

The Works of Christopher St German

PhD

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ABSTRACT

This thesis examines the writings of early-modern common lawyer Christopher St German (c. 1460-1540/1). Though many scholars have written about St German, none has studied the known canon of his works in their totality and considered them against the background of the Reformation. This thesis fills that gap. It demonstrates how initial concerns about where the jurisdictional boundaries should lie between the common law and other forms of authority developed into broader considerations of where the boundaries of authority between the temporality and spirituality should lie.

This debate prompted St German's 'battle of the books' with then Chancellor Thomas More, with More staunchly upholding the *status quo* and the traditional rights and authority of the Church. Conversely, St German argued for a new world order where the Church was limited to dealing with 'merely spiritual matters,' promoting ideas of both royal and parliamentary supremacy, i.e. where non-spiritual matters were dealt with under the supervision of a lay supremacy that was at once royal and parliamentary.

During the later 1530s, this programme required a consideration of what the formulary of faith of the English Church should look like, and crucially what body was to be vested with the power for authoritatively determining and authorising Scripture. St German practically and firmly situates this authority with the King and his Parliament who, for St German, have the duty to command and prohibit on this and other issues, so as to promote the peace and quietness of the people.

St German's text predicts and narrates what law is becoming and will be, whilst asking the foundational question: 'what is law and how does it relate to fundamental belief'? Ultimately, St German is no Catholic conservative, no Lollard, no Lutheran and no Erasmian. Rather, he promotes his own idiosyncratically practical approach to religion which focusses on redressing the balance between temporality and spirituality, based on the Marsilian notion that both the clergy *and the laity* make up the 'universal Church,' but that submission to Rome is not required.

DECLARATION

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged.

Michelle Johnson

GENERAL ABBREVIATIONS

<i>Commentaries</i>	Blackstone, Sir William <i>Commentaries on the Laws of England</i> (1765-69) (Accessed via: https://lonang.com/library/reference/blackstone-commentaries-law-england/)
<i>CUP</i>	Cambridge University Press.
<i>History</i>	The Journal of the Historical Association.
<i>LP</i>	<i>Letters and Papers, Foreign and Domestic, of the Reign of Henry VIII</i> , edited by James Gairdner <i>et al.</i> London: Longman, 1862-1932. (Accessed via: https://www.british-history.ac.uk).
<i>ODNB</i>	Oxford Dictionary of National Biography.
<i>OHLE</i>	Oxford History of the Laws of England.
<i>OUP</i>	Oxford University Press.
<i>Parl. Hist.</i>	<i>Parliamentary History of England From the Norman Conquest, in 1066, to the Year, 1803</i> , edited by William Cobbett. London: TC Hansard for Longman, 1806-1820.
<i>PRO</i>	Public Records Office.
<i>SP</i>	<i>State Papers Published under the Authority of His Majesty's Commission, King Henry VIII and King Edward VI</i> . London: Murray, 1830-52.
<i>Statutes</i>	<i>The Statutes of the Realm</i> , edited by Alexander Luders <i>et al.</i> London: Eyre and Stahan, 1810-28.
<i>STC</i>	Short Title Catalogue.
<i>Summa</i>	Aquinas, Thomas <i>Summa Theologica</i> . (Accessed via: http://www.newadvent.org/summa).
<i>TNA</i>	The National Archives (UK).

ABBREVIATIONS OF ST GERMAN'S WORKS

St German's attributed works have been abbreviated as follows:

<i>Dialogus</i>	<i>Dialogus de fundamentis legum Angliae et de conscientia</i> (1528)
<i>Doctor and Student</i>	A Dialogue in English between a Doctor of Divinity and Student of the Laws of England of the grounds of the said Laws and of Conscience (1530[?]) – and – The Second Dialogue in English between a Doctor of Divinity and Student of the Laws of England (1530)
<i>Epistle of St Bernard</i>	An Epistle of Saint Bernard called the Golden Epistle, which he sent to a young religious man whom he much loved ... it is translated out of Latin into English ... Then after the said Epistle follow four revelations of Saint Bridget (1531[?])
<i>Treatise against Mohammed</i>	A Little Treatise against Mohammed and his Cursed Sect (ca. 1530)
<i>New Additions</i>	A Little Treatise called the New Additions (1531)
<i>Replication</i>	A Replication of a Serjeant at the Laws of England (ca. 1531/2)
<i>Parliamentary Draft</i>	Parliamentary Draft (1531)
<i>Writs of Subpoena</i>	A Little Treatise concerning writs of Subpoena (1532[?])

<i>Clement and Bernard</i>	A Dialogue Between one Clement a Clerk of the Convocation, and one Bernard a Burgess of the Parliament Disputing between them what Authority the Clergy have to make Laws. And how far and where their power does extend (1532)
<i>The Division</i>	A Treatise concerning the Division between the Spirituality and the Temporality (1532)
<i>Salem and Bizance</i>	Salem and Bizance (1533)
<i>Additions of Salem and Bizance</i>	The Additions of Salem and Bizance (1534)
<i>Power of the Clergy</i>	A Treatise Concerning the Power of the Clergy and the Laws of the Realm (1535[?])
<i>Constitutions Provincial</i>	A Treatise Concerning divers of the Constitutions Provincial and Legatines (1535)
<i>Answer to a Letter</i>	An Answer to a Letter (1535)
<i>Things Necessary to Salvation</i>	A Dialogue Showing what we are Bound to Believe as Things necessary to Salvation and what not (1537)
<i>Discourse of the Sacraments</i>	Discourse of the Sacraments: How many there are (1537)
<i>General Councils</i>	A Treatise Concerning General Councils, the Bishops of Rome and the Clergy (1538)

For citations to the authoritative editions of these works, please see chapter 1.4 The (Attributed) Works of St German. Spellings of the titles of St German's works have been modernised for ease of reference. Otherwise, with respect to quotations from within the texts, original spellings and punctuation have been maintained as they appear in the authoritative editions of the works, unless otherwise indicated.

CONTENTS

	Pages
Abstract	1
Declaration	2
General Abbreviations	3
Abbreviation of St German's Works	4
Contents	6
Acknowledgments	8
Chapter 1: Introduction	9
1.1 The Aims of the Current Study	9
1.2 Structure of the Thesis	25
1.3 The Life of Christopher St German (c. 1460-1540/1)	30
1.4 The (Attributed) Works of St German	37
1.5 St German's Publishers	44
1.6 St German's Sources	54
Chapter 2: Background to the Henrician Reformation	66
2.1 St German's Ideas in the Context of the Early Henrician Reformation	66
2.2 Enforcing the Royal Supremacy: The Road to Divorce	70
2.3 Chapter Summary	104
Chapter 3: The Division between the Temporality and the Spirituality	106
3.1 <i>Dialogus de Fundamentis Legum Angliae et de Conscientia</i> (1528) – and – Doctor and Student (1530)	106
3.2 A Replication of a Serjeant at the Laws of England (1531/2)	157
3.3 A Little Treatise concerning Writs of Subpoena (1532[?])	166
3.4 Chapter Summary	173

Chapter 4: ‘The Battle of the Books’	175
4.1 The Controversy between Christopher St German and Thomas More	175
4.2 The Ex Officio Procedure for Heresy	180
4.3 Chapter Summary – ‘The Field is Won’	215
Chapter 5: Establishing the Authority of the King-in-Parliament	217
5.1 Parliamentary Draft (1531)	217
5.2 A Little Treatise called the New Additions (1531)	222
5.3 A Dialogue Between Clement and Bernard (1532)	240
5.4 A Treatise concerning the Power of the Clergy and the Laws of the Realm (1535[?])	248
5.5 A Treatise concerning divers of the Constitutions Provincial and Legatines (1535)	256
5.6 An Answer to a Letter (1535)	259
5.7 A Treatise concerning General Councils, the Bishops of Rome and the Clergy (1538)	270
5.8 Chapter Summary	284
Chapter 6: St German on Orthodoxy and the Articles of the English Faith	286
6.1 The Early Religious Works: The Epistle of St Bernard ... [and] Four Revelations of St Bridget (1531[?]) – and – A Little Treatise against Mohammed and his Cursed Sect (ca. 1531)	286
6.2 The Unpublished 1537 Religious Works	293
6.3 Chapter Summary	315
Chapter 7: Conclusions	3
Bibliography	329
Appendix 1: A Note on the Transcriptions	356
Appendix 2: Things Necessary to Salvation	358
Appendix 3: Discourse of the Sacraments	449

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1.1 The Aims of the Current Study

There is no single work which considers each of St German's extant attributed works in turn to construct a complete map of his developing ideas. This is a gap in the literature which this thesis fills. In reviewing St German's known canon of works, it seems that they attempt to provide answers to three fundamentally interconnected questions and, in reflecting on St German's writing, it is these key questions that this study focusses on exploring. These questions are:

1. Where should the jurisdictional boundaries lie between the common law and other forms of authority?
2. More broadly, where should the authority between the temporality and spirituality lie?
3. After the break with Rome, what should the formulary of faith of the English Church look like?

In the secondary literature, St German's texts have received much attention from both legal and non-legal historians, theologians and political theorists but, overall, they have received particularly uneven scholarly attention. The printed and more readily available works, and, in particular, his most well-known *Doctor and Student*, have obviously been treated more consistently and thoroughly. With respect to the manuscript works (*Things Necessary to Salvation* and *Discourse of the Sacraments*), to-date these have received far less attention and require further scholarly examination. This thesis is indebted to John

Guy's identification of these as St German's in 1985.¹ However, since then, the only significant scholarship which has considered these, and other of St German's generally less well treated works in any detail, has been carried out by John Guy², Richard Rex³ and Daniel Eppley,⁴ whose research has similarly been invaluable in constructing this thesis. Although, even these authors have not expressly noted the specific gap in scholarship identified concerning the evolution of St German's thought by examining the totality of his works. However, their work has been indispensable in terms of how they have each turned to a consideration of one of other of the key research questions posed above. Firstly, Guy's 1985 *St German on Chancery and Statute* was central to understanding the point on legal jurisdictional boundaries and the influence of writers such as St German in establishing creative ways to curb and curtail the power of Chancery and the ecclesiastical courts in favour of the common law. Secondly, Rex's work was generally informative, but was especially critical in unpacking St German's unpublished

¹ John Guy, *St German on Chancery and Statute* (London: Selden Society, Vol. 6, 1985),17; for broader discussion see 47-53.

² See *ibid* generally. Also John Guy, "Thomas More and Christopher St. German: the battle of the books" *Moreana*, 21, no. 83-84 (1984) 5-25, and John Guy, "The Later Career of St German 1534-1541." in *The Debellation of Salem and Bizance*, ed. John Guy, Ralph Keen, Clarence Miller and Ruth McGugan, 408-14. Vol. 10 of *The Complete Works of Thomas More* (New Haven: Yale University Press, 1987), 408-14.

³ In particular, Richard Rex, "Christopher St German on Scripture, Councils and Monarchs," *Reformation & Renaissance Review*, 16, no. 3 (2014): 266-279, and Richard Rex, "New Additions on Christopher St German: Law, Politics and Propaganda in the 1530s," *The Journal of Ecclesiastical History*, 59, no. 2 (2008): 281-300.

⁴ Daniel Eppley, *Defending Royal Supremacy and Discerning God's Will in Tudor England* (Aldershot: Ashgate, 2007).

works in particular, and identifying St German's rather creative accounting of 'the point in history at which ecclesiastical authority was transferred from bishops to kings'.⁵ Finally, Eppley's work was incredibly instructive on the points regarding how the campaign to defend the Royal Supremacy was built around the arguments for 'the authors of human law [to have] the authority to pronounce definitively regarding God's will'⁶, and how, for St German, this was to be explicitly via the medium of the King-in-Parliament rather than the Crown alone.

However in terms of calls to study the totality of St German's work, the closest anyone has expressly come to a call for such research was Schoek in 1963 who called for an 'interdisciplinary seminar on St German which he felt would be 'challenging and fruitful'. He then specified that:

First, study is needed of St German's sources and habits of thought and expression (in light of his professional legal experience), for their own importance as well as for the further light that such studies would throw on the role of St German in Cromwellian England and the remarkable similarity of St German's writings to later Acts of Parliament as, notably, the Act for the Submission of Clergy'.⁷

More will be said about this at the appropriate moment in the thesis.⁸ And the only way to really come to terms with St German's sources and habits of thought and expression is to study each of his attributed works in turn and to place them within the contextual framework of contemporary Henrician policy.

⁵ Rex, *St German on Scripture*, 266.

⁶ Ibid, Introduction.

⁷ Richard J. Schoeck, "Canon Law in England on the Eve of the Reformation," *Mediaeval Studies*, 25 (1963), 133.

⁸ See chapter 5.1: 'Parliamentary Draft (1531)'.

Previously, Allen in 1928, compiled his research on political thought in the sixteenth-century.⁹ He opened his discussion with an assertion that Henry VIII's reign saw the conception of a 'new national consciousness and the old and widespread dislike of Papal interference and jurisdiction.'¹⁰ In this, Allen suggests that Henry capitalised on popular feelings that were similar to St German's own approach to the clergy:

[Henry] had with him the sense, widespread among the more educated of the laity, that clerical ascendancy in school and college was obstructive and obscurantist, and that an ignorant clergy, for grossly material and selfish purposes, was pandering to and making use of a mass of popular superstition.¹¹

Ultimately, to effect the changes necessary within his reign to grant his desires: '[i]t had to be shown that God intended that a national king should rule a national church.'¹² Allen criticises the regime, developed to see this change through, saying that 'there appears a tendency to adopt the method of proof by bald assertion.'¹³ This is certainly something St German was guilty of, considering More's frequent criticism of his overreliance on the evidence of 'some say.' But how was society to be kept from chaos if the Church was to have no centralised head and the civil power had no right to order the Church? In turn, this explains the preoccupation in parts of St German's writing with telling the origin story of authority within the Church – 'since it was incredible that God had not, from the first, provided means for the government and ordering of the Church, the question of how

⁹ John W. Allen, *A History of Political Thought in the Sixteenth Century* (London: Methuen, 1928).

¹⁰ *Ibid*, 157.

¹¹ *Ibid*, 157.

¹² *Ibid*, 158.

¹³ *Ibid*, 159.

the Church had in the earliest times been governed logically became important.’¹⁴ The peace and quietness of the realm was under threat. There needed to be some sharply defined alternative domestic national power and for St German, this was the King-in-Parliament, as will be shown.

Therefore, the line was that both Pope and clergy had effectively usurped the power of temporal princes, or in Tyndale’s words: ‘Kings they are, but shadows; vain names and things idle, having nothing to do in the world but when our holy father needeth their help.’¹⁵ But were the secular authorities and the common law really under attack by the ecclesiastical jurisdiction? One could argue that the jurisdictional boundaries had actually been hashed out during the medieval period thanks to the temporal power’s ability to call on the Writ of Prohibition. This writ had been put to use during the period by the common law courts to restrict and prevent other courts from overstepping their jurisdictional boundaries. Indeed, as Grey identifies, they were primarily used against the ecclesiastical courts due to the perception of them as a “foreign” or supra-national judicial system on the King’s jurisdiction’.¹⁶ Matters progressed further in the 1480s with the use of actions based on the fourteenth-century statute of *Praemunire*, which was originally used to prevent appeals to Rome, but was now being used to prevent litigation within England’s spiritual courts, and which also ‘allowed litigants who had been sued in any ecclesiastical court to prevent further proceedings there and to punish those who

¹⁴ Ibid.

¹⁵ William Tyndale, *The Obedience of a Christian Man*, ed. David Daniell (London: Penguin Books, 2000), 47.

¹⁶ Charles M. Grey, “The Boundaries of the Equitable Function,” *American Journal of Legal History*, 20, no. 3 (1976): 198.

had initiated them'.¹⁷ Consequentially, those commencing suits before ecclesiastical tribunals could be liable in damages and also suffer the criminal penalties established under the statute of *Praemunire*.¹⁸

So, could the jurisdictional boundaries have already been settled through the use of Writs of Prohibition and invoking the statute of *Praemunire*? If this was the case and the jurisdictional boundaries had indeed been settled in the medieval period, then why would the prohibitory power have been used against the ecclesiastical jurisdiction in the post-Reformation period when the courts could no longer really be described as 'foreign'? Gray suggests sensibly that this was due to the fact that they were still 'manned by civil lawyers and administered a body of law which had its origin in the medieval international Church and which was at any rate a distinct law, whose rules could sometimes conflict directly with English rules governing the same subject'.¹⁹

Thus, the precise jurisdictional boundaries were still very much under dispute during the period in which St German was active and he was determined that it would be the common law which would gain the upper hand. Indeed, as Helmholz confirms, ultimately, the '[r]ejection of papal authority did not entail the rejection of all the pope's law'. Thus, this remained to muddy the jurisdictional waters well after the break with Rome in the 1530s.²⁰ And even if there had been some tacit settlement, as per Helmholz,

¹⁷ Richard Helmholz, *Roman Canon Law in Reformation England*, (Cambridge: CUP, 1990), 25-26.

¹⁸ *Ibid*, 26.

¹⁹ Grey, *Boundaries*, 198.

²⁰ Richard Helmholz, *The Oxford history of the laws of England. Volume I, The canon law and ecclesiastical jurisdiction from 597 to the 1640s* (Oxford: OUP, 2004), 148. See also: Charles M. Gray, *The Writ of Prohibition: Jurisdiction in Early Modern English Law* (New York: Oceana Publications,

it is clear that ‘as the Tudor age began, it looked as though the settled compromises and agreed upon rules had that had long defined the Church’s *de facto* jurisdictional rights might well be overthrown’.²¹

Hence, the desire to firmly re-establish the authority of the sovereign was understandably reflected in the various publications of the period, some more extreme and exaggerated in their language than others. Allen cites Simon Fish’s *Supplication for Beggars* (1528), which claimed that the clergy ‘exempt themselves from the obedience of your grace’ and how they ‘translate all rule, power, lordship, authority, obedience and dignity from your grace unto them.’²² Allen describes the tract as ‘a grossly and unscrupulously libellous attack on the clergy, which justified the indignation expressed by Sir Thomas More in an answer called *The Supplication of Soules*’ (1529), noting how Fish ‘exhorts the King to despoil the monasteries and “set these sturdy lobies abroad in the world”’.²³ St German does not go as far as this practically, and nor does he go as far as the author of the *De Vera Differentia* (1534), which asserted that the Church lacked any coercive authority; it had no power to create law and it had ‘no power to constrain or to punish.’²⁴ There is still some compromise in his ideology as to the space for a reformed version of the ecclesiastical jurisdiction. Yet the general ideas that secular princes had a

1994); Richard Helmholz, “Writs of Prohibition and Ecclesiastical Sanctions in the English Courts Christian,” *Minnesota Law Review*, 60, no. 5 (1975), 1011-33; and also David W. Raak, “A History of Injunctions in England before 1700,” *Indiana Law Journal* 61, no. 4 (1986): 539-592.

²¹ Helmholz, *Roman Canon Law*, 27.

²² Allen, *A History*, 160.

²³ *Ibid*, 160 at n. 1.

²⁴ *Ibid*, 160; more reference to the *De Vera Differentia* will be made in chapter 5.

positive duty to recapture this God-given authority from the clergy are the very same ideas expounded by St German, even at an early stage.

St German also agrees with the author of the *De Vera Differentia* and with Gardiner in his *De Vera Obedientia* (1535), that if one looks to the scriptures for evidence, one finds only support for the authority of princes over the clergy. As Allen clarifies:

God must have intended to commit the ordering of the Church to Princes, and we find in the Old Testament that in fact he did so: and we know what St. Paul said. We may say, therefore, with Cranmer, that “all Christian Princes have committed unto them immediately of God the whole cure of all their subjects, as well concerning the administration of God’s Word for the cure of souls, as concerning the ministration of things political and civil governance.”²⁵

But even at this early stage, this was not an untempered power for princes to wield, for St German this power was bordered by the power of the Parliament.

However, these considerations then naturally devolved into a consideration of the very definition of the Church itself. If the Church meant ‘the clergy’ then there needed to be a new definition to support the authority of the King, or as Allen identifies, ‘[i]t had to be maintained that the Church Universal is a system of separated, national or State churches.’²⁶ St German approaches this using Marsilian principles by defining the Church as the entire body of Christendom – including the laity. More will be said about this at the appropriate moment.²⁷ In his *De Vera Obedientia* (1535), Gardiner defined the Church of England as ‘nothing else but the congregation of men and women of the clergy

²⁵ Ibid, 161.

²⁶ Ibid, 163.

²⁷ See chapter 1.6.

and of the laity, united in Christ's profession.'²⁸ Therefore, according to Allen, '[t]he Church of England, in fact, is one aspect of the realm, and to say that the King is head of the realm but not head of the Church, either means something evidently absurd or means nothing at all.'²⁹ Yet, this is not a sufficient definition to resolve the issues of supporting the conception of a nationalised church as it does not distinguish between the 'Church in England' and the 'Church of England.' Allen suggests that a satisfactory definition was not conceived of until the publication of the *Necessary Doctrine and Erudition for any Christian Man* (1543). It was this text which clarified the position of the national church by defining the 'Church Catholic' as a group of local churches. For '[a]s they be distinct in places, so they have distinct ministers and divers heads in earth ... yet be all these holy churches but one holy catholic church.'³⁰ Therefore, there was no need for the Church to have a centralised head in the body of the Pope. Thus, as Allen notes, for those such as Thomas Starkey writing in his *Exhortation to Christian Unity* (1534) 'to acknowledge a single ruler for the whole Church Catholic [...] would be as inconvenient as to recognise the Emperor as supreme secular ruler of Christendom.'³¹ This is a fundamentally different proposition to those suggested by Luther and Calvin:

both of whom conceived the Church Universal as an invisible thing. In the *Erudition* it appears as a group of quite visible Churches, each governed by its own natural and secular head and united by a common profession of the essentials of the Christian religion.³²

²⁸ Cited in Allen, *A History*, 163.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

Precisely what these essentials were also formed an important question later in the period, and one again that St German was vocal in his opinion thereupon.

But precisely how much power was the prince to wield? What were the boundaries of the royal supremacy to be? How far would the ecclesiastical power of the King extend? For example, what was his power in relation to items of strictly religious belief? Allen believes that generally these questions were ‘either shirked or not clearly seen’ during Henry’s reign and that if any answer was given then it was ‘prudently vague.’³³ Overall, Henry VIII maintained church tradition where it did not involve papal supremacy. For the lawyers, Allen suggests, this power was unlimited. He cites a speech given by Henry in 1545:

If you know surely [...] that a bishop or a preacher erreth or teacheth perverse to doctrine, come and declare it to some of our council or to us, to whom is committed by God the high authority to reform and order such causes and behaviour: be not judges yourselves ... Although you be permitted to read Holy Scripture ... in your mother tongue, you must understand that it is licensed you so to do only to inform your own conscience and to instruct your children and family, and not to dispute and make scripture a railing and a taunting stock against priests and preachers.³⁴

From this Allen suggests that, with respect to discerning scripture, ‘it is for the King alone to decide what the meaning is.’³⁵ Yet this interpretation is not established by the quotation just given as Henry clearly invokes the power of his council to also hear these matters. This is precisely the boundary that St German identifies from the outset of his writing. Incidentally, it is to St German that Allen then turns in order to expand upon the

³³ Ibid, 164.

³⁴ Ibid, 164-65.

³⁵ Ibid, 165.

implications suggested by the ideological shifts regarding the authority of the King signalled by Henry's reign.

In [St German's] writings the right, not of the King simply, but of the supreme civil authority, to decide for every one all controverted questions of religious belief, is much more than implied. It is natural that the assertion should have been made by a lawyer and not by a theologian. Cranmer and Fox and Hooper and Gardiner and Sampson and Bekinsau were theologians or, at least, ecclesiastics. They saw, or tried to see, in Henry VIII's Reformation a reformation of religion, and to them the royal supremacy was an instrument of religious reform. They concerned themselves with the invalidity of Papal claims rather than with the question of what was implied in the royal supremacy they needed. None of them really faced the issue.³⁶

St German is significant because he did face the issue and he proffered a solution. He argued for the reclamation of all powers considered temporal and that, if powers had been given away to the spirituality through goodwill of the temporality, this did not mean that they could not then be withdrawn. He did not see any appropriate position for the Pope outside the diocese of Rome, hence his demotion of him to 'Bishop of Rome.'

Allen is correct in his assertions, even if he is incorrect in identifying St German as a "'Protestant" lawyer,' and he also correctly identifies the key link between the authority of the King in religious matters within the realm with the power to discern the word of God, or as St German himself phrases it in his *Answer to a Letter* (1535) with the question: '[w]ho hath the power to declare and expound Scriptures?'³⁷ Allen notes that he made a 'serious attempt at an answer.'³⁸ However, ultimately, Allen's reading of St German is not entirely correct, in that '[i]n all cases of theological "variance" or dispute

³⁶ Ibid.

³⁷ The heading for chapter vii of the text.

³⁸ Allen, *A History*, 166.

as to the meaning of the Word of God, it is for the civil sovereign to decide the question authoritatively.³⁹ St German does not attribute ultimate power to the monarch unbounded.

Allen's next sentence comes closer to hitting the mark with the statement that '[a]ll that is wanted to decide religious controversies is a legal decision,'⁴⁰ as this comes closer to identifying St German's attribution and support of Parliament's supremacy, and his conception of the supreme authority of the King-in-Parliament. Therefore, it is important to revisit the definition provided by St German as to the meaning of the 'Church' which was made up of the collective of both clergy and laity, therefore the people of the realm must be represented in this definition of authority and this means that the authority over the Church in England must be wielded by the King-in-Parliament. Fortescuean theory was also invoked here with reference to the power of the King as *jus regale politicum*⁴¹ which confirms that the King 'may make no law to bind his subjects without their assent.'⁴² Comfortable with this stay on the King's power, the King-in-

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Fortescue called this *dominium politicum et regale* and differentiated it from *dominium regale* saying: 'Ther bith ij kyndes off kyngdomes, of the wich that on is a lordship callid in laten dominium regale, and that other is callid dominium politicum et regale. And thai diuersen in that the first kyng mey rule his peple bi suche lawes as he makyth hym self. And therefore he mey sett vpon thaim tayles and other impositions, such as he wol hym self, with owt thair assent. The secounde kyng may not rule his peple bi other lawes than such as thai assenten unto. And therefore he mey sett vpon thaim non imposi|cions with owt thair owne assent.' John Fortescue, *The governance of England: otherwise called The difference between an absolute and a limited monarchy*, ed. Charles Plummer (Oxford: Clarendon Press, 1885), 109.

⁴² See St German's comments to this effect in *Answer to a Letter*, sig. G6r.

Parliament has an unlimited authority to bind in law and to practically bind in conscience too as '[i]n one place, indeed, St. Germain says that no law made by man is binding unless "consonant to the law of God." But since Parliament can decide authoritatively what the law of God is, the restriction becomes unreal.'⁴³

In 1937, Baumer turned his attention to St German's political philosophy and lamented the piecemeal attention paid to an intellectual he considered 'one of the most influential writers of his generation.'⁴⁴ Indeed, he thought so highly of St German's influence that he highlighted how St German's theory had largely fallen into obscurity, whereas other 'less important men,' such as Stephen Gardiner, had taken his place in the attention of scholars.⁴⁵

Baumer went on to discuss St German as an early proponent of parliamentary sovereignty through his development of the notion of parliamentary infallibility⁴⁶ and

⁴³ Allen, *A History*, 167.

⁴⁴ Franklin Le Van Baumer, "Christopher St German The Political Philosophy of a Tudor Lawyer," *The American Journal of Legal History*, 42, no. 4 (1937): 631.

⁴⁵ Baumer confirmed that, while important as a polemic, Gardiner's *De vera obedientia* 'lacked the vision of St German's works.' Ibid, 631 n. 2.

⁴⁶ Walters explains this well and succinctly: 'Parliamentary infallibility implied Parliament *is* bound by higher laws of God and/or reason but due to the wisdom of the King, Lords and Commons it could never violate those higher laws; its moral judgment is infallible. This may be contrasted with "parliamentary moral omnipotence", or the idea that statutes themselves constitute or determine the content of the law of God and/or reason. Neither of these claims is the same as Diceyan parliamentary sovereignty, which asserts that Parliament is neither morally infallible nor morally omnipotent but rather is *legally* omnipotent: that is, its decisions are law regardless of their morality or immorality. If parliamentary infallibility is not parliamentary sovereignty, Baumer's argument can only make sense if it is accepted that, despite the differences, acceptance of parliamentary infallibility was a critical step in the historical evolution of

discussed the systematic theory of law within its historical context.⁴⁷ For St German, Baumer notes, that whenever discussing legislation ‘the king’s prerogative is quietly ignored’ and reference is rather made to the ‘king-in-parliament.’⁴⁸ He notes of St German’s religious views that he was a ‘moderate reformer’ as per Pollard’s description of him. In some respects this is perhaps true. In others, as we shall see (particularly in chapter 6), his views did become more advanced dogmatically. This is something which Baumer does note, though he would not have considered the most dogmatically extreme of St German’s religious works as they were as yet unattributed to him.⁴⁹

It was the weaponised notion of the King-in-Parliament that St German would use to attack the ‘Bishop of Rome.’ As Baumer notes, St German ‘was not interested in the problems of king vs. parliament but in the struggle between the king allied with parliament vs. the spiritual power, and as such may have been one of the first theorists of the modern doctrine of parliamentary supremacy.’⁵⁰ Yet, Baumer also notes, correcting Allen, that St German does not attribute to the King-in-Parliament ‘unlimited authority,’ for all law was subordinate to the law of reason and the law of God, but the King-in-Parliament certainly enjoyed a pre-eminence it had never before enjoyed.⁵¹ Ultimately, St German expanded the power of Parliament based on a reclassification of what was

parliamentary sovereignty-and that St. German did in fact advocate parliamentary infallibility’. Walters, *St German on Reason*, 349.

⁴⁷ More will be said on this point in the discussion of *An Answer to a Letter*.

⁴⁸ Ibid, 641.

⁴⁹ Ibid, 632.

⁵⁰ Ibid, 643.

⁵¹ Ibid, 643-44.

defined as temporal, and allocated Parliament the supreme authority over all cases related to property, to goods, and to money.⁵² He would also attribute the power to expound Scripture to Parliament, though he would deny the King ultimate authority in matters designated merely spiritual.⁵³ Therefore, the King could not administer the sacraments, or exercise powers of consecration, as the law of God itself had not designated these powers as belonging to the monarch, and even the Parliament could not contravene this source of law.⁵⁴

Baumer returned again to a consideration of St German in 1940, discussing him in the context of early Tudor theories of kingship.⁵⁵ Therein, he also noted another important point in St German's theory, that there was 'no conception of a royal prerogative outside the law.'⁵⁶ Contrasting St German with the likes of William Tyndale and Gardiner, again, who supported obedience to the King without exception, 'the lawyers defined the prerogatives which the king might exercise *according to the law.*' Therefore, for St German the idea of Royal Supremacy was not one unbounded on all sides. The King could not assert authority over merely spiritual matters, and he was also confined in the sense that he could not exercise his prerogatives outside of the law.

⁵² Ibid, 645.

⁵³ Ibid, 650.

⁵⁴ Ibid, 651.

⁵⁵ Franklin Le Van Baumer, *Early Tudor Theories of Kingship* (New Haven: Yale University Press, 1940), 184.

⁵⁶ Ibid.

Dickens in 1964, described St German as ‘one of the founders of Henrician legal thinking.’⁵⁷ St German ‘survived not only to utilise the press but also to participate in the actual crisis of the struggle.’⁵⁸ Though Dickens did not have the benefit of the later discoveries of other of St German’s works and therefore claimed ‘he took little interest in religious dogma,’ branding him as a ‘conservative’ in the matter.⁵⁹ However, Dickens noted St German’s ‘clarity and prescience’ in foreseeing the potential consequences of an unbridled ‘Royal Supremacy,’ and also highlighted St German’s insistence upon Parliament’s consent to the making of English law, and the importance of statutory measures, thus effectively foreshadowing the Reformation Parliament’s legislative approach.⁶⁰ His later attack on the Pope and his assertion that it was from the Crown that the ecclesiastical jurisdiction within the realm originated proceeded ‘*pari passu*’ with the Acts of Parliament which followed.⁶¹ Thus, justifying the assertion that one of St German’s roles was to encourage public support for the significant changes which were to occur.⁶²

This approach was followed by McConica (1965) who noted that ‘Saint German’s legal approach to the problem of Royal Supremacy was to be a cornerstone of the Henrician apologetic, and he and Gardiner with Edward Fox would carry the main burden

⁵⁷ Arthur. G. Dickens, *The English Reformation* (London: Batsford, 1989), 118.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid, 119.

⁶¹ Ibid, 120.

⁶² Ibid, 118.

of formulating a theoretical justification in public tracts.’⁶³ Though Scarisbrick (1968) notes that what the public were meant to interpret was not particularly consistent, thus for Gardiner, ‘the Royal Supremacy was vested in the king alone,’ but for St German ecclesiastical authority was ultimately vested with the ‘king in Parliament.’⁶⁴ This thesis will demonstrate the progress of St German’s ideas in this respect. More recently scholarly treatment of St German and his texts, by those key academics already mentioned (Guy, Rex and Eppley), and those not yet mentioned, will be made at the appropriate moments throughout the thesis.

1.2 Structure of the Thesis

With respect to structure, chapter one of the thesis proceeds with a consideration of the limited biographical information that we have about St German, before listing the works variously attributed to him in order to establish the canon of works that will be considered in this study. Thereafter, in an endeavour to start to assemble St German’s associations as a writer generally, and his connections to Cromwell and the intellectuals surrounding the King, chapter one also briefly examines the printers who published St German’s works, and also considers three of St German’s key sources for supporting his arguments: (i) Marsilius of Padua, (ii) John Fortescue; and (iii) Jean Gerson.

Chapter two establishes the context for St German’s developing ideas by examining the background to the Henrician Reformation. It, therefore, starts to chart where St German’s idiosyncratic ideology began to connect with the wider Reformation

⁶³ James K. McConica, *English Humanists and Reformation Politics under Henry VIII and Edward VI* (Oxford: Clarendon Press, 1965), 112.

⁶⁴ John J. Scarisbrick, *Henry VIII* (London: Eyre & Spottiswoode, 1968), 397.

debate. The chapter focusses on two key methods of propaganda that were used in an attempt to garner popular support for the King's 'Great Matter' and the religious reform which ensued, following the ultimate repudiation of papal power; namely the use of legislation and the press. Indeed, St German was involved in producing both written works of propaganda and with legislative schemes.

Chapter three considers St German's approach to the 'division between the spirituality and the temporality.' St German is, of course, classified as an 'anticlerical,' which he certainly was, in the sense that he was opposed to the amount of power and influence wielded by the clergy in what should be considered 'temporal matters.' He indicates his significant resentment of the perceived clerical usurpation of secular power throughout each of his works. Right from the start, he emphasises his concerns about the greed and pride of the clergy, buying into an anticlerical attack on the Church even before he comes to any theoretical resolutions. He sees the clergy as setting themselves against the laity, both spiritually and temporally, meaning that they were no longer focussed on the responsibilities Christ had tasked them with in the Scriptures. As mentioned, taking inspiration from Marsilian theory, for St German, the 'universal Church' was not only made up of the clergy, but the laity too. The chapter also demonstrates how St German likely came to the attention of the government following his seminal work *Doctor and Student*, which sought a resolution to the ongoing jurisdictional battle between the secular common law courts and the canonically influenced equity emanating from the Chancery. St German saw a resolution to this battle through designating *conscience* as a pre-existing common law principle, thus circumventing the Church's historic control over the concept. Other of his works connected to this concept are also considered in the chapter.

Chapter four then looks at the highly-charged ‘battle of the books’ which erupted between St German and the incumbent Chancellor Thomas More, which emerged following St German’s *The Division*. More of course preferred the *status quo* and saw St German’s works as potentially opening the floodgates to uncontrolled heresy within the realm. Therefore, it is their arguments over heresy and the *ex officio* procedure for heresy which the chapter focusses on specifically. More believed that rather than seeking a solution to the enmity between clergy and laity, which he saw as nowhere near as significant as St German, that St German was rather fanning the flames of open division. Though, as Williams amusingly notes, St German as an author does carry the rather rare honour of quite literally ‘having tried the patience of a saint.’⁶⁵

Chapter five charts the further evolution of St German’s ideas which developed in order to provide a pragmatic solution aimed at filling the vacuum of power which emerged following the formal break with Rome. St German had no qualms in settling this authority squarely with the King-in-Parliament via Fortescuean theory invoking what St German describes as *ius regale politicum*, therefore deftly avoiding situating ultimate power with a theocratic monarchy. Focussing such unlimited power in the body of one man did not sit well with St German, who felt that the conscience of one man was just too uncertain. Constraining the conscience of the King through the promotion of the authority of Parliament avoided this problem. With the Pope demoted to ‘Bishop of Rome,’ the King-in-Parliament was of course the fundamental authority, as the King was

⁶⁵ Ian Williams, “Christopher St German: Religion, Conscience and Law in Reformation England,” in *Great Christian Jurists in English History*, ed. Mark Hill and Richard Helmholz, 69-91 (Cambridge: CUP, 2017), 76.

after all the chosen leader of the body identified by St German as making up the ‘universal Church’ within the realm, i.e. all good Christians, both lay and ecclesiastical.

Chapter six then continues the exploration of the natural evolution of St German’s ideas into an analysis of who held the power to authoritatively authorise and determine the Scriptures. It begins with an examination of two early works (c. 1530-31) which, on first glance, seem only tangentially connected to his broader developing ideology; namely his *Epistle of St Bernard* and *Treatise against Mohammed*. The first of these, his *Epistle of St Bernard*, demonstrates that in the later 1520s/early 1530s St German’s approach to religion seems rather traditional. However, his *Treatise against Mohammed* has the potential to cast his earlier work in a tonally very different light, considering his criticism of the reluctance of Islam to provide vernacular translation of the Qur’an on the basis that this would lead to the risk of debate about the interpretation of the text. Though here focussing on Islam, this suggests potential considerations as to scriptural interpretation much earlier than previously conceived. His approach to orthodoxy faced further changes during the later 1530s and, although he does remain unclassifiable (it is not possible to identify St German as a Catholic conservative, Lutheran, Lollard or Erasmian etc), he does start to promote heterodox ideas in relation to the articles of the English faith in his unpublished works of 1537. This is where we are able to locate most explicitly his approach to scriptural determination and how he believes that, in the absence of a legitimately constructed general council, ultimate power to determine the Scriptures lies with the King-in-Parliament. And even though St German does seem to promote the supreme authority of a general council in determining the Scriptures, the key here is in the idea of ‘legitimately constructed’ general councils. As St German places so many onerous conditions upon their construction as to make them

practically implausible to be called in any way he would support as valid. He also rejects that any councils have been validly constituted, a more extreme view than the Protestant conception at the time, where most approved of at least the first four councils. Therefore, to all practical intents the King-in-Parliament reigns supreme.

Finally, chapter seven concludes the thesis demonstrating that above all, if one did want in some way to label St German with a single label summarising his approach to these key issues, he was a ‘man with a plan’ and one distinctly his own though ever developing and unlikely emanating from any preconceived religious premise, eclectically borrowing from where needed to fulfil his overall endeavour. His aim was to rebalance the imbalance between clergy and laity, between spiritual and temporal, and he did this by trying to proffer practical solutions. In the process, he helped to develop and promote the concepts of common law, royal and parliamentary supremacy, the conception of the ‘universal Church’ as inclusive of the laity, the idea of Christian unity and the rise of the English national church. Thereafter, the Appendices to the thesis provide a transcribed version of St German’s previously unpublished manuscript works from 1537 for the first time, namely; *Things Necessary to Salvation* and *Discourse of the Sacraments*.⁶⁶

⁶⁶ This author has also arranged for the transcription of *Discourse of the Sacraments* to be published shortly at <http://www.lawandjustice.org.uk/index.htm>. The companion website to the journal *Law & Justice*. This is in conjunction with a companion article on the manuscript in the journal itself, now available in Michelle L. Johnson, “Christopher St German’s “*Discourse of the Sacramentes Howe Many There Are*”: a reflection on St German’s ideas in the context of Law and the Reformation,” *Law & Justice*, 181, no. 2 (2018): 189-206.

1.3 The Life of Christopher St German (c. 1460-1540/1)

Christopher St German was born around 1460 at Shilton in Warwickshire, where his parents are buried. His parents were Sir Henry St German and Anne Tyndale (or Tindall). As Schoeck, who has traced St German's family connections, confirms it is not possible to establish St German's paternal grandfather, though he believes that he was related to Geoffrey St German who was attainted in 1485. However, his mother Anne was the daughter of Thomas Tyndale of Hockwald, Norfolk, and on this maternal side St German seems to be connected to several families (including the Yelvertons, Pastons and Coningsbys) whose members held significant places in the law.⁶⁷ Based on his research, Schoeck describes the 'St German family as one derived from a London middleclass family of considerable wealth' but which then went on to suffer difficulties potentially in part due to Geoffrey's attainder and also due to other issues.⁶⁸ Baker is more reserved and suggests that the family was of more 'modest fortunes' and that they probably derived from 'mercantile origin.'⁶⁹

⁶⁷ See Richard J. Schoeck, "The Family of Christopher St German," *Notes and Queries*, 31, no. 2 (1984): 165, and more generally for further information on St German's immediate family tree and pedigree. For other biographical information about his life and associates, see Hogrefe account which includes the details of several property transactions that he was involved with and which also details correspondence between St German and Cromwell and other instances where St German appeared in Cromwell's papers. Pearl Hogrefe, "The Life of Christopher St German," *Review of English Studies* 13, no. 52 (1937): 398-404. See also Guy, *St German*, 3-10 for further information on St German's background, including an immediate family tree at 4.

⁶⁸ Schoeck, *The Family of Christopher St German*, 168.

⁶⁹ John H. Baker, "St German, Christopher (c.1460-1540/1), legal writer," *ODNB* (2004).

As Williams notes, there is unfortunately no evidence of his legal or non-legal education, but that he presumably ‘made his way to London in his late teens.’⁷⁰ The only reference to St German’s education that this author has yet been able to identify is hearsay reference to his alumni status in Foster’s *Alumni Oronienses*, which includes the original misassociation of him with the Inner Temple and notes that the source the claim of his association with Oxford scholars comes from Wood’s (1632-1695) *Athenae Oxoniensis*.⁷¹ Wood’s work notes the following entry for St German:

CHRISTOPHER SEINTGERMAN, called by some SEYNYARMAYN or SEYNGERMAN, son of sir Hen. Seintgerman [...] In his juvenile years he was educated in grammatical and philosophical learning among the Oxonians, from whom and by whom, by the advice of his parents he was taken away and sent to the Inner-Temple; where by the benefit of his academical learning, certain instructors in the municipal laws, and by his forward genie, and industry, he became a barrester [*sic*] and a counsellor of note, being then esteemed eminent not only in the common, but also the civil law ; by which afterwards he obtained immortal fame among the citizens of London. Besides this his profound knowledge, he was admirably well read in philosopy, and the liberal sciences, which made his company desired by scholars and clergy.⁷²

Wood goes on to include some more personal information about St German including status as a confirmed batchelor, that he seldom took a fee for his legal advice, that he spent much of his money on books and that he read a chapter of the Bible to his household every night and expounded on the substance of the same. However, this is effectively

⁷⁰ Williams, *St German*, 70.

⁷¹ [St German, Christopher, s. Sir Henry of Shilton, co. Warwick; said by Wood to have been a barrister of the Inner Temple, and to have obtained immortal fame among the citizens of London ; but his name does not even survive ; his will dated 10 July, 1540, proved 30 May following [...].] Joseph Foster, *Alumni Oronienses*, Oxford: James Parker & Co (1891), vol. 4, 1300.

⁷² Anthony Wood, *Athenae Oxonienses*, London: F.C. and J Rivington *et al* (1813), vol. 1, 264-5.

lifted from Bale's entry for St German in his *Index*.⁷³ A search of Cambridge's *Alumni Cantabrigensis* by Venn⁷⁴ and its digitised counterpart⁷⁵ yield no reference to St German at all.

St German's career in formal legal practice as an 'utter-barrister' of Middle Temple is not well noted. It should be noted that '[s]tatus as an utter barrister denied lawyers audience rights in the Court of Common Pleas, the most important of the central common law courts, and so it is no surprise that St German does not appear as a lawyer in any contemporary law reports.'⁷⁶ Baker notes how he does not seem to have held office in the inn and nor does he appear to have become a bencher and seems to have withdrawn from formal legal practice around 1511, after which time no further mention is made of him in the records of the inn.⁷⁷ The records of the Parliament of Middle Temple (its governing body) refer to 'Master Seynt Germain' suggesting the initial possibility that he was indeed a Master of the Bench.⁷⁸ However, this is not the case and a full review of

⁷³ Ibid.

⁷⁴ John Venn, *Alumni Cantabrigenses*, Cambridge: CUP (1922); part 1 vols. 1 and 4 specifically.

⁷⁵ <http://venn.lib.cam.ac.uk/Documents/acad/2018/search-2018.html>. This author had planned to obtain firsthand access to the Oxbridge alumni registers, however, due to restrictions imposed by the Covid-19 pandemic, it has not been possible to obtain access to these at this time. But there are already plans to follow this up with in-person future research endeavours.

⁷⁶ Ibid.

⁷⁷ Baker, *St German*.

⁷⁸ Ibid. The record for 4 July 3 Hen VIII states: 'Broughton, junior at the instance of Seynt Germain, is pardoned all vacations at the time of Christmas, and all offices except the offices of Steward and Marshal, for a fine of 13s. 4 d. which he paid into the hands of Fitz James, then Treasurer.

the Parliamentary Minutes and post-1501 admissions registers for the Inn (no admissions registers exist prior to 1501) support Baker's thesis. The term Master of the Bar was also in use at the time and this is the likely titular association with St German in that particular Minutes entry.⁷⁹ The few other sparse references to St German in the Parliamentary Minutes omit any reference to a title for him.

However, other details of his earlier legal practice can be seen, for example, from a record from the Court of Requests in 1505 where St German was involved in a family property dispute. In 1508 and 1510 he was also involved as a feoffee in trust, with other Middle Templars.⁸⁰ Schoeck's research conflicts with the 1511 date as his calendar of references to St German in the records of Middle Temple suggest a date of between 1512 and 1522 as to when he parted ways with his inn, and with the last named mention of him in the records in 1512.⁸¹

This pardon was granted because he alleged, on the testimony of Seynt Germayn, that it was promised to him at his first admission.

Hord, junior was admitted to the Clerk's commons [...] This admission was made at the instance of Master Seynt Germayn, because he was well learned, and others had laboured for him at other inns.' Venn, *Alumni Cantabrigenses*, vol. 1, 29.

⁷⁹ See *ibid*, vol. 1, 2, 11 and 32.

⁸⁰ Williams, *St German*, 70. By way of further explanation, '[b]y the early sixteenth century, placing land in use (the precursor to the trust) was a means by which landowners could avoid some of the undesirable financial consequences of English feudal land law, and groups of lawyers were frequently appointed as the feoffees (legal owners) for these purposes.' *Ibid*.

⁸¹ Richard J. Schoeck, "That Most Erudite of Tudor Lawyers," *Journal of the Rocky Mountain Medieval and Renaissance Association*, 4 (1983): 124.

Williams notes a remark in a letter of 1539 which suggests that he left the Temple ‘before about 1515.’⁸² It could have been that St German continued to act in the interests of his family until the late 1530s. However, there is no evidence to substantiate this and Baker further notes that there is no record of his name within any law reports or among lists of any commissions. He was named as a master of requests in 1529, but it is considered unlikely that he ever sat.⁸³ He is also styled as ‘Doctor’ in some documents of the period but, as Schoeck notes, we have no information as to his studies or if he did receive a doctorate in either civil or canon law, and as mentioned, this author has similarly been unable to locate any information to clarify this point further.⁸⁴ Therefore, what he did between 1511 and 1528 when his first book was published remains a mystery. Schoeck suggests he retired from legal practice around 1520 at the age of sixty, and then came out of retirement to study theology and canon law before preparing his *Dialogus*.⁸⁵ Baker posits that it is possible that he worked within the world of legal publishing, perhaps anonymously editing works.⁸⁶ Both of these seem a logical possibility considering his later career. There is further support for Baker’s thesis in the fact that a suit of 1506 demonstrates that St German was retained on a committee by the King’s

⁸² Williams, *St German*, 71. The letter referred to is a holograph letter from St German to Thomas Cromwell, It can be found at: TNA, PRO, SP 1/152 f. 249.

