

HENRY VIII, FRANCIS I AND THE REFORMATION PARLIAMENT

Peter R. Roberts

*(Wolfson College,
University of Cambridge)¹*

In many respects the year 1533 marked a climacteric in the making of the English Reformation. On 25 January Henry VIII contracted a secret marriage with Anne Boleyn, and by Easter the Act in Restraint of Appeals had been passed in parliament to abolish Roman jurisdiction in England. This has been described by one modern historian as « doubtless the most important single piece of legislation » to be enacted by the Reformation Parliament. But historians do not agree on what was the pivotal event in the transformation ; there is no consensus on whether it was Anne's pregnancy or the appointment of Thomas Cranmer as Primate that precipitated the break with Rome and the emergence of the unitary state in England. It is generally recognized that the negotiations with Rome, which finally came to nought, were facilitated by Henry's alliance with Francis I in the early 1530s². In the event, the timing of his divorce from Catherine of Aragon and the breach with the papacy were crucially influenced by that alliance, but the interplay of the French connection with the constitutional developments of these years is an aspect of the crisis that has been comparatively neglected in historical accounts. Henry revealed a growing awareness that parliament could provide a viable alternative solution to the problems of the royal divorce and remarriage. His understanding of what could be achieved through statute law was nowhere more explicitly stated than in the briefing instructions he gave to the duke of Norfolk as his envoy to France in a little known letter of 8 August 1533. While this affirmation of the role of parliament in resolving « the king's great matter » has to be understood in its immediate context, it expressed a belief that Henry had held and acted on for some time. Between 1532

¹ In preparing this article the author has benefited from discussing points of common interest with Dr Henry Cohn, Dr David Potter and Dr Glenn Richardson.

² S. E. Lehmborg, *The Reformation Parliament, 1529-1536* (Cambridge University Press, 1970), p. 175 ; D. Potter, *A History of France, 1460-1560 : the Emergence of a Nation State* (London, 1995), p. 267. Francis's participation in the negotiations with Rome is discussed in G. de C. Parmiter, *The King's Great Matter : a study of Anglo-Papal relations, 1527-1534* (London, 1967).

and 1536, in the process of realizing his own conception of what historians have called « the sovereignty of the crown in parliament », Henry gained unprecedented authority over the Church in his realm and dominions¹.

At the Treaty of the More in 1525 Henry reached a *rapprochement* with his great rival, the king of France, because he needed him as an ally against the Emperor Charles V, the nephew of Catherine of Aragon and champion of her cause at Rome. Henry believed a renewed French alliance would further the suit at Rome for an annulment of his marriage to Queen Catherine to enable him to marry Anne Boleyn – « the king's great matter ». Henry's inherited title to the kingdom of France, which in the early 1520s had been an ostensible *casus belli*, was in abeyance for the duration of the alliance, although it could still be invoked in treaties and used as a lever to gain advantage for England in the form of monetary tributes². The interests of the two kings could not always be reconciled, even in pursuit of a common goal. Although from 1528 onwards Francis expressed moral support for Henry in his dealings with Rome, his loyalties remained equivocal. While English churchmen were permitted to consult theologians in the Sorbonne and other French universities on the validity of Henry's marriage, it was not until the summer of 1530 that Francis intervened to ensure a favourable response to their inquiries³. He purported to act the part of the honest broker in negotiations with the pope, though he may have calculated that an England in schism would bring perceptible advantages for France by increasing the rift

¹ For Henry VIII's relations with Francis I in these years, see G. Richardson, « Eternal Peace, Occasional War : Anglo-French Relations under Henry VIII », in *Tudor England and its Neighbours*, ed. by S. Doran and G. Richardson (Basingstoke, 2005), p. 44–73, esp. p. 52–60. In a forthcoming study of the consequences of the Anglo-French treaty of 1532, Dr Richardson will consider the relations from the perspective of French interests, and argue that the peace encouraged, and to a degree enabled, Henry to take direct action against the pope and assume control of the English Church.

² The claim had been exploited by Henry in Wolsey's negotiations with Louis XII in 1514, and again with Francis I in 1527, G. Richardson, *Renaissance Monarchy : the Reigns of Henry VIII, Francis I and Charles V* (London, 2002), p. 55. Cf. C. S. L. Davies, « "Roy de France et Roy d'Angleterre" : the English claims to France, 1453–1558 », *Publications du Centre Européen d'Etudes Bourguignonnes (XIV^e-XVI^e siècles)* 35 (1995), p. 123–32.

³ *L[etters and] P[apers, Foreign and Domestic, of the reign of Henry VIII, 1509–47]*, 21 vols in 33, ed. by J. S. Brewer et al. (London, 1862–1910), vol. IV, pt 3, n° 6449, 6458.

between Henry and Charles V. Henry for his part found it expedient to be able to claim that his ally countenanced his strategy. He either deluded himself as to the extent of French commitment to the cause or deliberately exaggerated the promises of moral support so that Francis would have found it awkward to deny them. In spite of the formal agreements, Anglo-French diplomacy in these years was characterized by mutual suspicion and distrust. Henry was adamant in defence of the rights he had arrogated to himself, and Francis became exasperated when this intransigence undermined his efforts to negotiate an accommodation with the papacy¹.

