Sovereignty, Supremacy and the Origins of the English Civil War

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Abstract
This article integrates the concept of sovereignty with religious perceptions of misrule in the years leading up to the English Civil War. Existing revisionist narratives have emphasized the consensual nature of early Stuart political culture, especially the central role of the 'common law mind' in determining the proper place of potentially rival political vocabularies of natural law, civil law and absolutism. This article argues alternatively that the concept of sovereignty and in particular the contested relationship of sovereignty to ecclesiastical governance stood at the centre of the emerging conflict. The primary mode of 'opposition' to the policies of Charles I's personal rule (1629–40) was erastian: it presumed that control over the doctrine and discipline of the established church was for all intents and purposes a mark or right of sovereignty in the same manner as power of war and peace, power of appointing magistrates, or coinage. Seen in this light the ecclesiastical innovations of the personal rule constituted a treasonable attempt on the part of the Laudian episcopate to erect an ecclesiastical state within a state. The English Civil War was a war of religion in the sense that a significant number of those who waged it operated under the assumption that religion was the rightful provenance of the civil magistracy of king in parliament.

I

The concept of sovereignty has fallen into considerable dispute among historians of the English Civil War. With some very notable exceptions, historians of the last two decades have portrayed the concept as alien, 'un-English' and even anachronistic. Under the predominant revisionist scheme early Stuart political life constituted itself in terms of a 'common-law mind' or mentality that privileged historically derived, customary forms of argument above those flowing from natural law and the direct appeal to reason unmediated by custom. A common law based consensus kept potentially rival political vocabularies of civil law, natural law and absolutism in their rightful and limited places where they posed no threat to landed property. This set of circumstances
prevailed until the abuses of Charles I’s personal rule (1629–40) eroded it to the point where hostilities became imaginable. The English Civil War was less an ideologically-driven ‘outbreak’, a struggle for sovereign power in the state, than a ‘breakdown’ of a broad procedural consensus resulting from the abuses of an increasingly distant and mistrustful monarch.¹

This article integrates the concept of sovereignty with religious perceptions of misrule in the years 1640–4. The aim is to reposition the concept of sovereignty at the centre of discussion on the origins of the English Civil War. Without making any allusions to babies and bath water, the argument will retain certain features of the revisionist account outlined above. The English Civil War was, indeed, a struggle for sovereignty in the state, but it was not a struggle driven by rival accounts of the origins and location of the law-making power – the classic Whig position often associated with J. H. Hexter and more currently Johann Sommerville.² The issue was less the location of sovereignty than its practical definition as a cluster of positive or ‘state’ powers. This struggle was as much for the definition as for the actual control of these powers. Its nature was, of necessity, ideological: individual actors trotted out an array of concepts aimed at persuading the fence-sitters and the undecided that one particular set of political actions and arrangements was more attractive than another. The struggle, however, was not carried out from ideological poles.³ Participants drew on a range of inter-subjectively shared


assumptions about the nature of both the lawful and political. Indeed, the finite resources with which early Stuart polemicists fashioned their arguments meant that an imperfect conceptual consensus inevitably underpinned the ideological conflicts leading up to 1642. Furthermore, in continuity with existing revisionist accounts of early Stuart political culture, the goal of political thought and action remained the achievement of consensus. The personal rule of the 1630s and the civil wars that followed were not the product of an ideologically polarized Jacobean polity. These events were themselves the cause of the deeper ideological polarities that emerged later in the seventeenth century. In the early 1640s events drove ideas and not the other way around.\(^4\)

II

‘Sovereignty’ was, in the lexicon of the period, not necessarily a particular theory or body of theories, but a commonplace concept that formed an integral part of a shared stock of assumptions about politics and political life; it possessed no precise definition. Perhaps the closest to a ‘standard’ definition of sovereignty was that offered by the French jurist, Jean Bodin, whose principal work appeared in English in 1606 as *Six Bookes of a Commonweale*. Bodin envisioned nine ‘marks’ of sovereignty including most notably power to ‘give law’, power of war and peace and the making of foreign alliances, power of taxation, appointing magistrates, and coinage.\(^5\) However, English civil lawyers also arrived at varying conceptions of the rights and marks of sovereignty independently of Bodin through a direct engagement with Roman law sources. Brian Levack has noted a greater willingness among English civil lawyers than common lawyers to attempt a systematic, practical definition of sovereignty, but there is ample evidence that common lawyers were very much privy to this sort of thinking as well.\(^6\) In fact, the exposure of leading common lawyers of the time to Roman law sources is indisputable. Individuals such as Sir Edward Coke, John Selden and Sir John Davies were certainly familiar with Roman law and, in the case of Davies, Hans Pawlisch has suggested that the myth of common-law insularity and distinctiveness was just that – a myth, albeit a powerful one. When the royalist judge David Jenkins, a common lawyer of Grey’s Inn, writing in the 1640s, offered a definition of sovereignty as ‘the power of the Militia, of coyning Money, of making leagues with forraigne Princes, the power of Pardoning, of making Officers etc.’ he was simply repeating a commonplace.\(^7\) Indeed,

\(^4\) The argument presented here is in this sense fundamentally opposed to that of Sommerville. See Sommerville, *Royalists and Patriots*, p. 225.


