

## The Theory of Contractual Monarchy in the Works of the Huguenot Monarchomachs

Andrei Constantin Salavastru  
“Al. I. Cuza” University of Iași  
(Social Sciences and Humanities Research Department)

### Abstract

The French Wars of Religion (1562-1598) were often characterized in historiography as a revolutionary period, when some very advanced political theories were put forward by the parties in conflict. Some historians spoke of the existence of a form of popular sovereignty in many of the political writings produced during that time, where different constitutional mechanisms for restraining the powers of the monarchy were imagined. The first to propose such theories were the Huguenot theorists, especially those which would gain fame as the “Monarchomachs” (François Hotman, Theodore Beza, Philippe Duplessis-Mornay), a term coined by the royalist writer William Barclay at the beginning of the seventeenth century to describe the promoters of a political model of a limited monarchy where the ultimate sovereignty rested with the people. With Huguenots in active rebellion against the Crown, especially after 1572, when the defiance against the king (and not just against his “evil advisors” anymore) became openly acknowledged, the Monarchomachs strove to demonstrate that the people had a lawful right to actively resist (and even overthrow) a tyrannical monarch. The basis of their argument rested upon the concept of a political contract between the king and the people, which made the submission of the latter dependent on specific conditions set at the ascension of the king: if those conditions were violated, then the people were automatically released from their obligation of obedience.

**Keywords:** French monarchy, wars of religion, Monarchomachs, resistance, political contract

### 1. The Medieval Precedents of Political Contract

The medieval theory of government did not acknowledge an unrestricted power on the part of the king: despite being

God's anointed, despite the sacral aura which surrounded medieval kingship, reinforced through so many quasi-religious ceremonials, there were in place serious restrictions on the unlimited exercise of royal power compared to the absolutist monarchy of the seventeenth century. A fundamental factor which determined this situation was the fact that medieval kingship had a judicial character, first and foremost: the king was, before anything else, the fountain of all justice and the supreme judge. One of the most potent images of the French monarchy, for instance, was that of its most revered king, Louis IX (1226-1270), doing justice under the oak tree at Vincennes. On the other hand, during the Middle Ages, law meant custom and tradition, which the monarch could not easily change or create anew. In the words of the great historian of medieval political thought, Walter Ullmann, "feudal society was governed by the law of contract and once feudal kingship became operative, the unilateral royal creation of law became severely limited": by the eleventh century a system of feudal law had developed, through the transfer of feudal arrangements from the private to the public sphere, which was "in form, substance and structure customary law" (Ullmann 1975, 216). These feudal arrangements meant the existence of a contractual relationship between the king and his vassals, doubled by a similar relationship between the king and the urban communities of his realm, which was acknowledged on a case by case basis through the royal entry ceremonies, when the king received the homage and the gifts of his faithful cities and, in return, confirmed their privileges or granted them new ones. In the words of Neil Murphy, "urban elites embedded the confirmation of municipal liberties within the extramural greeting as a means to emphasize the contractual nature of monarchical rule" (Murphy 2016, 73). This legal bond made it possible to conceive the king as a member of the feudal community and made possible the operation of consent with regard to those measures which affected all parties involved (Ullmann 1968, 147-148) and, as a result, these arrangements would provide a pattern which the theories of resistance could be moulded upon, with the sixteenth-century resistance theorists eagerly seizing these precedents. One of the clearest

examples of such contractual relationships which involved the French Crown were the conditions upon which the former imperial province of Dauphiné passed under the rule of the French heir to the throne: every new Dauphin from the ruling house of France had to swear that he will preserve all the privileges and liberties of his province and all the nobles and the communities of Dauphiné were not bound to obey him or his officials until he swore to do so (Carlyle 1962, 67-68).

But the medieval idea of a contractual monarchy was not based exclusively on the feudal relationship, which was individual and relied on personal oaths. There had been theorists who brought up arguments from Roman law such as Manegold of Lautenbach, who argued for the existence of a contractual arrangement between the monarch and all his subjects: for many advocates of Roman law, imperial authority derived from *lex regia*, the original law by which the Roman people passed all its powers to the emperor, but, for Manegold, this was a revocable grant (Ullmann 1975, 249). The fourteenth-century civilians recognized that the prince might enter into contractual relationships with his subjects and he was bound by such contracts; they were also clear that the extra-legal powers of the prince did not entitle him to deal at his pleasure with private property (Carlyle 1962, 131). According to David Parker, many Romanists concluded that the grant of sovereignty embodied in the original *lex regia* ought to be interpreted in a constitutionalist sense, where power is delegated by the people, and the general renewal of interest in the law under the impact of Renaissance humanism had the effect of developing an understanding of feudal, customary and Germanic traditions with their emphasis on a contractual and limited exercise of authority (Parker 1996, 9). The emergence of the first proto-representative institutions during the thirteenth and the fourteenth centuries was another expression of this contractual relationship between the monarch and his subjects, as they were often accompanied by statements of mutual obligations between the king and the people: as John Russell Major convincingly argued in many of his works, the medieval and Renaissance kings needed the consent of their subjects, especially on the matter of taxation, and they saw such

institutions, like the Estates, as a necessary instrument to make their subjects accept more easily their fiscal policies<sup>1</sup>. The gradual centralization of the French government during the Valois dynasty necessarily included such contractual arrangements, as the French kings needed “the support, or at least neutrality, of the chartered towns, ecclesiastical corporations, and the lesser nobles, and the price of this support was the willingness and ability of the kings to guarantee existing privileges more effectively than the feudatories they replaced”, an obligation which was “often made explicit in contractual agreements between the king and the provincial estates” (Franklin 1973, 2-3).