Henry's principal councillor, Cardinal Wolsey, was disgraced after his failure to resolve the king's matrimonial problems through negotiations with Rome, and he fell from power in 1529. The king then summoned what has become known as the Reformation Parliament, which sat for eight sessions over seven years, and he tried a different tack by responding to lay demands to reform the Church in England. The king's new minister, Thomas Cromwell, exploited to the king's advantage the criticism of clerical abuses which had been expressed spontaneously in the House of Commons. The Convocation of the Church was required to submit to the king's mercy, and early in 1531 the clergy petitioned for pardon, paid a fine, and acknowledged Henry as « Supreme Head » of the Church in England, while adding the qualification « as far as the law of Christ allows ». The Archbishop of Canterbury, William Warham, and other leaders of the Church, like Wolsey before them, were threatened with the penalties in the medieval statutes of *praemunire* (of 1353, 1365 and 1393), which protected the jurisdictional rights claimed by the crown against papal encroachment. With the Submission of the Clergy in 1532, the king undermined the independent legislative power of Convocation. An official bill drafted in the same year would have given parliamentary sanction to this concession, but the royal supremacy was not enacted by statute until 1534. The preamble to the abandoned bill of 1532 expounds the political theory of a body politic consisting of the three estates of the realm – clergy, nobility and commons – while declaring that the authority to make laws belongs to the king alone, the only supreme and imperial head and sovereign. Thomas Cromwell, who

¹ The present survey of Anglo-French relations draws mainly on the English state papers to present an *aperçu* of the shifting patterns. A full study of Franco-English diplomacy in particular must await the completion of research in the French national archives.

had a hand in drafting the bill, had crossed out the qualifying phrase in the preamble declaring that law-making required « the assent of the said prelates, nobilles and comens ». While this correction and the bill's abandonment suggest that the king and his Council had decided to rein back on constitutional changes that highlighted the role of parliament in 1532, it is noteworthy that these resounding phrases describing the body politic and the sovereignty of « the imperial crown » were later used in the Act of Appeals¹.

In 1532 the government's challenge to the pope's jurisdiction in England was closely followed by overtures to France. In June the terms of a new Anglo-French treaty of mutual defence were agreed in London, and in the autumn the two kings met near Calais and Boulogne to consolidate the alliance, with France promising armed support in the event of an invasion of England by imperial forces². Anne, newly created marquess of Pembroke in her own right, accompanied Henry to the meeting held outside Calais, and there is some evidence that Henry had hoped that a wedding could be arranged in Francis's presence. A witness to the deliberations later testified that, despite Henry's blandishments, Francis would not give his « assent » to the proposed marriage, and so despite the rumours that a ceremony had been planned there it did not take place³. Even so, Henry continued to canvass the approval of Francis, who was duly informed of the secret ceremony after the event.

¹ The act of 1534 confirming the submission of the clergy (25 Henry VIII, c. 19) repeated the provision made earlier in Convocation for the appointment of 32 commissioners (composed of equal numbers of laymen and clergy) to review canon law, Lehmborg, *Reformation Parliament*, p. 153-4, 193.

² Richardson, « Eternal Peace, Occasional War », p. 52-60.

³ The confession of Geoffrey Pole, brother of the exiled Reginald Pole, interrogated in 1538 after being arrested on suspicion of treason. He alleged that he had been present in disguise at the meeting of the two kings, having concealed himself in the chamber of his brother, the courtier Henry, Lord Montague, who then sent him to inform Queen Catherine of the meeting. Montague had been estranged from Henry from that time ; he had told Geoffrey that the Francis « wer hardier man than the King our master » and would deceive him. Pole was not a very reliable witness : his relationships with his brothers were strained, and he was reported to be deranged, *LP*, XIII, ii, nos 695 (2), 795, 804 (6), 830 (i) (the original mss are mutilated ; the quotation is from the reconstruction by the editor of the calendar) ; E. Ives, *The Life and Death of Anne Boleyn* (Oxford, 2004), p. 166 ; *Oxford D[ictionary of N[ational] B[iography]*, ed. by H. C. G. Matthew and B. Harrison, 60 vols (Oxford : Oxford University Press, 2004), s.v.» Sir Geoffrey Pole » by T. F. Mayer.

When in the resumed negotiations with Rome the pope refused to accede to his demands, the king resorted to coercive measures to assert such control over the Church in England as would preclude the pope's adjudication of his divorce and remarriage¹. Parliament afforded him the means to express the acquiescence of the political nation in his actions and to impose his political will on the papacy. Newly enacted laws, rather than those already on the statute book like the acts of *praemunire*, came to be used as instruments of policy and diplomacy, and for a time the legislative programme of the Reformation Parliament and the negotiations with France proceeded in tandem. The timetable of law-making was contingent on shifts in Henry's diplomacy at intervals until 1534, and the sequence of key statutes can be related to moves in the game of diplomatic chess.

In the Supplication against the Ordinaries the Commons had articulated their criticism of clerical abuses, but this anti-clerical measure had not been used by the government to exert pressure on the pope². The first move in the game was the conditional Act of Annates, which was passed in parliament in March 1532. A proviso added at the last moment, possibly in response to opposition to the bill in both houses, suspended its operations until the king decided to implement the provisions by letters patent ; this in effect postponed the royal assent to the bill until Easter 1533.

Cromwell drafted this clause at the king's behest, and the explicit intention was to enable him to blackmail the papacy into submitting to his demands. As such it probably did succeed in exacting papal approval for Cranmer's consecration as Archbishop of Canterbury³. In four subsequent sessions of parliament over the next two years a series of important statutes proceeded to undermine papal

¹ G. R. Elton, *Reform and Reformation : England 1509-1558* (London, 1977), p. 174-6.

² For a corrective to the claims made for Cromwell's initiative by Elton in his reconstruction of the proceedings in the Commons, see J. P. Cooper, «The Supplication against the Ordinaries Reconsidered», *English Historical Review* 72 (1957), p. 616-41, esp. p. 619.

³ Lehmborg, *Reformation Parliament*, p. 135-7 and chapter 8. In Cromwell's draft the king is empowered by parliament to register whether or not the pope conforms to the premises ; the act authorizes Henry to decide whether these premises should be observed and take effect as an act of parliament. This was, as Elton points out, « an extraordinarily wide competence in law-making », G. R. Elton, « A note on the first Act of Annates », *Bulletin of the Institute of Historical Research* 20 (1950) p. 203-4. The act was finally confirmed by letters patent issued on 9 July 1533 : *LP*, vol. VI, n°793.

jurisdiction in England. A few months after the Act in Restraint of Appeals to Rome was passed in the spring of 1533 the king was excommunicated, and the pressure was now on Henry to submit to conditions imposed by the pope. A point had been reached when the breach seemed irreparable, though Francis persevered in his attempts to effect a reconciliation.

