CHAPTER FOUR

EUROPEAN BACKGROUND

Two centuries after Hildebrand, Pope Boniface VIII (1294-1303), whose administration began and ended in scandal, confronted two able royal opponents in Edward I (1272-1307) of England and Philip the Fair (1285-1314) of France. Both kings pressed new taxes on the clergy in support of their expansionist policies. Boniface issued a bull that prohibited such taxation without permission of the pope, then backed down when Philip threatened the clergy. Then, in 1301, following a new provocation from Philip, Boniface issued another bull that modified the "two swords" doctrine, claiming that the spiritual and temporal swords were both held ultimately by the pope as Christ's vicar on earth.[1] Philip rejoined with a virulent verbal attack on Boniface and, before the Pope could excommunicate the King, had him imprisoned for a short while. Shortly after his release, Boniface died a defeated man. Within a few years, the power of the papacy was broken. The papal residence was removed to Avignon and the English church drew even further away from the papal sphere of influence. Nationalism and the Renaissance took root together.[2]

Following the death of Boniface VIII in 1303 and the removal of the papal court to Avignon, the unity of Christendom--the universal Christian empire--was shattered over a three century period by the decline of the empire and the papacy, the rise of independent national

states, and the onslaught of the Protestant Reformation.  It was toward

the end of this period that religious dissenters set sail for what they

thought would be Virginia and instead founded a new government in New

England at the end of their voyage.  The Pilgrims and many of the

settlers who followed them were intellectual heirs of religious

reformers on the continent as well as in the British Isles.  But the

mainstream of American political and religious thought was drawn from

the low church tradition of English dissent.  This chapter is devoted to

some of the sources of this mainstream.

## Emergence of National States

Commenting on John of Salisbury's mid-twelfth century distinction

between a tyrant and a king, Edward S. Corwin contended that "the notion

of all political authority as intrinsically limited" is "the distinctive

contribution of the Middle Ages to modern political science. . . ."[3]

While it is true that the decentralized feudalism of the period

reflected a biblical concept of limited government, it is also fair to

say that this concept was only one element of an unstable synthesis of

Christian and classical political theory that loosened as its bonding

agent--the Roman Catholic Church--became weakened politically.

In theory, according to Otto Gierke, "Medieval Thought proceeded

from the idea of a single Whole."[4]  In the writings of Thomas Aquinas,

for example, the separation of church and state was simply a

differentiation of functions--regnum and sacerdotium--within the larger

embrace of Christian society.[5]  Indeed, the general solution Aquinas and

other medieval Schoolmen offered to the problem of the one and the many

was to derive diversity from a prior unity. This hearkened back to classical idealism. As a result, such disparate elements as nature and grace were reconciled dialectically.[6]

In practice, the later medieval period of the twelfth and thirteenth centuries was beset by a growing tension between a more biblical concept of the monarchy--both in church and state--as an office and a more classical concept of sovereignty which, according to Gierke, gradually issued in a new emphasis on popular sovereignty and the rights of the community. Gierke believed that the pure strain of medieval thought favored a federalistic conception of unity between the Roman Catholic Church and the Holy Roman Empire:[7]

> In Church and Empire the Total Body is a manifold and graduated system of Partial Bodies, each of which, though itself a Whole, necessarily demands connexion with the larger Whole. . . .
>
> But as time goes on we see that just this federalistic construction of the Social Whole was more and more exposed to attacks which proceeded from a centralizing tendency.[8]

The ideological tension between limited government and absolutism was matched contrapuntally by the rivalry between the papal and imperial parties--the Guelphs and the Ghibellines--and their political apologists on the continent. The papacy reached its climax early in the thirteenth century during the reign of Innocent III (1198-1216); a few years later Frederick II Hohenstaufen (1215-1250) spurred the empire in one more bid for earthly glory. But both men had passed from the scene by the time Thomas Aquinas, Dante, and Marsilio of Padua took up the cudgels for their respective patrons--pope, emperor, and prince--and contributed to the transition from medieval differentiation of institutions to early modern Erastian absolutism.[9] The result was a dissolution of mediating

structures, as Gierke notes regarding the beginnings of the modern national state:

> The Sovereignty of the State and the Sovereignty of the Individual were steadily on their way towards becoming the two central axioms from which all theories of social structure would proceed, and whose relationship to each other would be the focus of all theoretical controversy. And soon we may see that combination of which is characteristic of the 'nature-rightly' doctrines of a later time: namely, a combination of the Absolutism which is due to the renaissance of the antique idea of the State, with the modern Individualism which unfolds itself from out the Christiano-Germanic thought of Liberty.[10]

The transition was aided on the continent by the twelfth-century revival of Roman law and classical literature by the glossators of the student-operated universitas in Bologna founded by the Countess Mathilda. The first systematic treatise on canon law, the Decretum of Gratian, was composed around 1140 under the influence of the recently recovered Digest of Justinian. It reasserted the doctrine of the two swords, which was amplified more than a century later by Thomas Aquinas with an added Scholastic twist:

> What is new and startling is its development on the basis of the Aristotelian theory of ends. It is with a view to the full attainment of human ends, culminating in the fruitio divina, that the necessity of the two powers is shown. The duality converges into unity in Christ, who is both rex and sacerdos.[11]

But the focus of attention was subtly changing from divine to human purposes. Half a century later Marsilio--who, like Aquinas, cited Aristotle in defense of his position--placed the church in theoretical submission to the state. George Sabine delineated the implications of Marsilio's secular conception of the state:

> There is, to be sure, no frontal attack on the spiritual interests which the church professes to serve and which Christians believe to be the ultimate interests of mankind. One may say, if he wishes, that such things are too sacred for reason to touch. But practically there is little difference between too sacred and too

trivial. The church is a part of the secular state in every respect in which it affects temporal matters.[12]

The intellectual tools revived by the Scholastics proved--like Occam's razor--to be two-edged instruments of policy that cut both ways. Meanwhile, the papacy and the empire gradually played themselves out on the continent, developments in the British Isles set the stage for a dramatic confrontation between political and religious absolutism, followed by a wave of popular religious revival and reform that coincided with the settlement of America.