⁸³ Baker, *St German*.

⁸⁴ Richard J. Schoeck, “The Strategies of Rhetoric in St German’s *Doctor and Student*” in *The Political Context of Law: proceedings of the seventh British Legal History Conference*, ed. Richard Eales and David Sullivan (London: The Hambledon Press, 1987), 78.

⁸⁵ Ibid.

⁸⁶ Baker, *St German*.

printer, Richard Pynson, along with two other Middle Templars in 1506.⁸⁷ They were to work on a reprint of Pynson's lengthy *Abridgement of Statutes*. The aim was to alphabetically arrange the statutes according to subject matter, but the work ended up in litigation in both the common law and Chancery courts. As Williams notes, '[n]o outcome of the dispute is known, and no copies of this printing of the *Abridgement* are known to exist.'⁸⁸ There was also already a connection between St German and John Rastell (c. 1475-1536),⁸⁹ brother-in-law to Thomas More after marrying his sister Elizabeth possibly around 1497, in that they were both from Coventry and Rastell was also a contemporaneous Middle Templar.⁹⁰ Rastell would then go on to print the 1528 edition of St German's *Dialogus*.⁹¹ However, St German may as easily have worked as a conveyancer or a legal advisor during the period. Both employment options would leave no formal record, yet both would have been ready ways to make money. So, despite the lack of official record that we have for St German, this by no means suggests that he was an obscure figure to his contemporaries, it seems as likely that he was sufficiently well-known in the relevant circles to bring him to the attention of the party surrounding the King in wake of the divorce issue in the later 1520s and early 1530s.

⁸⁷ Ibid.

⁸⁸ Williams, *St German*, 72.

⁸⁹ Schoeck suggests a repeated association with Rastell through his research of the Middle Temple records as they would both have been there at the same time and also due to the fact that they derived from a similar geographical area nearby Coventry. He and St German are also named in records regarding the transaction of a Warwickshire property in 1508. Schoeck, *Most Erudite of Christian Lawyers*, 110.

⁹⁰ Cecil H. Clough, "Rastell, John (c. 1475–1536), lawyer and printer," *ODNB* (2004).

⁹¹ *STC* (2nd ed.)/21559.

Ultimately, St German died unmarried and resident in Old Fish Street in the City of London (incidentally an area important for the early modern English book trade⁹²) in 1540/1 at the age of approximately 80/1.⁹³ Bale notes that his wealth at death was mainly in books, suggesting St German was indeed a formidable reader.⁹⁴ This is also borne out by the 1539 letter to Cromwell wherein St German complains that he is not able to get hold of a copy of Erasmus de Sarcerio's *de Locus Communibus*.⁹⁵ As Williams notes, '[t]his is a reference to the *Commonplaces of Scripture*, translated by Richard Taverner, whose Protestant leanings can be seen by his role as a lay preacher during the reign of Edward VI.'⁹⁶ In executing St German's will, the first choice of his library was given to his executor Christopher Breteyn, another fellow Middle Templar (though he had to pay for them) where after St German insisted that his books be sold first from his assets before moving on to the sale of other assets, in order to meet the value of his bequests. Baker further notes how his library must have been 'impressive' but is sadly lost.⁹⁷ There is no

⁹² Williams, *St German*, 71.

⁹³ Though Bale dates his death to 28 September 1539 and notes his place of burial at the church of St Alphage, Cripplegate. Baker and Guy note, however, that his will is rather dated 10 July 1540, which was proved on 30 May 1541, thus suggesting that St German had died in the weeks prior to this date. Baker, *St German*. Bale, *Index*, 53-55 for references to St German.

⁹⁴ PRO PROB 11/28, quire 29 (St German's will); Bale, *Index*, 53-55.

⁹⁵ TNA, PRO, SP 1/152 f. 249.

⁹⁶ Williams, *St German*, 71.

⁹⁷ Bales' entry for St German notes this, as does Anthony à Wood's (1632-95) account of his life in the *Athenae Oxonienses* where he states that '[w]hat he got, and what he could spare out of his paternal estate, he expended in purchasing books. So that several years before he died, his library exceeded any one or two that belonged to a person or persons of his profession.' However, following Schoeck's research there seems

list of the books which constituted it and only one volume from it has been identified as having belonged to him.⁹⁸

1.4 The (Attributed) Works of St German

This brings us to a discussion of St German's works, as it is not for his legal practice that he receives recognition, but for his substantial legal writings produced in less than a decade during the early Reformation period.⁹⁹ As will be discussed in chapter two, the Reformation may have been a primarily theological affair on the continent and even closer to home in Scotland, yet in England it was closely tied to legal and political concerns, particularly during its early stages in the 1530s. It was of course tied to Henry's divorce from Katharine of Aragon, but also to the legal controversy over the parameters of the ecclesiastical jurisdiction and its perceived encroachments into the territory of the common law, as well as the Church's influence over Chancery jurisdiction. Both the latter issues were hotly contested by lawyers on either side of the argument and much of St German's writing was focused on reconciling the differences between the two sides, with a distinct and recurrent bias in favour of the common law. A recurring theme in his writing was the issue of the sphere of conscience as the natural property of the Church,

to be no evidence in the University's records to support Wood's suggestion that St German was 'educated in grammatical and philosophical learning among Oxonians.' Wood also erroneously ascribes St German to the Inner Temple. Anthony à Wood, *Athenae Oxonienses: An Exact History Of All The Writers And Bishops Who Have Had Their Education In The University Of Oxford*, ed. Philip Bliss (London: F.C. and J. Rivington, 1813), 1:120.

⁹⁸ The volume is Harvard Law School, MS 155, which seems to be a copy of the *Registrum brevium*, with tracts (c. 1384), with additions into the fifteenth-century. Baker, *St German*.

⁹⁹ Guy, *St German*, 3.

which St German attempted to resettle, in large part, with the common law by designating conscience as a pre-existing element of the domestic law of the realm. Therefore, following St German, if common lawyers wanted to follow conscience they need not seek recourse to an ostensibly foreign-inspired jurisdiction in the body of the canon law channelled via the equity courts. They need only look to their own law which already embodied it via its foundation upon the law of God. The appeal of constructing a ‘domestic solution’¹⁰⁰ to the perceived encroachments of a foreign jurisdiction must have proven immediately apparent to those seeking to secure Henry his divorce, as they drew ever closer to a conclusion which would ultimately lead to a spiritual power vacuum following the repudiation of papal power.

St German’s initial ideas about conscience were likely practically attractive and his writings continued to be relevant as they progressed into a conceptual consideration of the authority of the King-in-Parliament. Towards the end of his decade of writing, St German then moved on to consider the new key issue of the day – what the formulary of faith of the English Church should look like. Therefore, even though not all of St German’s works were published, he was involved with many of the key ideological stages of the evolving Henrician Reformation during the 1530s, thus justifying Baker’s argument that St German ‘must be reckoned one of the major intellectual forces behind the English Reformation.’¹⁰¹ Even the unpublished works tell us something important, for as Ryrie stated; ‘[t]he paths not taken, the religious dead ends, are as revealing about

¹⁰⁰ Greg Walker, *Writing under Tyranny: English Literature and the Henrician Reformation* (Oxford: OUP, 2005), 137.

¹⁰¹ Baker, *St German*.

the process of reformation as the successes.¹⁰² This study will go on to consider each of the works currently attributed to St German and will consider the evolution of his ideas within the context of the Henrician Reformation of the 1530s, thus shedding further light onto a significant historical period. A complete consideration of a key intellectual's body of written work, produced contemporaneously to the period, offers an invaluable snapshot of the ideas in circulation at the time and the different options on the table as the debates in the period raged on, and something solid upon which to advance our understanding.

In order, to explore St German's works in greater depth, we need a clear picture of what works we can attribute to him. According to Bale's list,¹⁰³ St German produced sixteen works:

1. *Dialogum de legibus Anglicanis*
2. *Dialogum de fundatione earundem*
3. *Apologiam as epistolam quandam*
4. *De statutis prouincialibus*
5. *De cleri potestate ex iure*
6. *Doctrinam Bernardi et Brigide*
7. *Concilia Romanorum pontificium*
8. *In Mahumetem et eius sectam*
9. *Discrimen vulgi et cleri*
10. *Salem et Bizantium*
11. *Additiones eiusdem operis*

¹⁰² Alec Ryrie, "Paths Not Taken in the British Reformations" *The Historical Journal*, 52, no. 1 (2009): 2.

¹⁰³ John Bale, *Index Britanniae scriptorum*, ed. Reginald L. Poole & Mary Bateson (Woodbridge: Brewer, 1990), 54.

12. *Quod clerus non condret leges*
13. *Quid ecclesia sit*
14. *De sacramentis eiusdem*
15. *Apologiam aduersis Morum*
16. *De vtraque potestate dialogum*

However, recent scholarship (predominantly completed by Rex), has expanded St German's list of works to eighteen. It is this list which this thesis follows.¹⁰⁴ St German's writings have then been sub-divided for consideration into three categories (following the three key questions set out in the introduction to the thesis) and then considered thematically to demonstrate the progress of his key ideas, rather than following a simple chronological walk-through of each of his works. The first sub-division within chapter three looks at his 'earlier works' written between circa. 1528 and 1532/3, including *Doctor and Student* which paved the way for the primacy of the common law. Secondly, in chapter four the thesis will discuss the works involved in the dispute with Thomas More, where St German established the appropriate place for the clergy within his perceived new world order, i.e. one where their authority ends with 'purely spiritual' matters. Thus recapturing the temporal territory they had previously annexed. Thirdly, chapter five contains the works where St German laid the foundations and began to develop his ideology of the supreme legal authority of the King-in-Parliament. St

¹⁰⁴ Though Baker also suggests that a c.1534 work entitled '*Certen considerations why the spirituall jurisdiction wold be abrogatt and repelled or at the leest reformed*' is also potentially St German's. The manuscript is found at BL Cotton MS. Cleopatra F.II, fo. 244. For this attribution by Baker see; John .H. Baker, *The Oxford History of the Laws of England The Oxford History of the Laws of England*. Vol. 6, 1483-1558 (Oxford: OUP, 2003), 790, n. 70.

German's works, such as *Power of the Clergy* (1535[?]), are included here. This is where St German argues that the King derived his power directly from God and again demonstrates St German's support for a royal supremacy bordered by that of the Parliament. Finally, chapter six will consider St German's early religious works (c. 1528 – 1531) which provides us with a snapshot of his early religious leanings, and his unpublished works of 1537 in which he went on to consider the formulary of faith of the English Church in a distinctly heterodox manner.

For the purposes of clarity, St German's works included in chapter 3 comprise:

1. *Dialogus de fundamentis legum Angliae et de conscientia* (1528)¹⁰⁵
2. *Doctor and Student* (1530)¹⁰⁶
3. *A Replication of a Serjeant at the Laws of England* (1531/2)¹⁰⁷
4. *A Little Treatise Concerning Writs of Subpoena* (1532[?])¹⁰⁸

St German's works related to the controversy with More in chapter four are as follows:¹⁰⁹

¹⁰⁵ Authoritative modern edition: Christopher St German, *Doctor and Student*, ed. John Barton and Theodore Plucknett, Vol. 10 (London: Selden Society, 1975).

¹⁰⁶ Ibid.

¹⁰⁷ Authoritative modern edition: Christopher St German, "Replication of a Serjeant at the Laws of England," in *St German on Chancery and Statute*, ed. John Guy. Vol. 6, 99-105 (London: Selden Society Series, 1985).

¹⁰⁸ Authoritative modern edition: Christopher St German, "A Little Treatise concerning writs of Subpoena." in *St German on Chancery and Statute*, ed. by John Guy, Vol 6, 106-26 (London: Selden Society Series, 1985).

¹⁰⁹ This section will also provide a detailed consideration of More's responses to St German's writings in the form of *The Apology* (1533) and *The Debellation of Salem and Bizance* (1533/4). Authoritative modern editions of these works found at Thomas More, "The Apology," in *The Complete Works of Thomas More*,

1. A Treatise Concerning the division between the Spirituality and the Temporality (1532)¹¹⁰
2. Salem and Bizance (1533)¹¹¹
3. The Additions of Salem and Bizance (1534)¹¹²

The works considered in chapter five comprise:

1. Parliamentary Draft (1531)¹¹³
2. A Little Treatise called the New Additions (1531)¹¹⁴
3. A Dialogue Between one Clement a Clerk of the Convocation, and one Bernard a Burgess of the Parliament Disputing between them what Authority the Clergy have to make Laws. And how far and where their power does extend (1532)¹¹⁵

ed. Joseph Trapp, Vol. 9 (New Haven: Yale University Press, 1979), and Thomas More, “The *Debellation of Salem and Bizance*,” in *The Complete Works of Thomas More*, ed. John Guy, Vol. 10 (New Haven: Yale University Press, 1987).

¹¹⁰ Authoritative modern edition: Christopher St German, “A Treatise Concerning the division between the Spirituality and the Temporality,” in *The Complete Works of St. Thomas More*, ed. Joseph Trapp. Vol. 9, 177-212 (London: Yale University Press, 1979).

¹¹¹ Authoritative modern edition: Christopher St German, “Salem and Bizance,” in *The Complete Works of St. Thomas More*, ed. John Guy. Vol. 10, 323-92 (London: Yale University Press, 1987).

¹¹² STC (2nd ed.)/21585.

¹¹³ Authoritative modern edition: Christopher St German, “Parliamentary Draft,” in *St German on Chancery and Statute*, ed. by John Guy. Vol. 6, 127-35 (London: Selden Society Series, 1985).

¹¹⁴ Authoritative modern edition: Christopher St German, “A Little Treatise called the New Additions,” in *Doctor and Student* ed. John Barton and Theodore Plucknett. Vol. 10, 316-340 (London: Selden Society, 1975).

¹¹⁵ STC (2nd ed.)/6800.3.

4. A Treatise Concerning the Power of the Clergy and the Laws of the Realm (1535[?])¹¹⁶
5. A Treatise concerning divers of the Constitutions Provincial and Legatines (1535)¹¹⁷
6. An Answer to a Letter (1535)¹¹⁸
7. A Treatise Concerning General Councils, the Bishops of Rome and the Clergy (1538)¹¹⁹

Finally, the works considered in chapter six comprise:

1. The Epistle of St Bernard [... and] Four revelations of Saint Bridget (pre-1531[?])¹²⁰
2. A Little Treatise against Mohammed and his Cursed Sect (ca. 1530)¹²¹
3. A Dialogue Showing what we are Bound to Believe as things Necessary to Salvation and what not (1537) – in manuscript¹²²
4. Discourse of the Sacraments: how many there are (1537) – in manuscript¹²³

¹¹⁶ STC (2nd ed.)/212588.

¹¹⁷ STC (2nd ed.)/24236.

¹¹⁸ STC (2nd ed.)/21558.5.

¹¹⁹ STC (2nd ed.)/24237.

¹²⁰ STC (2nd ed.)/1915.

¹²¹ STC (2nd ed.)/17994.5.

¹²² TNA, PRO, SP 6/8, fos. 1-20.

¹²³ TNA, PRO, SP 6/2, fos. 89-168.

1.5 St German's Publishers

It may also be valuable to make a brief point about the publishers who printed St German's works, as they offer some information as to his connections and also offer insight into links with the government in the 1530s.¹²⁴ St German's works between 1528 and 1538 were published by several printers starting with his *Dialogus* in 1528 which was printed by John Rastell. Rastell also printed *Clement and Bernard* in 1532/3. Rastell is an interesting character, as from the early 1530s he began printing works of an increasingly radical nature, after having undergone a conversion to the Reformed faith in 1531 where after he began 'issuing protestant treatises.'¹²⁵ This was after his initial resistance against religious change. Ultimately, his business declined and 'by the summer of 1533 half the shop was leased out to the bookseller John Gough, known for selling heretical books.'¹²⁶ Prior to this he was also involved in the Reformation Parliament of 1529, returned as the Member for Dunheved (Cornwall). He was then commissioned to release a printed copy of the legislation enacted by the first Reformation Parliament. Rastell also likely spent some time at the University in Paris in 1529, seeking academic support for the divorce and is also thought to have had links to Cromwell, who he acted as an agent for. However, 'Rastell died in poverty in the Tower about 25 June [1536], a prime example of the turn of fortune's wheel in Tudor England.'¹²⁷

¹²⁴ It must be remembered that *Replication of a serjeant* and *Little Treatise concerning writs of subpoena* were not printed until 1787, and so are not discussed here.

¹²⁵ Clough, *Rastell, John*.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

Robert Wyer, Peter Treverys and Robert Redman all produced editions of the various incarnations of the dialogues of *Doctor and Student* between 1530 and 1532. Robert Wyer also printed a version of the *New Additions* in 1531. Wyer (c. 1524-1556) may have started out as a bookseller, but in September 1527 he was called before the vicar-general of London for having printed *Symbolum Apostolicum* (*Symbol or the Apostles or Apostle's Creed*), which was considered to be heretical. Though he managed to avoid such close shaves again, going on to 'publish some 145 popular, inexpensive books over his long and successful career.'¹²⁸ Wyer also printed books for other publishers, the most notable of which was the translated version of Marsilius's *Defensor Pacis* (translated as *The Defence of Peace*) by William Marshall in 1535. His books were also often published *cum privilegio regali*.¹²⁹ However, it is important not to read too much into such a notation as at this time:

there was as yet no system of royal licensing. The phrase 'cum privilegio regali' which appears in a number of variants in the colophons of numerous works printed from 1518 onwards seems to have signified a form of copyright rather than an imprimatur. Such privileges could be granted by authorities other than the king, for example the chancellors of the universities, and were the predecessors of the patents of monopoly which began to appear in the 1540s. It was not until 1538 that the old system of episcopal licences was superseded.¹³⁰

¹²⁸ Emily C. Francomano, *The Prison of Love: Romance, Translation, and the Book in the Sixteenth Century* (Toronto: University of Toronto Press, 2018), 136.

¹²⁹ Norman F. Blake, "Wyer [Wyre], Robert (fl. 1524–1556), printer and bookseller," *ODNB* (2004).

¹³⁰ David M. Loades, 'The Theory and Practice of Censorship in Sixteenth-Century England,' *Transactions of the Royal Historical Society*, 24 (1974): 148. It is also interesting to note that: 'In November of that year an important proclamation "for expelling and avoiding the occasion of... errors and seditious opinions by reason of books imprinted in the English tongue" laid down fresh regulations for the trade. No English

Peter Treverys (c. 1525-1532) seems an unusual choice as a printer of St German's works as he was mainly known as a printer of grammatical texts. In addition to publishing copies of the second dialogue of *Doctor and Student*, he also published the *Treatise against Mohammed*. Otherwise, unremarkable for the purposes of this thesis, he did seem to have some (at least brief) connection with Rastell as he printed John Skelton's *Magnyfycence* for him in 1530.¹³¹

Robert Redman who published incarnations of the first dialogue of *Doctor and Student* and *First Dialogue with New Additions*, also published a version of *The Division* in 1532. Redman was mainly a printer of law books and was eventually banned from selling St German's works and other privileged works by the Privy Council. He seems to have set himself up as competition to the King's printer, Richard Pynson, setting up shop one hundred meters away from Pynson's shop in Fleet Street and under the same sign. Indeed, when Pynson died he moved into Pynson's old shop. He continued this attempt at competition with Pynson's successor as King's printer, Thomas Berthelet, and this clearly caused irritation as he was brought before the Privy Council in May 1533 and fined five-hundred marks for selling books that had been privileged by the King. Redman

books were to be imported without the king's special licence, on pain of imprisonment during pleasure and forfeiture of goods; and no English book was to be printed within the realm unless licensed by members of the Privy Council or others appointed, on pain of imprisonment and fine at the king's discretion. Every duly licensed book was to contain the full effect of the licence "plainly declared and expressed in the English tongue. Although the bishops retained certain functions, the main burden of inspection and control had now been assumed by the Crown, which already bore the burden of punishing breaches in the existing laws.'
Ibid.

¹³¹ Norman F. Blake, "Treveris, Peter (fl. 1525–1532), printer," *ODNB* (2004).

also was involved in printing religious works and was ‘perhaps sympathetic to religious reform.’¹³² His name also appears connected to an English Primer in letters between Cromwell and Cranmer in 1537, and in 1536 he printed Richard Taverners’s (Reformist) translation of an Erasmian text dedicated to Cromwell. He may have turned against Cromwell after this though as in 1541, when fellow printer Robert Banks was brought before the council for producing ballads by Thomas Smyth which attacked Cromwell, he claimed the ballads had in fact been printed by another printer Richard Grafton and by Redman. However, conveniently for Redman he was already dead by this time and did not have to suffer imprisonment as Grafton did.¹³³

Thomas Godfray is a little more difficult to pin down any information on. However, Godfray printed several of St German’s most impactful works, starting with the less significant *Epistle of St Bernard* (1531[?]), Godfray went on to publish *Power of the Clergy* (1535), *Answer to a Letter* (1535) and *Constitutions Provincial* (1535). The final three texts were printed *cum privilegio regali*, for what that might be worth. Godfray, described by Guy as a ‘private printer,’¹³⁴ printed only three dated books, a first complete edition of *Chaucer’s Works* (1532), *The Forme and Maner of ... Helpyng for Pore People* (1535) and, most notably for this study, Tyndale’s *New Testament* (1536) otherwise the books printed were undated. It has been suggested that:

His press seems in some mysterious way to have been connected with that of Berthelet and some have gone so far as to assert that Godfray was not a printer at all and that the books with his name were printed by Berthelet. With our present knowledge this seems more than doubtful, though Berthelet certainly came into

¹³² Alexandra Gillespie, "Redman, Robert (d. 1540), printer," *ODNB* (2008).

¹³³ *Ibid.*

¹³⁴ Guy, *St German*, 44.

possession of Godfray's material and many other undated and unsigned books are dubiously assigned to one or the other printer. Almost all Godfray's books were of a religious or controversial nature.¹³⁵

Elton denies that there is any logical reason for this confusion with Berthelet.¹³⁶

However, Guy denies any known connection between Godfray and any of the propaganda emanating from the presses at the time, and rather suggests that St German's use of Godfray is 'unquestionably a reflection of St German's literary independence in the wake of the act of supremacy; it reinforced his earlier decision in July 1534 to stand apart from the activities of Thomas Cromwell's propagandists assembled at Blackfriars.'¹³⁷ as a summary of a letter from Thomas Thyrleby and others to Cromwell demonstrates:

By the King's command we have met sundry times at the Blackfriars, London, to debate such matters as you proposed to us, but cannot set them forth without the help of men learned in the laws of God and of the realm. We have required several times the assistance of master Sayntegerman, but he has excused himself. We therefore wait for your further pleasure.¹³⁸

Yet, it is possible to view St German's hesitations at Blackfriars in another way (which will be discussed in chapter five in the discussion on *General Councils* (1538)). Indeed, there is also evidence that 'Godfray enjoyed the patronage and protection of Thomas

¹³⁵ Edward G. Duff, *A century of the English book trade: short notices of all printers, stationers, bookbinders, and others connected with it from the issue of the first dated book in 1457 to the incorporation of the Company of Stationers in 1557* (Cambridge: CUP, 2011), 56.

¹³⁶ Geoffrey R. Elton, *Policy and Police, The Enforcement of the Reformation in the Age of Thomas Cromwell* (Cambridge: CUP, 1972), 174.

¹³⁷ Guy, *St German*, 44. Thus reflecting Elton's feelings in *Policy and Police*, 174.

¹³⁸ LP 7:1008.

Cromwell himself.’¹³⁹ Rex points to the work of McCarl whose investigations into Godfray’s literary outputs supports this thesis. McCarl’s research demonstrates that Godfray disappears from the records after 1537, suggesting that he ‘operated during the only open window in Henry VIII’s reign.’¹⁴⁰ McCarl is convinced of a Cromwell-Godfray connection, saying that Godfray ‘definitely published books under the protection of Thomas Cromwell and perhaps with the encouragement of figures closer to Henry VIII.’¹⁴¹ However, aside from citing Anne Boleyn’s ownership of a Tyndalian *New Testament* (printed in Antwerp in 1534), she offers no other evidence for her assertions here.¹⁴² McCarl states that Elton, who said that ‘Godfray was not used by Cromwell and the government,’ was misled in this by Duff.¹⁴³ Instead, McCarl suggests that Godfray had support from high up and also had radical continental connections.¹⁴⁴

Though McCarl notes how Godfray’s printing output was small overall, she maintains ‘his choice of titles led, rather than followed, the trend towards publishing reformed material.’¹⁴⁵ He produced forty-seven titles, thirty-four of which she describes as ‘tendentiously protestant,’ a further five were in 1546 proscribed by title in the proclamation against Protestant printing. She notes how all of his works were printed *cum privilegio regali*, though again adding the caveat that this was ‘not necessarily a guarantee

¹³⁹ Rex, *New Additions on St German*, 297.

¹⁴⁰ Mary R. McCarl, *The Plowman’s Tale, The c. 1532 and 1606 Editions of a Spurious Canterbury Tale* (New York: Garland Publishing, 1997), 37.

¹⁴¹ *Ibid*, 38.

¹⁴² *Ibid*.

¹⁴³ Elton, *Policy and Police*, 174; citing Duff, *A Century*, 56.

¹⁴⁴ McCarl, *The Ploughman’s Tale*, 40.

¹⁴⁵ *Ibid*, 39.

of orthodoxy, but an indication he was a recognised printer.’¹⁴⁶ Overall, twelve titles published by Godfray were written or edited by Tyndale or his circle. He printed works from Martin Bucer and George Joye and printed all five of William Marshall’s pieces of Reformed propaganda, with Marshall reporting to Cromwell. For example, Duff notes that in 1534, Godfray printed Marshall’s *Donation of Constantine* and in writing about it to Cromwell, Marshall stated ‘On the book of Constantine I have laid out all the money I can make, and for lack of it cannot fetch the books from the printers.’¹⁴⁷ Though Duff, notes that Marshall frustratingly does not name the printer.¹⁴⁸ He also seems to have been trained by Richard Pynson (King’s printer) as twenty-two of Godfray’s woodcut historiated initials came from Pynson.¹⁴⁹

In terms of output, in 1530, one hundred and forty-two published works were printed for the English market; fifty-two (thirty-seven *per cent*)¹⁵⁰ were deemed by McCarl as religiously conservative; ten (seven *per cent*) religiously reformed; and eighty (fifty-six *per cent*) not religious. Only three of the controversial religious works were printed in England, and McCarl notes that none of these were by Godfray. One of these was an anonymous official argument on the divorce (*Grauissimae Censurae*), and strikingly the other two works were St German’s first and second dialogues of *Doctor*

¹⁴⁶ Ibid, 40.

¹⁴⁷ ‘I have made an end of the Gift of Constantine and of Erasmus upon the Creed. On the book of Constantine I have laid out all the money I can make, and for lack of it cannot fetch the books from the printers.’ *LP* 7:178 (423).

¹⁴⁸ Duff, *A Century*, 56.

¹⁴⁹ McCarl, *The Ploughman’s Tale*, 42-43.

¹⁵⁰ Such as Latin service books, nineteen of which were printed abroad.

and Student. Other controversial works printed abroad were works by Joye and Tyndale, and Lollard works by Jerome Barlow.¹⁵¹ In 1531, Godfray was still issuing traditional devotional material, which makes sense considering the publication of St German's *Epistle of St Bernard* that year.

However, by 1535 Godfray was printing the greatest of his output of reformed materials, at fourteen titles that year. In fact, by that point reformed materials had overtaken conservative output numbers in all English-language printing.¹⁵² This year, one-hundred and twelve works were published. Of those sixteen (fourteen *per cent*) were religiously conservative; fifty-four (forty-eight *per cent*) religiously reformed; and forty two (thirty-eight *per cent*) were not religious. With respect to the conservative titles, ten were published in England, but forty-four of the fifty-four reformed titles were published in England.¹⁵³ McCarl notes that this was the period that Henry's emissaries were 'flirting with the Lutherans,' whilst on the continent Gardiner wrote his *De Vera Obedientia* demonstrating that 'church and realm were two aspects of the same community' and also when Cromwell paid for Marsilius' translation of the *Defensor Pacis* by Marshall. McCarl notes that in the same letter that Marshall wrote to Cromwell concerning the

¹⁵¹ McCarl, *The Ploughman's Tale*, 44, n. 57. There seems to be some scholarly confusion as to Barlow's true identity with suggestions that Jerome Barlow may have recanted his anti-clerical and Reformed ways and been the future Bishop (of Chichester) William Barlow (c. 1498-1568). See, Glanmor Williams, "Barlow [Finch], William (d. 1568), bishop of Chichester," *ODNB* (2015), and also Ernest G. Rupp, *Studies in the Making of the English Protestant Reformation* (Cambridge: CUP, 1966) chapter 4:62-72, for the chapter on "The Early Career of Bishop Barlow."

¹⁵² McCarl, *The Ploughman's Tale*, 47.

¹⁵³ *Ibid.*

Donation of Constantine,¹⁵⁴ he also mentioned that the translation had been ready for a year. Marshall notes in the letter that: '[w]hereas you promised to lend me 20l. towards the printing of *Defensor Pacis*, which has been translated this twelvemonth, but kept from the press for lack of money, in trust of your offer I have begun to print it.'¹⁵⁵

Godfray published only one conservative piece in 1535 'a reprint of Bernard's *Epistle* and Bridget's *Four Revelations*.'¹⁵⁶ The rest of the material he was printing was of a Reformed nature, such as the '*Pater noster spoken of the sinner*' as Girolamo Savonarola's *Exposition* on the fifty-first psalm (perhaps translated by William Marshall), and *The Primer in Englysshe, with dyuers prayers*, which was based on George Joye's *Ortulus anime*.¹⁵⁷ McCarl notes, that he also printed a work which stated that 'images are not to be suffered in churches, translated by Marshall of a Latin translation of a German work by Bucer.'¹⁵⁸ This was the *Treatise Declaring and Showing that Images are not to be Suffered in Churches*, translated from German Protestant

¹⁵⁴ This was a translation of Lorenzo Valla's (an Italian Catholic priest; c. 1407-1457) work which set out to undermine the *Donatio Constantini*, a supposed imperial decree via which the Roman Emperor Constantine (4th century) was said to have transferred to the then Pope Silvester power over Rome and other territory in the western Roman Empire. The *Donation* provided the papacy, at least since the eighth-century when it seems to have been fabricated, with a justification for its claims to political authority over the realms of the western Mediterranean. Valla exposed the decree involved as a forgery. Lorenzo Valla, *On the Donation of Constantine*, ed. and tran. Glen W. Bowersock (Cambridge, Mass.: Harvard University Press, 2007), vi.

¹⁵⁵ LP 7:178 (423).

¹⁵⁶ McCarl, *The Ploughman's Tale*, 48.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

reformer Martin Bucer's 1530 *Das Einigerlei Bild*. It is therefore important to reinforce again, that this was also the same year that he printed St German's *Answer to a Letter, Constitutions Provincial*, and also his *Power of the Clergy*.

This focus of Godfray's printing of controversial or even 'evangelical material' theory does seem to be borne out when looking at what other printers were doing at the time. Da Costa notes that between 1530 and 1537 only two other printers were prepared to put their names to Tyndale's works.¹⁵⁹ Other printers did produce such works, but did so without adding anything to identify themselves, and some went as far as to make use of false imprints.¹⁶⁰ Godfray did not do this. For example, the work containing the translation by Marshall of Bucer was not signed by Marshall but Godfray was not fazed by using his own distinctive historiated initials in the printing of that text and also the second edition of the text, in addition to using 'four of his standard decorative strips on the title page and colophon of the second edition.'¹⁶¹ Godfray came into contact with Luther's ideas whilst at Cambridge, and would go on to flee to the continent after being accused of heresy in the later 1520s. St German's choice of Godfray as a printer for some of his works, like *Power of the Clergy*, may have seemed tame to Godfray in comparison to some of these other works, but he still considered them suitable materials to print within the context of the other works he was publishing at the time, possibly

¹⁵⁹ These were James Nycolson who printed *The Parable of the Wicked Mammon* (1536) and Robert Redman who, between 1533 and 1539 (approx.) printed three editions of *An Exposycyon vpon ... Mathewe*. See, A. Da Costa, "Selling Forbidden Books: profit and ideology in Thomas Godfray's printing," *Journal of the Early Book Society for the Study of Manuscripts and Printing History*, 19 (2016): 131.

¹⁶⁰ Da Costa, *Selling Forbidden Books*, 131.

¹⁶¹ McCarl, *The Ploughman's Tale*, 48, n. 66.

demonstrating Godfray's broader aim to 'place his printing activity within the context of the king's own program [*sic*].'¹⁶²

Finally, the most obvious connection between St German's works and government is the fact that several of his works were printed by Thomas Berthelet (d. 1555), who has already been noted as the King's printer. Berthelet printed the authoritative versions of the *New Additions* (1531), *The Division* (1532?), *Salem and Bizance* (1533), *Additions of Salem and Bizance* (1534) and *General Councils* (1538). Likely French in origin, Berthelet was in London and resident on Fleet Street by at least 1524, when he applied for a marriage licence to marry the widow Agnes Langwyth. He printed his first book in September of that year. In March 1526, he was himself called before the vicar-general for printing Erasmus' *A Devout Treatise upon the Pater Noster* and other such works, without having first submitted them for a licence. He seems to have gone on to obtain the necessary rights as he later reissued the works. He acceded to the office of King's printer on 22 February 1530. Berthelet was also involved with printing 'several works fostering uniformity in religion.'¹⁶³ These included the *Bishops' Book* (1537) and the *King's Book* (1543). Following Henry's death in 1547, Berthelet chose not to renew his patent as the King's printer, it is thought he may have chosen to retire to live at his house at Holborn. He died in London on 26 September 1555.¹⁶⁴

1.6 St German's Sources

¹⁶² James C. Warner, *Henry VIII's Divorce: Literature and the Politics of the Printing Press* (Woodbridge: The Boydell Press, 1998), 141.

¹⁶³ N.A. "Berthelet [Berthelot], Thomas (d. 1555), printer," *ODNB* (2008).

¹⁶⁴ *Ibid.*

In order to examine St German's key sources, we need to consider the debate as to whether the 1528 edition of St German's *Dialogus* was, in fact, the earliest printed version of the work as it has been suggested that there was at some point an edition dating from 1523. However, there is no known copy of this and so the argument for its existence is based solely on the recording of a 1523 text with a similar title in Ames' *Typographical Antiquities* (1816).¹⁶⁵ Schoeck has argued the credence of this possible early edition due to 'Ames' reputation as a careful bibliographer, together with the detailed description, especially of the colophon.'¹⁶⁶ However, Rex is less convinced of the 1523 edition, rather believing it to be a ghost created by William Herbert in his edition of Ames' *Typographical Antiquities* (London, 1785-90). Yet, Schoeck sees this date as significant as Marsilius of Padua's *Defensor Pacis* was published the year before in Basle in 1522. He notes how research has already identified the role of Marsilius' ideas in support of the case for royal ecclesiastical supremacy in relation to the anti-papal propaganda emanating from the period. He also notes how other reformers had already put the 1522 version of the *Defensor* to good use prior to Cromwell employing William Marshall to create a substantially modified English version of the work to suit the need to justify Henry's desire to 'exercise the powers of the king as emperor in his own kingdom.'¹⁶⁷ Simultaneously discussing Marshall's *Defence of Peace* and his *Donation of Constantine*

¹⁶⁵ Joseph Ames, *An index to Dibdin's edition of the Typographical antiquities / first compiled by Joseph Ames, with some references to the intermediate edition by William Herbert*, ed. Thomas Dibdin and William Herbert (London: W. Bulmer & Co, 1816) Vol. 3:86.

¹⁶⁶ Schoeck, *Strategies of Rhetoric*, 78, n. 5.

¹⁶⁷ Shelley Lockwood, "Marsilius of Padua and the Case for the Royal Ecclesiastical Supremacy," *Transactions of the Royal Historical Society*, 1 (1991): 92.

(1535), Elton notes how ‘the outstanding anti-papal tracts of relatively recent times; to have them in English print gave the campaign a solid, respectable, scholarly European backing.’¹⁶⁸ Effectively, Marshall’s translation of the *Defensor Pacis* attributed overall coercive power to the King himself, whereas Marsilius had attributed this to the ‘*universitas civium*’ as represented by the ‘legislator.’ Lockwood notes that, ‘Marshall saw in Marsilius’ work the potential to substantiate a case for the royal ecclesiastical supremacy and to go further, that is, to satisfy his own desire to see a Lutheran solution to the King’s “great matter”.’¹⁶⁹ Further, Marshall:

was able to exploit Marsilius’ largely Aristotelian philosophy and terminology by altering it at a key point [...] bringing it into line with English constitutional practice. He stressed the hereditary, *Dei gratia* nature of the monarchy in England, and governance by law made in Parliament for the good of the common weal. Parliament was not, however, a check on the king’s will, but an emanation of it.’¹⁷⁰

The translation was published in 1535 (as noted by Thomas Godfray), but was said to have been first circulated in manuscript (from around 1533).¹⁷¹ Schoeck suggests that if St German’s works were in part inspired by the 1522 Basle edition of the *Defensor* and/or St German was working from the manuscript version of Marshall’s English translation,¹⁷² it signifies an early and ‘remarkable affinity between the Marsilian theory of the power of the state and the Cromwellian [...] and that is the rejection by both the canon law and

¹⁶⁸ Elton, *Policy and Police*, 186.

¹⁶⁹ Lockwood, *Marsilius of Padua*, 110.

¹⁷⁰ *Ibid.*

¹⁷¹ Schoeck, *Most Erudite of Christian Lawyers*, 119.

¹⁷² Baumer, *Christopher St German*, 638.

its jurisdiction' and St German.¹⁷³ But as the ideas of the translation by Marshall were so fundamentally different to those posed by Marsilius in the *Defensor*, it does not seem right to assert this 'remarkable affinity,' particularly when we do not know which version of the *Defensor* (1522 Basle edition or Marshall's translation) St German was referring to.

St German does seem to have been influenced by Marsilius' ideas, in as far as he uses them as a prism through which to refract his own ideas, but he never cites Marsilius by name (as he does with other of his sources such as Gerson). Therefore, it is difficult to feel confident in Schoeck's comments here. It is unlikely that St German was himself a 'Marsilian,' as his ideas are at times demonstrably different from those of Marsilius yet at other times they are similar if not identical. Therefore, it seems that St German uses Marsilian ideals where they are the most practically convenient to him securing his aims, such as his repeated use of the definition of the universal Church as a church of the faithful of Christendom and not just the clergy. As Baumer notes St German's description is 'precisely the same as Marsilius' famous phrase that "all faythfull crysten men are and ought to be called men of the churche, as well as those, whiche be not preestes, as those whiche be preestes".¹⁷⁴ In 1535, in his *Power of the Clergy*, St German defines the

¹⁷³ Schoeck, *Most Erudite of Christian Lawyers*, 120.

¹⁷⁴ Baumer, *Christopher St German*, 638; citing Marshall's English translation of Marsilius in *The defence of peace; lately translated out of laten in to englysshe, With the Kynges most gracyous priulege* (London: Robert Wyer, 1535), 45b. The more precise words from the original *Defensor* (as we know the Marshall version was rather curated towards supporting the political realities of England in the 1530s) were '[a]nd therefore all the Christian faithful, both priests and non-priests, are and should be called churchmen according to the truest and most proper signification, because Christ purchased and redeemed all men with his blood'. Marsilius, *Defensor*, 103.

universal Church by explaining that ‘by that worde chyrche is nat vnderstande only the clergye / for they vndoutydly make nat the chyrche / for the hole congregation of Christe[s] people maketh the chyrche.’¹⁷⁵ On face value this does not look particularly dismissilar to the traditional Catholic notion that the universal church is made up of that body of men united by the Chrtistian faith. However, the traditional definition of the church (if we were to take counter-Refromationist St Robert Bellarmine’s as an example) as the body of true believers (i.e. those initiated into the church at the point of baptism) is crucially diffierent from the definition propounded by both Marsilius and St German as central to both theories was an absolute refutation of the third part of Ballarmine’s definition that the church was denoted by those who subjected themselves to the authority of the Roman Pontiff:

Now, our opinion is that the Church is only one, and not two; and that one and true [Church] is the assembly of men gathered in the profession of the same Christian faith, and in the communion of the same sacraments, under the reign of legitimate pastors, and especially of the one vicar of Christ on earth, the Roman Pontiff.¹⁷⁶

St German also seems to have been inspired more generally by Marsilius’ distinction between the temporal and spiritual spheres and, though again in distinction, St German ‘never precisely distinguishes between [the temporal and spiritual ...] the cases at issue between the clergy and the laity which he cites are based on this fundamental distinction.’¹⁷⁷ St German also did repeat the Marsilian belief that Christ and not the

¹⁷⁵ St German, *Power of the Clergy*, sig. D4r.

¹⁷⁶ Bellarmine’s definition is cited in Susan Wood, “Continuity and Development in Roman Catholic Ecclesiology,” *Ecclesiology*, 7, no. 2 (2011), 3.

¹⁷⁷ Baumer, *Christopher St German*, 638.

Pope was the supreme authority within the Church and it was to him all should defer, therefore denying the infallibility of the Pope.

However, as we also shall see (in chapter 5), St German would later depart in crucial ways from the *Defensor* and especially the conciliar ideals represented therein which had been actively promoted by the Cromwellian regime. Cromwell had ‘relied on a general council as the rationale for Henry’s revolt against the authority of Rome,’ pushing Henry as early as 1532 towards pleading his case for divorce at a general council.¹⁷⁸ Indeed, more recent scholarship has promoted the idea of Henry as a conciliarist himself.¹⁷⁹ Though St German did promote the peculiarly Marsilian ideal of lay membership of general councils, and though he argued that general councils did indeed represent the high authority in determining the Scriptures, the conditions St German imposed for convening a validly constituted general council in his later writings were so onerous as to seem insurmountable for any such valid council to be convened. Therefore, rather leaving the King-in-Parliament, for all intents and purposes, the only realistic authority for deciding on such matters within the realm. This is again distinct even from Marshall’s translation, as for the most part, Marshall does not engage with the issue of the general council. And by avoiding the issue is meant the fact that he actively deletes the discussion from the original from his translation, ‘since General Councils pertain rather to the universal church than to the emergent church of England.’¹⁸⁰ But St

¹⁷⁸ Harry S. Stout, “Marsilius of Padua and the Henrician Reformation,” *Church History*, 43, no. 3 (1974): 316.

¹⁷⁹ Matthew McNicoll, “Henry VIII: Conciliarist” *Journal of Early Modern Christianity* 5, no. 2 (2018): 109-49.

¹⁸⁰ Lockwood, *Marsilius of Padua*, 107.

German used the term ‘universal Church’ not only to refer to the entire body of Christendom, but to also refer to the body of the faithful within the realm. Therefore, St German was prepared to idiosyncratically use and adapt whatever ideas he deemed suitable in order to secure the solution he had planned. Whereas Marshall fitted his translation of the *Defensor* to suit the requirements of the distinct constitutional requirements of England (i.e. to fit the idea of *imperium* within the context of a hereditary monarchy) and also to fit in with his own approach to royal ecclesiastical supremacy in which he vested all coercive power with the King, Marsilius situated this with the ‘elected’ legislator. St German did neither. Instead, he offered a *via media* between the two options, situating some powers with the King, but situating the vast majority with the King-in-Parliament.

However, from the outset it is clear (as Guy suggests) that it was the tone and the specific arguments set forth in St German’s works and their potential value to the Henrician reform campaign which initially caught their attention.¹⁸¹ Though, Guy confirms that there is no evidence to suggest that St German was ever formally in the employ of Henry VIII,¹⁸² and sums up St German’s role in 1530s England, neatly stating that:

¹⁸¹ Indeed, the *New Additions* (1530) was published by none other than Thomas Berthelet, the King’s printer himself ‘and the suspicion is [therefore] strong that the New Additions was an early component of Henry VIII’s campaign of official propaganda.’¹⁸¹ Guy, *St German*, 22.

¹⁸² Guy, *St German*, 33. Though he was clearly specifically sought out by Cromwell or his agents on several occasions as noted in the reference in chapter 2 to St German’s refusal to provide assistance at Blackfriars when specifically approached by associates of Cromwell. As also noted St German was among several other notable figures such as Nicholas Heath, Samson and Cranmer in order to provide his opinion on the *Bishops’ Book*. Baumer notes the reference to St German having provided this opinion as evidence in

[i]n 1531 St German was an independent scholar who took a keen interest in the cause of reform and renewal, but who, like Henry VIII, remained doctrinally orthodox. His expertise in jurisprudence and practical law was used by the official party at a time when they were especially interested in such matters.¹⁸³

However, it is perhaps strange to think that St German would write his works without thinking he would be rewarded for it in some way. However, Guy's argument that there does not seem to be evidence that action on the Crown's part motivated the production of any of St German's work does seem plausible. There does seem to have been an independent nature to the creativity of these legal sources in offering Henry the solutions that he wanted. Indeed, what we may be looking at here is partly a religious revision. There was a reciprocal relation between a minimal view of the functions of the clergy and St German's impulse to minimise the privileges of the Church as an institution. For example, he would hardly have been so critical of mechanisms to deal with heresy (as is made evident in his debate with More over the issue detailed in chapter four) if he had thought of heresy as a serious threat to the salvation of simple members of the population. In other words, anticlericalism both fed upon and contributed to a predisposition to minimise the clergy's privileged status as the performers of sacramental and semi-sacramental actions and possessors of salvific knowledge.

British Museum, Royal MSS., 7, CXVI, ff. 199-210, which he notes is a summary in a secretary's hand of the material contained in books already submitted by these four figures where St German is referred to 'St Jermyn' – 'there are four entries under St German's name, giving his views on the perpetual virginity of the virgin, the mediation of saints, and the sacraments of penance and orders.' Baumer, *Christopher St German*, 632, n. 5.

¹⁸³ Guy, *St German*, 33

St German's rejection of the supremacy of canon law was a recurring theme throughout his works and his early works the *Dialogus* and the English incarnation which would develop into *Doctor and Student* are framed in an attempt to redress the jurisdictional boundaries between the secular and ecclesiastical law. However, as mentioned it is important to not overstate the significance of Marsilius to St German as he was just one of the sources St German relied upon to support his theories. In general, he was inspired in his work by traditional medieval and classical texts, a fact demonstrable through his use of medieval sources such as Aquinas and other theological writers such as the French theologian and guiding light of the Conciliar movement Jean Gerson, upon whom St German relied heavily in *Doctor and Student*. For example, as Walters notes, Gerson's conception of the 'lex naturalis' consisted of three parts, composed of the law of reason or nature being:

1. a natural sign;
2. indicative of the right reason of God willing humans to do or refrain from doing things;
3. in order to pursue the natural end of human life which is happiness, whether monastic, domestic or political.

St German's conception of natural law (as we shall explore in more detail shortly) also consisted of three parts as he states that human or positive law is:

1. a true sign constituted by human tradition and authority;
2. showing that right reason wills to bind rational creatures to do or not to do something;

3. with a view to some spiritual or temporal end consonant with reason.¹⁸⁴

Walters confirms that St German does not cite Gerson in this definition, but that Gerson's work contains a similar three-part definition of '*lex humana seu positiva*' that appears to have been St German's source.¹⁸⁵ There is however one important difference, and that is that Gerson states that 'human law is that which is not inferred from a necessary deduction from divine and natural law, whereas St German states that human law shows that "right reason wills to bind a rational creature to do (or not to do) something",' which St German seems to have taken from point two of his definition of the law of reason

¹⁸⁴ St German, *Doctor and Student*, 27-31 (for a discussion of human law).