It is against the pressing need to gain international recognition for the marriage of Henry to Anne Boleyn in January 1533 that the diplomatic exchanges between the two kings in the spring and summer of 1533 should be interpreted. The new queen's brother, George Boleyn, Viscount Rochford, was despatched in March to inform Francis of the marriage, which had been contracted in secret in accordance (or so Henry alleged) with the advice Francis had given him at their recent meeting at Calais¹. Archbishop Cranmer annulled Henry's marriage to Catherine of Aragon on 23 May, and five days later he declared the marriage to Anne to be lawful. The French ambassador to the English court, who had failed in his attempt to have the pronouncements postponed until Francis had an opportunity to negotiate personally with Pope Clement VII, attended Anne's coronation on 1 June, and his presence was taken by Henry to signify his master's tacit approval of the match².

Even at this stage it appears that the king still expected that the pope would recognize the marriage as a *fait accompli*. When his bluff was called and the papal censure was proclaimed, Henry engaged in desperate attempts to neutralize the expected hostile reaction of the Catholic powers and to forestall the formation of a concerted coalition against him. Francis had planned a conference with Pope Clement VII at Marseilles to arrange a marriage between his second son, Henri, duc d'Orléans and Catherine de Medici, Clement's niece. Henry was convinced that this meeting would compromise the assurances of support Francis had given him in the past. Early in June, Anne

¹ *Ibid.*, n°230 ; *State Papers[, Henry VIII]*, 11 vols (London, 1830-52), vol. V, p. 427-37 (undated). The letter was written in French and evidently intended to be read by Francis, who was asked to instruct his ambassador in Rome to support Henry's envoy to win over as many cardinals as possible to the cause. Enclosed with Rochford's instructions was the draft of a letter for Francis to write to the pope to declare his belief that Henry's suit was in keeping with divine law, and to hint darkly at the disagreeable consequences that might follow for the papacy from a failure to oblige the two kings.

² *LP*, vol. VI, n° 584 ; Parmiter, *The King's Great Matter*, p. 239-40.

Boleyn's uncle, the duke of Norfolk, who was already in France, was instructed to prevail on Francis not to meet the pope but rather to order the French cardinals at Rome to demand that Henry's « excusator », Sir Edward Carne, be received in the Vatican. Should Carne be prevented from representing his case, Henry intimated that he would be constrained to devise and enact laws to diminish the pope's authority and to withdraw the realm of England from obedience to the see of Rome¹. Carne did not, in the event, gain an audience with Clement, and in retaliation Henry authorized two drastic actions against Rome : on 29 June a protocol formulating an appeal to a future General Council of the Church was drawn up by the Archbishop of York, and on 9 July letters patent were issued to implement the suspended Act of Annates². At a consistory on 11 July, Clement declared Cranmer's pronouncements, which had been issued when the matrimonial cause was still pending at Rome, to be invalid. Henry was commanded to restore Catherine to her rightful place and renounce Anne. The sentence of excommunication was suspended until Henry agreed to comply with the ultimatum.

It was in order to forestall the meeting at Marseilles, which had been postponed until the autumn, that new instructions were drawn up for the duke on 8 August to complement those issued previously to Rochford on a similar mission. The king's letter to the duke contains a remarkable statement of Henry's conviction that he possessed the means to realize his rights without reference to Rome. This passage in the document has been largely overlooked by historians of the English Reformation, and it deserves close attention for the revealing light it throws not only on international relations but on the constitutional history of the decade³. The royal instructions rehearsed in detail the arguments that the ambassador was to use in his conversations with Francis. Henry claims that in a previous interview which Francis had with Norfolk and Rochford about how to disclose to his subjects his marriage to Anne, « ... which We had by his advise and counsail contracted and consummate, He sent Us worde that We shuld first

¹ Henry VIII to Norfolk, 14 June 1533, Parmiter, *The King's Great Matter*, p. 250.

² *Ibid.*, p. 251 ; *LP*, vol. VI, n°793.

³ A copy in the hand of Thomas Derby, clerk of the king's Council, is printed *in extenso* in *State Papers*, vol. VII, pt 5 (1849), p. 493-8 ; an abstract appears in *LP*, vol. VI, n°954. A. F. Pollard, the only modern British historian to have noticed it, misdates the document to 1532 and misreads it to claim that Francis told Henry « there is no way.... so safe as by Parliament ». Pollard, *Henry VIII* (London, 1903, 1951 edn), p. 350.

unite and knit in oon accorde all the nobles of our Realme, and so thereupon divoulge ... » the marriage¹. Henry insinuated that he had indeed done this by consulting the Lords in parliament,

And, forasmoch as ther was non other waye so fermly to knytt them as by Parliament, and considering that all other knottes being losse [sc. loose] and slippery, this knotte of acte and statute is by authorite therof permanent and durable, being counsailled by our good brother to unite and knytt them fast and sure ; so as He being counsaillour, auctour and chief adviser of that knott, ought nowe to be the better contented that it is a sure knott : wherfore We accompte Ourself neither to have done thing of innovacion, ne other mater attempted, then wherof our good brother was auctour unto Us, though not of forme and maner, yet of the substance and mater, whiche We have executed in the best sorte, and as mightstand Us in best sted, to the pleasure (as We trust) of God, and as We knowe well to the quiete and contenacion of our hole Realme.

The statute referred to was the Act in Restraint of Appeals, read and passed in parliament between 14 March and 7 April, which had authorized the determination of the king's cause within the realm². The preamble to the statute contains a triumphalist declaration of the autonomy of the realm of England, which, on the authority of historical precedents, is defined as « ... an empire, and so hath been accepted in the world, governed by one supreme head and king having the dignity and royal estate of the imperial crown of the same...³ ».