Thomas Hobbes, while undeniably original in his marriage of the new mechanistic science and classical humanist rhetoric in *Leviathan*, also operated within an accepted conceptual framework in laying out his twelve rights of sovereignty.\(^8\)

Like most hard-working concepts in political life, sovereignty was frayed at the edges – sometimes with dire consequences. For example, the distinction between legislative and judicial powers was obscure. This situation was rendered even murkier by the revival of parliamentary judicature in 1621. When parliament impeached Giles Mompesson it opened a Pandora’s box of jurisdictional conundrums. Parliament was at once court, council and legislature with none of these roles and functions clearly differentiated. The practices of the personal rule of 1629–40 – a period in which parliament did not sit – confused rather than clarified the issue. Parliament was effectively excluded from all governing functions and the judicial functions of the Privy Council became blurred with its role in issuing executive orders. In the absence of new statute, the proclamations and orders of king in council became *de facto* legislation.

Nowhere was this confusion more marked, however, than with respect to religion – an issue that Bodin, writing during the French Wars of Religion of the later sixteenth century, may have judiciously neglected at times. The English, as usual, proved to be less judicious. For example, as early as the 1530s the common lawyer, Christopher St German, envisioned a parliamentary conception of the Royal Supremacy in which control of the doctrine and discipline of the established church fell to the king *in parliament*.\(^9\) The act for submission of the clergy of 1534 (25 Henry VIII, c. 19) had only specified that canons of the church could not be made, promulgated or executed ‘unless the King’s most royal assent and license’ be given.\(^10\) However, subsequent generations of English jurists revealed a pronounced tendency to interpret ‘king’ as a legal expression as ‘king in parliament’. Sir Thomas Smith, writing in the 1560s, included among parliament’s powers the authority to ‘establisheth forms of Religion’.\(^11\) That Smith was a civil lawyer by training suggests that common lawyers did not hold a monopoly on this view.\(^12\)

The spread of a new, more militant Counter-Reformation Catholicism during the final decades of the sixteenth century and the subsequent discovery of the Gunpowder Plot early in the reign of James I contributed


to a hardening of English views on the Royal Supremacy. The 1570 Papal Bull against Elizabeth, *Regnans in excelsis*, was the key catalyst. This bull had, first, excommunicated the English queen; secondly, declared ‘her to be deprived of her pretended title . . . and of all lordship, dignity and privilege whatsoever’; and thirdly, absolved her subjects from their oaths of ‘fealty and obedience’. Subsequently the 1570s, 1580s and 1590s saw a growth in Jesuit and seminary priest activity on English and Irish soil, rebellion in Ireland (1579–83, 1594–1603), and Armada (1588). From 1570 onwards the Tudor polity and the Tudor church were under siege from without from the forces of Counter-Reformation. With Elizabeth beyond childbearing years, and the religious views of her heir, James VI of Scotland, uncertain, the role of parliament as a bulwark against the Counter-Reformation increased. For example, in 1571 parliament confirmed the 39 Articles of the Church passed by the Convocation of 1563 and required that all clergy subscribe to them. Parliament also passed additional treason statutes that included provisions making it treasonable to bring in or attempt to promulgate papal bulls. Additional treason statutes followed in 1581 and 1585, the latter aimed specifically at Jesuits, seminary priests, and those that harboured them. After a brief respite early in the reign of James I the revelation of the Gunpowder Plot in 1605 and the assassination of Henry IV of France in 1610 saw old tensions re-emerge with a vengeance. Unsurprisingly, in 1606 the civil lawyer and historian, John Hayward, defended the Royal Supremacy as a mark of sovereignty in language clearly evocative of Bodin.

Nevertheless, controversies concerning the supremacy persisted throughout the seventeenth century. The canons of 1604, which among other things stipulated the wearing of copes (Canon 24), significantly did not receive parliamentary approval. As a result their authority was subject to dispute throughout the first half of the century. For example, early in the Long Parliament Robert Holborne cited numerous precedents for the making of canons without parliamentary approval from before the Reformation as well as those made ‘King James his time’. He argued that ‘such canons as weere directly against law were void; but such as constitute indifferent things are not against law but ought to binde’. For critics such as John Pym, Oliver St John and their ally Sir John Maynard,
however, this was tantamount to popery. Maynard countered Holborne, arguing that ‘those who would bind us by the Canons of the clergie doe use the verie arguments the Pope did to raise his own power’.18 That the king was supreme in religious affairs was generally accepted. The institutional mode through which the king exercised his supremacy, convocation or parliament, remained subject to heated debate.

