ARISTOTELIAN ANCIENT CONSTITUTION AND ANTI-ARISTOTELIAN SOVEREIGNTY IN STUART IRELAND*

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ABSTRACT. *Aristotelianism and anti-Aristotelianism are essential categories for the interpretation of political discourse in Stuart Ireland, Scotland, and England. In the 1650s, the Capuchin Richard O'Ferrall defined the future of the Irish kingdom by means of its past. This Irish ancient constitution was not anchored in J. G. A. Pocock's common law mind, but rather in Aristotelianism. Ancient constitution discourse in England and Scotland shared this Aristotelian basis. Responding to O'Ferrall, John Lynch, Catholic archdeacon of Tuam, employed openly anti-Aristotelian arguments which had been pioneered by the Jacobean attorney general for Ireland, Sir John Davies. Recognizing the Aristotelian and anti-Aristotelian nature of these discourses enables the incorporation of both Catholic and Protestant writers, whether educated in Ireland, England, or France, within a coherent account of political thought across the Stuart world.*

Kingship constituted the primary political discourse in seventeenth-century Ireland, whether that discourse took place among the half-starved rioters who roamed Ulster in 1641 or among the sleek nobles and gentlemen who welcomed the lord lieutenant to Kilkenny in 1649. Ireland was not exceptional in this; the same was true in Scotland and England. Preliminary treatments of the seventeenth-century discourse of king and kingdom in Ireland have revealed concepts and concerns substantially similar to those of early modern Scotland, resting on the international and trans-confessional foundations of humanism and scholastic philosophy.[1] However, historians have struggled to settle the question of the

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[1] Brendan Bradshaw, *The Irish constitutional revolution of the sixteenth century* (Cambridge, 1979); Tadhg Ó hAnnracháin, '"Though hereticks and politicians should misinterpret their goode zeal": political ideology and Catholicism in early modern Ireland', in J. H. Ohlmeyer, ed., *Political thought in seventeenth-century Ireland: kingdom or colony* (Cambridge, 2000), pp. 155–75; Bernadette Cunningham, 'Representations of king, parliament and the Irish people in Geoffrey Keating's *Foras Feasa ar Éirinn* and John Lynch's *Cambrensis Eversus* (1662)', in Ohlmeyer, ed., *Political thought*, pp. 131–54;

relationship between the English common law, the ancient constitution apparently derived from it, and political discourse elsewhere in Europe.[2] This article will attempt to open this problem up to a view from Galway, St Malo, and Rome. By adopting an approach analogous to that of the 'new British history', it will propose that Aristotelianism and anti-Aristotelianism provide a basic interpretative framework for all three kingdoms.[3]

The papal bureaucrat Richard O'Ferrall and John Lynch, Catholic archdeacon of Tuam, fought an intense book-battle between 1658 and 1667.[4] O'Ferrall offered his Roman patrons an ancient constitution for Ireland which incorporated a contract between the English kings and the pope. Since that contract had been broken by royal heresy, O'Ferrall wrote, the kingdom now reverted to the pope and was his to bestow on a suitable Catholic prince. The archdeacon, staunch for the Stuarts, did not quibble with the details of O'Ferrall's argument. Rather, he employed the anti-Aristotelian sovereignty theory of Jean Bodin and Sir John Davies to uproot completely the constitution which the Capuchin had described. Lynch, a generally conservative churchman committed to traditional humanism and the Aristotelian virtues, was thus driven to experiment with anti-Aristotelian doctrines in order to refute an opponent drawing on a highly esteemed historical tradition: in this he was a typically eclectic late seventeenth-century political writer.[5] The threat of O'Ferrall's treason, as Lynch saw it, and the uselessness of the Old English parliamentary tradition by the 1660s, even caused the archdeacon to embrace the champion of the New English Protestants, Sir John Davies, and the controversial parliament of 1613. Most importantly, a close reading of the debate between Lynch and O'Ferrall suggests that ancient constitution discourse itself was fundamentally Aristotelian.

Ian W. S. Campbell, 'Alithinologia: John Lynch and seventeenth-century Irish political thought' (Ph.D. thesis, Trinity College, Dublin, 2008), pp. 138–80; J. H. Burns, *The true law of kingship: concepts of monarchy in early modern Scotland* (Oxford, 1996).

[2] Glen Burgess, 'Revisionism, politics and political ideas in early Stuart England', *Historical Journal*, 34 (1991), pp. 465–78; idem, *The politics of the ancient constitution: an introduction to English political thought, 1603–1642* (London, 1992); idem, *Absolute monarchy and the Stuart constitution* (London, 1996); idem, 'England and Scotland', in idem, H. A. Lloyd, and Simon Hodson, eds., *European political thought, 1450–1700: religion, law, and philosophy* (London, 2007), pp. 332–75; J. P. Sommerville, *Royalists and patriots: politics and ideology in England 1603–1640* (2nd edn, London, 1999).

[3] J. G. A. Pocock, 'British history: a plea for a new subject', *Journal of Modern History*, 47 (1975), pp. 601–21; J. H. Ohlmeyer, 'The "old" British histories?', *Historical Journal*, 50 (2007), pp. 499–512.

[4] Eudoxius Alithinologus [John Lynch], *Alithinologia sive veridica responsio ad invectam mendaciis* ([St Malo], 1664); idem, *Supplementum alithinologiae* ([St Malo], 1667); Richard O'Ferrall and Robert O'Connell, *Commentarius Rinuccinianus, de sedis apostolicae legatione ad foederatos Hiberniae catholicos per annos 1645–9*, ed. Stanislaus Kavanagh (6 vols., Dublin, 1932–49) (hereafter *Com. Rin.*), v, pp. 485–504; Nienke Tjoelker and Ian W. S. Campbell, 'Transcription and translation of London version of Richard O'Ferrall's report to Propaganda fide (1658)', *Archivium Hibernicum*, 61 (2008), pp. 7–61; P. J. Corish, 'Two contemporary historians of the Confederation of Kilkenny: John Lynch and Richard O'Ferrall', *Irish Historical Studies*, 8 (1953), pp. 217–36.

[5] This last phrase is Greenberg's, see Janelle Greenberg, *The radical face of the ancient constitution: St Edward's 'laws' in early modern political thought* (Cambridge, 2001), pp. 34–5.

I

On 5 March 1658, O'Ferrall submitted a report on Irish affairs to the secretary of the congregation Propaganda Fide, the committee of cardinals charged with the evangelization of Protestant Europe and the wider non-Catholic world.[6] This report was a radical proposal for a reconstituted Irish church which would exclude those Irish Catholics of English descent, the Old English, from all authority.[7] As an instance of Old English wickedness, O'Ferrall offered their support for the illegitimate Stuart claim to Ireland. The report was leaked by his Italian superiors, who wished to be rid of the strident Capuchin, and caused uproar in the Irish church in exile. Moreover, O'Ferrall's attack on the Stuart right to Ireland earned the papacy a sharp protest from the royalist court in the Low Countries, probably composed by Edward Hyde, later earl of Clarendon.[8]

Before 1658, O'Ferrall had lived at the cutting edge of the church militant.[9] A Gaelic Irish nobleman who took the Capuchin habit late in life, he trained at Lille, Douai, and Charleville. O'Ferrall remained in France during the Ulster rebellion of 1641 and the foundation of the Catholic Confederation in 1642. He returned to Ireland in 1644, initially working to turn Ormond's Catholic troops to the confederate side, and later becoming superior of the Capuchin convent at Galway. While at Galway, he joined the circle of GianBattista Rinuccini, archbishop and prince of Fermo, and nuncio apostolic to the confederate Catholics of Ireland.[10] When Rinuccini excommunicated the supreme council of the confederation in 1648 for signing a ceasefire with the Irish Protestants, he sent O'Ferrall and other key servants to Rome to defend his actions. This was a role in which O'Ferrall excelled, and the Capuchin was quickly appointed expert witness to the congregation *propaganda fide*. When O'Ferrall fell from favour in 1658, he sought shelter under Rinuccini patronage in Florence where he composed the massive *Commentarius Rinuccinianus* with the help of his confrère Robert O'Connell. Finished in 1666, three years after O'Ferrall's death, this manuscript Latin history of Rinuccini's nunciature sought, through thousands of documents transcribed and translated from Rinuccini's papers, to convince its reader that the nuncio had been right in the 1640s and his confederate opponents wrong. This was set in a remarkable new narrative of Irish history which united a vision of Gaelic Irish blood-purity with the most militant Tridentine Catholicism. O'Ferrall's 1658 report was a preliminary sketch for the *Commentarius*.