Norfolk was commanded to tell Francis that, as the original promoter of the undertaking endorsed in parliament, he should be content that it is a binding one, for (Henry insinuated) no innovation had been enterprised that Francis had not himself proposed, in

¹ Rochford's first embassy to France was in October 1529, and his most recent in March 1533. No record of Rochford's conversation with Francis on this topic has been found, but intimations of similar advice were contained in Sir Francis Bryan's report from Paris on 21 March 1531 that Francis had then suggested, apropos the marriage, that Henry « ... might well have finished it, in his opinion, by the clergy and nobles of your realm, and that if any had withsaid or been against the same, look what party you had taken, or would take, he would and will take the same, » *State Papers*, vol. VII, p. 288-92 ; *LP*, vol. III, nos. 5996-7.

² Lehmborg, *The Reformation Parliament*, p. 163-9, 174-6.

³ Statute 24 Henry VIII, c. 12, in *The Tudor Constitution : Documents and Commentary*, ed. by G. R. Elton (Cambridge University Press, 1960), n° 177, p. 344-9.

substance if not in form. Now that the marriage had been publicly celebrated, nothing should be done to disturb what has been done to secure a legitimate succession to the throne « ... by the hole agreement of our Realme established for thair and our commoditie, wealthe and benefite ». Henry went on to assert his refusal to revoke any of the four transactions in which were « conjoynded the suretie of our mater » : the marriage, the Archbishop's pronouncement on it, the act of parliament, and the royal proclamation of 5 July depriving Catherine of her royal style, all were non-negotiable¹.

He continued to vindicate his position to Francis, whose support he still needed, and he feared that the meeting with the pope would give the impression to the world at large that he was distancing himself from Henry's cause. Francis was also to be reminded that he had promised to have no truck with the pope if he did anything to injure Henry, yet Carne the « excusator » had lately been denied a hearing at Rome, and Clement had broken his promises to both kings. If Francis went ahead with the planned meeting at Marseilles, he should not give the appearance of being a close friend to Henry's great enemy ; in the King's own words,

« ... for what soever the secrete affection be, the worlde loketh on the outward demonstracions ; and the fame, glory reputacion, honnour, and strength of Princes depende upon exterior appearances, and opynyons of the worlde, which many tymes preveyleth and is better than trouthe, or at the lest standeth in more sted... »

This cynical recognition of the inwardness of statecraft has a Machiavellian ring to it. Cromwell was accused at this time by the English dissident, Reginald Pole, writing from his exile in Italy, of being a reader and disciple of Machiavelli, a charge that has been discounted by modern scholarship². There is little doubt that it is the

¹ *State Papers*, vol. VII, p. 495 ; *Tudor Royal Proclamations*, 3 vols, ed. by P. L. Hughes and J. F. Larkin (New Haven & London : Yale University Press, 1964-69), vol. I, *The Early Tudors, 1485-1553*, n°140, p. 209-11.

² G. R. Elton, *England under the Tudors* (London, 1955, 1958 edn), p. 128 and n. 2 ; F. Raab, *The English Face of Machiavelli : a changing interpretation, 1500-1700* (London, 1964), p. 31-2. An example of Henry's « Machiavellianism » *avant la lettre* is to be found in the instructions to his secretary, Richard Pace, who was sent as his envoy to the imperial election in 1519. Pace was to ascertain « by the most politique drifts » the disposition of the electors and to dissemble his true mission, which was to advance Henry's own interest in the title of Holy Roman Emperor, by giving false assurances of his support for the other candidates, Francis I and Charles

king's voice we hear in this passage, and not that of one of his secretaries who composed the letter at his dictation. It forms part of the speech written out *verbatim* and placed in quotation marks in the letter for Norfolk to use in his audience with Francis. Henry himself was quite capable of expressing such sentiments of political realism, which in his case were gleaned from experience, and he need not have read a tract like *The Prince* (first published in Italian in 1532) to be conversant with them. For this king, appearances were indeed important in the theatre of the world. Determined not to lose face in his confrontation with the pope, he reiterated what were constant refrains in his correspondence with Francis: his actions were grounded in law, equity and reason, and all rulers should resist the pretensions of the papacy to exercise power over kings. He evidently expected Francis to forego the opportunity to conclude a dynastic marriage with the Medicis by giving priority to Henry's matrimonial concerns.

How Francis reacted to this blatant and disingenuous attempt by Henry to implicate him by association in the resort to parliament for remedy to his marital problems is not recorded in the surviving correspondence. Nor is it known what precisely Francis had proposed to Rochford beforehand, though we may safely assume it was something to the effect that Henry should approach his nobility to gain their support for an approach to Rome to negotiate a measure of jurisdictional independence for England without risking a schism¹. This was in a sense what Francis himself had done when he contracted the Concordat of Bologna with Pope Leo X in 1516. The Concordat had given him control over the temporalities of the Church in France while the pope's spiritual authority was left unimpaired². It should not be assumed that the advice he tendered had been informed by any special knowledge of the English constitution, though he may well have been aware of the existence in England of a body equivalent to the French Assembly of Notables. Had Henry chosen to follow the advice to the letter at that time, he could have summoned a meeting of « the Great Council of the Realm », composed of the nobles and, on occasions, the spiritual peers, but this was an approach that had

I of Castile, to each of their representatives in turn. *LP*, iii, part 1, nos. 239-41, discussed in H. J. Cohn, « Did bribes induce the German Electors to choose Charles V as Emperor in 1519 ? », *German History* 19 (2001), p. 9.

¹ See n. 9 above.

² R. J. Knecht, *Renaissance Warrior and Patron : the reign of Francis I* (Cambridge, 1994), p. 94-100 ; Potter, *History of France*, p. 225-31.

already been tried and found wanting. After the failure of the two cardinals, Wolsey and Campeggio, to find a satisfactory solution to the king's marital dilemma at the tribunal they held in London in 1528–29, the English aristocracy was invited on two occasions to deliberate on the king's marriage and the succession, and to authorise a petition to the pope¹. These moves had proved ineffective and, after an interval of reorientation in policy, Henry decided instead to work through parliament, thereby involving the whole political nation in the jurisdictional changes, and not merely one or two of the three estates of the realm.