## British Constitutionalism

The insularity of the British Isles following the Norman Conquest of 1066--especially after England's loss of its Norman territories in France during the Hundred Years War (1337-1453)--permitted the English to pursue a different, more independent course of development than the volatile politics of the mainland would otherwise allow. This assured England's security while it was yet poor and its appeal as a model for continental reformers once it became more powerful. Like the Japanese in later times, the English converted the rich heritage of a neighboring continent into the commercial and intellectual capital needed to dominate mainland politics. Jonathan Swift's satirical portrait of eighteenth century England as a small Flying Island in command of a continent was by then becoming as descriptive of its relationship with Europe as it was with Ireland and the American colonies.[13]

## Common Law

The distinctiveness of the English political culture is probably

best revealed through its legal and religious history.  Norman Cantor

notes that "England was the only European country whose legal system did

not come heavily under the influence of the Justinian code."[14]

Historians and legal commentators long have contrasted the Germanic

common law tradition--which served as the foundation for a national

system developed under the Norman king--with the Roman civil law

tradition of the continent.  English common law grew through the slow

accretion of local custom--Saxon and Danish law--that also drew elements

of Roman, Norman, and canon law into a national system through judicial

precedent.  The Roman civil law system, which had reached its apex under

Justinian, was by contrast a product of legislative and administrative

design.

Roscoe Pound has distinguished the two traditions according to

their sources of authority:

> Whereas in the final Roman theory law proceeded from the
> emperor--was made by him--in the English theory it was pre-existing
> and was found by the king or by his justices and applied to the
> cases before them as something binding on them no less than on the
> parties.[15]

While under the Roman system the emperor was <u>legibus solutus</u>--absolved

from the law--and his pleasure had the force of law, "the Germanic law

was thought of as a quest of the justice and truth of the Creator.  As

Bracton put it, the king ought not to be under any man but to rule under

God and the law."[16]  The common law proved time and again to be an

obstacle to the ambitions of even the strongest of English kings.

On the continent, however, the civil law revival during the twelfth

and thirteenth centuries strengthened the trend toward political

centralization as feudal institutions broke down under changing social,

economic, and religious circumstances. Feudal barons lost much of their former prestige and prosperity following the Crusades and the deflection of external military threats. The growing prosperity of merchants encouraged financially strapped members of the gentry to break their feudal oaths in order to profit from the new commercial opportunities. The weakened but frequently avaricious papacy failed to establish its religious authority over all Christendom, although the universities of the Empire "did succeed in establishing the Roman law (as they made it into the modern Roman law) as a universal law. . . ."[17] The judicial inquisitio of classical Rome was revived first by the princes, then by the bishops, and finally by the papacy.[18] Emperor Frederick II punished heresy as treason.[19]

Since the Empire was too weak to bring about political unification, centralization took place through the creation of independent nation-states under absolute monarchs who claimed to rule by divine right. At the end of the fifteenth century, what may be called the modern era of European history opened with the formation of what Ludwig Dehio described as "the new system of states."[20] The five centuries of European politics--now world politics-- since the French king Charles VIII (1483-1498) invaded Italy in 1494 have been characterized by a prolonged struggle between great powers seeking foreign markets, imperial domains, military security, and--sometimes--international stability.

England was a comparative latecomer into the contest for political domination on the continent and colonial empires abroad. As late as the reign of Elizabeth I--five centuries after the Norman Conquest and more

than a century after the Hundred Years Was--the English monarchy was
still primarily concerned with consolidating its power at home and
protecting itself from foreign intervention.  It had taken nearly that
long to recoup the population losses caused by the Black Death in the
fourteenth century, along with the economic and military ruin wrought by
the wars with France and the subsequent War of Roses between the English
royal houses of York and Lancaster.  Yet, ironically, England had been
the first European nation-state to be unified under a centralized
monarchy.  Norman Cantor believes it is this circumstance which accounts
for England remaining outside the Roman legal system:

> The answer emerges from the historical timetable of the twelfth
> century.  Precisely because the Anglo-Norman monarchy was at least
> half a century ahead of every other government in Europe in the
> development of strong centralizing institutions, it ultimately
> refrained from the reception of the Roman law.  During the founding
> period of English royal power, between 1066 and 1135, the text of
> the Justinian code and the new personnel for administrative
> bureaucracies which the law schools were to provide were not yet
> available north of the Alps.  The aggressive royal government had
> to make do with whatever was at hand, although it was by no means
> as suitable for establishing royal centralism and absolutism as the
> materials which the Capetian monarchy could draw upon at the end of
> the twelfth century.
>
> . . . By the 1130's the English monarchy became accustomed to using
> unpaid representatives of the local communities for a great part of
> the work of both law and administration in the counties.
>
> When Henry II became king in 1154, he found a legal system in
> operation composed of Germanic, feudal, and additional elements
> which had been fused together by the royal justices after half a
> century into a common law for the whole realm.[21]

The tension between royal absolutism and feudal decentralization in
medieval politics reached its greatest crescendo in England, where it
was evident not only in the tug of war between the king and his barons
but also in the struggle between the king and the church.  George
Sabine noted its long-term significance:

> Far beyond the period in which the relation of the two authorities
> was a chief controversial issue, the belief in spiritual autonomy
> and the right of spiritual freedom left a residuum without which
> modern ideas of individual privacy and liberty would be scarcely
> intelligible.[22]

William I (1066-1087), known as the Conqueror, built his political power base on his de facto status as England's ultimate landlord through the land survey known as the Domesday Book.[23] Nearly four-fifths of the land changed hands after the Conquest due to the necessity of paying off the mercenaries who helped install him on the throne. The great landowners now held their fiefs as vassals of the king. Roscoe Pound saw particular significance in this fact since the reciprocal rights and duties are involved in such a feudal relationship differ from those in a strictly political one. The Anglo-Norman monarchy combined elements of both traditions. The king staffed his court, the curia regis, with his own vassals as a feudal overlord but retained the customary bond with the people as the king of the nation and was sworn to uphold the law of the land. As king, he was the "fountain of justice."[24]

