IN DEFENCE OF NATION AND COUNTRY: TALKING ABOUT THE DEFENCE OF RELIGION, LAW AND PROPERTY IN ENGLAND AND SCOTLAND, 1630S TO 1660S[1]

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I.

There seems to be little disagreement that religion was a core issue during the Civil Wars in England and Scotland.[2] Nor is there much doubt that theologians on both sides provided pious argument and references from scripture in order to back up the good cause.[3] However, it is equally accepted that both sides attempted to defend not just the true religion, but the law of the realm and the property of its subjects as well, in which the true faith remained enshrined. In the articles of the Commons assembled at Parliament against Thomas, Earl of Strafford, in 1640, the main charge was thus that he had attempted „to introduce an arbitrary and tyrannical government against the law" and that he „hath trayterously assumed to himself Regall power over lives, liberties, persons, lands and goods of his Majesties subjects".[4]

Resistance against Charles and his advisors only very rarely involved talking about tyranny or about resistance. It involved defending the religion,

[1] The argument pursued here has been more fully spelt out in R. v. Friedeburg, Widerstandsrecht und Konfessionskonflikt. Notwehr und Gemeiner Mann im deutsch-britischen Vergleich 1530-1669 (Berlin, 1999); idem, 'From collective representation to the right of individual defence: James Steuart's *Ius Populi Vindicatum* and the use of Johannes Althusius' *Politica* in Restoration Scotland', in History of European Ideas 24 (1998), 19-42.

[2] J. Morrill, The Nature of the English Revolution (London, 1993).

[3] E.g., S. Baskerville, Not Peace but Sword. The Political Theology of the English Revolution (London, 1993).

[4] Articles of the Commons of England assembled in Parliament, against the Earle of Strafford, 1640. See on his case C. Russell, 'The Theory of Treason in the Trial of Strafford', in English Historical Review LXXX (1965), 30-48; J. F. Merrit (ed.), The Political World of Thomas Wentworth, Earl of Strafford 1621-1641 (Cambridge, 1996).

laws and liberties of the body politic and its members. For most contemporaries agreed that every human society had to be ordered into a hierarchy of order and subjection. Therefore, resistance against anyone in office, and therefore endowed with authority, was deeply resented.[5] Only against a person that had unlawfully assumed office - which Charles hadn't - or had exercised his powers unlawfully - which remained doubtful at least until his letter-exchange with foreign powers had been secured by his opponents at Naseby[6] - such a person ceased to be an officeholder and could be understood to be a tyrant. However, in particular the English historical experience with deposing tyrants included prolonged periods of legal insecurity and internal turmoil. In particular the opponents of Charles were therefore, at least at the beginning of civic turmoil, reluctant to talk about tyranny either.[7]

Given this background, Englishmen - confronted with officeholders that were apparently violating the law and that had to be resisted - talked about office, property and duties. The appropriation of office and of the duties relating to such an office and an appropriate definition of property in need to be defended allowed to explain most acts of organised violence against magistrates that the later enlightenment and the nineteenth century, for their own purposes, were going to call „resistance".[8] During the sixteenth and seventeenth century, however, resistance as a word smacked of disorder and lawlessness, and monarchy remained the most important and in most cases only viable form of government.[9] While resisting monarchs was thus not an issue in Early Modern Europe, defending the religion and laws, i.e. the property, of the body politic against a person illegally acting as monarch or violating his monarchical powers by men holding the appropriate office definitely was.[10]

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[5] C. Condren, 'Liberty of Office and its Defence in Seventeenth Century Political Argument', in History of Political Thought 18 (1997), 460-482.

[6] C. Carlton, Charles I. The Personal Monarch (London, 1983), 289.

[7] J. Morrill, Charles I, 'Tyranny and the English Civil War', in Morrill, Nature, 285-306; G. Burgess, Usurpers, Tyrants and the Problems of Resistance and Obedience: Some Aspects of the Theory of Tyranny in England 1642-1656, M. A. Dissertation University of Victoria, Wellington, New Zealand, 1984.

[8] See Condren, Liberty of Office.

[9] That remained even true for the political debate after the regicide, see J. G. A. Pocock, Interregnum and Restoration, in idem (ed.), The varieties of British political thoughts, 1500-1800, 146-179 (Cambridge, 1993).

[10] Thus, from the Lutheran accounts of the 1530s until the parliamentary accounts of the 1640s, such actions had to account for the nature of the body politic in general that was

Once, however, arguments turned to the political entity that those office-holders had the duty to defend, the terms „nation" and „country" sometimes entered the reservoir of political vocabulary. While there is decreasing doubt that both terms played an important role in Early Modern politics, it is less clear what that role might have been. In his contribution to this volume and in his recent book, Adrian Hastings has challenged the received orthodoxy of the 1980s that only since the American and French revolutions talk about the nation had any detailed and specific meaning worth while mentioning, while any talk about medieval and early modern nations rested on the inventions of nineteenth century ideologies.[11] Ernest Gellner, Eric Hobsbawm, Benedict Anderson and others concentrating on the period from the later eighteenth century had in mind, however, a very specific sense of the use of the term „nation". To them, the term involved a new concept of society. From the later eighteenth century, a substantial reorganisation of society was envisioned using the term „nation" as its core catch-word, in which most male heads of households were increasingly believed to be endowed with rights to rule by virtue of their membership to a secular nation. It is indeed doubtful whether the term „nation" in this specific modern and secularized sense had a place in Seventeenth century England or Scotland.[12] But what meanings could the terms „nation" and „country" acquire during this earlier period? To pursue this question, in what follows two examples will be closely examined. One is taken from Sir John Eliot's reflections about the nature of the body politic during his time in tower, the other from the Scottish presbyterian James Steuart during the