By the time Norfolk met the French king at Montpellier, a second papal censure had been promulgated, though Francis believed it was not irreversible. He told the duke that he could not honourably call off the interview with Clement, but gave his assurance that he would present Henry's case as if it were his own². The conference duly took place between 13 October and 12 November, and two English envoys, Sir Francis Bryan and Sir John Wallop, were commissioned to attend the meeting as observers. Francis suggested that the papal censure be postponed for six months, but Clement was prepared to consider only one month's delay. His conciliatory proposal, also advanced at Francis's request, that Henry's suit be referred to Franco-papal commissioners was refused, and deadlock ensued. To Francis's embarrassment, the English envoy, Dr Edmund Bonner, interrupted the proceedings to confront the pope and deliver his master's warning that he intended to appeal to a General Council of the Church³. This was plainly an empty threat at this stage, but it served the purpose of the king of England in his foreign relations to challenge the authority of the « bishop of Rome » by invoking the superior jurisdiction of representative bodies, alternately General Councils in Christendom and parliament in his own kingdom. That this by now entailed mutually exclusive courses of action is suggested by an objection to the bill of Appeals raised during the debate in the House of Commons. A burgess of parliament who was engaged in trade with Spain (possibly Paul Withypool of London) expressed his alarm at the likely impact of a schism on the country's economy

¹ P. J. Holmes, « The Last Tudor Great Councils », *Historical Journal* 33 (1990), p. 1-22, esp. p. 8-9.

² Norfolk was careful to ask Francis for a memoir of credence to present to Henry on his return. The exchanges are recounted in Francis's letter to Jean de Dinteville, the French ambassador at the English court, 27 Aug., 1533, *LP*, vol. VI, n° 1038.

³ Knecht, *Renaissance Warrior*, p. 302.

should the Emperor retaliate by imposing an embargo on English cloth. He proposed that parliament offer the king a *douceur* of £200,000 to abandon the bill and submit the marriage question to a General Council¹.

The attempt to stave off a papal appeal to all rulers to administer the ultimate papal sanction against Henry failed. On the same day as Norfolk received his instructions Clement VII issued his bull of excommunication². There was to be no resolution of Henry VIII's matrimonial case at Rome because he was not prepared to consider reversing any of his own actions to meet the conditions for the lifting of papal censure. Henry had attempted a number of ploys to put pressure on Rome to cede to his demands, but as far as reconciliation on terms acceptable to the papacy was concerned he had probably burnt his boats as early as 1532. The statutes passed in parliament since then were too drastic in their challenge to papal authority to be finessed by the mediation even of a sympathetic ally adept in the niceties of diplomacy. Clement would not make the concessions that Henry considered acceptable to enable him honourably to retreat from the positions he adopted in each successive act of parliament. In November Francis expressed his exasperation with Henry's actions to Stephen Gardiner, the English ambassador in Paris: the king of England should not expect Pope Clement to capitulate to the Archbishop of Canterbury's decrees, and thereby « ... confess himself therein no pope, and be made such a fool as he will apply to lose his pre-eminence and authority by entreaty³ ».

Parliament had been prorogued on 7 April 1533 and did not reassemble until 15 January 1534. In its fifth session the Reformation Parliament passed the second Act of Annates, the Act of Dispensations, and the first Act of Succession (25 Henry VIII, cc. 20, 21, 22), each of which defied papal authority in crucial ways. What proved to be the last nails in the coffin of Roman jurisdiction in England followed in the next session, which convened on 3 November, with the passing of the Acts of Supremacy and Treason

¹ Chapuys's report, cited in Lehmborg, *Reformation Parliament*, p. 175 and n. 1 ; *The History of Parliament: The House of Commons, 1509-1588*, ed. by S. T. Bindoff, 3 vols (London, 1982), vol. III, p. 650.

² The sentence was passed on 11 July ; the two versions of the bull promulgating it are dated 8 and 13 Aug. ; a final sentence declaring the marriage with Catherine to be valid was issued in April 1534, Parmiter, *The King's Great Matter*, p. 253 and n. 1.

³ *LP*, vol VI, no 1427, quoted in Parmiter, *The King's Great Matter*, p. 252 n. 1.

(26 Henry VIII, cc.1, 13). These seminal statutes of 1534 signalled the emergence of an autonomous Church of England and the integral Reformation state¹. For the first quarter of the year diplomatic activity continued to have an impact on the legislative settlement to which Henry was outwardly committed. He persisted in justifying his actions to Francis and kept him informed about the progress of measures taken to recover regalian rights in England alleged to have been misappropriated by the papacy. The bill to prohibit taxes such as Peter's Pence to the see of Rome invested the Archbishop of Canterbury with the exclusive power to issue ecclesiastical dispensations, licenses and bulls. Its preamble, cast in the form of a petition to the king, was one of the earliest formal documents to refer to papal usurpation, for it advances the theory that England has « no superior under God, but only your Grace », whose « imperial crown » is undermined by the unjustified exactions and depredations of the pope. It is declared to be consonant with equity and reason that the king, together with the Lords and Commons, « ... representing the whole state of your realm in this your most High Court of Parliament ... », has full power not only to dispense with all human laws of the realm but also to change or rescind them. The bill received its final readings in the Commons on 20 March, but ten days later, on the last day of the session, the Lords added a proviso permitting the king to repeal its provisions, if he so wished, before 24 June. Henry thus hesitated before acting immediately on the defiant trumpeting of caesaro-papalism and the omnicompetence of statute contained in the preamble. As in the case of the proviso in the provisional Act of Annates of 1532, this enabling clause was evidently a contingency measure devised to take account of diplomatic manoeuvres : there seemed to be a prospect of a breakthrough in Francis's continuing attempts to reconcile Henry to Rome². The legislative discretion was not to be invoked in the event, for on 23 March the pope gave his final pronouncement on the validity of the marriage to Catherine³. When the news reached the English court, Henry put on a brave face although (according to the imperial ambassador) « inwardly his spirit

¹ Elton, *Tudor Constitution*, p. 6-12, 349-68.

