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Sovereignty, Governance and the Exercise of Power in the Huguenot Monarchomach Treatises

Abstract: The French Wars of Religion, and in particular the period after the massacre of Saint Bartholomew, saw the emergence of a concept of popular sovereignty, whose most influential proponents were the so-called (to use the expression of Ralph Giesey) "monarchomach triumvirs", François Hotman (1524-1590), Theodore Beza (1519-1605) and Philippe Duplessis-Mornay (1549-1623) as the presumed author of the treatise *Vindiciae, contra tyrannos*. This occurred in the context of the collapse of the mutual trust between the French Crown and its (Huguenot) subjects, which led to the discredit of the previous medieval model of a monarchy relying on the king's willing adherence to commonly agreed ethical principles in order to prevent any abuse of power. The main feature of this concept of popular sovereignty, which had made the object of much discussion in the historiography of the French Wars of Religion and of the sixteenth-century political thought, the right of resistance and deposition was, however, only one aspect of the monarchomachs' political model. Even though the monarchomach treatises were intended to provide a way to address the political crisis generated by unchecked tyranny, their authors also had to describe how the government of a kingdom where the sovereignty belonged to the people was supposed to function. This paper intends thus to move the historiographical focus from the specific issues of resistance and deposition of tyrants (but, obviously, without excluding them from the analysis) to the overall picture of the monarchomachs' "constitution", explaining the relationship between a king and a sovereign people and how power was to be exercised in such a kingdom, according to the vision of the three above-mentioned authors.

Keywords: Sovereignty, Huguenots, Monarchomachs, France, Sixteenth Century, Wars of Religion

1. Introduction

In 1576, in the tumultuous circumstances created by the Peace of Beaulieu and the subsequent Estates General at Blois, the French jurist Jean Bodin published one of the most influential works of political thought of that period, *Les Six Livres de la République*. Dedicated to Guy du Faur du Pibrac, jurist and diplomat in the service of Charles IX and Henry III, *Le Six Livres de la République* was described by Howell A. Lloyd as a "a work of astonishing scope, a wide-ranging analysis of contemporary and ancient constitutions presented within a weighty theoretical framework" (Lloyd 2017, 117): amongst other issue, the book includes an influential definition of sovereignty, whose primary feature is considered to be the power to legislate, and a scathing attack on the idea of a "mixed constitution", which, on the authority of classical thinkers like Aristotle or Polybius, had proven extremely attractive to many medieval and early modern intellectual figures. Bodin's work was often regarded as heralding the seventeenth-century absolutism and seen as a direct counterpart to the resistance theories promoted at the exact same time by the "monarchomachs" in France and elsewhere. However, whether *Les Six Livres* was devised as a direct reply to the monarchomach theories is less clear: John Hearsey McMillan Salmon argues that the book, as a whole, was not, but Bodin's specific "doctrine of an absolute sovereignty reposed in the French crown" was such a reply, "enunciated in reaction to the concept of the sovereignty of the community through the estates" (Salmon 2002, 135). Howell A. Lloyd also insists that the work "was no mere *thèse de circonstance*", pointing out that it was built on the foundations already laid by Bodin's earlier publications, like *Response à Malestroit*, the *Iuris universi distributio* and *Methodus*, and calling it "a contribution from a fresh perspective and by way of fresh priorities to deliberations and debates pursued over nearly two millennia at the highest levels of moral philosophy and jurisprudence, from Plato and Aristotle, through Polybius, Cicero, and many more, on how a political society might best be organized on earth" (Lloyd 2017, 117). On the other hand, Bodin himself presents his work as a reaction to the pitiful situation France and the Valois monarchy had reached by 1576 (Bodin 1577, Preface), with no end in sight to the religious troubles, with the authority of the Crown at its lowest ebb since the darkest days of the Hundred Years War and with the always looming specter of foreign intervention, be it Protestant or Catholic.

Whatever Bodin's actual intent, the timing of the work's publication alone established a link with the treatises of the monarchomachs: if Bodin was considered as being a proponent of absolutism manifested through an unfettered royal sovereignty, the monarchomachs like François Hotman, Theodore Beza or the anonymous author of *Vindiciae, contra tyrannos* (usually identified with Philippe Duplessis-Mornay) have been associated until today with the concept of popular sovereignty. However, sovereignty and governance were not, according to Bodin's scheme, the same thing: while adamant that sovereignty could not be divided or shared, Bodin was less categorical when it came to the practical realities of governance. Undoubtedly aware that the kind of sovereignty defined by him could prove too unwieldy for the practices of sixteenth-century administration and compromises might be required, Bodin claimed that the ultimate locus of sovereignty being placed in a single body (be it an individual monarch or an aristocratic or popular assembly) did not preclude a different type of governance: thus, a monarchy, with a prince as its sovereign authority, could be governed aristocratically or democratically (Bodin 1577, 233-234) or even as a combination of more than one type. Bodin's vision of sovereignty, though, does not imply the lack of any limits whatsoever and, at least in certain respects (like the matter of taxation), he is less absolutist than some of the seventeenth-century monarchies. He actually admits three kind of limits on the sovereign: the law of God and nature, the contracts with his subjects, and the need of consent for taxation (because it involved appropriating the subjects' own possessions). However, as pointed out by Jean-Fabien Spitz, the possibility that the subjects could constrain their king was destructive for sovereignty and Bodin excludes it completely; nor was the subjects' consent required for the abrogation or the modification of the laws (Spitz 1998, 54, 123). On the other hand, the monarchomachs' core idea was that a monarch *was* actually constrained by the subjects' will and this has been the basis for ascribing to them a concept of popular sovereignty. The rulership models proposed by the monarchomachs took as their main concern the problem of tyranny – more exactly, what to do when a lawful ruler became a tyrant. Their answer to this question was to vest a power of resistance into the hands of the inferior magistrates and a power of deposition into those of different representative assemblies, like the Estates General in France – and, hence, in the opinion of their contemporary critics and many later historians, take the ultimate sovereignty from the hands of the king and place it in those of the people. However, although it was the focus of the monarchomach

treatises, the potential conflict between a king and his people was not the only aspect of a realm's governance addressed in these works. If David Parker is correct when points out that Bodin's *Six Livres de la République*, "has been constantly treated as though it were primarily about the concept of sovereignty, whereas it was an elaborate explanation of the principles which order a well-governed commonweal" (Parker 1996, 169-170), it is also true that there can be more to the monarchomach treatises than the problem of resistance to tyrants and their deposition – and from the justifications provided by the monarchomach authors, an actual model of governance can be distinguished. In the end, resistance and deposition were an exceptional event – a solution of last resort in face of the threat of unremitting tyranny, after all other remedies had been tried and failed and when the tyrant endangered the well-being of the realm. Available in case of extreme necessity, as an expression of the people's ultimate sovereignty, removing a lawful ruler from office was not part of the normal system of governance, as imagined by the monarchomach authors.

2. Constituting the Government of the State

In the opinion of Nannerl Keohane, "the treatises of the French Huguenots closed off certain possible avenues of constitutionalist argument to orthodox jurists, because those arguments were associated with heresy and civil dissension; and they encouraged the formulation of a more extremist absolutism in response to the radicalism of the popular sovereignty they proclaimed" (Keohane 1980, 49). This assessment is too harsh on the Huguenot monarchomachs: their radicalism, at least in comparison with the sixteenth-century trends towards a monarchical authoritarianism under Francis I and Henry II, cannot be denied, but the main culprit for the collapse of the concept of popular sovereignty was the Catholic League, its willingness to submit France to a Spanish monarch and the concrete act of regicide it carried out, which took the life of Henry III on 1-2 August 1589. However, the Huguenot monarchomachs generally avoided the dangerous and thorny subject of tyrannicide, even in the terrible circumstances of the massacre of Saint Bartholomew from 24 August 1572 and its immediate aftermath, when hard questions about the king's (Charles IX) involvement in the massacre and his breach of faith with regards to the Huguenots had to be finally asked, after a whole decade during which the Huguenot's political and intellectual leadership skirted the issue of royal responsibility in the religious persecutions. However, despite the restraint on the issue of

tyrannicide, Saint Bartholomew led to a reshaping of the relationship between king and people by some of the main Huguenot political ideologues, like Hotman, Beza or Mornay.