going to be defended, of the nature of the office that allowed specific persons or groups of persons such defence, and of the nature of the property that needed to be defended. Indeed, in sixteenth and seventeenth century political theory, the appropriate definition and, if need be, extension, of the concepts of office, property and duty is at the core of most contemporary accounts of resistance. This is, indeed, the result of a conference on theories of resistance in a British-German comparison. I do thank in particular Luise Schorn-Schütte (Frankfurt), Georg Schmidt (Jena), Coral Condren (Sydney) and Glenn Burgess (Hull), whose respective papers helped to bring out the common issue.

[11] A. Hastings, The Construction of Nationhood. Ethnicity, Religion and Nationalism (Cambridge, 1997), and his contribution to this volume.

[12] Hasting's argument about the connection of the thought of John Foxe and John Milton (see Hastings, Construction, 55-61) reminds the reader of the cautious remarks of Patrick Collinson about the meaning of „nation" in Protestant authors such as Foxe, being a highly ambivalent term and by no means clearly putting the true church and its members second to the secular nation, see P. Collinson, The Birthpangs of Protestant England. Religion and Cultural Change in the Sixteenth and Seventeenth Centuries (New York, 1988).

1660s. One example is thus preceding the Civil Wars, the other was conceived at the beginning of the Restoration. One is situated in England of the 1630s, the other in Scotland of the 1660s. Despite these differences, they share one important feature. Both draw heavily on sources from Imperial Germany, namely the two German „*politiques*“ Johannes Althusius and Henning Arnisaeus. Only recently, the amount of intellectual interaction between England, Scotland and the Continent has been given more then passing attention.[13] However, even given a common framework of basic conceptions, shared terms of political expression in acceptable contemporary political language and a certain shared loyalty of Protestants and Catholics even across their loyalties to their respective monarchy, it is clear that the radically different constitutional settings in various European monarchies provided very different backgrounds to political argument in general and the meaning of terms such as „nation“ and „country“ in particular. This is particularly true for the Holy Roman Empire on the one hand and England and Scotland on the other. A close examination of the use of ideas emanating from the Holy Roman Empire and relating to nation and country in an English and Scottish context might thus shed light on some of the specific meanings that „nation“ and „country“ could acquire in their new context. I will first outline their German context and then elaborate on their use in England and Scotland.

II.

Lutherans in the Empire had provided, from the 1530s to the 1620s, a nuanced debate on what could be legal and thus legitimate resistance when they were forced with the threat of an execution of the edict of Worms during the 1530s and 1540s, the Spanish invasion of the Netherlands in the 1560s, the French Civil Wars from the 1570s and again the threat from the Habsburgs from the 1620s, when most of the older arguments were reedited and again thrown into debate.[14] Accounts of resistance in the Empire must be understood as similar to a surgical operation, which aim is to prevent a specific magistrate from threatening the true faith without actually damaging the hierarchy of order and subjection that was meant to be a prerequisite of social life. The 1524 peasants

[13] See, in particular, the recent work of J. Scott. On the reception of French political thought see J. H. M. Salmon, The French Religious Wars in English Political Thought (Oxford, 1959).

[14] See Friedeburg, Widerstandsrecht und Konfessionskonflikt, part II, 51-97.

war, the events at Munster, the Batholomew nights massacre and again the assassinations of protestant or allegedly pro protestant princes like William of Orange and Henry III. and IV. brought home the dangers of the common men turned into assassins and supported among most Protestants the believe that every society had to be such a hierarchy of order and subjection to work. Thus, only representatives of that order, not every single subject, could act. Protestants all over Europe, not least in England and Scotland, fully shared that basic concern.[15] In the course of this debate, in a nutshell developed by 1547, but fully developed by the 1620s, three kinds of legitimate resistance had been distinguished: These were

- The right of lower magistrates, primarily the estates of the Empire, to defend their subjects by way of their specific liberties enjoyed under the ancient constitution of the Empire (Golden Bull and so forth) and as representatives of the people.
- The individual right to self defence in narrowly defined cases of emergency under the provisions of the 1532 Imperial code of capital punishment (Constitutio Criminalis Carolina), articles 139-145
- The right of Fatherlands - an attribute given to the protestant territories as confessional communities of believers - to defend themselves and their faith by law of nature.

Only between 1553 and 1558 few members of the English protestant exile community, notably Christopher Goodman and John Ponet, during Edward VI. reign (1547-1553) bishop of Winchester[16] attempted to take these arguments on board, quoting from the more radical treatises of Luther of the period from 1539 and some of the pamphlet literature of the Schmalcaldic War in 1547. Thus, Ponet argued the prince had been endowed by his power by the people. In the case of an abuse of his power, „the law of nature“ allowed „to cutte away and incurable membre, which being suffered would destroy the whole body.[17]

[15] See J. H. Burns, The True Law of Kingship. Concepts of Monarchy in Early Modern Scotland (Oxford, 1996), 128; J. D. Ford, ‘Lex Rex iusta posita: Samuel Rutherford and the origins of government’, in R. A. Mason (ed.), Scots and Britons. Scottish political thought and the Union of 1603 (Cambridge, 1994), 262-92; R. A. Mason, ‘George Buchanan, James VI and the presbyterians’, in idem, Scots and Britons, 112-37.