If the sixteenth century marked a decline in clerical and episcopal influence and prestige in the English polity, the Laudian ascendancy of the 1630s marked a clear attempt at reversing that trend through the restoration of church property, the renovation of cathedrals, and the ‘beautification’ of worship. The long-term objective of the Laudian programme was not the restoration of the Catholic faith in England, but the reform of the Roman church after the episcopal pattern of the English church. While Laud and his circle carried out these changes under the rubric of ‘reforming’ rather than ‘re-catholicizing’ the established Church, to those who envisioned a more Genevan church settlement, the ‘Laudian Style’ was tantamount to popery.19 It was, in the words of John Pym, ‘an Applying of us towards a conversion to Rome’.20 ‘Godly Bishop’ meant popish bishop.21 In the years 1640–2 men like John Pym, Oliver St John, John Hampden, Sir John Maynard, and the future royalist, Edward Bagshawe, looked not to presbyter or sectary but to the civil magistracy of king in parliament to advance and defend the true reformed religion.22 Erastianism became the key.

III

The term ‘erastianism’ is a somewhat nebulous concept pertaining to a particular ideological position on the relationship of church and state. It is clear that, on the eve of the English Civil War, the power to alter and determine the doctrine and discipline of the Church of England constituted, in the eyes of many English civil and common lawyers, a mark of sovereignty. Like most marks of sovereignty in the seventeenth century the nature of the supremacy was subject to dispute. For example, the ideological position of Laud’s accusers at the start of the Long Parliament was erastian. Erastianism, according to William Lamont, ‘is now understood as the claim of the secular power to control belief; it carries with it pejorative connotations of a cynical indifference to moral questions’. Unsurprisingly, it is an ideological position usually associated with

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18 Notestein, D’Ewes, p. 155.
22 Edward Bagshawe, Two Arguments in Parliament, the First Concerning the Cannons, the Second Concerning the Praemvniire upon those Cannons (1641).

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that well-known seventeenth-century monster, Thomas Hobbes. Lamont, following J. N. Figgis, has argued that this was in fact an inaccurate representation of Erastus’s views and that the central concern of Erastus and his followers was ‘with the question of how to enforce ecclesiastical discipline in a state that was uniform in religion’.23 Erastus, writing in the mid-sixteenth century, did not presume that the secular magistrate had any power to define belief or doctrine.24

Figgis, however, allowed that the term ‘erastian’ meant something more expansive in the context of seventeenth-century England, encompassing the right to define and determine doctrine as well as the enforcement of ecclesiastical discipline.25 Thus, the working definition of erastianism is simply the view that power to determine doctrine and exercise discipline within the Church of England rested ultimately with the civil magistrate, whether that be king, parliament or king-in-parliament, rather than with any ecclesiastical body, whether episcopal or Presbyterian. To a parliamentary erastian such as William Prynne this meant in practice that acts of the convocation were subject to parliamentary judgement and approval. Furthermore, questions of doctrine, as well as discipline, were the proper jurisdiction of the civil authority of king in parliament. This position opposed that which was essentially clerical: Laud at his trial appears to have been willing to grant to the civil authority of king in parliament powers of discipline but reserved doctrinal questions to the clergy of the church assembled together in convocation.26 Indeed, erastianism in this sense stood against both the pretensions of the Laudian episcopate to hold and exercise the powers of their offices iure divino, directly from God by apostolic descent, and against the similar iure divino claims of Scottish Presbyterianism on behalf of the assembly of the kirk for a very different, yet also very clerical, form of church government.27

For an erastian such as John Selden the view that religious affairs were ultimately the jurisdiction of the civil magistrate did not derive from any sort of eschatological vision predicting the defeat of the Anti-Christ and the establishment of what Lamont has called ‘Godly Rule’. However, for the younger more ‘Puritan’ erastians such as William Prynne, with whom Selden allied himself in the Long Parliament against the Westminster Assembly in 1643–6, this was not so. Lamont has argued that both

erastian and clerical positions in the 1630s and 1640s were united by a common set of eschatological expectations but were divided on the means of achieving ‘Godly Rule’. The former sought to achieve the defeat of the Anti-Christ and the millennium through the agency of the civil magistrate while the latter sought the same end through clerical rule. 28