Previously, Calvin, despite his initial deference to the French monarchy and his insistence that the Protestants were not rebels, might have laid some of the foundations of the monarchomach resistance theory, referring briefly in some of his works to the idea of "inferior magistrates" actively opposing tyranny, and Calvinist theology was tacitly subversive for the French monarchy, because, as pointed out by Joseph Bergin, its "nonsacramental form of worship and its aversion to all forms of liturgical and iconographic embellishment cut directly across the religious culture of the French monarchy and the elaborate rituals associated with it" (Bergin 2014, 32). Additionally, the 1560s already witnessed the publication of some anti-royalist political tracts, in the vein of the future monarchomach treatises, but they did not gain much traction. The path of open defiance against the monarchy was fully embraced only after Saint Bartholomew. The consequences of this event for the political thought of the movement are clearly pointed out by Arlette Jouanna, who asserts that the monarchomach doctrine meant, first and foremost, "the rejection of affectivity" and of the "personal bond" between king and subjects (Jouanna 1989, 352-353). The same argument is also made by Paul-Alexis Mellet, who argues that "if Saint Bartholomew was a turning point, it was less in terms of redirecting the criticism of the Protestants (from the entourage of the king to the king himself), but rather in terms of adopting an attitude of systematic suspicion towards kingship" (Mellet 2002, 82). The consequence was that power and its exercise, according to the monarchomach theories, become institutionalized.

In one of his articles on the subject, Ralph Giesey refers to the principal monarchomach authors as "the monarchomach triumvirs" (Giesey 1970, 41-56): they are, as already pointed out, François Hotman (1524-1590), whose main work on this subject, *Francogallia*, was published in 1573, Theodore Beza (1519-1605), who published *Right of Magistrates* (*Du Droit des magistrats*) in 1574, and, very likely, Philippe Duplessis-Mornay (1549-1623), assumed author of *Vindiciae, contra tyrannos*, published in 1579. Hotman's book, *Francogallia,* uses, almost exclusively, a partially fictionalized history of Roman and Frankish Gaul and of medieval France in order to develop a constitutional model that could provide a lawful framework for the possibility of resistance against tyrants and for their deposition. Beza and Mornay try to achieve the same result, but use instead a different sort of arguments, combining historical

precedents from the whole of Europe (or at least as they interpreted them) with Biblical models of overthrown tyrants and specific principles of Roman Law that could support their position. Daniel Lee, in particular, points out that "arguments from Roman law were central to monarchomach thought", not only enabling them "to justify the legal permissibility of resistance", but also giving them "the conceptual tools to interpret popular resistance as a specific sign or expression of a more general constitutional theory of popular sovereignty (Lee 2016, 125) and proceeds to show how their usage of Roman Law translated into a theory of popular sovereignty. The outcome of the monarchomach's efforts was, as pointed out by Quentin Skinner, a resistance theory based on a "purely political and non-sectarian argument, so performing the vital ideological task of appealing not merely to their own followers, but to the broadest possible spectrum of Catholic moderates and malcontents" (Skinner 2004, 322). On the other hand, Gregory Haake seems to disagree with this interpretation in what concerns *Right of Magistrates* and *Vindiciae*: he argues that "in any text of this period, the use of scripture and even religious language can already signal a polemical orientation, since biblical exegesis presented an easy opportunity to malign the ignorance or foolishness of the other side, as well as their theological ideas" and that Beza and Mornay "are not particularly interested in convincing their fellow French subjects to unite behind a duly elected king beholden to the estates and to the people", instead seeking "to convince their fellow Protestants to resist in the face of the Catholic enemy". The basis for Haake's idea is that "polemical interpretation of scripture exemplifies this lack of interest in convincing their fellow French who are Catholic, and it further hints at a prophetic quality present in both texts" and, thus, "both Beza's text and the *Vindiciae* possess a latent apocalypticism that declares the opposition a permanent enemy whose ultimate end should only be condemnation" (Haake 2021, 298, 307-308). However, in our opinion, this argument is not really sustainable in light of the political circumstances after Saint Bartholomew: it is hard to believe that people like Beza or Mornay could be so politically oblivious as to ignore the need of an alliance with the moderate Catholics, displeased either with the massacre or with the influence within the kingdom of the Guise clan or of the Italian courtiers. In order to succesfully face the pressure of the radical Catholics bent to exterminate them, the Huguenots needed the support of moderate *French* Catholics, because foreign Protestant support was either not coming (in case of England) or was not enough (in case of the German princes). The facts do not bear this out, because, right at the time when Beza was about to

publish *Right of Magistrates*, the Huguenots of Midi, joined in a kind of semi-republic in Southern France, were seeking the alliance of the Catholic marshall of Damville, governor of Languedoc, and were trying to approach the king's own brother, François d'Alençon. More so, as Hugues Daussy points out, Mornay "was convinced that the deliverance, then the victory of the true religion went through the establishment of a confessional coexistence, which would allow the Reformed faith to spread and establish itself" and "his plea in favour of a peaceful cohabitation did not imply the abandonment of his dream of triumphing over the papacy": his apparently paradoxical attitude can be explained by the fact that he regards the foreign Catholic powers as the main enemy of the Reformation, sharing the Protestant fear of an international Catholic league, and only internal peace would allow the Huguenots to focus all their efforts against this enemy (Daussy 2002, 255).

The key element, both for the resistance theory they intended to assert and for their whole constitutional model, was the constitutive process of the state and its government. Despite the fact that they were often accused of republicanism by their enemies and even though some political developments in the Protestant regions of France, after 1572, – like the formation of a quasi-autonomous Huguenot state in southern France in 1573 –, might have given credence to such charges, the monarchomachs operated within a political context in which monarchy dominated and, therefore, it is this form of government they analyzed in their works. For all three monarchomach authors, a lawful monarchy was constituted by the people, who decided both upon its type (hereditary or elective) and upon the person of the king. In his book *Francogallia*, François Hotman declares the ancient constitution of France to have been a mixture of royal, aristocratic and popular elements, in other words a mixed government of the kind recommended by "Plato and Aristotle, whom Polybius followed", where the nobility played the role of "buffer" between king and people, in order to reduce the potential animosity between them (Hotman 1574, 97). However, Hotman's statement is not actually supported by the description of the constitutional mechanisms of his "Francogallia": a truly mixed government implies an equal share of sovereignty and it is clear that in Hotman's ideal state, the popular element dominates. As Isabelle Bouvignies pointed out, "instead of a tempered or divided sovereignty, the monarchomachs propose a sovereignty of the assembled people, which would have the right, according to Hotman, to depose a king who betrayed his promises" (Bouvignies 2005, 119).

In *Right of Magistrates*, Beza takes care to emphasize both the people's temporal precedence and that the king's own existence depended on that of the people: he appeals to the authority of the Bible to strengthen his point, by claiming that even a divine appointment, like when God chose Saul and David to reign over the Israelites, still had to receive the people's consent (Bèze 1970, 9). The implication is that the process by which a king is chosen is of divine origin and, therefore, unassailable. *Vindiciae* takes the same position, arguing that "the people constitutes kings, confers kingdoms, and approves the election by its vote", a constitutional model directly approved by God, who "willed that it should be done in this way, so that whatever authority and power they have, should be received from the people after Him; and that thus they would apply all their care, thought, and effort to the welfare of the people" (Brutus 2003, 68). The natural conclusion of this argument is, just like that of Beza, that "a people can exist of itself, and is prior in time to a king" (Brutus 2003, 71). More so, according to the Biblical account of the origins of the kingship of Israel, it was the people itself who took the initiative of establishing the Israelite monarchy, to which God merely consented, and an entire ritual was devised in order to emphasize the strength of the elective principle, which endured when a king was replaced by the other. Even when heredity apparently imposed itself, election was not abandoned, because a fully hereditary principle of succession would have significantly altered the relationship between king and people, reducing the dependency of the king on the people and thus undermining the original covenant by which the monarchy was established. This reasoning is clearly explained in *Vindiciae* when it is pointed out that "this was done in order that kings should always remember that it is from God, but by the people and for the people that they rule; and that they should not claim that they have received their kingdom from God alone and by the sword, as they say, since they were first girded with that very sword by the people" (Brutus 2003, 69). Just like François Hotman did in *Francogallia*, *Vindiciae* provides examples from the history of France to make its case that heredity had not supplanted election completely, albeit not all are accurate and include significant historical errors, especially in what concerns the Capetian period: while *Vindiciae* cannot completely deny that lineage played a major part in ensuring the succession – and to do so would have been completely absurd –, it still insists that "although it has been the custom in some regions for the people to choose its kings for itself from a certain lineage on account of some outstanding merits, it chooses the stem and

not the offshoot" (Brutus 2003, 74). In other words, heredity might favor a specific family, but not its individual members, the people remaining free to pick between them – and even in such a case, the people can choose another dynasty if the previous one had "degenerated".