The most significant evidence of the contractual nature of the medieval monarchy was the oath included in the coronation ceremonies: between the king and the people, but also between the king and God, through His Church. During the coronation of the kings of France, the new monarch was taking a solemn vow to drive heresy out of his kingdom and thus show himself worthy of the title of “Most Christian” which the Church bestowed upon him: and this aspect was going to play a fundamental part during the sixteenth century, when it became the cornerstone of the Catholic League’s propaganda. Yet the obligations imposed by the coronation oaths, and not just in France, were not limited to protecting the Church, but also illustrated the limited nature of medieval kingship, something which was emphasized by the sixteenth-century jurists: legal minds such as Christopher St.Germain, in England, and Jacques Cujas, in France, insisted that princes were bound by their coronation oaths to obey the laws of the realm (Carlyle 1962, 258-259; 311-318) – a religiously-neutral argument which could not have gone unnoticed by the Protestant polemicists and was, therefore, enthusiastically exploited by them.

## **2. The First Huguenot Rebellions and the Emergence of the Concept of Contract in Huguenot Political Thought**

The concept of a contractual monarchy gained significant ground during the French Wars of Religion, when

the factions which came into conflict with the Valois monarchy, first the Huguenots, then the Catholic League, used it in order to justify their arguments in favour of resistance against the king or even for tyrannicide. When the Reformation had started to take roots in France, one of the main charges which their opponents brought against the Protestants was that of sedition: an accusation which the latter had strenuously denied by constantly professing their loyalty towards the Crown. The accusation was not without basis, because the separation between state and religion which the Huguenots were trying to propose – where they could remain loyal subjects of the Crown while practicing a different religion than that of the monarch – was an idea fundamentally alien to the thinking of the Catholic majority. The traditional political thought, up to that period, had constantly associated religious heterodoxy with rebelliousness, due to the close relationship between the monarchy and the Church. The contract between king and God compelled the former not to allow any deviations from religious dogma in his kingdom – else he would violate his covenant with God and his coronation oath and bring down God's wrath upon himself and his realm. There were also more secular reasons to consider, as many sixteenth-century political theorists argued that there was no greater cause for conflict in a kingdom than religious differences – and to allow the existence of two religions would have destroyed the unity of the kingdom. After the persecutions which occurred during the second half of the reign of Francis I (1515-1547) and especially during Henry II (1547-1559), it became more and more clear than there was no certain way for a forceful eradication of Protestantism in France. In search of another solution, there was a short hope for a reconciliation during 1561, when Catherine de Medicis, who had assumed the regency in the name of her son Charles IX, supported by the chancellor Michel de l'Hôpital, extended an olive branch to the Huguenot leadership and convoked the Colloquium at Poissy, where a debate between Catholic clergy and Huguenot religious leaders, led by Theodore Beza, was supposed to find a way to bridge their differences. Yet, they proved impossible to overcome and, despite the attempt to find a *modus vivendi* through the Edict of Saint-Germain, which

granted the Huguenots a limited degree of religious freedom, the tensions exploded in the spring of 1562, when a full-scale Huguenot rebellion broke out, in answer to a massacre of a group of Protestants at Vassy, on 1 March 1562, by soldiers in the service of one of the major Catholic figures of that era, François de Guise. Over the next decade, there were three major outbreaks of war in France, in 1562-1563, 1567-1568 and 1568-1570, with changing results.

Despite the warfare between the Huguenots and the Crown during this period, the political thought of the Huguenots remained conservative, continually protesting their loyalty towards the king and rejecting the charges of sedition launched by their adversaries. During the first war, which took place in 1562-1563, the manifesto issued by the prince of Condé after the start of hostilities asserted the intention to free the king from his evil advisers and defend the laws of the kingdom – by which the Huguenots had in mind the Edict of Saint-Germain from January 1562, which was not observed, according to the Huguenots, contrary to the king's wishes. According to John Salmon, Huguenot political rhetoric during the first phase of the civil wars remained dependent upon constitutional precedent and reiterated the charges against the radical Catholics from the king's entourage, such as in 1568, when Jeanne d'Albret "issued a bitter indictment of the Guise as foreign usurpers after her arrival at La Rochelle" (Salmon 1979, 181). Still, despite the obvious unease of most Huguenots with a direct challenge to the existing status-quo, more radical voices were starting to be heard: a key reason was the fact that, after 1567, the Crown took a more active role in the fight against the Huguenots, unlike during the first civil war of 1562-1563, when the hostilities were directed mostly by the Catholic triumvirate consisting of François de Guise, the constable Anne de Montmorency and the marshal of Saint-André. But François de Guise and Saint-André had both been killed during the first war, while Montmorency became a casualty at the start of the second, so there were not that many prominent hardline Catholic leaders left around the king for the Huguenots to blame. Such circumstances made possible for some Huguenot polemicists to target the monarchy itself and one such tract,

which prefigured the resistance treatises from after 1572, was the anonymously published *Discours par dialogue sur l'édit de la révocation de la paix*: it argued for the Estates General having the right to consent to taxation and to modify the law, and – quite surprisingly, having in mind the hostility of the Parlements to the Huguenot cause – for the Parlement's right to act in place of the Estates General, when the latter was not in session, and disallow legislation contrary to precedent and fundamental law (Salmon 1979, 181). But the most significant issue expressed in this pamphlet was the idea of a reciprocal contract between the king and the people, where obedience was conditional upon good governance. Similar ideas could be found in another tract, written probably between October 1568 and March 1569, called *Question politique: s'il est licite aux subjects de capituler avec leur prince*, where the author describes an original contract between the people and the prince, at the election of the latter, which implied reciprocal obligations and conditional obedience on the part of the subjects and which left its traces in the coronation oath and the urban and provincial charters such a contractual nature of the monarchy also involved a divided sovereignty, which the king had to share with the Estates General, the Parlements and the Council of Peers (Jouanna 2009, 453-454). But all these restraints were going to be abandoned after 24 August 1572, when the Massacre of Saint-Bartholomew's night occurred. It is very likely that the decision taken by the king and his council on that fateful occasion involved only the elimination of the Huguenot leadership, but what the government of Charles IX failed to take into account was the religious fervour of the population of Paris, which had been constantly stoked by popular preachers over the previous decade. This fervour manifested itself through an intense hatred of the Huguenots, which burst when the king's order to kill the heads of the Huguenot faction was interpreted as the signal for a general massacre of the Protestants – a massacre which, during the next days, did not remain limited to the capital, but spread into the provinces. Many Catholics welcomed the massacre, as it seemed to mean that the policy of conciliation was abandoned and the monarchy was about to embark on a decisive anti-Protestant campaign.