[16] J. Ponet, A shorte Treatise of Politike power, and of the true obedience with subjects owe to kings and other civil governors (Straßburg, 1556); C. Goodmann, How superiour powers ought to be obeyed of their subjects...and wherein they may lawfully by Gods Word be disobeyed and resisted (Genf, 1558); see Friedeburg, Widerstandsrecht, 99-110.

[17] A. Pettegree, Marian Studies. Six Studies (Alderhot, 1996), 129-50; J. Ponet, A shorte treatise of Politike Power, and the true obedience with subjects owe to kings and other

Queen Elizabeth subsequently refused to appoint Goodman for an office in the church and was equally abhorred at Buchanan's claims. Indeed, once English protestants were given a Godly prince, talk about resistance almost completely quieted down[18] and until 1642 there was virtually no talk about resistance in England. When it picked up again, however, it had do deal again with that delicate balance how to talk about waging war without the king in command and yet preserve the monarchy and order in society - and that was generally achieved by talking about the self defence of the body politic. Even before 1642, however, Sir John Eliot's *De Jure Maiestatis* (1628-30) provided a glimpse on the thought of how to deal with conflicts within the body politic.

III.

Sir John Eliot's use of Henning Arnisaeus' *De Jure Maiestatis* signals one of the earliest systematic attempts to make use of the arguments developed in the Empire in order to understand the nature of monarchical power and the true basis of the body politic in England. Eliot's text is a strongly abbreviated translation of Arnisaeus' *De Jure Maiestatis*, clinging, however, to the structure of Arnisaeus' argument and keeping to Arnisaeus organisation of the work in books and chapters. What is significant are the derivations between Eliot's abbreviated translation and Anrisaeus original argument.[19]

Arnisaeus first defined majesty, i.e. sovereignty, as indivisible royal power bound only by the law of nature and divine law within the commonwealth and inferior to none outside it (c I and II). He then denounced democracy and aristocracy as impractical forms of sovereign government - Eliot agreed that

civil governors (Straßburg, 1556), G iiii-v, see G viii on his use of Phineas, already used by the Lutheran Wick.

[18] See, however, G. Bowler, 'Marian Protestants and the Idea of Violent Resistance to Tyranny', in Peter Lake, Maria Dowling (ed.), Protestantism and the National Church in Sixteenth Century England (London, 1987), 124-143.

[19] The close reading of the text of a renown Absolutist by an alleged reader of parliamentary opposition has led to a cautious qualification of the alleged radicalism of Eliot's point of view, see R. G. Asch, Der Hof Karls I. von England. Politik, Provinz und Patronage 1625-1640 (Wien, 1993), 51; or to a questioning of his political realism, see J. N. Ball, 'Sir John Eliot and Parliament 1624-1629', in K. Sharpe (ed.), Faction and Parliament (Oxford, 1978), 173-207; C. Russell, The Causes of the English Civil War (Oxford, 1991^2, 24, 179, 182), however at least accuses him of being at least unrealistic, at worst intentionally hostile about the King's finances.

monarchy was the best form of government[20], but left Arnisaeus uncompromising attack on aristocracy out.[21]

Arnisaeus was similarly uncompromising in his insistence that true monarchy is free of all constraint of written laws and the alleged rules of reason and virtue. He only calmed the reader by promising that princes were rational beings and that thus rational behaviour could be expected of them.[22] Eliot transformed this into „Absolute power is that which is not tyed to the necessity and coartion of law" but added that nevertheless a king was „not therby loose from all direccon of law".[23] While Arnisaeus bolstered his point about the rational prince with the medieval lawyer Baldus, Eliot translated Baldus as saying that the king was „to govern by Law and Reason & not just by his lust & will".[24]

This difference in emphasis was most clearly spelt out in Eliot's transformation of Arnisaeus' account of tyranny. As an absolutist, Arnisaeus was particularly cautious in using the term, because he did not want to grant any rights to resist. Therefore, he had preferred to argue his case about the defence of fatherlands without raising the issue of tyranny at all. Likewise, he was anxious to separate his account of absolute monarchy, free from legal constraint, from what others define as tyranny, pointing out that only clear-cut breaches of divine or natural law constitute tyranny. Arnisaeus illustrated his point with the example of Alexander the Great refusing to be bound during a surgical operation to prevent any constraint to his freedom.[25] Eliot left out this argument and only translates Alexander's statement, explaining it as meaning „Majesty having no superiour upon earth" and thus rather fitting to the second chapter that established the independence of human kings from the power of the pope.[26] Arnisaeus strengthened his case by describing the king as the speaking law and at the same time as similar in his relation to his subjects as a father to his children and a master to his family. Eliot distinguished positive law, which does not bind the king, and virtue, which in his account does and

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[20] Sir J. Eliot, The Monarchy of Man, ed. by Alexander Balloch Grosart (London, 1879), 9.