In *Right of Magistrates,* the power of the popular consent is so great that it can even remedy initial usurpations and transform such tyrants into lawful rulers – "that who was a tyrant in the beginning can become lawful and inviolable magistrate through that free and lawful consent by which legitimate magistrates are created" (Bèze 1970, 13-14). In this way, Beza merely acknowledged historical reality, which had seen many governments establishing themselves by force and surviving the test of time, and did not cling to a legal idealism that would have seemed hopelessly out of touch. However, for Beza, the legitimacy of a government depends just as much on its justice: the consent was originally required to create a government, but it was not sufficient by itself to preserve it. Popular consent cannot defeat the principles of equity inscribed in divine and natural law: "But I will say that, even when a people has consented with full knowledge and freedom to something which in itself is obviously irreligious and against natural law, such obligation has no value" (Bèze 1970, 45). The argument is repeated almost verbatim in *Vindiciae*: if the kingdom formally consented to the rule of the tyrant by usurpation, "it is equitable that the people should obey, and should calmly acquiesce in the will of God", but on condition that "he who was initially a tyrant without title should govern legitimately and should not practice tyranny after acceding to the title" (Brutus 2003, 152).

Vindiciae establishes the relationship between the king and the people on the basis of several fundamental principles from feudal and Roman Law. Daniel Lee argues that the monarchomachs (albeit the argument applies mostly to *Vindiciae, contra tyrannos)* retain, from Roman Law, the concept of "dominium", but which is located in the community of the people and not in the king, therefore the "people taken together as a whole were rightly to be regarded the sole 'proprietary owner' of the powers attached to the 'whole kingdom'" (Lee 2016, 127-128). The contractual nature of the relationship between the king and the people is explicit in both *Right of Magistrates* and *Vindiciae*, where Paul-Alexis Mellet identifies a so-called "double alliance" (Mellet 2006, 182), a sacred contract between God, the king and the people and a political contract between only the king and the people. In the opinion of professor Mellet, the "theory of contract allows the monarchomachs to establish a constraining system of a complex nature (juridical and religious at the

same time) pressing on the Crown, while associating the representatives of the people (the magistrates and not just the princes) to the political decisions" and "the principle of mutual obligations leads them to set up the limits of obedience, and thus the conditions to be observed in order to guarantee the integrity of the body politic" (Mellet 2007, 61). *Vindiciae* basically embeds the mutual obligations between the king and the people into this sacred contract with God: "the people itself is always said to be the people and inheritance of God, and the king the administrator of His inheritance and leader of God's people – which title was expressly applied to David, Solomon, Hezekiah, and other pious princes" (Brutus 2003, 18). The consequence of this arrangement is that "there was a twofold covenant at the inauguration of kings: the first between God, king, and people, to the effect that the people should be the people of God; the second between king and people, that while he commanded well he would be obeyed well" (Brutus 2003, 21). If the king fails to abide by the terms of his promise, then he also forfeits his throne just like an unfaithful vassal would forfeit his fief: "In short, unless a vassal keeps his oath he forfeits his fief, and by that very right strips himself of all prerogatives. The king also, if he neglects God, if he goes over to His enemies, if he commits felonies against God, forfeits the kingdom by this very right and often loses it in practice" (Brutus 2003, 20-21).

From *Vindiciae*'s description of "the inauguration of Joash" in the Old Testament, we can conclude that the oath establishing the obligations of the king and of the people towards God is an event which is constitutive of kingship, indissolubly bound to the election process: a candidate to the throne cannot actually become king without acknowledging his duty to God and the argument is based on the unassailable authority of the Scripture. Since this rule tacitly applied even to heathen rulers, who obviously did not worship the God of Israel, for *Vindiciae* it is obvious that the same rule was passed into the constitutional structure of the Christian kingdoms and, therefore, obedience to God takes precedence to any other obligation towards any earthly monarch. In this scheme, the people serve as a check against any religious transgressions of the king: their involvement in the first covenant is nothing else but God's acknowledgement of the moral fallibility of a single individual, who could not be entrusted with absolute power over his kingdom without the Church of God incurring a serious risk. What we see here is a desacralization of the person of the monarch: if royalist political theory turned the king into a transcendent person, imbued through his coronation with total equity and justice, *Vindiciae*

makes the king as morally feeble as any of his subjects. However, the second contract, where the king promises "to command the people justly" and to care "for the welfare of the people" makes the king vulnerable to deposition even in case of secular transgressions and it emphasizes once more his inferiority to the people, because the terms of the contract bound him absolutely, while the people is bound only conditionally (Brutus 2003, 129-137). The contemporary coronations are reminiscences of this original arrangement, with their many oaths acknowledging the rights of the subjects and the duties of the monarchs taking them.

Theodore Beza also reminds his readers of the possibility that a vassal could renege on his obligations to his lord if the latter had failed to fulfill his own duties. This rule, according to Beza, applies even more when taking into account that a king is placed in a position of inferiority with respect to his people, something which is not the case with the lord versus his vassal. The corresponding oath that binds king and people serves as a kind of warranty that the mutual obligations will be enforced or, if they were not, that punishment will be meted out on the failing party: "Who doubts, like we have demonstrated that it is practiced everywhere, that the kings don't lose their fiefs if they commit the felony of becoming notorious and otherwise incorrigible tyrants?" (Bèze 1970, 52). According to Beza, a king is bound by pretty much all the laws of his kingdom and the cause of this situation is the contractual relationship involved in establishing his monarchy: the original contract is perpetuated through the coronation oath required from each king, in which he swears precisely to protect and preserve the laws. Beza's "double alliance" relies on Scriptural precedent, "a solemn oath by which the king and the people obligated themselves to God, to observe His laws, both ecclesiastical and political; and then another mutual oath between the king and the people" (Bèze 1970, 30). If the oath is broken by king, the people is then fully within its right to remove him from his throne, a point Beza emphasizes based on the history of Israel, Rome, but also other contemporary European kingdoms, like Denmark, Sweden and Scotland (Bèze 1970, 32-33). *Vindiciae* also insists on the king's necessary obedience to the laws, but relies for its arguments on a philosophical analysis of the virtues of the law (as opposed to the fallibility of man) and of the rational nature of the submission to the laws, tinged with some Christian references. The rejection of the Roman imperial principle "Quod principi placuit legis habet vigorem" ("What pleases the prince has the force of law") is categorical: "nothing is just because the king has sanctioned it, but a king is just who orders to be sanctioned what is just in itself" (Brutus 2003,

99). If the king failed to do that, then he would undermine his own prestige in the eyes of the public opinion – a problem not inconsequential for an early modern king who usually valued his reputation –, but also the normal functioning of justice in his own kingdom. *Vindiciae* obviously alludes to the idea that kings should provide an ideal model of behaviour to their subjects, since "it is fitting to distinguish kings from subjects on account of equity and justice rather than impunity" and "it is manifestly futile and even, in a sense, wrong for a prince to appear to demand of his subjects that they should keep the laws which he, although bound to protect them, disregards" (Brutus 2003, 102).