Many (at the behest of the government itself, who was mindful of the negative impact which the massacre might have abroad, especially upon the Protestant powers, but also even among its own Catholic subjects less inclined towards radicalism and violent solutions to the religious problem) published works of propaganda in an attempt to justify the king's action (Yardeni 1971, 112-119). If, for these Catholic propagandists, the Huguenots deserved their chastisement because they were bad subjects always prone to sedition, for the Huguenots the event represented a major breach of faith on the part of the monarchy.

### **3. The Contractual Monarchy of the Monarchomach Triumvirs: Hotman, Beza and *Vindiciae*<sup>2</sup>**

As often pointed out in historiography, it took the shock of Saint-Bartholomew's massacre to make the Huguenots abandon their previous deference towards the monarchy and make solid arguments in favour of resistance against kings turned tyrants and in favour of some versions of proto-constitutionalism, where the monarch shared part of his attributes with representative institutions like the Estates General. John Salmon suggests a much more radical trend in Huguenot political thought, namely, that "some Huguenot polemicists attacked the king as a tyrant, calling for his deposition and even for his death", because "doctrines of constitutionalism and limited monarchy no longer seemed adequate for the situation" (Salmon 1979, 188). But Salmon's assertion is questionable, because the concept of a limited monarchy where the king's authority was checked and even censored by other institutions became the cornerstone of the new Huguenot anti-royalist propaganda: it advocated resistance, yes, in face of abusive actions from the king and it even devised a constitutional mechanism for removing an unrepentant tyrant, when all other options had been exhausted, but it generally shied away from tyrannicide. There was no shift from "constitutionalism" to doctrines of deposition and tyrannicide, as John Salmon claims: instead, what we witness is the movement of the idea of limited monarchy from the periphery to the center of Huguenot political thought. On the

other hand, John Salmon is correct when he points out that theories were developed about the responsibility of the ruler to the ruled, which were “expressed in terms of a contract of government between king and people, and sometimes in terms of a contract with God, which, if voided by the monarch, might be enforced by the society”, resistance being thus “not a matter for personal decision, but a duty to be performed corporatively when the lead was given by lesser magistrates, the natural leaders of society” (Salmon 1979, 188). According to Arlette Jouanna, the notion of contract expresses the abandonment of the ideal of trust and natural obedience, as such constitutional mechanism of control reveals the fear of possible royal abuses: in her words, we are looking at the old medieval defiance becoming thus institutionalized, with the paternal monarchy being replaced by the contractual monarchy (Jouanna 2007, 262). In order to provide a viable political mechanism which could actually function in practice, the monarchomachs developed “federal or aristocratic systems, where the *senior pars* (nobility, officials, urban elites) possessed extensive local powers and rights of consultation and control with respect to the sovereign” (Garrisson 1995, 293). The most significant Huguenot political writings in favour of resistance which were published during this period were those belonging to what modern historiography named “the Monarchomach triumvirs”: François Hotman’s *Francogallia* (1573), Theodore Beza’s *Right of Magistrates* (1574), and *Vindiciae contra tyrannos* (1579) whose likely author (using the pseudonym Stephanus Junius Brutus) is thought to be the Huguenot political figure Philippe Duplessis-Mornay.

François Hotman’s *Francogallia* is a work which makes extensive use of historical precedents (many of them fictional) in order to argue that France originally possessed a form of government which combined monarchic, aristocratic and democratic traits, whose roots could be traced back to the ancient Gauls. For Hotman, the original kings of “Francogallia”, in the pre-Capetian era, were actually elected by the people and there was no automatic hereditary right to succeed the throne – and, equally, the people retained “the power and sovereign authority to depose them” (Hotman 1574, 59-71). Second,

Hotman argues for the existence of an Assembly of the Estates as early as the Merovingian and Carolingian eras, which gathered yearly “on the first day of May, where they would deliberate by the common council of the Estates on all the great affairs of the kingdom” (Hotman 1574, 99). Hotman invokes here an imaginary past, as the real Estates General had absolutely nothing in common with the version depicted by him, but these fictional Estates provide an institutional mechanism which could serve as a check on the king: the popular sovereignty which he advocated needed a place and a way to manifest itself and in ascribing this role to the Estates, Hotman was following a trend which was becoming quite popular during that period. Even though few besides the Monarchomachs (and, later, the League) had gone so far as to make the Estates a possessor of sovereignty superior to the king, there was a deeply-held belief during the late fifteenth century and the sixteenth century in the ability of this institution to provide a remedy for the problems of the realm, in concert with the king. But even though he grants such an important role to the people and the Estates, Hotman does not explicitly refer to a contractual relationship between the monarch and the people. Yet it can be concluded that Hotman’s vision was not far from such an opinion. Julian Franklin establishes a direct connection between the Huguenot concept of popular sovereignty and the idea of contract, since the monarchy was “qualified by an historical contract between the people and the king, the terms of which could change by mutual agreement”, which thus explained the evolution of the monarchy as “the outcome of successive delegations, which were accomplished either by express consent or else by gradual changes in accepted custom” (Franklin 1973, 103) and this makes him argue that Hotman depicts the election of kings as “a contract between king and people that was repeated with every new incumbent” (Franklin 1973, 44-45). The terms Hotman uses in order to depict the relationship between the king and his people strongly point out towards the existence of mutual obligations, which can void the respective relationship if one party is found in breach and where the king is the inferior partner: he is to his kingdom “as a father to his family, a guardian to his ward, a custodian to his

charge, a pilot to his ship or a captain to his army”; and therefore, “a people is not created for the sake of the king, but the king is established for the sake of the people, because a people can exist without a king, like those which are governed by more noble men or govern themselves, but we cannot find, or even imagine, a king who could exist without a people” (Hotman 1574, 157).