¹⁸⁵ Gerson was widely read in German-speaking regions, with Hobbins identifying a 'textual avalanche' of his works reaching these areas. However very few copies of Gerson reached England, so it may be that St German did not read Gerson at first hand. Daniel Hobbins, *Authorship and Publicity Before Print: Jean Gerson and the transformation of late medieval learning* (Philadelphia: University of Pennsylvania Press, 2009), 213. As Mazour-Matusevich notes, '[b]y 1521 there were five collected editions of Gerson's works available in England.' However, she notes that 'his name and legacy had become part of the English intellectual horizon.' Yelena Mazour-Matusevich, "Some Aspects of Jean Gerson's Legal Influence in Sixteenth Century England: The Issue of Epikeia," *Journal of Early Modern Christianity*, 4, no. 1 (2017): 49. This was due to the importance given over to the importance of the notion of *epieikeia* in sixteenth-century England, and then due to the popularity of his conciliar theory in the 1520s, attractive initially to Henry's divorce campaign. Mazour-Matusevich, *Aspects of Jean Gerson's Legal Influence*, 50. He was likely poorly received during the fifteenth-century due to his 'active patriotic involvement during the Hundred Years War (1337-1453), the eras largest conflict, and his proven support for Joan of Arc. He was, after all, a sworn enemy of England.' Mazour-Matusevich, *Aspects of Jean Gerson's Legal Influence*, 49. For his support of Joan of Arc, see Daniel Hobbins, 'Jean Gerson's Authentic Tract on Joan of Arc: *Super facto puellae et credulitate sibi praestanda* (14 May 1429),' *Mediaeval Studies*, 67 (2005): 99-155.

above which is based on Gerson's definition of the law of nature.¹⁸⁶ As Walter's points out, the effect of St German's point two is to effectively remove God from the formula, so it is 'right reason' rather than God which is responsible for creating rational norms for rational beings. Though St German does clearly recognise the category of divine law.¹⁸⁷ The emphasis is therefore on 'right reason' focused on human tradition. For St German, the focus was on 'a theory of law premised upon an inherent connection between reason and positive law.'¹⁸⁸

Despite this, it does seem that St German favoured theological sources. In fact, if one lists the cited authorities in *Doctor and Student*, it becomes apparent just how much St German relied upon theological texts in constructing his most famous treatise. Of the sixteen authorities cited, thirteen are theological in origin, with the others being Seneca, Aristotle and a leading Italian figure in medieval Roman law; Baldus de Ubaldis, once again writers familiar to any canon lawyer of the time.

Along with Marsilius and Gerson, another political inspiration seems to have been the theory of John Fortescue, whose *De laudibus legum Angliae* he cites in the second dialogue¹⁸⁹ and whose theory of the distinction between the monarch's powers *jus regale* and *jus politicum et regale* seems to closely mirror St German's own distinction between

¹⁸⁶ Mark D. Walters, "St German on Reason and Parliamentary Sovereignty," *Cambridge Law Journal*, 62, no. 2 (2003): 342.

¹⁸⁷ St German, *Doctor and Student*, 9 (Of the lawe eternal).

¹⁸⁸ Walters, *St German on Reason*, 343.

¹⁸⁹ St German, *Doctor and Student*, 282. Which again he would have to have had access to a manuscript version of as *De laudibus* was not published until circa 1543 (STC 2nd ed.)/11193. It does seem the work was circulated in manuscript as other writers of the period also cited *De laudibus*, including John Rastell.

jus regale and *jus regale politicum* in *Answer to a Letter*. Baumer also identifies the pamphlet *Dialogus inter militem et clericum*¹⁹⁰ as a potential source considering the synthesis between the ideas contained therein with St German's own ideas of the division of power between spiritual and temporal power. The pamphlet originally published during the early fourteenth century as a defence of Philip the Fair, was republished in English as *A dialogue between a knyght and a clerke, concernyng the power spiritual and temporall* by Berthelet's press in 1533 the same year as the break with Rome.¹⁹¹ The text: asserted that the church had never received power from God over temporal things; that Boniface VIII's pretensions were absurd; that Peter had been given the keys of heaven, not of earth; and that what privileges the clergy did possess had been granted them by kings and princes for the profit of the commonweal, and that if these privileges later proved injurious to the state, they could be altered or withdrawn.¹⁹²

Again, these are all points familiar from St German's own writings and more will be said about these connections between sources at the appropriate points in the thesis. Just as Lockwood notes how Marshall used Marsilius' ideas as a 'prism through which to refract his own ideas.'¹⁹³ St German would do the same with each of his sources harnessing their authority to support his own ends, distinctly brazenly at times.

¹⁹⁰ Anonymous, *Disputatio inter clericum et militem*, in "A Dispute between a Knight and a Priest," translated by Norma N. Erickson, *Proceedings of the American Philosophical Society*, 111, no. 5 (1967): 288-309.

¹⁹¹ Baumer notes that it was reprinted again in 1540 – also from Berthelet's press. Baumer, *Christopher St German*, 639.

¹⁹² *Ibid*, 638.

¹⁹³ Lockwood, *Marsilius of Padua*, 91.

2.1 St German's Ideas in the Context of the Early Henrician Reformation

Firstly, this chapter aims to provide an overview of the key events of the Henrician Reformation. It specifically focuses on a chronology of the period 1528-1538 as this is the period from which we have extant works from St German. Therefore, the chapter will provide the contextual background from which St German's ideas emerged and began to develop. Secondly, an overwhelming abundance of secondary literature discussing and debating various elements of the Reformation has been generated over the years. This chapter explores some of the key ideas and theories of the Henrician Reformation arising from this literature, specifically in relation to the question of authority and the emergence of the royal supremacy. Thus, by examining the motivations behind the early English Reformation and assessing the current state of the relevant knowledge, this chapter begins to establish where St German's idiosyncratic ideology, as expressed through his writings, intersected with the wider Reformation debate. On intersecting axes between Catholic and Protestant and clerical and anti-clerical, it seems that St German's ideas are not located at any of the extremes. It is possible to describe St German as further along the anti-clerical spectrum, though not completely so. He does seem to see a place for the clergy within the new world order established by Henry's new 'domestic solution,' though significantly amended to prevent the continuation of their past abuses, and limited to truly 'spiritual matters.' Similarly, as per his *Discourse of the Sacraments*, he is clearly not an orthodox Catholic conservative, but he certainly explicitly rejects some of the more significant elements of the ideology Reformists were touting during the period. Therefore, it seems that despite More's accusations throughout his *Apology* that he

wanted to further divide the laity from the clergy throughout the period, St German genuinely seems to have been endeavouring to develop an unimpeded route through politically, legally and religiously turbulent waters – even if this was whilst concurrently attempting to produce specific clerical reform regarding issues which personally perturbed him. This will form the basis of the discussion in later chapters.

Finally, the chapter will also begin to establish why his ideas may have proved valuable to the propaganda campaign in the early 1530s and what the impact of his ideas was within the broader Reformation debate. Though this is not to suggest that there was one cohesive ‘official’ campaign promoting such material. Logically, Henry’s ministers and bishops were themselves divided on the issues and how to seek a resolution. However, as Walker highlights:

The divorce campaign, and Henry's need to pressurize the church at home and in Rome into granting a domestic solution to his ‘Great Matter’, led to an increasingly bitter religious debate at the political centre, and the sense of a new and alarming social rift throughout the nation: a ‘division’ (as a treatise published in 1532 by the common lawyer Christopher St German was to call it) ‘between the spirituality and the temporality.’¹⁹⁴

Considering this approach, we can observe that the divorce campaign brought with it a new attitude of openness and acceptance towards the voicing of the sort of ‘anticlerical’ opinion that St German was so fond of expressing in his works. St German was in a strong position to put out precisely whatever he wanted as he was, after all, the ‘man with the plan.’ Indeed, if one compares St German’s works with other material which appears at the same time, one sees both similarities and differences. Early on, what is interesting about St German is that he is neither humanist, nor evangelical. By the time he wrote his

¹⁹⁴ Walker, *Writing under Tyranny*, 36.

Dialogus in 1528 he would have been sixty-eight, therefore, he is unlikely to have been touched by humanism at any stage of his education. Such promotion of anticlerical sentiment also fanned the flames of a debate which would develop into an open battle between those in support of broader reform and those who wished to maintain the *status quo*. With respect to St German specifically, this would of course erupt into open battle between himself and the incumbent Lord Chancellor, Thomas More, but it was St German who would keep his head. His ideas remained useful, even as they began to deviate from government proposals during his later years.

Walker notes the obvious contemporary awareness of this openly ‘anticlerical’ attitude when he cites the chronicler Edward Hall’s comments:

These things before this time might in no wise be touched nor yet talked of by no man except he would be an heretic, or lose all that he had, for the bishops were [hitherto] chancellors and had all the rule about the King ... But now when God had illumined the eyes of the King, and that their subtle doings was once espied; then men began charitably to desire a reformation, and so at this Parliament men began to show their grudges.¹⁹⁵

Writers like St German, who had long borne a grudge against the variously perceived abuses of the Church, carefully capitalised on this new approach. They framed their ideas in ways which became indispensable to the government as they fundamentally helped to unsettle the previously largely unquestioned authority of the Church in various key areas. It was this authority which required dismantling in order to provide Henry with his new domestic solution to the divorce issue, whilst also managing to avoid the full (and often fatal) consequences of the backlash against heterodox opinion. Headed by men such as Bishop Stokesley and More, the full powers of the law were initially employed in an

¹⁹⁵ *Ibid*, 37; citing Hall, *Chronicle*, 765-66.

attempt to reinforce the ecclesiastical position, which resulted in public burnings of William Tyndale's works and '[b]y 1531 [...] it was men and not books being burned,'¹⁹⁶ but only if their ideas were not in some fashion useful to Henry. For example, Walker notes how Ambassador Chapuys:

'was appalled to see the evangelical convert Robert Barnes walking at large in London in December 1531, flaunting his apostasy in the secular clothes he was wearing. And he reported bitterly that another heretic had been released from prison when the King had noticed that one of the views for which he had been condemned was the claim that the Pope was not the head of the Church.'¹⁹⁷

Thus, it was ultimately men like More and Stokesley whose ideas became unusable by the government who would end up on the wrong side of the King, with More executed for treason in April 1536, and Stokesley facing potential sanction when placed under a writ of *Praemunire* in May 1538. He escaped the associated penalties (which included imprisonment at the royal pleasure, forfeiture of land and goods and all civil rights) only by throwing himself on the King's mercy.¹⁹⁸ However, those engaged in the task of

¹⁹⁶ Walker, *Writing under Tyranny*, 38.

¹⁹⁷ Ibid, 40. Though, of course, Barnes (an ally of Cromwell) would eventually be burned for heresy under the *Six Articles* in July 1540, the same month that Cromwell himself was attainted.

¹⁹⁸ Contextually, Stokesley is an interesting figure – a Catholic conservative employed by the regime in an attempt to encourage support for the divorce from the conservative bishops. As Chibi states, if Henry 'could get an "avowed approval of the schism" from the conservative bishops, he would have a useful propaganda weapon greater "than all of the invective of the reformers against the usurped powers of the Pope" combined.' Andrew Chibi, "Henry VIII and his Marriage to his Brother's Wife: the Sermon of Bishop John Stokesley of 11 July 1535," *Bulletin of the Institute of Historical Research*, 67, no. 162 (1994): 40; citing Susan Brigden, *London and the Reformation* (Oxford: Clarendon Press, 1989), 233. For a fuller exploration of Bishop Stokesley's role during the divorce issue, see Andrew Chibi's later work: Andrew Chibi, *Henry*

securing Henry his divorce would succeed by developing a solution to the divorce issue based upon the idea of royal (and for St German, parliamentary) rather than papal supremacy.

2.2 Enforcing the Royal Supremacy: The Road to Divorce

There has been much debate in the literature as to just who was the driving force behind the move towards the expanded royal supremacy. As Haas confirms, Elton acknowledged the likelihood that Henry was himself aware of and went as far as to ‘[condone] a radical faction within his council which advocated ‘the autonomous self-sufficiency of England and [the] imperial authority of her king’ as early as the summer of 1530.’¹⁹⁹ Though Elton argued that it was Cromwell who was the driving force behind the movement. Bernard argues that Henry was the ‘dominant force in [...] the king’s reformation.’²⁰⁰ Much more recently McNicoll has noted the lack of scholarly consensus around the matter and compellingly argues the case for the need for significant further research to be carried out, whilst adding his own theory to the mix and casting Henry as an ‘amateur theologian with a sincere appreciation of conciliarism.’²⁰¹

Whoever the dominant individual(s) might have been, Rex has highlighted how Henry VIII’s divorce from Katherine of Aragon was *the* major catalyst of the

VIII's conservative scholar: Bishop John Stokesley and the divorce, royal supremacy and doctrinal reform (Bern: P. Lang, 1997).

¹⁹⁹ Steven W. Haas, “Henry VIII’s *Glasse of Truthe*,” *History*, 64, no. 212 (1979): 353.

²⁰⁰ George W. Bernard, *The King’s Reformation Henry VIII and the Remaking of the English Church* (New Haven: Yale University Press, 2005), 595.

²⁰¹ McNicoll, *Henry VIII*, 109.

Reformation in England, as without it the *Act of Supremacy* (1534)²⁰² would not have been needed.²⁰³ Further, and in agreement with Powicke, Rex argues that the Reformation in England was an ‘act of state’ where the central focus was on generating an extension to the royal supremacy.²⁰⁴ The trajectory of ideas which developed throughout St German’s works of the 1530s certainly seems to support this theory, with his own idiosyncratic approach simultaneously promoting the power of Parliament.

In terms of defining what is meant by royal supremacy, the early Reformation period in England represented a battleground over who would take over the powers previously licitly exercised by the Pope within a framework formed by fundamental Christian doctrine following the extinguishing of papal power in the realm. There were only two really plausible resolutions: (i) the King acting alone issuing instructions to the bishops and working through the existing ecclesiastical apparatus, or (ii) the King acting within a parliamentary context, that is, uniting the forces of the whole community. It was the latter of these two options that St German would advocate for in his writings. Rex asserts that the construction of the royal supremacy thereby gave the King a positive duty to advance what was known as the ‘true religion’ within the realm.²⁰⁵ But how would this new conduit of God’s word be justified? Rex has an answer for this too: ‘[t]he new supremacy was justified in terms of divine law as revealed in the word of God, which was identified ever more precisely after the break with Rome as the written word of

²⁰² 26 Hen 8 c. 1.

²⁰³ Richard Rex, *Henry VIII and the English Reformation* (Hong Kong: MacMillan, 1994), 6.

²⁰⁴ *Ibid*, 2; citing Frederick M. Powicke, *The Reformation in England* (Oxford: OUP, 1941), 1.

²⁰⁵ *Ibid*, 3.

scripture.²⁰⁶ This explains St German's preoccupation with who could authoritatively determine Scripture, expressed most explicitly in his unpublished 1537 works.

For Rex, '[t]he rhetoric of the "word of God" almost dictated the policy. If the people were to live by the word of God, they had to know what it was.'²⁰⁷ Rex makes these comments in relation to the promotion of the vernacular Bible, but they are just as pertinent in considering St German's work. St German not only aimed to provide clarification as to what the word of God was but, more importantly, who could define it. It will be demonstrated in later chapters that for St German, conveniently for Henry, the ultimate power in his understanding lay with the King, or more specifically with the King-in-Parliament. To reach as broad an audience as possible, St German himself aimed to disseminate his ideas in the most accessible way possible by working in the vernacular. As early as 1530/1 when his English translation of the first dialogue of *Doctor and Student* appeared, St German personally explained the reasoning behind his commitment to publishing his works in the vernacular when he stated that his work was addressed 'to all men in this realm, bothe spyrytuall and temporall for the good orderynge of theyr consyence to knowe many thynges of the lawe of Englande that they be ignoraunt in.'²⁰⁸

Having briefly explained the motive behind the Reformation (the need for a divorce), the means (extension of royal and parliamentary supremacy) and the method (practically relocating the power to define the word of God with the King, or more specifically the King-in-Parliament) and before going on to explore these in greater detail in relation to how St German was linked to these events in later chapters, it is vital to

²⁰⁶ Ibid, 2.

²⁰⁷ Ibid, 3.

²⁰⁸ St German, *Doctor and Student*, 176.

have a clear snapshot of the chronology of the period to provide context for St German's developing ideas. It is all well and good proceeding as modern scholars do with the benefits that hindsight affords, but St German's works were generated during a period of significant flux in the legal, political, and religious worlds. No contemporary would have been acting with any certainty of the outcomes of the period and it is crucial to understand St German's writings as effectively 'works in progress.' Not all of St German's works are complete, for example, and not all saw publication. Indeed, we have examples of works at various stages of completion within the canon of St German's works be they composed, circulated or ultimately published. As mentioned, there is perhaps as much to learn from his works of the *paths not taken* during the Reformation, those intellectual dead-ends so to speak, as of the paths which did form a part of the realised campaign. Yet all paths provide modern scholarship with a broader appreciation of the period. As despite the great abundance of literature on the topic, and in fact maybe using this great abundance as evidence of the very same, it is clear that we still have no complete picture of one of the most significant moments in English history. A work detailing the developing ideas of a prominent intellectual figure from the period, close to the ideas that were central to the government throughout, can only be invaluable in assisting in filling in the gaps which we are yet missing.

Henry VIII: the 'ideal prince'

What we do know, is that in 1509 the new king Henry VIII, 'hailed as an ideal prince'²⁰⁹ by his new subjects, married his brother Arthur's widow, Katherine of Aragon. From the

²⁰⁹ Walker, *Writing under Tyranny*, 1.

start the marriage was blighted by several miscarriages, still births or babies who died soon after birth. Between 1509 and the end of 1518 the couple suffered six of these tragedies. The only surviving child being the later queen, Mary I (born February 1516).²¹⁰ Bernard notes that the lack of a male heir was a particular strain for Henry, it was a genuine concern evidenced, for example, when he made the vow that should a male heir be born he would lead a crusade against the Turks in person.²¹¹ However, at this point Henry was still a seemingly faithful son of the Catholic Church, defending papal supremacy and earning the title of ‘Defender of the Faith’ from Pope Leo X in 1521 for his written attack on Luther entitled; *Assertio Septem Sacramentorum* (or *Defence of the Seven Sacraments*).²¹² Yet Henry would go on to definitively break with Rome and his previously won title would be revoked by Pope Paul III.²¹³

1527 was a key official turning point in Henry and Katherine’s marriage, as it was from this year that Henry started (according to official dated evidence) to assert that the

²¹⁰ Bernard, *The King’s Reformation*, 3-4.

²¹¹ Ibid, 4.

²¹² How far Henry was involved in the writing of the document has been questioned, with arguments of Thomas More’s significant involvement in the compilation of the document. For example, Scarisbrick has considered this in *Henry VIII*, 112. However, most recently, McNicoll has argued that the *Assertio* was validly Henry’s own work and therefore that as he was ‘sufficiently well educated in theology and Latin’ to write it that he would have been perfectly aware of the Levitical impediments concerning marriage to one’s brother’s widow. McNicoll, *Henry VIII*, 126.

²¹³ In 1544, Parliament would regrant this title to Henry, and English monarchs as defenders of the Anglican faith in their position as Supreme Governor of the Church of England still use the title to this day.

marriage was invalid according to canon law.²¹⁴ In fact, the marriage had never been valid Henry now claimed, it should never have been allowed on the basis that Katherine had previously been married to Arthur as according to Leviticus 20:21; ‘if a man shall take his brother's wife, it is an unclean thing: he hath uncovered his brother's nakedness; they shall be childless.’ By this point, Henry was deep in an extra-marital relationship with Anne Boleyn and, by 1528, Bernard confirms that even the then Pope Clement VIII had suspicions that Henry’s desire for annulment had reached an urgency due to Anne being pregnant.²¹⁵ From the evidence available, this motivation does not seem to be true,²¹⁶ but

²¹⁴ Although it has been argued that Henry desired an official separation from Katherine as early as 1514. See Betty Behrens, “A note on Henry VIII's divorce project of 1514,” *Bulletin of the Institute of Historical Research*, 11, no. 3 (1934): 163-64.

²¹⁵ Bernard, *The King's Reformation*, 7.

²¹⁶ Despite the speculation as to the number and timing of Anne’s pregnancies, she seems to have had three for which there is corroborating evidence (*LP* 7:96 (‘The letter stated also that Anne was pregnant’); 7:114 (‘Anne Boleyn is now pregnant and in condition to have more children’), 7:958 (Her reasons are, that being so far gone with child, she could not cross the sea with the King’); 7:1013 (‘the lady de Boulans (Anne Boleyn) wishes to be present, which is impossible on account of her condition’), 7:1193 (Since the King began to doubt whether his lady was encicntc [pregnant] or not), 8:919 (‘The King and Queen are well, "and her Grace has a fair belly as I have seen".’)), one successful pregnancy in 1533 where she gave birth to the future Elizabeth I (born 7 September 1533), two miscarriages in June 1535 and February 1536 (the latter of these apparently being the long desired male heir which prompted Neale’s assertion that she had ‘miscarried her saviour.’ John E. Neale, *Queen Elizabeth I* (Chicago: Academy Chicago Publishers, 2001), 5). She is also said to have had one supposedly ‘false’ pregnancy earlier in 1534. Proving that there really is a literature for every topic, for a discussion of the speculation surrounding Anne’s alleged pregnancies and miscarriages, see John Dewhurst, “The Alleged Miscarriages of Catherine of Aragon and Anne Boleyn,” *Medical History*, 28, no. 1 (1984): 49-56. Or for a more general account of her life, see her

Henry had set a course towards an official separation between himself and Katherine which would leave him free to marry Anne. He began by discussing matters with those closest to him and, on 17 May, Thomas Wolsey established a secret court at Westminster to discuss the legitimacy of the royal marriage. The court was short lived and was abandoned on 31 May, so that further theological guidance could be sought before any more progress was made.²¹⁷

At this point, Henry wanted to explore all orthodox options open to him and thus in the same year he sent William Knight (Secretary to the King) to Rome to promote the case for annulment. Knight's aim was to obtain the desired annulment and to secure permission for the King's remarriage. Bernard confirms that Henry did this without first consulting Thomas Wolsey, who at the same time, in a clearly orchestrated strategy in his position as cardinal and a papal legate had announced his own concerns over the legitimacy of the King's marriage and put forward a series of arguments against it.²¹⁸

However, granting Henry's request for annulment was a politically and legally tricky business for the Pope for several reasons. Not least as before Henry had married Katherine a bull had been duly executed by Julius II providing dispensation for Katherine's prior marriage. Additionally, Katherine's nephew also happened to be Charles V, Holy Roman Emperor, whose troops had been responsible for the Sack of Rome (also 1527) and for the imprisonment of the incumbent Pope Clement VII who then, in addition to other terms, had to pay a significant ransom for his life and to secure

authoritative modern biography by Eric W. Ives, *The Life and Death of Anne Boleyn: 'the most happy'* (Malden: Blackwell, 2004).

²¹⁷ Walker, *Writing under Tyranny*, 136.

²¹⁸ Bernard, *The King's Reformation*, 8-9.

his release. However, thereafter, his powers as Pope were severely practically curtailed. It is understandable that Clement would want to distance himself from and delay decisions which could ultimately have led to further action against Rome by Charles, which is precisely the course of action Clement adopted. With the most obvious route to divorce now out of the question, the break with Rome became a closer reality and a need for alternative methods for securing the divorce (such as via the conduit of royal rather than papal authority) was engendered. The use of legislation and the use of the press being two particularly effective methods of deploying the necessary materials to undermine the authority of the Pope whilst simultaneously promoting that of the King. St German was himself directly involved in both methods of propaganda through the development of his *Parliamentary Draft* (1531) and his other writings throughout the period, both published and unpublished.

The Legislative Campaign and the Reformation Parliament (1529-1536)

In May 1529, a papal legatine court was established at Blackfriars to consider the divorce. It was headed by Cardinals Wolsey and Campeggio, and Henry anticipated a favourable decision within weeks. In July, Campeggio adjourned the court. It was never reconvened. The case was revoked to Rome.²¹⁹ Henry totally lost confidence in a papal remedy and turned to Parliament for suggestions as to a potential solution.²²⁰ The first session of the

²¹⁹ Stanford E. Lehmborg, *The Reformation Parliament 1529-1536* (Cambridge: CUP, 1970), 2.

²²⁰ Lehmborg goes as far as to suggest that Henry's recourse to Parliament may not only have been to seek a solution to the divorce issue but also 'as a stage for his action against Wolsey.' Further noting Chapuys comments that 'the whole purpose of Parliament was to take away the chancellor's seals from the cardinal.' Though Wolsey was ultimately dealt with under a writ of *Praemunire*. Ibid, 3-4.

Reformation Parliament was called in October 1529. It was the first meeting of Parliament for six years and Parliament would continue to sit in multiple sessions until April 1536 to consider and finally decide on the King's 'Great Matter.'²²¹ The first session of the Reformation Parliament has been described as 'notoriously "anticlerical",' though ultimately practically disappointing.²²² However, the Parliament was heavily criticised by contemporaries for so many different reasons that Lehmborg argues that '[n]early every sort of special interest has been alleged,' from the clergy holding ultimate sway, to arguments of the King packing the Parliament with those partisan to his interests.²²³ Edward Hall's *Chronicle* describes the opening of the Parliament on 3 November as the King 'came by water to his place of Bridewell and there he & his nobles put on there robes of parliamēt' wherein afterwards they heard mass at Blackfriars and 'came into the parliamēt chābre.' More likened the King to a 'good shepard whiche not only kepeth and attendeth well his shepe, but all so forseeth & prouideth for althyng, which either may be hurtful or noysome to his floke.'²²⁴ More went on to more specifically describe the focus of the Parliament as:

²²¹ Ibid, 1.

²²² Walker, *Writing under Tyranny*, 36. For an alternative perspective on whether the Reformation Parliament was indeed anticlerical in nature and for a denunciation of the traditional assertion of the supposed wide-spread popular anticlericalism of the period, see Christopher Haigh, "Anticlericalism and the English Reformation," in *The English Reformation Revised*, ed. Christopher Haigh, 56-74 (Cambridge: CUP, 2000).

²²³ Lehmborg, *Reformation Parliament*, 8-9.

²²⁴ Edward Hall, *Hall's Chronicle: containing the history of England, during the reign of Henry the Fourth, and the succeeding monarchs, to the end of the reign of Henry the Eighth, in which are particularly described the manners and customs of those periods.* (London: Printed for J. Johnson et al, 1809), 764.

how diuers lawes before this tyme wer made now by lōg cōtinuance of tyme and mutacion of thinges, very insufficient, & vnperfight, and also by the frayl condicion of man, diuers new enormities were sprōg amongst the people, for the which no law was yet made to reforme thesame, which was the very cause why at that tyme the kyng had somoned his high court of parliament.²²⁵

Lehmberg notes Hall's account of More's oration, but also Fabyan's *Chronicle* which far more succinctly and specifically described the purpose of the Parliament as 'A Parliament for enormities of the cleargy.'²²⁶ Farther along, Hall's account highlights the obvious anticlericalism of the gathering, relaying how the commons expressed their 'grefes wherwith the spiritualitie had before tyme greuously oppressed them, both cōtrarie to the lawe of the realme, & cōtrarie to all righte, and in especial thei were sore moued with sixe greate causes.'²²⁷ The six causes dealt with: (i) the fees due to the clergy for the probate of wills (with Wolsey and Warham, (the Archbishop of Canterbury) specifically named); (ii) how the mortuaries taken for the payment of burials that hit the poor so hard that they would die of starvation or have to turn to begging;²²⁸ (iii) how the

²²⁵ Ibid.

²²⁶ Lehmberg, *Reformation Parliament*, 5; citing Robert Fabyan, *The New Chronicles of France* (London: Printed for F.C. & J. Rivington *et al*, 1811), 699.

²²⁷ Hall, *Chronicle*, 765. Though it is important to acknowledge that Hall himself may not have been a neutral witness, and he may himself have held strong anticlerical views. He was a close friend of Cromwell and may well have had sympathy for the Reformers. In 1545, for example, he witnessed the confession of Anne Askew which resulted in her release. He was also charged as part of a commission with enforcing the *Six Articles* 'perhaps because of his earlier enthusiasm for Henry VIII's role in prescribing religious belief.' Peter C. Herman, "Hall, Edward (1497–1547), lawyer and historian." *ODNB* (2012).

²²⁸ Fees paid to the Church for the preparation and burial of the dead. Helmholz notes how the 1529 statute (21 Hen 8 c. 6) 'turned all mortuaries into money payments.' During the medieval period they had normally

priests took and used grazing land from the poor or charged them heavily to use it; (iv) how the priests ran tan houses and traded in wool and cloth in direct competition with temporal tradesmen; (v) how the clergy lived richly in the houses of lords at the expense of the poor who had nothing spent on them; and finally (vi) how the priests were frequently non-resident, possibly having as many as ten or twelve benefices.²²⁹ Voicing how the expression of anticlerical sentiment was now acceptable, the Commons noted that before ‘God has illumined the eies of the kyng’ such claims would have ended in accusations of heresy due to bishops holding the chancellorship.²³⁰ However, now men had begun to ‘desyre a reformation.’²³¹ Therein Audley, their elected speaker, appointed a commission of men learned in the law to set about drawing up legislation to make the necessary amendments to correct these abuses.

With the repeated sittings of the Parliament throughout the 1530s, a statutory campaign was instituted to engender this ‘reformation’ and the legal, religious and political change necessary to settle the ‘Great Matter.’ Concomitantly, it would also significantly expand upon the competence of Parliament more generally. Thereafter, powers which had previously rested with the Church alone were brought within the ambit of Parliament’s governance. Religious authority was transmitted to the monarch and thus the Reformation Parliament confirmed the primacy of the King’s supremacy, or more particularly the King-in-Parliament’s supremacy (as will be shown in later chapters).

consisted of chattels. Richard Helmholz, *The Ius Commune in England: Four Studies* (Oxford: OUP, 2001), 141.

²²⁹ Hall, *Chronicle*, 765.

²³⁰ *Ibid*, 766.

²³¹ *Ibid*.

Elton highlights the change in Henry VIII's attitudes to his own versus Parliament's powers, when in 1520 Henry is recorded as having confirmed that due to 'our absolute power we be above the law.' Yet in 1543 in *Ferrer's Case* he stated that 'we be informed by our judges that we at no time stand so highly in our estate royal as in the time of Parliament, wherein we as head and you as members are conjoined and knit together into one body politic.'²³² This marked a significantly different way of thinking about Parliament from fifteenth-century conceptions, where Parliament was defined merely by reference to the doctrine of the three estates. According to the three estates, Parliament was made up of the Lords Spiritual, the Lords Temporal and the Commons. Thereby, the King formed no part of the Parliament, rather he sat above them. They were not previously considered to be 'conjoined and knit together' as Henry suggested during the 1540s.²³³ The King was clearly still the supreme power even within Henry's incarnation of the relationship between Parliament and monarch. However, Parliament, or more specifically statute, became a most effective conduit for effecting the sovereign will of the King.

This transformation in the role of Parliament during the 1530s is evidenced through the statutes enacted during the period to bring about the required legal, religious and political change. Rex provides an effective summary of this legislation with the fourth to seventh sessions of the Parliament between 1533 and 1536 proving the most successful sessions in the legislative campaign to solidify the royal supremacy with the enactment of various key statutory measures and beginning with the foundational act of

²³² Geoffrey R. Elton, *Studies in Tudor and Stuart Politics and Government*, vol. 2, *Parliament, political thought: papers and reviews 1946-1972* (Cambridge: CUP, 2002), 32.

²³³ *Ibid.*, 2:32-33; citing *Ferrer's Case* (1543) 1 *Parl. Hist.* 555.

the fourth session of Parliament – the *Act in Restraint of Appeals* (1532 – but passed by both houses by April 1533).²³⁴ However, it is Lehmborg who has provided the most thorough and chronologically complete account of the entire Reformation Parliament’s activities throughout all of its sessions.

Lehmborg describes the *Act in Restraint of Appeals* as ‘the most important single piece of legislation to be enacted by the Reformation Parliament: it forms a climax, with the earlier anti-clerical measures preparing its way and the subsequent ecclesiastical regulation flowing from it.’²³⁵ The *Act* identified the English crown as imperial and forbade appeals to Rome in any matter, and made the King the final point of legal authority in the realm. It allocated the power of finally deciding on the divorce case to the English Church. Convocation therefore pronounced that it considered the marriage between Henry and Katherine invalid, now all that was needed was for there to be a formal trial wherein the official judgment could be announced. The trial began on 10 May and did not even last a fortnight. Katherine did not appear and was pronounced contumacious by Archbishop Thomas Cranmer. Lehmborg notes how no witnesses were heard, instead the four-year old depositions of testimony presented to Wolsey and Campeggio were relied upon.²³⁶ On 23 May Cranmer pronounced that the union between Henry and Katherine was invalid, and on 28 May he pronounced Henry and Anne’s union lawful – as by this point, they had been ‘married’ since 25 January 1533. However, despite the significant implications of the *Act* it faced little direct opposition in the Parliament. As Lehmborg summarises:

²³⁴ 24 Hen 8 c. 12. Rex, *Henry VIII*, 19-23.

²³⁵ Lehmborg, *Reformation Parliament*, 175.

²³⁶ *Ibid*, 179.

A few great men could not reconcile their consciences to the break with Rome which the appeals act implied. Some lesser figures grumbled in taverns and gossiped with foreign envoys. But on balance there was surprisingly little evidence of serious opposition to the king's new marriage or to the steps which had been taken to validate it. Seldom has so momentous a change, affecting the religious life of a whole people, been initiated so easily.²³⁷

Chronologically, the next significant ecclesiastical act (for the purposes of this thesis at least) was the *Act Concerning Ecclesiastical Appointments and Absolute Restraint of Annates* (1533)²³⁸ which represented a partial victory for the clergy as with respect to the matter of annates,²³⁹ the aim had been to try to transfer the payment of these from the Pope to the King. However, this element of the *Act* failed to meet the approval of the Upper House and thus the idea of transfer was dropped in favour of an end to all annates. In relation to the appointment of bishops, the *Act* effectively sealed the monarch's authority to direct their election. The *Ecclesiastical Licences Act* (1533)²⁴⁰ followed and made it illegal to pay 'Peter's Pence'²⁴¹ or other payments to Rome. It also

²³⁷ Ibid, 181.

²³⁸ 25 Hen 8 c. 20.

²³⁹ Annual payments from the holder of an ecclesiastical benefice made to the Apostolic Camera (Papal Treasury). They were also known as 'first fruits.' John J. Scarisbrick, "Clerical Taxation in England, 1485-1547," *Journal of Ecclesiastical History*, 11, no. 1 (1960): 44.

²⁴⁰ 25 Hen 8 c. 21.

²⁴¹ A contribution or donation to Rome which was collected more like a tax. As Lehmborg clarifies, Peter's Pence was 'originally an annual tribute to the Pope consisting of a penny from each householder owning land of a certain value, [which] had been collected in England since the time of King Alfred; in the twelfth century it had been fixed at two hundred pounds a year for the whole country.' Lehmborg, *Reformation Parliament*, 191.

granted previously held papal powers to the Archbishop of Canterbury for the granting of dispensations. This *Act* is interesting as ‘it is one of the earliest documents to speak of a papal usurpation, because it restates the theory that England has “no superior under God, but only your king’s grace,” and because it argues that the authority of the King’s “imperial crown” is diminished by “the unreasonable and uncharitable usurpations and exactions” of the Roman pontiff.’²⁴²

The *Act for the Submission of the Clergy* (1534)²⁴³ had been passed earlier in 1532 by the Convocation of Canterbury, but was subsequently the next act to be formally passed by the Reformation Parliament in 1534.²⁴⁴ This *Act* granted the King powers to establish a commission focussed on revising English canon law and began to jurisdictionally distance England from Rome by establishing a right of appeal from any ecclesiastical court to the Court of Chancery.²⁴⁵ Indeed, a post-*Doctor and Student* Court of Chancery, where in the broader context of the battle for jurisdictional supremacy between the common law and equity, the common law had won its primacy.

²⁴² Ibid, 192.

²⁴³ 25 Hen 8 c. 19.

²⁴⁴ ‘By custom of the Convocation of the English Church in the Province of Canterbury men concurrently with Parliament. [...] The clerics once gathered together, could discuss [...] matters affecting the welfare of the Church, and they were available for negotiations with the king and Parliament. During the years from 1529 to 1536 the interaction between Parliament and the Convocation was so close that it would be folly for the historian to separate out the two assemblies.’ Lehmborg, *Reformation Parliament*, 64.

²⁴⁵ Though the *Act* also established an appeal direct to a royal commission for certain monasteries and other religious houses ‘since these houses were by tradition exempt from archiepiscopal jurisdiction.’ Ibid, 193.

Statutes were also used to silence opposition to the new regime through the use of *Acts of Attainder*.²⁴⁶ For example, these were used against the ‘Holy Maid of Kent,’ Elizabeth Barton and her adherents (a group of conservative clergy) who had vehemently spoken out against the King’s intention to pursue the divorce and had prophesied that, should he not desist, he would die ‘a villaynes death.’²⁴⁷ At the time, what she had said did not legally support a charge of high treason even if it was clear that she was guilty of something, and thus it was necessary to proceed against her using attainder rather than through a trial.²⁴⁸ Due to his previous correspondence with Barton, Bishop Fisher was included in the bill and, at the King’s own request, so was More. More and Fisher hurried to defend themselves. More succeeded in having his name struck from the bill, but Fisher was not so fortunate meaning that he had to buy his pardon for £300.²⁴⁹ However, the duo would not escape for long and acts of attainder were of course specifically used in order to effect their demise.²⁵⁰ Barton’s and her accomplices’ executions and the public display

²⁴⁶ For more on the use of acts of attainder during the reign of Henry VIII, see: Stanford E. Lehmberg, “Parliamentary Attainder in the Reign of Henry VIII,” *Historical Journal*, 18, no. 4 (1975): 675-702; William R. Stacy, “Richard Roose and the use of Parliamentary Attainder in the Reign of Henry VIII,” *Historical Journal*, 29, no. 1 (1986): 1-15. More generally, see: Elton, *Policy and Police*; also John Bellamy, *The Tudor Law of Treason: An Introduction* (London: Routledge, 1979).

²⁴⁷ For more on Barton, see: Edward J. Devereaux, “Elizabeth Barton and Tudor Censorship,” *Bulletin of the John Rylands Library*, 49, no. 1 (1966): 91-106. For a contemporary account, Hall also discusses her story at length in his *Chronicle*, 803-815.

²⁴⁸ Lehmberg, *Reformation Parliament*, 194.

²⁴⁹ *Ibid*, 195-96.

²⁵⁰ 25 Hen 8 c. 12 (Barton); 26 Hen 8 c. 22 (Fisher); 26 Hen 8 c. 23 (More). Both More and Fisher were implicated with Barton following evidence of their correspondence with her. Though More initially

of their remains were timed with grotesque pageantry on 20 April 1534 – the same day that the call went out for those prominent citizens of London to swear the oath to the *Act of Succession*. Unsurprisingly, there was little effective popular resistance to the swearing of the oath, with More being the only layman to refuse to swear to it. Similarly, within the ecclesiastical sphere there were few who followed Fisher’s example of refusal. Barton’s execution and Henry’s previously harsh and violent public punishments towards those who had resisted his new religious policy, and upheld Katherine’s position as the true Queen of England, likely sent out an abundantly clear message to those whose consciences may have otherwise been pricking them.²⁵¹

The *Act of Succession* (1534),²⁵² emerged during the spring of 1534 in response to the Pope’s formal judgment the previous July that Katherine and Henry’s marriage should not be put aside and ordering that Henry return to her.²⁵³ The main effects of the *Act of Succession* (earlier known as the *Act Respecting the Oath to the Succession*) were

managed to have his name struck from the bill attainting Barton by providing evidence of letters where he had counselled Barton not to act against the King’s authority.

²⁵¹ For example, as Walker notes: ‘During the summer and autumn of 1533 opposition to both the King’s marriage and his religious policy had continued to be voiced, and had met with an increasingly violent response. On 22 June the evangelical author John Frith and a like-minded apprentice tailor, Andrew Hewet, were burnt at Smithfield for their heretical beliefs. On 23 August two women, one very obviously pregnant, were stripped to the waist, beaten, and nailed by the ears to the Standard in London for claiming that Katherine of Aragon was the true Queen of England.’ Walker, *Writing under Tyranny*, 225.

²⁵² 25 Hen 8 c. 22.

²⁵³ Walker, *Writing under Tyranny*, 225.

to exclude Henry and Katherine's daughter Mary from the succession²⁵⁴ and to impose on all male subjects an oath accepting a new dynastic settlement on Henry's future male heirs with Anne (or a subsequent wife) or, failing the birth of a male heir, on the new born daughter of Henry and Anne, the Princess Elizabeth and her descendants. Mary was not specifically bastardised by the *Act* as is sometimes stated as '[i]t might later prove desirable to give Mary a place in the succession, and theoreticians could argue, as Chapuys did on occasion, that she was lawfully born since her parents were unaware at the time of any impediment to their union.'²⁵⁵ The *Act* confirmed that the Bishop of Rome and the Apostolic See had in times past tried to override the power of emperors, kings and princes 'contrary to the greate and invyolable grauntes or jurisdiccions geven by God ymmediatly to' them, which both the spirituality and temporality within the realm 'doo mooste abhorre and deteste.'²⁵⁶ Henry and Katherine's marriage was deemed unlawful, while Henry and Anne's marriage was deemed 'undowtfull true syncere and p[er]ecte,' and, as Henry wanted to reinforce the unquestionable theoretical legitimacy of the union, it was highlighted that it had been confirmed by the 'just judgement' of Cranmer as Archbishop of Canterbury, the whole clergy of the realm and by the Universities of 'Bonony Padua Paris Orleance Toulouse Angiew and dyvers others, And also by the private wrytyneg[es] of many right excellent well lerned men.'²⁵⁷

²⁵⁴ Katherine had already been demoted in status by statute (25 Hen 8 c. 28) to Princess Dowager, as the widow of Prince Arthur.

²⁵⁵ Lehmborg, *Reformation Parliament*, 198.

²⁵⁶ *Statutes*, 3:472.

²⁵⁷ *Ibid.*

The *Act* went further and also clarified that any persons marrying within the degrees of consanguinity prohibited by Scripture had no lawful union for ‘no man of what estate degree or condicion soo ever he be hath power to dispence with Goddes lawes,’ which was also the opinion of the clergy of the realm and ‘for the most parte of all the famous Universities of Christendome’ and the Parliament.²⁵⁸ Anyone committing acts or producing writings which ‘maliciously procure or doo or cause to be procured or don any thyng or thynges to the perell’ of the King, his marriage to Anne or his succession on her, or anyone supporting the same acts or writings would be judged to have committed high treason.²⁵⁹ Anyone convicted of the same would forfeit their (and their heirs’) titles to land, freeholds or interests in rents to the King. Anyone uttering such malicious imperilments against the King, his marriage or heirs would be judged guilty or misprision of treason. Neither those guilty of treason or misprision of treason by the *Act* would be able to seek sanctuary.²⁶⁰

Thereafter, the next key statutory measure in severing the authority of the Pope within the realm appeared with the *Act of Supremacy*, which was passed by the Reformation Parliament in November 1534. It built upon the *Act in Restraint of Appeals* and provided the first statutory recognition of Henry’s (and his descendants’) power (or responsibility, based upon the wording of the *Act*²⁶¹) as Supreme Head of the Church in England and required the clergy to swear an oath to that effect as the *Act of Succession* had contained a defect and had not specified the precise wording to be used to swear

²⁵⁸ Ibid.

²⁵⁹ Ibid, 3:473-74.

²⁶⁰ Ibid, 3:474.

²⁶¹ Ibid, 3:492.

obedience to the King. St German himself would be inspired by the *Act of Supremacy* to write his *Power of the Clergy*, delineating the parameters of the powers of the monarch.

Parliamentary members had been sworn earlier in the spring and, as Lehmborg notes:

the oath administered to them was intended as the oath which the act required, but it went beyond the act in several particulars, especially in its requirement that the persons sworn renounce the power of any “foreign authority or potentiate” and repudiate any oath previously made to such a ruler.²⁶²

The new *Act* clearly set out the wording of the oath to be used. Those who would not swear would be certified into the King’s Bench and it was this action which confirmed the imprisonment of Fisher and More. They were duly attainted for misprision of treason.²⁶³ However, the *Act* laid down no specific penalties for denying or opposing the King’s powers, thus laying the foundations for the next key statutory measure.²⁶⁴

As it was, the *Act of Treasons* (1534)²⁶⁵ laid down the penalties for ‘maliciously’ denying the supremacy. The *Act* made malicious denial of the supremacy by ‘wish, will, or desire by words or in writing’ a capital offence. Rex notes how there were passionate debates in the commons over the term ‘maliciously’ and confirms that this was due to a general feeling that the *Act* demonstrated a huge practical extension of the concept of

²⁶² Lehmborg, *Reformation Parliament*, 203.

²⁶³ Ibid.

²⁶⁴ Fisher and More were not the only ones to fall foul of repercussions for refusing to swear the oath. For example, Walker notes how the monks at the London Charterhouse who refused to swear were imprisoned in chains for their disobedience. Walker, *Writing under Tyranny*, 226.

²⁶⁵ 26 Hen 8 c. 13. The *Act* came into effect in February 1535.

treason as it now seemingly applied to merely verbal offences.²⁶⁶ Walker notes that it did not take long for the *Act* to claim its first victims, as he recounts the fates of:

the first group of Carthusian monks, including the prior of their London house, John Houghton, [who] were convicted of treason and dragged together through the streets from the Tower to Tyburn and there hanged, drawn, and quartered. Henry had almost the whole court turn out to watch them, with a number of the gentlemen of his privy chamber leading the revels disguised in masks and wearing armour for the occasion.²⁶⁷

Notably, it was by this *Act of Treasons* that Fisher and More were put to death in June and July 1535 respectively, even though by this time Fisher was a Cardinal. Following his beheading, Henry had Fisher's head placed upon London Bridge, and morbidly joked that it was 'so that it might look in vain for his [Fisher's] Cardinal's hat coming from Rome.'²⁶⁸

By the opening of the final session of the Reformation Parliament, Lehmborg notes how Henry was already tiring of the woman he had seemingly broken with Rome for want of marrying.²⁶⁹ Anne miscarried a male heir on 7 January 1536, the day of the

²⁶⁶ The *Act* stated that it was treason to: 'maliciously wish, will or desire by words or writing, or by craft imagine, invent, practise, or attempt any bodily harm to be done or committed to the king's most royal person, the queen's or the heirs apparent [Elizabeth], or to deprive them of any of their dignity, title or name of their royal estates, or slanderously and maliciously publish and pronounce, by express writing or words, that the king should be heretic, schismatic, tyrant, infidel or usurper of the crown.' 26 Hen 8 c. 13.

²⁶⁷ Walker, *Writing under Tyranny*, 226.

²⁶⁸ *Ibid.*

²⁶⁹ Parliament did not meet in 1535 due to various reasons, among them a severe outbreak of plague in London. Lehmborg, *Reformation Parliament*, 217.

former queen Katherine's funeral.²⁷⁰ She herself would be dead by 17 May 1536 following an execution for charges of adultery, incest and treason. Cranmer, despite his former closeness to her, or perhaps precisely because of it, would declare her and Henry's union void on the eve of her execution.²⁷¹ Cromwell, a lay-man who according to Lehmborg, had become 'a dominant figure during this second stage [of the Reformation Parliament], lasting from 1532 to 1534'²⁷² had been named as 'Vicegerent of Spirituals'²⁷³ by Henry at some point following the *Act of Supremacy* (in Lehmborg's and MacCulloch's theorisation likely in early 1535²⁷⁴). He would begin his visitation of the monasteries making some significant progress by the end of the year. The final session of the Reformation Parliament thus closed on 14 April 1536. The following Parliament (sitting between 8 June and 18 July 1536) would pass the *Act against the Authority of Rome* (1536).²⁷⁵ This *Act* formally extinguished the authority of Rome and was the first to explicitly confirm that it was treason to refuse an oath of royal supremacy. It upheld

²⁷⁰ Ibid.