The Charter of Liberties of 1100 and the Magna Carta of 1215, which constitutionally limited the king's power, hearkened back to the customary law of pre-Conquest England, especially the lost Liber justicialis of Alfred (871-899) and the later code of Edward the Confessor (1042-1066), however dimly they might then have been recollected. Philip Schaff underscored the Christian character of Alfred's law:

> His code is introduced with the Ten Commandments and other laws
> taken from the Bible. It protects the stranger in memory of
> Israel's sojourn in Egypt; it gives the Christian slave freedom in
> the seventh year, as the Mosaic law gave to the Jewish bondman; it
> protects the laboring man in his Sunday rest; it restrains

bloodthirsty passions of revenge by establishing bots or fines for offences; it enjoins the golden rule (in the negative form), not to do to any man what we would not have done to us.[25]

Helen Silving treats the Magna Carta--and its counterpart, the Charta Magna Leonesa (1188) of Don Alfonso, King of Leon--as a type of Old Testament covenant, like those concluded between God and the king as well as the king and the people. Particularly interesting is her interpretation of the phrase "law of the land," which is found in the famous passage of Article 39 that protects the freeman from arrest, detention, and other harms except "by the lawful judgment of his peers and by the law of the land."[26]

> One of the most difficult notions is the "lex terre," which may refer to the biblical idea of the land functioning as a sanctioning agent under the oath, as a "self-blessing" or in the alternative as a "self-curse"--the promised land for one who keeps the Covenant or the charter and the land that spews out the one who does not. It is possible that at the time of the Magna Carta this conception of "lex terre" (not "terrae"), the sanctioning land, stood for the law under which the land functions as such an agent or for the form of proof that will be regarded as admissible or sufficient under such a law.[27]

A constitutional document like the Magna Carta is not simply a primitive ancestor of the modern written constitution but stands in a long tradition of limited government based on the rule of law which dates back to pre-Christian times. In addition, as Norman Cantor commented, the common law tradition--as it developed during the reign of Henry II (1154-1189)--proved very economical in comparison with the civil law administration:

> The common law was already in existence; it worked smoothly enough and was popular. Above all, it found favor in Henry's eyes because it was cheap. It required very few judges in comparison with the Roman system and yet returned a steady profit to the crown. Furthermore, the use of the jury for administrative purposes at the local level allowed the English government to operate with a minimum of bureaucratic personnel and, instead of an expensive host

of royal agents, to make use of the unpaid services of the local nobility.[28]

## Church and State in Medieval England

The relationship between the English kings and the popes in Rome and Avignon was always sensitive.  William the Conqueror refused to be the pope's vassal and declined to help divert the English church from its independent course.  He also refused to permit his barons to be excommunicated except with his approval and claimed a veto over ecclesiastical synods.  Even so, the papacy regarded him as a friendly monarch.  His son, Henry I (1100-1135), reached a compromise with Rome over investitures by relying instead on the secular clergy to staff his bureaucracy, which included the curia regis and the exchequer.  By contrast, Henry's successor, Stephen (1135-1154), conceded much of the political authority wielded by his Norman predecessors, including jurisdiction over lawsuits involving clerics and church property. Later, through the Constitutions of Clarendon (1163), Henry II attempted to reassert royal authority over bishops, clerical offenders, and lawsuits involving benefices and church lands, but to little avail.

Henry II is best known as the ultimate loser in a battle of wills with his former chancellor, Thomas a Becket, the Archbishop of Canterbury, who excommunicated the royal ministers after Henry asserted jurisdiction over the clergy and was assassinated at Canterbury by some of the king's men.  Losing what he had thought to gain, Henry submitted himself to the lash in penance for his part in Becket's death.  One of his sons, John Lackland (1199-1216), was later excommunicated--and his kingdom placed under an interdict--after he confiscated church property

and disputed the pope's selection of an archbishop. Deposed by Innocent III in 1213, King John surrendered his crown and received it back as the pope's vassal. But when the new archbishop joined with the barons and merchants at Runnymede and compelled him to sign the Magna Carta two years later, John appealed to Innocent, who ousted the archbishop and then annulled the charter. Nevertheless, the charter was restored following the deaths of the two principals in 1216 and was subsequently confirmed on forty-seven occasions through the reign of Henry V, the hero of the battle of Agincourt (1415).[29] But old resentments lingered. "Benefit of clergy," in particular, appeared to enable clerics to get away with murder since the ecclesiastical courts, which retained exclusive jurisdiction over the clergy, substituted imprisonment for capital punishment.[30]

The absenteeism of Henry II and his eldest son, Richard I (1189-1199), was instrumental to the development of constitutional liberty because of their use of the jury system, which superseded trials by battle and ordeals. The jury even proved useful for collecting taxes. The Magna Carta pushed this development further along and guaranteed that the English Church would be free of external interference. The first order of business for Henry III (1216-1272), after John's death in 1216, was to reissue the charter, although with some omissions, including those pertaining to the English Church. Even so, Henry was dominated by the Roman Church throughout his lengthy reign. His successor, Edward I set the pendulum swinging in the opposite direction once again with a reassertion of earlier royal prerogatives and the passage in 1279 of the Statute of Mortmain, which

forbade the alienation of land to religious bodies without the king's permission. It was under Edward that the Model Parliament was held in 1295 and the constitutional system began reaching a maturity of form.

The following year, Pope Boniface VIII issued a bull--<u>Clericos Laicos</u>--forbidding the clergy to submit to taxes from secular princes. When Edward outlawed the clerics for refusing to help pay his was debts, he was excommunicated. Disaffected barons and clergymen again sided with each other against the king over the issue of taxes. Edward's seizure of "the wool and leather of the merchants and the money in the sacristies of the monasteries and cathedrals"[31] precipitated yet another declaration of rights, the Confirmatio Cartarum of 1297, which reaffirmed the earlier charters and declared all judgments contrary to them to be void. Richard Perry has observed that the method of enforcing the terms of the Confirmatio placed the Magna Carta into the realm of "higher law."[32]

Decline of the Medieval Order

The next two centuries of English history witnessed the passing of the medieval order and the rise of the modern nation-state in the sixteenth century under the Tudors. By the middle of the fourteenth century, religious reform was again in the air. The defeat of Pope Boniface VIII by Philip the Fair of France broke the power of the papacy and was soon followed by the transfer of the papal residence to Avignon. This made the pope a vassal of the traditional enemy of England and further weakened the credibility of the church hierarchy. Popular resentments strengthened the hand of the crown in its conflict with the

papacy over clerical appointments and tribute payments.