Erastianism did not necessarily entail that the civil magistrates be left to their own devices in making judgments concerning doctrine. A printed speech of Oliver St John dated 17 January 1642 suggested that the erastian position was sensitive to the complications that could arise in the determination of doctrinal issues. 29 Speaking to the impeachment of the twelve bishops on charges of misdemeanour and treason, St John argued that the bishops should not have votes concerning Religion, or any ways to intermeddle or give advise touching temporall affaires. 30 He objected vigorously to bishops issuing writs and warrants in the ecclesiastical courts in their own names and not in that of the king. 31 Nevertheless, St John qualified his remarks, suggesting ‘that it may be necessary for Bishops to sit in Parliament to give their advise in points of Divinity concerning Religion’ in much the same way that the learned judges of the law were summoned to deliver opinions on points of law during impeachments and other instances of parliamentary judicature. 32 Episcopacy was of humane rather than divine institution and the bishops would serve in a merely advisory role to the civil magistrate.

Late in the nineteenth century Figgis argued that the idea of the divine right of kings acted in the wake of the Reformation and Counter-Reformation as a bulwark protecting the British monarchies against the growing pretensions of the papacy to power held iure divino and later on to rebut the similar iure divino claims of Presbyterianism. 33 In particular, western European monarchs directed the theory towards claims that the popes possessed a power to depose princes and absolve subjects from their allegiance. 34 Because kings held their powers directly from God and not

28 Lamont, Godly Rule, chs. 3 and 5.
29 Interestingly, this speech was in fact made against Laud’s rival, Archbishop John Williams, one of the twelve bishops impeached by the Long Parliament in 1641 and a man characterized by Nicholas Tyacke as a ‘Calvinist in doctrine’. The Laudians did not have a monopoly on the idea of a separate clerical sphere of influence nor were they the sole targets of the anticlerical sentiment in the early Long Parliament: Nicholas Tyacke, Anti Calvinists: The Rise of English Arminianism 1590–1640 (Oxford, 1986), p. 209; Nicholas Tyacke, ‘Puritanism, Arminianism, and Counter Revolution’, The Origins of the English Civil War, ed. Conrad Russell (1973), pp. 119–43.
30 Master St. John His Speech in Parliament on Monday January the 17th An. Dom. 1641. Concerning the Charge of Treason then Exhibited to the Bishops, Formerly Accused by the House of Commons (1642), sig. A3v [hereafter Master St. John His Speech]; I would like to thank John Morrill for drawing my attention to this tract; for St. John and erastianism see Valerie Pearl, ‘Oliver St. John and the “Middle Group” in the Long Parliament: August 1643–May 1644’, English Historical Review, lxxxi (1966), 500–1.
31 Master St. John His Speech, sig. A3r.
33 Figgis, Divine Right, ch. 8; for a more recent discussion of the divine right of kings see Glenn Burgess, Absolute Monarchy and the Stuart Constitution (1996), ch. 4.
34 Elton, Tudor Constitution, p. 427.
through the mediation of the papacy, there could be no power in the pope to deprive kings of their crowns. To subject the powers of the king in church and state to those of the pope was not merely a praemunire but treasonable. It was treason according to both Roman and English law because it raised an earthly power above that of the king. The derogation of the king’s sovereignty in ecclesiastical affairs was every bit as treasonable as levying war in his name without his commission.

The *State Trials* are replete with evidence supporting the contention that this view was nothing new in the years leading up to civil war. In the case of Sir William Talbot (1613), his accusers charged that the Irish lawyer then Recorder of Dublin, had treasonably adhered to the doctrines of the Jesuit resistance theorist Suarez, ‘that he maintaineth . . . a power in the pope for the disposing and murdering of kings’.35 The veracity of the charges against Talbot is irrelevant here. What is important is that ‘popish power’, by its very definition, meant the power to absolve subjects from their lawful allegiance to their sovereign and depose them; furthermore, deposition meant death.36 This was clear: Sir Francis Bacon’s argument in *Peacham’s Case* (1615) equated compassing the king’s deposition with compassing his death and William Prynne, writing in opposition to the king’s trial in early 1649, reaffirmed this construction.37 Thus, the papal usurpation of sovereignty suggested a particularly heinous meaning and necessarily fell under the first head of the statute of treasons of 25 Edward III as a constructive compassing of the king’s death.