²⁷¹ Cranmer had previously served as Thomas Boleyn's (Anne's father) personal chaplain, and it is reputed that when Cranmer thanked the King for his elevation to the Archbishopric of Canterbury, the King is reported to have told him that it was Anne he had to thank for his promotion. Diarmuid MacCulloch, *Thomas Cranmer: A Life* (New Haven & London: Yale University Press, 1996), 82.

²⁷² Lehmborg, *Reformation Parliament*, 250.

²⁷³ A Latin translation of 'exercising in the place of,' which MacCulloch clarifies here meaning 'of King Henry's powers as Supreme Head of the Church.' MacCulloch, *Thomas Cromwell: A Life* (London: Allen Lane, 2018), 269.

²⁷⁴ S.E. Lehmborg, 'Supremacy and Vicegerency: A Re-examination,' *The English Historical Review*, 81, no. 319 (1966): 225; MacCulloch, *Thomas Cromwell*, 269.

²⁷⁵ 28 Hen 8 c. 10.

the pre-existing notion of the ‘prerogative royal’ and reaffirmed Richard II’s *Statute of Praemunire* (1392)²⁷⁶ which had made it an offence to appeal an English case to the Pope against the will of the King, or indeed to act in any way which identified that the Pope held authority over the King.²⁷⁷ Through the campaign of legislation throughout the preceding seven years, the circle was thus complete – the power of the Pope had been thoroughly repudiated and the royal supremacy aggressively and solidly established and enforced, and Parliament was one key conduit through which it was achieved.²⁷⁸

²⁷⁶ 16 Ric 2 c. 5. Indeed, Richard II’s judges had attempted to provide a definition of the royal prerogative in 1387. See Stanley B. Chrimes, “Richard II’s Questions to the Judges, 1387,” *Law Quarterly Review*, 73 (1956): 365-90, for a discussion of this in the context of Richard II’s meetings with the judges in 1387 to discuss the prerogative power of the Crown and the power of Parliament. With respect to the powers of the King, the judges ‘ruled that the king could dissolve parliament whenever he wished, and further that the lords and commons had no right to put forward articles of their own and insist on their discussion before dealing with the king’s business.’ Nigel Saul, *Richard II* (New Haven: Yale University Press, 1999), 174. The judges would also confirm that Parliament could not impeach a minister without the consent of the Crown. Thus, leading Saul to conclude that the answers of the judges comprise ‘the most remarkable statement of the royal prerogative ever made in England in the middle ages.’ *Ibid.*

²⁷⁷ For a succinct summary of Cromwell’s legislative campaign of the early 1530s see, Rex, *Henry VIII*, 20-23.

²⁷⁸ Though it was of course not without opposition. The Pilgrimage of Grace was yet to occur (it began in October 1536 in Lincoln lasting for two weeks, but subsequent uprising in Yorkshire (led by the lawyer Robert Aske who termed that uprising the *Pilgrimage of Grace*) continued into the new year. This was a serious issue for Henry – the first real popular threat since he had taken the throne and particularly concerning as the ranks of rebels included nobility. Ultimately, Henry dealt harshly with the rebels (including Aske). Despite promises of pardon, they would face trial and execution for treason. Overall at least one hundred and thirty-two of the rebels were executed (at a conservative estimate), and likely many more when Norfolk imposed martial law in the north, at the King’s bequest, dealing ferociously with the

The Use of the Press in Enforcing the Henrician Supremacy

Alongside the use of Parliamentary legislation used to exact the changes necessary to appropriately hasten the expansion of the King's supremacy, there was also a decided stream of propaganda emanating from the presses of England supporting the King's cause (particularly in the form of polemics). St German was just one individual whose ideas were harnessed to proliferate wider popular support for the legality of Henry's 'domestic solution.' Elton of course cautions, that not everything which appeared off the presses which looked like propaganda actually would have been such, which is true. However, he also crucially discounts St German as a potential propagandist on two grounds: (i) that he was not 'employed by the government; and (ii) that he was not published by Berthelet.²⁷⁹ Though we have no direct proof of employment, we do have clear connections between Cromwell and St German, such as Cromwell's seeking out of St German's opinion²⁸⁰ (which incidentally Elton uses to argue lack of connection due to St German's refusal to provide assistance at that time), but we also know that Cromwell kept St German's papers. Again, Cromwell may well have been inclined to do this with works he thought may prove useful in the future, but he clearly had singled out several of St German's works in this manner and added together this suggests some sort of

remaining rebels. Walker, *Writing under Tyranny*, 237. See also: Geoffrey Moorhouse, *The Pilgrimage of Grace: the rebellion that shook Henry VIII's throne* (London: Weidenfeld & Nicolson, 2002); and also Michael L. Bush, "The Tudor Polity and the Pilgrimage of Grace," *Bulletin of the Institute of Historical Research* 80, no. 207 (2007): 47-72; Janice Liedl, "The Penitent Pilgrim: William Calverley and the Pilgrimage of Grace." *Sixteenth Century Journal*, 25, no. 3 (1994): 585-594; Hugh Loughran, "Henry VIII and the Pilgrimage of Grace (1537)," *Catholic Insight* 5, no.7 (1997): 24-26.

²⁷⁹ Elton, *Policy and Police*, 173.

²⁸⁰ LP 12/2:1151 (seeking his opinion upon the *Bishops' Book*).

connection between the pair. Therefore, though St German maintained his independence as was not, as far as records show, an employed propagandist, his works were used as propaganda. And, more importantly, (thanks to Rex's keen scholarship) we do now know that St German was published by Berthelet up to 1538. He was also actively drafting legislation, so not simply writing works to encourage popular support for the government's endeavours, he was practically involved in the legal attempts to realise it.

Henry struggled to convince his advisors of the legitimacy of a domestic approach to the divorce issue. As Walker notes, in June 1530 Henry had summoned a council of his leading subjects. Those assembled at the council did not side with Henry and rather argued that the divorce could only be settled in Rome. Henry then went on to summon a broader meeting containing lawyers and theologians to Hampton Court to debate the matter. They reconfirmed what the leading men of the council had already said. Henry then went on to prorogue Parliament out of sheer fury.²⁸¹ Thereafter, Henry had a veritable army of scholars engaged in the matter of the divorce throughout the later 1520s and early 1530s, to provide additional support for the legitimacy of the domestic solution. More himself attests to this fact in a letter to Cromwell from March 1534, wherein upon rehearsing to Cromwell the events which had taken place in Henry garnering More's opinion upon the divorce, More stated:

Whereupon his Highness accepting benignly my sudden unadvised answer commanded me to commune further with Mr. Fox, now his Grace's Almoner, and to read a book with him that then was in making for that matter. After which book read, and my poor opinion eftsoons declared unto his Highness thereupon, his Highness like a prudent and a virtuous prince assembled at another time at Hampton Court a good

²⁸¹ Walker, *Writing under Tyranny*, 137.

number of very well learned men at which time as far as ever I heard there were (as was in so great a matter most likely to be) diverse opinions among them.²⁸²

The initial investigation into the diverse opinions on the divorce would then develop throughout the 1530s into a broader consideration of the difference between royal and ecclesiastical power, resulting in the replacement of papal supremacy with that of the monarch.

Several of these works are contextually instructive for the purposes of this thesis. For example, the *Collectanea Satis Copiosa (The Sufficiently Abundant Collections)*²⁸³ was produced by a group of domestic scholars partisan to the King, with individuals such as Thomas Cranmer and Edward Foxe among them. Foxe would also go on to assist in drafting the *Ten Articles* in 1536. The text of the *Collectanea* itself was comprised of a compilation of ancient sources and the work was presented to Henry in 1530 after taking two years to complete. The aim of the *Collectanea* was to provide support for the annulment from Katherine and to justify that the case considering the annulment be heard at home in England and not in Rome. The '*Collectanea* suggested that in the past the kings of England had known no earthly superior and had enjoyed great authority over the Church.'²⁸⁴ The main thrust of the materials collected together within the *Collectanea* were threefold and proposed that Henry, as King, held not only secular authority

²⁸² More, Thomas, *The Correspondence of Thomas More*, ed. Elizabeth F. Rogers and Helen M. Allen (Princeton: Princeton University Press, 1947), letter 199 to Cromwell.

²⁸³ Hereinafter, *Collectanea*.

²⁸⁴ Eric J. Carlson, "Marriage Reform and the Elizabethan High Commission," *Sixteenth Century Journal*, 21, no. 3 (1990): 438.

(specifically in the form of *imperium*²⁸⁵) within the realm, but also spiritual authority. Further, that the Church of England was an independent province of the Catholic Church exercising autonomous powers – thus supporting the idea of royal rather than papal supremacy. These were all ideas that St German would support at various points in his own writings.

Henry himself was also popularly reputed to have turned his own pen to producing such propaganda, supposedly partly writing the anonymously published *The Glasse of the Truthe* (1532).²⁸⁶ The book followed the inspiration of various previously compiled texts, including the *Collectanea*. Haas summarises the argument of *The Glasse* as:

[...] quite straightforward. The pope is guilty of over-stepping his authority by unreasonably delaying the divorce. The impartial and carefully considered decisions of both English and continental universities, as well as the holy scriptures and a long list of Church councils-especially Constance-have proved that papal action on this subject is too often without divine sanction.²⁸⁷

The Glasse places the ‘theological and canonist argument [...] against a background of patriotic fervour and king-worshipping loyalty,’²⁸⁸ whilst at the same time never challenging the headship of the Pope, and still referring to him by that title. However, the

²⁸⁵ The links between identifying the King’s power with the notion of *imperium* are significant, especially considering the links between *imperium* and the power of the emperor to call a general council of the Church. The issues of the general council will be considered in more detail when considering St German’s later works (in chapter 5).

²⁸⁶ Elton, *Policy and Police*, 176 notes Richard Croke’s letters to Cromwell which demonstrated his belief in the King’s involvement. He also notes Nicholas Hawkins who referred to the *Glasse* as ‘your highness’ Dialogye.’

²⁸⁷ Haas, *Henry VIII’s Glasse*, 354.

²⁸⁸ Elton, *Policy and Police*, 178.

work does suggest that Parliament could find a solution by exerting its ‘wits and good will.’²⁸⁹ Thereafter, of course appeared the *Act of Appeals*. The format of the piece is a familiar one from the period commonly used by many writers (and a format frequently employed by St German in his own works) in that it is presented as a dialogue between a lawyer and a priest who both support the King’s position on the divorce.

Indeed, Henry’s *The Glasse* did not just derive its inspiration from works containing supportive domestic opinion on the divorce but was also heavily influenced by continental thought sympathetic to his cause. Henry had trawled the continent for the opinions of the learned men of Europe on the issue of the Pope’s authority to dispense against marriages such as his own. Henry’s *The Glasse* itself, as Warner confirms, derived its ‘heavy-handed’ ideas ‘wholesale’ from a work printed by Thomas Berthelet in 1531 which summarised the opinions from Europe partisan to the King’s position.²⁹⁰ The title of the book, which pulled no punches and made abundantly clear the subject matter contained within, was: *The Determinations of the Most Famous and Most Excellent Universities of Italy and France, that it is So Unlawful for a Man to Marry his Brother’s Wife, that the Pope has no Power to Dispense Therewith.*²⁹¹ The book collected the ‘determinations’ from ‘eight renowned university faculties, from Paris to Padua, which all conclude[d] that a pope cannot dispense against the Old Testament law forbidding marriages such as Henry’s.’²⁹² Additionally, for good measure, it also

²⁸⁹ Ibid.

²⁹⁰ James. C. Warner, ‘No Humanist Fiction This: Henry VIII’s Prose Dialogue *A Glass of the Truth*,’ *Prose Studies*, 18, no. 2 (1995): 123.

²⁹¹ Hereinafter, *The Determinations*.

²⁹² Warner, *No Humanist Fiction*, 123.

included a ‘seven-chapter defense [*sic*] of their position by the king’s own canonists.’²⁹³ Henry clearly wanted it popularly known, as Warner suggests, that this was *his* will on the matter, even if *The Glasse* was published anonymously.²⁹⁴ Subjects who wanted to be considered obedient would likely find it wise to conform to the ideas presented therein.

Indeed, throughout this early period, Henry tried to emphasise his impartiality in the proceedings as a further effort at securing popular acceptance of their legitimacy. As Walker notes:

Henry had stood back from the heated disputes between members of the Commons and the clergy in the Lords over the bills condemning pluralism (the holding of more than one benefice at the same time), non-residence (the inevitable consequence of pluralism), and excessive exactions such as probate charges and mortuary fees (the property claimed by the priest for officiating at a burial). Posing as an impartial judge between his contending subjects, he met delegations from each side and tried to resolve the arguments by appointing committees of both houses to discuss them.²⁹⁵

The first work to demote the Pope to his ancient title of ‘Bishop of Rome’ was the *Articles devised by the whole consent of the king’s most honourable council* (1533).²⁹⁶ The *Articles* were intended to lay down what people should believe ‘in straight forward terms; the absence of argument, of learned authorities, of theological debate produces a pervasive air of absolute conviction and calm assurance, a firm basis from which to attack the problem of dissent.’²⁹⁷ Thereafter, *A Little Treatise against the Muttering of Some*

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Walker, *Writing under Tyranny*, 138.

²⁹⁶ STC (2nd ed.)/9177.

²⁹⁷ Elton, *Policy and Police*, 181.

Papists in Corners (1534)²⁹⁸ was an appeal to the people directly. According to Elton, ‘it repeats the usual arguments, the Petrine claim and the point from the *Articles* concerning appeals to General Councils.’²⁹⁹ The work demonstrates that the government was aware of what was being said around the country and aimed to discredit popular grumblings. Elton notes no author but since the work has been attributed to Thomas Swinnerton (d. 1554), who was an evangelical preacher and, noted by Rex, to have been one of the first Englishmen to study at Wittenberg University where he matriculated in 1526. Rex describes the mutterings of *Some Papists* as ‘a dull, though genuinely brief, piece of anti-papal polemic.’³⁰⁰ He cites his other work, published under the alias of John Roberts, the *Mustre of Schismatic Bishops of Rome* (1534)³⁰¹ as ‘far superior.’ Swinnerton was another who may have enjoyed Cromwell’s patronage and dedicated his *Tropes and Figures of Scripture* to him.³⁰² This work ‘used a basic application to scripture of certain elements of Renaissance rhetoric to advance an evangelical agenda on such subjects as faith, purgatory and monastic vows.’³⁰³ Ryrie notes how the work demonstrates Swinnerton’s ambitions to ‘provide a vernacular guide to its [Scripture’s] interpretation; in particular, he was trying to establish clear and objective criteria governing when

²⁹⁸ STC (2nd ed.)/23551.5.

²⁹⁹ Elton, *Policy and Police*, 183.

³⁰⁰ Richard Rex, "Swynnerton [Swinnerton], Thomas (d. 1554), evangelical preacher," *ODNB* (2008).

³⁰¹ STC (2nd ed.)/ 23552.

³⁰² The work remained unpublished at the time, but has since been edited and published by Richard Rex as Thomas Swinnerton, *A Reformation rhetoric. Thomas Swynnerton's The tropes and figures of Scripture*, ed. Richard Rex (Cambridge: RTM Publications, 1999).

³⁰³ Rex, *Swynnerton, Thomas*.

Scripture should be read literally, and when figuratively.³⁰⁴ This was something that St German would also concern himself with in his *Power of the Clergy* in approximately 1535.

In his discussion of other propaganda emanating from the period, Elton also discusses a proposal outlining points to be covered in a treatise to comprehensively attack the Pope's claims to supremacy 'it goes over some old ground such as the early councils and powers of General Councils nowadays, but also wants to remind the Church that the pope augmented his power at the expense of other bishops.'³⁰⁵ Elton notes the arguments only really get interesting towards the end, one of which 'insists that Englishmen "are bounden in conscience to obey the Parliament" since its acts do not contravene the law of God, the issue over which More was to die.'³⁰⁶ He also notes a 1536 call for a text from leading clergy to prove that John 20:21 and Acts 20:28 did not prove the superiority of bishops over princes, but that this call also came to nought.³⁰⁷

³⁰⁴ Alec Ryrie, "A Reformation rhetoric. Thomas Swynnerton's The tropes and figures of Scripture. Edited by Richard Rex. (Renaissance Texts from Manuscript)," *Journal of Ecclesiastical History*, 52, no. 4 (2001): 745.

³⁰⁵ Elton, *Policy and Police*, 185.

³⁰⁶ Ibid; Elton notes that this is also referenced in *LP* 8:295. However, there is a slight discrepancy in the number of arguments listed by Elton at fourteen, and the number recorded in the *LP* record at fifteen.

³⁰⁷ Ibid; citing *LP* 11:83. On the authority of bishops, the following was stated: 'Things to be remembered before the breaking up of parliament. Many of the clergy take the two texts following to prove the authority of bishops to be above that of kings and princes. "It is expedient that the question be demanded of such of the clergy as be most like by their authority and learning to be disposed to declare the truth therein," and their declaration to be made so manifest that all who list may take exception to it, and not say afterwards that they would have spoken, but durst not. The texts are John xx. *Sicut misit me Pater, et ego mitto vos,*

Two more significant works of propaganda were Richard Morison's *Apomaxis* (1537)³⁰⁸ and Thomas Starkey's *An Exhortation to the People instructing them to Unity and Obedience* (1536).³⁰⁹ Morison's *Apomaxis* has been described as a major piece of propaganda, in that it offered 'a full-scale review of the past seven or eight years.'³¹⁰ In the work, Morison 'sets out the official versions of all the *causes célèbres* – the Divorce, the Nun of Kent, Fisher and More.'³¹¹ With respect to Starkey, Elton cites Zeeveld that he was 'the first specific advocate of the Anglican *via media*.'³¹² With respect to the *Exhortation*:

After criticism by Henry (who found the argument too little scriptural), some divines (who missed in the treatise their own commitment to one side or another), and Cromwell (who, seeing the point, wanted even more stress laid on the middle position which he himself had first pressed on Starkey), he rewrote the book so that it might have some propaganda value by stringing his argument upon the main chord of the duty of obedience.³¹³

and Acts xx. *Attendite vobis et universo gregi in quo vos posuit Spiritus Sanctus episcopos regere Ecclesiam Dei quam acquisivit sanguine suo.* Explains how these are interpreted by some of the clergy.' This was an issue raised earlier in 1531 in *A Document of the year 1531* on the subject of the Pope's supremacy which will be discussed briefly in chapter 5.

³⁰⁸ STC (2nd ed.)/18109.

³⁰⁹ STC (2nd ed.)/23236.

³¹⁰ Elton, *Policy and Police*, 192.

³¹¹ *Ibid.*

³¹² *Ibid.*; citing W Gordon Zeeveld, *Foundations of Tudor Policy* (London, Methuen, 1969), 152. Also see 141-156 more generally in relation to Starkey and the relation of his ideas for an English *via media* to Melancthon's 'plan for unity among Protestant nations on an adiaphoristic basis.' Zeeveld, *Foundations*, 141.

³¹³ *Ibid.*, 193.

However, Elton believes the title to be a misnomer pointing out that Starkey's initial purpose remains, arguing for a:

middle way in policy, justified by a theological system of things indifferent – *adiaphora* – which sensible men can agree are not doctrinally necessary and may therefore be varied from place to place and time to time without endangering the unity of Christendom.³¹⁴

In particular, he argued that 'spiritual blindness' was being caused by two afflictions 'superstition and arrogance.'³¹⁵ This is a line that St German himself would also spin out. Throughout his works he would demonstrate his frustration at the arrogance of the clergy and would also start to take umbrage with what he saw as unnecessary superstitions. In his 1537 *Things Necessary to Salvation*, St German notes precisely the same sentiment about the permissible variance on non-essential matters of faith versus the importance of the overall unity of the Christian faith, as will be discussed in chapter six. Starkey also noted that papal supremacy was within this designation of *adiaphora* or indifferent things. Again, this is another idea expounded by St German in the 1537 text. Starkey also took more specific aim at particular offending superstitions 'geared to the needs of the moment,' issues which again St German tackled within his own writings, such as pilgrimages and the role of the saints. For example, St German discussed images as early as 1533 in his *The Division*. Though he was more extreme on this issue than Starkey was, as St German in his later *Constitutions Provincial* could see no reason why the saints should be worshipped, and Starkey avoided side taking on the issue.

Therefore, it is within this framework of other works that St German (and other writers like him) found an outlet. Suddenly such ideas were of practical use to the

³¹⁴ Ibid.

³¹⁵ Ibid, 194.

Henrician campaign for divorce and supremacy. Elton notes how the government focussed on harnessing support from contemporaries ‘especially to men whose known standpoint made them far from obvious propagandists in the King’s behalf. It looks rather as though special steps were taken to involve such people in public statements of adherence,’ the aim of which was ‘to demonstrate the unity of the realm and to silence the voices claiming that only heretics and schismatics would agree with what had been done.’³¹⁶ St German, learned in the common law, was valuable as he was capable of presenting arguments which supported the idea that the common law and England’s Parliament was superior over and above that of the canon law and Rome. Therefore, they were a more effective and indeed more legitimate domestic way of securing the divorce than resorting to foreign papal authority. By the early 1530s, he was already experienced in producing such material. Crucially, this meant that he was well-known in the field as he had successfully argued for the subversion of the authority of the ecclesiastical jurisdiction to that of the common law and the authority of the King-in-Parliament as early as *Doctor and Student*. In 1531, in the *New Additions* in what St German titles as the eighth of his additions to his earlier *Doctor and Student* ‘concernynge the auctoritie of the parlyament and the spiritualitie’ he hypothesised how:

If there were a scisme in the papacye, who were ryghtwyse pope/ the kynge in his parlyament/ as the hyge soueraygne ouer the people/ whiche hath not onely charge on the bodies, but also the soules of his subiectes/ hath power for the quietnes and suretie of his realme to ordeyne and detemyne, who shall be in this realme holden for rightwise pope, and maye commaunde that no man spirituall nor temporall shall name any other to be pope, but hym that is so autorysed in the parlyament.³¹⁷

³¹⁶ Elton, *Policy and Police*, 186.

³¹⁷ St German, *New Additions*, 327.

Indeed, he speculated more broadly in relation to Parliament's authority over the spirituality at the outset of the *New Additions* wherein he confirmed 'that no man wolde thynke, that they wolde do any thyng, that they hadde nat power to do.'³¹⁸ Therefore, it is no surprise that these would continue to be running themes throughout his later works, and that he would continue to develop and extend them.

2.3 Chapter Summary

To appreciate St German's writings fully as a methodologically cohesive body of work, it is critical to understand that contextually they represent a single example of how the minds of independent scholars were harnessed during the 1530s to enforce and engender popular support for Henry's divorce and remarriage, ultimately via the conduit of the royal supremacy. More will be said about various other relevant works throughout the thesis. Therefore, St German's works are not unique in promoting the government's objectives. However, they are unique in placing the policies argued for within the context of legal theory.³¹⁹ This chapter has demonstrated how Parliament and the press were specifically hijacked by the divorce campaign in order to effect the necessary change to

³¹⁸ Ibid, 317.

³¹⁹ There were also alternative methods engaged by the government, employed towards the same ends, that St German was not involved with which will not be discussed in the thesis. For example, it has not been possible to discuss the value of methods such as the use of popular preaching at locations such as St Paul's Cross to the government, as discussed by Rex in: Richard Rex, "Paul's Cross and the Crisis of the 1530s," in *Paul's Cross and the culture of persuasion in England, 1520-1640*, ed. Torrance Kirby and Paul Stanwood, 107-27 (Leiden: Brill, 2014); and also in Chibi, *Henry VIII*, 40-56. See also Elton, *Policy and Police*, 188-190. Elton write briefly on the use of the sermon as a means of disseminating propaganda more generally.

support the transfer of power from Pope to King. As has been briefly shown here, these various methods (and indeed St German's own specific place within them) have generated much study and consequently much debate for many years in the secondary literature. Yet, as discussed, no work has considered all of St German's works as a collective whole as this thesis does. Therefore, it is to each of St German's works that we turn throughout the remaining chapters of this thesis in order to establish precisely where his ideas intersected with the wider Reformation debate and how they developed.

**3.1 *Dialogus de Fundamentis Legum Angliae et de Conscientia* (1528) – and –
Doctor and Student (1530)**

The Latin incarnation of the first dialogue of *Doctor and Student* (1528), known by its full title as the *Dialogus de Fundamentis Legum Angliae et de Conscientia*, was the only work St German would ever publish in a language other than English. The work was printed, as mentioned earlier in chapter one, by John Rastell. In 1530, a second dialogue appeared from Peter Treveris' press, but this time the text appeared in English (the *Second Dialogue in English betwixt a Doctor of Divinity and a Student of the Laws of England*), and it was then joined by a translation of the first dialogue into English.³²⁰ Within this second dialogue there is no reference to a pre-existing first dialogue in English, only

³²⁰ The first and second dialogues in English and the new additions were printed severally between 1530 and 1532 by Robert Wyer, Robert Redman, Peter Treverys. Wyer published a 1530[?] version of the first *Dialogue in English* (STC (2nd ed.)/21561), which was followed by a 1531 publication by Robert Redman (STC (2nd ed.)/21567). Wyer then published the *First and second Dialogue with new additions* in 1531 (STC (2nd ed.)/21562). Peter Treverys published the second *Dialogue* in 1530 (STC (2nd ed.)/21565), and also the *Second dialogue with new additions* in 1531 (STC (2nd ed.)/21566). Robert Redman then published the *First dialogue with new additions* in 1532 (STC (2nd ed.)/21568). Barton explains that one of Plucknett's notes supported the fact that Plucknett believed that Redman's editions of the first dialogue are later than Wyer's, as his editions are later than Treveris. It also looks that 'in both cases Redman's compositor printed from the earlier editions and not from the author's manuscript.' St German, *Doctor and Student* (Barton's *Introduction*), xv. The Plucknett and Barton edition of *Doctor and Student* broadly follows the version from Treverys.

references to the Latin version.³²¹ Thorne notes how St German is said to have been the translator of the first dialogue into English, but argues that a comparison ‘seems to show a different hand,’ arguing instead that ‘the success of the English second dialogue in Treveris’ edition led Wyer or someone connected with him to undertake a rapid translation of the first dialogue for publication and sale, which translation was later extensively revised by St German.’³²² Indeed, the text of the Latin version of the first dialogue and the English is ‘not a mere translation,’ as Holdsworth noted.³²³ Barton explains that the English version is ‘less scholastic’ and omits some of the technical matter which appears in the Latin. Specifically, ‘[d]isquisitions upon and references to the canon law, which would be useless or unmeaning to English lawyers, were omitted.’³²⁴ Barton accounts for this otherwise on the basis that ‘Wyer’s translator had been given leave to modify his text to suit the English-speaking market.’³²⁵ However, some of the changes are ‘very difficult to ascribe to a publisher’s hack,’ such as the added material on common recoveries.³²⁶ This appears in the English edition of the first dialogue (as an appendix), but makes no appearance in the Latin. Otherwise, the translator is familiar with the sources that St German was familiar with; the Bible, Jean Gerson, some canonist doctrine etc. Therefore, in addition to the supplementary material on

³²¹ Samuel E. Thorne, “St Germain’s *Doctor and Student*,” *The Library: Transactions of The Bibliographical Society*, s4-X, no. 4 (1930): 422.

³²² *Ibid*, 423.

³²³ William. S. Holdsworth, *A History of English Law*, Vol. 5 (London: Methuen, 1923), 267.

³²⁴ *Ibid*.

³²⁵ St German, *Doctor and Student* (Barton’s Introduction), xvii.

³²⁶ *Ibid*, xvii.

common recoveries, Barton argues that the English edition of the first dialogue contains ‘a good number of what look uncommonly like author’s corrections.’³²⁷

When the second dialogue was published it was ‘noticeably more anti-clerical than the first,’ as noted by Barton, who goes on to explain that it was ‘becoming clear that the quarrel with Rome might be pressed to extremes.’³²⁸ The work which came to be known as *Doctor and Student* ran through many reprints in subsequent years signalling its popularity and its importance to contemporary and later common lawyers’ understanding of their law.³²⁹ Thorne goes as far as to state that the number of its editions suggest that ‘it seems to have been more in demand than that most important and valuable work, Littleton’s *Tenures*.’³³⁰ As the full title suggests, it was written in the form of a dialogue between a Doctor of Divinity and a Student (barrister) of common law and is separated into three parts. The dialogue format is significant considering how the work examined the fractious relationship between the early modern canon and common laws. The dialogue format, Cox notes, ‘was conceived of by the humanists as “provocation” to the reader: a form of argumentation which deliberately eschewed the self-sufficiency of the treatise form, and actively challenged its readers and critics to pursue the quest it had begun.’³³¹ This was not passive observational writing on the part of St German. It was a

³²⁷ Ibid, xviii. Barton details these corrections at xviii-xix.

³²⁸ Ibid, xii.

³²⁹ Indeed, Baker notes that the text ran through thirty reprints ending in 1886 with the Cincinnati edition. (Baker, St German).

³³⁰ Thorne, *St Germain’s Doctor and Student*, 421.

³³¹ Virginia Cox, *The Renaissance Dialogue: Literary Dialogue and its Social and Political Contexts, Castiglione to Galileo* (Cambridge: CUP, 1992), xii.

call to arms to the reader. As Donahue stated in his review of Plucknett and Barton's 1975 edition of the text; 'in many ways [*Doctor and Student* is] the first treatise on English law since Bracton to deal with the rules of English private law on a broader theoretical plane.'³³² However, St German's main concern within the work was a pragmatic one – to try to provide some remedy to the ongoing jurisdictional battle between the canon and common law. Throughout his writings, St German demonstrates a desire to actively engage with his readers and entice their passion to seek practical remedies to resolve the wrongs identified in his works. The use of the dialogue format for some of his works is just one example demonstrating this motivation. As discussed, St German was a man determined to present solutions. In this section it will be shown how St German used the notion of conscience as a tool to proffer some form of practical remedy to the perceived encroachments by the canonists into territory of the common law via the equity jurisdiction. As Walters confirms, 'lawyers celebrate St German as the legal scholar whose *Doctor and Student* gave modern English equity its intellectual foundations.'³³³ St German would establish the common law's intrinsic connection with conscience and, therefore, pave the way towards its supremacy over equity. It was these skills which would make him so attractive to the campaign against papal power in the 1530s.

St German establishes the centrality of theories of conscience within the treatise from the outset, beginning the first dialogue with; 'He who has a good conscience will

³³² Charles Donahue, "Review of St German's *Doctor and Student*, eds. T.F.T Plucknett and J.L. Barton," *Legal History Review*, 47, no. 2 (1979): 182-83.

³³³ Walters, *St German on Reason*, 337.

always have joy as well; but no punishment exceeds the inner wound of conscience.’³³⁴ Fundamentally, it is noted that ‘St German’s achievement [with *Doctor and Student*] was to reconcile the new concept of law with the medieval belief in divine justice.’³³⁵ Indeed, St German begins his treatise by systematically establishing the canonist tradition, utilising the voice of the Doctor to express how it is based upon natural law. In order to understand the theoretical mountain St German had to climb in order to establish his thesis in *Doctor and Student* (in order to try to clear the path towards resolving the jurisdictional battle between the canon and common laws), it is critical to step back and consider some of the key chronology, theories and ideas linked to the development of the equity jurisdiction in England, to provide some sort of foundational understanding of what is some technically complex subject matter. This chapter will, therefore, explore theories of equity and conscience (and the developing vocabulary surrounding them), the rise of the equity jurisdiction and the development of the office of chancellor, before considering the text of *Doctor and Student* itself in more detail.

Introduction: Theories of Equity and Conscience

The term ‘equity’ has ignited much scholarly debate. In some definitions for example it can refer to a moral concept or, alternatively, to a cluster of legal practices. The current literature covering the development of early modern equity, and the relevance of key conceptual ideas such as conscience to its development, largely focuses on the latter understanding of equity, charting its development via an examination of so-called

³³⁴ St German, *Doctor and Student*, 3.

³³⁵ Timothy S. Haskett, “The Medieval English Court of Chancery,” *Law and History Review*, 14, no. 2 (1996): 271.

‘equitable’ institutions and the practices of their personnel. For example, Klinck (2010) examined equity via the development of the Court of Chancery and identified conscience as a ‘juristic principle’ active within the settlement of cases based on equity. MacNair’s (2007) notion of conscience, upon which Klinck comments, is rather a ‘pure term of art’; a procedural method of questioning in a particular case which considers ‘is this a case in which it is appropriate to go outside the normal adversarial character of the common law judicial procedure, and *inter alia* force the defendant (under penalty of judgment in default) to make disclosures adverse to his interest?’³³⁶ DeVine (1987) examined the related concept of *epieikeia* in the Chancellor of England’s enforcement of the feoffment to uses before 1535. For DeVine:

the Chancellor’s role as administrator of the *epieikeia* function in the realm was not [...] at odds with the common law, but served to effectuate the common law, overriding the objective of a peaceful allocation of rights according to predetermined standards, so as to achieve results acceptable to disputants and thereby interstitially to maintain order.³³⁷

For Prall (1964), in his examination of equity in Tudor England, equity was a ‘natural response of the courts, both common law and prerogative, to the needs of a changing society.’³³⁸ Further, regarding contemporary thought, Behrens (1999) examined the concept of equity in the *Commentaries* of Edmund Plowden and demonstrated how by Plowden’s time equity was disassociated from conscience and was not restricted to the

³³⁶ Mike Macnair, “Equity and Conscience,” *Oxford Journal of Legal Studies*, 27, no. 4 (2007): 681.

³³⁷ Stephen DeVine, “The concept of *epieikeia* in the Chancellor of England’s enforcement of the feoffment to uses before 1535,” *University of British Columbia Law Review*, 21, no. 2 (1987): 350.

³³⁸ Stuart Prall, “The Development of Equity in Tudor England,” *American Journal of Legal History*, 8, no. 1 (1964): 19.

jurisdiction of the Chancellor. For Plowden, equity's value originated from its use in ascertaining the intent of the law-maker, unlocking the 'equitable' intents already abiding within every statute. So, it is with a brief institutional history that we will start our exploration, but it is not where we will end, as it is ideas and not institutions which are important for this thesis.

The Emergence of the Equity Jurisdiction.

The fractious relationship between the canon and common laws during this period as parallel legal systems is well documented, debated and disagreed upon. Earlier interpretations followed what Seipp termed as 'enemy theory,' where scholars such as Scrutton, Maitland, Holdsworth, Lyon and Plucknett encouraged the view that common lawyers treated 'Roman and canon law with a mixture of ignorance, distrust, fear and loathing.'³³⁹ Whereas later writers, Seipp among them, and also Donahue and Helmholz have attempted to moderate this viewpoint somewhat, suggesting that common lawyers

³³⁹ David J. Seipp, "The Reception of Canon Law in the Common Law Courts before 1600," *Oxford Journal of Legal Studies*, 13, no. 3 (1993): 389. See Thomas E. Scrutton, *The Influence of the Roman Law on the Law of England* (Cambridge: CUP 1885); Frederic W. Maitland & Francis C. Montague, *A Sketch of English Legal History* (New York: Putnam, 1915) discusses the insular growth of the inns of court at 110-14; William S. Holdsworth, *A History of English Law*, Vol. 2 (London: Methuen, 1923) on how the canon and civil law ceased to influence the development of the common law through the fourteenth and fifteenth-centuries at 287; Bryce Lyon, *A Constitutional and Legal History of Medieval England* (New York: Norton, 1980) 436; and Theodore F. T. Plucknett, "Relations Between Roman Law and English Common Law down to the Sixteenth Century: A General Survey," *University of Toronto Law Journal*, 3 No. 1 (1939): 24-50.

viewed the canon (and Roman law upon which it was based³⁴⁰) as ‘comparable to their own in many respects.’³⁴¹ On the continent, following the Lutheran Reformation, it has been noted that out of the ashes of pre-Reformation law and legal ‘thought’ something fresh arose; the creation of a Western legal philosophy.³⁴² Looking specifically to England, we are able to identify, as usual, her jurists’ unique interpretation of this movement, adapting it in the light of the specific religious, legal and political realities within the country.³⁴³ English jurists began to think about law in a new way, and seemed to become more comfortable in transplanting ideas from the medieval religious and legal tradition (which dovetailed with England’s emerging religious outlook of the sovereign at the head and heart of the Church in England, than their continental neighbours), but there would be no wide-scale reception of Roman law. As Ives notes:

³⁴⁰ Together known as the *ius commune*, or the *untrunque ius*. Richard Helmholz, *The Ius Commune*, 3.

³⁴¹ Seipp, *Reception of Canon Law*, 390. Charles Donahue, “Roman Canon Law in the Medieval English Church: Stubbs v Maitland Re-examined,” *Michigan Law Review*, 72, no. 4 (1985): 647-716; Richard Helmholz, *Canon Law and the Law of England* (London, The Hambledon Press, 1987); Richard Helmholz, *Roman Canon Law and Reformation England* (Cambridge: CUP 1990). Richard Helmholz, “Continental Law and Common Law: Historical Strangers or Companions?,” *Duke Law Journal*, 1990, no. 6 (1990): 1207-28.

³⁴² For a discussion of this topic regarding German territories, please see Harold J. Berman, “Conscience and Law: The Lutheran Reformation and the Western Legal Tradition,” *Journal of Law and Religion*, 5, no. 1 (1987): 177-222.

³⁴³ Helmholz, *The Ius Commune*, 5.

The common law was the king's law, administered by judges holding office at his pleasure; it was tender towards his rights, responsive to his wishes and always ready to grant his procedural privilege. [...] The common law needed no injection of Roman-law concepts.³⁴⁴

At least not in the sense of doctrinal issues, and not in the same way as they were used on the continent, such as in Germany where 'German princes were seeking to escape the limitations of existing law upon the power of the state.'³⁴⁵ Where the common law did need help was in procedure.

What is clear from the various studies conducted in this area is that by the thirteenth-century the major courts administering public justice were already well established in England in the form of the King's Bench, the Common Bench and the Exchequer.³⁴⁶ The establishment of a strong centralised court system for the administration of royal justice was by no means standard for the period but it was something which England had achieved.³⁴⁷ The question, therefore, arises as to why the Court of Chancery, proceeding as a supplementary jurisdiction on the basis of something called 'equity,' was therefore necessary? The general consensus concurs that Chancery's judicial responsibilities arose due to the development of extreme rigidity in the forms of

³⁴⁴ Eric W. Ives, *The Common Lawyers of Pre-Reformation England: Thomas Kebell: A Case Study*, ed. David E. C. Yale (Cambridge: CUP, 1983).

³⁴⁵ *Ibid*, 193.

³⁴⁶ Frederic Maitland, *Equity: a course of lectures*, ed. Alfred H. Chaytor & William J. Whittaker and revised by John Brunyate (Cambridge: CUP, 1969), 2.

³⁴⁷ For example, we only have to look as far as Scotland to find an example of a territory within which no such established framework for royal justice existed.

action under common law due its nature as a closed writ system,³⁴⁸ or as MacNair puts it the courts under the English bill procedure developed by ‘a failure of justice’ on the part of common law.³⁴⁹

There was [...] a clear common tendency in the fifteenth and sixteenth centuries, in those parts of Europe which had not already developed roman-canon systems of procedure, for the initiatives of royal government, combined with complaints from litigants about the older forms of procedure, to produce new appellate courts using variants of summary or inquisitorial roman-canon procedure, which eventually displaced older procedural forms.³⁵⁰

In England, the development of Chancery jurisdiction meant that litigants defected from the Courts of the King’s Bench and Common Pleas to Chancery. Indeed, the closing phrases of Chancery cases stated that they were ‘for God and in the way of Charity.’ An appeal to Chancery was an appeal to the Chancellor’s equitable sensibilities. ‘It was [...] a plea for compassion and, therefore, legal flexibility.’³⁵¹

³⁴⁸ Indeed, within common law, ‘[t]he very strength of the substantive law could produce injustice because judges preferred to suffer mischiefs to individuals rather than making exceptions to clear rules [thus] there were many possibilities for mechanical failure,’ within the common law. Haskett, *Medieval English Court of Chancery*, 252. For further examples of the discussion on the influence of the rigidity of the common law writ system on the development of Chancery jurisdiction, please see Maitland, *Equity*, 5, Timothy Endicott, “The conscience and the king: Christopher St German and Thomas More and the development of English equity,” *University of Toronto Law Review*, 47, no. 2 (1989): 552; and Louis A. Knafla, “Conscience in the English Common Law Tradition,” *University of Toronto Law Journal*, 26 no. 1, (1976): 4.

³⁴⁹ MacNair, *Equity and Conscience*, 668.

³⁵⁰ *Ibid.*

³⁵¹ DeVine, *Concept of Epieikeia*, 347.

The Development of the Office of Chancellor

Regarding its history, the office of Chancellor is a role evident from Norman times³⁵² and was usually handed to a cleric who was responsible for the supervision of the King's scribes who produced the writs necessary to commence an action within common law, which the Chancellor would then seal with the Great Seal of which he was keeper. Chancery, therefore, began life as part of the King's secretariat and formed one of the two great administrative departments of royal government (with the other being the Exchequer). The office of Chancellor can, therefore, be seen as the centrifugal force from which the authority to commence an action to obtain royal justice emerged, justifying a description of the Chancellor as functioning essentially as a 'multi-purpose secretary of state.'³⁵³

However, discerning the beginnings of the Chancellor's equitable jurisdiction is slightly more 'elusive,' as Milsom described it.³⁵⁴ Evidence of the Chancery's independent judicial responsibilities can be observed as early as the fourteenth-century, with Parliament handing cases to Chancery as early as the 1390s, as demonstrated in the case of *Godwyne v Profyt*.³⁵⁵ The reliance of the Chancellor on conscience as a judicial

³⁵² Acknowledged in Edward Hake, *Epieikeia: a dialogue on Equity in three parts*, ed. David E.C. Yale (Yale: Yale University Press, 1953), 134. For a brief biography of Hake, see Louis A. Knafla, "Hake, Edward (fl. 1564–1604), lawyer and satirist," *ODNB* (2004).

³⁵³ DeVine, *Concept of Epieikeia*, 326.

³⁵⁴ Stroud F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981), 82.

³⁵⁵ DeVine, *Concept of Epieikeia*, 346; citing William P. Baildon, *Select Cases in Chancery A.D. 1364-1471*, Vol. 10 (London: Selden Society, 1896), petition 45.

tool is also seen early in the development of his jurisdiction; for example, an early case concerning feoffments contains the following:

And so it is, most reverent [Lord], that the said supplicant cannot have any remedy... by the law of the Holy Church, nor by the common law of the land: May it please your most gracious Lordship, in honour of God and on account of righteousness, to grant writs [of subpoena against feoffees]... to come before you in the King's Chancery, which is the Court of Conscience, there to answer thereto as reason and conscience demand, otherwise the said supplicant is and will be without remedy, which God forefend.³⁵⁶

This certainly confirms the general position that Chancery jurisdiction followed the failure of common law, and it is just as important to note that at this time (in the fourteenth-century) 'there was no law of England.'³⁵⁷ Procedural developments within the jury system, which would '[compel] a reasoned consideration of the facts,' which 'would create substantive rules and the concept of substantive law,' were still some way off completion.³⁵⁸ However, the interesting reference is how Chancery is spoken of as a 'Court of Conscience,' an epithet which developed from the role of the Chancellor (almost always a priest) as the 'keeper of the King's conscience' and described by DeVine as his 'virtual *alter ego*.'³⁵⁹ Therefore, here we can understand the conscience the Chancellor is applying is that of the sovereign himself in his position as the ultimate source of justice in the land. Here the King's conscience is synonymous with justice. Thus, common law and equity can be seen as two sides of the same coin acting in parallel and in line with the King's aim to ensure that his prerogative to effect justice in all cases

³⁵⁶ Ibid.; citing Baildon, *Select Cases*, petition 123.

³⁵⁷ Milsom, *Historical Foundations*, 83.

³⁵⁸ Ibid.

³⁵⁹ DeVine, *Concept of Epieikeia*, 334.

before the law was achieved. Holdsworth, posited alternatively that the jurisprudence of Chancery was in fact ‘supplemental’ yet something which signalled ‘a new, distinct and [...] independent development.’³⁶⁰ However, both latter authors concur that Chancery jurisprudence arose from the King’s prerogative duty which allowed the flexibility needed to ensure that the law of England remained just.³⁶¹

However, this understanding of the reference does not necessarily provide evidence that theological notions of conscience had anything to do with the development of the equity jurisdiction wielded by Chancery. Yet, such an association is hinted at farther along in the quotation with reference to the plaintiff requesting the defendant be subpoenaed to appear to ‘answer thereto as reason and conscience demand.’³⁶² If the defendant is not forced to appear then it will be an event which ‘God forefends.’ These are now familiar references, and the plaintiff can be seen as requesting that the defendant be called to justice in accordance with natural law as ordained by God and discerned via conscience/reason. A broader assessment of how common lawyers thought of conscience and equity in general should assist in confirming whether this interpretation is in line with contemporary understanding.

The nature of the conflict between equity and the common law has been well treated, yet the motivation behind it has not been. By examining the influence of an intellectual such as St German on the world of religion, this thesis moves matters along to the next stage of consideration. As mentioned, the focus here is on ideas rather than a

³⁶⁰ Holdsworth, *History*, 2:346-47.

³⁶¹ George Adams, *Council and Courts in Anglo-Norman England* (Yale: Yale University Press, 1926), 185, 189.

³⁶² DeVine, *Concept of Epieikeia*, 346; citing Baildon, *Select Cases*, petition 123.

technical examination of the equity jurisdiction as technical history and religious history converge on the question with respect to how we are to understand St German. When looking religiously, clearly one question which has been allowed to drop out of focus is one of anticlericalism and what it might mean. For example, for scholars such as Haigh who offer a perspective from the standpoint of extreme revisionism, anticlericalism is irrelevant as it is logical that you will always have grumbles against a strong church. Haigh went as far as to describe anticlericalism as a ‘fiction,’³⁶³ arguing that it was a

³⁶³ Christopher Haigh, “Anticlericalism and the English Reformation,” *History*, 68, no. 224 (1983): 391. Haigh’s position has been challenged by Cavill who, taking in the subsequent views of those such as Peter Marshall (1994), Ethan Shagan (2003) and George Bernard (2012), argues that Haigh has not taken sufficient account of the degrees of continuity after 1529. He argues that anticlericalism ‘was neither a cause nor a consequence of the Reformation, but a catalyst.’ Cavill notes that the authors following Haigh, while accepting Haigh’s first contention, subsequent contributors have ‘rehabilitated anticlericalism as a catch-all label for a set of attitudes, behaviours, and discourses.’ Paul R. Cavill, “Anticlericalism and the early Tudor parliament,” *Parliamentary History* 34, no. 1 (2015): 15. For Marshall’s arguments, see Peter Marshall, “Anticlericalism Revested? Expressions of Discontent in Early Tudor England,” in *The Parish in Late Medieval England*, ed. Clive Burgess and Eamon Duffy, 365–80 (Donington: Shaun Tyas, 2006), and Peter Marshall, *The Catholic Priesthood and the English Reformation* (Oxford: OUP, 1994), in particular for Marshall’s discussion of ‘The Priest as Enemy,’ discussing anticlericalism as a term more broadly and its ‘utility and deficiency as a historical tool,’ the contexts within which it arose in the sixteenth-century, and how hostile attitudes to the clergy linked to the progress of Reformation. For Bernard’s arguments, see George W. Bernard, *The Late Medieval English Church: Vitality and Vulnerability before the Break with Rome* (New Haven: Yale University Press, 2012), 152. Bernard denies any ‘crescendo of hostility towards the church in the early sixteenth-century,’ rather stating that there was what there had always been ‘plenty of criticism of the church and of clerics,’ i.e. that grumbling against clerics was a norm of medieval life. However, Bernard does not dismiss this as unimportant, as he specifies that Haigh does. Ibid.

consequence of Reformation and not a cause. But to argue this does not necessarily seem entirely plausible if we want to explain why Henry's marital difficulties led to the Reformation when the marital difficulties of other European monarchs did not.