One controversy centered around the use of the powers of reservation and provision--the nomination of prelates and clerks to vacant benefices and the appointment of others to benefices even prior to a vacancy--by the popes as a source of income. The sale of benefices to wealthy foreigners encouraged corruption within the church and intensified popular passions. Lewis Sergeant has observed:

> Almost everyone in England, except the alien priests and the independent monks and friars, was keenly opposed to the papal provisions, to the claim for first-fruits and annata--one year's revenue from the benefice conferred--and to other pretexts for the transference of English money to Avignon.[33]

The Statute of Benefices, passed in 1351, forbade papal interference in elections to ecclesiastical offices. Two years later, the first Statute of Praemunire prohibited appeals to court outside the kingdom, which effectively reduced another source of the pope's revenue.[34]

Another controversy involved the payment of tribute to the papacy. These payments had begun at the time John Lackland conceded the kingdom to Pope Innocent III and became the pope's vassal. The original agreement stipulated that the king and his successors were perpetually bound to render an annual tribute of 1000 marks sterling. Edward III (1327-1377) withheld payments at the beginning of the Hundred Years War and began taking steps designed to assert greater control over the English Church, including the appointment of the first lay chancellor in 1340. Edward's opportunity came in 1366 when Pope Urban V (1362-1370) formally demanded resumption of the tribute payments. John Wyclif, an Oxford theologian, was summoned by Edward to refute the pope's claim and produced a sharply worded tract on lordship that distinguished temporal

and spiritual powers. Edward issued the Refusal of Tribute to the Pope

that same year, stating the John did not have the power to place

himself, his realm, or his people into subjection "without their assent

and accord."[35] Four years later, ecclesiastics were removed from the

principal offices of the state.

## The Dissenting Tradition

Wyclif has been called "the morning star of the the Reformation."[36]

An admirer of Marsilio of Padua, he became active in politics and was

made a chaplain to the king. His support of civil intervention in cases

involving clerical abuse won him many enemies in the church hierarchy

but also the protection of John the Gaunt, the king's son, when the

bishops threatened to take action against him. Wyclif is best known for

his role in producing the first translation of the Bible into the

vernacular between 1380 and 1384. This was the first step in a series

of steps that placed the Bible into the hands of the people. The

Lollard Movement began at this time in England through the activities of

the "Poor Preachers," laymen trained by Wyclif to proclaim the gospel

and spread the influence of the Bible. Thomas Cuming Hall has commented

on the political implications of Wyclif's efforts:

> Wyclif and the Lollards made the Bible the banner of revolt from
> that day on. In the long four hundred years of warfare for
> religious freedom and equality the English Bible has been a source
> of strength and comfort, whether under Wat Tyler, Oliver Cromwell,
> William of Orange or the Chartists. Luther's translation of the
> Bible has been of simply incalculable influence upon the Continent
> of Europe; but no land, not even any Protestant canton of
> Switzerland, has been a land of one book as England has been. . . .
> Wyclif also laid the foundation for a deep-rooted distrust of the
> organized Church, for he taught that the Church must be poor, and
> that it should only depend upon the free gifts of the members.
> Wyclif is again the source for the demand for a free Church in a

free State.[37]

Although Wyclif did not attack the Mass, as later reformers did, he taught the priesthood of all believers and the doctrine of salvation by grace through faith. By so doing, he helped develop some of the more radical social and political implications of Christianity a century and a half before the Reformation. Wyclif's teaching was nationalistic in character and placed a strong emphasis on individual self-government through the Bible. According to Lewis Sergeant, Wyclif believed that ultimate temporal power and authority resides with the people at large:

> "The right to govern depends on good government; there is no moral constraint to pay tax or tithe to bad rulers, either in the Church or in the State; it is permitted to put an end to tyranny, to punish or depose unjust rulers, and to resume the wealth which the clergy have diverted from the poor."[38]

Wyclif's radical political and religious views made him increasingly vulnerable to attack from within the church. The monarchy suffered a setback when a compromise with the papacy was worked out at Bruges, revealing weakness on the part of the dying Edward and his son, John of Gaunt. Pope Gregory XI (1370-1378) issued bulls against Wyclif in 1377 and Archbishop Courtenay took the offensive. Sides began to be taken up along class lines and even John was finally unable to provide his full support for the reforms Wyclif demanded. Statutes aimed at the Lollards were passed in 1382 and 1401 even though Edward's successors continued to challenge papal authority. Under Richard II (1377-1400), a second Statute of Praemunire was passed in 1393 which dealt severely with appeals to the pope. In the struggle between the church and the reformers, the monarchy was already beginning to steer an independent course in a way calculated to strengthen its own hand, much as Henry

VIII did more than a century later. Henry V (1413-1422), for example, confiscated alien priories and took action against the Lollards at the same time:

> "That whosoever they were, that should read the Scriptures in the mother tongue, they should forfeit land, cattle, life, and goods from their heirs for ever, and be considered heretics to God, enemies to the crown, and most arrant traitors to the land."[39]

Wyclif died peacefully in 1384 before the storm broke loose. The Lollards were afterwards driven underground--following the Wat Tyler uprising--where their movement "took on the character of a more or less class-conscious protest against the whole traditional outlook upon life of the upper classes."[40] Thomas Cuming Hall believes the decentralization and populist nature of the protest guaranteed the success of the Poor Preachers:

> The thought of a Universal Church, which had dominated men's minds for a thousand years, was seemingly banished in a night. A Universal Chruch had proved a tyrant and a danger, therefore English Protestantism resolved itself into unnumbered sects and independent groups, in contented division. The weakness of this is patent so long as one thinks of an open fight for world supremacy by a Universal Church. But the Protestantism of Wyclif abandoned cheerfully all such ambition. It was content to silently permeate all society and felt sure that the elect would hear the call. The conventicle took the place of the historic Church. This proved, of course, from one point of view a weakness, but on the other hand it saved them often in the day of persecution, for their very weakness was a strength; they had no central authority to be attacked; they had no great property to defend; they had no visible union, so that only the really enthusiastic remained with them.[41]

The heresy persisted. One contemporary chronicler wrote that "you can hardly see two men passing in the road, but one of them shall be a disciple of Wyclif."[42] Religious dissent resurfaced during the reign of the second Tudor king, Henry VIII (1509-1547), about the time the Reformation broke out on the continent.