IV

John Morrill has identified ‘three quite distinct and separable perceptions of misgovernment or modes of opposition’ to Charles I’s personal rule: the localist, the legal-constitutional, and, most importantly, the religious. According to Morrill, only the religious had the momentum and aroused sufficient passion to carry through to a civil war. Offences against property – ship money, coat and conduct, and forced loans – may have heightened tensions but they were not in and of themselves able to ignite the flames of revolt. ‘Popish’ innovations and idolatry in a parish church were a far graver matter altogether.38 Bagshawe aside, religious stances would


prove the most reliable indicator of allegiance in the years immediately after 1642. The royalist Sir Robert Holborne, who had acted as John Hampden’s counsel in the *Ship Money Case*, was probably more representative of how religious convictions factored into allegiance. Holborne vehemently opposed the king’s right to collect the extra-parliamentary levy of ship money as well as other fiscal expediencies of the personal rule such as tonnage and poundage. However, in December 1640 he defended with equal vigour the legislative autonomy of convocation in passing the canons of 1640 without parliamentary approval and the following November 1641 he staunchly defended the embattled episcopate during the Long Parliament’s proceedings against the twelve bishops. 39

To the Godly, however, religious ‘innovations’ and the reassertion of the clergy’s legislative independence posed a threat not only to material well-being but also to spiritual well-being. The spiritual health of the English polity was at stake along with the souls of every Englishman and woman.

The Morrill thesis has received pointed criticism from a number of historians including Ann Hughes, Johann Sommerville, and, more recently, David Cressy and Glenn Burgess. Hughes has emphasized the need for an ‘integrationist’ approach emphasizing, ‘framework of intimate integration and interaction between the centre and localities’. 40 Sommerville has argued that resistance to the ecclesiastical policies of the 1630s was necessarily grounded in constitutional theory and more explicitly that ‘Religious resistance was constitutional resistance.’ 41 Cressy has suggested that the localist and religious perceptions of misgovernment were in fact often one and the same. The progress of the reformation in England as on the continent was uneven and, as a result, at the parish level this left significant regional variations in the practice of worship. Local custom pertained as much to religious as political and other cultural practices. As a result, the Laudian episcopate’s attempts to impose uniformity and ‘beautification’ aroused widespread resentment in the localities because they displaced long-cherished local practices and customs. 42 Similarly, Burgess has argued that many English saw the Protestant religion as part of a heritable birthright guaranteed to them by the fundamental law of the land – the common law of England. The subversion of the law was also the subversion of the reformed religion that it protected from the forces of popery and Counter-Reformation. 43

The result of these contributions has been a gradual collapsing of

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Morrill’s tripartite division between localist and religious perceptions of misgovernment on the one hand and religious and legal-constitutional perceptions on the other.

This picture, however, is incomplete. Opposition could only harden and move into the practical sphere of political action when legal-constitutional issues became inextricably fused with the religious. The locus of this fusion was parliament. When the Short Parliament convened in the spring of 1640, parliament became the forum in which the grievances of the personal rule aired themselves. Pym’s famous speech to the House of Commons on 17 April 1640 outlined the grievances stemming from the personal rule under three heads: first, ‘Grievances against the priviledges and liberties of parliament’; secondly, grievances concerning ‘innovations in matters of religion’; and thirdly, ‘against the free propriety of our goods’. The first set of grievances flowed from the abrupt dissolution of parliament in 1629 before the redress of grievances, the subsequent imprisonment of several leading members including Sir John Eliot, and the ensuing exclusion of parliament from the governance of the realm for over a decade. The second referred to the ‘popish’ practices instituted during the Laudian ascendancy. These included, for example, the practice of bowing at the altar, the wearing of copes, and the placing of the communion table railed-in at the east end of the church. It also, however, significantly included the aggrandizement of the jurisdiction of the ecclesiastical courts and in particular that of High Commission. The third category encompassed such extra-parliamentary levies as ship money, tonnage and poundage, coat and conduct money, and the like.

Pym put forward his own tripartite division of the forms of misgovernment based on parliament, religion, and property or ‘Civill Goverment’.

The events of the Short Parliament reveal that Pym’s tripartite division was more formal than substantive. From the start Pym recognized the interdependence of parliamentary privilege and the spiritual well-being of the commonwealth:

The Parliament is as the soule of the common wealth, that only is able to apprehend and understand the symptomes of all such diseases which threaten the body politique. It behooves us therefore to keepe the facultyes of that Soule from distemper. And although Religion is in truth the greatest grievance to bee lookt into, after and alsoe should claime the precedence in that respect before either of the other Generalls. Yett insomuch [as] that

46 Proceedings, p. 151; Kenyon, Stuart Constitution, pp. 185–6.
47 Proceedings, pp. 151–2; Kenyon, Stuart Constitution, p. 186.
48 The accounts have certain nuances with the term ‘civil government’ reappearing in connection with property-related issues: Proceedings, pp. 149, 256; Aston, pp. 8–9.
The role of parliament in ecclesiastical governance was central because without free parliamentary debate on religious issues the true reformed religion could not flourish. An assault on the privileges of parliament represented not merely a threat to that body’s individual members but to the Protestant religion in England.