² One proviso inserted in the Act in the House of Commons declared that the king's subjects would not depart from « the very articles of the Catholic faith of Christendom », while another gave the Crown authority to make visitations of monasteries : 25 Henry VIII, c. 21, in Lehmborg, *Reformation Parliament*, p. 191-2 ; Elton, *Tudor Constitution*, p. 351-5.

³ Lehmborg, *Reformation Parliament*, p. 184-200.

is not at rest ». His response was to order the preachers to denounce the pope in their Easter sermons, and to authorize the publication of the absolute Act of Annates¹. Catherine had already been deprived of her royal style and been designated «Princess Dowager» by proclamation, while the Act of Succession had also anticipated the pope's decision by affirming the legitimacy of Princess Elizabeth, who had been born to Queen Anne on 7 September 1533, and recognising her as heir presumptive to the throne².

In April 1534 Rochford returned as joint envoy to France with Sir William Fitzwilliam, Anne Boleyn's cousin, to present the king with a digest of the key statutes passed in the session that ended on 30 March³. Their letter of instructions was drafted by Thomas Wriothesley, clerk of the signet, and corrected by Cromwell⁴. Henry's response to the papal censure was to impress on Francis that Clement had deceived both of them, telling him what he must already have admitted to himself: « we shall never find any remedy or redress in our cause at his hands ». The envoys were instructed to set Francis at odds with the pope by insinuating that the recent marriage of Orléans and Catherine de Medici was displeasing to the Emperor, with whom Clement was in secret alliance⁵. They returned to England with a memoir of credence in which Francis assured Henry that he well understood the reasons for the « *nouvelles ordonnances* », which he did not believe to be contrary to divine law, although he was not prepared to avow them publicly⁶.

¹ The Emperor was informed that Henry had proposed « an interview » with Francis, who was unlikely to countenance it lest he incur the pope's suspicion, Eustace Chapuys to Charles V (12 April 1534), *LP*, vol. VII, n° 469, p. 191-3.

² Lehmborg, *Reformation Parliament*, p. 196-9.

³ *LP*, vol. VII, n° 420.

⁴ *Ibid.*, n° 470 ; British Library, Cotton MSS, Nero B III, f°118.

⁵ The envoys were instructed to urge Francis to « ... withdraw himself from the bishop [of Rome] and adhere unto us. » He was to be informed that Clement had fitted out eight galleys to serve the imperial fleet. The instructions were again drafted by Wriothesley and corrected by Cromwell, *LP*, vol. II, n° 470.

⁶ Bibliothèque Nationale, MS français 3005, fos. 131-2. I am grateful to Dr David Potter for this reference. The degree to which Henry's actions conflicted with divine law was to reach a more critical point later in the year, when in the Act 26 Henry VIII, c.1, the phrase « in earth » qualifying the royal supremacy over the Church was substituted for the saving clause, « so far as the law of Christ allows », inserted by Convocation in 1531. If Francis was canvassed on this alteration, no record of his opinion on it has come to light.

Parliament stood adjourned from 30 March 1534 to 3 November 1534, and early in the new session the king's title of Supreme Head of the Church in England was endorsed by statute without qualification. Papal jurisdiction was thereby abolished, though parliament did not formally extinguish the spiritual and temporal authority of « the bishop of Rome » in the realm of England and the king's dominions until 1536, with the Act 28 Henry VIII, c.10¹. By that time the French alliance had ceased to be of any relevance to the progress of what had become an irreversible jurisdictional revolution. Two events in October 1534 had had a momentous impact on French foreign policy and conspired to undermine the Anglo-French entente. With the election of the Farnese Paul III as pope in succession to the Medici Clement VII, Francis lost influence at Rome ; and the Affair of the Placards in Paris earned him an international reputation as a persecutor of religious radicals far more severe than Henry². Within a decade of the exchanges of 1533, the kings were again at war with each other.

Henry's expression of confidence in August 1533 in the competence of acts of parliament has to be understood in the context of his chequered relations with France, but although he found it opportune to articulate it on this occasion it had been his settled conviction for some years. In Henry's eyes, the endorsement of statute law vindicated his policy and gave it the legitimacy that the papacy denied him. The concept of « the crown in parliament » formulated in these years became one of the most compelling arguments deployed in the official apologetics of the Henrician Reformation. There is perhaps a sense in which the schism was a *pis aller* : the rejection by Rome was a hard pill to swallow, and it is difficult to locate the precise point at which policy came to be driven by a determination to assert his independence whatever the consequences. According to a modern historian of the Reformation Parliament, the Act of Appeals « ... was a turning-point opening the door to more sweeping change than its authors foresaw or its supporters intended³ ». George Bernard, on the other hand, contends that « ... there is an essential continuity between the threats of 1527 and the logic and philosophy underlying the

¹ Elton, *Tudor Constitution*, p. 356-8.

² Knecht, *Renaissance Warrior*, p. 236, 313-21, 330.

³ Lehmborg, *The Reformation Parliament*, p. 175.

parliamentary statutes of 1533–35¹ ». This is surely to underestimate the degree of improvisation inherent in Henry's strategy and to ignore the significance of the contingency measures enacted in parliament in 1532 and again in 1534 to allow for alternative scenarios. Thomas Cromwell is generally credited with responsibility for the management of parliament from 1532 until his fall in 1540, though he evidently organized the legislative programme under the king's direction. One of the stratagems adopted in their collaborative campaign was the « enabling clause » added to bills in their final reading in either house, a time-honoured device to give the king a discretion to make law, to authorize further reform, or to suspend or repeal what had already been enacted without returning to parliament to obtain its sanction². As we have seen, the first important use made of an enabling clause for a political purpose was in the « conditional » Act of Annates in 1532³. It effectively defused real and potential opposition to Henry's designs in the Commons and allowed him freedom to manoeuvre in diplomacy ; the Act's provisions were later confirmed by letters patent attached to the parliament roll, and this gave statutory sanction to what had been decided in the interval. By these means as well as by controlling attendance and the direction of debates in both houses, crucial changes were introduced from 1532 onwards in a tractable assembly, and constitutional legitimacy was conferred upon what might otherwise have had the semblance of arbitrary government. Radical changes were brought about without departing from the traditional principle of jurisprudence that the function of parliament was not to make new law so much as to reveal or restore the *status quo ante* – in this case, the situation that prevailed before the

¹ G. W. Bernard, *The King's Reformation : Henry VIII and the Remaking of the English Church* (London, 2005), p. 72.