This thesis, therefore, additionally distinguishes itself from most of the literature by focusing rather on the history of the ideas which shaped St German's writings. When considering the relationship between the canon and common lawyers in early modern England we need to consider the ideas behind equity, and some of the key associated terms (crucially the notion of 'conscience') that St German used as tools to sculpt an alternative way of considering the jurisdictional boundaries between the secular and ecclesiastical legal worlds. The chapter will explore the implications of the fact that early modern lawyers did see 'equity' as linked to morality in general and specifically to the natural law tradition (i.e. as promoting the idea that all forms of law are ultimately based on God's law discerned via human reason) as the authority behind all law. In consequence, the chapter demonstrates how professional practices reflected moral and religious thinking.

Endicott (1989) aimed to demonstrate the responses to the problems of the common law which led to the impetus for the development of equity in England (and its unique institutionalisation within the court of the Chancellor). Yet Endicott also noted that 'the developing system of equity did not merely seek to identify particular failings arising from the generality of the common law but applied an external standard of Christian conscience which aggressively reformed legal rights.'³⁶⁴ Indeed, many authors recognise the influence of the pedagogical role played by a 'Christian conscience' in the

³⁶⁴ Endicott, *Conscience and the King*, 549.

development of the equity jurisdiction. Landau (1994) examined *aequitas* (another related term) within the *Corpus iuris canonici* and summarised the use of *aequitas* between 1140 and 1243 as follows:

1. as a way of interpreting canon law rules with moderation and commiseration – mainly worked out by Stephen of Tournai;³⁶⁵
2. as a way of changing strict law and promoting judicial discretion – which could lead to substantive changes in procedural rules;
3. as a way of filling the gap in a legal system – used as a general clause;
4. as a justification for legal change and new legislation.

Thus, for Landau *aequitas* is a ‘necessary conceptual instrument,’³⁶⁶ within the canon law, and for some it was the chancellors as prelates of the Church (until the Chancellorship of Thomas More) who shaped the practice and theory of English equity.³⁶⁷

In one of the most relevant existing secondary treatments of this topic, Doe (1990) argues that the fifteenth-century observed a change in the perception and attitudes of English lawyers to their law, as law became a means of redressing wrongs.³⁶⁸ Doe posited that in developing this updated approach to law, English lawyers turned to civilian, canonist and more specifically Thomist notions. Doe believes that this resulted in the formation of two distinct approaches to law; (i) a ‘*voluntarist view*,’ where law is

³⁶⁵ Peter Landau, “Aequitas and the Corpus Iuris Canonici,” *Syracuse Journal of International Law and Commerce* 20 (1994): 101.

³⁶⁶ Landau, *Aequitas*, 102.

³⁶⁷ See Endicott, *Conscience and the King* generally.

³⁶⁸ Norman Doe, *Fundamental Authority in Late Medieval English Law* (Cambridge: CUP, 1990), 4.

disconnected from morality³⁶⁹ in general, law is human in origin ‘caused and altered by human usage and enactment, it exists because people consent to it,’³⁷⁰ and (ii) a ‘heteronomist view,’ which dictates that ‘abstract ideas of right and wrong provide the authority for the law and morality provides the justification “to create new rules, apply and extend existing rules, and to fill their gaps”.’³⁷¹ Thus, ‘law has a moral basis; its authority is morality.’³⁷² As Haskett states, here ‘natural law, divine law, justice and conscience made manifest the precepts of morality while reason advanced the claims of good sense and proportionality.’³⁷³ In the medieval and early modern period, the natural law tradition promoted the idea that all forms of law were ultimately based on God’s law discerned via human reason, and it is within this understanding of law (and specifically equity as related to upholding the heteronomist view of the ultimate authority and basis of law) that this chapter firmly bases its roots in order to clarify the relationship between medieval theological notions of conscience, as linked to the wider idea of morality, and how early modern English common lawyers used such ideas to understand and catalyse the development of secular ‘equity.’

Specifically, the chapter demonstrates how during the medieval period Catholic canonists developed significant theories about how canon law was based on divine law

³⁶⁹ For the purposes of this study, references to ‘morality’ follow Doe’s definition of the term as ‘a term of convenience employed [...] to signify a specific idea of abstract right and wrong: the requirements of divine law, justice and conscience are all treated as indications or aspects of morality.’ Ibid. p.5, no.16

³⁷⁰ Ibid, 4. Here human rules can result in unjust outcomes, yet still be valid laws as judges are not bound to consider the ‘conscience’ of a case.

³⁷¹ Ibid, 177-78.

³⁷² Ibid, 5.

³⁷³ Haskett, *Medieval English Court of Chancery*, 274.

expressed via natural law, developed by the application of man's reason/conscience to divine law. At the same time, they began developing ideas that conscience formed an element of the equitable interpretation of administered law based on notions of equity in the Aristotelian sense and using the Ciceronian language of civil law as a method of tempering the rigour of law, summarised in the words of St Cyprian; '*aequitas est iustitia dulcore misericordiae temperata.*'³⁷⁴ These ideas of legal equity were married to the notion of private theological conscience via the procedure of *denunciatio iudicallis*, which used conscience/knowledge of the parties to inform the judge and on this basis offered legal remedies for sin, whilst maintaining under the procedure of *denunciatio evangelica* that some aspects of man's conscience (those relating to private sin) did not fall within the remit of the *reparative* arm of church law (whilst still providing judgement on these cases within a public forum). By way of explanation, the canonist procedure known as the *denunciatio evangelica* was a special form of canonist procedure developed in the twelfth-century, which allowed the Church to intervene legally and directly in matters of private conscience. The procedure focussed on the discovery of sin and ensuring penance was completed by an offending soul (and, therefore, focussed on the health of man's private conscience) and was based on the procedure of biblical fraternal correction and dispute resolution delivered in Matthew.³⁷⁵

³⁷⁴ Endicott, *Conscience and the King*, 554; translation: 'equity is justice tempered with the sweetness of mercy.'

³⁷⁵ '*Si autem peccaverit in te frater tuus, vade, et corripe eum inter te, et ipsum solum: si te audierit, lucratus eris fratrem tuum. Si autem te non audierit, adhibe tecum adhuc unum, vel duos, ut in ore duorum, vel trium testium stet omne verbum. Quod si non audierit eos: dic ecclesiae. Si autem ecclesiam non audierit, sit tibi sicut ethnicus et publicanus.*' Matthew 18:15-17, Vulgate.

The procedure later began to be used as a method of obtaining reparation before an ecclesiastical tribunal for loss incurred by another as a result of the defendant's sinful action. As Coing explains; 'the denunciation of a sin might [now] be combined with a legal claim.'³⁷⁶ Pope Innocent III regulated the procedure enacting certain decretals, which were relied upon by the later decretalists who further honed the procedure and distinguished between two forms of action: the first being the *denunciatio iudiculis privata*; where redress for material wrongs as well as penitence were sought from the defendant, and secondly, the *denunciatio evangelica* itself; which remained purely penitential in nature.³⁷⁷ Here we can observe how canonists formally divided two aspects of conscience; both of which were accessible by canon law and upon which a judgement could be made publicly; with one retaining conscience as a matter of sin and private (though publicly ordered) penance guided via the *denunciatio evangelica* and to which the dictates of the *reparative* powers of canon law did not extend, and one enforcing specific legal reparation via the *denunciatio iudiculis*.

Authors, such as Coing, have been tempted to label the procedure as the basis of Chancery procedure. For Coing, the similarities between the two forms of procedure in terms of grounds of action, substantive rules applied, and procedure seem overall too

'Moreouer yf thy brother treaspace agaynst the, go & tell hym hys faute betwene him & the alone. If he heare the, thou hast wonne thy brother: But yf he heare the not, then take yet wyth the one or two, that in the mouth of two or .iiij. witnesses, euery mater may be stablysshed. If he heare not them, tell it vnto the congregacyon. If he heare not the congregacion let him be vnto the as an hethen man & as a publican.'

Matthew 18:15-17, Great Bible (1539).

³⁷⁶ Helmut Coing, "English equity and the *denunciatio evangelica* of the canon law," *Law Quarterly Review*, 71 (1955): 226.

³⁷⁷ *Ibid*, 227.

striking to deny,³⁷⁸ basing this argument most notably on the fact that both the *denunciatio* and Chancery acted upon grounds of denial of justice (where the law denied a remedy) and where a natural obligation required the law to take action (where the law failed to provide any ground of action). Regarding the substantive rules applied, his argument is based upon how the *denunciatio* enforced duties of reason and conscience, or as he puts it more precisely, of divine law and natural law as binding on human conscience. The same is true of the law applied by equity in Chancery. Therefore for Coing, ‘the influence of the “*de plano*” procedure of the canon law can hardly be in doubt.’³⁷⁹ More will be said about the developments in Chancery shortly. The medieval canonist tradition can thus be seen as establishing how man’s conscience as reason and private knowledge was responsible for establishing a natural law basis for all legal norms and was also a conceptual tool accessible in the public forum for getting to the truth of a matter (via an examination of the consciences of the parties and thus their personal knowledge of pertinent facts) in order to ensure that justice, as equity, was done in every case. This was the medieval legacy ultimately inherited by common lawyers such as St German.

However, MacNair takes issue with Coing’s approach and has claimed that there are ‘awkward issues’ with this line of argument. In essence, MacNair raises the point that several of the issues remedied by the *denunciatio* were already irremediable in Chancery by Henry VII’s reign (1485-1509) (i.e. nude pacts), and secondly, and perhaps more

³⁷⁸ For a full discussion on the similarities between *denunciatio* procedure and a case in Chancery, see Ibid, 232-38.

³⁷⁹ Ibid, 238.

importantly and convincingly, the fact that contemporaries failed to associate the two procedures. He cites the work of Sir Julius Caesar, doctor of both laws and Master of Requests, who described Chancery's procedure as 'entirely according to the summary procedure of the civil law' [*The Ancient State Authorities and proceedings in the Court of Requests by Sir Julius Caesar*], and Dr John Cosin, who he describes as the 'defender of the ecclesiastical ex officio procedure against complaints about compulsory self-incrimination, [who] discussed the denunciatio without mentioning the English side of Chancery, and Chancery English bill procedure without mentioning the *denunciatio* [*An Apologie of Certaine Proceedings Ecclesiasticall*]'.³⁸⁰

However, aside from this, the medieval chancellors 'were invariably bishops who called to their aid [...] "the principles and the practice of another system with which they were familiar, and which they were daily employing in their lives as bishops, the Canon Law of the Holy Roman Church"'.³⁸¹ Chancery was staffed by Roman-Canon lawyers and had therefore been viewed with deep suspicion by those such as St German who believed that the Roman Pontiff had led the church astray.³⁸²

³⁸⁰ MacNair, *Equity and Conscience*, 671-672.

³⁸¹ Schoeck, *Canon Law in England*, 143.

³⁸² Though it is possible that St German may not have been as helpful in this area as he had intended to be and may rather have inadvertently helped to reinforce the validity of Chancery invoking and upholding Roman-Canon law. Chancery could also potentially be argued to have invoked canon law through the establishment of the Court of Delegates which saw its roots in the *Submission of the Clergy* (St German's links to this Act through the remarkably similarity of ideas demonstrated with his *Parliamentary Draft* will be discussed more specifically in chapter 5.1), which provided that in cases where there was a 'lack of justice' parties could appeal to the Chancery who would then appoint commissioners to determine on this issue, Chancery played a part upholding the very canon law St German had wished to bring to heel.

The Developing Vocabulary of Equity

For the purposes of this chapter, it is important to contextualize questions relating to theories of conscience and equity within the broader cultural and religious frameworks within which they were understood by contemporaries. In the same way, it is just as important to clearly define the relevant related terms used by contemporaries in their discussions on these matters, and there are certain key terms which continually make themselves apparent in studies of this kind and are often used in unique and idiosyncratic ways by their authors. Similarly, the relationship between these terms must also be explored and fully understood.

Synderesis and Conscience

So it must be confessed that a great part of the law moral is of that perfection, whereunto the light of nature cannot aspire. How then is it that man is said to have by the light and law of nature some notions and conceits of virtue and vice, justice and wrong, good and evil? Thus: because the light of nature is used in two several senses; the one, that which springeth from reason, sense, induction, argument, according to the laws of heaven and earth; the other, that which is imprinted upon the spirit of man by an inward instinct, according to the law of

[Helmholz, *OHLE*, 211.] Thus, Chancery invoked and upheld the canon law, which was not eliminated from English soil following the break with Rome. Despite St German's attempts to establish a 'Great Standing Council' to assess which elements of the canon law should remain and which should be eliminated as inconsistent with the English law, this commission never really got off the ground until the reign of Henry's daughter Elizabeth I. Indeed as Helmholz identifies 'the law applied in the [canon] law courts was based on accepted and traditional rules, which [were] not materially altered, the abolition of papal jurisdiction in itself ha[d] remarkably little effect on the substantive law applied in the courts'. [*Roman Canon Law*, 37-38.]

conscience, which is a sparkle of the purity of his first estate: in which later sense only he is participant of some light and discerning touching the perfection of the moral law: but how? sufficient to check the vice, but not to inform the duty. So then the doctrine of religion, as well moral as mystical, is not to be attained but by inspiration and revelation from God.

*Francis Bacon - Advancement of Learning (1605)*³⁸³

Introduction to Conscience

The development of Christian casuistry, the flourishing of casuistic literature and its importance throughout the medieval and early modern periods in England testifies to the fact that conscience was not simply a lofty notion for consideration by academics and poetic writers, but a matter of day-to-day concern for the everyday Englishman, therefore this is the first definition which must be explored. Much discussion in the secondary literature dealing with the relationship between conscience and equity retraces the ultimate source of the medieval tradition's understanding of conscience to its understanding of the Greek term *synderesis*. The Latin *conscientia* is more accurately a translation of the related but distinct Greek term *syneidesis/συνειδησεις*.³⁸⁴ It has been argued that usage of *synderesis* arose due to a 'corrupt translation' of *syneidesis* into

³⁸³ Cited in Robert A. Greene, "Synderesis, the Spark of Conscience, in the English Renaissance," *Journal of the History of Ideas*, 52, no. 2 (1991): 214.

³⁸⁴ Maria Drakopoulou, "Equity, Conscience and the Art of Judgement as *Ius Aequi et Boni*," *Law Text Culture*, 5, no. 1 (2000): 346.

synderesis.³⁸⁵ However, both terms relate to a certain kind of ‘knowledge,’ i.e. regarding the Latin term for example: in its simplest form it means quite literally to act *con*/with *scientia*/knowledge. Drakopoulou confirms that the root of the Greek ‘*syneida*’ means ‘to know in common with,’³⁸⁶ with the early scholastics associating the Greek term with an ‘inner spark’ as ‘a power of discerning between good and evil and of inclining towards good.’³⁸⁷ The scholastics, used their methodology to unite classical moral philosophy and Christian doctrine in order to understand how eternal law translated into human action. They saw *synderesis* and *conscientia* as the private faculty of man’s reason as informed by God. The first example of the use of the term *conscientia* demonstrates it as another term for *synderesis*, with the two notions forming a singular concept in the writings of St Jerome, who wrote of what: ‘the Greeks call synteresin, which spark of conscience was not extinguished from the breast of Cain after he was turned out of Paradise and by which we discern that we sin.’³⁸⁸

Later theological writers such as Philip the Chancellor, Lombard, Bonaventure and Aquinas would separate *synderesis* from ‘conscience’ and reconstruct it as the practical application of *synderesis* to given circumstances. For the later medieval theologians, whereas *synderesis* was universal and infallible as something implanted in

³⁸⁵ Timothy Potts, “Conscience,” in *The Cambridge history of Later Medieval Philosophy: From the Rediscovery of Aristotle to the Disintegration of Scholasticism, 1100-1600*, ed. Norman Kretzmann, Anthony Kenny, Jan Pinborg, Eleonore Stump, 687-704 (Cambridge: CUP, 1982), 687.

³⁸⁶ Timothy Potts, *Conscience in Medieval Philosophy* (Cambridge: CUP, 2002), 2.

³⁸⁷ Paul Vinogradoff, “Reason and Conscience in Sixteenth-Century Jurisprudence,” *Law Quarterly Review*, 24, no. 4 (1908): 378.

³⁸⁸ Comments of St Jerome on Ezekiel 1:6-10; cited in Potts, *Conscience in Medieval Philosophy*, 79.

man's heart directly by God, man in applying his fallen reason/*conscientia* to it could err.³⁸⁹ However, in either understanding it is clear that man's private application of conscience is fallible, justifying the need for (the Church's) public jurisdiction over it (through encouraging confession and ordering proper penance), in order for man to remain on the right path to God and so salvation. Here, 'what is good and what evil is not a matter of personal taste, but is determined by revelation and reason,'³⁹⁰ and for man to act against the compulsion to do good is, therefore, to commit sin. Thus, it is observed that the medieval tradition, with roots grounded in ideas from classical antiquity, saw man's private conscience as linked to his ability to apply reason to *synderesis* (as the innate spark inclining towards good and abhorring evil) to practical human action, which required the objective guidance of an external institution. Here conscience refers to both knowledge and reason and retains its private element³⁹¹ but the foundations for its guidance by an external forum based on a sense of objective moral feeling are established.

Reason and Natural Law

³⁸⁹ For example, Phillip the Chancellor wrote in 1235 that: 'What was contributed by synderesis was unchangeable and dictated only good, but this conjoined with what was contributed by reason dictated sin. So therefore, synderesis plus reason for a free choice makes conscientia right or mistaken and conscientia sticks more to the side of reason: synderesis itself, however, which is the spark of conscientia [...] is not mistaken.' Cited in Potts *Conscience in Medieval Philosophy*, 12.

³⁹⁰ St German, *Doctor and Student* (Barton's *Introduction*), xxvi.

³⁹¹ In the idea that it is linked to sin, which should be confessed.

From the definition of conscience above, one medieval understanding of private conscience relates to man's God-given ability to apply reason to his current circumstances. When man turns this reason to consider the eternal law of God, he thereby determines certain universal norms (that which God has directed is good), which were understood by the medieval tradition as the law of reason/nature, thus labelling that previously intangible feeling of moral rightness or wrongness in human action. Natural law would form the basis of not only the Church's understanding of canon law but would also form the basis of the secular English common law and all administered forms of law. The theory of the moral law of man as based on a law bestowed upon man by God is biblical in origin³⁹² and entered ecclesiastical and secular law via reference to the various canonical authorities which discussed it, and which also discussed it in relation to notions of conscience and reason. For example, Aquinas' *Summa* stated that 'natural law is something appointed by reason, just as a proposition is a work of reason.'³⁹³ The end of reason and thus the law of nature is good as:

good is that which all things seek after.' Hence this is the first precept of law, that 'good is to be done and pursued, and evil is to be avoided.' All other precepts of the natural law are based upon this: so that

³⁹² *'Cum autem gentes, quae legem non habent, naturaliter ea, quae legis sunt, faciunt, ejusmodi legem non habentes, ipsi sibi sunt lex: qui ostendunt opus legis scriptum in cordibus suis, testimonium reddente illis conscientia ipsorum, et inter se invicem cogitationibus accusantibus, aut etiam defendentibus.'* Paul's Letter to the Romans 2:14-15, Vulgate.

'For whan the Gentyls which haue not the lawe, do of nature the thynges contayned in the lawe: then they hauynge not the lawe, are a lawe vnto them selues, which shew the dede of the lawe wrytten in theyr hertes: whyll theyr conscience beareth wytnes vnto them, and also theyr thoughtes, accusynge one another or excusynge.' Paul's Letter to the Romans 2:14-15, Great Bible (1539).

³⁹³ Aquinas, *Summa*, II.I, Qu. 94, a.1.

whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.³⁹⁴

Justice and Equity (Epieikeia/Aequitas)

In modern parlance, justice refers to overarching notions of fairness, rightness and goodness. By this understanding, justice is the true end of the law, directing us in our interactions with others. Equity can be understood as a supplementary conceptual tool acting from within a supplementary jurisdiction assisting positive law in achieving its end in justice. Here, justice comprises certain moral absolutes (or expressions of natural law) directing the ordering of law. Returning to Aristotle, the definition of justice is circular, as a ‘state or character that disposes [people] to perform just acts, and behave in a just manner and wish for what is just; and in the same way they mean by injustice the state that makes them act unjustly and wish for unjust things.’³⁹⁵ This idea is adopted later by Aquinas in the *Summa*³⁹⁶ and in the words of the anonymous author of a 1347 work, ‘justise is [as] the mothir of all vertues.’³⁹⁷ The tract goes on to describe justice after the civil law as ‘perpetuell, ferme and constaunt will to yive [sic] unto every persone his owne right and that he ought of dutie to have.’³⁹⁸

³⁹⁴ Ibid, II.I, Qu. 94, a.2.

³⁹⁵ Aristotle, *The Nicomachean Ethics*, (London: Penguin Classics, 2004), 112.

³⁹⁶ Aquinas: *Summa*; II.II Qu.58, a.11.

³⁹⁷ Anonymous, “The three considerations right necessary to the good governance of a prince,” in *Four English Political Tracts*, ed. Jean-Philippe Genet, 174-219 (London: Offices of the Royal Historical Society, 1977), 196; cited in Doe, *Fundamental Authority*, 86. Spelling amended to match the original transcription by Genet, as Doe had modernised the spellings in his quotation.

³⁹⁸ Anonymous, *Three Considerations*, 196.

For Aristotle, justice is also a virtue, and he quotes the proverb ‘in justice is summed up the whole of virtue.’³⁹⁹ Aristotle states that ‘justice and equity are neither absolutely identical nor generically different,’ clarifying that equity/epieikeia ‘though superior to one kind of justice,⁴⁰⁰ is still just, it is not superior to justice as being a different genus [... legal] justice and equity coincide, and although both are good, equity is superior.’⁴⁰¹ Therefore, for Aristotle equity is an expression of justice and he differentiates between various grades of justice placing equitable justice above that adjudicated by human law and discusses how, owing to its universality, law can err. In these cases, a positive duty arises for the judge in the particular to correct omissions owing to the generality of law ‘by a ruling such as the legislator himself would have given if he had been present there, and as he would have enacted if he had been aware of the circumstances.’⁴⁰² Hence, for Aristotle, equity represents ‘a rectification of law in so far as law is defective on account of its generality’⁴⁰³ which is based on man’s ability to discern what is conscionable (what natural law would say) in a particular case and, if necessary, the equitable man ‘accepts less than his share, although he has the law on his side’⁴⁰⁴ in order for justice to be achieved. For Aristotle, the exact application of the words of the law can lead to injustice in certain circumstances, even though the effectuation of justice always remains its intent. Equity assists in realising this intent via

³⁹⁹ Aristotle, *Ethics*, 115.

⁴⁰⁰ Namely legal justice.

⁴⁰¹ Aristotle, *Ethics*, 140.

⁴⁰² *Ibid.*

⁴⁰³ *Ibid.*, 141.

⁴⁰⁴ *Ibid.*

reference to (conscience as) reason/natural law in discerning the will of legislators. As will be discussed further, St German would rely heavily on this line of argumentation in maintaining the form of equity which he saw as residing at the heart of common law and which he distinguished from the equity provided by Chancery.

Turning to civil law (as the medieval theologians also did): ‘Justice is one; it binds all human society, and is based on one Law, which is right reason applied to command and prohibition. Whosoever knows not this Law, whether it has been recorded in writing anywhere or not, is without justice.’⁴⁰⁵ Here Cicero is clearer in establishing a causal link between conscience as reason and obtaining a just outcome. Indeed, ‘Cicero’s prime concern was justice in human society, and his goal was to set forth a rational basis of justice rooted in nature,’⁴⁰⁶ an understanding of justice also accepted later by Fortescue.⁴⁰⁷ Ciceronian equity and justice are linked, as ‘when the issue is about the just and the unjust, the Places of equity will be assembled. These are divided into two, with respect to nature and with respect to institutions.’⁴⁰⁸ Equity and justice are essential to maintain the bonds of human society as:

we must trace back to their ultimate sources the principles of fellowship and society that Nature has established among men. The first principle is that which is found in the connection subsisting between all the members of the human race; and that bond of connection is reason and speech, which by the processes

⁴⁰⁵ Marcus T. Cicero, *De re publica; De legibus*, tran. Clinton Walker Keyes (Cambridge, Mass.: Harvard University Press, 1948), I.XV.42.

⁴⁰⁶ Guenther H. Haas, *The Concept of Equity in Calvin’s Ethics* (Waterloo: Wilfrid Laurier University Press, 1997), 19.

⁴⁰⁷ Doe, *Fundamental Authority*, 85; citing Fortescue, *De Natura II*, CC.34.36.39.

⁴⁰⁸ Marcus T. Cicero, *Topica*, ed. and trans. Tobias Reinhardt (Oxford: Oxford University Press, 2003), 165.

of teaching and learning, of communicating, discussing, and reasoning associate men together and unite them in a sort of natural fraternity. In no other particular are we farther removed from the nature of beasts; for we admit that they may have courage (horses and lions, for example); but we do not admit that they have justice, equity, and goodness; for they are not endowed with reason or speech.⁴⁰⁹

Thus, equity is again linked to concepts of natural law based on man's unique God-given ability to reason, but it does not act alone. Cicero also establishes firmly 'this principle is not established by Nature's laws alone (that is by the common rules of equity), but also by the statutes of particular communities' and this principle 'follows much more effectually from the Reason which is Nature, which is the law of God's and men.'⁴¹⁰ Hence, Ciceronian equity represents the 'spirit of justice'⁴¹¹ as based on natural fraternity which establishes natural law, the precepts of which are expressed through human law.

Therefore, as stated by MacNair and supported also by Doe's work:

the role of conscience in law thus presupposes a natural law theory of the Thomist type – law ultimately garners its authority from objective morality based on the place of human beings and human society in the divine creation; synderesis/conscience gives the reasoning being direct access to this, and hence by this he is capable of modifying the dictates of positive law in accordance with natural law.⁴¹²

Much later, the effect of the Reformation on the ideology of man's place within the divine order had a profound effect not only on theological theories of conscience but also concomitantly on the authority wielded by secular law in general, because of its

⁴⁰⁹ Marcus T. Cicero. *De Officiis*, trans. Walter Miller (Digital copy: ReadHowYouWant.com, 2006), 31-32.

⁴¹⁰ *Ibid*, 166.

⁴¹¹ Sharon Dobbins, "Equity: The Court of Conscience or the King's Command, the Dialogues of St German and Hobbes Compared," *Journal of Law and Religion*, 9, no. 1 (1991-1992): 117.

⁴¹² MacNair, *Equity and Conscience*, 661-62.

reliance upon natural law. Natural law theory saw a revival in the writings of the post-Reformation seventeenth-century common lawyers as a ground in the defence of common law. In the words of Edward Coke: ‘the law of nature is that which God at the time of creation of the law of man infused into his heart, for his preservation and direction; and this *lex aeterna*, the moral law, called also the law of nature.’⁴¹³

Such writings indicate how even after the Reformation, early modern common lawyers identified the basis of natural law as man’s moral interpretation of God’s eternal law (as the ultimate authority, ‘infused into [man’s] heart’ as a form of private/innate knowledge, a guiding inner voice, i.e. conscience). At this point, such references demonstrate how medieval theological concepts of natural law formed the ultimate foundation of the authority of human law for medieval and early modern lawyers, and justifies ‘conscience’ (as understood as reason or private knowledge in practical application and in theory with an objective sense of morality as an expression of the natural law tradition) as a relevant reference point in considering the development of secular law, and especially equity. This was the conceptual language that St German was immersed in.

Conscience, Equity and the Reformation

The main effect of Reformation on conscience and equity lay in the Reformed construction of conscience as subjective. In his 2010 book, Klinck refers to St German’s *Doctor and Student*, which he believes preserved the teaching of the medieval canon law and philosophical ideas of objective conscience. Klinck clarifies that the difficulty in

⁴¹³ Bernard McCabe, “Francis Bacon and the Natural Law Tradition,” *Natural Law Forum*, 9 (1964): 117.

perceiving equity as a juristic principle is that it seems superficially a ‘privatised or subjective notion.’⁴¹⁴ As such, it does not rest comfortably against the backdrop of the ‘objective’ nature of law. Klinck rejects Bryson’s claim that the idea of conscience is the same today as it was in the sixteenth-century, claiming that objections against the argument for conscience as a juristic principle are themselves as old as the sixteenth-century. Klinck demonstrates the change in emphasis from ‘conscience’ to ‘equity’ in Chancery to demonstrate how conscience was ultimately superseded by equity and, with the advent of Reformation, how an attempt was made by reformists to promote ideas of individual subjective ‘Protestant conscience’ against objective ‘canonist conscience.’ He also notes that there is an additional layer for consideration, namely whether there are cases of conscience justiciable at law and those which are not, setting this consideration against the backdrop of the Church’s belief in the division of matters cognisable in terms of the spiritual well-being of a particular individual against those matters affecting the Church more generally, and how to decide which matter fits where. What the Reformation did do was catalyse and modernise intellectual development in the area, by unhinging the foundations of early modern Christian thought and the secular law linked to it. Writers like St German were critical to this process.

Pre-Reformation Common Law Conscience and Equity

As stated by Maitland; ‘in the course of the sixteenth-century, we begin to learn a little about the rules the Chancellors are administering in the field that is thus assigned to them.

⁴¹⁴ Dennis Klinck, *Conscience, Equity and the Court of Chancery in Early Modern England* (Surrey: Ashgate Publishing Limited, 2010), 2.

They are known as rules of equity and good conscience.’⁴¹⁵ However, equity is a term which has been in constant usage within the secular jurisdiction since the thirteenth-century and is discussed in Bracton’s *On the Laws and Customs of England* as ‘a property of all rightly conducted judicial activity.’⁴¹⁶ Bracton’s fuller definition states:

Equity is the bringing together of things, that which desires like right in like cases⁴¹⁷ and puts all like things on an equality. Equity is, so to speak, uniformity, and turns upon matters of fact, that is, the words and acts of men. Justice, [on the other hand], lies in the minds of the just. Hence it is that if we wish to speak properly we will call a judgment equitable, not just, and a man just, not equitable. But using these terms improperly, we call the man equitable and the judgment just. Jurisprudence therefore differs in many ways from justice. For jurisprudence discerns, justice awards to each his due. Justice is a virtue, jurisprudence a science.⁴¹⁸

From this, Ciceronian influences are notable in the reference to equity ensuring like law in like cases, hints of Aristotle in the reference to justice as a virtue and then again to Cicero’s idea of equity relating to natural law which ‘awards to each his due.’ Therefore, in Bracton, both the *aequitas* of the Roman tradition and the *epieikeia* of the Aristotelian tradition, which were so influential in the development of the theological medieval tradition’s concepts of conscience and equity, are evident. Justice is again a theoretical

⁴¹⁵ Maitland, *Equity*, 7-8.

⁴¹⁶ Georg Behrens, “Equity in the Commentaries of Edmund Plowden,” *The Journal of Legal History* 20, no. 3 (1999): 25.

⁴¹⁷ i.e. as per the Ciceronian definition of *aequitas*. ‘Like his contemporaries abroad, Bracton was endeavouring to reduce his native materials to order, using the principles and distinctions of Roman law to rationalize the results reached in the English courts.’ Samuel Thorne, *Essays in English Legal History* (London: The Hambledon Press, 1985), 78.

⁴¹⁸ Henry de Bracton, *On the Laws and Customs of England*, <http://amesfoundation.law.harvard.edu/Bracton/index.html>, (March 22, 2019), 2:25.

virtue, and the practical endeavour to achieve it is seen as a ‘science,’ thus supporting distinctions between the understanding of equity and justice as, on the one hand something philosophical, related to morality more generally, and on the other to the application of such theories practically in human action.

Indeed, it has been argued that Bracton was ‘careful to set his theory in its place in the scholastic framework,’⁴¹⁹ defining the law of nature as ‘a certain instinctive impulse arising out of animate nature by which individual living things are led to act in certain ways.’ For Bracton, natural law is ‘that which nature, that is, God himself, taught all living things.’⁴²⁰ In his summing up of natural law he relates it to equity as he states: ‘[t]his perhaps is said more clearly, that natural law is a certain due which nature allows to each man. Natural law is also said to be the most equitable law, since it is said that erring minors are to be restored in accordance with [natural] equity.’⁴²¹

However, specific references to conscience are not prevalent in Bracton, and the most significant of these can be found in the following discussion:

But before judgment he ought to examine the facts and the verdicts of the jurors so that he may proceed to judgment with security, since jus has three associates, namely, truth, justice and judgment: truth is to be found in the juror, justice and judgment in the judge. But it seems that judgment sometimes belongs to the jurors, since it is for them to say on oath, or at least according to conscience, whether he did or did not disseise him, and judgment is rendered accordingly.⁴²²

⁴¹⁹ John Bowle, *Western Political Thought: from the origins to Rousseau* (London: Methuen, 1967), 214-15.

⁴²⁰ Bracton, *On the Laws*, 2:26.

⁴²¹ *Ibid*, 2:27.

⁴²² *Ibid*, 2:74-75.

Therefore, a juror's conscience relates again to 'private knowledge' which he utilises to ensure that judgement has been properly rendered. MacNair notes that this defines an alternative understanding of conscience acting as a procedural concept in common law, the root of which can be found in the maxim that 'the judge should decide according to what is alleged and proved, not according to [his] conscience.'⁴²³ Common law could, therefore, only recognise proven facts. Acting in accordance with conscience here means to proceed on the basis of private knowledge, which is in some way relevant to the case, and which has not otherwise been proven in accordance with the strict rules governing proofs at common law.⁴²⁴ It is also noted that for the medieval common lawyers, conscience could also refer to the knowledge of the judge or the knowledge of the parties. Knowledge of the parties was central to the process of the waging of a defendant's law and in 1406 it was stated that 'the record is in the conscience [meaning knowledge] of the judge.'⁴²⁵

In summary, as can be seen some authors remain far from convinced that the moral quality behind the idea of conscience as private knowledge has anything to do with its value in understanding the development of practical Chancery procedure, where it was popularised as a method of discerning the truth of a matter via Chancery's special ability to be able to examine of the conscience/knowledge of the parties, and this is a justified point. However, shadowing these notions of conscience are ideas of over-arching moral precepts and it is from this philosophical understanding of conscience that a popularised literature grew dealing with casuistic 'cases of conscience,' which allowed man to

⁴²³ MacNair, *Equity and Conscience*, 662.

⁴²⁴ *Ibid*, 674.

⁴²⁵ *Ibid*, 675.

rationalise and measure his public actions against the background of his private conscience. Here conscience stands as a ‘distinct moral force known directly, principally through the pulpit and the confessional by the ordinary citizen.’⁴²⁶

At the same time as the pedagogical aspect of conscience developed, canon law underwent a process of ‘legalisation,’ wherein the private conscience/knowledge of the parties was drawn out in ecclesiastical legal cases under the *denunciatio* procedure. On this basis, the development of the idea of conscience in the medieval common law tradition as practical knowledge and reason for use in the adjudication of secular cases does seem to be analogous to that of the medieval theological tradition, especially when taking into account the fact that, as a system, of law common law considered itself as based upon identical foundations to all other systems of law, i.e. upon the precepts of natural law. Here reason as conscience symbiotically developed alongside conscience in the more moral sense as ‘something of a technical idea of right understood [...] by common lawyers.’⁴²⁷

Regarding the application of conscience in Chancery, as with the canonists, the Chancellors were ‘not covered by the evidential blinkers of due process.’⁴²⁸ The Chancellor’s court was, therefore, seen as a ‘court of conscience in which defendants could be coerced into doing whatever conscience required in the full circumstances of the case.’⁴²⁹ Verdicts according to conscience became a stock phrase in the thirteenth-century, especially regarding jurors who worked on the basis of their private knowledge,

⁴²⁶ Doe, *Fundamental Authority*, 132.

⁴²⁷ *Ibid*, 132.

⁴²⁸ John Baker, *An Introduction to English Legal History* (London: Butterworths, 1990), 119.

⁴²⁹ *Ibid*, 118.

whereas later (as within common law procedure) they would need to work from actual evidence of what had been proven. Therefore, it seems that within the pre-Reformation common law tradition, the application of conscience to law is both intimately connected to wider ideas of general morality and upholding the natural law tradition (via the King's ultimate prerogative as the Chancellor's actions were an expression of royal power), as well as being disassociated from it in a practical procedural sense where conscience can also be understood as the application of specific knowledge and practical reason to a particular case.

Reformed Notions of Religious Conscience

Regarding medieval notions of conscience, which supported the objective, direct and public intervention of the Church in matters of sin, the Reformation effectively removed the guiding hand of the Catholic Church. Therefore, the socially, politically, economically and religiously dominant power-house which had guided the individual in every aspect of his daily life since the birth of Christianity had been suddenly withdrawn. With his new-found freedom, the individual man ultimately discovered that he was in possession of the terrible responsibility for his immortal soul. Man was left to find his own way to God *sola Scriptura*, with only his own private conscience to guide him on the way. Our 'every man' is representative of the fact that not only was the soul of an individual at stake but, that of a nation. A new body of faith was forming, and along with it man's new perception of his place within the divine order, and with the same force that the Roman Catholic Church enforced the idea that man's conscience required the firm guidance of an objective external forum and, therefore, took on a public aspect itself, Reformation theologians attempted to extricate these notions of private conscience from

the public sphere. With the concept of subjective individual conscience guided by personal examination of Scripture and direct communication with God as the heart of the notion of Luther's 'priesthood of believers,' conscience emerged as a totally private experience.

**Section Summary: The Importance of Conscience as a Tool in Resolving the
Spiritual and Temporal Divide**

In summary, all discussions regarding the relationship between private conscience and the secular law revolve around natural law as the heart of medieval and early modern public legal thought, promoting 'natural justice' or what can be intangibly understood as a sense of moral feeling and translating this as a practical guide to human action. In Hooker's words; 'The reason why we are bound in conscience to be subject unto all powers is because All powers are of God.'⁴³⁰ The medieval position was set out by Aquinas, who posited that humans have access to the supremacy of divine law via natural law as the expression of humanity's ability to reason. Therefore, conscience, as the practical application of synderesis (that innate spark), is to be equated with reason and is expressed through the medium of natural law and any public law (such as English common law) which follows it. The medieval period also saw a revival of Aristotelian *epieikeia*, wherein conscience is equated with equity itself in its guidance in cases where the strict application of the words of law would lead to injustice. The theological arm of conscience relating to the confessional and private sin also developed during this period.

⁴³⁰ Richard Hooker, *On the Laws of Ecclesiastical Polity*, ed. Arthur. S. McGrade (Cambridge: CUP, 1989), 189.

The medieval Canonists were able to link all three in the procedure of the *denunciatio*, therefore, demonstrating the value of conscience in the administration of public legal systems and especially those proceeding ‘equitably.’

With the advent of Reformation, the theologians proposing extreme reform used notions of conscience, which they saw as subjective and private, as a method of rejecting the authority of public law to order any man’s conscience. In defence of common law, Reformation era jurists such as St German sought to show that the equity administered by the distinct Court of Chancery was not a law dealing with matters of private conscience. Rather Chancery followed conscience insofar as it was directed by common law, itself a product of natural law and so divine law. What St German began, the early modern common lawyers and theorists after him followed, as he formally divided three areas of ‘conscience’ in law, which seem to tally with the notions of theological conscience as formulated by the medieval canonists. Firstly, conscience existed as moral reason discerning the natural equity within common law via the equitable interpretation of statutes. Secondly, there existed the conscience of Chancery based on practical reason and its specialised fact-finding procedure, which allowed it to publicly examine the private consciences/knowledge of the parties. Thirdly, conscience also existed out-with the ambit of the law. Although secular law was there to maintain public order through the administration of public justice, and it was not to be usurped on the basis that man’s conscience was totally his own, common lawyers acceded to the fact that there were those matters dealing with sin and ‘reconciling personal conscience’ on which they could not proceed secularly in law. Therefore, it seems that if one wants to understand the reasons for the development of the secular notion of legal equity in England, one must invariably look first to the medieval theological notions of private conscience which preceded it,

and which helped establish the natural law tradition upon which all publicly administered law was subsequently based. This is the context which sets the scene of the stage upon which St German's *Doctor and Student* emerged, and whereby he came upon the first area of focus pertinent to this thesis – where the jurisdictional boundaries between the common law and other forms of authority (such as the canon law) should lie.

The Text of Doctor and Student

Turning to the main text of *Doctor and Student* now, for the Doctor of Divinity⁴³¹ there are four important laws: (i) the law eternal, (ii) the law of nature (reason), (iii) divine law, and (iv) the law of man. In order to construct St German's approach to the law and how he went about constructing his solution to the jurisdictional battle between the canon and common lawyers, it is important to consider each of these in turn.

The law eternal and the law of God

For St German the law eternal is defined as follows:

⁴³¹ It is interesting that St German casts this character in the guise that he does when he could quite easily cast a Doctor or Student of the Canon Law to be the mirror opposite of the Student of the Common Law. There could be many reasons for this, however, one of the most compelling considering the immediate trajectory of his early writings was that St German's complaint was never as simple as griping over the jurisdictional boundaries between common and canon law, it was with the spirituality as a whole with which he took issue right from the outset. To have cast this character as a Doctor of Canon Law would have been to have cast the character far too narrowly for the multifaceted debate which was imminent. His character needed to be both experienced in the law and in the finer points of theology and church polity, for he would be the mouthpiece that St German would use to paradoxically support the shift of authority to 'temporal' powers.

And as the reason of things which are to be fashioned by craft is called the art or exemplar of the things made, so likewise the reason of him who governs the acts of his subjects obtains the reason and name of a law, the other requisites of law being present [...] And according to this view, the law eternal is nothing else than that supreme reason in God for governing things; or that supreme reason of the divine wisdom whereby God wills all things established by him to be moved and guided to a good and due end.⁴³²

Here God is depicted as the supreme ruler, crafting eternal law from his divine will. St German follows the medieval tradition utilising the work of Gerson who stated that the eternal law is an expression of divine will,⁴³³ and St Augustine who rationalised eternal law as ‘simply first [a] legal obligation.’⁴³⁴ God bestows knowledge upon his reasonable creatures:

first by the lyght of natural reason. Second by heuently reuelacyon [...] And whan the lawe eternall [...] is knowen to his creatures [...] then it is called the lawe of reason. And when it is shewed by heuently reuelacion [...] it is called the lawe of god.⁴³⁵ For St German, God acts as the supreme ruler and indeed it is ‘by [God] kynges Reygn/ and makers of lawes descerne the trewth.’⁴³⁶

Regarding divine law as discerned from the eternal law, St German understood it as a certain law gifted to man as a reasonable creature by divine revelation, enabling him to discern God’s will and guiding him in situations where he is bound to do or not do a particular thing, the end of which is the obtaining of his eternal salvation, which St German refers to as felicity.

⁴³² St German, *Doctor and Student*, 9.

⁴³³ *Ibid.*

⁴³⁴ *Ibid.*

⁴³⁵ *Ibid.*, 11.

⁴³⁶ *Ibid.*, 13.

The law of nature (reason)

St German then divides the law of nature into two parts; (i) general law (which refers to all creatures), and (ii) special law (which refers to man created in the image of God who has a ‘natural instinct [...] to observe it’). According to Jean Gerson:

it is a sign, possessed naturally, which is indicative of the right reason of God which wills that the human rational creature shall be held or bound to do (or refrain from doing) something, in order to pursue its natural end which is human felicity – be it monastic, domestic or political.⁴³⁷

St German, therefore, invokes Gerson’s tripartite conception of ‘lex naturalis’ directly. For St German, the law of reason is, therefore, bound to the eternal law as man’s moral interpretation of it, therefore, endorsing his own commitment to a theory of law reliant upon the fundamental connection between reason (how St German styled natural law) and positive law⁴³⁸ The reason utilised in discerning God’s law is Aristotle’s *synderesis*, that ‘knowledge of eternal law in a rational creature, revealed to him by the natural light of reason, whereby he has a natural inclination to act duly, and to a due end.’⁴³⁹ As we already know from Aristotle and much later Aquinas, natural law has the effect of ‘inclining men to good and abhorring evil.’⁴⁴⁰

⁴³⁷ Ibid.

⁴³⁸ Walters, *St German on Reason*, 343. Thus, in this sense, St German could be termed both a positivist and a natural lawyer simultaneously. The groundwork laid here comes to full fruition in his later works when he identifies the King-in-Parliament as the key legal authority where conscience requires obedience to law, and statutes made by the King-in-Parliament can only be repealed by the King-in-Parliament.

⁴³⁹ Ibid.

⁴⁴⁰ Ibid, 15. Though there has been debate as to how closely we can say that St German followed Aquinas’s natural law theory. He does rather quickly abandon references to the ‘law of nature’ in favour of the ‘law of reason’ as this is the phrase used by English lawyers. Ibid, 31-33. In St German’s understanding: first

The Doctor's voice then logically invokes Romans 2 that the law of reason is the law inscribed upon the heart of every man which cannot be put away, one which is immutable, unchangeable despite the passing of time or the changing of place.⁴⁴¹ St German, citing Aristotle, notes that this law is quite simply always and everywhere. Therefore, nothing can be set against it, neither statute nor custom – these being void, and further, against justice. The Student (the voice of the defence of common law) logically queries, why then do we need any other law? The Doctor responds with the fact that before the written law, the law of reason was blinded by evil customs, and by the sins of the people besides original sin, in so much that 'the inner book of the heart having been obscured and as it were obliterated and mutilated by diverse passions it myght hardly be descernyd or read by men what was ryghtwyse and what was vnryghtwyse.'⁴⁴² Also the law of reason is incomplete as it does not deal with every situation. Therefore, as for the Catholic casuists and St German too, man's conscience as practical reason is flawed. It cannot be left to its own devices and requires objective

conscience binds positive law, then conscience is a part of positive law and then positive law binds conscience. [Walters, *St German on Reason*, 339.] However, he never does abandon the idea that conscience can in certain instances bind the positive law, even though he does internalise an Aquinas-inspired law of nature within the English common law. This tendency remains throughout his writings and becomes rather characteristic of his approach. His desire is never to obliterate conscience, or the canon law or the spirituality, it is merely to modify their significance in comparison to the common law in order to achieve, as he saw it, a fairer balance of power, and to settle the ultimate law-making power with the King-in-Parliament.

⁴⁴¹ 'Conscience moreover applies to all time, namely, past, present and future; and it bears witness concerning every work of the past, the present or the future saying whether it is good or evil.' *Ibid*, 91.

⁴⁴² *Ibid*, 15.

guidance of external authority, and for St German the edifice of the common law had the power to provide such guidance, whilst also realising that there remained instances where conscience would continue to bind positive law.

The law of man

St German then connects human law with divine law and reason and clarifies the law of man is necessary to ensure the ‘due end of human nature.’⁴⁴³ St German returns to the usual medieval position internalising the natural law (and so divine law) within positive law,⁴⁴⁴ citing canonical authority, mentioning the theologian Isidore of Seville’s *Etymologies*, which clarifies that a human law should be:

honest/ ryghtwyse/ possyble in it selfe/ & after the custome of the countree/ conuenient for the place and tyme/ necessary/ profytable; and also manyfest that it be not capcious⁴⁴⁵ by any darke sentence ne myxt with any pryuate welth/ but all made for the common wealth.⁴⁴⁶

Quite simply, natural law is embedded within human law with its inherent equity aimed at the common good of mankind. However, he does not go as far as to say that the common law is unimprovably reasonable. He does see the value of alternatives, such as the Chancery. He also replicates this approach theologically in his later writings where he does not completely eliminate the relevance of the clergy. They retain value, but in a

⁴⁴³ Ibid, 27.

⁴⁴⁴ ‘Human law is defined as a true sign constituted immediately by human tradition and authority, showing that right reason wills to bind a rational creature to do (or not to do) something, with a view to some spiritual or temporal end consonant with reason.’ Ibid.

⁴⁴⁵ Marred.

⁴⁴⁶ Ibid.

way which is modified and carefully moulded within specified parameters to prevent any future inappropriate usurpations of rightly temporal authorities. St German goes on to refer to further theological authorities, including St Bridget⁴⁴⁷ and the author of the *Decretum* himself, Gratian.⁴⁴⁸ Therefore, the equitable tradition of the law of man is to be understood quite literally by reference to medieval theological and legal authorities and their position regarding natural law theory. Common law is the natural law's realisation in English law.