[21] H. Arnisaeus (1575?-1632), De Iure Maiestatis (Frankfurt, 1612), lib. III, c III, 29-33; see on Arnisaeus H. Dreitzel, Protestantischer Aristotelismus und absoluter Staat. Die „Politica" des Henning Arnisaeus, ca. 1575-1636 (Wiesbaden, 1970).

[22] Eliot, De Jure Maiestatis, lib. I, c III, 37.

[23] Eliot, De iure Maiestatis, 15.

[24] Eliot, De Iure Maiestatis, 15.

[25] Arnisaeus, 38.

[26] Eliot, 15.

went on insisting that „laws ought to rule in the city".[27] He then concluded that „It is fitt then that kings should of their own accord live according to lawe, albeit they cannot be compelled therunto ... and this makes the difference between a king and a tyrant, that the tyrant abuses his great liberty: a king will not use it when he may. The one ursurpes more authority than he should, the other doth not exercise all the power that he might."[28] While Arnisaeus only conceded that a king will not reign licentiously as measured against his rational nature, but clearly rejected the notion that the body politic is run by positive laws other then those the king made, Eliot refused to specify a body above the king that could enforce those laws, but insisted on their existence and on the monarch keeping within their boundaries, lest he becomes a tyrant. Arnisaeus' examples about the punishment of tyrants by God thus served to make the point that it was God' office, not the office of any group of men, to punish a tyrant, whereas those same examples in Eliot's abbreviated translation substantiated the claim that a monarch breaking the law brings havoc over himself and the commonwealth.[29]

The most significant change of argument occurred, however, with regard to chapter Five on the relation of lords and vassals. That chapter provided Arnisaeus with a way out of the unconditional submission of subjects to their magistrates with regard to the relation of the Catholic emperor to his Lutheran vassals. It allowed Arnisaeus to declare the resistance of these vassals against the Emperor to defend their territories lawful. To Arnisaeus, the oaths of these princes to the Emperor are void in cases of danger to their fatherland, i.e. the territories they rule, for to the fatherland we owe even more respect than to our fathers. Eliot transformed this into „for noe fidelity by covenant can be so sacred that it should be preferred before the piety that is due to one's countrey ... And a Vasall may in many cases renounce his lord but a subject may never forsake his countrey which we must love above our parents and ourselves".[30] Because Eliot took Arnisaeus' „patria", to Arnisaeus the territory within the Empire, as the realm of England itself, styled by Eliot as „country", Eliot failed to identify Arnisaeus patriots and vassals as the princes of the Empire. Instead of juxtaposing their feudal privileges, rights and duties against their oath to the Emperor, Eliot in his translation juxtaposed the possible lack of the binding

[27] Eliot, 16.
[28] Eliot, 19.
[29] Arnisaeus, 42-47; Eliot, 16-19.
[30] Eliot, De Iure Maiestatis, 44; Arnisaeus, Politica, V 12, 100.

power of an oath of allegiance with the unconditional commitment of every subject to the welfare of his „country" - a notion not just alien to Arnisaeus purpose of argument but directly against the grain of his argument. Inserting Cicero at this point, Eliot substantially transformed Arnisaeus argument about the territories within the Empire as fatherlands into an argument about the duties of citizens to their country, a notion carefully avoided by Arnisaeus.[31]

Eliot concluded that „The summe of this discourse is this: That a prince who hath majesty is not bound by the decrees of his Antecessors quod iura maiestatis bound by the decrees of his Antecessors quod iura maiestatis & statum imperii: but only so far as the publicke good and the laws of god and nature doe require. And a prince must aim at this end in all his acts, that he keep his honour and words, and that the common weal take noe hurt".[32] Where Arnisaeus wrote a blueprint of territorial absolutism and provided arguments for its defence both against the people and the Emperor, Eliot produced a stoic king to be judged against his commitment to the common good and checked by the uncompromised obligation of his subjects to put the welfare of the country before any other obligation, certainly before those of their solemn oaths. Thus a door was left open to understand the welfare of the fatherland as different from that of the king and allow both to wage war on their respective behalf, as Henry Parker later put it[33] in his *Contra Replicant, his Complaint to His Majestie* of January 1643: „But both have better Rules if they will not deceive them, which are, to direct all by the interest of State (which is never accusable of Injustice) and by Equitie...Laws ayme at Justice, Reason of state aimes at safety; Law secures one subject from another, Laws protect subjects from insolence of Princes, and Prince from sedition of Subjects...; but Reason of State goes beyond all particular forms and pacts, and looks rather to the being, than well being of a state..., by Emergent Counsels, and unwritten resolutions. Reason of State is something more sublime and imperiall than Law: It may be rightly said, that the statesman begins where the Lawyer ceaseth, for when warre has silenced Law, as it often does; Policy is to be observed as the only true Law, a kind of dictatorial power is to be allowed to her; whatsoever has any right to

[31] Arnisaeus, c V, 100; Eliot, 34-54.

[32] Eliot, 85.