What exactly was this Irish kingdom described by O'Ferrall and disputed by Lynch? A kingdom was a political community whose ruler was distinguished

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[6] *Com. Rin.*, V, pp. 485–504; Tjoelker and Campbell, 'Richard O'Ferrall's report to Propaganda fide', pp. 7–61.

[7] Throughout his works, John Lynch labelled the Gaelic Irish Old Irish, and called the Old English, who were his own people, Newer Irish (*noviores Hiberni*), to distinguish them from New Irish Protestants.

[8] *Com. Rin.*, V, p. 288.

[9] For biography, see Corish, 'Two contemporary historians'; Campbell, 'Alithinologia', pp. 46–91.

[10] Tadhg Ó hAnnracháin, *Catholic Reformation in Ireland: The mission of Rinuccini, 1645–1649* (Oxford, 2002).

from other magistrates by his special relationship with God.[11] As far as the English common law was concerned, Ireland had been a kingdom since the Irish parliament passed the Kingship Act in June 1541.[12] Before that the English kings had merely been lords of Ireland, which title they owed to Pope Adrian IV's bull *Laudabiliter* of 1155. Adrian had charged King Henry II with the reform of the Irish church which he believed to be in a barbarous state, and with the church came the lordship. This story of papal grant, royal ecclesiastical responsibility, and English conquest became an essential part of Englishness in Ireland. *Laudabiliter* itself could be read in the *Expugnatio Hibernica*, composed by Gerald of Wales in the twelfth century and widely copied and read thereafter.[13] Then, in its 1536–7 session, the Irish parliament recognized Henry VIII as supreme head of the Irish church. Thus, while the primary aim of the 1541 act seems to have been the reconciliation of the Gaelic Irish to Tudor government, it had the added purpose of excising that now-anomalous papal grant from Irish political culture.[14] The ambitious intentions and strategies of the Tudor reform, of which the act was a part, were halted both by English political instability, insufficient war-making capacity, and the process of confessionalization among the Irish themselves.[15] Nevertheless, the language and concepts of the most potent political ideology in Europe had been planted in Irish soil, and they flourished.[16] This meant that both the Gaelic Irish and Old English, now Catholics, were faced with the monstrous problem that their king, who united in himself both the spiritual and the secular, was a heretic.[17]

The intersection of these concerns about church, kingdom, and king rendered O'Ferrall's report explosive. All the more so, since the Capuchin evidently regarded Christian kingship as ultimately subordinate to papal power. In his account, 181 paramount Gaelic kings had governed Ireland since the arrival of the three sons of Míl in Ireland 2,500 years ago.[18] St Patrick converted the island to the Catholic faith in 431, and became the first archbishop of Armagh and first primate of Ireland. O'Ferrall insisted that the succession of archbishops and primates had continued unbroken to the present day, and that these primates 'were

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[11] E. H. Kantorowicz, *The king's two bodies: a study in mediaeval political theology* (2nd edn, Princeton, NJ, 1997), pp. 42–5, 318–22; Tim Harris, *Restoration: Charles II and his kingdoms, 1660–1685* (London, 2005), p. 69.   [12] Bradshaw, *Irish constitutional revolution*, pp. 231–42.

[13] Robin Frame, '"Les Engleys nées en Irlande": the English political identity in medieval Ireland', *Transactions of the Royal Historical Society*, 6th ser., 3 (1993), pp. 83–104, at p. 98; Giraldus Cambrensis, *Expugnatio Hibernica: the conquest of Ireland*, ed. A. Scott and F. X. Martin (Dublin, 1978), pp. xxxiv–xl, 144–7; James Murray, *Enforcing the English Reformation in Ireland: clerical resistance and political conflict in the diocese of Dublin, 1534–1590* (Cambridge, 2009), pp. 48–81.

[14] Colm Lennon, *Sixteenth-century Ireland: the incomplete conquest* (Dublin, 1994), pp. 154–5.

[15] Ciaran Brady, 'The decline of the Irish kingdom', in Mark Greengrass, ed., *Conquest and coalescence: the shaping of the state in early modern Europe* (London, 1991), pp. 94–115.

[16] Breandán Ó Buachalla, 'James our true king: the ideology of Irish royalism in the seventeenth century', in G. Boyce, R. Eccleshall, and V. Geoghegan, eds., *Political thought in Ireland since the seventeenth century* (London, 1993), pp. 1–35; idem, *The crown of Ireland* (Syracuse, NY, 2006).

[17] For an account of this troubled relationship, see Aidan Clarke, *The Old English in Ireland, 1625–1642* (2nd edn, Dublin, 2000).   [18] *Com. Rin.*, V, p. 486.

established as arbiters of all business of greater importance by the kings, magnates, and clergy'.[19] So Catholic were the Irish kings, and so devoted to the papacy, that they gladly paid Peter's Pence, endowed churches, cathedrals and monasteries with most of their lands, and even in the end presented the royal crown to the pope.[20]

O'Ferrall then turned to the Laudabiliter question and the problem of English royal title to Ireland, devoting a long opaque paragraph to the circumstances in which Henry II came to possess Ireland.[21] Without reminding his reader that the Irish crown was now the pope's to grant, O'Ferrall first argued that Henry had requested the grant of the country under false pretences, as the Irish church had not fallen into paganism as a result of Viking raids and persecution. In fact, O'Ferrall wrote, the Irish church was firmly supported by its hierarchy and ornamented by a great many saints throughout the Twelfth Century. It was also obedient to Rome, and held a great reforming synod at Kells in 1152. O'Ferrall then moved uneasily and with some obfuscation to his second point, which was that such a papal grant could be of no effect because contrary to natural law, although he surrounded this allegation with a thick hedge of rhetorical questions and ungrammatical subjunctives.[22] Even O'Ferrall, committed to the highest doctrines of papal power, could not tolerate the idea that the Irish church had been fundamentally, essentially damaged by the Viking invasions.

O'Ferrall's Latin recovered its usual blunt clarity in the next paragraph, as he treated the reigns of the medieval English kings over the Irish. Whether Laudabiliter was obtained under false pretences, or whether it was in fact a simple forgery, there could be no doubt that 'the conditions that were expressed in it and accepted by Henry were violated by himself and his successors', crushing Ireland's 'doctrine, holiness, and religion'.[23] O'Ferrall went on to describe the English kings' attacks on the Irish clergy, their demand that bishops surrender to them in temporalities, and their appointment of politique foreigners to the hierarchy.[24]

Henry VIII's turn to heresy only put the final tyrannous seal on 400 years of illegitimate government. The title of the English kings was illegitimate both because they had broken the conditions of Laudabiliter, and because they had persecuted the church endangering the souls of the Irish people, which enabled the pope's power to depose rulers. According to O'Ferrall, the Kingship Act

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[19] 'et a Regibus, Magnatibus et Clero statuebantur arbitri omnium negotiorum majoris momenti', ibid., p. 487.

[20] Ibid., p. 487. O'Ferrall's story of the presentation of the crown rested on a solid foundation, see Geoffrey Keating, *Foras feasa ar Éirinn: the history of Ireland*, ed. David Comyn and P. S. Dinneen (4 vols., London, 1902–14), III, pp. 6–7; Ó Buachalla, *Crown of Ireland*, pp. 18–41.