In *Francogallia*, François Hotman insists that all political traditions which combined to produce sixteenth-century France relied on a form of elective kingship. When referring to the political traditions of the Gauls, François Hotman asserts that the Gaulish kingdoms that existed at the time of the Roman conquest "were not hereditary, but they were granted by the people to those who seemed good to them, because of the good opinion they had of their righteousness and lawfulness" and the power of these kings "was not absolute or unlimited, nor could they do anything they wanted, on the contrary, they were limited by certain laws, so that they were under the power and authority of the people, just like the people under theirs" (Hotman 1574, 10-11). However, Gaulish precedent was not sufficient to create a convincing argument in favor of a *French* elective monarchy, because Hotman also had to take into account that there was no political continuity between the pre-Roman Gaulish statelets and the Frankish Merovingian and Carolingian state which, in turn, gave birth to Capetian France. The Roman conquest had annihilated Gaulish statehood, therefore the Frankish conquest of Gaul in the fifth century was free to create a new type of state, especially since sixteenth-century legal mindset acknowledged the right of conquerors to impose upon the conquered people any kind of regime they saw fit. In order to avoid this pitfall, Hotman appeals to Tacitus to point out that "the kings of the Germans (from whom our French descend) are chosen by the votes of the people, the kings according to their nobility and the captains according to their virtue" and links this tradition to the contemporary monarchies of Germany, Denmark, Sweden and Poland, whose kings are "elected in the general assembly of the estates of their nation, albeit the sons [of previous kings] have preference" (Hotman 1574, 60). Since the Franks were a Germanic people themselves, it is obvious to Hotman that the same rule should apply to them and adduces examples from the chronicles of the Merovingian and Carolingian period in order to confirm

it. Hotman's argument is aptly explained by Paul-Alexis Mellet, who points out that the main characteristic of the ideal monarchy as imagined by the monarchomachs is that it originates in the past, their ideal king being a Biblical monarch or a king of ancient France (Mellet 2002, 76).

In itself, the elective origin of monarchy was not a controversial idea and many adepts of absolutism and of the divine right of kings would have agreed (on condition that the people were considered as only an intermediary expressing the will of God). Medieval jurists have often pointed at the alleged "lex regia" – a purported law, passed by the Roman people itself, which transferred the supreme power in the Roman state from the people to the emperor – as the way by which the Roman imperial monarchy came into being. However, it was a matter of debate whether this transfer of authority had been definitive and complete, or the people still retained their original sovereignty, which might manifest itself in certain circumstances: this is what sixteenth-century proponents of absolutism vehemently denied and this is what the radicalism of the monarchomachs consists of. According to the opinions of all three authors, the people who created a king could also depose him if circumstances demanded it. Hotman relies in his argumentation mostly on historical precedents taken from the annals of the Merovingian and Carolingian dynasties, which provided him with plenty of examples in order to support his point: the first such instance recorded by Hotman was Childeric, "the first to be declared king of France and of Gaul", deposed in 469 "on the advice of the Estates" because he was "enslaved by women and wine and fallen into debauchery and dissolution"; the last (chronologically) was Charles the Simple, in 926, because "by his folly and stupidity had ruined the kingdom and lost Lorraine" (Hotman 1574, 66-71). And Hotman does not hesitate to point out that the Capetian themselves owed their throne to an election, because, in 987, there still was a surviving Carolingian, namely Charles, duke of Lorraine, "to whom, in accordance with French practice, the succession to the Crown should have belonged, since he was legitimate and the closest descendant of Charlemagne", while Hugues Capet ascended the throne only because he was the choice of the nobility (Hotman 1574, 162-163). The same argument appears in Beza's *Right of Magistrates* as well, where it is pointed out, logically, that "if the kingdom was not elective, Pepin had no right (to the throne), nor Hugues Capet, because the Merovingian succession in male line had not failed when Pepin became king, and nor that of Charlemagne, when Capet took the crown" (Bèze 1970, 41).

François Hotman goes significantly farther than any previous critic of royal misgovernment and it is clear why his work shocked many of his contemporaries: his constitutional model allows for the removal of a king not just in case of tyranny, but also for mere inadequacy. It is no wonder that suspicions of republicanism hovered over the Huguenot publicists: the political arrangement depicted by Hotman for the Merovingian and Carolingian period turned the king into a mere magistrate for life – the highest in the realm, true, but still with quite limited powers. *Vindiciae* follows in the same path when it argues that "kings were removed to monasteries for reasons of extravagance, idleness, or tyranny, to such an extent that whole lineages were deprived of succession to the kingdom, just as they had been initially called to the kingdom at the people's instigation" (Brutus 2003, 86). However, no matter how appealing the idea of the people electing the king might have seemed for those at odds with the current monarchical regime, there was also an inherent weakness in this model, which would became apparent later, namely that the people could have elected *anyone* as king, including a foreign prince: according to Henri Morel, it is on this basis that the "politiques" rejected the calls to popular sovereignty (Morel 2003, 116).

The power of the people in deciding the nature of the government was not limited to selecting the person of the king or deposing him: according to Hotman, "because the assembly of the people and the general council of the Estates of France, having sovereign power not just to grant, but also to withdraw the royal dignity, it is a necessary consequence that it is within the power of the same to confer the succession on all [children of the king] or only to one, excluding all the others" (Hotman 1574, 72-73). This is an extremely surprising statement from Hotman, because it evokes the image of the state as a "many-headed monster" and directly contradicts the principle of the unicity of the supreme power, so dear to all medieval and early modern political theorists: if the king would have been the ultimate sovereign in his realm, such a political model should have been anathema to a jurist like François Hotman. The implication of this statement is that the king actually did not possess such sovereignty and the succession, thus, did not mean a transfer of sovereignty: if kingship was only a magistracy, then such an arrangement became possible, because Hotman's world included such power-sharing, in particular in the case of urban communities. François Hotman refers first to the division of the Frankish kingdom, after the death of Pepin, between his sons Charlemagne and Carloman, an example which is strengthened by the mention of the many partitions from the

Merovingian and Carolingian history. The conclusion Hotman draws from such situation is that "the public council of the French" had power of decision on all legal claims: kingship itself does not constitute an exception. Further, the administration of the royal domain fell within the purvey of the same assembly, because, according to Hotman, the distribution of appanages to the younger sons of kings "must be entrusted to the assembly of the Estates, which will provide them, in proportion to their number, with lands and seigneuries enough for them to maintain their dignity" (Hotman 1574, 79-80). The issue of granting appanages comes up in *Vindiciae* as well, in the context of the discussion about the inalienability of the royal domain: here, *Vindiciae* yields the point to the realities of its time, by acknowledging that, while "at one time neither was considered to be valid unless an assembly of the three estates had ordered it", in its time "the senate of Paris – which is the senate of peers – and the chamber of public accounts" needed to approve the decision (Brutus 2003, 120-121).

Due to the conditions imposed on kings at their accession, the people retains a superior legislative and judicial power, which can overthrow the king's verdicts – "Seneca remarked from the books *de Republica* of Cicero that someone could appeal from the king to the people (as in the criminal case of Horatius, slayer of his sister, acquitted by the people after he had been condemned by the judges of King Tullius Hostilius" –, and was able to "create magistrates, establish laws and declare war" (Bèze 1970, 25): the example Beza used here was that of royal Rome, but he implies that it also applied to France at the beginning of its monarchy. *Vindiciae*, in its turn, claims that "whatever a king gains either by war or when he annexes neighbouring territory by right of war; or whatever he gains by jurisdiction, as when returns are made to the fisc, he acquires not for himself, but for the kingdom" and that no "binding agreement be contracted with him except by authority of the people" (Brutus 2003, 75). Entrusting such powers to the people basically meant that the king was deprived of his sovereignty and was bound to draw the ire of many adepts of royal authoritarianism – for instance, Henry III was to remark, when confronted with similar pretensions from the Estates General of 1576 and 1588, that such demands would make him a king in name only. And not just hardcore royalists were bound to feel disconcerted with a political model that reduced a king almost to the status of the Doge of Venice. Beza undoubtedly was aware of the radicalism of his position and his attempt to justify it gives us a glimpse into the Huguenot disillusion with Charles IX after Saint-Bartholomew.

According to Beza, "there has never been a king who had not abused his power; so that we must return to what the Philosophers knew by their natural reason, that the royal government is rather the ruin of the people than his conservation, if it is not so bridled that the great good which can come from monarchy is pulled out, and the great evil which monarchy can bring about is impeded" (Bèze 1970, 29).