If the concept of a contract between king and people is only implied in *Francogallia*, this idea is openly proclaimed in Theodore Beza’s *Right of Magistrates*. Like Hotman, Beza takes many examples from history, in order to construct his argument, but he does not show a special preference for the history of France; and, unlike his colleague, he also deploys a vast array of biblical references and principles of natural law. Beza’s argument is that the people possesses a right of resistance which derives from the inherent superiority of the former over their monarch, as the people was not created for its rulers, but the rulers for their people, which is proven by the fact that even the first Jewish kings of the Old Testament, who had been selected by God, had to be elected and receive the consent of the tribes of Israel (Béze 1970, 9). In Beza’s opinion, it was impossible that the people had submitted to the king without any conditions and, therefore, renounced all its liberty, because such an act would have been contrary to all law and equity (Béze 1970, 24). Such a contract based upon the consent of both parties, according again to “equity and natural law”, can be dissolved if a flagrant violation of the obligations originally agreed had occurred – from which it results that those who have the power to create a king, also have the power to depose him (Béze 1970, 44). That was even more so because the creation of a polity did not involve only a contract between king and people, but also a covenant with God: relying on the Biblical example of the foundation of the kingdom of Israel, Beza points out that both the king and the people took first “a solemn oath by which they submitted to God and promised to observe His Law, both ecclesiastical and political”, which preceded the oath between the king and people (Béze 1970, 30).

The next issue Beza addresses is against whom can this right of resistance be exercised. Beza identifies two types of

“tyrants”: those who have acquired their power illegitimately and those who abuse an authority which they would otherwise hold legitimately. While the former case does not raise any dilemma, as there was a common consensus, which Beza shared in, that they could be resisted and even killed by any member of the polity subjected to their tyranny, the latter case is more problematic, because opposing a legitimate authority, even if it became tyrannical, came into conflict with the traditional duty of obedience the Huguenots themselves had professed and with the widespread revulsion against sedition. A legitimate authority involved the consent of the people and even an initial usurper could have become, according to Beza, a legitimate ruler if such consent was obtained later: but such consent is always conditional and Beza invokes in support the principle of natural law that no people, knowingly and without constraint, could submit to someone to be destroyed and pillaged, therefore the original consent could be rescinded if it came into obvious conflict with equity and honesty (Béze 1970, 14). Beza is quite clear that a lot of criteria had to be met in order for this to happen and a private individual would have no right to initiate resistance by himself. There are two reasons for this restriction: first, because it would have created the risk of anarchy and “a thousand tyrants would emerge for the sake of suppressing one” (Béze 1970, 17) and second, due to the contractual nature of the relationship between king and people. Since the latter entered into a contract with the king by public agreement, as a corporation, it stands to reason that no individual can legitimately void the respective pact, especially when taking into consideration that even private contracts often had to be kept even when they prove damaging. But, if the contract denies the possibility of resistance to private subjects, it also opens the door to legitimate resistance for the “lesser magistrates”, who, unlike simple subjects, can act in the name of the corporative people, within the limits of their office. Beza categorically points out that “the sovereign himself, before being granted his sovereign administration, swears fealty to the sovereignty under the conditions attached to his oath” and “he administers the oath to the said officers”, therefore there is a mutual obligation between a king and the officers of a kingdom

which allows one to act against the other when the obligation is broken (Béze 1970, 19-20). The contractual relationship between the king and his people makes such actions of the officers not to be regarded as seditious, thus avoiding this common accusation coming from the radical Catholics, because it creates a legal framework where rebellion against a tyrannical king becomes lawful. In this context, the resisting magistrates would be “loyal and keeping their oath to those from which they received their authority, against the one who had broken his oath and oppressed the kingdom which he should have protected” (Béze 1970, 21). On the other hand, the power to resist which the magistrates possessed was subjected to certain limits specific to their office: in particular, they did not have the power to overthrow a tyrant. Since the people-corporation entered into this compact with the king, only an institution which could claim to represent the whole people, in this case the Estates General, could remove a king who broke the compact. The task of the magistrates was to protect the realm against any damage until the Estates could be convened and could find a remedy to the problem.

Beza argues for the existence of an Assembly of the Estates in the Merovingian and Carolingian period, which exercised the right of electing and removing kings, while taking an active part in the governance of the realm. Naturally, the sixteenth-century Estates General no longer wielded such extensive powers, but for Beza, regardless of how long they had fallen into disuse, such rights could never be legally voided, as the right of prescription did not apply in such matters (Béze 1970, 41-42). Even if the Estates no longer acted as such a powerful check on royal power, the fact that the kings were required to swear an oath at their anointment, to confirm the privileges of the towns and of the officers of the kingdom and that the Estates were tasked (in Beza’s opinion) with deciding who would administer the realm during the king’s minority, represented for Beza evident proof of their ancient authority (Béze 1970, 42). The legislative power of the Estates means that the original contract between the king and the people was not unalterable and violation of the agreement was not limited to breaking the initial conditions upon which a king had assumed

the throne: in fact, the king was supposed to respect subsequent laws as well, not only because the author of laws must observe them to the same degree as anyone else, as Beza does not hesitate to point out, but also because the Estates possess a legislative sovereignty superior to that of the king. More so, new agreements between the king and the people can be concluded, which are equally binding. In this, Beza touches an issue which was extremely sensitive for the Huguenots and his language takes a more sectarian tone, as his argument is an obvious allusion to the several edicts of pacification which preceded the massacre of Saint-Bartholomew and which, according to the Huguenots, were never respected. Without referring explicitly to the French civil wars, Beza justifies the Huguenot rebellion, by arguing that, if there were edicts promulgated by a lawful authority which permitted the exercise of the "true religion", they could not be arbitrarily repealed by the monarch and if he does so, he becomes guilty of tyranny and could be lawfully opposed in the manner previously described (Béze 1970, 66-67).