[21] Lynch criticized O'Ferrall's disorderly mass of arguments at this point, 'argumentorum inconditam struem', [Lynch], *Supplementum*, p. 23.   [22] *Com. Rin.*, V, p. 488.

[23] 'Conditiones autem in eo expressae et ab Henrico acceptatae, fuerunt ab eo et a successoribus violatae … ut in ea doctrinam, sanctitatem et Religionem tunc reflorescentem oppresserint', ibid., p. 488.   [24] Ibid., p. 489.

of 1541 was not part of a sophisticated reform programme popular across all Irish elites, but rather a heretical king's grab at church property, assisted by greedy Irishmen of English descent.[25]

O'Ferrall's 1658 report was in fact a highly compressed synthesis of a large body of politically charged Irish history writing, composed by both Old English and Gaelic Irish authors. James Murray has argued that the Old English of Dublin made use of a historical-political argument based on Laudabiliter to resist Tudor religious reform in the late sixteenth century.[26] Patrick Darcy's *Argument*, printed in 1645, was a defence of the Old English medieval parliamentary tradition in the style of Sir Edward Coke.[27] Breandán Ó Buachalla has described a historical-political tradition which included Conell Mageoghan's *Annals of Clonmacnoise* written in 1627, Mícheál Ó Cléirigh's *Annála ríoghachta Éireann* compiled between 1632 and 1636, and Geoffrey Keating's *Foras feasa ar Éirinn* completed about 1634.[28] According to Ó Buachalla, all those authors were committed, to varying degrees, to the Stuart sovereignty of Ireland. Nevertheless, there was also a radical strand to this tradition which urged resistance to English monarchy on religious grounds. The most substantial representatives of this strand were Peter Lombard, later archbishop of Armagh, who addressed his *De Hibernia insula commentarius* to Pope Clement VIII in 1600, though it was not printed until 1632, and Conor O'Mahony, whose *Disputatio apologetica* was printed in 1645.[29] Both of these works celebrated the Catholicity of the ancient Irish past, both insisted that the Laudabiliter contract was now void, and both renounced Protestant monarchy. O'Ferrall appears to have borrowed from them extensively, though he neglected Lombard's interest in medieval prophecy, and did not repeat O'Mahony's demand that every Protestant in Ireland be killed. Moreover, the Capuchin's violent polemic against the Old English was his own innovation.

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[25] Ibid., p. 489; [Lynch], *Alithinologia*, pp. 22–4, 34.

[26] Murray, *Enforcing the English Reformation*, pp. 48–81.

[27] Patrick Darcy, *An argument delivered by Patricke Darcy, esquire, by the expresse order of the House of Commons in the parliament of Ireland, 9 Junii, 1641* (Waterford, 1643); C. E. J. Caldicott, ed., 'Patrick Darcy, an argument', *Camden Miscellany*, 31 (1992), pp. 191–320, at pp. 213–19; Raymond Gillespie, *Seventeenth-century Ireland: making Ireland modern* (Dublin, 2006), pp. 134–6.

[28] Ó Buachalla, *Crown of Ireland*. John Lynch translated Keating into Latin, and O'Ferrall possessed a copy of that translation, see Bernadette Cunningham, *The world of Geoffrey Keating: history, myth and religion in seventeenth-century Ireland* (2nd edn, Dublin, 2004), pp. 187–9.

[29] Peter Lombard, *De regno Hiberniae commentarius* (Louvain, 1632); Thomas O'Connor, 'A justification for foreign intervention in early modern Ireland: Peter Lombard's *Commentarius* (1600)', in idem and Mary Ann Lyons, eds., *Irish migrants in Europe after Kinsale, 1602–1820* (Dublin, 2003), pp. 14–31; [Conor O'Mahony], *Disputatio apologetica de iure regni Hiberniae pro Catholicis Hibernis adversus haereticos Anglos* ([Lisbon], 1645); Tadhg Ó hAnnracháin, 'Hereticks and politicians'; Lynch devoted the twenty-third chapter of his *Cambrensis*, first published pseudonymously as Gratianus Lucius, *Cambrensis eversus* ([St Malo], 1662), to refuting O'Mahony, see John Lynch, *Cambrensis eversus*, ed. Matthew Kelly (3 vols., Dublin, 1848–52), III, pp. 32–143 (all subsequent references are to Kelly's edition).

II

In his rapid survey of the early modern Irish political histories, Colin Kidd argued that the 'ancient Milesian constitution' and the English ancient constitution were different species of the same genus.[30] This is indeed the case: the dominant element of O'Ferrall's treatment of the ancient Irish kingdom and kingship was that very antiquity itself; Ireland's political constitution in the distant past, O'Ferrall believed, indicated the country's proper constitution for the present and future. Ever since J. G. A. Pocock's seminal work in the 1950s this variety of political discourse has been labelled the 'ancient constitution'.[31] According to Pocock, many seventeenth-century Europeans argued that the particular rights and privileges which they wished to defend from their kings were immemorial and so immune from royal meddling. Pocock argued that the influence of Roman law tended to cause the continental representatives of this discourse to discard the role of custom in the making of their ancient constitutions, and instead to argue that these constitutions were founded by a particular lawgiver in the distant past. Moreover, these continental ancient constitutions were under constant threat from the new lawyers expertly trained in the humanities to spot cherished, supposedly ancient, foundation texts as relatively modern forgeries.[32] England, where Roman law was less important, was different. The English common law was not made, as Sir John Davies said, by any Solon or Lycurgus, but by custom.[33] By this paradox, that the English common law was both immemorial and constantly adapting to local circumstances, the English ancient constitution was made far more durable than its continental cousins.[34] But why did the English not spot the suspect nature of the old texts, like the *Modus tenendi Parliamentum*, which Sir Edward Coke and others adduced in their arguments?

Pocock's solution to both the problem of the dominance of custom, and the English disinclination to apply Roman law principles or humanist scholarship to the old texts, was to posit a *mentalité* called the 'common law mind'. He asserted that the common law was such a powerful force in English political, social, and intellectual life that some technical elements of the law, such as the principle of prescription, became part of the unspoken assumptions of the English elite. It was the principle of prescription, by which an old custom became a right, that accounted for the success of arguments for ancient limits on the crown: it was so then and thus should be so now.[35]

The common law mind is not a convincing explanation of the nature of ancient constitution discourse in the three kingdoms. It is most unlikely that the Capuchin

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[30] However, the reading of John Lynch's work offered below will be entirely different to Kidd's, see Colin Kidd, *British identities before nationalism: ethnicity and nationhood in the Atlantic world 1600–1800* (Cambridge, 1999), pp. 153–8.

[31] J. G. A. Pocock, *The ancient constitution and the feudal law: a study of English historical thought in the seventeenth century* (2nd edn., Cambridge, 1987).

[32] Pocock, *Ancient constitution*, pp. 16–21; R. J. Smith, *The Gothic bequest: medieval institutions in British thought, 1688–1863* (Cambridge, 1987), pp. 3–4.   [33] Pocock, *Ancient constitution*, p. 41.

[34] Ibid., pp. 30–1, 274–5.   [35] Ibid., pp. 30–55; Greenberg, *Radical face*, pp. 17–26.

friar Richard O'Ferrall shared this common law *mentalité* with Sir Edward Coke. Moreover, O'Ferrall, as a successful courtier, would not have presented to a group of Italian cardinals an argument which was fundamentally foreign to them. One solution would be to argue that O'Ferrall was writing his ancient constitution in a continental style, rather than an English one. After the manner of the Roman law, one could say, O'Ferrall provided lawgivers for the Irish kingdom in the person of the three Milesian brothers, and a founder figure for the Irish church in St Patrick. In this way analysis of O'Ferrall would remain within Pocock's original categories.