It was not long before parliament’s role as the Godly commonwealth’s guardian of the true reformed religion against ‘popish’ innovations came to the forefront. News of a commission from the king to the convocation house for the making of new canons on 22 April 1640 drew strong responses from both St John and Pym, who remarked upon hearing of the commission’s issuing, ‘that noe such commission may be executed till the house adiudged of it’ and that neither could any canons made in such a manner bind the laity. Parliamentary inspection of the commission on 24 April did nothing to quiet fears. John Hampden expressed concern over the extent and scope of the commission to make canons binding on the laity and argued that the commission constituted an ‘Inducement to Innovation’. Pym argued further that the canons of 1604 made without parliamentary approval ‘had produced ill effects[,] And therefore the Howse should nowe be more vigilant’. The issue was not simply innovations in religion or grievances against parliament flowing from the acrimonious dissolution of 1629 but parliament’s continued role in ecclesiastical governance and the maintenance of the Protestant religion in England.

Power over the doctrine and discipline of the established church came of age as a mark of sovereignty in the years 1640–2. As a result, Archbishop Laud’s actions in continuing the convocation of 1640 after the dismissal of the Short Parliament and the subsequent making of canons and the voting of ecclesiastical subsidy were not merely illegal but potentially treasonable. A century earlier Cardinal Wolsey had faced a mere praemunire for his subversions of the fundamental law. However, when the Long Parliament convened in the autumn of 1640, Laud for his ‘subversions’ faced not only charges of ‘divers High Crimes and Misdemeanours’ but also high treason. That Laud acted with the king’s leave, complicity, and even approval was conveniently overlooked. The king could do no wrong; therefore, Laud and other ‘evil counsellors’ such as

49 Proceedings, p. 149.
50 Aston, p. 51; see also Proceedings, p. 175.
51 Aston, p. 51; see also Proceedings, p. 175.
52 Proceedings, p. 175; interestingly it was Canon 24 of 1604 that called for the wearing of copes.
53 Coke 12 Rep. 40; 77 Eng. Rep. 1322 (KB); praemunire is a largely technical term relating to a type of legal action categorically distinct from misdemeanour, felony and treason that involved the usurpation of the king’s jurisdiction by either the convocation of the church or the ecclesiastical courts. I have dealt with these issues in detail in chs. 2 and 4 of Orr, Treason and the State; see also Elton, Tudor Constitution, p. 339.
Wentworth and Finch became fully accountable for their records during the personal rule. Although the 1604 canons provided a potential precedent for the 1640 canons, Pym, William Prynne, and the prosecution in Laud’s trial all discounted them for lack of parliamentary confirmation. Religion stood at the centre of the unfolding struggle for sovereignty and the specifically erastian context of the English Civil War took precedence.

Viewed in conjunction with these developments, the ramifications for the increasingly contested relationship of episcopate and civil magistrate become manifest. For example, the sixth of the original set of fourteen articles against Archbishop Laud drawn up well before the outbreak of hostilities in 1642 acquires a new significance. It charged that the prelate had:

traitorously assumed to himself a Papal and tyrannical power, both in Ecclesiastical and temporal matters, over his Majesty's subjects in this realm of England, and other places; to the disinhersion of the Crown, dishonour of his Majesty, and derogation of his supreme authority in ecclesiastical matters. And the said Archbishop claims the King's ecclesiastical jurisdiction, as incident to his episcopal and archiepiscopal office in this kingdom; and doth deny the same to be derived from the Crown of England; which he had accordingly exercised, to the high contempt of his royal majesty, and to the destruction of divers of the King's liege people in their persons and estates.

The assumption of papal power was necessarily treasonable. It presumed the erection of an autonomous sphere of clerical action over and above that of the crown – a rival pole of sovereignty. Laud’s treason was that he created an ecclesiastical state within a state.

Laudian attempts to alter the symbolic representation of civil and ecclesiastical power both in London and in the provincial centres also demonstrate the integral relationship between religious, localist and legal-constitutional perceptions of misrule. Notable among the particular proofs offered for Laud’s assumption of papal power were his attempts to alter the form of civic procession in St Paul’s London and a number of other provincial centres, most notably York. The issue was the hitherto accepted practice of bearing up the temporal sword in church during the Lord Mayor’s procession – something to which Laud vigorously objected and ordered to be stopped first in St Paul’s and then in the provincial centres. In the case of York the testimony of Alderman Thomas Hoyle

56 Bliss and Scott, Works, iii. 406.
was particularly significant. Hoyle recalled that an order of council board had forbidden the carrying up of the sword in York Minster and claimed that the order was by Laud’s procurement. He defended the practice of bearing up the temporal sword, stating that ‘Itt was carried uppe soe in the time out of minde of Man, and would have carried itt soe still butt they were over-ruled by the Recorder, and soe itt was carried downe.’ Sir John Maynard for the prosecution outlined similar incidents in Exeter, Chichester and most remarkably in Shrewsbury where Laud had withheld the grant of the city charter subject to the inclusion of a clause stipulating that ‘The sword might not be borne uppe in the Church.’