The same concept of contract appears in *Vindiciae contra tyrannos*, but the main difference from Beza is that the author develops in much greater depth the notion of a double contract, which had been only briefly mentioned in *Right of Magistrates*. Just like Beza (and common political wisdom of that time), *Vindiciae* differentiates between tyrant "without a title", who does not possess a legitimate authority, and tyrant "by practice", who does – but the former does not have any relevance for the concept of the contract, because, governing by force only and without the consent of the people, he could not be involved in any such contractual relationship. In *Vindiciae's* scheme, the state is the result of two contracts, actually, which Paul-Alexis Mellet refers to as a "double alliance", because it was a covenant not only between the king and the people, but also between king, people and God, binding the obligations of the first two to a superior authority (Mellet 2006, 182-183). Nancy Roelker speaks of the transformation of the concept of "covenant" into that of "contract", which was represented in France at the time only by Huguenots, easily recognized in the formulations of Beza and the *Vindiciae contra tyrannos*

(Roelker 1996, 111-112). This assertion is erroneous, though, because, instead of such a metamorphosis, what one can see in the Huguenot literature of resistance is the cohabitation of the two concepts: this phenomenon is especially obvious in *Vindiciae contra tyrannos*, where the covenant between God, on one side, and the king with his subjects, on the other, is complemented by the “contract” between the king and the people. The author uses at first medieval legal tradition in order to construct his argument: God is “dominus” and “proprietary” of heaven and earth and those who inhabit the earth are his “tenants” and “copyholders”; “those who have jurisdiction on earth and preside over others for any reason, are beneficiaries and vassals [*beneficiarii* and *clientes*] of God and are bound to receive and acknowledge investiture from Him” (Brutus 2003, 16-17). The feudal relationship is contractual and involves the loss of fief in case the vassal does not fulfil his obligations and the same principle applies to the relationship between kings and God, which is indicated as much in the covenant (Brutus 2003, 20-21). Even though this covenant originated in the Jewish kingship of the Old Testament, the transition from the Jewish royalty to the Christian one did not alter the manner in which kings were created or the conditions their ascension depended upon and, therefore, the consequences for transgressing against God’s command remained the same (Brutus 2003, 25-26). The role of the people in this covenant is to guarantee that the king fulfils his duty to God faithfully: *Vindiciae* describes its task by referring to the Roman legal mechanism of debt, God acting “as creditors are accustomed to do with unreliable debtors, by making many liable for the same sum, so that two or more promissory parties are constituted for the same thing, from each one of whom the sum can be sought as if from the principal debtor” (Brutus 2003, 38-40). By making the king and the people responsible for each other’s behaviour, *Vindiciae* introduces thus the possibility for the people to act as God’s enforcer against a disloyal king and develops a divinely-sanctioned right of resistance. Yet, just like Beza before him, the author of *Vindiciae* makes it perfectly clear that this right of resistance does not extend to private individuals and for the exact same reason, that the people entered into its compact

with God and the kings as a corporation and, therefore, only the corporation was entitled to react and correct a breach of the contract by the king. The only ones who possess the right to enforce the contract are the magistrates of a kingdom, a point which is repeated extensively through the text, and, if they did not do so, then they became culpable themselves. The relationship of the magistrates with the people is comparable to that of a tutor and his ward: the former had both the legal capacity and the duty to protect the interests of its ward (in this case, the people), because the latter cannot act itself (Brutus 2003, 49-50). But, if *Vindiciae's* advocacy in favour of the lesser magistrates serving as a bulwark against tyranny was inspired by the support the Huguenots were expecting and receiving from the princes of the blood belonging to their cause, there is one further aspect of the right of resistance which *Vindiciae* emphasized and which reflected the realities of the Huguenot opposition to the Crown: that right was granted not just to the magistrates representing the entire realm, but also to those which acted only in the name of some specific parts of the kingdom. An important element driving the Huguenot resistance had been the municipal governments. According to *Vindiciae's* argument, they were permitted to lawfully do that (within the limits of their jurisdiction) because they were independent parts of the contract: "the king swore to observe the law of God, and that he vowed, in so far as he was able, to preserve the church. In just this way the whole of Israel, like a single person, promised the same at God's stipulation. We now say that individual cities, and the magistrates of individual cities which form part of the kingdom, individually promised the same in explicit terms, in so far as it concerned their own interests. It follows that all Christian cities and societies have done so tacitly" (Brutus 2003, 52). This argument was possible because sixteenth-century political thought (and the medieval, before that) was not beholden to the principle of majority: on the contrary, what theorists termed the "senior pars" could often prevail against the will of the majority and so did the existence of a privilege which a specific part of the kingdom could avail itself of.