## The Reformation

The Protestant Reformation was inaugurated at Wittenberg in 1517 when Martin Luther posed his ninety-five theses against indulgences on the church door. This essentially conservative protest against papal supremacy and corruption within the church was the latest manifestation of a reforming tradition that had waxed and waned over the centures.

While the reforms introduced by Hildebrand and his colleagues in the eleventh century did help restore its tarnished image, the enhanced prestige of the papacy soon led to a dramatic increase in the political power of the popes. The Holy See reached the height of its power under Innocent III, who humbled John Lackland of England and launched a crusade against the Albigensian heretics of southern France. But even then, the corruptions of power had once again taken hold. From there the papacy went the way of all flesh. Innocent and his successors adopted the Inquisition--with its emphasis on administrative efficiency and certainty of outcome--during the revival of Roman law. But it was Emperor Frederick II who introduced new refinements to the old tricks of tyrants.[43]

By the end of the same century, the papacy--which managed to survive its long struggle with the Hohenstaufen emperors--was now struggling against a still more resilient foe: the secular nationalism of the rising nation-states. Even after its capture by the French monarchy, the papacy attempted to maintain its supremacy in religious affairs through tribute and taxes, which at once rendered it more worldly and further removed it from contact with the people and the parish priests.[44]

A century before Luther, the Council of Constance (1414-1418) --which condemned Wyclif and Jan Hus--also attempted to curb the power of the papacy, which had by then been restored to its seat in Rome. This effort failed, however, and the political power of Rome was strengthened by a reaction against the Council of Basel (1431-1449). George Sabine detected in this failure a sign of the shape of things to come: "Thus the pope in the fifteenth century established himself as the first of the absolute monarchs, and the theory of papal absolutism became the archetype of monarchical absolutism."[45]

Lord Acton maintained that the Reformation grew out of an ecclesiastical controversy in which Luther upheld the traditional position of the church. Regarding the sale of indulgences, Acton, a Catholic, blamed the stubbornness of church officials, who took the position of many a chief executive "that the whole fabric of authority would crumble if a thing permitted, indirectly or implicitly sanctioned by the supreme authority responsible for souls should be given up."[46] Like Sabine, Acton attributed the Reformation to a reaction against the growth of the papal monarchy--in both spiritual and temporal matters--following the failure of the conciliar movement.[47] But in England, it was Henry VIII who dropped the other shoe.

## The Tudor Monarchy

Political considerations prevailed over religious ones throughout the period of the Reformation in England. Henry VIII at first opposed the reforming impulse but later allowed the selective introduction of ecclesiastical changes to the extent they served his purposes. In 1520,

Henry coupled a denunciation of Luther with a defense of papal supremacy that won him a title, "Defender of the Faith," elevating him to a level of official religious status long enjoyed by the Spanish and French monarchs. The fluid state of power politics at that time largely dictated Henry's actions, however, as he sought to gain an upper hand over his rivals, Charles V (1519-1556) of Spain, who had been elected Holy Roman Emperor, and Francis I (1515-1547) of France. After his first wife, Catherine of Aragon, failed to produce a male heir, Henry sought an annulment from the pope in 1527 so he could marry Anne Boleyn. Unfortunately for Henry, the emperor, who was Catherine's nephew, sent troops to invade Rome and capture the pope in retaliation for his alliance with Francis.[48] Rome was then sacked by marauding Spanish, French, and German soldiers, marking the end of Italian independence.

Pope Clement VII (1523-1534), who feared death at the hands of Charles if he complied with Henry's request, refused to grant the divorce. Although the grounds suggested for the divorce were flawed, Henry might have obtained it under other circumstances. But the loss of the papal states to Charles had placed the pope into a vulnerable position and even the best efforts of Henry and Francis failed to restore them. Stymied in his fatuous matrimonial schemes for several years, Henry began drawing away from the Roman orbit and finally broke with Rome during a period from 1533 to 1536.[49] In the process he had Thomas More, his Lord Chancellor, executed and then, emboldened by the advice of Thomas Cromwell, began dissolving the monasteries and distributing the plunder among the gentry.[50]

With the cooperation of his new archbishop, Thomas Cranmer, Henry

married Anne Boleyn early in 1533--divorcing Catherine some months

later--after it was learned that Anne was carrying a child.  In order to

forestall papal intervention, Henry asked Parliament to pass the Act in

Restraint of Appeals to Rome, which declared the king to be the supreme

head of the realm over both clergy and laity.  Although he held firm to

his reckless course, Henry still sought an accommodation with the pope

and continued to press his own appeal.  The following year, Parliament

passed the Act of Succession, the Ecclesiastical Appointments Act, which

withheld Annates or First Fruits from the pope.  This was followed by

the Act of Supremacy, which declared Henry to be the "supreme head of

the Church of England."[51]  Conrad Russell suggests that, even then,

Henry may still have regarded the breach as a temporary one:

> In September 1534, Clement at last died, and Henry, cooperating
> with the French, warmly welcomed the election of Paul III, and set
> out to negotiate with him.
>
> . . . As late as 1536 Pope Paul was prepared to tell him that if he
> would accept papal authority he could have the same jurisdiction in
> his realm as Francis and Charles had in theirs.[52]

One consequence of Henry's breach with Rome was a legacy of

confusion with respect to the ends and means of church government.  As

Sir Maurice Powicke observed in the opening sentence of The Reformation

in England: "The one definite thing that can be said about the

Reformation in England is that it was an act of the State."[53]  Reasons

of state along dictated the dissolution of the monasteries in 1536 and

1539 as a sheer exercise of royal supremacy.  Doctrinal changes that

already marked the Reformation on the continent were kept to a minimum.