However, all of Pocock's original categories have been brought into question by Janelle Greenberg's recent work. Greenberg has questioned the supposed major differences between English and continental ancient constitutions. She has emphasized the plasticity of the ancient constitution, invoked by English radicals as well as conservatives.[36] She has demonstrated that the common law was in fact generally considered to have a founder figure, just like continental ancient constitutions: St Edward the Confessor.[37] And she has established, against Glen Burgess, that ancient constitution discourse was not inimical to contract theory. English radicals imagined a contract between king and people in the distant past, just as O'Ferrall imagined one between king and pope.[38] O'Ferrall's ancient constitution was not structurally different to those composed by English authors. With Greenberg's arguments in mind, it makes sense to revisit an old argument against Pocock for a single Aristotelian *mentalité* underlying all ancient constitution discourse.

Zachary Schiffman pioneered this explanation in the 1980s.[39] Schiffman was mainly interested in sixteenth-century French lawyers and historians and was unconvinced by Pocock's account of their proto-modern historical consciousness. He insisted on the importance to the ancient constitution of Aristotle's division of all substance into essence and accidents. The accidents of a thing could be changed or destroyed without changing the nature of the thing; rather essence was what made a thing all that it was.[40]

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[36] Greenberg, *Radical face*, pp. 15–16, 116. Note also that Greenberg saw the ancient constitution playing an important role in English political discourse as late as the Glorious Revolution, ibid., pp. 243–96.　　[37] Ibid., pp. 4–5, 48–50.　　[38] Ibid., pp. 21–7.

[39] Z. S. Schiffman, 'Renaissance historicism reconsidered', *History and Theory*, 24 (1985), pp. 170–82; idem, 'Etienne Pasquier and the problem of historical relativism', *Sixteenth Century Journal*, 18 (1987), pp. 505–17; idem, 'An anatomy of the historical revolution in Renaissance France', *Renaissance Quarterly*, 42 (1989), pp. 507–33.

[40] 'A definition is an account which specifies the essence', Aristotle, *Topica*, 101b38; translation from Christopher Shields, *Aristotle* (London, 2007), p. 99; idem, *Topics, books I and VIII*, trans. Robin Smith (Oxford, 1997), p. 4; Aristotle, 'Topicarum', in idem, *Opera omnia quae extent, Graecé & Latiné. Veterum ac recentiorum interpretum, ut Adriani Turnebi, Isaaci Casauboni, Iulij Pacij studio emendatiβima … Authore Guillelmo Du Val* (2 vols., Paris, 1619), bk I, ch. 5, vol. I, p. 182. This widely used edition had its origins in the French reaction against Petrus Ramus's anti-Aristotelianism, see J. Glucker, 'Casaubon's Aristotle', *Classica et Mediaevalia*, 25 (1964), pp. 274–96.

Drawing on the work of Friedrich Meinecke, Schiffman argued that this Aristotelian metaphysics underlay the way that medieval and early modern Europeans thought, argued, and wrote about the past.[41] Aristotelian historical consciousness was a process of *Entfaltung*: the institution or nation unfolded in a predetermined form according to its essence.[42] For medieval and early modern people history was a teleological process in which the potential or essence of a thing became clearer over time. Early modern humanists did indeed have critical tools which they could apply to detect anachronism in texts, but these tools were used mainly to help them to determine the essences of historical entities, such as the Irish church or kingdom. The potential of such an institution was established at its first foundation, usually by the founder figure, whether St Patrick or the three Milesian brothers. Sometimes a process of degeneration would occur, in which that essence or potential decayed. Writing history meant discovering the unchanging essence of a thing, depicting the unfolding of this essence over time and sometimes, in cases of decay, calling for a return to original purity. In contrast, Meinecke argued, modern historical consciousness, or historicism, left Aristotelianism behind and depended on the concept of *Entwicklung*, or evolution, in which an institution or a nation would move from one state of being to another, depending on its interaction with its environment.[43]

Schiffman's approach thus helped to resolve two serious criticisms of Pocock's thesis. Pocock argued that sixteenth-century French intellectuals possessed a historical consciousness much more modern than the common law mind of contemporary Englishmen.[44] In fact, as J. H. M. Salmon established, while the French legal humanists possessed sophisticated critical methods which they applied to ancient documents in order to detect anachronistic language and date documents more accurately, these methods were used to discover and depict the essence of existing institutions, such as *parlement*, the Gallican church, or the crown.[45] Pocock, Donald Kelley, and others confused the presence of modern historical method with modern historical consciousness. Secondly, Christopher

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[41] Friedrich Meinecke, *Die Entstehung des Historismus* (Munich, 1959); idem, *Historism: the rise of a new historical outlook*, trans. J. E. Anderson (London, 1972). For criticism, see P. H. Reill, *The German Enlightenment and the rise of historicism* (Berkeley, CA, and London, 1975); Allan Megill, 'Aesthetic theory and historical consciousness in the eighteenth century', *History and Theory*, 17 (1978), pp. 29–62; Paul Hamilton, *Historicism* (2nd edn, London, 2003). Greenberg approached this explanation, see Greenberg, *Radical face*, pp. 32–4.

[42] Schiffman, 'Renaissance historicism reconsidered', pp. 172–3, 182.

[43] Meinecke saw crucial evidence of this modern consciousness in the work of J. G. Herder, see Schiffman, 'Renaissance historicism reconsidered', pp. 172–3, 182; Meinecke, *Historism*, pp. 295–372.

[44] Pocock, *Ancient constitution*, pp. 4–11. Pocock was more cautious than Kelley in attributing a modern historical consciousness to the French humanists.

[45] Kelley had argued that modern historical consciousness emerged from the interpretative practices of sixteenth-century French humanist lawyers, see D. R. Kelley, *Foundations of modern historical scholarship: language, law, and history in the French Renaissance* (New York, NY, 1970). For criticism, see J. H. M. Salmon, 'Clovis and Constantine: the uses of history in sixteenth-century Gallicanism', *Journal of Ecclesiastical History*, 41 (1990), pp. 584–605. For Kelley's response, see D. R. Kelley, *Faces of history: historical inquiry from Herodotus to Herder* (London, 1998), pp. 245–6, 266–8.

Brooks, Kevin Sharpe, and Hans Pawlisch have argued that Pocock's account of an English legal profession so dominated by the common law mind that they chose to have nothing to do with continental legal theory was inaccurate. English lawyers frequently resorted to continental theory and indeed Roman law.[46]

All of these criticisms of Pocock's thesis can be brought together into a new synthesis by turning to Aristotelianism. When Pocock wrote in the 1950s much less was known about the extraordinary range, strength, and longevity of the Aristotelian tradition in the universities. While the old university sciences were under pressure during this period, it was not until the later seventeenth century that the new sciences began to constitute a practical pedagogical replacement for Aristotle's works, and this was true in both Catholic and Protestant Europe.[47] Indeed, Christopher Brooks has insisted that scholastic Aristotelianism provided an elementary theoretical foundation for all writing on the common law and other laws in England.[48] This latter point has been illustrated at length by J. W. Tubbs, who resorted continually to Aristotelianism in order to explain the writings of sixteenth- and seventeenth-century common lawyers.[49] Sir John Davies was educated at Oxford as well as at Middle Temple, and Sir Edward Coke, who spent more than three years at Cambridge, recommended the liberal arts in general and Aristotelian logic in particular to all students of the common law.[50] John Lynch and Richard O'Ferrall would have found Aristotelianism impossible to escape at their French colleges and seminaries.[51] The same can be said of the education of Scots like John Mair, Hector Boece, George Buchanan, and

[46] D. R. Kelley, 'History, English law and the Renaissance', *Past and Present*, 65 (1974), pp. 24–51; Christopher Brooks and Kevin Sharpe, 'History, English law and the Renaissance'; D. R. Kelley, 'A rejoinder', *Past and Present*, 72 (1976), pp. 133–42, 143–6; H. S. Pawlisch, *Sir John Davies and the conquest of Ireland* (Cambridge, 1985), pp. 161–75.