² The most notable provision made for the use of this legislative discretion was in the case of the Act of Proclamations of 1539 and the so-called « second Act of Union » of Wales with England in 1543 : these were the *loci classici* of the later modern practice of delegated legislation by the legislature to the executive which Victorian constitutional lawyers dubbed the « Henry VIII clause ». In the previous acts of 1536-9 for reforming the administration of Wales, the use of enabling clauses reflected the way in which policy was improvised before the character of the final settlement was determined, P. R. Roberts, « A Breviat of the Effectes devised for Wales », in *Camden Miscellany*. 26 (Camden 4th ser., vol. 14, London : Royal Historical Society, 1975), p. 31–6 ; P. R. Roberts, « The “Henry VIII clause” : Delegated Legislation and the Tudor Principality of Wales », in *Legal Record and Historical Reality*, ed. by T. G. Watkin (London, 1989), p. 37-49.

³ See note 11 above.

usurpation by the bishop of Rome of the traditional prerogatives of English kings¹. Parliament's concurrence in the enhancement of the king's authority was complemented by the enforcement of the reformation changes through the systematic prosecution of offences against the new statutes in the king's courts of common law².

The king's comment on statute law as recorded in 1533 does not in itself prove that the use of parliament to effect the changes had been his own idea, or that he arrived at this realization unaided or untutored by his councillors. The question that has exercised two generations of historians is the respective contribution that the king and his minister, Cromwell, made to the making of the English Reformation. Did Cromwell show Henry a way out of an impasse by persuading him that the surest way to resolve his problem was to proceed by parliament and statute ? According to the late Sir Geoffrey Elton, who does not refer to the exchanges between the two kings at this stage in any of his publications, Henry had been brought to this frame of mind by Cromwell after he was appointed to the royal Council in 1531. Elton claimed that Cromwell was responsible for most if not all the initiatives in policy-making that issued in legislation in the Reformation Parliament³. Other modern historians of the reign, from J. J. Scarisbrick, writing 40 years ago, to George Bernard, have placed the king centre-stage as the deviser, if not the only-begetter, of the major concepts and policies that were realized in the 1530s⁴.

¹ For the view that parliament's constitutional function in the English Reformation was not revolutionary, see G. W. O. Woodward, « The role of parliament in the Henrician revolution », *Schweizer Beiträge zur Allgemeinen Geschichte* 16 (1958), p. 56-65 ; reprinted in *Studies presented to ICHRPI*, XX (1959), p. 15-24, and in *Government in Reformation Europe*, ed. by H. J. Cohn (London, 1971), p. 113-25.

² G. R. Elton, *Policy and Police : the Enforcement of the Reformation in the Age of Thomas Cromwell* (Cambridge, 1972), which argues against the claim that Cromwell conducted a « reign of terror » in implementing the changes.

³ Elton's faith in Cromwell as a far-seeing statesman is affirmed in all his writings ; e.g., in *England under the Tudors*, p. 128-9 : « ... in the last analysis it was he who founded the modern constitutional monarchy in England and organised the sovereign national state ».

⁴ Bernard, *The King's Reformation, passim*. Bernard does not discuss the exchanges between Henry and Francis in 1533. Scarisbrick concludes that « ... as far as the central even of the 1530s is concerned, namely, the establishment of the Royal Supremacy, he [Cromwell] was the executant of the king's designs. » J. J. Scarisbrick, *Henry VIII* (London, 1968), p. 304.

In his reconstruction of the drafting of the bill of Appeals in 1532–33, Elton goes so far as to claim that Henry

... throughout ... tried to avoid any suggestion that in some way his supreme authority depended on an act of Parliament. He always preferred to deal through « *his* » clergy, very much in contrast to Cromwell whose faith in the power of statute took time to win Henry's full allegiance even after the decision to proceed radically had been taken¹.

Even if we accept the main conclusion of Elton's analysis, that the minister was mainly responsible for framing the bill, it looks as if the king was fully persuaded by 1533 of the importance of statute law as a means to attain his ends². In fact, as Professor Scarisbrick demonstrated in his critique of Elton, Henry had arrived at this conclusion as early as September 1530, when he told the imperial ambassador, Chapuys, that he would never submit to a papal adjudication of his matrimonial case. If Pope Clement disallowed a resolution by English judges, he declared, « I will appeal to Parliament for a decision which that body cannot fail to give³ ». Professor Bernard maintains that Henry threatened the pope with unilateral action in 1527, and in 1529 various ambassadors' letters reported his resolution to settle the divorce question by the advice of the council and parliament if it was not determined in his favour at Rome. Henry had therefore expressed an interest in consulting parliament before Thomas Cromwell was in a position to advise him : he entered the royal service early in 1530 and was sworn of the king's

¹ Elton, *Reform and Reformation*, p. 176. Cf. G. R. Elton, « The Evolution of a Reformation Statute », in Elton, *Studies in Tudor and Stuart Politics and Government*, 4 vols (Cambridge University Press, 1974-92), vol. II (1974), p. 82-106.

² Since parliament consisted of the three estates of the realm – crown, lords and commons – there was never any suggestion that his supremacy depended on an assembly conceived of in the modern sense as a separate institution.