The monarchomachs also distinguish between the person of the king and the royal office, in opposition to a tendency during the reigns of Francis I and Henry II towards royal authoritarianism, which included statements like the one of Guillaume Budé that "the royal majesty was 'inseparable from the Crown and the [king's] person in whom it is situated like the shadow with the body'" (Lange 2014, 240). In the words of Daniel Lee, "by locating sovereignty in the people and identifying them, rather than kings, as the 'co-owners' of the public powers of the commonwealth, these writers effectively stripped kings of their claim of an exclusive right of *dominium* over their kingdoms, a point of conventional wisdom in the humanist legal theories of the king's *sua propria iurisdictio*" (Lee 2016, 126). In Hotman's constitutional template, a distinction is created between the possessions of the king as an individual and the possessions of the kingdom, which belong only to the office and not to the person occupying it. Hotman's reliance on Merovingian and Carolingian precedents is completely ahistorical in this case and not without a touch of irony, because the Merovingians and the Carolingians were the ones who regarded their kingdoms as patrimonies of the royal family, which in turn led to the well-known partitions, while it was the more maligned Capetians who put an end to this practice. However, regardless of the alleged origins, Hotman merely follows sixteenth-century conventional wisdom when he asserts that "the things which belonged to the kingdom and the republic, since they depend on the Crown, as parts of the body, they must go to the person to whom the kingdom goes" (Hotman 1574, 74).

François Hotman describes the relationship between the king and the kingdom as "that between a father and his family, a guardian and his ward, a custodian and the minor in his charge, a ship's pilot and the passenger on the vessel, a captain and his army" (Hotman 1574, 156-157). The same analogy is employed by Beza in *Rights of Magistrates,* in order to show that the king was created for the people, just like "the tutor for his ward and not the ward for the tutor, and like the shepherd for his flock, and not the flock for the shepherd" (Béze 1970, 9), while *Vindiciae* uses for this purpose the comparison with a ship's pilot (Brutus 2003, 74-

75). In Hotman's case, though, not all his examples are well chosen, in particular the analogy between a king and the father of a family, which is a favorite analogy of the absolutists and emphasized by Bodin in order to demonstrate the extent of royal authority: the father, according to sixteenth-century thought, enjoyed a natural authority over his family, which was restricted only by divine law. Despite the inherent danger to his constitutional model, Hotman was encouraged to use this analogy by the fact that, as pointed out by Nancy Lyman Roelker, "the French nation itself was conceptualized as a family with the king as father", while "the family was the state in miniature, and the authorities of the father and the king were different manifestations of the same thing", even though absolutists like Bodin would argue on the same basis "that there could be no sharing of the ultimate authority in a well-governed state, as in a well-governed family" (Roelker 1996, 121). All the other examples provided by Hotman, though, illustrate the main characteristic of his constitutional model: the mutual obligations between king and subjects and the possibility that the relationship could be dissolved by the latter if the king failed in his duty or abused his power. More so, putting limitations on the king's power would protect the kingdom against human fallibility.

3. The Powers of the Estates General

In order to justify that popular sovereignty was, indeed, what the monarchomachs advocated, one need to consider other aspects of government than just electing or deposing a ruler or the theoretical position of the people with respect to its king. This because, as already shown above, a ruler could be removed only for cause: even though this cause could extend to more than tyranny, this principle of government would not have necessarily prevented a reasonably just and competent monarch from governing his realm as he saw fit, while granting the people only a consultative role, without any decision-making power of its own. However, the monarchical government envisioned by the monachomachs included significant restraints on royal power. Again, this idea was not particularly new, nor particularly shocking: fifty years before, a deeply royalist writer like Claude de Seyssel, an active diplomat in service of Louis XII and archbishop of Turin under Francis I, spoke in his book *La Grande Monarchie de France* of the three "bridles" on the French kings, namely, justice, religion and "la police" (the latter meaning the laws and ordinances of the kingdom). This kind of restraints were, first and foremost, of a moral nature: it was assumed that the king would

consent to them by his own free will, due to his own aversion to earning the disapproval and even the hatred of his subjects. Bodin himself hesitated on the issue: in one of his earlier works, *Methodus*, he "stated that the king was also bound by the law, because he swore at his coronation to preserve the laws of the realm, which included both private and fundamental laws, and he denied that the ruler might alter established custom without the consent of the estates", only to reverse himself later in *Les Six Livres de la République*, where he made the king superior to positive law and custom, on the reasoning that otherwise he could not change it when circumstances demanded; and Bodin still kept natural law as an ultimate check on royal power (Church 1969, 235-236).

However, the monarchomachs' restraints were of a completely different nature, because they had a much more institutionalized character: for instance, invoking the opinions of "Plato, Aristotle, Polybius, Cicero" as support, François Hotman asserts that the king "must be restrained in his power by the reverence and authority of good and honorable persons, as representatives of the people, who puts them in charge and gives them this power" (Hotman 1574, 12). In practice, the restraints envisioned by the monarchomachs consisted in removing a series of essential attributes from the king and entrusting them to a different political body, the Estates General. The same institution that was the only one entitled to remove an unsuitable or tyrannical king was also granted the power to actually make the most important government decisions. Out of the three monarchomachs, François Horman is the one who insists the most upon the role of the Estates General in the governance of a realm. Regarding Hotman's terminology, Robert Kingdon points out that "the French translation of this term is more relevant to sixteenth-century concerns that the Latin original, which speaks of a 'public council' of the Franks" and that, even though the choice of the term "Estates" may belong to the translator, there is "no evidence, however, that Hotman ever repudiated it" (Kingdon 1988, 144). Beza and *Vindiciae*, on the other hand, are less focused on this institution: Beza might have understood already that the Estates could be used by the radical Catholics to implement their anti-Protestant policy and Mornay, the alleged author of *Vindiciae*, could actually witness what would happen in an assembly where Catholics were in majority during the Estates General of Blois from 1576-1577. Still, it was impossible to exclude the Estates General from their constitutional scheme, on account of the prestige of the institution and also because it was the only body deemed sufficiently representative in order to carry out the deposition of a

tyrant. As such, Beza points out that "the same Estates had the power to depose the king they had elected if he did evil", an argument backed up, just like Hotman's, by examples from Merovingian and Carolingian history, and this power was based on the existing laws (Bèze 1970, 40-41, 44). *Vindiciae*, in its turn, alludes to the participation of "a council", which held public authority, as the decision-maker on enforcing the original covenant upon a king "who violated the worship of God" (Brutus 2003, 42) and firmly insists this duty fell exclusively upon "the assemblies, which are nothing other than the epitome of each kingdom to which all public business is referred", namely "the parliament, diet, and other assemblies which have different names in different regions" (Brutus 2003, 46-47). *Vindiciae* even makes this specific argument with direct reference to the history of France and it bears an obvious similarity with those of *Francogallia*: in this context, it is evident that *Vindiciae* extends the possible cause of deposition (which was, first and foremost, religious tyranny) to include secular reasons as well, when it claims that "a legitimate assembly of the people always reserved to itself the authority to expel a tyrant or an unworthy king, or to consign him to his relations and to establish a good king in his place" (Brutus 2003, 86).

For François Hotman, the earliest precedent for popular participation in the government of the state can already be found in the Gaulish history before the Roman conquest, when existed "a diet and general assembly of all the country, where they deliberated on the affairs of state and all that concerned the universal good of public interest" (Hotman 1574, 2). As far as he was concerned, this institution passed into the constitutional practice of the Frankish state: "the sovereignty and the principal administration of the kingdom of Francogallia belonged to the general and solemn assembly of all the nation which we have called since then the assembly of the three Estates" (Hotman 1574, 96-97, 107-113). In Hotman's description, the Estates preserved "their honor and authority as it was before, so that sovereign judgment and the decision of all affairs did not belong to Pepin, Charles or Louis, but was totally in the power of the Royal Majesty, which Majesty was located within the solemn Assembly of the Estates" (Hotman 1574, 151-152). According to Hotman, even Charlemagne himself, the most distinguished of the Frankish monarchs, "did not deprive the French of their first privileges and ancient liberty and never tried to do anything important without the advice of the people and without the authority of the notable personages of his kingdom" (Hotman 1574, 153). Hotman's goal is to increase the prestige of the Estates by association with the most prestigious monarch

of the pre-Capetian period: if such a revered figure as Charlemagne accepted and respected the role of the Estates General during his reign, then no good faith objection could be raised to the Estates playing a similar role in the sixteenth century. This argument is clearly a reaction to the absolutist claims that an Estates General possessing a sovereignty of their own would diminish the authority of the king: but if it was shown that Charlemagne's achievements were not in any way impeded by the Estates, then the respective objection becomes moot. For the Capetian period, Hotman can no longer claim that the kings were elected (with the exception of the special case from 1328, when the direct Capetians died out and a choice had to be made between the Valois branch, descended in male line from Philip III, and the king of England, Edward III, as grandson of Philip IV, through his mother, Isabelle), but otherwise the Estates retained all their prerogatives, their decline being only a relatively recent innovation in the governance of France. In *Vindiciae*, the participation of the Estates in governance is shown by their role in assisting the king to enforce the religious precepts established at the constitution of the kingdom through the original covenant – or even acting in his place if necessary: a pious people "will also take special care lest anything should be gradually introduced through his fault or negligence which by the effluxion of time might corrupt the pure worship of God", removing even the opportunities for such developments, as this was done "by Israel, after the public council had been assembled, when it remonstrated with those living on the near bank of the Jordan, who had erected an altar" (Brutus 2003, 45).