[47] C. B. Schmitt, 'Philosophy and science in sixteenth-century universities: some preliminary comments', in idem, *Studies in Renaissance philosophy and science* (London, 1981), pp. 485–530, at pp. 489, 91–2; idem, *John Case and Aristotelianism in Renaissance England* (Montreal, 1983), pp. 13–76; idem, *The Aristotelian tradition and Renaissance universities* (London, 1984); idem, *Aristotle and the Renaissance* (Cambridge, MA, 1983); Mordechai Feingold, 'Aristotle and the English universities in the seventeenth century: a re-evaluation', in Helga Robinson-Hammerstein, ed., *European universities in the age of Reformation and Counter-Reformation* (Dublin, 1998), pp. 135–48.

[48] C. W. Brooks, 'The place of Magna Carta and the ancient constitution in sixteenth century English legal thought', in Ellis Sandoz, ed., *The roots of liberty: Magna Carta, ancient constitution, and the Anglo-American tradition of rule of law* (Columbia, MO, 1993), pp. 57–88, at pp. 59–62.

[49] J. W. Tubbs, *The common law mind: medieval and early modern conceptions* (Baltimore, MD, 2000), pp. 46–52, 71–2, 80–2, 93, 167–78.

[50] Pawlisch, *Sir John Davies*, pp. 16, 22; Tubbs, *Common law mind*, pp. 170–1. Coke owned Aristotle in Greek, Latin, French, and English, see W. O. Hassall, *A catalogue of the library of Sir Edward Coke* (New Haven, CT, 1950), pp. 59–60, 61; Brooks, 'Magna Carta and the ancient constitution', pp. 60–3.

[51] Richard Tuck, 'The institutional setting', in Daniel Garber and Michael Ayers, eds., *The Cambridge history of seventeenth-century philosophy* (2 vols., Cambridge, 1998), I, pp. 9–32, at pp. 18–19; L. W. B. Brockliss, *French higher education in the seventeenth and eighteenth centuries: a cultural history* (Oxford, 1987); Liam Chambers, 'Defying Descartes: Michael Moore (1639–1726) and Aristotelian philosophy in France and Ireland', in Michael Brown and S. H. Harrison, eds., *The medieval world and the modern mind* (Dublin, 2001), pp. 11–26; idem, *Michael Moore, c.1639–1726: provost of Trinity, rector of Paris* (Dublin, 2005).

Sir George Mackenzie who wrote for and against their own nation's ancient constitution.[52]

The European elite's shared education in Aristotelian metaphysics explains why ancient constitution discourse occurred all over Europe. When political writers sought to defend or attack particular institutions, such as kingdoms, courts, or churches, it seemed reasonable to them to search that institution's past for indications of its essence. In fact, in order to prove that the essence of an institution was as it was claimed, one would have to demonstrate that it had remained constant throughout the existence of the institution. That essence, having been discovered, could be exposed to praise or blame. Richard O'Ferrall claimed that the essence of the Irish kingdom lay in its reverence for the church and the papacy, which was epitomized by the nation's gift of the crown to the pope in 1063.[53]

Moreover, supposing underlying Aristotelian structures to this discourse provides an explanation for Pocock's distinction between French founder-figure ancient constitutions and English customary ancient constitutions. The answer lies in Aristotle's theory of causation, which was vital to all the Aristotelian sciences even after Descartes and Locke offered workable alternatives.[54] Aristotle argued that all things or entities were made by four causes: the material (that from which an entity came to be), formal (the shape or structure of the entity), efficient (the agent imposing that shape), and final (the purpose of the entity).[55] In the case of a bronze sculpture of Achilles, the material cause would be bronze, the formal cause would be human shape, the efficient cause would be the sculptor himself, and the final cause would be to honour the dead hero. Richard O'Ferrall provided all of these four causes in his account of the Irish church. The material cause of the Irish church was the Irish people led by the hierarchy of bishops, archbishops, and primate. The formal cause of the Irish church was the mystical body of Christ, or the Roman and apostolic church.[56] The efficient cause was the missionary St Patrick. The final cause was the salvation of the Irish people. The efficient cause of the kingdom of Ireland, subordinate to the church in O'Ferrall's account, was the three Milesian brothers. For many English writers, as Greenberg

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[52] Burns, *True law of kingship*, pp. 54–93, 185–221; A. H. Williamson, *Scottish national consciousness in the age of James VI: the apocalypse, the Union, and the shaping of Scotland's public culture* (Edinburgh, 1979), pp. 97–132; Kidd, *British identities before nationalism*, pp. 123–45.

[53] John Locke's innovative, anti-Aristotelian account of essence might account for his antipathy to the ancient constitution, see E. J. Lowe, *Locke on human understanding* (London, 1995), pp. 67–91.

[54] For Schiffman's treatment of the four causes, see Schiffman, 'Anatomy of the historical revolution', pp. 517–9.

[55] Shields, *Aristotle*, pp. 40–97; Vasilis Politis, *Aristotle and the Metaphysics* (London, 2004), pp. 50–63. Aristotle, *Physica*, 194b23–35; idem, *Physics, books I and II*, trans. William Charlton (Oxford, 1970), pp. 28–9; idem, 'De naturalibus principiis', in *Opera omnia*, bk II, ch. 3, vol. I, p. 330.

[56] Aristotle wrote that in the case of a human being, the body was the material cause, and soul the formal. On this see Shields, *Aristotle*, pp. 278–85; Aristotle, *De anima*, 415b8–415b21; idem, *De anima books II and III*, trans. D. W. Hamlyn (Oxford, 1993), pp. 18–19; idem, 'De anima', in *Opera omnia*, bk II, ch. 4, vol. I, pp. 634–5.

has explained, the efficient cause of the English law was St Edward the Confessor.[57]

When Sir John Davies, attorney general for Ireland from 1606 to 1619, wrote, in his Irish law reports, that the English law had no founder figure like Solon for Athenian law or Lycurgus for Spartan, and that it was made instead by custom, he was not arguing for the autonomy of the law at all. It is clear from Hans Pawlisch's work on Davies that what Davies meant by custom was the law made by his own judges, which was to be used to undermine the statute law of the Irish parliament.[58] Davies's purpose, and his anti-Aristotelian position, will be explained below.

III

The proposition that ancient constitution discourse was fundamentally Aristotelian is reinforced by use of anti-Aristotelian ideology against O'Ferrall by his most important contemporary opponent. John Lynch was born in Galway about 1600, educated first in the town's Jesuit grammar school, and then at a series of both Jesuit and Oratorian colleges in France and the Low Countries, including Dieppe, Douai, and Rouen. Returning to Ireland in 1625, Lynch was appointed archdeacon of Tuam and chaplain to Sir Richard Blake, probably the richest of Galway's Catholic merchants. Lynch continued to live in Galway through the wars of the 1640s, Oliver Cromwell's arrival in Ireland in 1649, and the town's surrender to the parliamentarians in 1652. Expelled by the new regime, the archdeacon fled first to Nantes before settling at St Malo and finding new patrons among the local nobility.[59] Over a ten-year period at St Malo, Lynch saw four substantial Latin works on Irish history through the press, and left another two long works in manuscript at his death in 1677.[60]

Lynch and O'Ferrall had been friends in Galway, but the archdeacon's response to the friar's declaration against the Stuarts was unforgiving. Lynch vehemently defended both the Old English churchmen attacked in the report, and also the Stuart right to Ireland, in an anonymous Latin answer to O'Ferrall

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[57] Greenberg, *Radical face*, pp. 4–5.

[58] Sir John Davies, *Le primer report des cases in les courts del roy* (Dublin, 1615), sig. 3r; Pawlisch, *Sir John Davies*, p. 12.