The voice of the Student then acknowledges this as the basis for common law, confirming that common law is based first upon the law of reason and the law of God, thereafter followed by the customs of the realm, maxims, particular (local) customs and parliamentary statutes.⁴⁴⁹ It is then the Student's voice which instructs the Doctor on how the natural law is interpreted within English law and how it is divided into laws of primary reason (as things which are commanded or prohibited by that law are derived from reason alone, without the addition to it of any other law) and secondary reason, subdivided into the general law of secondary reason (which deals with the law of property and is grounded on custom) and the particular law of secondary reason (which is the body of the positive law of statutes and maxims).⁴⁵⁰ Therefore, for the Student, the law of the realm is one and the same as the law of reason. However, although all law is reason, for the Student,

⁴⁴⁷ St Bridget was a Swedish mystic, saint and founder of the Brigettine nuns who lived 1303-1373, of whom St German was obviously fond considering his *Epistle of St Bernard [and] Four Revelations of St Bridget*.

⁴⁴⁸ St German, *Doctor and Student*, 28-29.

⁴⁴⁹ *Ibid*, 31.

⁴⁵⁰ *Ibid*, 31-35.

not all law is immediate reason; there is a more complex understanding of law which necessitates the intervention of human institutions and laws.

It is important to remember that at the time that St German was constructing his ideas about the common law, the very same law had yet to be reduced to writing. As Plucknett and Barton remind us, at this point in history, '[n]o one had as yet hit upon the ingenious expedient of treating the legal profession as repositories of the communal sense of right, with implied authority to consent to new customs on behalf of their fellow country-men'.⁴⁵¹ So for St German, the law of man (or the common law) was divided bifold into rules which qualified as i) customs (such as primogeniture) due to the public's awareness of them and ii) maxims, which were not founded upon statute, but 'which [were] generally not known to those not lawyers by profession'.⁴⁵² It seems that it is Fortescue who inspired St German's use of the term 'maxim'. Though he takes Fortescue's definition out of its context and ultimately is forced to admit that there is 'no authority to prove a maxim save long usage, and that the reader is therefore at liberty to treat his maxims as general customs, if [they] prefer to do so'.⁴⁵³ The method of proving a maxim would be by reference to the Year Books and to the records of the judges. The reality was that precedents remained 'evidence [of the law] in a very real sense. They have to be weighed, and an unsatisfactory precedent may be disregarded like an unsatisfactory witness'.⁴⁵⁴

⁴⁵¹ Ibid, (Barton's *Introduction*), li-*lii*.

⁴⁵² Ibid, *lii*.

⁴⁵³ Ibid.

⁴⁵⁴ Ibid.

St German's Concept of Conscience

Located in the fifteenth chapter is St German's definition of conscience, which he links to the Latin *conscientia* and explains is compounded of two parts 'con' with 'scientia' knowledge. Hence, for St German, to act on conscience is once again to act with knowledge. In explanation of this St German (speaking through the voice of the Doctor) defines conscience further, explaining that conscience is made up of a duality. Firstly, 'conscience imports knowledge' this is its higher (natural) aspect which is 'not only cognitive but also motive, and inclines the soul to pursue good and eschew evil' (thus once again establishing the link between the classical understanding of conscience as linked to *synderesis* and notions of morality). Secondly, conscience 'imports more appropriately knowledge with something else [...] that is to say with some particular act.'⁴⁵⁵ Here conscience utilises reason to provide guidance regarding human action; its lower aspect. In its lower aspect, conscience may err, as it deals with knowledge or research from which the chance of error arises.⁴⁵⁶ For the Doctor, *synderesis* is the universal element that never errs.⁴⁵⁷ However, in that conscience is also linked to man's ability to apply his reasoning faculties, errors in conscience manifest in a number of ways and the authority of an objective external authority is, therefore, necessary in order to correctly guide individual conscience:

namely a theologian in matters of faith. And if in such a case as those learned in the law shall have advised him otherwise than in accordance with the truth of the law, yet if he has formed his conscience according

⁴⁵⁵ Ibid, 87.

⁴⁵⁶ The Doctor confirms that it is easy to demonstrate how conscience may err using the usual Doctors' syllogism that 'no evil is to be done.' Ibid, 89.

⁴⁵⁷ Ibid, 91.

their advice, his conscience is clear – provided that they advised nothing against the law of reason or the law of God, for God binds nobody to an impossibility.⁴⁵⁸

Therefore, in his understanding of conscience, St German does follow the traditional medieval theological line of conscience related to law through theoretical ideas of morality and natural law (‘as a lyght is sette in a lanterne that all that is in the house may be seen thereby/ so almyghty god hathe sette conscyence in the myddes of euery reasonable soule as a lyght wherby he may dyscerne and know what he ought to do : and what he ought not to do’⁴⁵⁹), and it also related more practically to how cases were to be dealt with in Chancery. It is here that St German’s prose naturally flows into an exposition of the understanding of equity on the cusp of Reformation.

St German’s Concept of Equity

St German again utilises the voice of the Doctor, providing the traditional Romano-canonical position, echoing St Cyprian’s definition of the *denunciatio* procedure. He immediately clarifies that equity is: ‘a [ryghtwysenes] that consideryth all the pertyculer cyrcumstaunces of the dede/ the which is also temperyd with the swetnes of mercye.’⁴⁶⁰ For the Doctor, this type of equity ‘must always be obserued in euery lawe of man’⁴⁶¹ and is understood in its traditional medieval theological sense as mitigating the rigour of the law, based on concepts of discretionary mercy/*miser cordia*.

⁴⁵⁸ Ibid, 91-93.

⁴⁵⁹ Ibid, 95.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

The Doctor confirms that it is not possible to legislate for every circumstance as a general rule will fail in the particular (again echoing Aristotle in his treatment of justice). In some cases, acting strictly in accordance with a law's words will lead to injustice – in these cases it is expedient and necessary to leave the words, and to this end equity is ordained to 'tempre and mytygate the rygoure of the lawe [...] by [...] epicaia. The whiche is no other thyng but an excepcyon of the lawe of god/ or the lawe of reason/ from the generall rewles of the lawe of man.'⁴⁶² However, here law is not mercifully set aside; 'equytie rather foloweth the intent of the lawe/ then the wordes.'⁴⁶³ The Student offers some examples of this type of equity acting within the English law, using the example of the general prohibition that it is not lawful for a man to enter into the freehold of another without the authority of the owner or the law. However, an exception should be granted if a man is driving beasts along the highway and the beasts enter his neighbour's field. He may enter his neighbour's land to bring the beasts away again to prevent them doing damage.⁴⁶⁴ Hence the type of equity as understood by the Doctor is already active within the positive law of the realm as the Student understands it.

These definitions precede and establish the basis for St German's main line of argumentation; that conscience in its relationship to natural law is not something which stands outside common law but is something which is a part of it. Therefore, in ordering his private conscience to guide his public acts man should look to the external guidance of the common law. In the words of St German's Student:

⁴⁶² Ibid, 97.

⁴⁶³ Ibid, 99.

⁴⁶⁴ Ibid.

for suche a lawe of man hath not only the strength of mannes law/ but also of the lawe of reason/ or the law of god wherof it is dyruyed/ for lawes made by man whiche haue receyued of god power to make lawes be made by god. And therefore consyence muste be orderyd by that human lawe.⁴⁶⁵

Section Summary: The Significance of Doctor and Student

It has been well documented that *Doctor and Student* is typified by its polemic nature as a reaction to ‘some of the more extensive uses of the powers of Chancery by civilian and canonist trained judges in the late fifteenth and early sixteenth-century’⁴⁶⁶ and how it also acted as an apology for the state of English law, which was also ripe for reform or at least for fresh ideas by the time of the Reformation. A revival of classical learning permeated St German’s work, through his use of the typical medieval sources of Aquinas (relying on Aristotle and Cicero) and also his use of Gerson and other traditional canonical authorities. The 1533 break with Rome may still have been a few years off when the first dialogue of *Doctor and Student* was printed in Latin in 1528, but as Barton confirms the Reformation Parliament was actually sitting as the second dialogue was being prepared.⁴⁶⁷ St German was professing ideas attractive to the anti-papal campaign and propounded his King’s unique take on and approach to the idea of Reformation.

Doctor and Student was, therefore, valuable as a marvellous piece of Reformation propaganda,⁴⁶⁸ acknowledging the ecclesiastical position on the relationship between

⁴⁶⁵ Ibid, 111.

⁴⁶⁶ MacNair, *Equity and Conscience*, 662.

⁴⁶⁷ St German, *Doctor and Student* (Barton’s *Introduction*), xx.

⁴⁶⁸ For a more general discussion on this topic, please see John Guy: ‘*Christopher St German*, 19-55, which discusses the politics behind St German’s *Doctor and Student* and other writings, and his role in the 1530s.

conscience and law as ultimately set within notions of natural law yet stating clearly that divine law also formed an essential part of the English common law. Therefore, conscience, if it wanted to follow divine law, should follow common law and the common law could bind in conscience. Importantly, though the text also established that some areas of conscience (i.e. matters of personal sin) were not within the common law's remit and remained within the scope of matters of private conscience and here conscience would continue to bind positive law.⁴⁶⁹ In summary, it seems that St German accepted medieval premises relating to external justice whilst rejecting the idea that it should deal with private conscience (for the Chancellor must be guided by the law).

Therefore, *Doctor and Student* establishes a rejection of the primacy of canon law over the equity jurisdiction, re-enforcing a common law basis for what were seen by common lawyers as pre-existing common law ideals. St German paved the way for linguistic advancement, as conscience became equity. 'The notion of equity [became] a conceptual tool developed by St German in order to explain the relation between law and conscience, between the brand of justice meted out in common law courts and the brand of justice meted out in Chancery.'⁴⁷⁰ The effect of St German's treatise was, therefore, to circumvent the Church's historic primacy in areas relating to conscience, whilst re-enforcing the idea of equity as belonging to common law. He had constructed a domestic solution (conscience exists in the common law already) to counter the invasion of a foreign jurisdiction's (in the body of the canon law) encroachments. As per Holdsworth, 'St Germain's popular exposition ha[d] made [...] canonist principles the basis and

⁴⁶⁹ 'And in some case[s] there is no remedye for suche an equitye by way of compulsyon/ but all the remedye therein must be commytted to the conscyence of the partye.' St German, *Doctor and Student*, 103.

⁴⁷⁰ Behrens, *Equity*, 28.

starting point for *English* equity.⁴⁷¹ Opportunely, St German bridged what could have been a chasm between the age of almost exclusively ecclesiastical chancellors and the age when equity would be ‘guided by the common lawyers.’⁴⁷² By effectively popularising the canonist principles upon which the equity jurisdiction had been based and applying these to the rules of English law, *Doctor and Student* ‘facilitated the development of [those] principles on native lines.’⁴⁷³ When mapped against the political realities of the time, this cannot have failed to have inspired the interest of the anti-papal party seeking to inoculate against papal legal interference within the realm.

3.2 A Replication of a Serjeant⁴⁷⁴ at the Laws of England (1531/2)

The next time St German picked up the thread of resettling the jurisdictional boundaries between the canon and common laws was in his *A Replication of a Serjeant at the Laws of England* (1531/2). Though this work was never published in St German’s lifetime.⁴⁷⁵ However, it is important to highlight that the attribution of the work to St German is not without controversy. Yale notes the suspicions surrounding the authorship

⁴⁷¹ Holdsworth, *History*, 5:268.

⁴⁷² *Ibid.*

⁴⁷³ *Ibid.*, 5:268-69.

⁴⁷⁴ The Serjeants at law were ‘the especially proficient and respected pleaders who argued cases before the King’s Bench, Common Pleas and, the royal assize courts. The practitioners, along with judges, enjoyed the highest status among English men of law and often served as judges in assizes while still practicing before the central courts.’ Robert J. Meindl, “Gower’s *Speculum Iudicis*: Judicial Corruption in Book VI of the *Vox Clamantis*,” in *John Gower: Others and the Self*, ed. Russell A. Peck and Robert F. Yeager, 260-282 (Cambridge: D.S. Brewer, 2017), 268.

⁴⁷⁵ It was first published in 1787.

of the piece, i.e. that St German was not the author of the *Replication*. This does seem an entirely sensible question to pose considering the vitriol of the attack on the Student of the common law from the Serjeant and how the subsequent *Writs of Subpoena* is framed as a reply to the *Replication*, whose author was supposedly unknown to St German.⁴⁷⁶ However, there are also strong arguments for St German's authorship. At British Museum, Harl. MS. 829, are located the manuscript copies of the *Replication* and the *Writs of Subpoena* acquired by Edward Saunders who died in 1576. He was a fellow Middle Templar like St German and it is possible that he acquired these copies either from St German himself, or after his death. Both works are written in the hand of the same copyist. However, the text of the *Writs of Subpoena* also contains controlling editorial amendments in St German's own hand (recognisable from his holograph letter to Cromwell⁴⁷⁷) thus more securely identifying the *Writs of Subpoena* as St German's own work.⁴⁷⁸ Yale uses this as reasoning to suggest that the works came from one and the same source. However, it could just be that St German had a copy made of the unpublished *Replication* so that he could make an answer to it, as Saunders had noted on the manuscript before the text of the *Replication* 'The answere of this Treatyse by Xtofer Seynt Jerman.' Yale then goes on to consider the reasons why St German may have been

⁴⁷⁶ For Yale's full arguments regarding the authorship of the work see: David E. C. Yale, "St German's Little Treatise Concerning Writs of Subpoena," *Irish Jurist* 10, no. 2 (1975): 326. A personal note, not included with the printed version, contains a note from St German that 'peradventure he that made the same treatise hath sometyme devised suche uses as hath ben necessary for his clyents or for hymself or his frends, and of no crafte or falsehood.' Yale notes this citation at 326, n. 15; citing MS f. 68r, at Hargrave, p. 341, 1.10.

⁴⁷⁷ TNA, PRO, SP 1/152 f. 249.

⁴⁷⁸ Yale, *St German's Little Treatise*, 325; citing British Museum, Harl. MS 829, ff. 53r-81v.

responding to a real adversary. For example, ‘the asperity and acrimony of “the Serjeant’s” remarks tell heavily against such a theory of authorship,’ (i.e. that St German was the author of both texts).⁴⁷⁹ The *Replication* is also framed as an attack on the student of the common law, who represents St German’s own voice in *Doctor and Student*. Though, alternatively, it could be that St German as the author of both works, as Guy suggests, employed the *Replication* as a literary device.⁴⁸⁰ This could explain why the prose was written in such an emotive way (that is not to say that St German’s clearly attributed works are not emotive, they certainly are, but the *Replication* is distinctly so), so that the response of the *Writs of Subpoena* would seem the more convincing due to its less pugnacious and more rational tone. Unfortunately, this remains conjecture. However, with respect to the true significance of the work, as Yale notes:

[w]hether the author was a Serjeant at law or indeed whether he was any particular person is a question of interest rather than of any great importance. His significance for legal history is that he represents a point of view, and we will not doubt, a point of view which was real enough at the time,⁴⁸¹

and it is precisely this point of view that St German would then challenge in his *Writs of Subpoena*.

According to Guy:

the overwhelming significance of the *Replication* [...] and the [*Writs of Subpoena*] [...] is that several debates begun in the twin dialogues of *Doctor and Student* concerning the relationship of the laws of

⁴⁷⁹ Ibid, 327.

⁴⁸⁰ Guy, *St German*, 57.

⁴⁸¹ Yale, *St German’s Little Treatise*, 327.

England to equity and conscience are resumed with specific reference to the contemporary practice of the Court of Chancery.⁴⁸²

Although *Doctor and Student* did deal with particular instances which might give rise to actions within the Chancery and dealt with specific interpretations of statutes, it did not deal with the procedure of the Chancery in any detail. Specifically, these works permit an insight into a very specific period of the Chancery's development, following the fall of Wolsey and the ensuing controversy which defined More's incumbency as Chancellor. Guy believes that 'Wolsey's methods and the wider business rivalry of Chancery and the common law courts had subtly subverted and divided the legal profession against itself.'⁴⁸³ It is at this point that the *Replication* picks-up the debate – and the Serjeant's quarrel is with the very same Student who had participated in dialogue with the Doctor of Divinity in *Doctor and Student*.

In the *Replication*, the Serjeant cries out against the state of the English common law, accusing its lawyers of allowing it to fall into disrepute by allowing the Chancellor to act as ultimate judge in all matters. For the Serjeant, all power seems to lie with the Chancellor and his deliberation of what the conscionable action is to take in a particular matter. By this, the very authority of the common law is called into question. If an issue cannot be resolved by the common law with finality – then where is the certainty of law? Thus, the *Replication* discusses conscience and the use of conscience by the equity jurisdiction as an agitator in the domestic institutional tensions between the equity courts and the common law courts in the Tudor period, whilst on the international stage the formal break with Rome loomed ever closer.

⁴⁸² Guy, *St German*, 64.

⁴⁸³ *Ibid*, 66.

The text of the *Replication* opens with a statement that what follows is a response of a Serjeant of the English Law to certain points made in *Doctor and Student*. The Serjeant starts out by approving the Student's explanation that the common law of England is grounded upon the law of reason. The Serjeant does not wish to question this but to argue against the opinion of the Student that in the case of a debtor (described as the obligor) not taking an acquittance of his debt from his creditor (the obligee), as it is his obligation to do, that the debtor has the right to seek a remedy by subpoena in the Chancery, as there is none available in the common law. Firstly, the Serjeant confirms that he believes that there is a remedy at common law as the defendant (the debtor/obligor) can bring an action of debt against the obligee. If the obligee pleads that he did receive the money in the Court of Record, then the debt would be duly discharged. However, if the obligee will not plead this way then the obligor has no remedy at common law or in the Chancery.⁴⁸⁴

In the law, such an obligation cannot be discharged unless discharged by writing or as a matter of record. To argue that there is some remedy in the Chancery is, to the Serjeant's mind, not compliant with 'the law of reason, ne with the lawe of God, ne yet with the common well of the realme.'⁴⁸⁵ In this instance, the obligor:

hath hurte hym self by his own necligence and by his owne follye, that this goode commen lawe of the realme, that ys this, that matier in wrytinge withoute condicion may not be answered but by matier yn wrytinge or by matier ofrecorde [*sic*], shulde be made voyde or sette at nought by the suyte of [...] any particuler persone made yn the chauncery or yn any other place.⁴⁸⁶

⁴⁸⁴ St German, *Replication*, 99.

⁴⁸⁵ *Ibid*, 100.

⁴⁸⁶ *Ibid*.

More simply, it is against the law of reason to allow a man to discharge his obligation when he has hurt himself by his own negligence. If this matter were to go to the Chancery then it would stand against the law of the realm and, therefore, one of the laws would have to be declared void as ‘these two lawes, oon being contrary to thoder, cannot stande together, but oon of theym muste stande as voyde.’⁴⁸⁷ Further, this causes the Serjeant to ‘merveil moche what auctoritie the Chauncellor hathe to make suche a wrytte yn the kinges name?’ What authority does the Chancellor have to allow the King’s subjects to sue against the King’s own laws which the King himself cannot do?⁴⁸⁸

For the Serjeant, this seems to be ‘contrary to all goode reason and good pollycy.’ Beyond this, it also seems to be against the law of God; ‘for the lawe of God is not contrary yn hit [*sic*] self, that is to saye, oon yn oon place, and contrary yn another place, yf it be well perceyved and understood.’⁴⁸⁹ St German’s keenness for the people of the realm to understand the law they are bound by is made evident by the Serjeant’s comments that:

this suyte by a sub pena is ayenste the common well of the realme, for the commen well of every realme is to have a good lawe, so that the subgiettes of the Realme may be justified by the same; and the more playn and opyn that the lawe is, and the more knowledge and understanding that the subgiettes hath of the lawe, the better it is for the commen well of the realme.

Considering the question of authority, one of the most interesting points that St German makes throughout the entire treatise is a comment regarding the vesting of such power of the law in the body of one man. For the Serjeant says, ‘if the subgiettes of any

⁴⁸⁷ St German, *Replication*, 100.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ *Ibid.*, 101.

realme shalbe compellede to leve the lawe of the Realme, and to be [...] ordered by the discrecion of oon man, what thing may be more unknowen and more uncertayne?’ This certainly is directed primarily at the Chancellor in this instance, but the reference more broadly to the subjects of any realm could also infer some sort of occult reference to authority of the Pope. This dislike of vesting power in the body of one man could also explain St German’s seeming aversion (even in his early works) to vesting supreme authority in the King alone. The subjects of the realm would be put to great uncertainty if they were to ‘be compellede to be ordrede by the discrecion and conscience of oon man.’⁴⁹⁰

The reason for this, the Serjeant explains, is the unreliability of conscience due to its diversity as ‘so divers men, divers conscience.’⁴⁹¹ Therefore, the threat of vesting so much power in one man is that:

if that the kinges subgiettes shulde be drevyn and constraynede to be ordrede by the discrecion and conscience of oon man, they shulde be put to a greate uncertayntie, the whiche is ayenste the common well of any realme. And so me semethe it is not oonly againste the comen law, but also ayenste the lawe of reason, and ayenste the lawe of God, and eyenste the comen well of this realme.⁴⁹²

This potentially great threat has arisen as the Chancellors have been ‘spirituall men’ who have ‘but superficial knowledge of the lawes of the realme.’⁴⁹³ For the Serjeant, the law should not be left to conscience as the common law already upholds its own internal

⁴⁹⁰ Ibid.

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

synderesis as ‘the lawe commanundith all thing that is good for the common welthe to bee doon, and prohibithe all thing that is evill and that is againste the commen welle.’⁴⁹⁴

Therefore, mirroring the argument from *Doctor and Student*, to follow the common law of the realm is to follow a law that is sufficient to also bind in conscience. ‘Yf ye therfore followe the lawe trewly, ye cannot do amys, nor yet offende your conscience, for it is saide, quod implere legem est esse perfecte vertuosum (to fulfill the lawe is to be perfetely vertuose).’⁴⁹⁵ The Student points out that this is the approach if you follow the law of God, to which the Serjeant replies; ‘Yt is also to be understande [*sic*] by the lawe of man; for the lawe of man is made principally to cause the people to kepe the lawe of God.’⁴⁹⁶ If you follow the inherent *synderesis* expressed by the common law of the realm, then there is no need to trouble yourself with conscience (i.e. here referring to the equity of Chancery).

The Serjeant then takes aim at the Student for effectively colluding in undermining the common law:

But I perceyve by your practyse that ye leve the commen lawe of the Realme, and ye presume moche upon your owne mynde, and thinke that your conceyte ys ferre better then the commen law; and therupon ye make a bill of your conceyte, and then ye put yt yn to the Chauncery, saying that it is groundede upon conscience. And so you bring your conceyte yn argumente yn the Chauncery, and leve the commen lawe as it were a thing of no goodnes ne of no reputacion; yn the whiche practise me thinke ye moche abuse yourself.⁴⁹⁷

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid, 103.

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid.

He then moves on to consider another issue arising out of *Doctor and Student* – the issue of uses.⁴⁹⁸ He explains that uses arose due to ‘untrewe and [...] crafty ynvencion to put the king and his subgyettes from that (which) they aughte to have of righte by the good, trewe common lawe of the realme.’⁴⁹⁹ Again, he levels an attack against the students of the common law for not doing more to prevent the usurpation of the jurisdiction of the common law. To continue to uphold the deceitful invention as set up by Chancery is to act ‘contrary to the studye and lernynge of the commen lawe, and contrary to reason, and

⁴⁹⁸ Feudal landholding meant that landholders were meant to pay certain fees to the lord of which they held their land, who would keep a portion and then turn the rest over to the Crown. Many of these became due to the Crown on the death of the landholder, whereupon, the land would be passed to an heir triggering payments of ‘incidents.’ Uses were seen as a sleight of hand to avoid payment of these incidents (and others, such as wardship and marriage) to the Crown. The land would instead be placed in the name of a person for the benefit of a third party (the *cestui que use*) who was usually the original landholder. Thus creating a use. Ultimately, courts began to recognise the landholder’s right to split possession (to a tenant) and legal title to another (as a feoffee), or others (multiple feoffees) as was more usual. On the death of a feoffee, title would not pass to their heir but to the other feoffees. Therefore, no dues on death could be claimed by the Crown. Henry VIII would try to reclaim these dues through his *Statute to Uses* in 1535 (27 Hen 8 c. 10). See David T. Smith, “The Statute of Uses: A Look at its Historical Evolution and Demise,” *Case Western Reserve Law Review*, 18, no. 1 (1966): 40-63, for more on the development of the use and the *Statute of Uses*; 44-45 on the reason for the development of the use. See also Milsom, *Historical Foundations*, 211-220, on uses as an institution, their mischief and the *Statute of Uses*.

⁴⁹⁹ St German, *Replication*, 103.

also to the lawe of God.’ Further according to statute,⁵⁰⁰ this ‘bringe the kinges highnes to the detestible offence of perjury.’⁵⁰¹

Finally, in a flourish expressing what can only be perceived as extreme frustration for the common lawyers’ lack of awareness of the consequences of their own inaction against the perceived abuses of the Church, he further reinforces his argument that the students of the common law remain complicit in the usurpation of the jurisdiction of the common law arguing:

And so the commen lawe of the realme is nowe a daise by you that be studentes turnede all ynto conscience, and so ye make my lorde chauncellor juge yn every matier, and bring the lawes of the realme yn suche an uncertayntie that no man can be sure of any landes, be it enheritaunce or purchesse, but every mannes title shalbe by this meane broughte ynto the chauncery; and there it shalbe triede whether it be conscience or no conscience, and the lawe of the realme, by the whiche we aughte to be justifyede, nothing regarded.⁵⁰²

Therefore, as is true of *Doctor and Student*, the *Replication* was once again an active call to arms in defence of the common law against the canonists.

3.3 A Little Treatise concerning Writs of Subpoena (1532[?])

As discussed, *Writs of Subpoena* constitutes the reply of the Student to the *Replication* and St German prepares to treat specific cases of conscience in detail, and to clarify how the subpoena of the Chancery should and should not be used.⁵⁰³ Once again, the aim of

⁵⁰⁰ 20 Edw 3 c. 1. (The Ordinance of the Justices 1346). St German references this again in more detail in *A Little Treatise*.

⁵⁰¹ St German, *Replication*, 104.

⁵⁰² *Ibid*, 105.

⁵⁰³ Again, the work was never published in St German’s lifetime. It was published in the same year as the *Replication*, 1787.

the work is to provide a practical walk-through aimed at resolving the jurisdictional challenge posed by the Chancery. It is marked by its seeming moderation, as the work begins with a general vindication of Chancery's jurisdiction (chapter one), a discussion of individual points of legal doctrine in order to enquire as to the accountability and reasonableness of Chancery's intervention by subpoena (chapters two to six), an examination of cases where, despite a party having a right in conscience, a remedy was not to be provided by subpoena (chapters seven and eight) and finally an extension of St German's arguments in relation to contemporary theory of the Chancery, equity and the Chancellor's conscience (chapters nine and ten).⁵⁰⁴ Throughout, St German makes reference to statutes to support his arguments, but what he does not do is make any reference to specific Year Book cases. This seems odd at first for an ostensibly 'legal' work as suggested by the title and subject matter, but St German was again not just writing a legal work to be used by lawyers, quite the opposite in fact. As Yale highlights from Barton's discussion of St German's general theory in *Doctor and Student*, this lack of reference to the Year Books was a 'natural consequence of its original purpose' and that '[c]itations of authority [...] would puzzle rather than enlighten the intelligent non-lawyer with no knowledge of law French.'⁵⁰⁵ This was a template St German would follow in his subsequent works such as *Writs of Subpoena*. The Year Books were written in the professional language of the law and, just as St German had switched to the vernacular to present his works after his *Dialogus*, it seems likely that he omitted specific reference to such authorities to further his endeavour of securing the broadest readership possible for his ideas.

⁵⁰⁴ Guy, *St German*, 81.

⁵⁰⁵ St German, *Doctor and Student* (Barton's *Introduction*), xxi.

Turning to the arguments presented in *Writs of Subpoena* and the relevance for this thesis, the overall theme of *Writs of Subpoena* supports the view that, despite the Serjeant's objection to equity based on the Chancellor's conscionable discretion, the conscience which the Chancellor employs is not arbitrary as it is grounded upon God's law, the law of reason and the law of the realm which is not contrary to the laws of God and reason:

And though some men may be deceived through a scrupulous conscience, or an erroneous conscience, or in some other manner, yet it is not to presume the Chancellor, who is always appointed to his office by the King as a man of singular wisdom and good conscience, will be deceived through such errors in conscience, having so straight rules to the order of his conscience as he shall have. And so I think, it is not to be judged against the common weal of the realm, though such cases as writs of sub poena lie upon be committed only to the judgment of the Chancellor.⁵⁰⁶

MacNair, in his exploration of some of the (possible) technical meanings of the words 'conscience' and 'equity' in their early usage referred to earlier in the thesis, suggests that St German's defence of Chancery English bill jurisdiction in [... *Writs of Subpoena*] was a *faux* defence – and that *Doctor and Student* itself – adopts a 'substantially more restrictive view of the jurisdiction than that which was operated in practice.'⁵⁰⁷ MacNair takes the usual line of explaining that St German's work essentially inferred the primacy of the common law over the jurisdiction of equity courts. It certainly did do this. *Writs of Subpoena* and the preceding *Replication*, therefore, garner their value to this particular study from their usefulness in extending the theories originally proposed in *Doctor and Student* and in how theory then informed the debate around actual practice. As stated by Behrens, in constructing an understanding of equity and law in the way in

⁵⁰⁶ St German, *Writs of Subpoena*, 124.

⁵⁰⁷ MacNair, *Equity and Conscience*, 662.

which St German does in the *Replication* and *Writs of Subpoena* this leads to ‘the payoff which St German is looking for. While the anonymous author of the “Replication” claims that conscience must “follow” the law, and Wolsey that it must mitigate the law’s rigor, St German can have it both ways.’⁵⁰⁸

Within the work we also see some cross-over between the issue of the resettling of the jurisdictional boundaries between the canon and common laws through the dispute over the equity jurisdiction and the rising issue of the theory of royal supremacy and how this would work in practice, i.e. for St German via the construction of the King-in-Parliament. St German notes that though some Chancellors have been spirituals and some have been temporals, they derive their authority from the ‘goode aucthorytye, and by cummaundement of the kyng and his councel.’⁵⁰⁹ As mentioned, the King is a man of good and sound conscience ultimately responsible for ensuring that justice is done in the realm and it is he who appoints the Chancellor to his position. Hence to question the authority of the Chancellor is in reality to challenge the authority of the King and, incidentally, his Parliament. The Chancellor’s discretion is not arbitrary; he must follow rules in dispensing justice – rules based on the common law itself.

St German also suggests that the power lies with Parliament to direct when a case may lie in Chancery as he says that it ‘thereby apperyth that they that were of ye parliament at the makynge of ye seyde statutes assentyd that in summe cases a man may be ryghtwysely sewyd in the chauncery.’⁵¹⁰ He makes reference again to *The Ordinance*

⁵⁰⁸ Georg Behrens, “An Early Tudor Debate on the Relation between Law and Equity,” *Journal of Legal History*, 19, no. 2 (1998): 157.

⁵⁰⁹ St German, *Writs of Subpoena*, 107.

⁵¹⁰ *Ibid.*

of the Justices (1346)⁵¹¹ and confirms that if it is argued that it is against this statute for people to be sued in the Chancery on the basis that the justices must not ever cease to do justice even for ‘ye graunte seale nor privye seale, nor for non other cummaundement of ye kyng’ then such an argument represents a misunderstanding of the statute as this commandment is directed to the justices themselves, and a *subpoena* is not directed to the justice, it is directed to the party concerned. St German argues that even if there was a motion delivered to the justices commanding them to cease in a case, but yet the party called for justice, then the justice would be ‘bounde by reason of ye said statute to procede and do justyce, the seyde monicion not withstondyng.’⁵¹² Therefore, there are instances where a *subpoena* may legitimately lie:

And me thynkyth that al theyse thinges wel consydeyrd, no man ought to marveyll what auchthorytye the chaunceler hath to make such a writte of sub pena in ye kynges name ; for the olde custome, not restreynd by any statute, warrantyth hym by reason of his offyce so to do after certeyn groundes and under a certeyn manner.⁵¹³

In chapter four of the treatise, St German further underlines the power of statute when discussing the free alienation of land under the statute *Quia Emptores*⁵¹⁴ where he confirms that, to act against statute, is to act in a way that is void in both law and conscience:

⁵¹¹ This statute ‘codified in law the standards of conduct for those acting in a judicial capacity and specified severe punishments for their breach. To ensure that equal justice would be forthcoming for rich and poor alike, the Ordinance specifically prohibited justices from accepting rewards for the fulfillment [sic] of their duties, either as money or gifts.’ Meindl, Gower’s *Speculum Iudicis*, 267. 20 Edw 3 c. 1.

⁵¹² St German, *Writs of Subpoena*, 108.

⁵¹³ *Ibid.*

⁵¹⁴ 18 Edw 1 c. 1.

And yf any man wold sey that this reservacion ys void to al ententes, bycause it is ageynste the law, for yf it be ageynste ye lawe, eyther it is void or els ye law is void. And therefore yf a statute were made that al reservacions of rents out of landes shuld be void, then a man contrarye to that statute wolde make such a reservacion, that reservacion were void in law and consyence, for it were directly ageynst ye statute.⁵¹⁵

In chapter seven, St German clarifies that the power to void statute is held solely by the Parliament: ‘then the lawe shuld be juged to be voyd, and that may not be don by no courte, but by ye parliament.’⁵¹⁶ Also, ‘but if the statute be not good, it muste be broken by parliamente as yt was made.’⁵¹⁷

However, St German acknowledges that the law of the realm does have its limitations and St German does envisage instances where the common law has gone as far as it can in terms of the provision of a remedy, and here (as he does in *Doctor and Student*) he invokes the higher tribunal of the soul. If there can be no further trial, then there cannot be a *subpoena* as:

then the common lawe shuld have non ende, and thereupon shall fall many grete inconvenyences. Wherefore the partie shall rather be suffrede to be withoute remedie then that inconvenyence shulde fall. But yn that case he that hath the lande is bound yn consyence to restore yt, if he will save hym self from dedly synne.⁵¹⁸

In chapter ten, St German replies to further accusations made by the Serjeant in the *Replication* with respect to the authority of the Chancellor. Here St German argues that if you take the law to mean the common law and the jurisdiction of Chancery, it is

⁵¹⁵ St German, *Writs of Subpoena*, 109.

⁵¹⁶ *Ibid*, 116.

⁵¹⁷ *Ibid*.

⁵¹⁸ *Ibid*, 116.

not against the King's oath that the Chancellor exercises his jurisdiction. In response to the accusation that the Chancellor is not sworn to do justice as the Serjeants and justices are and, therefore, he can break justice, it is true that the Chancellor is not sworn to justice in the same way as the justices are but he is bound by conscience. Therefore, he must form his judgments in accordance with the laws of God, reason and the realm. Thus, representing a deeper commitment even than the justices.⁵¹⁹ As such, there is the greater potential default in him than in the judges as the laws of God, reason and the realm are easier to discern than the general grounds and maxims of the law that the judges have to deal with. There is no writ of error available for a judgment handed down by the Chancellor, as how could a chancellor make errors with a law that is so easily discernible?⁵²⁰

Concerning the issue of the variability of conscience as a measure of the law, the Chancellor's conscience is not arbitrary as it is bound by the laws of God, reason and the realm. There is no further proof of the non-arbitrariness of the Chancellor's conscience needed.⁵²¹ St German refers the reader back to chapter fifteen of the first dialogue of *Doctor and Student* where issues of error in the Chancellor's conscience are dealt with. Ultimately, St German once again reinforces how the Chancellor is bound to higher requirements even than the judges as he cannot pass a judgment that is against his own knowledge.⁵²² The Chancellor is appointed by the King for his wisdom and his own good conscience, but the issue is that the common law is sufficient to order conscience without

⁵¹⁹ Ibid, 122.

⁵²⁰ Ibid, 123.

⁵²¹ Ibid.

⁵²² Ibid, 124.

recourse to *subpoena*, yet as the common law is built upon the laws of God and reason it is sufficient to guide conscience in and of itself, but it will not always provide a practical remedy.⁵²³ However, if the Serjeant takes a definition of the common law that does not include the laws of God and reason and just takes account of customs, maxims, general rules of law and procedural rules used in the Kings Bench and Common Pleas, that is not sufficient to order conscience.⁵²⁴

3.4 Chapter Summary

Hence, for St German, in his theory of law conscience exists in the common law as a pre-existing common law ideal. Thus, securing the common law's primacy in the realm. There is no turning to a foreign jurisdiction involved, as the English common law is the realisation of God's law and the law of reason within the realm. Also the scene has been set to advance and extend the legitimacy of the supremacy of the King-in-Parliament as, the authority of the Chancellor is not set against the authority of the common law, as the Chancellor derives his very authority from the King and his Parliament. The Chancellor exercises his power and discretion within the procedure of the law of the realm. As Haigh has noted, the common lawyers' (including St German's) 'assertion of common law supremacy predisposed lawyers to value national sovereignty above papal authority, and parliamentary jurisdiction above ecclesiastical independence.'⁵²⁵ Here we can see some glimpses of how the debate over the jurisdictional parameters between the canon and common laws would map onto the broader practical issues evolving from the repudiation

⁵²³ Ibid.

⁵²⁴ St German, *Writs of Subpoena*, 125.

⁵²⁵ Haigh, *The English Reformation Revised*, 211.

of papal power within the realm. For St German, the King and his Parliament present the potential solution to these issues and indeed in his work of 1531 – *New Additions* – which preceded both the *Replication* and *Writs of Subpoena*, St German had already begun to more forcefully establish and explain the justification for vesting such power with them and it is to this theme that we will turn in chapter five. However, before considering these issues further we turn to the pamphlet war waged between Thomas More as incumbent Chancellor and St German between 1532 and 1534 as the issue of conscience (and the jurisdictional battle between canon and common lawyers) once again emerged within the writings of both men.

4.1 The Controversy between Christopher St German and Thomas More

The life and career of Sir Thomas More has been expansively documented and it is not relevant to the scope of this study to explore it further here in anything other than the briefest of detail.⁵²⁷ However, More's approach to the relationship between law and religion is extremely relevant to this thesis, and even more so is Guy's so-called 'battle of the books' which he engaged in with St German between 1532 and 1534. According to Cummings, More stands as 'an icon of private rights against public good, individual freedom against tyranny, conscience against the letter of the law.'⁵²⁸ Though, ironically, he would not have extended these sorts of private rights to those he himself considered heretical.

⁵²⁶ It was Guy in *The Battle of the Books* who coined this phrase.

⁵²⁷ For a varied account of More's life and career see Peter Ackroyd, *The Life of Thomas More* (London: Vintage, 1999); Raymond W. Chambers, *Thomas More* (Brighton: The Harvester Press, 1982); John D. Derrett, "The Trial of St Thomas More," *English Historical Review*, 79, no. 312 (1964): 449-477; the essays on More from Elton in Geoffrey Elton, *Studies in Tudor and Stuart Politics and Government*, 4 vols. (Cambridge, CUP, 1974-92); John Guy, *The Public Career of Thomas More* (Brighton: The Harvester Press, 1980); John Guy, *Thomas More* (Oxford: OUP, 2000); John Guy, *A Daughter's Love: Thomas and Margaret More* (Boston: Houghton Mifflin Harcourt, 2009); Henry Ansgar Kelly, Louis W. Karlin and Gerard. B. Wegemer, *Thomas More's Trial by Jury: A Procedural and Legal Review with a Collection of Documents* (Cambridge: CUP, 2011); Richard Marius, *Thomas More: A Biography* (London: Phoenix Giant, 1999).

⁵²⁸ Brian Cummings, "Conscience and the Law in Thomas More," *Renaissance Studies*, 23, no. 4 (2009): 483.

Following the fall of Cardinal Wolsey, More was appointed as Chancellor of England in 1515, a position he held for fourteen years. Arguably, it was More's resignation from the Chancellorship in May 1532 which paved the way for 'the radical policy espoused by Thomas Cromwell [which] had dominated the Council.'⁵²⁹ More was one of only a handful of non-clerical men to hold the office since its institution and the first non-clerical chancellor in England for over sixty years. Yet despite this and despite his training in common law, More was not a revolutionary when it came to dealing with matters of the law. He preferred the *status quo* and rather saw any significant upheaval in the balance of authority between the spiritual and temporal spheres as simply opportunities for heresy to flood the realm.

For example, when it came to the notion of conscience, so carefully remolded by St German in the service of the common law, for More conscience was:

not independent of truth values, indeed conscience is itself a kind of truth condition. Just as God enables the church in general to know the truth of God's revelation through its accordance with the teaching of tradition, so the individual human is guaranteed access to this truth through the mediation of his conscience in accordance with the teachings of the church.⁵³⁰

Thus, for More, the truth of moral life was only accessible via the traditional teachings of the Church, and for him this was the Roman Catholic Church and not some national English Church operating under the headship of the King and Parliament. Ultimately, he would die for these beliefs and, ironically, for upholding what he saw to be the only way he could act in accordance with conscience. His dedication to his faith has often been misinterpreted by some. De Silva notes that More was 'ever the dedicated Christian

⁵²⁹ Elton, *Policy and Police*, 179.

⁵³⁰ Cummings, *Conscience and the Law*, 483.

humanist' and that if we fail to understand this is 'to misunderstand him and to make him a fanatic, a reactionary, and a humanist writer who completely lost his control and whose voluminous writings should be dismissed not only as boring but insane.'⁵³¹ Gregg's work explains why More may have chosen the path that he did, as he speaks of the fundamental changes wrought not only to religion in this period, but also to the law. Henry VIII and his advisor saw that 'ending the Catholic Church's judicial and legislative autonomy would make it legally impossible under English statute and common law to argue that parliamentary acts did not bind all the King's subjects.'⁵³² This would have significant ramifications for the success of the King's 'Great Matter,' yet it was a movement that More could not conscientiously support. Between 1532 and 1534 whilst More was engaged with his pamphlet war against St German (and others), Cromwell orchestrated the legislative campaign (discussed earlier in chapter two) which severed ties to the Church and which must have seemed to More as both a legal and spiritual travesty. More resigned his position as Chancellor on 16 May 1532 the day after the Church's Convocation agreed to the *Supplication of the Commons against the Ordinaries (Submission of the Clergy)*, which recognised, as noted, Henry as the Head of the Church in England. However, More's resignation did not signal the end of his public life.

⁵³¹ Thomas More, *The Last Letters of Thomas More*, ed. Alvaro de Silva (Grand Rapids, Mich.: William B. Eerdmans, 2000), de Silva's *Introduction*, 7; See also Rex's exploration of More's approach to heresy, see Richard Rex, "Thomas More and the Heretics: Statesman or Fanatic?," in *The Cambridge Companion to Thomas More*, ed. George M. Logan, 93-115 (Cambridge: CUP, 2011).

⁵³² Samuel Gregg, "Legal revolution: St Thomas More, Christopher St. German. and the schism of King Henry VIII," *Ave Maria Law Review*, 5, no. 1 (2007): 186.

Despite relinquishing his office, More still saw that he had work to do as an advocate of his faith, which was under attack, and he fought a pamphlet war not only with St German, but with Tyndale (regarding Scripture) and with Fish (regarding the clergy – *Supplication to the Beggars*). On 12 April 1534, More was summoned to appear at Lambeth Palace to take the *Oath of Succession*. At the palace the next day, after reviewing the oath and the *Act of Succession*, he spoke to the commissioners present and confirmed that, although he did not deny anything stated in the documents, his conscience would not allow him to swear the oath. More went on to refuse to swear the oath a second time and within the week was confined to a cell in the Tower of London.

His works between 1532 and 1534 cannot but have helped to pave his way and indeed both Gregg and Guy have noted that St German was a dangerous man to be involved in a dispute with.⁵³³ It is to these works that we now turn. The ‘battle of the books’ between St German and More is made up of the following texts: (i) St German’s *The Division* (1532); (ii) More’s *Apology* (1533); (iii) St German’s *Salem and Bizance* (1533); (iv) More’s *Debellation of Salem and Bizance* (1533/4); and finally, (v) St German’s *Additions of Salem and Bizance* (1534). The main issue which was reprised throughout each of the texts surrounded the canonical *ex officio* procedure in relation to cases of heresy. This procedure will be briefly explained in the chapter. Though St

⁵³³ Gregg notes that: ‘St German was considered sufficiently dangerous by the Catholic opposition to Henry VIII that his name was included on the list of dangerous heretics drawn up by the clergy in 1536.’ Gregg, *Legal Revolution*, 191. Guy notes that: ‘St German was a dangerous man because man because [...] he had, in *Doctor and Student*, constructed a brilliant, comprehensive and systematic theory within an English context, something miles ahead of a mere amalgamation of separate theories or proposals.’ Guy, *The Battle of the Books*, 10.

German made a great many complaints regarding the relationship between Church law and common law more broadly, and the abuses of the clergy of their clerical privileges (which for St German prompted the division between the temporal and spiritual spheres and threatened to do worse if set unchecked), More preferred to focus rather more squarely on St German's complaints against the heresy proceedings. St German argues, of course, in support of significant reform of clerical power and authority in relation to matters which he considers temporal and, therefore, rightly within the remit of the temporal authorities, i.e. the King and Parliament. We see specific reference to the authority of the King and Parliament throughout these works. As Rockett notes:

[t]he Church's revenues, including tithes, fines, and grants, are, like all revenues, temporal goods and as such fall under the authority of the king in parliament. The Church, therefore, can claim no legitimate right to temporal possessions except by parliamentary license.⁵³⁴

St German considered the need for a radical overhaul of the canonical heresy procedure within the realm. More champions the position of the *status quo* and the traditional authority of the Church, arguing that St German is rather fanning the flames of division, than trying to put them out. He sees any radical overhaul of the heresy procedure as rather more likely to induce a flood of heresy within the realm, rather than containing and overwhelming it. Thus, defending the practices and authority of the ecclesiastical courts and in particular the authority of the Ordinary (bishop) in cases of heresy.

⁵³⁴ William Rockett, "More and St German: *Ex Officio* and Lay-Clerical Division," *Moreana*, 34, no. 129 (1997): 21-43.

4.2 The Ex Officio Procedure for Heresy

A Treatise concerning the Division between the Spirituality and the Temporality (1532)

In 1532, St German wrote *A Treatise concerning the Division between the Spirituality and the Temporality*. The work was published by King's printer Thomas Berthelet. The text continued the attack on clerical privileges begun in the *New Additions* and argued that no greater or less favour should be shown to the clergy under the law. The treatise aimed to demonstrate what divisions had arisen between Church and state and what reforms were required to restore unity. 'The wedge that St German was beginning to drive between temporal and spiritual authority in *Doctor and Student* was becoming an open wound in the *Division* and a host of other works that follow it such as *Salem and Bizance*,⁵³⁵ and it was enough to spark More's ire. As Rockett summarises, the centrifugal argument in *The Division* was that 'the clergy's claim to incontestable authority is the chief matter dividing laity and clergy' and this point is 'embodied in the clergy's claim to be exempt from prosecution in the civil courts.'⁵³⁶ After setting out the cause of the division as he saw it in chapter one of *The Division*, St German dedicated the remaining fifteen chapters of the work to setting out the excesses of the clergy and how they had acted in contravention of their duties to the laity.

One cause of the division for St German existed in the manifold *ex officio* cases in the spiritual courts. Something which had similarly troubled the Commons in their *Supplication against the Ordinaries* (1532). St German dedicates two chapters in the text

⁵³⁵ Cummings, *Conscience and the Law*, 447.