[33] See H. Parker, 'Observations upon some of his majesties Late Answers and Expresses', (Juli 1642), in H. Erskine-Hill, G. Storey (eds.), Revolutionary Prose of the English Civil War (Cambridge, 1983), 37, 38, 41, 46, 47: „Ephori, Tribuni, curatores ... by virtue of election and representation, a few shall act for many, the wise shall consent for the simple ... and the prudence of some shall redound to all" (47).

defend itself in time of danger is to resort to policy instead of Law. To deny to Parliament recourse to reason of state in these miserable times of warre and danger, is to deny them self defence."[34] In this context, Parker significantly referred to the very Arnisaeus that Eliot had used to buttress his claim for unconditional defence of the country.[35]

Such self defence of the English country against outside threats was to become a core argument of men like Parker in their attempt to explain the actions of Parliament after 1642. The alleged legal ability of Parliament to raise the Militia in 1642 rested, as is well known, on the possibility to understand parliament not primarily as an assembly of estates nor as the highest court of justice, but as a council able to lead the nation's affairs in a situation of emergency that made immediate action indispensable, in which the king, however, was for some reason unable to act.[36] Parliaments actions were about self defence against outside threats, not about resistance. Insofar, pamphlet propaganda engaged in an argument about the meaning of the Ancient Constitution that led into arguments about legislative sovereignty, not about resistance.[37] Whereas the Scots, however, had based their notion of legitimacy on the notion of the covenant, i.e. the enshrining in law of a certain interpretation of the confession and government of the church of Scotland, in England arguments from necessity, allowing to overrule statute law in certain circumstances, became a much more important part of parliamentary propaganda.

In his reply to Charles' answer to the *Nineteen propositions* in July 1642, Henry Parker, one of the more eloquent partisans of the parliamentary course, began with some of the more standard arguments, among them that the king was singulis maior, but universis minor, and that he was bound by his oath to the upkeep of law, order and religion. Further, he alleged the office of

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[34] H. Parker, „Contra Replicant, his Complaint to His Majestie", quoted after M. A. Judson, 'Henry Parker and the Theory of Parliamentary Sovereignty', in Essays in History and Political Theory in Honour of C. H. McIlwain (Cambridge, 1936), 156-157.

[35] M. Mendle, Henry Parker and the English Civil War (Cambridge, 1995), 132 on Parker and his „Jus Populi", 7, quoting Arnisaeus for the legitimacy of self defence.

[36] Mendle, Henry Parker; idem, 'The Great Council of Parliament and the First Ordinances: The Constitutional Theory of the Civil War', in Journal of British Studies 31 (1992), 133-162; idem, 'Parliamentary Sovereignty: a very English absolutism', in N. Phillipson, Q. Skinner (eds.), Political Discourse in Early Modern Europe (Cambridge, 1993), 97-119.

[37] J. Sanderson, 'But the Peoples Creatures'. The Philosophical Basis of the English Civil War (Manchester, 1989).

parliament „to consent“ was more then just „to counsel“.[38] Parker understood Parliament, even in its mutilated form, as the representative of the nation, as „the whole community in its underived majesty“[39]. Parker combined with notion of parliament as „indeed the state itself“[40] with the notion of the right to self defence by law of nature.[41] In his *Contra Replicant* of January 1643, he expanded this argument to the notion that neither king nor parliament by positive law, „but both have better rules if they will not deceive them, which are, to direct all by the interest of state (which is never accusable of Injustice) and by Equitie...[for] Laws ayme at Justice, Reason of State aimes at Safety...Law protext subjexts from inselence of princes, and Prince from the sedition of subjects; but reason of state goes beyond that aoo particular forms and pacts, and looks rather to the being than well being of a state..by Emergent Counsels...Reason of state is something more sublime and imperiall than law: It might be rightly said, that the statesmen begins where the Lawyer ceaseth, for when warre has silenced Law, ...Policy is to be observed as the only true law...To deny Parliament the recourse of reason of state in these miserable times of warre and danger is to deny them self defence“.[42] Self defence was the core notion of the parliamentary argument, while the legal framework around this notion changed from writer to writer. William Marshall, for instance, insisted in his *Plea for Defensive Arms* (London 1643) the right to self defence of „a people, especially the representative body of a state ...to defend themselves against the unlawful violence of the supreme magistrate...endeavouring to deprive them their lawful liberties“.[43] Only after the execution of the king the term nation came up to address the legal subject that now had to act. Thus John Cook, the chief solicitor of Charles' trial, addressed in his *Monarchy nor Creature of Gods Making* (Waterford 1652) Parliament as the „Supreme Authority of the three Nations“ England, Ireland and Scotland.

[38] Parker, Observations, 37, 38, 41, 46, 47.

[39] See e.g. Parker's wording, that „this convention may not be without intelligence, certain times and places and forms shall be appointed for its reglement...by virtue of election and representation, a few shall act for many, the wise shall consent for the simple“, in Parker, Observations, 46-47.

[40] Parker, Observations, 56.

[41] Parker, Observations, 48.

[42] Parker, Observations, 156.

[43] Edinburgh Advocate's library, State Tracts Ry.1.2.112.

IV.