In addition to the covenant between God, king and people, there is a second contract, this time only between the last two: this is necessary because, in the establishing of kings by God, the people plays the role of intermediary, as the role of the king is not only to preserve God's law (albeit this always comes first), but also to defend the interests of his people. In this, *Vindiciae* brings an addition to the well-known Pauline maxim that all authority comes from God, by pointing out that authority comes from the people as well, through the mechanism of election. In the opinion of the author, there were multiple precedents, both biblical and Roman, which confirmed this trait of the ancient monarchies, and the purpose of the election was mainly to serve as a "reminder that such a great dignity was conferred by the people, so keeping kings mindful of their office" (Brutus 2003, 68-71). While hereditary succession became the norm in most Christian polities during the Middle Ages, *Vindiciae* argues that this was more a *de facto* situation and the elective character of the monarchy had never been completely abandoned. The principle which *Vindiciae* employs in order to justify what would otherwise seem a strange idea in a world where lineage determined succession, is one which had been previously known and used by French jurists in order to justify the inalterability of the so-called French fundamental laws: according to this principle, kingship was a dignity and not an inheritance, therefore the king, even for the more absolutist political writers of the sixteenth-century, could not dispose of his kingdom as he saw fit. *Vindiciae* extends this principle to all "well-constituted kingdoms" and argues that "children do not succeed to the dead before they are constituted as if anew by the people. Nor are they born to their fathers as heirs, but they are only considered at last to be kings when they receive investiture of the kingdom, as if through the sceptre and diadem, from those who represent the people's majesty" (Brutus 2003, 71). In order for the son of a king to assume the throne, even if a tradition of hereditary succession existed, the confirmation by the Estates was required – and the same Estates could have chosen a different candidate from the same family or even a different dynasty if necessary, because the

original selection had not been unconditional, but the result of the above-mentioned contract.

The consequence of these two contracts is that the officials of a kingdom depend upon the people first and foremost, “give fealty first to the kingdom - that is, to the whole people - and then to the king as its protector [*curator*], as is manifest from the very formula of the oath” (Brutus 2003, 83). Just like Beza, the author of *Vindiciae* is perfectly aware that this system of government, which he claims to have existed in the past, became “corrupted” over time and many of the original checks upon royal power had fallen into disuse. But, in a manner similar to Beza’s, the anonymous author is adamant that prescription could not have deprived the people of its original rights: this was because those rights rested on two contracts, with God being part of one, but also because the people was a sempiternal corporation and the contract was renewed upon each succession.

The double contract described by *Vindiciae* illustrates the main responsibilities of the king as they were perceived during the sixteenth century: to protect the faith and provide his subjects with justice. The first covenant, between God, king and people, imposes piety as the main obligation of the parties, which are both equally compelled to observe it; but, in the second, the king becomes directly bound to the people, as the contract was modelled upon the civil law, where “the people stipulated and the king promised; for the parts of stipulator are considered to be stronger in law” (Brutus 2003, 130). Therefore, the king’s obligation is absolute, while the people’s was only conditional and the latter could be released from their oath of obedience in the circumstance that the king became a tyrant. But, if Hotman and Beza were quite explicit that only an Assembly of the Estates, which was the foremost manifestation of the popular sovereignty they were advocating, could actually depose a king, *Vindiciae* grants this right to the magistrates of a kingdom as well: in fact, the Estates play a much less prominent role in *Vindiciae*’s constitutional scheme, while the importance of the Parlement was emphasized more, likely because the Estates General of France were proving to be a body hostile to the Huguenots’ interests and goals. Julian

Franklin argues that the intent of the author was “not to diminish the rights of the Estates but simply to show that they may, if need be, be represented by the magistrates” (Franklin 1969, 41). Still, it was an extremely bold move by the author of *Vindiciae*, which made Ralph Giesey consider that, by expanding so much the magistrates’ power, through the analogy with the individual cotutor’s responsibility as set in Roman law, the book might suggest “the possible rightfulness of singlehanded regicide” (Giesey 1970, 51-52). There is just one example in the text where the author seems to give his consent to such an action, when he cites approvingly the fate of Manlius Capitolinus – who came into conflict with the Roman Senate, was accused of aspiring to kingship and executed – and claims it would be lawful to pass the same sentence on a tyrant (Brutus 2003, 156): but since Manlius was a *former* Roman magistrate, no longer in office at the time of his sentencing, he would classify as a “tyrant without title”, in whose case there was little doubt that could be resisted or killed by anyone, even private persons. Whether such sentencing would apply to “tyrants by practice”, namely, legitimate kings who abuse their power, is unclear, because, overall, the remedy which *Vindiciae* usually envisions against an unrepentant tyrant was removal from office, with the magistrates using “whatever is permitted against a tyrant either by right or just force” (Brutus 2003, 155).

The author of *Vindiciae* points out many examples from the history of France which, in his opinion, prove the previous existence of a contract between the French monarchy and the people. For him, the contract does not represent only a memory from a distant past. Even though its presence has become less obvious over time, *Vindiciae* argues that the contract is still embedded within the fabric of French political practice and it persists within certain traditions and customs: chief amongst them is the coronation, which the anonymous author refers to as the moment when the obligations stipulated in the original contract are reasserted by the new king and the people’s consent is explicitly reaffirmed (Brutus 2003, 134-135). By defining the relationship between king and people in such terms, the coronation gives a legal sanction to the right of resistance and *Vindiciae* emphasizes the role of