In order for this assembly to exercise its sovereignty in an efficient manner, it had to avoid the major pitfall of medieval assemblies, namely, that they did not have a permanent existence and could be called only by the king. Hotman's assembly, thus, was supposed to meet once per year, independent of the royal will or "when something consequential happened" (Hotman 1574, 102-103, 107). Hotman undoubtedly took into account that such a political organization of the state ran contrary to the conventional wisdom of his time, which vested most power in the person of the king. Unlike the typical monarchy of the day, the benefits of an institution where "the greatest affairs of the kingdom were decided upon with the common advice of all the Estates" were not self-evident: therefore, first, he points out that such an assembly would bring together many wise and experienced men, whose cumulated advice would be superior to the insight of a single individual; second, he invoked the old Latin principle "what concerns all should be approved by all" as a

quintessential element of the liberty of the people; and, third, he argued that the assembly could serve as a "supervisor" of the kingdom's magistrates, entitled to castigate those who strayed from their duties. It was also important for Hotman to demonstrate that the existence of this assembly with such extensive powers in Francogallia did not represent an outlier: according to him, it was adopted in the contemporary German Empire, in England and Aragon, it existed in pagan Sparta and it showed up even in infidel Ceylon. The implication is that, if such a constitutional model emerged amongst such diverse nations, Christians or not, then it could be regarded as a "natural" outcome of political life, thus demonstrating its legitimacy.

In the opinion of the monarchomachs, the Estates General was thus not just an exceptional institution that could provide a solution in times of crisis (even though this was its most important function), but one supposed to take an active part in the normal governance of the kingdom. As pointed out by Penny Roberts, "during the religious wars, the Estates General was often proposed as the perfect forum for the resolution of the troubles", being invoked by the rebels "as an alternative locus of authority and, above all, as a remedy for the problems afflicting the realm", even though "the institution had more meaning as an ideal rather than as a practical instrument of governance" (Roberts 2013, 121). According to François Hotman, the Estates were to have not just the power to create and depose kings, but also to declare peace and war, to make public laws, to appoint officials (up to the regent of the kingdom), to pronounce judgments, to determine the apanages given to royal sons (or the dowries for daughters); and, as if this extensive range of attributes over the most important aspects of government was not enough and was afraid that some loophole for royal authoritarianism might remain, Hotman insists that the Estates should control "all matters which we commonly name 'affairs of state', since it is not lawful to decide any affair concerning the public good except in the assembly of the Estates" (Hotman 1574, 114). *Vindiciae* makes the same point when it asserts that "the authority of this assembly was always so great that whatever was decreed in it, would be considered sacrosanct, whether making peace or waging war, whether bestowing the regency of the kingdom on someone or ordering a tax" (Brutus 2003, 86, 117). The problem of taxation was a delicate one in both the medieval and the early modern period, when it was considered that the monarch should rely only on the financial resources of his domain, without imposing a general tax on his subjects. Obviously, this proved inadequate to meet the needs of even a rudimentary

administration, as it developed during the thirteenth and the fourteenth centuries, but obtaining funds from one's subjects was always difficult. Here is the one case where the arguments of the monarchomachs were grounded in reality, because the kings of France (and not just them) always tried to obtain the consent of national or provincial assemblies in order to get financial help. This is, in fact, the reason why most of these assemblies were summoned in the first place. According to *Vindiciae*, "the emperor swears that he will never impose any tax or inflict any tribute without the authority of the public assembly" and "the law of Philip of Valois" stated "that exactions should not be adjudged except in cases of dire necessity and by consent of the three estates" (Brutus 2003, 117-118).

Just like *Vindiciae*, Beza also asserts that "the authority of the same Estates to appoint and depose the principal officers of the Crown, or at least to keep an eye on what their kings are doing in this regard, and on the imposition of taxes and on the other main affairs of the kingdoms in peace and in war, is made clear by ancient and authentic histories" (Bèze 1970, 41). This ideal situation was contrasted with the state of affairs in sixteenth-century France, where the role of the Estates had diminished to the point of the institution becoming irrelevant in the actual governance of the country: in Beza's opinion, this situation is "contrary to the good customs of our ancestors and directly repugnant to the laws established at the foundation of the French monarchy" (Bèze 1970, 41). But the Estates had more uses than deposing a tyrannical king: if the respective tyrant could not be removed from the throne for some reason or it was simply not expedient to do so, then the Estates could turn into a mechanism of control, overseeing the tyrant and restraining his actions in order to prevent him from causing any damage. This alleged role of the Estates was the only one which could have properly been identified for the Capetian period, when, unlike during the Merovingian and the Carolingian period, no ruling king had ever been deposed, despite their flaws. Beza's most natural example was that of Louis XI, who remained as the quintessential tyrant in French royal history and was remembered as such in the sixteenth century: according to Beza, Louis XI "was rightly charged with governing the kingdom poorly and received from the Estates assembled at Tours thirty-six persons as guardians, through which he would have to govern and behave himself" (Bèze 1970, 42).

In the context of the wars of religion, one of the most significant attributes of the Estates was to decide the regency. This had been an argument which the Huguenots had tried to push since 1559, when they argued that the control which the Guise brothers, duke François and the

cardinal Charles de Lorraine, exercised over their son-in-law, King Francis II, was illegitimate, because it lacked the sanction of the Estates General. The significance of the argument was increased also by the fact that the most likely candidate for a regency, in 1573-1574, if such circumstances were to arise, was Catherine de Medici, regarded by the Huguenots as the main artisan of Saint Bartholomew and subjected to an intense campaign of denigration. The Huguenots' interest and desire at that time was to exclude Catherine from power as much as possible. Beza is in agreement with Hotman when he points out that "if the kings are minors, the Estates will advise who will have the administration of the kingdom" (Béze 1970, 42). One episode of this sort is indicated by Beza to having occurred in 1380, when "the testament of Charles V, called the Sage, was rescinded by the Estates" (Bèze 1970, 42). For Beza, this alleged power of the Estates is one of the remnants from the period the Estates possessed full sovereignty and provides him, in his opinion, with the necessary evidence that his argument is historically correct.