On July 11th 1668 Bishop Andrew Honeyman, accompanying Archbishop James Sharp in a coach on the streets of Edinburgh, was wounded in the wrist by a bullet from an assassin aiming at Sharp. Sharp himself remained unscathed, only to fell victim to another attempt at assassination in the streets of St. Andrews eight years later. On February 21st of that same year, Honeyman died as well, probably not least due to the injury inflicted by the bullet from the first attempt.[44] By that time, however, he had long since completed his refutation of those arguments that he thought invariably turned subjects into assassins. Already during summer 1668, he had been in Edinburgh to supervise the publication of the first part of his *Survey of Naphtali*[45], meant to refute a pamphlet of this name that had been published in the aftermath of the Pentland rising.[46] *Naphtali* had asserted the right of individual subjects to non-obedience against law breaking magistrates. In the defence of the true faith it invoked both the duty against God and against those statutes and bonds like the National Covenant that, to Scottish Presbyterians, had made their ideas on church government the only lawful basis of the church.[47] To Honeyman, having just become the victim of a religiously motivated assassin himself, these claims promoted nothing but „Munster

[44] See on this incident and the debate on it Friedeburg, From collective representation. A. Van Doren Honeyman, The Honeyman Family in Scotland and America (Plainfield (NJ), 1999, 26-41).

[45] A. Honeyman, A Survey of the insolent and infamous libel, entituled, Naphtali, Edinburgh 1668; idem, Survey of Naphtali, Part II, Edinburgh 1669; Van Doren, Honeyman, 20-43.

[46] J. Willcock, A Scots Earl in Covenanting Times. Being life and Times of Archibald 9th Earl of Argyll (1629-1685) (Edinburgh, 1907), 140-6: Spreading from disturbances after the arrest of a man at Dalray, Galloway, on November 13th 1666, the man had been freed, a little garrison stormed and finally around 700 men had gathered that were crushed on November 28th by c. 2600 soldiers.

[47] Naphtali, or the Wrestlings of the church of Scotland, for the Kingdom of Christ, contained in a true and short deduction thereof, from the beginning of the reformation of religion until the year 1667, together with the last speeches and testimonies of some who have died for the truth since the year 1660..., n. p. 1667, ed. W. Wilson (Perth, 1845); G. W. T. Omond, Sir James Stewart, in idem, The Lord Advocates of Scotland (Edinburgh, 1883), 243-276, 246-7; R. Wodrow, Analecta: or Materials for a History of Remarkable Providences, 4 Vols. (Edinburgh, 1842-83), Vol. I, 71, Vol. II, 202-7, 327-8; The Coltness Collections 1608-1840 (Edinburgh, 1842), Part II, 38-52, 359-67.

madness".[48]

When James Stirling, minister of Paisley, and James Steuart, just admitted to the Scottish bar, wrote *Naphtali*, they drew on a rich tradition of Scottish political thought. On the one hand, despite claims to the contrary[49], Scotland was a hereditary monarchy which monarchs carried, by any comparison, particular valid legal title and could potentially make much more far-reaching claims for their power within Scotland than any king elected in Germany.[50] On the other, Reformation thought succeeded against a monarch both Catholic and female, an extraordinary situation culminating in the deposition of Queen Mary in 1567 and the subsequent struggle over the control of her child James.[51] For a critical period, the church was left to a degree uncontrolled by lay magistracy difficult to imagine in the context of the Empire. Once James VI. attempted to reconsolidate monarchical power after the Ruthren raid of 1582 and during the 1590s[52], Presbyterianism had established itself as a powerful force in the church.[53] True, from the synod of Perth 1597, the able power broker James

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[48] Survey, I, 106-7.

[49] See Burns, Kingship, 64-64 on Mair's argument; C. Kidd, Subverting Scotland's Past: Scottish Whig History and the Creation of an Anglo-Whig identity 1689 - c. 1830 (Cambridge, 1993), 12-18; A. H. Williamson, Scottish National Consciousness in the Age of James VI. The Apocalypse, the Union and the Shaping of Scotland's Public Culture (Edinburgh, 1979), 95-103; Steuart, Jus Populi, 93-94, takes up the argument from the election of Fergus by the people.

[50] J. Morrill, 'The National Covenant in its British Context', idem (ed.), The Scottish National Covenant in its British Context (Edinburgh, 1990), 1-30; for an exception to this rule see on the claim of the Earl of Menteith to the earldom of Strathearn as direct heir-male of David, son of Robert II., Sir John Scot of Scotstarvet, The staggering state of Scottish Statesmen, From 1550 to 1650, (1660) ed. C. Rogers (Edinburgh, 1872), 90-107; A. J. Macinnes, Charles I. and the Making of the Covenanting Movement 1625-1641 (Edinburgh, 1991), 83-85; M. Lee Jr., The Road to Revolution Scotland under Charles I. (Chicago, 1985), 43-118.

[51] J. Wormald, Court, Kirk and Community. Scotland 1470-1625 (Edinburgh, 1981), 143-8; R. A. Mason, 'George Buchanan, James VI and the presbyterians', in Mason, Scots and Britons, 112-37, 113-31; Burns, Kingship, 155-226; Morrill, 'Covenant', reminds us that Charles I. was the first Scottish Monarch in over a hundred years to become King as a grown up.

[52] After the Ruthven raid in 1582 and his escape 1583, see for the Black Acts attempting to control Presbyterianism in 1584 and further crises by the death of Mary 1587 and the threat form the Armada in 1588 Mason, 'Buchanan', 129-35; Burns, Kingship, 223-44; Wormald, Court, 149-68.