the magistrates as supervisors of the king and guarantors of the agreement, by claiming that “nor yet do the peers swear to him until he has pledged faith to them that he will guard the laws strictly” (Brutus 2003, 135). The participation of the magistrates in the swearing of the oath taking place at the coronation binds them to act against a king who violates his pledge, because otherwise they would themselves become perjurers: “just as the king promises to care for the welfare of the commonwealth, so do they. So if he breaks faith, they will not consider themselves absolved from their oath as a consequence, any more than bishops are if the pontiff is protecting heresy or destroying the church. Indeed, the more of a perjurer [*foedifragus*] he is, the more will they consider themselves obligated to fulfil their oath” (Brutus 2003, 160). And *Vindiciae* does not limit itself to referencing only the coronation, but digs even deeper into French political practice in order to bring out further evidence of the contractual character of the monarchy. First, the author argues that taxation always required consent (Brutus 2003, 118) and in this he merely gives voice to a long-established tradition, which maintained that kings could not dispose at will of their subjects’ goods. Second, the existence of privileged towns and provinces, whose rights the king was compelled to confirm, represents another proof of this, because such agreements “would all be in vain, unless they were considered to hold the place of a condition in contract” (Brutus 2003, 135). Third, the author brings up the so-called fundamental laws of France: if the first of them, the Salic law, which established the principle of agnatic succession to the throne, does not concern him because it deals only with the manner of succession and not with the powers of the king after assuming the throne, the other, the inalienability of the royal domain, provides him with an extremely valuable support for his initial argument that kings were mere administrators of their kingdoms and did not enjoy unlimited rights to them: “But to make it even clearer that the kingdom is to be given precedence over the king, and that he who received majesty from the people could not impair it on his private authority, he can banish no one from his realm, nor can he cede from the right of highest

command [*summi imperius*] over any part of the kingdom” (Brutus 2003, 123).

*Vindiciae contra tyrannos* was by far the most elaborate expression of the Huguenot theory of resistance and contractual monarchy. But, at the same time, it was also its swansong. The fundamental weakness of the Huguenots’ attacks against absolute monarchy was the fact that they were not a choice: the Huguenots had originally been extremely attached to the French monarchy and they were pushed towards more radical positions only when a *modus vivendi* with the Crown seemed to have become impossible. If the circumstances which emerged after 1572 changed, so could the opinions of the Huguenots on the matter of resistance – and this is what happened. But the impact of the proto-constitutionalist literature produced by the Huguenots during the 1570s was powerful: it arose strong reactions among the partisans of an absolute monarchy, who answered with their own rebuttals, among which the most celebrated is Bodin’s *Les Six Livres de la République*. Despite these attacks, the idea of resistance against a tyrannical monarchy was not going to fade away yet.

#### 4. The Legacy of the Huguenot Contractual Model of the Monarchy

If the Huguenot political theorists largely abandoned their notions about resistance and contractual monarchy during the 1580s, because the leader of their faction, Henry of Navarre, found himself in the position of heir apparent to the throne in 1584, after the death of Henry III’s brother, these theories were appropriated (and radicalized further) by their Catholic opponents. During the first phases of the religious wars, between 1562 and 1576, the radical Catholics tried to portray themselves as ardent supporters of the monarchy seeking to suppress the “seditious” Huguenots – and the revolutionary rhetoric which the Huguenots indulged in especially after 1572 seemed to provide them with vindication. But, while it is true, as Mack Holt asserts, that such claims that kings contracted their authority from the people struck at the heart of the sacral foundations of the French monarchy, the notion that the respective rhetoric “went a long way alienating

many Catholic nobles further from any lasting peace” (Holt 2005, 76) is much more questionable. The greatest opponents of the theories of resistance and contractual monarchy came from the legal class, the so-called *robins*, while many Catholic nobles were comfortable with many aspects of the limited monarchy of the sort proposed by the Monarchomachs. The noble revolt of the “Malcontents” from 1574, which shared many of the Monarchomachs’ ideas, such as distinction between king and Crown, sovereignty of the law, political dignity of the subjects, the role of the Estates General and the duty of revolt (but not the idea of a contractual monarchy) (Jouanna 1989, 351) and the revolt of the League, which pushed forward theories even more radical than the Monarchomachs ever dared to propose, without losing the support of their Catholic noble adepts, shows that to be the case. In fact, the political ideology of the radical Catholics, either noble or commoners, was consistent only with respect to their deep hostility towards Protestantism and their insistence that the king of France had to be a Catholic. On the question of the status of the monarchy and the right of resistance, on the other hand, the Catholic radicals vacillated much more and, even during the 1560s, there were some opinions similar to those which were declared seditious when coming from the Huguenots: as early as 1561, discontented with the policy of toleration apparently initiated by the government of Catherine de Medicis, one Parisian preacher defended the proposition that the pope could excommunicate kings who favoured heretics and free their subjects from their obligation to obey them (Holt 2002, 152). The next years will see popular preachers, especially Simon Vigor and René Benoist, getting closer, in their sermons, to Monarchomach discourse: while steering clear from advocating resistance against the monarch itself and chastising instead only his advisers, such preachers started delivering more and more dire warnings about the consequences which might befall a king who failed in his duty of eradicating heresy<sup>3</sup>. In the context of the religious division, violence against heretics became a sign by which the subjects could recognize the king’s justice: just like the Monarchomachs were to invoke the covenant with God in their writings, the radical Catholics were not slow to point out that

“God forbade his enemies to live amongst His people” and that, in exterminating the Huguenots, the king fulfilled the sacred mission for which he was elected by God (Crouzet 2008, 339). When the League moved towards open rebellion during the 1580s, the duty of submission to God engendered a right of resistance.