Another key issue in the discussion about the powers of the Estates General was their legislative attributes and, in particular, the fact that no law, or any modification of the law, was binding unless approved by the Estates. Hotman states in his book that "from this is clear that the people of France had not been bound to observe other laws but those which had been authorized by their voices and votes" (Hotman 1574, 122-123). Beza, in his turn, emphasizes that "if there are edicts, lawfully issued and approved by the public authority, by which it was allowed to practice the true religion, the prince is compelled to respect them more than any other law, just like the state of religion is of greater consequence than any other; nor to repeal them by his own command and knowledge" (Bèze 1970, 66). This matter was not merely academic for the Huguenots, but it had extremely important and dangerous implications: from the very beginning of the wars of religion, they had strived with all their efforts to show that the royal edicts of pacification in their favor could not be abrogated simply by the king's will. The justifications of the Huguenot political leadership from 1562-1568 insisted that the fate of the edicts had to be decided by the king in consultation with a representative body (the Estates or an assembly of public officials): in the context of Saint Bartholomew's aftermath, the role of a king, who had proved irreconcilable hostile to the Huguenots, in the legislative decisions affecting the situation of the Protestant community had to be reduced. The insecurity created by a legislative process functioning according to the king's whims was acutely felt and resented by the Huguenots, as shown

by a complaint of Theodore Beza in a letter to Bullinger from January 1574, where he deplores "that the king can change the laws *pro tempore et necessitate*" (Mellet 2007, 51-52). Hotman achieves this by making the Estates General the ultimate decisional factor in the legislative process of France. In *Vindiciae*, it is categorically stated that "legitimate princes receive the laws from the people, together with the diadem as a symbol of honour and the sceptre as a symbol of power" and "if he considers that anything should be abrogated, replaced, or modified, he advises the people or the nobles of the people – either the ordinary ones or those convoked extraordinarily" (Brutus 2003, 102-104). However, new laws can be passed by common consent, which would imply that constraints on royal authority could even be reshaped if need arose: according to Arlette Jouanna, even though the possibility of increasing the initial corpus of laws is not depicted as frequent, it still suggests the "progressive augmentation of the constraining dispositions limiting the power of the king" (Jouanna 2013, 255).

However, the problem with this exalted description of the Estates General was that it was clear for all contemporaries that the institution no longer exercised that kind of power: even if it was accepted that the Estates played such a role in the kingdom at its inception, the counter-argument would have been that the respective role had been abandoned through disuse. Beza is categorically opposed to this idea and firmly insists that prescription cannot have an effect upon the rights and powers of the people and of their representative institutions. In light of this argument, we understand better the reason and the effect of Beza's insistence that these rights and powers were, ultimately, of divine origin: no sixteenth-century political theorist could ever argue that a divine law could disappear if not enforced for a long time. This divine origin, according to Beza, was receiving even a regular confirmation, in his time, in the coronation oaths habitually used when new kings ascended the throne: "But even today the kings take an oath during their coronation (which must be printed and made known through the whole world) and the kings are required at their accession to confirm the privileges of the towns and of the officers of the Crown" (Bèze 1970, 42). With this argument, Beza inserts the rights of the people in the sacred ceremonial of the monarchy: the tools used to strengthen royal authority are thus turned against it, in order to support a model of popular sovereignty. *Vindiciae* is in complete agreement with this idea, but relies not on scriptural arguments, like Beza, but on the Roman law, arguing that "neither prescription nor that prevarication of yours runs against the people",

because "the people meanwhile, just like any other corporation, never dies" and "years do not detract anything from the right of the people, but compound the crimes of a king" (Brutus 2003, 89-91).

4. The Position of the Inferior Magistrates in the State

One interesting characteristic of the monarchomach's constitutional model is that they distinguish clearly between the officers of the king and the magistrates (or inferior magistrates, as they are called to clearly distinguish them from the monarch) of the state: this is a habitual distinction in modern political thought, but one that did not occur in medieval times. Theodore Beza points out that, by the term "magistrates", he does not understand "the officers of the king's household, who are in the service of the king rather than in the service of the kingdom, but those who possess public responsibilities or of the state, either touching the administration of justice or war, named because of this, in a monarchy, officers of the Crown, and thus belonging to the kingdom rather than to the king" (Bèze 1570, 18). Such officers have existed in both Rome and ancient Israel – Beza's favorite references – and it is only natural that they should have persisted in sixteenth-century Europe. Beza identifies them with both the hereditary nobility of the European states and with the urban governments, while *Vindiciae* referred to them as the "the officers of the kingdom, princes, peers, patricians, magnates" (Brutus 2003, 47). In order for the magistrates to be able to fulfil their duty of opposing an unjust royal command, in both practical and legal terms, without being considered traitors, they had to possess an authority independent of the king. For this purpose, Theodore Beza points out that "when the sovereign magistrate dies, they remain in their office whatever that was, just like sovereignty persists in its entirety" (Bèze 1970, 19). Basically, according to this scheme, the administrative apparatus of the state becomes separated from the physical existence of the king. However, there was still one issue which Beza had to address, in order to rebut any counter-arguments to this theory: namely, the practice that each new king had to confirm, on his accession, some of these officers in their dignities or the urban privileges. The solution is to regard such confirmations as representing only a recognition of the *de facto* situation and having mostly a ceremonial purpose, to emphasize the perpetuity of the sovereignty itself. The same description of the position of the "officers of the Crown" can be encountered in *Vindiciae*, as well: since they are appointed by the Estates General and can be dismissed only by the same

Estates, their authority is thus distinct and complementary to that of the king, but not subservient to him. Instead, they depend only "on the supreme lordship of the people, on which the king himself ought to depend just as they do" and "are like assistants of the king in jurisdiction and partners in royal command to such an extent that they are all assuredly bound, in the same way as the king, to administer the commonwealth" (Brutus 2003, 77-78).

François Hotman does not have much to say about these magistrates of the kingdom, his focus being almost exclusively on the Estates General: since he obviously regards the Estates as holding the solution to all political problems which might arise in a kingdom, other officials become inconspicuous. The only exception is when Hotman narrates the episode of the 1465 aristocratic rebellion against Louis XI: Hotman pretty much ignores the particular interests of the nobles and presents the revolt as having an almost "democratic" character (basically going along with the propaganda of the rebels, which insisted on the issue of public good as the ultimate goal of the rebellion), aiming merely to restore the rights of the Estates General in face of the encroachments of a tyrannical king. Here, the inferior magistrates (in this case a coalition of the highest-ranking aristocrats from 1465 France) basically play the role which the other two monarchomachs assign to them, to ask for the summoning of an assembly of the Estates General, when the king (Louis XI) was not willing to do so: however, Hotman does not expand on this event in order to provide a more thorough analysis of the role of the magistrates – besides the fact that his description is historically inaccurate, since Louis XI did call an assembly of the Estates in 1468, not to accept limitations on the royal power, but to gather support for cancelling the concessions he had been forced to make to the rebels.

Beza and *Vindiciae*, on the other hand, pay much more attention to the inferior magistrates, because, in their constitutional scheme, these magistrates represent the first and the most readily available line of defense against the excesses of tyranny. The private citizen, according to both Beza and *Vindiciae*, is forbidden to resist legitimate tyrants by his own initiative, but he can always petition the appropriate magistrates for redress: this is the condition *sine qua non* which makes resistance lawful. The action of the magistrates implies that the decision to resist benefited from the consent of the political community, because these magistrates, in their sphere of responsibilities, are representative of the corporate people. *Vindiciae* justifies such actions by analogy with those of the tutor from Roman law, who is "ought to take care lest his ward's goods be lost and

unless he does so, is liable to an action of tutorship", this principle being extended at the level of a kingdom, so that the magistrates "were obliged to protect the safety of the people which has handed itself over and committed itself entirely into their charge, and which has, in a way, transferred to them all its legal capacity" (Brutus 2003, 49). In this duty, the inferior magistrates are supposed to proceed with caution, by seeking first to warn the monarch when he exhibits the first signs of tyranny, and, if he shows himself incorrigible, to "bear against him whatever is permitted against a tyrant either by right or just force" (Brutus 2003, 155). In order to be able to do this without being considered seditious, *Vindiciae* emphasizes that they possess a share in the king's responsibilities towards the people, "as co-tutors": since they, too, took an oath towards the people during the coronation ceremonies, a failure to hold the tyrant to account would place them in breach of that respective oath – with all the spiritual penalties which this implied for the sixteenth-century mindset. According to Beza, carrying out this duty is an existential matter for both the magistrates and for the kingdom itself because "the authority of the magistrates cannot be established, nor the public peace preserved, which is the goal of all true polities, unless tyranny is prevented from arising or abolished when it had arisen" (Bèze 1970, 8).