[53] M. Lynch, 'Calvinism in Scotland, 1559-1638', in M. Prestwich (ed.), International Calvinism 1541-1715 (Oxford, 1985), 225-50. On the Golden Acts 1592 see Wormald, Court, 128-129; G. D. Henderson, The Burning Bush. Studies in Scottish Church History

managed to consolidate his grip over the church.[54] But even after Perth, Presbyterian ministers such as George Gillespie and David Calderwood, sometimes from their Dutch exile, painted the image of a Scottish magistracy perpetually violating the law, kept alive Conciliarist thought, reminded the reader on their duty to obey God's ordinances and nourished a rhetoric of the law of nature and the right to self-defence.[55]

The outbreak of resistance against King Charles' reforms at liturgical innovation[56] could thus tap a reservoir of arguments supporting the legitimacy of non-compliance that was second to none in Protestant Europe. In particular, the three decades of momentous and dramatic conflict since the deposition of Queen Mary in 1567 had given the most pronounced claims of both Monarchomachism and of the Anti-Monarchomachist reaction, both abroad and at home, ample occasion to be developed with direct reference to Scottish affairs.[57] Althusius' *Politica* could advocate both, power invested in estates and close control of subjects for the sake of pious harmony. On the other hand, no matter how clear-cut Presbyterians attacked royal policy, among the cumulative deeds of their argument a „pervasive ambiguity" remained about who was to act in behalf of the people once the supreme magistrate failed. For Scotland lacked the legal tools to sharply distinguish claims for the power of the people from the rights of subjects.[58] Knox combined his urge to obey God's demands with the warning that „it is plaine that the slaying of ydolateris

(Edinburgh, 1957), 61-73; R. G. Cant, The St. Andrews University Theses 1579-1747, Edinburgh Bibliographical Society Transactions Vol. ii (1946); idem, The University of St. Andrews (Edinburgh, 1970), 50-67; Burns, Kingship, 266-73.

[54] Lee, Road to Revolution, 4-5; Wormald, Court, 129-138; Mason, 'Buchanan', 131-5.

[55] G. Gillespie, 'A Dispute against English Popish Ceremonies obtruded on the Church of Scotland' (Edinburgh 1637), in The Works of Mr. George Gillespie, ed. W. M. Hetherington (Edinburgh, 1846), chapters VIII, 136 and 145 on the limited duty to obey to magistrates, quoting Gerson (see Oakley, Natural Law), and IX, 184: „This is, therefore, the first precept of the law of nature, that man seek his own conservation, and avoid his own destruction"; D. Calderwood, Parasynagma Perthense et Iuramentum Scotinae Ecclesia, 1620 (Leyden, 1626); idem, Altare Damascenum, ceu Politia Ecclesia Anglicia nae obtrusa Ecclesia Scoticanae (1623) (publ. in the Netherlands), quoting 112 Beza and 116 argument on the authority of councils; idem, A re-examination of the Articles of Perth anno 1618, 1636, on the duty to God to „maintaine the puritie and integritie of God's ordinances" (136); idem, The Pastor and the Prelate on Reformation and Conformity, Edinburgh 1628, in Presbyterian Armoury (Edinburgh, 1846), Vol. III.

[56] Lee, Road, 184-222; Morrill, 'Covenant', 6-21; Macinnes, Charles I., 155-66.

[57] Mason, 'George Buchanan', 114.

[58] Burns, Kingship, 145.

appertanis not to every particular man".[59] Buchanan remained suspicious of the people but insisted on their right to depose tyrants and invoked notions of Civic virtue among them.[60]

When conflict between the Presbyterian wing of the church, supported by most of the nobility and the city of Edinburgh climaxed after 1636, the opposition party drafted the „National Covenant of 1638" and thus used a legal tool that had been used already to bind the nation together in times of emergence, such as the threat from the Armada in 1588. It declared a state of defence in the realm to protect the legal basis of the church in Scotland, as enshrined in the Negative Confession of 1581 and those Acts confirming them like the Golden Acts of 1592, but it did not indulge in any explicit argument about resistance.[61] It is significant that later Episcopalians could dispute the presbyterians' reliance on the Covenant with portraying it as „an Ark for unclean cattle", including „Socinians, Arians, Familists, Antinomians, Arminians, Antitrinitarians." and so forth.[62] The one document that had managed to draw the body politic together had done so by careful avoiding detailed argument on controversies of church government preceding the innovations under Charles I.[63]

From the National Covenant in 1638, the Scottish repertoire of political ideas, in particular the rhetoric of self defence, was tapped over and again and further developed.[64] Once more sophisticated argument was attempted,

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[59] Quoted after Burns, Kingship, 128.

[60] Mason, 'Buchanan', 114-25; Burns, Kingship, 188-207; on the „Presbyterian Humanism" of Buchanan and later ministers see Williamson, National Consciousness, 85-95, 107-32; I. M. Smart, 'The Political Ideas of the Scottish Covenanters, 1638-88, in History of Political Thought, 167-92, 169.

[61] Reference is made to S. Rutherford, Lex Rex (London, 1644); and J. Knox, Apologetical Relation, see on Knox J.H. Burns, The True Law of Kingship. Concepts of Monarchy in Early Modern Scotland (Oxford, 1996), 122-151; on Calderwood see Kidd, Subverting Scotland's Past, 22-26; on Rutherford J. D. Ford, 'Lex Rex iusta posita: Samuel Rutherford and the origins of government', in R. A. Mason, Scots and Britons. Scottish political thought and the union of 1603 (Cambridge, 1994), 262-92.