Hoyle, a former Lord Mayor of York and an MP for that city in the Long Parliament, was well known for his predisposition to ‘Godly’ Protestantism. He and his circle had been the target of Laudian attempts to enforce uniformity in the 1630s and his roles as Lord Mayor, Alderman, MP and ultimately ‘Godly’ magistrate gave him a perspective on the ecclesiastical innovations on the 1630s that was arguably representative of the prosecution’s basic position. He made use of the language of the ancient constitution handed down from time immemorial to defend a customary practice at the level of the locality. The Godly such as Hoyle cherished this customary practice because it had symbolized the relationship of church and state in a Godly Commonwealth. Long-cherished local practice symbolically represented the legal-constitutional relationship of church and state. Thus, a single set of incidents reveal that the perceptions of misgovernment and the languages used in their re-description were far from separable and distinct but closely linked and highly interdependent.

Unsurprisingly, the canons of 1640, passed after the dissolution of the Short Parliament, also loomed large in the proceedings against the archbishop and formed the basis of the fifth original and ninth additional articles. The fifth charged Laud with the composition and execution of the ‘pretended canons’ in which were contained ‘many matters . . . contrary to the King’s prerogative, to the fundamental laws and statutes of the realm, to the right of Parliament, to the propriety and liberty of the subjects, and matters tending to sedition, and of dangerous consequence; and to the establishment of a vast, unlawful, and presumptuous power in himself and his successors’. The latter part of the article concerned

58 The fullest account of Hoyle’s testimony in Worcester College, Clarke MS lxxi, 16 April 1644 (I cite the date of entry as this section of the MS is not foliated) [hereafter WC, Clarke MS lxxi]; see also HMC House of Lords, The Manuscripts of the House of Lords, Addenda 1514–1714, xi, n.s., ed. Maurice F. Bond (1962) [hereafter HMC Lords 11], p. 400.
59 WC, Clarke MS lxxi, 16 April 1644; HMC Lords 11, pp. 400–1.
62 Bliss and Scott, Works, iii. 404–5.
itself with the oath against popery stipulated in Canon 6 which was to be administered to all of the clergy and all the members of the universities, whether they be doctors of law, divinity or medicine, as well as all masters and bachelors of arts. This, of course, was a substantial section of the laity, putting the canons in direct conflict with Pym’s argument in the Short Parliament. Pym’s parliamentary conception of the Supremacy had insisted that in order for canons of the church to be binding on the laity parliament must confirm them.

The position of the prosecution was that canons in matter of doctrine should be subject to parliamentary confirmation. The canons of 1640 were essentially a confirmation of the Laudian programme of reforms of the 1630s. For Pym, St John, Prynne and like-minded erastians, they were nothing short of an attempt to entrench the ‘popish’ innovations of the personal rule. For example, Canon 7 had confirmed the communion table’s status as an altar, ordered its setting altarwise and the erection of railings around it. The oath against popery decreed in Canon 6, known as the *et cetera* oath, also stirred controversy. This oath enjoined the subject to swear that they approved ‘the Doctrine and Discipline, or Government, established in the Church of England, as containing all Things necessary to Salvation’ and that they will never give consent ‘to alter the Government of this Church, by Archdeacons, etc. as it stands now established, and as by Right it ought to stand’. For those opposed as a matter of conscience to the ecclesiastical innovations of the 1630s, these passages were more than a mere political setback. They were an imminent threat to the spiritual well-being of the kingdom.

A logical objection to the case presented here would be that much of the evidence is *ex post facto* – that the blending together of these perspectives on the personal rule occurred after the outbreak of the civil war and that until that catalyst emerged perceptions of misgovernment did indeed remain, as Morrill has asserted, separable and distinct. However, the first set of articles against Laud, including Article 6, his assumption of papal power, were presented well before the fighting commenced when the hope for a parliamentary reconciliation between king and people still held sway. Furthermore, many of the jurisdictional grievances that found their way into the articles of impeachment against Archbishop Laud were not new. Pym in his speech on grievances in the Short Parliament had...
charged that the ecclesiastical courts, particularly the High Commission, had encroached upon the king’s authority and claimed their jurisdiction ‘immediately from heaven’ by divine right.68