⁵³⁶ Rockett, *More and St German*, 25.

to a consideration of these types of cases (chapters seven and eight). As Rockett notes, St German:

remarked that people were driven to purge and do penance on suspicion of heresy, that secret accusers and witnesses were used in heresy trials, and that often there was no distinction drawn between erring innocently and erring obstinately. It was a great peril, he reasoned, for the clergy to have the power of arresting for every light suspicion or accusation.⁵³⁷

The *ex officio* procedure was a general inquisitorial legal procedure of the Church courts originating in the twelfth to thirteenth-centuries and used in relation to various types of cases. It was not specific to heresy proceedings.⁵³⁸ For example, Kelly confirms how ‘all of Henry VIII's annulment trials were inquisitions.’⁵³⁹ As Oakley notes, ‘[n]o centralized prosecution of heresy ever existed for all Christendom; and it certainly never existed for all England.’⁵⁴⁰ Indeed, in England there was no actual definition of heretical behaviour either. The word ‘heretic’ meant ‘one convicted of heresy who is obstinate, impenitent, that is, refuses to abjure or is a repeat-offender.’⁵⁴¹ Once deemed heretical by the bishops or papal legates of the Church courts via the *inquisitio ex officio*, the secular arm would then take over to punish the offender, usually through execution by burning. The *ex officio* procedure was meant to be better than the alternative procedure, that of

⁵³⁷ Ibid, 23.

⁵³⁸ Though it was not used in ‘civil’ actions or instance cases, with plaintiff’s bringing their cases against defendants. Henry A. Kelly, “Inquisition and the Prosecution of Heresy: Misconceptions and Abuses,” *Church History*, 58, no. 4 (1989): 441.

⁵³⁹ Ibid.

⁵⁴⁰ David R. Oakley, “English Heresy Procedures in Thomas More’s Dialogue Concerning Heresies,” *Thomas More Studies*, 3 (2008): 70.

⁵⁴¹ Ibid, 71.

accusation/*accusatio*, in terms of fairness to the accused. *Accusatio* was the oldest criminal procedure and derived from Roman law.⁵⁴² Oakley summarises that under accusation, ‘a private party would accuse someone of a crime and attempt to prove it.’⁵⁴³ Within this procedure, the judge would not take sides but would judge upon the outcome of the case between plaintiff and defendant as two independent parties. With respect to the inquisitorial procedure, this required what was known as a *publica fama*, a ‘reputable opinion that a certain person is guilty of a given crime.’⁵⁴⁴ As Oakley notes, ‘[h]ere one finds the advance in procedural fairness. *Fama* takes the place of the accuser; and the judge himself levels the charge and prosecutes the case.’⁵⁴⁵ It was up to the judge to ensure that an adequate *fama* existed via the testimony of ‘substantial witnesses.’⁵⁴⁶

St German does not seem to be wholly aware of the procedure by *inquisitio ex officio*. According to St German, the use of this procedure had caused many to resent the Church and in particular the ecclesiastical judges.⁵⁴⁷ He criticises the procedure, claiming

⁵⁴² Kelly, *Inquisition*, 853. Other than *inquisitio* and *accusatio*, the other criminal process in ecclesiastical tribunals is, of course, the *denunciatio*. As Kelly notes, compurgation was also possible up through the twelfth-century. By this process, a judge would summon the suspect and charge him with the crime suspected. If the accused denied the charge, it was then up to him to find the requisite number of reliable character witnesses to swear for him. Should he not manage to do this, he would be assigned penance to complete. *Ibid.*

⁵⁴³ Oakley, *English Heresy Procedures*, 71.

⁵⁴⁴ *Ibid.*

⁵⁴⁵ *Ibid.*

⁵⁴⁶ Kelly, *Inquisition*, 853.

⁵⁴⁷ St German, *The Division*, 188-89.

that it can lead to serious miscarriages of justice.⁵⁴⁸ Instead, he suggests that to overcome these issues, the bishops should show such cases to the ‘Kynge and to his counsaylle.’⁵⁴⁹ St German continues this line of argument and states that although it is not within the temporal jurisdiction to enquire into potential heresies, yet it is difficult for the spiritual jurisdiction to redress the issue without recourse to the temporal. He states that it is the duty of the temporal power to be ready to oppress heresy when it arises. Further, it is stated that the spirituality may not take all the credit for suppressing such behaviour.⁵⁵⁰ Once again, as in his earlier writings, we see a further attempt to significantly restrict the Church's jurisdiction and power, and here an explicit transfer of this power to the King-in-Parliament.

St German claims that his intention is not to prove that the Church's laws are wholly cruel and unreasonable, and even argues that the discretion of the spiritual judges can act equitably, in that they serve to temper the harshness of these laws. Yet he warns of problems should the laws be put in the hands of cruel judges who would punish innocents as well as offenders. He speaks of how, whether this be the case or not, the common people do believe this type of behaviour of most spiritual judges. The people believe that spiritual judges act not from zeal and love of faith, but to oppress those who speak against the clergy holding worldly materials and wealth. He says that even though a priest may hold the requisite virtues for a spiritual man, it is unlikely that he will not also wish for the worldly wealth of priests and for preference to be shown to them.⁵⁵¹ He

⁵⁴⁸ Ibid, 189.

⁵⁴⁹ Ibid, 190.

⁵⁵⁰ Ibid.

⁵⁵¹ Ibid. 190-91.

then moves on to say that it is a weight on the King and Parliament's consciences, and that they should not let this division continue.⁵⁵² Thereby, identifying the authorities with the power to do something about these issues.

St German notes that it is common opinion amongst the Doctors of the Church that he who errs in ignorance cannot be a heretic, and discusses the *Summa Rosella*, i.e. the *Summa* of Baptista Tromovara (a manual on conscience), which he states confirms in the title *hereticus in principio* that a man may err, but merit by it.⁵⁵³ Tromovara (according to St German) puts forwards an example: 'If a symple vunlerned man here the preachyng of his byssshop / that preacheth happly agaynst the faithe / and he beleueth it with a redy mynde to obey : this man meriteth yet he erreth : but that is to be vnderstonde where ignorance excuseth'⁵⁵⁴ Therefore, it is not enough to prove that a man is a heretic because he holds opinions against what the Church teaches, if they are simple and unlearned and have taken their opinions over from somebody else.

St German then discusses the process for examining heresy and how alleged heretics are held attained without the examining of the intent or cause of their heretical sayings – and whether they had a mind to be reformed or not. He, therefore, is speaking

⁵⁵² Ibid, 191.

⁵⁵³ Ibid, 191-92. This is a familiar source of St German's, employed by him in *Doctor and Student* also. The *Summa Rosella* is a canonist manual on conscience expounding the traditional orthodox theory of the relationship between the secular law and conscience. With respect to his use of such sources, Barton suggests that '[w]hat he did in fact, was to follow his authorities save where they adopted what he considered to be unsound views on the relationship between spiritual and secular powers, or, it is sad to have to confess, where he misunderstood them and reasoned in a manner which can most charitably be described as original.' St German, *Doctor and Student* (Barton's *Introduction*), xxviii.

⁵⁵⁴ St German, *The Division*, 192.

of an examination of the conscience of the offender being of importance in these cases, he sees the crux of the matter as lying with the 'desire' and the 'intent' rather than the consequence of the act, as the current procedure seems to him to focus on. This is more in line with Chancery procedure (and the normal interrogatory procedure of the Church during the process of ecclesiastical church tribunals).⁵⁵⁵ St German confirms that spiritual men seem to desire the punishment of lay men and until this is no longer the case the division will not be healed, and that they should request the assistance of the secular power in cases of heresy. Once again, the suggestion is made that 'it wyll be ryghte expediente, that the kynges highnes and his counsaylle loke specyally vpon this matter, and nat to ceasse / tylle hit [*sic*] he brought to more quietnes than it is yet.'⁵⁵⁶

The Apology (1533)

Kelly notes that:

St German appeared to understand nothing about the inquisitorial system. He assumed that the standard ecclesiastical trial against heresy, which he called the 'suit *ex officio*' (and More 'follows suit' in this terminology), consisted of the bishop's summoning a suspect on the basis of secret information and convicting and punishing him without further ado, with no revelation of the identity of the informant or informants. St German wanted to substitute for this system a process whereby an informant would reveal himself and play an active role as an accuser. St German probably wanted nothing more than for the informant to come out into the open as a witness, not realising or not admitting that this was exactly what happened in an inquisition when the suspect denied the charge. More understood him to be calling for the formal process of accusation to be used instead of inquisitorial procedure.⁵⁵⁷

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid, 193.

⁵⁵⁷ Kelly, *Inquisition*, 854-55.

Thus, pretending to be unaware of the identity of the author of *The Division*, More responded forcefully with his *Apologye of Syr Thomas More Knyght* (or his *Apology*), of 1533. Guy describes the *Apology* as a ‘blockbuster which left no stone unturned in the battle first to defend the traditional privileges of church and clergy, and secondly to discredit both St German's actual case and his reasons for making it.’⁵⁵⁸ More was motivated by a desire to maintain social order, which he saw as at risk through such writings, and the risk of the spread of heresy. Hence, his preoccupation with this issue throughout his refutation. He defended the position of the Church and ‘its decisions guided by divine wisdom and the cumulative sapience of its doctors for a millennium and a half.’⁵⁵⁹ For Rockett:

His tactical point seems clear enough: *ex officio* powers, More is saying, are all that stand between the kingdom and imminent spiritual ruin. He had already demonized the heretics, particularly Tyndale and Luther, and now, as he turned to address the author of the *Diuision*, he wished to affirm episcopal authority and to represent the bishops' *ex officio* powers as England's only hope against the infection of heresy.⁵⁶⁰

St German's work was only the tip of the iceberg when it came to the flurry of works that were being written and published at home and on the continent that More felt it personally necessary to refute and it must have at times have seemed an overwhelming task to ward off what must have looked like an oncoming storm, yet he persisted anyway. Indeed, the *Apology* was not only styled as a response to St German's work, with the first third of

⁵⁵⁸ Guy, *The Battle of the Books*, 6.

⁵⁵⁹ More, *Apology* (Trapp's *Introduction*), xx.

⁵⁶⁰ Rockett, *More and St German*, 29.

More's response directed mainly towards Tyndale (chapters one to ten⁵⁶¹). The remainder of the response, which is dedicated to refuting the criticism levelled at the Church in *The Division's* sixteen chapters, runs to an extensive forty chapters into which are intermingled refutations of the various points of criticism raised by St German, who he terms as 'the Pacifier,' against the clergy and a defence against particular attacks by 'the Bretheren' against More's own behaviour in relation to alleged heretics. As Trapp, in his introduction to his 1979 edition of the work states, 'the division in the argument was repugnant' to More and further that 'it was an argument that he felt had to be answered.'⁵⁶² For the *Apology* represents not only a 'defense [*sic*] not only of his and the church's position, but of [More's] own integrity.'⁵⁶³ Indeed, it is beyond the scope of this study to examine all of More's arguments in full depth and reference can only be made in an effort to summarise some his specific refutations against St German's previously identified attacks on the Church and clergy in *The Division*, in particular relating to the issue over the *ex officio* procedure.

It is only in chapter forty of the *Apology* that More arrives at St German's criticism of the *ex officio* procedure of the Church. More confirms that he does not wish to speak of the procedure generally, containing his comments to a discussion of heresy and defending the anonymity of aspects of the procedure and reference to hearsay evidence in these cases. He does this by claiming that a man is more likely to confide secret

⁵⁶¹ Unfortunately, it is not within the remit of this study to investigate this to any great length. However, the Introduction to Trapp's edition of *The Apology* does provide some explanation on this part of More's response (lxvii-lxxiii).

⁵⁶² More, *Apology* (Trapp's *Introduction*), lxvii.

⁵⁶³ *Ibid*, xx.

information to a judge if he knows that he is doing so anonymously than he would do if he knew that he was giving the information openly.⁵⁶⁴ More uses his personal experience of cases in temporal law ‘of mych other oppresyion vsed by some man [...] in a shyre, whereby all theyr neyghbours sore smarted / and yet not one durste openly complayn.’⁵⁶⁵ If the spiritual law is to be changed in this regard then, according to More, the temporal law should also be altered.⁵⁶⁶ More fears that if the procedure of accusation should be followed, as St German seems to propose in *The Division*, then the realm would be at risk of a swarm of heresy. Thereby, More succeeds in his aim ‘to turn the Pacifier’s argument into an agenda for removing the barriers against heretics, leaving them free to swarm through the kingdom while the spiritual courts were held in check by the shackles of open accusations.’⁵⁶⁷ Also by limiting his discussion to the *ex officio* authority of bishops he is also:

‘effectively narrowing the scope of his dialogue with St German and making certain that the powers and duties of the spiritual judiciary would at least in part displace the main premise of the *Diuisio*n, which was that the spiritual and temporal spheres were being torn apart by unprecedented division.’⁵⁶⁸

More also defends the use of testimony of ‘knowen euyl persons to be receyued and taken in heresy’ cases by further reference to similar procedures used in the temporal law.⁵⁶⁹ As noted by Gregg, for More; ‘heresy under canon law [...] is the religious

⁵⁶⁴ More, *Apology*, 130-31.

⁵⁶⁵ *Ibid*, 131.

⁵⁶⁶ *Ibid*, 132.

⁵⁶⁷ Rockett, *More and St German*, 29.

⁵⁶⁸ *Ibid*.

⁵⁶⁹ More, *Apology*, 136.

equivalent of treason.’⁵⁷⁰ In More's own words; ‘heresey, wherby a chrysten man bycometh a false traytour to god, is in all lawes spyrytuall and temporall both accompted as great a cryme as is the treason commytted agaynst any worldly man.’⁵⁷¹ More argues that the testimony of such men is accepted in cases of treason and in cases involving a charge of murder, so why should it not, therefore, also be used in cases of heresy? Evil men do not make a habit of confiding their evil deeds to anyone other than other evil men, More observes practically. In summary, in cases of heresy, More diplomatically suggests that the spiritual and temporal jurisdictions should ‘well stand togyther [...] and so haue they in these matters of heresy god be thanked hytherto full well.’⁵⁷² As Guy notes, to allow heretics to accumulate would lead to the subversion of the Catholic faith, with the result that ‘mankind would be faced with the vicissitudes and misfortunes that sprang from God's vengeance.’⁵⁷³

More also defended the workings of the ecclesiastical courts and their jurisdiction and he supported the ‘two swords’ theory by which the ecclesiastical and secular arms enjoyed independent jurisdictions with their own autonomous courts and powers.⁵⁷⁴ In the *Apology*, More refutes the validity of the Pacifier's claim that though he does not believe the heresy laws to be wholly cruel and unreasonable but nevertheless he ‘lays the cause [of division] to be, for that the judges if they be good and charitable may by their wisdom and goodness moderate and temper the rigour of the laws but on the other side

⁵⁷⁰ Gregg, *Legal Revolution*, 198.

⁵⁷¹ More, *Apology*, 136.

⁵⁷² *Ibid*, 140.

⁵⁷³ Guy, *Battle of the Books*, 14.

⁵⁷⁴ Gregg, *Legal Revolution*, 197.

the evil judges may do by those laws [...] much harm.⁵⁷⁵ More responds by questioning what laws are there which, if abused by evil judges, would not do harm? More accuses the Pacifier of inciting men to believe that there are no good judges amongst the clergy. It is rejected by More that the clergy ‘make great confederacyes amonge theym, to make & maynteyne a parte agaynst the temporaltye and by suche confederacyes, and worldely polycyes, and straight correccyons, to rule the people and punysse them and keep them vnder.’⁵⁷⁶ Once again, More reinforces the idea that the clergy in the provinces are not the ones that are making the laws of the Church but that they are the ‘laws vsual thorow the whole chyrch of Chryst.’⁵⁷⁷ More considers it a blatant lie of the Pacifier's to maintain that the clergy abuse those laws towards cruelty and that there is ‘no great cunnyng in the makynge of that lye.’⁵⁷⁸ In relation to the provincial constitutions of the Church, More argues that they are not as unreasonable as they are made to seem in *The Division* and that there are no constitutions that have been created in the recent past that the Pacifier can be referring to. St German would of course construct a whole treatise on this issue in his *Constitutions Provincial* (chapter five).

The suggestion in *The Division* that the King and his council should look at cases of heresy is then discussed. More notes that in *The Division* the Pacifier confirms that this could be brought about using two devices; (i) by only allowing to the office of judge to those that have no worldly interest and who are not proud or covetous, and (ii) that the bishops shall not arrest a man for heresy until the desire that spiritual men have to punish

⁵⁷⁵ More, *Apology*, 141.

⁵⁷⁶ *Ibid*, 143.

⁵⁷⁷ *Ibid*, 144.

⁵⁷⁸ *Ibid*.

men for heresy is gone. More argues that once again the only evidence that is invoked by the Pacifier is that of ‘*some say*’ and that until there is better evidence, then the King and his council would make little of this device. He also confirms that if all the current judges of heresy were to be rejected this would then leave the door open for heresy to flourish ‘and make mery for a lytle season.’⁵⁷⁹ In relation to the second argument that the bishops should not arrest a man for heresy, More contends that this risks the possibility that wilful offenders will go unpunished. More summarises by confirming once again that if heresy is to be controlled then the spiritual jurisdiction must have the support of the King and of the temporality in general.⁵⁸⁰ Therefore, it seems that within the *Apology*, it was More’s objective to ‘alter the direction of the dialogue and revise the main points in dispute, hoping to turn his learning and persuasive powers to a defense [*sic*] of the spiritual jurisdiction and of the canons having to do with heresy and the prosecution thereof.’⁵⁸¹

Salem and Bizance (1533)

St German's response to More's *Apology* arrived hot off Berthelet’s press in September 1533 and signalled his return to the dialogue format. In *A Dialogue Between Two Englishmen, Whereof One Was Called Salem and the Other Bizance*, or more succinctly *Salem and Bizance*. St German’s protagonists once again became a doctor and a student

⁵⁷⁹ Ibid, 152.

⁵⁸⁰ ‘I lytle doute but that yf the kinges hyghnesse do as I doute not but hys hyghnesse wyll do, maynteyne & assyste the spyrytualty in executyng of the lawes, euyne those that are all redy made agaynst heresyces / and commaunde euery temporall offycer vnder hym to do the same [... then this will cause] both innocentes to be saued [...] and offendours punyshed to.’ Ibid, 155.

⁵⁸¹ Rockett, *More and St German*, 31.

and were so named (as St German clarifies in the last chapter of the work) after Jerusalem (*Salem*) and Constantinople (*Bizance*).⁵⁸² The introduction to the twenty-fourth chapter of the text establishes that the title characters are engaged in a discussion on the topic of More and St German's dispute. Bizance confirms that he has a book which will enlighten Salem with regards to More's *Apology*. Fundamentally, the work continues (somewhat repetitively and at other times inserting fundamental new material) the central dispute from the *Apology*, but it is not until the fourteenth chapter of the work that we meet with the text's central argument, a return to the conflict between More and St German's respective position with regard to the law of heresy and the *ex officio* procedure of the Church courts. The first thirteen chapters are short in comparison running to a total of twenty-five pages in the authoritative modern printed edition and individually deal with the various other matters More takes St German to task over in the *Apology*, or deal with issues that St German complains that More is trying to obfuscate and ignore by simply focussing in on the issue of the *ex officio* procedure.

It is only in chapter fourteen that St German demonstrates just how intensely impassioned, personal and technical the arguments between the pair were, and also rather self-indulgent and self-involved considering that there was an expectation of a broader readership for the works. In this chapter, he begins the discussion with the issue of those

⁵⁸² Guy notes that Trapp offered a few potential explanations for the naming of these characters beyond St German's own explanation: 'Either Bizance may be a punning reference to a famous patriarch of Constantinople, St Germanus (c. 674-733), or the title *Salem and Bizance* may deplore the fact that Christendom was rent by internal squabbles, as between More and St. German, while the two greatest Christian shrines, Jerusalem and Constantinople, languished in the power of the Turk.' Guy, *Battle of the Books*, 7.

who fall into potential heresy through errors of simplicity or ignorance. He refers to chapter eight of *The Division* and his comments on how some doctors say that no-one is a heretic if he is simply in error. St German says that he who ‘ereth by simplicitie, may in no wise be seyde an heretike.’⁵⁸³ He criticises that the Church will, nevertheless, ‘driue hym to abiure, or holde hym atteynted, without examyninge the intente or cause of his sayeng.’⁵⁸⁴ He confirms that from this More has construed that by this St German makes his readers believe that the spirituality cruelly handle the laity and that the world wonders and grudges at this. St German defends that he has never said this and once more ‘meruaylle[s] moche.’ He says that his words do not prove that all the world wonders at this cruelty but merely that it would be a pity *if* it were true (as reported) that there is such a desire in spiritual men to have men abjure and for there to be over-extreme punishment for heresy.

Feeling that his point on this issue has not been sufficiently made, he expands further:

And where I sey ferther in the saide treatise, that if any wyl wytnes that a man hath spoken anything, that is heresie though he speke it of an ignorance, or of a passion .&c.⁵⁸⁵ that he shall be driuen to abiure: master More denieth not those wordes, but anone he takes those wordes, as thoughe I had spoken them of dampnable and obstinate deedly passions, where the lettre serueth plainely for passions of ignoraunce, frailtie, and that be done for lacke of good aduysemente.⁵⁸⁶

⁵⁸³ St German, *Salem and Bizance*, 351.

⁵⁸⁴ *Ibid*, 352.

⁵⁸⁵ Indicating ‘etc.’

⁵⁸⁶ *Ibid*.

St German attacks the way More has argued his point. He says that More has attempted to ‘blynd the reders’ and further to ‘couert the truth the more’ by referring to the ‘passion of ire and anger’ and how this leads men to such ‘damnable’ deeds as manslaughter. But, St German, a writer who at every opportunity attempts to condition his readers to his will, counters that a man may also ‘have a light passion of anger and yet have no wil to slee no man.’ This St German argues shows how ‘a man may speake lighte wordes of heresie, and yet fall not fro the true catholike feith.’⁵⁸⁷ St German further confirms his position as he states that More claims that he cannot gather what St German would do with such men who speak no words of heresy and yet think it in their minds. The work treads on dangerous ground here as St German counters that if More will challenge the sayings of doctors that a man may speak words of heresy, and yet not be a heretic, but will defend his (More's) own heresy. By this St German innocuously yet openly accuses More of heresy. To compound matters, St German admonishes More that he should ‘take peine to aske that question of other great learned men, as he [More] is: that can beste skill of that matier, & can best folowe the mynde of the auncient doctours, that haue spoken thereof before their tyme.’⁵⁸⁸ Here, not only does St German offer an admonishment to More, he turns More's very own defence of the laws of the Church (that they are ancient and universal) back on him, supporting the ancient and respected knowledge of the doctors which St German at other times (i.e. whenever it so suits him) rejects. St German then changes tack completely, as if this is some scholarly game, and says that he knows not

⁵⁸⁷ Ibid.

⁵⁸⁸ Ibid, 353.

one heretic in the realm, despite the claims that there may be many, he cannot ‘with conscience iudge or report, that this man or that manne is an heretike.’⁵⁸⁹

He moves on to warn of any man reporting such words lightly and speaks of the ‘dangerous time, while this diuision continueth.’⁵⁹⁰ Any ordinary, upon hearing a report of such words should ‘aduisse him to kepe the matter secrete, if it yet be a secrete, and not openly knowen: and that he shal [...] charitably aske of him [the accused], what he mente by these wordes.’⁵⁹¹ With this, St German establishes certain scenarios containing some practical advice for any man faced with someone he feels may be a heretic:

1. if the accused makes a reasonable answer, and by this answer it is clear that he has no answer to make to the accusation, the matter is closed;
2. if the accused avows the words and they are indeed against the catholic faith, then he should be instructed by his potential accuser and warned accordingly;
3. if the accused will still not retract his opinion and remains obstinate and will not accept charitable guidance, the accuser should go at once to the Ordinary;
4. the Ordinary should then send for the man (not as a heretic) to inquire further. If the man remains obstinate, and the Ordinary has sufficient proof or the accused's own confession, then he can be deservedly punished;
5. if he will be ‘secretly reformed’ by the Ordinary then he may depart without any open penance; and

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

⁵⁹¹ Ibid.

6. if he is such a man that the accuser and the Ordinary dare not speak to him then the Ordinary should inform the King and council of it.⁵⁹²

St German believes that this procedure would help the people to see that the spirituality does not handle men cruelly for heresy, and he leaves with a warning: ‘no euil is to be done, that good shulde folowe.’⁵⁹³ As we shall see, More does not treat these suggestions kindly in his response. However, this suggestion looks very much like the process of fraternal correction under the *denunciatio* procedure (previously discussed). Barton notes that St German may well have been familiar with this process on the basis of his legal studies, but Kelly argues that this ‘connection is not evident.’⁵⁹⁴ Kelly also argues that part four of St German’s suggestion, seems to suggest a ‘secret trial’ as St German does not ‘specify what “proofs” the Ordinary should use to convict him if the suspect denied what “the other” has reported.’⁵⁹⁵

Chapter fifteen sees St German continue the debate on the issue of the *ex officio* procedure of the Church courts. He notes that More claims in his *Apology* that if the procedure was to be abandoned ‘the stretes were likely to swerme full of heretikes.’⁵⁹⁶ St German counters this and confirms that a case of heresy does not come about unless there is an accuser. ‘For if it [the heresy] be a secrete in his owne breste, none can be his iudge but god only, that is the sercher of a mans heart.’⁵⁹⁷ Further to this, if an accuser will not

⁵⁹² St German, *Salem and Bizance*, 353-54.

⁵⁹³ *Ibid*, 354.

⁵⁹⁴ Kelly, *Inquisition*, 855.

⁵⁹⁵ *Ibid*.

⁵⁹⁶ St German, *Salem and Bizance*, 355.

⁵⁹⁷ *Ibid*.

come forward publicly and declare himself as such, then ‘it is to think that he doth it of some malice or craft rather than for the truthe of the mattier.’⁵⁹⁸ He argues then that if the accuser dares not declare it for fear of his life, he has already provided a suitable solution to this scenario in the preceding chapter. To ensure his protection, such an accuser should take the matter directly to the King and council who will make adequate provision. However, St German notes that More has not denied that this is a convenient remedy and yet he has not arranged legal provision for such cases. According to St German, witnesses in heresy trials should publicly declare themselves, and if there is no such public declaration in a case then it may very well be that the accusation stems only from malice or a grudge between the accuser and accused. In addition to this, if a man could know his accuser then he may be able to successfully denounce the accusation as such.

St German then continues with his argument concerning the law *Ex de haereticis c. Ad abolendam*, which he discussed in chapter seven of *The Division*.⁵⁹⁹ He comments

⁵⁹⁸ Ibid.

⁵⁹⁹ Lucius III, *Ad Abolendam, Decretals Gregorii IX (Liber Extra)* 5. 7. 9. This refers to the process of purgation which had been laid down by then Pope Lucius III in 1184 at the Council of Verona. Here it was ‘decreed that anyone clearly taken in heresy was to be handed over to the secular authorities to be duly punished, unless he abjured, and the same was true of one who was found to be heretical by suspicion alone, unless he could demonstrate his innocence by suitable purgation. The process of purgation consisted of the suspect swearing to his innocence of the charge, accompanied by a certain number of acceptable witnesses, called compurgators, who would swear to their belief in his innocence. This [...] was the only stipulated way in which reputed heretics were to be tried in court’. Henry A. Kelly, “The Fourth Lateran *Ordo* of Inquisition Adapted to the Prosecution of Heresy,” in Donald S Prudilo ed. *A Companion to Heresy Inquisitions*, Boston: Brill (2019), 75-76. See also “The Legal Context of the Controversy: The Law of Heresy” (xlvii-lxvii) in *The Debellation of Salem and Bizance*.

that More does not deny that this law allows for an innocent man to be driven to purgation. He notes that More argues instead that there is no smoke without fire and that ‘he which cannot be proued guilty in heresy, and yet vseth suche a maner of weyes, that al his honest neighbors wene⁶⁰⁰ he were one, and therefore in their conscience dare not swere, that he is any other, is well worthie to do some penance.’⁶⁰¹ St German marvels that a man may be put to purgation simply because his neighbours will not swear that he is not a heretic and he argues that this idea is against the law itself, and he cites the law *Extra de hereticis ca. Excommunicamus*, whereby if a man stands excommunicated for a year, then it is time for him to be punished as a heretic.⁶⁰²

St German then notes More's argument whereby he compares the *ex officio* procedure for heresy with that of the procedure for the arrest of suspects in procedures for felony. St German confirms that he wishes to say little on the point, but he does offer some considerations. He states that the law being discussed is an old law of the realm: that a man is arrested for felony upon the bringing of a reasonable cause. The accused does not have the opportunity to answer that cause, but it is put forward that any person wishing to add to the cause suspected may do so. Whereupon, the judges will deliberate. St German notes that More likens the punishment (imprisonment) of such a man to the

⁶⁰⁰ Believe.

⁶⁰¹ St German, *Salem and Bizance*, 356.

⁶⁰² Innocent III, *Excommunicamus*, X 5.7.13. This canon, handed down by Innocent III at the Fourth Lateran Council, ‘simply repeated the language of *Ad Abolendam*, requiring suspects to undergo purgation; but the suspects who were not thus purged, instead suffering immediate condemnation and deliverance to the secular court, were to be excommunicated, and, if they remained excommunicated for a year, they were to be condemned *as if* heretics’. Kelly, *Heresy*, 76.

punishment meted out in a case of renounced heresy (the carrying of a faggot). He observes that More argues that:

the one of them shall come as openly to the barre as the other to the consistorie [...] And that sometyme his fetters shal wey a good pece of the fagot, besides that they lie lenger on the one mans legges, then the fagot on the other mans shulder: but he reherseth not howe they lye many tymes lenger in prison for heresi, then they do eyther for suspicion of felonie or for good abering.⁶⁰³ And ouer that I dare say, that there are but a fewe, but that they hadde well leauer abide the peyne to be thrise acquitted by proclamation, and peradventure offer, then ones to beare a fagot for heresie.⁶⁰⁴

St German follows this by noting that if a man of good conduct has laid long in prison as he cannot find anyone to act as surety for him, then the judges can by virtue of the writ *De gestu et fama* enquire as to his character. More references this too in his *Apology*. Following the application of that writ, if the man is found to be of good character, he shall be released. St German says that here More seems to be likening this deliverance to the purgation of a man suspected of heresy and he (St German) argues the opposite. A man released upon a writ of *De gestu et fama* is delivered as a man of honesty and good character. When a man is purged by the *ex officio* procedure for suspected heresy, he is put to penance and is not cleared of the accusation. Therefore, his neighbours will think that he is worthy of such penance and so guilty of that which he has been accused.

More's comments that upon indictments at sessions, the indicters used not to show the names of their informants is the next point St German homes in upon. He argues that his is a practical step so that before swearing they are not bound to help the party to his

⁶⁰³ Conduct.

⁶⁰⁴ St German, *Salem and Bizance*, 357.

writ of conspiracy ‘but as they liste to do in conscience.’⁶⁰⁵ St German observes how More confesses to a great divergence between the two procedures, as he can do nothing else, and St German compounds this with a scathing comment that this is because there is a great divergence between the two procedures. According to St German's arguments, in one the King's justices upon indictment with adequate proof put the accused to answer and in the other the spiritual judges, without proof, may decide upon what St German describes as a displeasure at will ‘and make man to be called, that is not gilty, if they were so disposed.’⁶⁰⁶ This paves the way to St German concluding by dismissing More's arguments and confirmation that he (More) has failed to prove the *ex officio* procedure to be like the procedure for arresting men for a felony. Thus, St German argues, the claim that if the procedure was to be amended the streets would swarm full of heretics, is unfounded.

The Debellation of Salem and Bizance (1533)

More's response to St German's latest inflammatory text, *The Debellation of Salem and Bizance*, was written and published around Michaelmas 1533 and More claims to have written the work in only a few days. The editors of the modern authoritative edition of the text provide a thorough discussion of the structure of its arguments.⁶⁰⁷ However, much of the debate between the pair had by this time become rather repetitive. Indeed, with regard to the effectiveness of the *Debellation* it has been argued that ‘More set the record

⁶⁰⁵ Ibid, 358.

⁶⁰⁶ Ibid.

⁶⁰⁷ Which can be found within; More, *Debellation of Salem and Bizance* at Guy *et al*, “The Argument of the Debellation,” lxviii-xciv.

straight and crushed his opponent on all counts, but at the cost of losing readers in a welter of mostly repetitive details.’⁶⁰⁸

In his preface to the text, More notes that some may question why he would waste his time in responding to such works, but he makes it clear in his declaration of title that he has taken it upon himself to vanquish any such text which appears.⁶⁰⁹ He begins as he means to continue, as throughout the text there is a ringing tone of mockery against the author of *Salem and Bizance*, who here he identifies again as ‘Sir John Some Say the Pacifier.’⁶¹⁰ He notes that when the *Apology* was published there were many who were angry about it, though he cannot understand why that would be and he confirms that he was writing for himself, good people and for the Catholic faith. However, their anger did not much bother him as he jests that he is not so unreasonable as to expect reason from those who lack it.

In particular, he says that he had heard that ‘one greate cunnyng man had made a long answere [...] wryten nere to gyther with a smale hande.’⁶¹¹ By this, most commentators assume that this is a subtle reference to the fact that the anonymous writer of *Salem and Bizance* was most likely known to More, as this provides an accurate description of St German's own hand. Indeed, Guy argues this point strongly, as he notes that due to More's position as Lord Chancellor and chairman of Henry VIII's Council in Star Chamber at the time when St German wrote his *New Additions* and prepared the parliamentary draft; ‘[i]t stretches credulity too far to assume that anyone could have

⁶⁰⁸ Ibid, lxxviii-xciv.

⁶⁰⁹ More, *Debellation of Salem and Bizance*, 3-4.

⁶¹⁰ Ibid, 3.

⁶¹¹ Ibid, 4.

drafted parliamentary legislation in 1531 without the knowledge, though not necessarily with the personal approval, of the lord chancellor.⁶¹² Though this argument is not necessarily convincing. Guy goes on to argue that More's description of the handwriting of the Pacifier 'is a hidden clue to inform posterity of his true knowledge of his opponent.'⁶¹³

As mentioned, as with *Salem and Bizance*, the opening chapters deal with smaller points the writer's opponent had raised in relation to their previous text. In the *Debellation*, More devotes the first fourteen chapters to this enterprise. These chapters are short in length, most running to only a few pages and they deal with various issues such as technical points, e.g. the faults of *Salem and Bizance* as a dialogue and its disorderly structure (chapter one), how the Pacifier's book has created dissention and that More is not required to find a remedy for the division (chapter two), to more substantive points such as a discussion of the question of whether prelates should give their wealth to the poor (chapter ten) etc. However, the main thrust of the argument appears in chapters fifteen and sixteen (which the editors of the *Debellation* propose were in fact written first by More⁶¹⁴) and it is these which must be our focus. Indeed, as the editors of the modern edition note, 'the resumption of [...] old matters in chapters 17 to 21 was a rhetorical, if not a logical mistake' arguing further that 'these final chapters are likely to strike most readers as [...] anticlimactic.'⁶¹⁵

⁶¹² Guy, *Battle of the Books*, 19.

⁶¹³ Ibid.

⁶¹⁴ Guy *et al*, *The Argument of the Debellation*, lxxxviii.

⁶¹⁵ Ibid.

Chapter fifteen signals the beginning of the second part of the *Debellation* and it is here that More resumes the argument on the topic of the *ex officio* procedure. He opens by referring to St German's *The Division* which he says, once again, is an attempt to bring the spiritual judges into disrepute and that St German's aim has been to convince the people that the spiritual judges cruelly mishandled men for heresy. More states that he will refute this in such a clear way that anyone who will listen will find his argument sound and St German's reasons unreasonable. More wants to bring the matter into the light and he explains that he will make the matter plain by quoting from St German verbatim. It is likely that this is in response to St German's complaints that More had misquoted him in several places. In an attempt to sever St German's pre-conditioning of the reader, More claims that if his response is to be understood there is one request that he would make of his readers; that is to put aside one argument that he describes as a wily slight of St German's.⁶¹⁶ He believes that this argument will corrupt the judgement of the reader and it is this: that the *ex officio* procedure benefits the spirituality only. Although the judges in these cases are spiritual, it is important to consider whether these suits benefit spiritual men only. He says that these suits are for the benefit of the Catholic faith as a whole, as if the faith should be damaged, this is not just a loss to the spirituality but to the entire realm. It is one thing to argue that the law should be changed in this area, but if the change in this law is negative then this will not impact the spirituality alone, it could harm all faithful Christian people. This is the point that he beseeches his readers to keep at the forefront of their minds throughout his argument.⁶¹⁷

⁶¹⁶ More, *Debellation of Salem and Bizance*, 86.

⁶¹⁷ *Ibid*, 87.

To freshen the mind of his reader, More encourages them to review the words of the Pacifier in *The Division* and his own arguments in the *Apology*, upon the debate of the *ex officio* procedure, and to then return to this chapter. He then refers to chapter fifteen of *Salem and Bizance* and he notes that within this chapter St German has set out to prove three things;

1. that no one will be hurt if the *ex officio* procedure is put away and that it is necessary to do so;
2. it is a great harm to keep the law; and
3. that More is wrong to draw an association between the *ex officio* procedure and certain laws of the realm (namely his comparison between *ex officio* procedure and arrests for felony).

More will, therefore, divide his chapter into a response to these specific points.⁶¹⁸

1. That no one will be hurt if the *ex officio* procedure is put away and that it is necessary to do so

More refers back to St German's criticism that a man may be called before the *ex officio* judge without there being a publicly named accuser of his heresy. According to St German, no man can be detected of having committed heresy unless there is someone else who is aware of his heresy and More agrees with this point, unless a man detects himself. More uses the example of where four or five or more people are aware of heresy and will yet not name themselves publicly as accusers, yet they will speak as a witness and will be sworn in court to tell the truth. What is the Ordinary meant to do then? St

⁶¹⁸ Ibid, 89.

German's argument is that if a man will not stand publicly as an accuser then his accusation is likely derived of some malice.⁶¹⁹ This is only conjecture according to More. Just as much as this is conjecture, it is just as easy to presume that the secret accuser is 'charytable and trew' and that the man they have 'detected [be] a very perylouse heretyque in very dede.'⁶²⁰ Is this man to be left? This is precisely why the *ex officio* procedure is needed, for if such a man goes undetected then he could continue to teach heresy and do great harm.

More's wit appears again here as he uses analogy to refer to St German's argument. He describes a feast; the Pacifier is a 'good hoste' and to make the readers 'lyke this the meate better, & fyl our belyes somewhat the better therewyth, he gueueth vs one lytle messe of sauce to it.'⁶²¹ By this More is referring to St German's further argument that a man may not wish to openly publicise his status as accuser for fear of his life and that he should, therefore, take the matter to the King and his council so that they can provide indemnity and a solution. More cleverly side-steps the trap set for him by St German here and does not comment directly upon the King and council's authority; he will confound St German's argument in another way. For More, St German has handled this point insufficiently and he argues that, by this reason, St German has provided only one reason why a man may not wish to openly stand as an accuser. In addition to this, there is no need to take the matter to the King and council as the *ex officio* procedure already provides for this circumstance in permitting the identity of the accuser to remain secret and allowing men to stand as sworn witnesses instead. More has defeated St German's

⁶¹⁹ Ibid, 90.

⁶²⁰ Ibid, 91.

⁶²¹ Ibid, 91-92.

argument here in one fell swoop. St German's remedy is proved needless, the spiritual jurisdiction already provides a sufficient remedy. The readers should not be beguiled by St German's argument.⁶²² He rejects St German's observation that he (More) has not denied the convenience of the solution of referring the matter to the King and council and states that he has not denied the usefulness of it, but that does not mean that he has approved it. He insults St German's logic and states that:

This good man semeth not very shamefast lo, but yf his logyke lede hym to think that this were a good argument. In these wordes he denyeth it not: ergo he denyeth it not. Which argument is euen as good as this. He denyeth it not in one place, ergo he denyeth it not in no place.⁶²³

St German then states that although More will not deny the convenience of his remedy, he will not assent that it be made law. More confirms that he would not be against a law whereby a man should be bound and find sureties that he would hurt neither accuser nor witness, he would still not put away the *ex officio* procedure. Anyway, though there is a law binding the accused from harming the accuser or witness, More says that the fear of such would still remain in men's hearts.⁶²⁴ To put away the *ex officio* procedure would be to allow 'harne [... to] dayely growe, by the encrease of heretykes and hynderaunce of the catholyke fayth.'⁶²⁵

⁶²² Ibid, 92-93.

⁶²³ Ibid, 97.

⁶²⁴ Ibid.

⁶²⁵ Ibid, 98.

2. It is a great harm to keep the law (ex officio)

According to the editors of the *Debellation*, ‘More was impatient of St German's demands that innocent suspects be protected against wrongful purgation or abjuration. In More's opinion a suspect was an offender.’⁶²⁶ He resisted St German strongly on the point that the *ex officio* procedure was harmful, and he cites his own words in the *Apology* directly here. He reinforces this by stating:

Now good readers where thys man taketh me to say a man may be dreuen to purgacyon without offence: you se well I say not so / but I say that he doth a great offence, & well wurthy were to be dreuen to his purgacyon & to do penaunce to, if he be not able to purge hym selfe / but haue vsed hym self so lyke an heretyke in all good folkes opinion, [that] he can fynd no good folke [that] dare in theyr conscience swere that they thynke other wyse.⁶²⁷

For More this is enough of an offence in itself. More cannot comprehend why St German marvels so that he (More) considers the law a reasonable one. Indeed he would not take it upon himself to: ‘aduise & counsaile this realme in a mater concernynge the conseruacyon of the fayth, to alter and chaunge that law that was make by so great aduise, by an whole generall counsaile of all chrystendome.’⁶²⁸ More returns to his old defence here, not only is St German questioning the law of the Church in England, he is also daring to question a time-honoured and ancient law that has well served the whole body of the Christian world. For More to take such an action would be unthinkable, this approach is the one which is unreasonable.

⁶²⁶ Guy *et al*, *The Argument of the Debellation*, lxxxiii.

⁶²⁷ More, *Debellation of Salem and Bizance*, 111-12.

⁶²⁸ *Ibid*, 113.

3. That More is wrong to draw an association between the *ex officio* procedure and certain laws of the realm

More systematically and technically denies the examples used by St German in an attempt to prove More's own error in associating arrests for felony with the *ex officio* procedure, making use of his substantive knowledge of common law procedure. As the editors of the *Debellation* note, in concluding his chapter, More 'recovered his polemical advantage.'⁶²⁹ St German had failed to address the main issue of debate, i.e. whether more people suffered false conviction on suspicion alone in the Church courts under the *ex officio* procedure or at common law. For More the law of heresy was sound and effective. The common law was not effective at seeking out heresy and here More cites the distinctly low number of cases identified at common law within a fifteen year period.⁶³⁰ More can only intend to insult as he questions whether St German was 'born defe & therby dumme?'⁶³¹ He must have been to have argued the points that he has.⁶³² For 'in euery good chrysten countrey, do they vse the same suyt of offyce (whyche vppon a lyghte reason this man calleth vnreasonable) and haue vsed many longe yeres.'⁶³³ If the amendment were to be made to any law where the threat of innocents suffering under it could be felt, then hardly any law would be left standing. However, if the *ex officio* suit was to be done away with, a great peril would certainly follow and that would be:

⁶²⁹ Guy *et al*, *The Argument of the Debellation*, lxxxv.

⁶³⁰ In his *Apology*, More estimates approximately five had been detected in this time.

⁶³¹ More, *Debellation of Salem and Bizance*, 140.

⁶³² *Ibid*, 145.

⁶³³ *Ibid*, 144.

the decay of the catholyque fayth by thencoragyng of heretikes / whiche wolde be well content that we make lawes to burne theym twyse when they be proued heretiques, so [that] the good counsayle of this good man be folowed, that the suyte ex officio maye be chaunged into suche open accusers, as in seuen yere shall neuer one come forth, nor one heretique of lykelyhe ones be put to answer.⁶³⁴

For More, it is no sound argument to suppose that a law should be reformed simply because an innocent man may suffer by it, especially when the consequences of putting it aside could lead to the destruction of the faith.

In chapter sixteen, More once again takes up the debate concerning the use of perjured witnesses in heresy trials and St German's references to the law *Accustatus perag. Licet*.⁶³⁵ He refers to St German's argument that '[the] lawes, though they must deuyse such ways as euill persons may be punyshed: yet the makers of the lawes must [...] prouyde that innocentes shalbe saued harmlesse.'⁶³⁶ Again More refers to the common-sense argument that if this were taken to be true for every law, offenders would never be punished for fear that an innocent may suffer under the law. More uses his own experience of the common law courts as he confirms that it is his own personal experience in criminal trials that the evidence of a fellow criminal is heard. For example, when a fellow thief provides the accused with an alibi and then stands as witness against the accused:

⁶³⁴ Ibid, 145.

⁶³⁵ Ibid, 146.

⁶³⁶ Ibid, 147.

I can not tell howe often, that in the excuse of some thefe some haue taken an othe, that the felon was with hym in hys owne house at suche tyme as the felonye sholde be done in a nother place [...] And yet afterwarde hath hym self confessed that the felon and hym self also were at the robbery.⁶³⁷

Once more the main aim here is to discredit St German's main argument that it is reasonable to undo the *ex officio* procedure on the basis that innocents may be wrongfully punished under it. More is multiplying his examples to prove that this is no good reason for the amendment of any law. As the editors of the *Debellation* state, More 'attempted to demonstrate that judges in both spiritual and secular courts might wisely calculate the credibility of witnesses in the interests of truth and justice.'⁶³⁸

More concludes the chapter by discussing the various other points that St German raises in regard to the use of perjured witnesses, and makes increasing use of the method of simply referring the reader between quotations taken from *Salem and Bizance* and the *Apology*. He feels that he has already made his points sufficiently in these respects. St German has failed to convince him that the *ex officio* procedure is harmful and More has offered arguments to demonstrate quite the reverse.

In concluding the *Debellation*, More highlights why St German's suggestions are so perilous as he argues that men went about reforming and changing the law on the basis that an innocent man would occasionally be harmed by it, there would be no end to the changing of laws until the end of time. 'For neuer can all the wyttes that are in yt, make any one penall lawe / suche that none innocent may take harme therby.'⁶³⁹ Yet if a new law was to be drawn up which would do much harm to innocents, then it is of course right

⁶³⁷ Ibid, 148.

⁶³⁸ Guy *et al*, *The Argument of the Debellation*, lxxxvi.

⁶³⁹ More, *Debellation of Salem and Bizance*, 229.

to speak out against it. However, this is not the issue here as these are not new laws and the Pacifier is commenting on what More feels are good laws well made. His respect for these laws lies upon the basis that they have been made and approved by great authorities and that crucially they signify the unity of the global Catholic faith as they are at work throughout the ‘whole corps of chrystendome, in thys realme ratyfyed specyally by parlyament’ they cannot be suffered to be altered.⁶⁴⁰ Thereupon, More concludes his *Debellation*, and the last words he would publicly print in the dispute with St German.

The Additions of Salem and Bizance (1534)

Published once again by the King's own printer in mid-1534, St German's *Additions of Salem and Bizance* will be treated only briefly here. Although the text technically comprises the last book in the debate between More and St German, as Guy explains, the title is a misnomer. In this text, St German does not follow the argument involving the heresy procedures and instead focuses on clerical greed and abuses, faults in liturgical observation, provincial canons, pilgrimages, the law of tithes etc.⁶⁴¹ He does include some new material, specifically he provides the reader with some commentary on the effect of the 1533 *Act of Appeals*, but there is little more to be said on the central issue of heresy that raged from the publication of *The Division* throughout the *Apology* and on into *Salem and Bizance* and its *Debellation*. This only goes to show that the ‘confrontational dimension’ of this battle between More and St German is problematical. As Rockett notes, the pair seem to have been on ‘divergent courses and at times seem to

⁶⁴⁰ Ibid.

⁶⁴¹ Guy, *Battle of the Books*, 7.

have been speaking past each other.’⁶⁴² Rockett concludes that More was motivated by his ‘perception that statute was about to be used to assist [what he saw as] the forces of error.’⁶⁴³ More was not wrong in this. By the time the *Additions of Salem and Bizance* rolled off the press the matter had indeed moved on. As Guy puts it; ‘[l]egislation had overtaken the debate,’ as Henry's revised heresy law (which received royal assent on 30 March 1534) alongside the First Act of Succession had ‘vanquished More's defence of the *status quo* in his *Debellation*.’⁶⁴⁴ Indeed, Kelly notes that ‘[i]t is even more likely that the wording of the 1534 Act was itself influenced by St German's two tracts.’⁶⁴⁵ In this More had lost the battle, though he would not see it this way.