The Act of Six Articles, passed by Parliament in 1539, actually

represented a setback for the Protestants and was later repealed by

Edward VI (1547-1553).  But Conrad Russell also notes that the
persecutions that accompanied the Reformation where largely absent in
England.  The important issues then being fought out on the continent
went largely unresolved in the face of Henry's urgent desire to secure
the independence of England from foreign intervention.[54]

Powicke suggests the inconclusiveness of the Reformation in England
was an outgrowth of the system of compromise which had developed since
the Middle Ages as the struggle of kings and popes to draw clear lines
of jurisdiction lapsed into pragmatism:

> Here are two great powers for good, working together in God's
> service.  Why should a bishop not act as a secular judge?  Why
> should he, and the Pope too, not do a good turn to a royal servant
> who deserved well of the King and was in need of a benefice?  If,
> in all kinds of ways, the law which was being defined in the royal
> courts was inconsistent with the Canon Law administered in the
> ecclesiastical courts, why not come to some working agreement, so
> that squabbles about advowsons, and tithes and legitimacy and wills
> and all the rest of it may cease?[55]

Powicke concluded that the central issue was the control of real
property--advowson--around which other royal claims were gathered.  What
took place, then, was a political revolution which aimed at overthrowing
a long-standing accommodation with the church and was promoted in the
absence of a well-developed national religious consciousness.[56]  The
ease with which religious policy shifted with every change of
administration during the years from 1539 to the Elizabethan Settlement
of 1559 would appear to support this view.

Despite Henry's hostility to reform, his break with the papacy
opened the door to Protestant influences.  For example, Thomas Cromwell,
Henry's secretary of state, helped sponsor the publication of the Great
Bible--based in the incomplete Tyndale translation--in 1539 to take the

place of the Coverdale Bible, which had been published abroad in 1535,

the year Tyndale was sent to the stake.  According to Conrad Russell,

> it provided the material which enable people to make their own
> choices in religion, and in a period of doctrinal flux it was bound
> to have a large influence.  It also had an enormous influence on
> the speeches, literature, and political thought of England and
> America, and it is fortunate that it was translated at a time when
> the standard of language was high.[57]

Henry's marriage in 1541 to Catherine Parr, his last wife, also

proved favorable to the Protestant cause.  Young Edward, Henry's heir,

was tutored by Protestants.  Edward's regency council leaned toward the

Protestant position by the time Henry died in 1547 and Edward VI

succeeded to the throne.  Persecution was brought to an end and

Protestant refugees from the continent flooded into England.  But at

least one of the two risings in 1549--the Western Rebellion in

Devonshire--may be attributed in part to unrest over the religious

changes.  Lord Protector Somerset fell as a partial result of his

efforts to assuage the rebels and was replaced by a more radical

Protestant faction.  Somerset was executed the following year.[58]

Edward's death in 1553 and the succession of Mary (1553-1558), a

Catholic, changed the religious situation dramatically.  Although Mary,

who was Henry's daughter by Catherine, continued to uphold royal

prerogatives against papal interference, she repealed the earlier

religious statutes.  A year after Mary's accession to the throne, during

the negotiations for her marriage to Philip II (1556-1598) of Spain,

Thomas Wyatt organized a rebellion that was aimed primarily at Philip,

as is evident from a vigorous propaganda campaign against Spain.  Philip

was the son of Charles V and, although he did not succeed to his

father's vast powers as Holy Roman Emperor, many of the gentry were

afraid of domination by the highly centralized Spanish state as well as a restoration of the stolen church wealth. To his credit, Philip advised Mary to practice religious toleration and deal with the opponents of the government as traitors rather than heretics. But Mary's Privy Council, led by Lord Chancellor Stephen Gardiner, initiated a campaign to eradicate Protestant influences.[59]

Many Protestant leaders fled to Geneva to escape the persecution, among them John Knox, who later led the successful Scottish Reformation and established the Kirk as the center of national life in Scotland. Geneva was then at the hub of the Reformation as the seat of Calvin's theocratic republic. So when the Geneva exiles returned to England after Mary's death in 1558, they brought with them Calvinist ideas regarding predestination, the sacraments, and church government which left their imprint in Britain and America through the Puritans and Presbyterians.[60]

The Elizabethan Settlement

Practically the first order of business for Elizabeth (1558-1603) when she succeeded to the throne was to secure a permanent religious settlement. The composition of the parliament that met in 1559 was heavily Protestant, particularly in the House of Commons, which was dominated by the exiles. Although Elizabeth retained many of Mary's councillors, her government was led by William Cecil, who had also been Secretary of State under Edward. She recalled the papal envoy and set about to unite the realm under a uniform religious order.

Compromises over the Prayer Book and the Anglican liturgy reflected

a balance between competing religious interests that Elizabeth sought to strike. He object was to achieve outward conformity rather than to pursue a policy of toleration. People were free to believe anything as long as they kept their beliefs private. But some of the exiles, like Coverdale, refused to accept appointments to church positions, while others continued to fight for further reforms from the inside.

A new Act of Supremacy made Elizabeth supreme governor--rather than head--of the church in an attempt to appease both the Catholics and the Calvinists, but this did not diminsh the authority of the crown over the church. A new Act of Uniformity established the order of worship in the Church of England. High church offices under the new establishment were awarded by the crown, bishops were seated in the House of Lords, and Parliament was given control over matters of doctrine and practice. Parishioners were unable to exercise any control over the clergy. Furthermore, church membership was based on citizenship rather than personal faith. Thus the Elizabethan settlement reaffirmed the Erastian policy of Henry VIII, in effect making the church an appendage of the state. The modern concept of the state as "an omnipotent yet impersonal power" also began to emerge at this time, further complicating the religious politics of the Reformation.[61]

While Elizabeth's popularity helped keep the edifice of the state church in good repair, it did little to stop the ferment of reform within the church from spreading through the realm. In fact, religion became an important factor in political and educational patronage, much of which was controlled by supporters of a more radical settlement, among whom were the mainsprings of the reform movement that came to be

known as Puritanism.  The Puritan hope for a Holy Commonwealth--freed
from the dictates of state policy--steadily grew in political influence
and finally culminated in the Cromwellian Revolution.  But the first
fruits were brought forth on this side of the Atlantic.