³ Scarisbrick, *Henry VIII*, p. 294. His view is supported by the analysis of the contents of the « *Collectanea satis copiosa* » by G. Nicholson, « The act of appeals and the English Reformation », in *Law and Government under the Tudors*, ed. by C. Cross, D. Loades and J. J. Scarisbrick (Cambridge, 1988), p. 19–30. In discussing the significance of the Act of Appeals, Scarisbrick contends that neither the king nor Cromwell « discovered » parliament ; they used it because they had no alternative. Statute law was already the highest form of law in the realm ; what was novel in the 1530s was the claim that, in the autonomous « empire » of England, it was omniscient. Scarisbrick, *Henry VIII*, p. 394 n. 1.

Council at the end of the year¹. The precise role that parliament was expected to play is not specified in the diplomatic correspondence, and there is nothing to indicate that new legislative instruments were seriously considered to put pressure on Rome before 1532².

The king may have received advice to use parliament from a source outside the Council. Radical political theories about the unitary state and the supremacy of statute were in circulation at this time among the common lawyers in London. They were publicised in print by Christopher St German in his *New Additions*, an appendix added in 1531 to his tract, *Doctor and Student*, though in the present state of the evidence it is difficult to establish with certainty whether his writings attracted the attention of the king or Cromwell to help shape the making of policy and laws. Elton concedes that St German formulated « ... a philosophy so like Cromwell's practice that he has been thought of as the minister's intellectual guide. There is, however, no evidence of "influence" or even acquaintance³ ». John Guy has been more confident in attributing the inspiration for the concepts behind the reforms to St German, who began « ... to articulate the sovereignty of the king-in-parliament – the theory that erected the English Reformation⁴ ». It looks as if Henry VIII, in his conversation with Chapuys in 1530, had anticipated even this seminal statement of the paramountcy of statute law. The evidence is circumstantial, but there is a distinct possibility that what St German may have contributed to the debate was a common-lawyer's pragmatic argument that parliament could be used, not only to enforce the reforms throughout the realm but, as Guy argues, to « ... legislate in defiance of papal anathema and Roman custom⁵ ». It may be that the acts passed in parliament from May 1532 onwards adopted a more radical

¹ *Oxford DNB*, s.v. « Thomas Cromwell » by H. Leihead.

² In support of his claims Bernard cites an undated draft bill providing for the hearing of the cause to be transferred from the legatine tribunal in London to the jurisdiction of the English archbishops. However, there is no evidence that this abandoned measure had been prepared for introduction into the first or the second session of the Reformation Parliament, National Archives, SP2/N, fols 155-60v; Bernard, *The King's Reformation*, p. 37-43 & n. 241.

³ Elton, *Reform and Reformation*, p. 159.

⁴ J. Guy, « Thomas More and Christopher St German : the Battle of the Books », in *Reassessing the Henrician Age : Humanism, Politics and Reform, 1500-1550*, ed. by A. Fox and J. Guy (Oxford University Press, 1986), p. 100-02. See also p. 151-78 for Guy's reappraisal of Cromwell's contribution to the formulation of the royal supremacy and « *imperium* ».

⁵ *Ibid.*, p. 101.

approach to the problem because the king had by then been assured of the righteousness of his cause by a cogently argued statement in print of a principle with which he was already familiar.

Another significant constitutional change can be traced to these years. The procedures whereby the recognition of the royal supremacy over the Church in England was registered first in Convocation and then in parliament caused a shift in the relative authority of the two assemblies that was not to be reversed until the Reformation statutes were repealed in Mary I's reign. One modern commentator on the Supplication against the Ordinaries has suggested that the Reformation allowed Henry VIII «to continue his role of arbiter between clergy and laity», but it is important to remember that the commission to revise the canon law (to consist equally of laymen and clerics), promised in Convocation in 1532 and enacted in parliament in 1534, was never appointed¹. Convocation met at the same time as parliament, but after the Reformation it was never again to be accorded a comparable institutional status. There were to be later attempts in Protestant regimes at adjusting the balance between the estates by restoring clerical standing in parliament : on the accession of Edward VI, and again in 1603, petitions were presented to the upper house of Convocation that the «inferior clergy» should have representatives in the Commons to complement the presence of the bishops in the Lords, but these were not favourably received².

The uncovering of documentary evidence that has been overlooked in the interpretations expounded in recent historical literature serves to throw fresh light on the contribution of king and minister to the creation of the Church of England and the redefinition of sovereignty in the Reformation state. Far from being a stale controversy, this debate retains its centrality in any account of the high politics of England in the early sixteenth century. It would be a mistake to accept the teleological view that Henry had been determined to break with Rome from the beginning, or the one that the major statutes of the Reformation Parliament which cumulatively cut the links with Rome proceeded with an inexorable momentum. The suggestion to be found in some historical accounts that schism was

¹ Cooper, « The Supplication against the Ordinaries Reconsidered », p. 641.

² It was claimed that when the division into two houses of parliament emerged in Edward III's reign, the clergy sat in both houses and granted subsidies along with the temporality, Gilbert Burnet, *History of the Reformation of the Church of England*, 7 vols (Oxford, 1865), vol. II, p.103-7. For the commission, see note 6 above.

unavoidable rests on the dubious premise that Henry was averse throughout to any accommodation with the papacy. In the event, the alliance with France did not help him to realize his ambition, which was achieved instead by resorting to a statutory re-formulation of the royal prerogative. In the course of his exchanges with Francis, Henry expressed his confidence in the sovereignty of the crown in parliament in the most explicit acknowledgement that has survived on record of what statute law could accomplish to resolve his matrimonial problem. He was to voice this conviction again in 1543, three years after Cromwell's fall, in his often quoted but little understood pronouncement addressed to a parliamentary delegation consisting of the Lord Chancellor, the Speaker and other dignitaries : « ... we be informed by our judges that we at no time stand so highly in our estate royal as in the time of parliament¹ ». This was the secular belief that underpinned the radical solution found to « the king's great matter » through the use of legislative instruments to create an autonomous Church within an integrated state free of external controls.

¹ The immediate context was the recognition of the privileges of parliament in Ferrer's case, from Holinshed's *Chronicles*, cited in Elton, *Tudor Constitution*, p. 270.