[62] Honeyman, Survey II, 184.

[63] See D. Stevenson, The Covenanters, Edinburgh 1988, 35-44; M. Steele, 'The Politick Christian: The Theological Background of the National Covenant', in Morrill, Covenant, 31-67.

[64] Henderson, Instruction, 683-93; Anon., A short relation of the state of the kirk of Scotland since the Reformation (Edinburgh, 1638); Archibald Johnston of Wariston, Causes of the Lord's Wrath against Scotland, 1651, in Presbyterian Armoury (Edinburgh, 1846); G. Gillespie, A Treatise of Miscellany Questions (Edinburgh, 1642); idem,

Scotland had no dearth for Conciliarists and Monarchomachists of its own.[65] None, however, could explain how to secure peace and order in an increasingly divided society. While the National Covenant had been phrased rather vague to allow for the most widespread allegiance possible and Alexander Henderson had explicitly denounced Monarchomach writers[66], subsequent warfare saw an increasing number of defectors once the actual outcome of the escalating conflict appeared ever more threatening.[67] In 1644, Samuel Rutherford professor of theology at St. Andrews, provided with is „Lex Rex", or the „Law and the Prince", the most sophisticated argument in favour of the self defence of the body politic against the supreme magistrate. Rutherford argued that the lex regis bound the king to obey the law and that magistrate were created by the people, but that God had instituted government. Men therefore had to submit to government and could not rule and obey at the same time. To this end, he distinguished the *virtual* power of the people and the *formal* of magistrates, a distinction based on the power the people had in community to constitute the magistrate but that each subject lacked as an individual that had to obey.[68] Finally, in his sermon at the coronation of Charles II. in 1651 Robert Douglas reiterated that the Covenant between the people and God that limited the King's power did nevertheless not compromise the peoples' duty to obey and thereby indirectly emphasised the uneasy coexistence of notions on the restrictions of royal power with the necessity of order and subjection in the body politic.[69] Honeyman detected a root of this flagrant disregard for the operation of „politique society" in the notion that the lex regis did not only state obligations of the King but that it invested subjects with the right to judge their obligations to obedience and recognize them as forfeited in case of violation of that lex - an implication that Robert Douglas in his sermon had

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Aaron's rod Blossoming, or, The Divine Ordinance of Church Government Vindicated (London, 1646); Smart, 'Political Ideas', 172-83.

[65] See Ford, 'Rutherford'. In Lex Rex, besides Mair and Gerson, a number of Monarchomach writers and alleged continental pro-absolutist writers were quoted, not least Barclay and Arnisaeus. Althusius was not quoted as frequently as they.

[66] Henderson, Instruction, 692; Morrill, 'Covenant'; Steele, 'Politick Christian'.

[67] See e. g. A. A.W. Ramsay, Challenge to the Highlander (London, 1933); Morrill, 'Covenant'.

[68] Ford, 'Rutherford', 271-81, stressing the distance of Rutherford's account from a natural rights account. Rutherford seems to cling here to the notion of representatio potestatis. For the person of the magistrate, once put into office, governs in behalf of the corporation as a whole, while each individual subject has to obey.

[69] Ford, 'Rutherford', 262-4.

explicitly ruled out.[70]

One of the authors of Naphtali defended this notion in a lengthy treatise published in London in 1669. He picked up the issues from above, but placed them in a different context. Rejecting the metaphor from body[71] to depict the relation of magistrate and subjects, he instead invoked the subjects as „righteous proprietors of their own goods“, violation of these rights depicting the border between lawful monarchy and tyranny[72], and arguing that since the „safety of the People, both in soull and body, their religion, Lives, Liberties, Privileges, Possessions, Goods and what was deare to them as Christians“ was the supreme law, any magistrate violating those goods had to be removed.[73]

V.

„Nation“ and „country“ thus were parts of the vocabulary that was used to think about a possible conflict between law-breaking magistrates and honest subjects. However, at least from the limited evidence presented above, neither of the two examples hints towards any project to reorganize society into one recognizing the full social and political equality at least of all adult men by virtue to their membership to a nation. Country and Nation entered the political vocabulary in a much less clearly defined sense. They allowed to address the body politic as a legal person able to act on its own behalf. They very often carried the sense of specific laws that bound that body politic together. The members of that legal person were thus meant to possess a religion, rights and liberties and had thus the right to defend themselves and their possessions. Indeed, the specific value of talking about nation and country during the seventeenth century might have been that it did not invoke, as it began to do from the early enlightenment and the later seventeenth century onwards, a sense of legal equality among men, even pertaining to political rights to rule. It did however address the body politic as a legal person providing certain rights to property and its defence to the members of that body politic beyond the reach of the supreme magistrate and more specific then either divine law or natural law would provide for - indeed specific to the nation or country in question. Judging against the more amorphous sense in which „natio“ and

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[70] Honeyman, Survey I, 100.
[71] J. S. of Goodtress, Ius Populi Vindicatum (n. p., 1669), 146.
[72] Steuart, Jus Populi, 146-8.
[73] Steuart, Jus Populi, 160.

„patria“ had been used during the later middle ages, nation and country could become associated to the defence of true religion, law and liberties and thus began to slowly acquire a more specific political meaning then these terms had had before.