Notes

[1]On the earlier use of this symbol, see Eugen Rosenstock-Huessy, Out of Revolution: Autobiography of Western Man (New York: William Morrow and Company, 1938), p. 535.

[2]Norman F. Cantor, Medieval History: The Life and Death of a Civilization (New York: The Macmillan Company, 1963), pp. 566-71.

[3]Edward S. Corwin, The "Higher Law" Background of American Constitutional Law (Ithaca, N.Y.: Cornell University Press, 1955), p. 19.

[4]Otto Gierke, Political Theories of the Middle Age, trans. Frederic William Maitland (London: Cambridge University Press, 1900; Beacon Press, 1958), p. 22.

[5]A. P. d'Entreves, ed., Aquinas: Selected Political Writings, trans. J. G. Dawson (Oxford: Basil Blackwell, 1965), pp. xx-xxi, 73-77.

[6]Rousas John Rushdoony, The One and the Many: Studies in the Philosophy of Order and Ultimacy (Fairfax, Va.: Thoburn Press, 1978), pp. 185-89.

[7]Gierke, Political Theories, pp. 20-21.

[8]Ibid., p. 21.

[9]John Emerich Edward Dalberg Acton, Essays on Freedom and Power, ed. Gertrude Himmelfarb (New York: Meridian, 1955), pp. 88-89; George H. Sabine, A History of Political Theory, 3rd ed. (New York: Holt, Rinehart and Winston, 1961), pp. 244-62, 287-304; Rushdoony, One and Many, pp. 202-24. Lord Acton points out that Aquinas justified the overthrow of tyrants. See d'Entreves, Aquinas, pp. 161, 181-85. Marsilio, a Ghibelline, believed that the king should be subject to the rule of law. See also Ernst H. Kantorowicz, The King's Two Bodies: A Study in Mediaeval Political Theology (Princeton: Princeton University Press, 1957) concerning the paradox of the king being at once under and above the law.

[10]Gierke, Political Theories, pp. 87-88.

[11]d'Entreves, Aquinas, p. xx.

[12]Sabine, Political Theory, p. 294.

[13]Ludwig Dehio, The Precarious Balance: Four Centuries of the European Power Struggle, trans. Charles Fullman (New York: Vintage

Books, 1962), pp. 28-30.

[14]Cantor, Medieval History, pp. 378-79.

[15]Roscoe Pound, The Development of Constitutional Guarantees of Liberty (New Haven: Yale University Press, 1957), p. 8.

[16]Ibid., p. 9.

[17]Ibid., p. 10.

[18]Will Durant, The Story of Civilization, vol. 4: The Age of Faith: A History of Medieval Civilization--Christian, Islamic, and Judaic--from Constantine to Dante: A.D. 325-1300 (New York: Simon and Schuster, 1950), pp. 269-79.

[19]Ibid., p. 777.

[20]Dehio, Precarious Balance, p. 23.

[21]Cantor, Medieval History, pp. 380, 381.

[22]Sabine, Political Theory, p. 196. The tension between these two authorities represents one form of a dualism between individuality and universality that, according to Rosenstock-Huessy, characterizes all civilization. Rosenstock-Huessy, Revolution, pp. 498-99.

[23]Gerd Tellenbach, Church, State and Christian Society at the Time of the Investiture Contest (London: Basil Blackwell & Mott Ltd., 1959; New York: Harper Torchbooks, 1970), pp. 123-24, notes: "The relations of the curia with England are typical of the way in which the popes had to concentrate their efforts on the most dangerous opponents, and in consequence to modify or even temporarily to abandon their demands in other directions. They refrained at first from attacking royal theocracy and the proprietary system in England, not only because the Conqueror did at least combat simony and priestly marriage with energy, but also because Gregory hoped that the king would hold England from him as a fief, and in consequence did not wish to arouse his antagonism. During the confusion of the period of schism there was the danger of driving William into the camp of Henry IV's antipope, and behind this there was always the risk that England might abandon the papacy altogether. As a result, Rome was prepared to put up with a good deal of laxity."

[24]Cantor, Medieval History, pp. 380-81; Pound, Liberty, pp. 11-14. The chancellor, who was a member of the clergy, served as the "Keeper of the King's Conscience." Rosenstock-Huessy, Revolution, p. 267.

[25]Philip Schaff, History of the Christian Church, vol. 4: Medieval Christianity (New York: Charles Scribner's Sons, 1910; Grand Rapids: Wm. B. Eerdmans Publishing Company, 1976), pp. 394-95. According to tradition, Christianity was promoted in Britain in the second century

under King Lucius.  Thomas Prince, A Chronological History of New-England in the Form of Annals (Boston: Kneeland & Greene, 1736), p. 34.  John C. H. Wu, Fountain of Justice: A Study in the Natural Law (New York: Sheed and Ward, 1955), pp. 63-66, refers to the common law as a "cradle Christian" and, citing Maitland, traces its earliest roots back to the reign of Ethelbert, who expunged all traces of the old pagan religion from the law.  Prince, Annals, p. 55 of the Introduction, noted that Ethelbert (Edelbert), the king of Kent, was baptized along with ten thousand of his subjects by the monk Augustine on Christmas Day, 597.  See also F. F. Bruce, The English Bible: A History of Translations from the Earliest Versions to the New English Bible (New York: Oxford University Press, 1970), pp. 6-7.  An American court cited Alfred's law and the Bible in Moore v. Strickling, 46 W.Va. 515, 522 (1899), a case involving the removal of a public official from office for gross immorality.

