, *L'absolutisme en France*, 44-5. More generally, Parker, *Class and State in Ancien Régime France : the road to modernity?* (London, 1996).

176 Above,n 46.Cosandey and Descimon, *L'absolutisme en France*,218-19,on the difference between structural limitations (by its nature absolutism could not be completed) and chronological limitations (further developments were possible at a later period).

177 P. Zagorin, *Rebels and Rulers, 1500-1660* (2 vols., Cambridge, 1982), i. 91. This might be relative in time and space, though there it is preferable to compare state structures in the same period.

178 H. G. Koenigsberger, '*Dominium regale* or *Dominium politicum et regale* : monarchies and Parliaments in Early Modern Europe', inaugural lecture for the Chair in History, King's College, London (25 February 1975) ; idem, *Monarchies, States Generals and Parliaments. The Netherlands in the Fifteenth and Sixteenth Centuries* (Cambridge, 2001).

179 Most recently, M. A. R. Graves, *The Parliaments of Early Modern Europe* (Harlow, 2001). Fortescue had stressed the point of independent fiscal power : 'And they diversen [= differ] in that the first king [in a *dominium regale*] may rule his people by such laws as he maketh himself. And therefore he may set upon them *tailles* and other impositions such as he will [i.e. wishes] himself, without their assent. The second king [in a *dominium politicum et regale*] may not rule his people by other laws than such as they assenten unto. And therefore he may set upon them none impositions without their own assent.'

180 Bonney, *L'absolutisme*, 121. Cosandey and Descimon, *L'absolutisme en France*, 119-20.

Additional Note on Louis XIV's personal rule as the apogee of absolutism in practice in France.

Since this article was drafted, a long-awaited moderately counter-revisionist interpretation of Louis XIV's personal rule has appeared in print : J. J. Hurt, *Louis XIV and the Parlements. The Assertion of Royal Authority* (Manchester, 2002). Whatever the arguments of the revisionists, who claim that Louis XIV was less than absolute in practice, it is clear that the restrictions on the *Parlements'* rights of

remonstrance between 1673 and 1715 were of considerable importance, as is evidenced by the political significance of these protests by the courts in the eighteenth century. The imposition of the *capitation* in 1695 and *dixième* in 1710 without consent are further indications of the king's capacity to impose his will in practice, which was greater than that of his predecessors and successors. The *dixième* was revoked in 1717 after Louis XIV's death.