The similarity of the developments of 1640–2 with the events of Laud’s trial in 1644 is readily apparent. For example, one of the main proofs to the archbishop’s assumption of papal power was his obtaining of a new commission for that court with expanded powers of fining and imprisonment and a non obstante clause restricting appeals from that court.69

The charge of denying appeal from the High Commission was potentially serious. Both the powers to mitigate the severity of the law and the right of final appeal were marks of sovereignty and the latter by its very definition could not be imparted to any inferior magistrate. Either the sovereign held this right or they were unmade as sovereign. There could not be two final appeals. Sir John Maynard, in summing up his remarks on 4 May 1644, argued that Laud’s actions during the personal rule were tantamount to ‘taking royall power out of the Kinge’ and denying the king’s power to pardon and mitigate against ecclesiastical sanctions.70 The assumption of a separate forensic jurisdiction over and against that emanating from the crown constituted the erection of an ecclesiastical state within a state.

Both Pym and later Laud’s prosecutors were on well-prepared ground. The jurisdiction of the church courts and in particular that of the High Commission represented a long-standing controversy. Nicholas Fuller, in his 1607 Argument, openly questioned the statutory basis from which the High Commission drew its powers. Fuller argued that the statute of 2 Henry IV, cap.15 made for the suppression of Lollardy had been ‘procured by the Popish prelats’ and parliament had passed the statute ‘in time of darknesse (if not without the full consent of the commons yet to their great dislike)’.71 Furthermore, the Elizabethan settlement (1 Eliz. cap.1) had merely restored ‘to the Crowne the ancient Iurisdiction over Ecclesiastical and Spiritual Estate’ and that ‘the power to imprison subjects, to fine them, or to force them to accuse themselves upon their own enforced oaths . . . was no part of the ancient Ecclesiastical jurisdiction, nor used in England by any spirituall Iurisdiction, before the Statute of 2 Hen. 4 cap.15’.72 The High Commission did not enjoy the power to imprison, fine, or administer an ex officio oath that compelled the accused to testify against themselves. Significantly, Fuller’s tract was reprinted in 1641 amid the heightening debate on church government in the Long Parliament, and the fourth volume of Sir Edward Coke’s Institutes

68 Proceedings, p. 256; see also Aston, p. 8.
70 WC, Clarke MS lxxi, 4 May 1644 (note that this entry is in fact misdated as 30 April in the actual MS).
71 Nicholas Fuller, The Argument of Nicholas Fuller of Grayes Inne Esquire, in the Case of Tho. Lad, and Rich. Mansell his Clients (1641) [hereafter Fuller, Argument], sig. A2v, p. 3.
72 Fuller, Argument, sig. A1v–A2v, pp. 2–3; The Statutes at Large (18 vols., 1763–1800), i. 415–18.

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published on the order of the Long Parliament in 1644 reiterated much of its substance.\footnote{Sir Edward Coke, \textit{The Fourth Part of the Institutes of the Laws of England Concerning the Jurisdiction of Courts} (1644), p. 326.} The charges against Laud, therefore, constituted not merely a continuation of the process of redress of grievances begun in the Short Parliament and continued in the Long Parliament, but also a new chapter in a series of long-standing controversies between church and state. Most of these controversies were not new. However, by 1640 and the recall of parliament the heavy-handed ecclesiastical policies of the personal rule had given them a sharpness and violence that they had hitherto lacked.

VI

The English Civil War was a struggle for sovereign power – sovereign power understood as a cluster of loosely defined positive powers, themselves contested in definition. Many of these powers were relatively mundane and included the making or giving of law, the taxation of estates, the appointment of magistrates, the declaring of war and the making of alliances, and coinage. The governance of the Protestant religion in England, however, was most assuredly not among the more mundane of these powers. It was essential to the spiritual well-being of the commonwealth. Control of the doctrine and discipline of the established church was, for all intents and purposes, a right or mark of sovereignty and, more than mere legal sovereignty, it was the lynchpin of opposition to royal policy in the early 1640s. Power over souls was more important than power over lives, goods and estates, and the question of sovereignty and the issue of ecclesiastical governance flowed together, forming an explosive combination that ultimately led to civil war. The historian, John Hayward, writing in 1606 stated that: ‘it is necessarilie expedient, that they who beare the soueraigntie of [the] State, should alwaies manage the affaires of religion; either by themselves, or by some at their appointment within the same State; and neuer receiue direction and rule from a foraine power’.\footnote{Hayward, \textit{A Reporte}, sig. C1', p. 11.} William Prynne could not have said it better – arguably he never did. If the English Civil War was a war of religion, it was only because a significant number of those who waged it saw religion as the proper provenance of the state.