[59] Nollaig Ó Muraíle, 'Aspects of the intellectual life of seventeenth-century Galway', in Gerard Moran and Raymond Gillespie, eds., *Galway: history and society* (Dublin, 1996), pp. 149–210; René D'Ambrières and Éamon Ó Ciosáin, 'John Lynch of Galway (c. 1599–1677): his career, exile and writing', *Journal of the Galway Archaeological and Historical Society*, 55 (2003), pp. 50–63; Campbell, 'Alithinologia', pp. 38–45.

[60] [Lynch], *Cambrensis eversus* (1662); idem, *Alithinologia* (1664); idem, *Supplementum alithinologiae* (1667); John Lynch, *Pii antistitis icon* (St Malo, 1669); idem 'De Praesulibus Hiberniae potissimis Catholicae religionis in Hibernia serendae, propagandae, et conservandae authoribus', Bibliothèque Mazarine, Paris, MS 1869. Lynch's translation of Keating's *Foras feasa* was 'Historia rerum Hibernicarum ab orbis et gentis incvnabvlis ad Hiberniam Anglorum ditioni svbiectam', Royal Irish Academy, Dublin, MS 24 I 5.

in 1664, entitled *Alithinologia*, or true response, and in a further refutation in 1667 entitled *Supplementum Alithinologiae*, or reinforcement to the true response. Lynch's two books insisted that O'Ferrall had lied and misrepresented facts in his 1658 report, and in this way Lynch hoped to smother the longer work which he knew the Capuchin was writing.[61] However, the real basis of Lynch's response to O'Ferrall lay not in a piecemeal refutation of the Capuchin's ancient Irish constitution, but in a theory of sovereignty devised by Jean Bodin and applied to Irish affairs by Sir John Davies. Bodin designed a system for interpreting the powers of governments that would destroy arguments for the limitation of royal power similar to those deployed by Richard O'Ferrall. Bodin's theory of sovereignty, as interpreted by Davies, was taken up by Lynch in the *Cambrensis Eversus*, *Alithinologia*, and *Supplementum*.

Jean Bodin was sixteenth-century France's most brilliant intellectual, and his life from 1562 until his death in 1596 was lived in the midst of religious and civil war.[62] During the 1560s and 1570s, both Huguenot and Catholic political writers argued that the kingdom of France was composed of an Aristotelian mixture of monarchy, aristocracy, and democracy. King, nobility, and people governed in co-operative harmony. This fact could be demonstrated, they argued, by tracing the essence of French government back to the assemblies of the Franks and their elected kings.[63] The epitome of this doctrine was François Hotman's *Francogallia*, first published in 1573.[64] Bodin took up a position in defence of strong monarchy and attacked his opponents' arguments not just by questioning their French history (though he did that in his 1576 *Six livres de la république*) but by attacking the whole concept of Aristotelian mixed government itself, a project he began in 1566 in the *Methodus ad facilem historiarum cognitionem*.[65]

Bodin demolished the concept of Aristotelian mixed government with the following argument. The most important thing that could be known about any state was where within it sovereignty lay. Sovereignty was made up of five functions: creating magistrates and defining their offices, proclaiming and annulling laws, making war and peace, receiving final appeal from magistrates, and granting pardons to the condemned.[66] When these five functions, or marks, were held by

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[61] [Lynch], *Supplementum*, pp. 1–3.

[62] For a brief biography, see Jean Bodin, *On sovereignty: four chapters from the six books of the commonwealth*, ed. J. H. Franklin (Cambridge, 1992), pp. ix–xii. For bibliography, see Marie-Dominique Couzinet, *Jean Bodin* (Rome, 2001). For key articles in English, see J. H. Franklin, ed., *Jean Bodin* (Aldershot, 2006).

[63] François Hotman, *Francogallia*, ed. R. E. Giesey and J. H. M. Salmon (Cambridge, 1972), pp. 39–40, 91, 107–9.

[64] For the classical mixed government of Plato, Aristotle, Polybius, and Cicero, see Hotman, *Francogallia*, pp. 292–6. For the Frankish ancient constitution which conformed to this model, see ibid., pp. 322–3. For contemporary readings of the *Francogallia* which saw its political purpose, see ibid., pp. 72–3.

[65] For the broader anti-Aristotelian movement, see Richard Tuck, *Philosophy and government, 1572–1651* (Cambridge, 1993), pp. 22–30.

[66] Jean Bodin, *Methodus, ad facilem historiarum cognitionem* (Paris, 1583), p. 170; idem, *Method for the easy comprehension of history*, trans. Beatrice Reynolds (New York, NY, 1969), pp. 172–3.

the king, then that state was a monarchy, when they were held by the nobility the state was an aristocracy, and when the people held the five marks it was a democracy.[67] Outside the fantasies of Plato, Aristotle, Polybius, and Cicero, mixed government did not exist. If the five marks became separated the result was not mixed government but the dissolution of the state.[68] Thus, Bodin continued disingenuously, those 'serious and learned men' who would prefer France to be a mixed government were really arguing for either aristocracy or democracy.[69] Both of those latter types of government were imperfect because they involved some sharing of sovereignty.[70] Bodin's doctrine of sovereignty allowed him to claim that the only real choice in government was between pure monarchy and several varieties of democracy, a form of government widely despised. Moreover, there was no place in this new political metaphysics for the ancient constitution.

This ferocious attack on Aristotle, and indeed the whole classical political tradition, was contained in condensed form in the *Methodus* (though it was the longest section in the book) and ten years later Bodin expanded the argument into the *République*, which he intended to replace Aristotle's *Politics*.[71] Combined with Bodin's highly unorthodox religious views, this attack on Aristotelian science was enough to have his work placed in the Roman index of forbidden books in 1590.[72] Nevertheless, both the *Methodus* and the *République* enjoyed great popularity across both Catholic and Protestant Europe. The *République* became well known in England before the death of Elizabeth, and was a standard text on politics in the reign of James I.[73]

Sir John Davies, attorney general for Ireland from 1606 to 1619, founded his *Discoverie of the trve cavses why Ireland was neuer entirely subdued, nor brought vnder obedience of the crowne of England, vntill the beginning of his maiesties happie raigne* on Bodin's

[67] Bodin, *Methodus*, pp. 176–7; idem, *Method*, pp. 178–9.

[68] Bodin, *On sovereignty*, bk I, ch. 10, pp. 71–2. I have consulted, Jean Bodin, *Les six livres de la republiqve* (Paris, 1577), key chapters are numbered differently in this edition, so that the reference is bk I, ch. 11, pp. 206–7. Richard Knolles's 1606 translation conflated the 1593 French edition and Bodin's 1586 Latin version, and omitted some of Bodin's criticisms of Aristotle, see Jean Bodin, *The six bookes of a commonweale: a facsimile reprint of the English translation of 1606*, ed. K. D. McRae (Cambridge, MA, 1962).

[69] 'graues & eruditi viri', Bodin, *Methodus*, pp. 272–3; idem, *Method*, p. 267.

[70] Bodin, *Methodus*, pp. 275–7; idem, *Method*, pp. 269–71.

[71] Bodin, *Six bookes of a commonweale*, pp. A24–A28; K. D. McRae, 'Ramist tendencies in the thought of Jean Bodin', *Journal of the History of Ideas*, 16 (1955), pp. 306–23. Bodin's natural philosophy was similarly anti-Aristotelian, see Ann Blair, *The theatre of nature: Jean Bodin and Renaissance science* (Princeton, NJ, 1992), pp. 3, 6.

[72] Bodin, *Method*, p. xxviii; J. P. Donnelly, 'Antonio Possevino as papalist critic of French political writers', in Jerome Friedman, ed., *Regnum religio et ratio: essays presented to R. M. Kingdom* (Kirksville, MS, 1987), pp. 31–9.