Vindiciae's envisioned role for the magistrates is to prevent "the commonwealth or the Church" from suffering damage – especially since "although as individuals the officers are inferiors to the king, all together as a whole they are his superiors" (Brutus 2003, 47) –, but also "to guard the rights and privileges of the people, and carefully to provide against even the prince himself doing any damage to it by either commission or omission" (Brutus 2003, 77). In other words, in *Vindiciae,* the magistrates possess both a quasi-inquisitorial role, protecting the Church against any impiety, and a policing role, defending the people against any unjust exactions. One further situation which *Vindiciae* takes into account is what should occur when tyranny has managed to gain the consent of the majority of those who would have entitled to resist it: here, we could say that *Vindiciae* falls back on the principle of *sanior pars* from the medieval theories of consent. Being a majority does not necessarily translate into having right on your side and, therefore, the few magistrates who still oppose tyranny can be regarded as the *sanior pars* of the body politic and are entitled to withstand the attacks of the erring (or wicked) majority. The majority falling into error (or wickedness) does not absolve the remaining magistrates of their original oath, which still applies to every participant: "at least the more powerful in the individual regions or cities,

through the agency of the chief magistrates as though constituted first by God, then by the prince, can by right exclude impious rites from within their walls and protect pious ones within them" (Brutus 2003, 58). However, *Vindiciae* makes it clear that the duty to resist does not apply to private persons and this is because of the nature of the original covenant: namely, it was a pact which the people entered as a corporation and only in this quality they are allowed to resist tyranny. Active resistance involves the use of force and "since God has not handed the sword to private individuals, so he does not demand use of the sword from them" (Brutus 2003, 60). The responsibility of a private individual is only personal, not collective, and therefore it cannot lawfully lead to an action which has to be collective, like resistance.

In *Vindiciae,* the judicial power of the king, the first attribute of his sovereignty in the medieval period, is severely curtailed, as the officers of the Crown – in the particular case of France, the peers of the realm or the "Senate of Paris" – can replace the king in certain matters or interpose themselves between the king and the people as arbitrators and judicators: in both cases, the consequence is that the judicial sovereignty of the king is impaired. The term "Senate of Paris" is an obvious reference to the Parlement of Paris – a rather surprising reference, having in mind the poor relationship between this Parlement and the Huguenots. More so, the legislative right of the king and his prerogative of deciding war and peace come under the same kind of attack: "if the king proposes to establish a statute or edict at home, or to arrange a settlement with neighbouring princes, or wages war or makes peace – as recently happened with Charles V – the senate ought to be the author, and everything which pertains to the commonwealth ought to be registered in its acts" (Brutus 2003, 85). Additionally, if "letters of the king are not signed by the secretary of the kingdom and his rescripts are not sealed by the chancellor (who has the power to cancel them), they have no authority" (Brutus 2003, 77). Basically, *Vindiciae* takes several contemporary governmental practices, like the right of remonstrances by the Parlements or the requirement that the chancellor sealed the royal acts, which could actually be bypassed on the king's express command, and builds them up in order to construct the model of what could be termed, at the very least, a proto-constitutional monarchy. The same thing happens with the king's power to sentence people to death or to pardon them: an unrestrained power of this sort could be employed as a tool of tyranny, to destroy the original covenant and replace it with a regime in which the king's arbitrary will would be the supreme law. Therefore, it is

no wonder that *Vindiciae* tries to diminish its impact and even depicts the judicial abilities of the king in derogatory terms: "These arrangements were most rightly instituted: partly lest kings should either prosecute private dislikes relying on public power or should remit public wrongs on their own authority; and partly also lest subjects should think it possible to prevail upon kings against the laws" (Brutus 2003, 107).

The same contractual relationship which exists between king and people also exists between king and magistrates: the latter are not subservient to their monarch, but, rather, they are all part of the same body of sovereignty, in proportion to their attributes and responsibilities. It could be said that the difference between the authority of the king and the authority of the magistrates is not one of nature, but merely one of degree: they all derive their authority from the consent of the people, sanctioned by God. This is made explicit in *Vindiciae*, when it is pointed out that the king "is like a president amongst them, only holding the first place" (Brutus 2003, 78). Since in France the prestige of the monarchy had reached such heights, *Vindiciae* does not hesitate to single it out in order to establish such an equivalence between the king and the peers of the realm, something which the kings of France had tried hard to deny since the beginning of the institution: "the French kingdom has its peers as partners of the king, or patricians as fathers of the commonwealth – individually named by the individual provinces of the kingdom – to whom the king is accustomed to give faith at his inauguration, as if to the whole kingdom" (Brutus 2003, 2004). Here, the author of *Vindiciae* resorts to an obvious falsehood – obviously, the king of France did not swear faith to the peers –, but the example is illustrative for the author's intent and state of mind, because, according to his opinion, both king and peers swear fealty to each other, in a kind of mutual pact to ensure the well-being of the kingdom. The extent of the duty of the peers is stated explicitly, in a rather shocking statement which excludes the king as a possible recipient of their allegiance: "But they in their turn swear that they will protect not the king, but the royal diadem; that they will assist the commonwealth with counsel; and that they will be the sacred counsel of the prince for the same purpose, whether in time of peace or war, as is manifest from the formula of the oath of the patriciate" (Brutus 2003, 84). Obviously, in such circumstances, the level of control the king can exert upon his main officers is extremely limited and this can even lead to a regional separatism the Huguenots actually toyed with during this period. According to Beza, the sovereign can "dismiss and punish the magistrates for cause, and only in the way the laws of the kingdom allow, and not

otherwise, if he does not want to violate himself his oath which he took to exercise his power according to the law" (Bèze 1970, 19). However, this power and right to enforce the mutual obligations can be exercised by the magistrates upon the king as well, albeit with one caveat: they "are entitled to oppose manifest oppression of the realm, which they have sworn to defend and protect according to their station and specific duties", but they cannot themselves remove the tyrant from office, because "an obligation contracted by common agreement cannot be nullified through the particular will of any individual, whoever he might be, even though his complaint was just" (Bèze 1970, 19-20). It is upon the magistrates that it devolves the duty to call the Estates General, in order to deal with a tyrant for good: thus, if the ultimate decision on the fate of the tyrant does not belong to the magistrates, they are an indispensable part of the constitutional process by which a tyrant can be deposed.

5. Conclusions

In light of all the evidence, it can be clearly said that the monarchomachs did advocate a form of popular sovereignty and not just because they contemplated a right of deposition for the people. Whether it was the work of François Hotman, Theodore Beza or Philippe Duplessis-Mornay, the king is always divested of most of his sovereign powers, turning him into the highest executive officer of the state, but one who was almost as dependent of the representative institutions and of the body of officials as a modern head of government. Not even heredity is fully preserved by the monarchomachs for their ideal monarchy, although, by any reasonable account, there were strong arguments in its favor, in the context of the sixteenth-century political circumstances. Specifically because the monarchomachs were so ahead of their time and also because their theories were born out of the circumstances generated by the wars of religion, this proto-constitutional monarchy faced an uphill battle – and failed. Much to their discontent, the Huguenots could see how the Estates General dominated by Catholics tried in 1576 and 1588 to become something akin to a modern Parliament, along the lines of the model recommended in the monarchomach treatises – only for the purpose of installing a religious tyranny directed against the Protestants. The practical outcome of Beza's and *Vindiciae*'s focus on the rights and powers of the inferior magistrates was, as pointed out by Janine Garrisson, that "the monarchomachs tended instead towards federal or aristocratic systems, where the 'senior pars' (nobility, officials, urban

elites) possessed extensive local powers and rights of consultation and control with respect to the sovereign" (Garrisson 1995, 293). This did not work out either. When they formed their autonomous political organizations in Southern France, which were supposed to have a military "protector" chosen from amongst the Huguenot princes (either Henry de Condé or Henry de Navarre), the Huguenots tried to impose on these protectors the same kind of limits that the monarchomachs envisioned for the kings – and it is no wonder that the princes, Navarre in particular, were irritated by this idea. J.H.M. Salmon points out how "the need for Condé and Navarre to consult delegates of local Protestant assemblies in later peace negotiations attests the continued strength of the urban and democratic element", but, on the other hand, it was "likely that some aspects of the Huguenot constitution were weakened during the alliance with the Politiques and the resurgence of the military noblesse in the party" (Salmon 1975, 193). The problem of the Huguenot "constitutionalism" is that the Huguenots had much more need of a strong central government, the only one who could suppress the religious tensions and guarantee their rights, than any royal prince had need of their political consent. By the time Henry de Navarre took the throne as Henry IV, confronted with a Catholic League that was happy to use democratic populism for their own purposes, the concept of popular sovereignty had become an embarrassment and a liability for the Protestants.

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