[26]Helen Silving, Sources of Law (Buffalo, N.Y.: William S. Hein and Co., 1968), p. 237n.

[27]Ibid., p. 244.

[28]Cantor, Medieval History, p. 382.  The jurisdication of the ecclesiastical courts is suggested in the following description by Will Durant, Story of Civilization, vol. 4, p. 755: "Indeed, the field covered by canon law was larger than that covered by any contemporary civil code.  It embraced not merely the structure, dogmas, and operation of the Church, but rules for dealing with non-Christians in Christian lands; procedure in the investigation and suppression of heresy; the organization of crusades; the laws of marriage, legitimacy, dower, adultery, divorce, wills, burial, widows, and orphans; laws of oath, perjury, sacrilege, blasphemy, simony, libel, usury, and just price; regulations for schools and universities; the Truce of God and other means of limiting war and organizing peace; the conduct of episcopal and papal courts; the use of excommunication, anathema, and interdict; the administration of ecclesiastical penalties; the relations between civil and ecclesiastical courts, between state and Church.  This vast body of legislation was held by the Church to be binding on all Christians, and she reserved the right to punish any infraction of it with a variety of physical or spiritual penalties, except that no ecclesiastical court was to pronounce a 'judgment of blood'--i.e., condemn to capital punishment."

[29]Richard L. Perry and John C. Cooper, eds., Sources of Our Liberties: Documentary Origins of Individual Liberties in the United States Constitution and Bill of Rights (Chicago: American Bar Foundation, 1959), p. 23.  See also Encyclopaedia Britannica, 11th ed., s. v. "English History;" and Harry Elmer Barnes, ed., Ploetz's Epitome of History, trans. William H. Tillinghast (New York: Blue Ribbon Books, 1925), pp. 231-32.

[30]Encyclopaedia Britannica, 11th ed., s. v. "English History."

[31]Perry and Cooper, Sources, p. 25.

[32]Ibid., p. 23. See George Burton Adams and H. Morse Stephens, eds., Select Documents of English Constitutional History (New York: The Macmillan Company, 1908), pp. 86-88.

[33]Lewis Sergeant, John Wyclif: Last of the Schoolmen and First of the English Reformers (New York: G. P. Putnam's Sons, 1893), p. 123.

[34]Adams and Stephens, Select Documents, pp. 117-21, 123-24.

[35]Ibid., p. 130. See Edwin Hall, The Puritans and Their Principles, 3rd ed. (New York: Baker and Scribner, 1847), p. 26.

[36]Verna M. Hall, comp., The Christian History of the Constitution of the United States of America: Christian Self-Government, American Revolution Bicentennial Edition, ed. Joseph Allan Montgomery (San Francisco: Foundation for American Christian Education, 1975), p. 28B.

[37]Thomas Cuming Hall, The Religious Background of American Culture (Boston: Little, Brown, and Company, 1930), pp. 22, 23-24.

[38]Sergeant, Wyclif, p. 260.

[39]Hall, Puritans, p. 36.

[40]Hall, Religious Background, p. 31.

[41]Ibid., p. 32.

[42]Ibid., p. 40.

[43]Durant, Story of Civilization, vol. 4, p. 777.

[44]Acton, Essays, pp. 93-94, 330-33; George L. Mosse, The Reformation, 3rd ed. (New York: Holt, Rinehart and Winston, 1963), pp. 1-8.

[45]Sabine, Political Theory, p. 326.

[46]Acton, Essays, p. 331.

[47]Ibid., p. 332.

[48]Conrad Russell, The Crisis of Parliaments: English History, 1509-1660 (Oxford University Press, 1978), pp. 81-82. See also Rosenstock-Huessy, Revolution, p. 563.

[49]Ibid., pp. 77, 81-83, 97-103.

[50]Rosenstock-Huessy, Revolution, pp. 272-77.

[51] Ibid., pp. 94-99.  See Adams and Stephens, Select Documents, p. 239.

[52] Ibid., pp. 99-100.

[53] Maurice Powicke, The Reformation in England (London: Oxford University Press, 1941; 1961), p. 1.  The role of the state in the English Reformation may be compared with its role in Sweden at that time.  Gustavus Vasa (1523-1560) secured national independence from Denmark, then consolidated church and state into a highly centralized, bureaucratic autocracy.  Like Russia, however, Sweden lacked a feudal tradition to counteract the absolute monarchy.  Members of the clergy and nobility became government functionaries rather than dynamic political factors in their own right.  Roland Huntford, The New Totalitarians, revised ed. (New York: Stein and Day, 1980), pp. 16-22.

[54] Russell, Crisis, pp. 97, 115-19.

[55] Powicke, Reformation, p. 10.

[56] Ibid., pp. 2-3, 15.

[57] Russell, Crisis, p. 113.

[58] Ibid., pp. 121-23, 127, 130.  See Anthony Fletcher, Tudor Rebellions, 2nd ed. (London: Longman, 1973), pp. 48-63.  For the late Tudor period generally, see J. Marcellus Kik, Church and State: The Story of Two Kingdoms (New York: Thomas Nelson and Sons, 1963), pp. 87-95.

[59] Hilaire Belloc, Characters of the Reformation, (Garden City, N.Y.: Image Books, 1958), pp. 98-99; Fletcher, Rebellions, pp. 78-90.  Philip Wayne Powell, Tree of Hate: Propaganda and Prejudices Affecting United States Relations With the Hispanic World (New York: Basic Books, 1971), pp. 10-13, 16-17, 26, 77-80, compares the reign of Mary favorably to those of Elizabeth and James I (1603-1625) with regard to persecution.  Powell also examines the anti-Spanish "Black Legend."

[60] Russell, Crisis, pp. 144-45.

[61] Ibid., pp. 148-56, 167-72.  See Powicke, Reformation, pp. 147-53; Quentin Skinner, The Foundations of Modern Political Thought, vol. 2: The Age of Reformation (Cambridge: Cambridge University Press, 1978), p. 358; Cobb, Religious Liberty, pp. 54-55.