[73] Bodin, *Six bookes of a commonweale*, pp. A62–A66; G. L. Moss, 'The influence of Jean Bodin's *République* on English political thought', *Medievalia et Humanistica*, 5 (1948), pp. 73–83; U. Krautheim, *Die souveränitätskonzeption in den englischen verfassungskonflikten des 17. jahrhunderts; eine studie zur rezeption der lehre Bodins in England* (Frankfurt am Main, 1977), pp. 44–69.

sovereignty theory.[74] The *Discoverie* was an explanation of the nature of the relationship of the English crown to Ireland between the reigns of Henry II and James I, an analysis of the nature of King James's title to the country, and a programme for Ireland's future government. The *Discoverie* wiped the eleventh-century conquest, and kingship act of 1541, off the Irish constitutional map; associated with it was Davies's speech at the 1613 parliament which attacked the legitimacy of the medieval Irish parliaments, and his Irish law reports which exalted judge-made law over statute law.[75] The *Discoverie* was part of a general attack on the political heritage of the Old English as it stood in 1612. The Gaelic Irish had been defeated in the Nine Years War; now Davies meant to bring the Old English to heel.

The main line of argument in the *Discoverie* began with Davies's definition of a complete conquest: 'For, that I call a *Perfect Conquest* of a Country, which doth reduce all the people thereof to the Condition of *Subiects*: and those I call *Subiects*, which are gouerned by the ordinary Lawes and Magistrates of the *Soueraigne*.'[76] Moreover, Davies continued, though a prince might call himself a sovereign, nevertheless if there were two-thirds of the country in which crimes could not be punished, unless by an army, to which the jurisdiction of the courts of law did not extend, and from which he received no revenue, escheats, or forfeitures, then no perfect conquest of the country had been made. Bodin's functions or marks of sovereignty underlay this argument, and Davies's debt to the French legist became clearer as he went on.

Under this definition of conquest, the supposed conquest of Ireland by Henry II, 'so much spoken of, by so many Writers', did not in reality happen. Ireland was never conquered until the reign of King James VI and I. The Gaelic Irish kings, and Davies noted that they were described as kings in government documents, merely promised to become 'tributaries' to Henry II:

And such as pay onely *Tribute*, though they bee placed by *Bodin*, in the first degree of *subiection*, are not properlie *Subiects* but *Soueraignes*. For, though they bee lesse and inferiour vnto the Prince to whom they pay Tribute, yet they hold all other pointes of Soueraignty.[77]

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[74] For biography, see Pawlisch, *Sir John Davies*, pp. 15–33; Sir John Davies, *Discoverie of the trve cavses why Ireland was neuer entirely subdued, nor brought vnder obedience of the crowne of England, vntill the beginning of his maiesties happie raigne* (London, 1612). I have used the facsimile edition, John Davies, *Discovery of the true causes why Ireland was never entirely subdued*, ed. John Barry (Shannon, 1969).

[75] Davies, *Le primer report*; idem, *Historical tracts: consisting of I: a discovery of the true causes … 4: a speech to the lord deputy in 1613, tracing the ancient constitution of Ireland* (Dublin, 1787); Tadhg Ó hAnnracháin, 'Imagining political representation in seventeenth-century Ireland', in idem and Robert Armstrong, eds., *Community in early modern Ireland* (Dublin, 2006), pp. 34–50. Pawlisch's excellent book tackled the law reports alone and had little to say about the *Discoverie* and Bodin, see Pawlisch, *Sir John Davies*, pp. 3–14, 31–2, 59–64. Davies took the same high view of the king's powers in some of his work on England, for example see John Davies, *The question concerning impositions* (London, 1656).

[76] Davies, *Discovery*, pp. 6–7.

[77] For the Irish kings after the supposed conquest, ibid., pp. 15–18. For quotation, see ibid., p. 14. In the left margin, Davies cited 'Bodin de Repub.', which referred to bk I, ch. 9, where Bodin distinguished six degrees of dependence: 'Le premier est le Prince tributaire, qui est moindre au traité,

Davies then went on to explain precisely what those 'true markes and differences' of sovereignty were, and who possessed them:

For, to giue Lawes vnto a people, to institute Magistrates and Officers ouer them, to punish and pardon Malefactors, to haue the sole authority of making warre and peace, and the like are the true markes of Soueraignetie; which King *Henry* the second had not in the Irish Countreyes, but the Irish Lords did still retaine all these prerogatiues to themselues.[78]

Not only did the Irish lords display these marks of sovereignty, but even the English lords of Ireland made war and peace 'without direction from the State'.[79] From this firm Bodinian foundation, Davies proceeded to argue that this state of affairs had continued from the reign of Henry II to that of Queen Elizabeth I. During her reign a final and perfect military conquest was made, quickly followed under King James by a civil conquest, in which English laws were given to the Irish.[80]

Unlike Davies, John Lynch regarded both the laws of the ancient Irish law tracts, and those of the medieval Irish parliaments, as admirable in their own way.[81] Nevertheless, Lynch wholeheartedly embraced the rest of Davies's analysis, and it was fundamental to his argument in the *Alithinologia*, *Supplementum*, and *Cambrensis eversus*. In the *Alithinologia*, Lynch agreed with his Capuchin opponent that the bulls of Pope Adrian IV and Alexander III conferring Ireland on King Henry II were either obtained through fraud (and thus invalid) or simply forged.[82] Nevertheless, he denied that this detracted in any way from the Stuart kings' *ius* or right in Ireland, 'since successive kings have held the sovereignty of Ireland by means of arms, the ratification of the Irish, and duration of time, just as by a triple cord'.[83] Lynch declined to spend much time explaining the claim of the crown to dominate by arms, which he took to be obvious:

Indeed, John Davies testifies that the magnates of Ireland submitted four times to the kings of England; first to Henry II, next to King John, then Richard II, last to Henry VIII; and the indentures of the penultimate submission are still extent in the royal archive at London, of the ultimate one in the book of the Irish council: and he adds that many lords individually made their profession of obedience to various viceroys.[84]

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que celuy auquel il doit tribut: & neantmoins il retient tout droit de souueraineté, sans autre submission à celuy auquel le tribut est payé. Et combien qu'il semble estre plus greué, que celuy qui est en protection, si est-ce qu'en effect il est plus grand: car en payant le tribut qu'il a promis pour auoir la paix, il est quite, & n'a que faire d'autrui pour defendre son estat.' Bodin, *Les six livres de la republiqve*, bk I, ch. 10, p. 155. In the 1586 Latin edition and the 1606 English edition there are nine degrees of subjection, so it would seem Davies read Bodin in French, Bodin, *Six bookes of a commonweale*, p. 115.

[78] Davies, *Discovery*, p. 15.   [79] Ibid., pp. 26, 147.   [80] Ibid., pp. 107–17.
[81] Lynch, *Cambrensis eversus*, II, pp. 362–87.   [82] [Lynch], *Alithinologia*, p. 26.
[83] 'Cum quidem secuti Reges supremam Hiberniae potestatem, armis, Hibernorum ratihabitione, ac temporis diuturnitate tanquam funiculo triplici, aliisque vinculis constrictam tenuerint', [Lynch], *Alithinologia*, p. 26.
[84] 'Hiberniae vero magnates vniversim quater Angliae Regibus fasces submisisse; primùm Henrico II, deinde Ioanni Regi, tum Richardo II, denique Henrico VIII; & penultimae submissionis syngraphas in memoriarum Regis officinâ Londini, vltimae, in Hiberniae Concilij libro etiamnum extare

In the left margin, Lynch fastidiously cited the relevant page numbers of Davies's 1612 text.[85] Lynch then pointed out that this domination had been recognized *de facto* by the papacy since the time of Henry II, referring to Popes Innocent III, Honorius III, Benedict XII, Innocent VIII, all of which was confirmed by Paul IV in 1555 when he proclaimed King Philip and Queen Mary and their successors kings of Ireland.[86] Lynch then returned to the attorney-general's radical concession: 'For all that, Davies demonstrates splendidly in his published book that the Irish were not brought to a whole and absolute subjection, in all their numbers, before King James.'[87] Lynch then departed from Davies, however, to make use of what Johann Sommerville has labelled a designation theory of kingship.