The idea of an ancient constitution guaranteeing the liberties of the French, which was corrupted over time, was not something created by François Hotman, but had deeper roots in French political thought and was shared by many Catholic nobles, as it showed during the Estates General of Blois from 1576-1577, when Claude de Bauffremont, addressing the king on behalf of the nobility, said “the French nobility only request of you what they asked of Charlemagne...that is that you let us live and grow old in the ancient laws, customs and ordinances of France” (Parker 1996, 162). But the most radical political theories proposed by the exponents of the Catholic League were put forward during the rebellion of the latter against Henry III and, after his death, against Henry IV, which broke out in response to the assassination of the League’s main leaders, Henri de Guise and his brother, cardinal Louis de Guise, on 23 and 24 December 1588, during the second Estates General from Blois. This event triggered a deluge of attacks against Henry III, as the League abandoned any facade of respect and submission to the king, which, previously, it had tried to preserve to a certain extent. One of the most vocal characters in this rhetorical war waged by the League was the preacher Jean Boucher, who published in August 1589 a treatise called *De justa Henrici Tertii abdicatione*, a bitter attack on Henry III, where not only he reiterated some of the previous arguments of the Monarchomachs, such as the sovereign power of the people which retained the right to depose a transgressing king, but goes even further, by advocating tyrannicide, even by private individuals<sup>4</sup>.

Boucher justifies this right by invoking the concept of a contract between God and the people, by which the latter transferred sovereignty to the king, who becomes thus bound by this contract and the submission of the people is conditional upon the observance of its terms. According to Mack Holt, Boucher equated the people with the *respublica* and thus placed

it above the monarch (Holt 2005, 134): in this, Boucher was following the lead of the Monarchomachs, who were also arguing for the superiority of the people as a corporation. Boucher, though, went one step further when he claimed that any private individual could take up arms against the tyrant, even absent a formal excommunication by the pope, as he judged the Sorbonne's pronouncement from January 1589, which absolved the people of France from their oath of obedience towards the king, as having been sufficient.

The same argument is developed by another League theorist, Guglielmus Rossaeus, author of *De justa reipublicae Christianae in reges impios et haereticos autoritate* (1590) – whose target was now Henry IV, since his predecessor, Henry III, had been assassinated one year before – where “obedience to the king is made to depend on his observing the contract by which he was raised” (Knecht 2010, 76). The notion of contract involves a set of conditions upon which someone could ascend the throne and the League argued that the Catholicity of the king should be the first of those – trying to raise this condition to the status of first fundamental law of the kingdom, even superseding the Salic law. Since Henry IV was still a Huguenot at the time, he was automatically in breach of that condition, therefore, according to this logic, in attempting to assume the throne he became just an usurper and, thus, killing him was licit for any individual. John Salmon claims that Rossaeus “refers fleetingly to a pact between king and people”, but it occupies no central role in this theory, and instead he “attaches great importance to the coronation ceremony, for it is only when the consent of the people is signified there that the king is invested with authority” (Salmon 2002, 149).

The political choices of the League, which were on the brink of making France subservient to Spain in order to prevent the ascension of Henry of Navarre, served to thoroughly discredit the theories of resistance and contract. Previously, Henry III and his royalist partisans had rejected the attempts to make the Estates General a legislative body, possessing of sovereignty independent of the king, which could censor or even depose him. During the 1590s, the balance started to tip decisively in favour of the absolute

monarchy, “free of any institutional control and moderated only by the king’s will alone to submit to the law of God and certain fundamental laws” (Jouanna 2007, 303-304). But the ideas of resistance and contract, even though they were forced to take a step back, overshadowed by the new absolutism, still did not disappear completely from French political thought and re-emerged, albeit timidly and without gaining much influence, on some occasions during the seventeenth century. The Huguenots' opposition, at the end of the 1610s, to the king's edict requiring the restitution of Catholic Church property seized in the Béarn province since 1569, and their subsequent rebellions during the 1620s were such an occasion, when Huguenot theorists like Theodore Brachet de la Milletière resurrected some of the old Monarchomach tenets: Brachet, while not returning to the old Monarchomach idea about the rights of the lesser magistrates to resist a tyrannical prince, invoked the rights of “ancient and natural subjects” of kings as the basis of a “mutual obligation” between subjects and rulers (Bergin 2014, 173). These new versions of early modern constitutionalism retained the idea of contract, but they no longer dared to proclaim the final power of the people over the king, as the Monarchomachs did – and they were overwhelmed by the voices which were rejecting any sort of limited monarchy.

## NOTES

<sup>1</sup> See Major, *Representative Institutions* and Major, *Representative Government*.

<sup>2</sup> Since the authorship of the treatise *Vindiciae contra tyrannos* is not definitely determined as belonging to Philippe Duplessis-Mornay, even though most of the historiographical opinions incline in this direction, I will avoid referring to him as the author when analyzing the text: instead, I will use the terms “the author”, “the anonymous author” or, simply, the title of the treatise, “*Vindiciae*”.

<sup>3</sup> For a more detailed account of the activities of the radical Catholic preachers in Paris during the 1560s, see Diefendorf, *Beneath the Cross*.

<sup>4</sup> For a thorough analysis on Jean Boucher’s book and the Leaguer radicalism, see Baumgartner, *Radical Reactionaries*.

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**Dr. Andrei Constantin Sălăvăstru** is a Scientific Researcher at the Institute of Interdisciplinary Research, Social Sciences and Humanities Research Department, at the University “Alexandru Ioan Cuza” of Iassy. His research focuses on early modern England and France, and more specifically on the (approximate) period 1450-1610. His publications include *Representations and Political Significations of the Disease in the Early Modern Era: England between 1470 and 1610* („Alexandru Ioan Cuza” University Press”, Iassy 2012). His many articles have covered topics related to the issue of corporal analogies in early modern political thought, in particular in Tudor England, with a focus on the metaphorical concepts of „political disease” and „political physician”. His current interest revolves around the ideology of power and propaganda during the French Wars of Religion (1562-1598), with a focus on the issues of tyranny, resistance and tyrannicide in the political literature of the period.

Address:

Andrei Constantin Sălăvăstru  
Institute for Interdisciplinary Research  
Social Sciences and Humanities Research Department  
Str. Lascar Catargi, nr. 54  
700107 Iasi, Romania  
Email: [andrei\\_salavastru@yahoo.com](mailto:andrei_salavastru@yahoo.com)