Many strong-monarchy writers, including English royalists, admitted, with the Jesuit Francisco Suárez, that popular acclamation strengthened a king's claim to kingship, but insisted that that act of acclamation need occur only once, and also insisted, against Suárez, that the acclamation could never be revoked.[88] The people designated the ruler, but God granted him power, independent of any grant of the people. According to Lynch, this act of designation by the people occurred in the 1613 parliament held at Dublin:

Then indeed, the consent of no people ever showed itself in choosing a king for themselves so explicitly, as that of the Irish in acknowledging James as their king. All the more honourable inhabitants of each county, as is their custom, came together at the place and time appointed by the viceroy in the year of our Lord 1613, and they elected two men of their number as representatives, who should vote on their behalf in the lower chamber of parliament.[89]

This was a remarkable celebration of a parliament packed by the crown by force and fraud with Protestants, which had been deplored by contemporary Catholic writers.[90] Nevertheless, because of the confiscation of Catholic estates in the 1650s the medieval parliamentary tradition was no longer of any use to Lynch and his contemporaries; royal power alone could save the Old English elite.[91] Having

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Ioannes Dauisius testatur: Additque pleroque proceres suae subjectionis professionem apud varios Proreges sigillatim fecisse', [Lynch], *Alithinologia*, p. 26.

[85] Ibid., p. 26.   [86] Ibid., p. 28.

[87] 'Dauisius tamen Hibernos ad integram & omnibus numeris absolutam subjectionem, ante Iacobum Regem, adductos non fuisse libro edito luculenter docet', ibid., p. 27.

[88] Sommerville, *Royalists and patriots*, pp. 24–9; J. H. M. Salmon, 'Catholic resistance theory, ultramontanism, and the royalist response, 1580–1620', in J. H. Burns and Mark Goldie, eds., *The Cambridge history of political thought, 1450–1700* (Cambridge, 1991), pp. 219–53, at pp. 234–5.

[89] 'Tum vero nullius vnquam populi consentio Rege sibi cooptando expressior, quam Hibernorum in Iacobo Reges suo agnoscendo, extitit. Honestiores quique, vt moris est, singulorum comitatuum incolae ad locae & diem à vicecomite [sic, for prorege] constitutum, sub an. Dom. 1613 confluxerunt, & duos è suo numero procuratores designarunt, qui vice ipsorum sententias in inferiori comitiorum conclaui ferrent', [Lynch], *Alithinologia*, p. 27.

[90] Brian Jackson, ed., 'A document on the parliament of 1613 from St Isidore's College, Rome', *Analecta Hibernica*, 33 (1986), pp. 49–58; Ó hAnnracháin, 'Imagining political representation'.

[91] Aidan Clarke, 'Patrick Darcy and the constitutional relationship between Ireland and Britain', in Ohlmeyer, ed., *Political thought*, pp. 35–55.

described the rest of these parliamentary elections in the most positive tones, Lynch then continued:

By the first decree of this assembly, James, king of Great Britain was also acclaimed king of Ireland, by the lords in the upper chamber, and by the representatives in the lower, just as in the place of all, so by the voice of all, to the greatest joy indeed of all the Irish, and in particular of the Old Irish.[92]

Lynch explained the particular pleasure of the Old Irish by the fact that they now, for the first time in hundreds of years, had a king 'undoubtedly sprung from the lineage of their own kings'.[93] Lynch had previously argued this point at much greater length in the *Cambrensis eversus*, where he had described four genealogical lines by which James VI and I was descended from the Milesian kings.[94]

Moreover, Lynch continued, even allowing that the initial establishment of English power in Ireland was unjust, that was almost 500 years ago. Both in the case of a state seized by a tyrant, and ecclesiastical property seized by a layman, 100 years was long enough to provide a title by prescription.[95] Lynch supported this argument with a marginal citation of the second book, fifth chapter of the *République*, in which Bodin treated the title to a kingdom of a tyrant's successors.[96] The archdeacon then summed up his arguments for the Stuart kings' title to Ireland:

Therefore, it would be unbearably reckless to deprive the kings of England of the sovereignty of Ireland, to whom it has been transferred by right of war, consent of magnates and people, long duration of possession, family ancestry, the authority of the pope, and clear indication of divine judgment.[97]

All of Lynch's published work on the kingdom of Ireland was committed to the same anti-Aristotelian doctrine of Stuart sovereignty which Sir John Davies had developed to counter the Old English constitutional tradition, resting on *Laudabiliter* and the medieval parliamentary tradition, fifty years before.[98]

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[92] 'Primo comitiorum horum decreto Iacobus magnae Britanniae Rex à proceribus in superiori aula; in inferiori à procuratoribus, sicut omnium vice, sic omnium voce, Rex etiam Hiberniae acclamatus est, summâ profecto omnium, ac praecipue veterum Hibernorum laetitiâ', [Lynch], *Alithinologia*, p. 27.   [93] 'suorum Regum stemmate citra dubium exorti', ibid., p. 28.

[94] Lynch, *Cambrensis eversus*, III, pp. 52–67; Ó Muraíle, 'Aspects of the intellectual life of seventeenth-century Galway', pp. 158–9; Ó Buachalla, 'James our true king', pp. 1–35; Marc Caball, *Poets and poetry: continuity and reaction in Irish poetry, 1558–1625* (Cork, 1998).

[95] [Lynch], *Alithinologia*, p. 28; Greenberg, *Radical face*, p. 20.

[96] Bodin, *Les six livres de la republiqve*, bk II, ch. 5, p. 254; Bodin, *On sovereignty*, pp. 110–26, at p. 112.

[97] 'Est igitur non ferenda temeritas summum Hiberniae imperium Regibus Angliae subtrahere, in quos ius belli, magnatum & populi consensus, possessionis diuturnitas; generis prosapia, Summorum Pontificum authoritas, & non obscurum diuini iudicij indicium illud transtulit', [Lynch], *Alithinologia*, p. 29.

[98] [Lynch], *Supplementum*, pp. 24–30; Lynch, *Cambrensis eversus*, II, pp. 522–7, III, pp. 300–15, I, pp. 198–217, III, pp. 82–3.

IV

Two years after the publication of the *Ancient constitution and the feudal law*, Friedrich Meinecke summed up a wide body of German scholarship in the argument that the new historicism developed by the pre-romantics and romantics depended crucially on their rejection of the earlier teleological style of history writing. Schiffman identified this teleology with early modern Aristotelianism. From a different direction, Schmidt, Feingold, and Brockliss have exposed the strength and longevity of Aristotelianism in both Catholic and Protestant universities throughout early modern Europe, and Brooks and Tubbs have emphasized the importance of Aristotelianism to the English common lawyers. The elite throughout the three Stuart kingdoms shared an education in this early modern Aristotelianism. Therefore, it is reasonable to see a set of unarticulated Aristotelian assumptions underlying the historically based political discourse (labelled the ancient constitution by Pocock) of this elite. The ancient constitution composed by Richard O'Ferrall, which epitomized a certain Irish political tradition, provides an example of these assumptions at play in Stuart Ireland. O'Ferrall's preoccupation with Catholicity, Laudabiliter, and heresy were particularly Irish, but his interest in the endurance of essence through time, and the significance of efficient causes to the later substance of political entities, were common to all ancient constitution writers. Moreover, the identification by McRae and Blair of Bodin's overall project as overtly anti-Aristotelian is a useful index of the Aristotelian nature of this discourse: Davies used Bodin against the Old English parliamentary ancient constitution, and Lynch used Davies and Bodin against O'Ferrall's radical Catholic ancient constitution. The Enlightenment would drive Aristotelianism from the universities, and the ancient constitution slowly became a different form of political discourse, developing a close relationship with the new racialism and eventually becoming a minor component of romantic nationalism.[99] In the Stuart century, however, the Aristotelian pole still exerted a powerful attraction throughout the three kingdoms.

[99] Smith, *Gothic bequest*, pp. 6–7, 61–5, 97–131, 140–6.