Though before we conclude on the More-St German debate, there are a few further points of significance regarding the *Additions of Salem and Bizance* that require mention. Crucially, Eppley notes, how the *Additions of Salem and Bizance* marks the starting point for St German in setting out the status of the general council as having the ‘authoritative voice of the universal Church having authority to settle disputes over doctrine.’⁶⁴⁶ However he had not quite settled on the ‘locus of authority’ by the end of the *Additions of Salem and Bizance*.⁶⁴⁷ This is a theme he would return to in his final work; *General Councils* and a topic to which we will return in the next chapter. However, within the current text, he starts to unsettle the foundations of the authority of the clergy

⁶⁴² Rockett, *More and St German*, 38.

⁶⁴³ *Ibid*, 43.

⁶⁴⁴ Guy: *Thomas More and Christopher St German: The Battle of the Books* (1984), 7.

⁶⁴⁵ Kelly, *Inquisition*, 893.

⁶⁴⁶ Eppley, *Royal Supremacy*, 119-20.

⁶⁴⁷ *Ibid*, 84.

with respect to the determination of Scripture and reinforces the idea that ‘even the unanimous teachings of the clergy are not a sure guide to the dictates of divine law.’⁶⁴⁸ Eppley notes that St German argues that it is not convenient for any to say that a lay man might not reason the power of the Church. For if it dimynishe the righte of the crowne, waste the substanunce of the realme, prohibite the laboure of lyuyng of the people, they may well speke of it. And also are bounde to speke of it, specially they [that] be lerned in the lawes of the realme.’⁶⁴⁹ However, Eppley cautions that the powers claimed for the King at this point in St German’s ideology are ‘as a defender of the faith, not the definer of the faith.’⁶⁵⁰ The *Additions of Salem and Bizance* also further set the stage for St German’s later works in that they highlight the significance and authority of Scripture as ‘al men be bou[n]d to beleue scripture, that is to say, the olde testamente & the newe, and to folowe it as a thyng most necessary to our saluation.’⁶⁵¹ The clergy pretend that they are the only ones who are able to declare the Scriptures to the laity, and that the laity are thereby bound to follow only their teaching and not to expound it for themselves, nor have access to any vernacular version of the Scripture. But that many lay men and also some ‘great clerkes’ argue the contrary, that it is both lawful and necessary for men to have access to the Scriptures in the vernacular, so that when they have no one to preach to them, they can (at least those of the literate sort) read it for ‘their own consolation and instructio[n], and to the instruction of other also.’⁶⁵² The *Additions of Salem and Bizance*

⁶⁴⁸ Ibid, 85.

⁶⁴⁹ St German, *Additions of Salem and Bizance*, sig. H4v.

⁶⁵⁰ Eppley, *Royal Supremacy*, 85.

⁶⁵¹ St German, *Additions of Salem and Bizance*, sig. H6r.

⁶⁵² Ibid, sig. H6v.

also set up a vital principle ‘that will become foundational to [St German’s] claim that the Crown in Parliament is authorized to interpret the Bible.’⁶⁵³ As Eppley highlights, when St German discusses the ‘liberty of the church,’ he signifies that ‘this is not equivalent to the liberty of the clergy.’⁶⁵⁴ ‘For it is no more their libertie then it is the libertie of al the people of Engla[n]de. For al the people of Engla[n]de make the church of Engla[n]de.’⁶⁵⁵ Though it is also crucial to note that St German also seems to somewhat deviate from his usual definition of the Church as the entire body of Christendom, as he introduces the idea of the Church as a general council, in a discussion of the canonisation of saints he says that:

And that the churche maye not erre in thynges that be of the feith, I take it to be vnderstonde, where any great dout ryseth concernynge the faith. And that, that dout is commytted to the church: whereby I vnderstonde mooste properly the generall Counsayle, that they then may not erre.’⁶⁵⁶

He also identifies that princes and their ambassadors should be the judges of whether a canonisation should be confirmed at a general council, taking the spirituality also as their counsellors.⁶⁵⁷ Therefore, already by 1534 ‘St German had claimed broad powers for the Crown in Parliament over religious affairs in England and called relentlessly on those authorities to use their powers to quiet strife between clergy and laity in England.’⁶⁵⁸ He would go on to finesse these arguments in his later writings to which we will turn shortly.

⁶⁵³ Eppley, *Royal Supremacy*, 86.

⁶⁵⁴ Ibid.

⁶⁵⁵ St German, *Additions of Salem and Bizance*, sig. G1v.

⁶⁵⁶ Ibid, sig. C8v.

⁶⁵⁷ Ibid, sig. D3r.

⁶⁵⁸ Eppley, *Royal Supremacy*, 87.

Before entering into a discussion of those matters, however, we need to turn to a conclusion as to the More-St German debate.

4.3 Chapter Summary – ‘The Field is Won’

Guy notes that the controversy with St German was; ‘a *cause célèbre*, a public conflict waged by intellectual titans.’⁶⁵⁹ However, this might be overstating things as both clearly made academic errors at points during the debate, or at least seemed to be at cross-purposes. However, there is much evidence to suggest that St German, though an independent scholar and ‘no sordid slave of the propaganda machine of Henry VIII and Thomas Cromwell,’⁶⁶⁰ was indeed part of the parliamentary programme of reform. It was due to him that Henry's ideal of sovereignty of the King-in-Parliament was established.⁶⁶¹ By the close of the battle, More was out-penned and he was most certainly out of favour. Yet on his journey to Lambeth Palace to answer to commissioners regarding his position on the *Oath of Supremacy*, More is alleged to have confirmed to his son-in-law William Roper: ‘Son Roper, I thank our Lord the field is won.’⁶⁶² Roper is said to have been confused by these words, yet More considered his mind clear and settled. He knew that his time as a free man and possibly his life was coming to an end. It seems that he had already firmly set his mind to the new battle at hand and already felt that victory was within his grasp, although he would have to surrender first his liberty, and then his life.

⁶⁵⁹ Guy, *Battle of the Books*, 17.

⁶⁶⁰ Ibid.

⁶⁶¹ Ibid.

⁶⁶² The words allegedly spoken by More to his son-in-law William Roper as he set off to Lambeth Palace to refuse the *Oath of Succession*. More, *Last Letters*, 7.

He was protecting possessions he considered far more precious than both; the clarity of his conscience, his Roman Catholic faith and Church. Ultimately, More neatly summarised his own views on conscience submitting it to the guidance and ordering of God alone as he wrote as the King's prisoner:

Leaving every other man to their own conscience my self will with good grace follow mine. For against my own to swear were peril of my damnation and what my own shall be tomorrow my self can not be sure and whether I shall have finally the grace to do according to mine own conscience or not hangs in God's goodness and not in mine.⁶⁶³

More was not prepared to reject centuries of tradition, wisdom and the health of his own soul, but yet he also went to great lengths to confirm that he remained the King's obedient servant. He died by one blow of the executioner's axe on Tuesday, 6 July 1535 and by his own words as 'the King's good servant, and God's first.'⁶⁶⁴ De Silva notes that it was 'responsibility for his soul that kept more a prisoner,'⁶⁶⁵ and further that his surrender of his physical liberty was in an attempt to 'retain a more fundamental freedom; he lost his head because he wanted to keep it in accord with his conscience.'⁶⁶⁶ More did not see his actions as treasonous disobedience to the King, but of his obedience to a higher power, to God – 'that judge which cannot be bribed.'⁶⁶⁷

⁶⁶³ Cummings, *Conscience and the Law*, 484-85.

⁶⁶⁴ Emphasis added.

⁶⁶⁵ More, *Last Letters*, 19 *emphasis added*.

⁶⁶⁶ *Ibid*, 18.

⁶⁶⁷ *Ibid*, 17.

5.1 Parliamentary Draft (1531)

Guy notes that St German's *Parliamentary Draft* (1531) is 'the affirmative proof of his contact with the government in that year' even though, as previously mentioned, he maintains '[t]here is nothing to suggest that St German was ever in the formal employ of Henry VIII, and it is not possible to link him to Thomas Cromwell.'⁶⁶⁸ St German set out practical solutions for instituting the reforms he had suggested in his prior writings through the *Parliamentary Draft*, which comprised of a collection of proposals for parliamentary legislation. The undated draft can be found in the library of Thomas Cromwell amongst his papers on theology and political theory, and the work has again been attributed to St German by Guy who once again uses the holograph letter to identify St German's hand as 'unmistakeable' noting how St German 'alone corrected the document and added all the afterthoughts and revisions.'⁶⁶⁹ From this Guy suggests that

⁶⁶⁸ Guy, *St German*, 21.

⁶⁶⁹ Ibid, 62. This is despite Lehmborg's opinion that its 'scrappy character' suggested to him that it was not the work of one hand, but that of several authors, either in or out of the Parliament. Though he does note the similarities between the draft and St German's other works such as *Doctor and Student* and the *New Additions*. Lehmborg is certainly correct in likening the draft to these works and, in particular, the *New Additions*, which so closely parallels the draft that it 'can hardly be accidental.' Lehmborg, *Reformation Parliament*, 120-21. Several of the articles of the draft connected to the redress of clerical bad behaviour seem to have been directly lifted from the *New Additions*. For example, as Guy notes the second article requiring curates to be present in their own parishes once a month, to say a dirige overnight and a requiem mass in the morning or be punished etc had already been discussed in chapter eight of the *New Additions*. Guy, *St German*, 27. The work was also previously attributed to Cromwell's agents by Elton in Geoffrey

St German was ‘a policy-maker with full editorial control over his copy.’⁶⁷⁰ Yet, it seems likely that the draft was never laid before Parliament.⁶⁷¹ As Lehmborg notes, the work is a ‘mixed bag’⁶⁷² but, more forgivingly, Guy identifies it as ‘a remarkably comprehensive, creative and original programme for the reform of church and commonwealth in the context of 1530-2.’⁶⁷³ Indeed he lavishes further praise, describing it as ‘the most impressive reform manifesto conceived during the entire reign of Henry VIII.’⁶⁷⁴

The first two thirds of the draft deal with the key issue of the reform of the Church and clergy, reiterating the now familiar difficulties of the relations between Church and state, with the remaining third dealing specifically with social policy and poor relief.⁶⁷⁵ The first article of the *Parliamentary Draft* is one of the most interesting as it deals with the establishment of a commission with the authority to, amongst other things, enquire as to the possibility of a vernacular Bible. The draft suggests that the commission be called

Elton, *Reform and Renewal: Thomas Cromwell and the Common Weal* (Cambridge: CUP, 1973), 71-75; wherein he describes the draft as a ‘mixed bag of legislation [...] very much like a summary of what “sage clerks of the realm” had been working on.’ Elton, *Reform and Renewal*, 72. Alternatively, the ‘hotch-potch’ draft was also attributed to, none other than St German’s own rival, Thomas More by Scarisbrick in John J. Scarisbrick, “Thomas More: the king’s good servant,” *Thought: Fordham University Quarterly*, 52, no. 3 (1977): 259-65. However, he does then go on to argue that it is likely ‘[t]here were probably several minds and hands at work on it. More may not have approved of everything in the document. On the other hand, it deals with matters in which he was intensely interested.’ *Ibid*, 265.

⁶⁷⁰ Guy, *St German*, 63.

⁶⁷¹ *Ibid*, 22-8.

⁶⁷² Lemberg, *Reformation Parliament*, 120.

⁶⁷³ Guy, *St German*, 26.

⁶⁷⁴ *Ibid*.

⁶⁷⁵ For further discussion of the social policy discussed in the draft, not dealt with here, see *ibid*, 28-31.

the ‘Great Standing Council,’ and that it also have the power to enquire after heresy. Though the commissioners were to have no powers of arrest, they were to be responsible for the initial investigations into heresy in the realm and thereby to encourage reform in those individuals identified as possible offenders. The spirituality’s powers were to be seriously curtailed as they were to be prevented from arresting those identified until a set time and, if they fell afoul of this provision, they were to be punished accordingly.⁶⁷⁶ Therefore, the initial investigations into heresy in the realm were to be carried out by a mixed clerical and lay commission, likely made up of ‘bishops, peers and other members of parliament.’⁶⁷⁷ The commission were also granted wider powers to examine the canon law and thereafter to redress any laws that the Parliament had the authority to redress. Or, where the Parliament had no such authority itself, the King was to discuss the redress of those laws with the bishops. Therefore, crucially refocussing the power away from spirituality and towards the King and the Parliament. Indeed, though this draft would always remain thus, the *Act for the Submission of the Clergy* (1534) would establish a commission set on revising the English canon law. The *Parliamentary Draft* must have preceded this ‘otherwise this proposal would have been redundant and inexplicable,’ thus demonstrating that St German’s ideas did make it into Henrician reform legislation.⁶⁷⁸ St German would have approved of the mixed temporal and spiritual commission charged with discerning what constitutions, ordinances, canons and provincial synodals were to be classed as in accordance with the law of God and the

⁶⁷⁶ St German, *Parliamentary Draft*, 128.

⁶⁷⁷ Guy, *St German*, 26.

⁶⁷⁸ John Guy, “The Tudor Commonwealth: Revising Thomas Cromwell.” *Historical Journal* 23, no. 3 (1980), 685.

English Common Law. This is what he had been calling for now for some time and what he specifically called out for in the *Parliamentary Draft*. He similarly would not have objected to the way the *Act* established the statutory authority of Convocations to legislate by canon *subject to royal assent*, as the types of subject matter that the Convocations would have been legislating on would be those the commission had designated as appropriate for the Convocations to consider following the great review.⁶⁷⁹

It seems that the reforms planned by the draft really were to be comprehensive, and yet the draft was left incomplete and unrepresented to Parliament. The dating of the document to circa. 1531 may offer some reasons as to why. Guy dates the work to somewhere between June 1530 and March 1532 (but certainly before the *Submission of the Clergy* as noted above) on the basis that certain anticlerical acts of 1529 are said to be in force and also due to the fact that in May 1530 Henry had held a Westminster conference to explore the possibility of the publication of a vernacular Bible. He also notes that the draft could not have been prepared after March 1532 as it makes no mention of the ‘revolutionary’ *Act in Restrain of Annates* passed in that month.⁶⁸⁰ However, Guy theorises that ‘[w]hen the king’s advisers, early in 1532, dropped the idea that the Aragonese marriage should be annulled by the authority of parliament, St German’s star

⁶⁷⁹ Yet it would not be until the reign of Edward VI, that St German’s ideas on this point would see fruition when a much smaller sub-committee of eight persons established the *Reformatio legum ecclesiasticarum*. Though this again never received royal authority. Another potential revival under Elizabeth I also proved fruitless [1 Eliz I, c. 1.], meaning that the ‘English ecclesiastical law [...] remained on the same footing assigned to it in the statute of Henry VIII’. Charles P. Sherman, “A Brief History of the Medieval Roman Canon Law in England,” *Universtiy of Pennsylvania Law Review and American Law Register*, 68, no. 3 (1920), 256.

⁶⁸⁰ *Ibid*, 31.

waned.’⁶⁸¹ Going further than this, he maintains a belief that St German had enjoyed some direct access to the King, for how else would he have secured permission to draft a bill including an English New Testament and as part of the social policy, or for a £3,000 grant for the poor box? This is possible, but he could just as easily have proceeded at this stage without permissions. Guy then argues that once St German’s star had started to wane, that his access to the King had been duly blocked, but that Cromwell, acting by that time as a parliamentary manager for the King, had not failed to notice the draft’s promise and was never ‘too ashamed to file away other people’s papers among his own archives for future reference.’⁶⁸² Therefore, even though the draft remained unpublished, it is not without its own individual value. It seems plausible that Guy’s thesis is right about the motivations for Cromwell holding on to the draft and this was:

for the same reason that the government decided to publish the related work, *New Additions*, in 1531 – that is, to adapt and exploit its ideas to support the radical policy fostered by the Boleyns through which the jurisdictional independence of the *Ecclesia Anglicana* would shortly be abolished, and the English church and clergy subjected to royal and parliamentary authority under the imperial crown of Henry VIII.⁶⁸³

Indeed, Lehmborg also notes how the idea of the ‘Great Standing Council’ was not immediately dispensed with as it was included in ‘three abortive bills, [and] was to continue until the conclusion of the next parliament,’⁶⁸⁴ and his rather progressive poor relief programme would also see another day in Parliament, a fact also noted by Guy. These ideas on relief for the poor were revisited in 1536, as Guy notes, how St

⁶⁸¹ Ibid, 32.

⁶⁸² Ibid.

⁶⁸³ Ibid, 33.

⁶⁸⁴ Lehmborg, *Reformation Parliament*, 120.

German had in the *Parliamentary Draft* ‘proposed quite astonishing legislation for large-scale public welfare’.⁶⁸⁵ However, Cromwell ultimately capitulated and far less progressive piece of legislation was put substituted after at the first objection from the Commons, but it did retain the concept of charitable giving and the organisation of collections into common box.⁶⁸⁶ Therefore, despite the claim that St German’s influence was reducing, his ideas were still being employed whenever they were considered theoretically useful, particularly with reference to the developing ideas of royal and parliamentary authority. These points of authority were promoted even more overtly within the text of the *New Additions*.

5.2 A Little Treatise called the New Additions (1531)

An immediate link between the government and the *New Additions* can be seen in that the work was the first of St German’s works put to print by the King’s own printer Thomas Berthelet in 1531⁶⁸⁷ and it has been posited that:

the connection between this issue and St German was that royal efforts to ‘prove’ that Henry VIII should have an annulment of his marriage immediately and without further reference to Rome were volubly assisted by St German’s independent theory of parliamentary power in the *New Additions*.⁶⁸⁸

Following the line of argumentation begun in *Doctor and Student*, in the *New Additions*, St German remained in favour of reform against the Church and in favour of the state.

⁶⁸⁵ Guy, *Tudor Commonwealth*, 685.

⁶⁸⁶ Ibid, 684. For the statute see 27 Hen 8 c. 25 (Act for the Punishment of Sturdy Vagabonds and Beggars (1536).

⁶⁸⁷ As highlighted, Robert Wyer also published a 1531 edition of the *New Additions* (STC (2nd ed.)/21562).

⁶⁸⁸ Guy, *St German*, 24.

According to Walters, this dialogue marked a shift in St German's writing to a 'polemical consideration of the constitutional crisis between church and state,'⁶⁸⁹ a vein which was to run consistently throughout his subsequent writings. The discussion within *New Additions* provides a supplement to the issues discussed between the Doctor and the Student in his earlier work, and the same characters discuss some of the key jurisdictional issues at hand between Church and state.

From the outset, St German's endeavour to vest power with the King and Parliament is made explicitly evident, as the first addition deals with 'what the parliament may do concernynge the spiritualitie and the spiritual iurisdiction, and what nat.'⁶⁹⁰ The Doctor asks the Student whether laymen have the power to enact laws which deal with mortuaries. The Student is clear:

There was a law made of mortuaries in the parlyament holden in the .xxi. yere of our souerayne lorde kynge Henry the .viii. by the assent of all the commons : and I holde it nat best to reason or to make arguments/ whether they had auctoritie to do that they dydde or nat. For I suppose/ that no man wolde thynke, that they wolde so any thyng, that they hadde nat power to do.⁶⁹¹

The student goes on to explain that Parliament has the power to enact law on temporal matters and these laws also bind the clergy. All goods, even those held by clerics, remain temporal. Therefore, referencing the citation to Gerson in chapter three of the first dialogue of *Doctor and Student*, the King has the powers to judge these matters by his own laws due to his right in the Crown, and Parliament has the right to enact laws

⁶⁸⁹ Walters, *St German on Reason*, 337.

⁶⁹⁰ St German, *New Additions*, 317.

⁶⁹¹ *Ibid.*

accordingly. The Church cannot make binding law in the realm without basis, as the Church has no temporal power.⁶⁹²

This theme is then followed throughout the remaining issues discussed in the text. The next issue considers whether the Parliament has the power to stop land passing into mortmain?⁶⁹³ Citing by now familiar St German sources, Gerson, Leviticus and Baldus de Ubaldis, it is concluded that it does indeed have this power and a statute may be made to this effect.⁶⁹⁴ Similarly, the King can by Parliament break all appropriations that are against statute, or are generally against the good order of the people, though no church can be appropriated. The patronage of the advowson must be given to the relevant individual before the appropriation be made.⁶⁹⁵ Advowsons are a temporal matter. Thus, dealing with an old controversy over advowsons dating to Henry II and perceived encroachments into the jurisdiction of the canon law. However, parliamentary authority is limited here as Parliament may not make an appropriation without spiritual assent. The

⁶⁹² Ibid, 318.

⁶⁹³ i.e. passing into the inalienable ownership of the Church.

⁶⁹⁴ Indeed statutes had already been passed in an attempt to prevent land from passing into the ownership of the Church, by specifying that royal licence was needed for land so to pass, via the *Statutes of Mortmain* 1279 (7 Edw 1 St. 2; *Statute De Viris Religiosis*) and 1290 (18 Edw 1 c .1; *Quia Emptores*). The statutes are described in Thomas Bouchier-Chilcott, *The Law of Mortmain* (London: Stevens and Haynes, 1905) at 3 and 5 respectively. Though through the use of *cestui que use* (as mentioned in the discussion of uses), Church lands remained an issue into Henry's reign. An issue he resolved with the dissolution of the monasteries.

⁶⁹⁵ An advowson is the right of a patron to present a candidate to an ecclesiastical benefice.

Student does not mean that all appropriations should be broken, but Parliament does have the power to do this.⁶⁹⁶

Benefit of clergy and sanctuary are dealt with next in a consideration of whether it is within the spiritual authority to decide when a man may take the benefit of clergy or sanctuary. St German concludes that this is not in the power of the spirituality. The old customs and maxims of the realm are the authority. The King's justices have the power to decide when a man may 'have his clergy.' Similarly, the Pope cannot make sanctuary in the realm. Parliament, in fact, has the power to break sanctuary made by the Pope. The King may grant sanctuary but can then withdraw his grant. These are the supreme domestic powers, not subservient to the will of a foreign jurisdiction in the body of the Pope. However, there is a concession that if the King does grant a sanctuary and the Pope then confirms it, it does make the sanctuary stronger, but the Pope alone does not wield the power to authorise sanctuary. The authorities cited here are the old customs and maxims of the law of the realm.⁶⁹⁷

More specifically, regarding the assignment of trees and grass in church yards, the Parliament can assign these as they are temporal. Practically, judges might put the court which tries to deal with such assignments 'out of jurisdiction,' but this is merely customary. It is not a law of God, but a favour of the common law and this was the general position held by St German over the way papal canon law had operated in England over what he viewed as purely temporal matters, i.e. that it had done so at the sufferance and patience of the common law to accommodate it, but should boundaries be overstepped,

⁶⁹⁶ St German, *New Additions*, 231.

⁶⁹⁷ *Ibid*, 322-23.

the Parliament did have the power to authorise a roll back of such accommodations.⁶⁹⁸ The Parliament has the power, but they (like the courts of Common Pleas and King's Bench) favour the spiritual jurisdiction. Yet, the Exchequer has sometimes done otherwise. Citing procedure at common law, dilapidations belong in the King's courts as they are temporal and the remedy for such should be sought from the King's courts and this should be enacted by Parliament, as there is currently no such remedy available in the King's court.⁶⁹⁹ Church courts cannot transform penance into money without the free

⁶⁹⁸ Thus following a similar line to that held by the later Blackstone. Blackstone, *Commentaries*, Book 3, chapter 5. Indeed, it was not until after the Henrician Reformation that we see 'the spectacle of an English ecclesiastical judge daring to reject a Decretal as infringing on the law of the English "Church" or because the "Church" ha[d] not received it'. Sherman, *Brief History*, 236. Ideas such as St German's cemented the required Reformation notion of the Canon law as 'foreign law' and the notion that the "statutory orthodoxy" of Henry VIII compel[led] all judges to say that it was only by "their own consent" that the English people ever paid any attention to Decretals or laws of any "foreign prince, potentiate or prelate"'. Ibid, 240. However, in support of Maitland's position in the Maitland-Stubbs debate, St German did not seem to have discerned any English characteristics in the pre-Reformation canon law and does not seem to suggest that the Church of England was 'Protestant before the Reformation and Catholic after it'. He seems to suggest that the church courts invariably followed canon law and saw the papal decretals as binding. [Helmholz, *Roman Canon Law*, 4-5.] And to have done so would not have suited his arguments anyway. He desired a very marked assessment of the canon law post-break with Rome in order to assess what was consistent with the law of the realm and what was not as we shall see in the more specific discussion of his *Parliamentary Draft* (chapter 5.1).

⁶⁹⁹ Dilapidations being the right of a new incumbent of a benefice to claim a remedy for waste or disrepair to the property of the benefice brought about by the previous incumbent, thus encouraging the clergy to take care of the buildings and lands that made up their benefice. For more information on dilapidations, see Helmholz, *OHLE*, vol. 1, 498-501.

will of the party. Thus, the Church courts do not have the power to award monetary damages, therefore, dilapidations where monetary damages are required are a temporal matter.⁷⁰⁰

Parliament also has the authority to order clerical apparel and salaries on pain of penalty, as the penalty makes it a temporal matter. However, it is doubtful whether Parliament has the power to simply order the fashion of clerical garments etc. The Doctor objects to this as (i) apparel has always been ordered in Convocation, (ii) prior issues with wages were raised in the Commons but referred by the King to the Archbishop of Canterbury, and (iii) Parliament did ordain that no temporal man should give wages above the sum assigned by a bishop, but set a remedy via Chancery and not the common law. The Student responds by saying that a great respect has been paid to the clergy in the realm and a lot has been forborne that otherwise might have been lawfully dealt with. Certainly, statutes have set wages and statute has given a remedy via Chancery, but this was granted by the authority of Parliament and Chancery only sits due to the King's authority. If there is a 'reasonable cause' there is no reason they may not be put to process at common law. The Doctor then objects as, by *subpoena*, the person is merely summoned and not arrested as they would be at common law. The Student then argues that even by *subpoena* the person would be arrested for non-appearance or non-performance. Wages are a temporal matter and there is no reason not to enact that answer be made at common law. The King has the right by the Crown and the common law does have the authority to arrest clergy and does so already – so no statute is even needed to this effect.⁷⁰¹

⁷⁰⁰ St German, *New Additions*, 324-25.

⁷⁰¹ *Ibid*, 325-27.

Then St German introduces the idea of papal schism as he poses the question if there was a schism in the papacy as to who was the Pope, whether the King in his Parliament has the power to determine who should be held to be the Pope in the realm? The response is clear and affirmative that the King-in-Parliament does have this power of determination as he has charge over the souls as well as the bodies of his subjects. The Parliament would then authorise this determination. He even provides previous precedent for this arguing that this has already been dealt with in terms of statutory remedy under Richard II where Pope Urban was judged to be the Pope. Now it has been established that the King does have charge over the souls of his subjects, the Student goes further and questions why the King should not search out the cause of the division between the spirituality and the temporality? The King and Parliament should consider the matter of division. Citing Bede on the historical authority of the actions of past kings, St German points out that King Nechtan of the Picts did so and brought about great reformation. St Theodore (once Archbishop of Canterbury) gathered together the clergy to examine the heresy of Eutyches. Ultimately, for St German, every man has a duty of care for his neighbour and an end should be brought to those problems which the people bear grudges over.⁷⁰²

Regarding defamation, the text then considers who has authority to hear matters in cases of defamation which cause some form of temporal loss. Here jurisdiction is split, and a man may choose where to bring his suit, though the spiritual law may make no recompense to the party.⁷⁰³ Haigh notes that defamation cases had started to be heard

⁷⁰² Ibid, 327-30.

⁷⁰³ Ibid, 330-31.

from 1508 in the King's Bench where the slander related to a secular offence.⁷⁰⁴ As an aside, annuities are only to be dealt with in the King's courts as they deal with money and thus are temporal.⁷⁰⁵

The text then considers other miscellaneous matters such as the age of entry into religious life, matrimony, the profits of pilgrimage etc. Regarding whether the age of entry into religious life can be set by Parliament, the answer is once again affirmative, so long as the statute provides that after entry the person not be removed within a year without the assent of his friends. There is no bar here on entry into religious life and, therefore, the statute would be good. In fact, there is a similar statute to this effect. Then the question is considered as to what authority Parliament has in relation to matrimony. The answer is given that a statute cannot prohibit matrimony, but it can set an order to it for the surety of the realm. The example given is that the King's widow may not remarry without the new King's licence and she is sworn in Chancery when endowed. The text also affirms the right of the lord to take the value of the marriage of a ward or bondswoman. The Parliament also has the authority to and should enact a statute providing that those taking pilgrimage profits set up information or sermons to instruct the people in how to properly pray for saints. Parliament shall also appoint when a miracle is a miracle. Parliament has already enacted that no priest may preach without a licence unless expressly excepted by statute. The spirituality should be open to hearing the opinions of those learned in the common law. Parliament has no power to alter the law of God or the law of reason, but to strengthen them only. Spirituality and temporality

⁷⁰⁴ Haigh, *The English Reformation Revised*, 65.

⁷⁰⁵ St German, *New Additions*, 331.

should lay heads together, and should not give Parliament the occasion to extend its power by what they do, and should not deny the authority of Parliament.⁷⁰⁶

Regarding a sufficiently learned clergy, the question is posed as to whether the Parliament can prohibit an ordinary upon pain of punishment from admitting the unlearned to the priesthood? The Student shows his first reservations here and suggests that there might be a problem with arguing yes to this question if an issue were to be joined, as then the matter would be heard by a jury – and why should a jury of potentially twelve unlearned men be permitted to decide if another be sufficiently learned? He argues for a middle way here, stating that if it should be tried then it should be tried by spiritual men or temporal men (or both) that are sufficiently learned. The Doctor objects that it is against Scripture for a cleric to sit on a jury. The Student then reassures that there is a writ for the clergy to use if impanelled. However, though generally it would be against the law for priests to be on juries, in specific matters with a spiritual element, then Parliament can assign them so and there is already an example of when this happens (in the writ to *enquire de iure patronatus*). But how can the temporal authority call them? Ultimately, it does not matter as to whether a spiritual authority or temporal authority calls them, their business is all the same. The Doctor is unconvinced and suggests that this is an encroachment on the spiritual jurisdiction. The Student argues that the good order of the realm is a higher priority. Parliament has a right to enforce the law of the Church for the good order of society, but it cannot make new law.⁷⁰⁷

On the issue of the assignment of tithes for new lands, whoever holds the freehold of the new land (not attached to a parish) can appoint where the tithes are to be sent. The

⁷⁰⁶ Ibid, 331-33.

⁷⁰⁷ Ibid, 333-35.

Parliament may compel the assignment of tithes for new land held by a commoner to assure that the assignment of the tithe is appropriately directed to ensure service to God. However, tithes are spiritual, so how can they be controlled temporally? Because assignment is a temporal act. Before the land was divided into parishes, each man decided where his tithes were to go. This is a matter of the old law and custom of the realm. St German uses the precedent of a case heard at the assizes in 1349 dealing with the King's assignment of the tithes out of the Forest of Rocke. The King's Bench subsequently confirmed the old law gave this right of assignment to the King. The Doctor argues that the precedent has been set in the Church by the ordering that tithes be paid to their own parish church – thus for new land, they have to order the same. The Student counters that the Parliament itself could have made the same law that the Church did. Anything that pertains to the peace and quietness of society is within their remit. None could have denied a parliamentary law, but some did not obey the Church's law.⁷⁰⁸

Regarding payments on visitation and returning back to the first issues discussed, mortuaries, the Parliament can prohibit the taking of money or pension upon visitation as though the occasion of visitation is spiritual, the money is temporal. Probate is a good example to support this argument, as probate is spiritual, but Parliament has set a limit on these payments. There is also a statute prohibiting the setting on any tallage (a form of tax) or financial imposition under the guise of visitation. The Doctor argues that the latter statute does not apply as this was principally meant to prevent goods being removed out of the realm. The Student argues that this may have been the principle intent but why should Parliament not now act in the way suggested? Payments were not originally paid

⁷⁰⁸ Ibid, 335-37.

on visitation. There can be no charitable reason to take it, which would be the only justification for claiming it. But what if a curate, against the statute of mortuaries, causes his parishioners to act against it, is he justified in doing so? The Doctor says that if the statute stands in conscience, then he has no right to do it. He is thereby bound to restitution. The Student agrees and argues that this logic is also true in relation to other issues of division. Finally, the question is posed by the Doctor to the Student as to whether the ordinaries hold inquiries into the hospitals set up by the King. Here the Student declines to answer at this time, though promises to do so at a later date and the text is concluded with a ‘finis.’⁷⁰⁹

St German’s *New Additions* were not the only dialogue to appear off the press of Berthelet in 1531, and looking at another of these, namely the *Disputatio inter clericum et militem*, helps us in understanding the significance of St German’s works within the broader context of the contemporary literature which helped to pave the way towards royal supremacy. Haas explains that the anonymous work⁷¹⁰ originated under the French King Philip IV’s sponsorship centuries earlier in 1290. The piece constituted a protest over taxes paid to Rome which were diverting funds from the war between France and

⁷⁰⁹ Ibid, 338-40.

⁷¹⁰ As Renna notes, the *Disputatio* was attributed to William of Ockham in Melchior Goldast, *Monarchia Sancti Romani Imperii i* (Hanover, 1612), 13. Renna notes that all 20th century historians now agree that the author cannot be identified, thus following Scholz’s assertion. See Thomas J. Renna, ‘Kingship in the *Disputatio Inter Clericum et Militem*,’ *Speculum*, 48, no. 4 (1973): 675-693 at 675 n. 1. For a brief account of Ockham, see William J. Courtenay, “Ockham, William (c. 1287–1347), philosopher, theologian, and political theorist” *ODNB* (2010). On key concepts in his political theory, see Charles C. Bayley, “Pivotal Concepts in the Political Philosophy of William of Ockham,” *Journal of the History of Ideas*, 10, no. 2 (1949): 199-218.

England and contained a ‘Dispute between a Priest and a Knight about the Power Entrusted to Prelates of the Church and Princes of the Earth.’⁷¹¹ The work attacked ‘clerical privilege’ and extended beyond financial complaints to complaints over the legal jurisdiction of the Church. Overall, it ‘strives to enhance royal prerogative at the expense of ecclesiastical dominion,’⁷¹² and because of this it was declared heretical by Pope Boniface VIII. Thereafter, it appeared again down the centuries, appearing in English in the fourteenth-century thanks to a translation by John of Trevisa, which made it popular with ‘Whitcliffite[s].’ It was also accessible throughout Germany and the Low Countries in its original Latin incarnation, and Stephen Vaughan is said to have been requested by Cromwell to locate a copy of the *Disputatio* whilst in Antwerp looking for Tyndale. Haas describes the *Disputatio* as ‘an old anti-papal warrior whose new armour made it the first true Henrician polemic.’⁷¹³

Warner summarises the significance of the *Disputatio* and its links to St German’s works in explaining that:

It does not, to begin with, challenge Church theology and ritual, as we see when the Knight (*Miles*) exclaims, “he that would deny” that “the holy Church shall correct men for sins” shall “deny penance and confession” (p. 11/ sig. A5r), two practices the sixteenth-century reformers were indeed denouncing. The government’s position in respect to religion, so the king’s press indicated, was orthodox, for at the time Henry wanted no part of doctrinal controversies. His problems lay in power relations, and the *Disputatio*

⁷¹¹ This translation from Norma N. Erickson, “A Dispute between a Knight and a Priest,” *Proceedings of the American Philosophical Society*, 111, no. 5 (1967): 301.

⁷¹² Steven W. Haas, “The *Disputatio clericum et militem*,” *Moreana*, 14, no. 3 (1977): 66.

⁷¹³ *Ibid.*

offers a vision of these comparable to St. German's in that the church is denied any jurisdiction over temporal goods or authority to pass laws outside of Rome.⁷¹⁴

However, the text of the *Disputatio* does not 'plainly evict priests from their position in the government'⁷¹⁵ as they are included as a part of the King's Council and, therefore, the Knight explains to the Priest finds 'it hard to believe that the king, whose council includes clerics, acts unjustly towards you, or that your rights would perish at the hands of those clerics.'⁷¹⁶ On a discussion of the injuries suffered by the clergy against 'all right,' which the Priest defines as 'decrees of the Fathers and the statutes of the Roman pontiffs,' the Knight confirms that '[i]f it concerns temporal things what they decree can be rights to you, but not to us. For no one can make decrees about things over which he has no dominion.'⁷¹⁷ Here Erickson notes that on the point of 'dominion' that the:

Knight repeats a familiar argument of medieval anti-papalists, that earthly power (*dominium*) is granted by God and that no single person has all earthly dominion. The pope has no temporal dominion and therefore cannot dictate the conduct of the secular ruler.⁷¹⁸

Mirroring St German's stance, the Knight goes on to say that; 'And just as earthly princes cannot decree any thing about your spiritualities, over which they have received no power, so you may decree nothing about their temporalities, over which you have no authority.'⁷¹⁹ Yet, as Warner notes, the dialogue is more explicit in its threats to priests

⁷¹⁴ Warner, *Henry VIII's Divorce*, 37.

⁷¹⁵ Ibid.

⁷¹⁶ Anonymous, *Dispute between a Knight and a Priest* (Erickson, trans.), 301.

⁷¹⁷ Ibid.

⁷¹⁸ Ibid, 301 n. 4.

⁷¹⁹ Ibid, 301.

who fail to toe the line than St German's writings were at this point.⁷²⁰ However, this is something he would certainly amend in his later works. The *Disputatio* also presents a more extreme version of the royal supremacy than St German's works, vesting almost complete power with the monarch to do as he wished. The text, in a discussion of an interesting assertion from the Priest on how 'it belongs to the Emperor to regulate the government of laws' (considering Henry's interest in asserting his *imperium*), the Knight argues that the Kingdom of France 'left the rest of the Empire through a division between brothers' and that the powers of the Emperor 'were given to the prince or King of France in the same fullness.'⁷²¹ Therefore, the Knight forcefully tells the Priest 'hold your tongue' and instructs him to 'admit that by his power the king is supreme over the laws, customs, privileges, and liberties which have been granted; that, consulting justice and reason or his nobles,⁷²² he can add to, or take away from, or change, or regulate anything he may require.'⁷²³ The Knight then goes on to cite the usual biblical sources in favour of royal rather than papal supremacy in referencing Paul at Romans 13:2 and also invoking the figure of David.⁷²⁴ This again reinforces St German's idiosyncratic standpoint in the debate, as:

at the very moment Henry's propaganda was representing him as a philosopher-king working harmoniously with all the "lords temporal and spiritual" in Parliament for the betterment of the realm, that same

⁷²⁰ Warner, *Henry VIII's Divorce*, 37.

⁷²¹ Anonymous, *Dispute between a Knight and a Priest* (Erickson, trans.), 308.

⁷²² Therefore, meaning that the King has options here and does not need to seek out counsel from his nobles.

⁷²³ Anonymous, *Dispute between a Knight and a Priest* (Erickson, trans.), 309.

⁷²⁴ *Ibid.*

propaganda was also warning many of Parliament's members – the Priests – to stifle their protests, to expect just penalties for their past presumptions, and to accept what laws the king himself might pass.⁷²⁵

1531 also saw the circulation of other documents related to the royal supremacy and to the 'Christian idea' of kingship, as Haas discusses two manuscripts from that year. The first, *A Document of the year 1531 on the subject of the Pope's supremacy* is one of these, the second being a manuscript delivered by Lord Rochford (George Boleyn and brother to Anne) to the Convocation on 10 February 1531, Haas subsequently cites this document at the *Rochford MS*.⁷²⁶ The *Document* focusses on 'Christian Obedience,' which Haas describes as 'a subject's total, unquestioning and uncritical loyalty to his king.'⁷²⁷ This concept, revived by Luther, also relied on Romans 13⁷²⁸ conception of divine law as supreme, therefore, rejecting the supremacy of man-made law, including law made by the Pope. For Luther, there was no authority above the King in the earthly

⁷²⁵ Warner, *Henry VIII's Divorce*, 38.

⁷²⁶ Steven W. Haas, "Martin Luther's "Divine Right" Kingship and the Royal Supremacy: Two Tracts from the 1531 Parliament and Convocation of the Clergy," *Journal of Ecclesiastical History*, 31, no. 3 (1980): 317-325.

⁷²⁷ *Ibid*, 318.

⁷²⁸ '*nam principes non sunt timori boni operis, sed mali. Vis autem non timere potestatem? Bonum fac: et habebis laudem ex illa: Dei enim minister est tibi in bonum. Si autem malum feceris, time: non enim sine causa gladium portat. Dei enim minister est: vindex in iram ei qui malum agit. Ideo necessitate subditi estote non solum propter iram, sed etiam propter conscientiam.*' Romans 13:3-5, Vulgate.

'For rulers are not fearfull to them that do good, but to them that do euill. Wylt thou be without feare of the power? Do well then: and so shalt thou he praysed of the same. For he is the mynyster of God, for thy welth. But and yf thou do that which is, euill, then feare: for he beareth not the sward for nought: for he is the mynister of God, to take vengeance on hym that doth euill. Wherefore, ye must nedes obeye, not onely for feare of vengeance: but also because of conscience.' Romans 13:3-5, Great Bible (1539).

kingdom. ‘Kings, to Luther, were thus the only earthly manifestation of God’s will within temporal bounds.’⁷²⁹ A particularly attractive feature of Luther’s ‘two kingdom’ theory to the anti-papal campaign in England, in trying to secure popular support for the royal supremacy, was that should the Pope choose to excommunicate a King, thus requiring a good Christian subject to rebel against his sovereign ‘this must be ignored, for in the earthly kingdom the Pope could not coerce men against the “vicar of God.” Revolution, in short, was heresy.’⁷³⁰ Indeed, as Schofield notes, there certainly was a Lutheran moment in England:

A Lutheran settlement in the 1530s would have enabled Henry to claim a moral seal of approval for rejecting the pope and becoming overseer of the church as well as the state, all the while allowing him to acquire church land and wealth in the process. It would have strengthened the authority of the king and reduced that of the church, especially in civil affairs. The example of Kings Christian III in Denmark and Gustav in Sweden was there for him to follow. If any further incentive was needed, then even the Lutheran doctrine seemed to be mellowing a little, just at the moment when Henry had the opportunity to accept it.⁷³¹

Indeed, the previously mentioned Robert Barnes, who had made the acquaintance of Luther after escaping to the continent (after being confined to house arrest for the preaching of heterodox sermons – he was also a distributor of vernacular English Bibles), returned to England in 1531 and became one of the chief mediators between Lutheran Germany and the Henry’s government.⁷³² However, the Lutheran moment was not to last,

⁷²⁹ Haas, *Martin Luther’s Divine Right*, 318.

⁷³⁰ Ibid. This is an idea reproduced for an English audience by Tyndale in his *Obedience to a Christian Man*, which will be discussed shortly in further detail.

⁷³¹ John Schofield, “The Lost Reformation Why Lutheranism Failed in England during the Reigns of Henry VIII and Edward VI,” PhD diss., (Newcastle University, 2003).

⁷³² See chapter 2.1.

with communications stalling over doctrinal differences in 1538, and ultimately collapsing in 1540. Schofield believes that this was due to Henry ‘carving out his own, independent theological path.’⁷³³ Specifically, Schofield argues that Henry was aiming at building a ‘Patristic church,’ one reliant on neither Rome nor Wittenberg.⁷³⁴ Here he cites Henry’s repeated references to Patristic authorities of the middle period, such as Chrysostom, Bede, Origen, Cyprian, Augustine, Jerome – incidentally all authors relied upon by St German himself.

Returning to the two works of 1531, they were aimed at dismissing the notion from Matthew 16:18 that Peter was the rock upon which the Church was to be founded, i.e. thereby identifying him as the divinely appointed first Pope from which all subsequent papal authority stemmed, and instead focussing on the Pauline teachings of the Old Testament, supporting the supremacy of the King. As in the *Disputatio*, King David once again makes an appearance in the *Document* as ‘scriptural proof for the royal

⁷³³ Schofield, *The Lost Reformation*, 120. There has been much scholarly speculation regarding Henry’s ‘religion.’ There is a rejection of the general and simplistic notion that Henry simply became ‘Protestant.’ For example, see Scarisbrick, *Henry VIII*, 405-08 and his discussion of Henry’s annotations to the *Bishops’ Book*. For Bernard and McConica’s assertions that Henry was a lifelong Erasmian see Bernard, *The King’s Reformation*, and McConica, *English Humanists*. For a more recent discussion on Henry’s religion, refuting the Bernard/McConica thesis and propounding the idea that he underwent some form of religious ‘conversion’ in the 1530s, see Richard Rex, “The Religion of Henry VIII,” *The Historical Journal*, 57 no.1 (2014): 1-32, wherein Rex argues that Henry’s conversion ‘hinged upon Henry’s new understanding of kingship as a supreme spiritual responsibility entrusted to kings by the Word of God, but long hidden from them by the machinations of the papacy. His own providential deliverance from blindness was, he believed, but the beginning of a more general spiritual enlightenment.’ Ibid, 1.

⁷³⁴ Schofield, *The Lost Reformation*, 122.

jurisdiction.’⁷³⁵ Whereas the *Rochford MS* tries to pre-empt clerical opposition to the royal supremacy on the basis of John 20:21 and Acts 20:28. As Haas effectively summarises, ‘these citations were each capable of being interpreted as proof of the Petrine supremacy and episcopal jurisdiction over temporal affairs – this would have immediately caught the concern of anyone contemplating a reduction thereof.’⁷³⁶

With the anti-papal party circulating these sorts of documents within Parliament, Haas argues that ‘in early 1531 Henry already saw himself as a reincarnation of the Hebrew priest-king, one who would restore the English Church to a scriptural basis’ and further that those who were involved in drafting Henry’s propaganda ‘did not pass by a chance to add distinctly Lutheran features to their portrait of the Tudor David.’⁷³⁷ This makes St German’s works all the more interesting for the fact that his works are printed by the King’s own printer, and yet he does not subscribe to this same form of royal absolutism. Despite his despal of those clergy abusing and overestimating their powers, he still sees a space for the spirituality within his new order in dealing with purely spiritual matters, and it is not an order where the King reigns without adequate guidance. Parliament is to play a crucial role in the formulation and making of the law. Whereas for Haas the *Rochford MS* handed Henry alone the ‘sword of correction,’ St German does not see him wielding this alone. These ideas are further honed in St German’s next relevant work to which we now turn.

⁷³⁵ Haas, *Martin Luther’s Divine Right*, 320.

⁷³⁶ *Ibid*, 322.

⁷³⁷ *Ibid*, 324.

5.3 A Dialogue Between Clement and Bernard (1532)

A Dialogue Between one Clement a Clerk of the Convocation, and one Bernard a Burgess of the Parliament Disputing between them what Authority the Clergy have to make Laws. And how far and where their power does extend presents a debate between a clerk of the Convocation and a Burgess of the Parliament on the authority of the clergy to make the laws. The work was attributed to Thomas Elyot by a manuscript note on the Bodleian copy of the text.⁷³⁸ However, as Warner notes, that ‘the Bodleian catalog [*sic*] rightly rejects the note’s speculation.’⁷³⁹ Alternatively, in an 1880 letter appended to the Cambridge copy of the manuscript, Henry Bradshaw noted that he believed the work to have been written by St German.⁷⁴⁰ Warner has attributed it to John Rastell,⁷⁴¹ though Rex provides compelling arguments as to St German’s authorship of the piece, due to the clear parallels between the work and other works of St German. As he says:

For example, the discussion of *ius regale* and *ius regale politicum* is akin to that in the *Answer to a letter*. The dialogue’s definition of the law of nature as the ‘law of naturall reason’ is also characteristic of St German’s legal thought, as is the closing argument of the treatise, namely that idea that the clergy had the power to make binding law and used this power to pass laws contrary to existing public laws, then they would be encouraging disobedience to the authority of the king. This authority is then derived directly from

⁷³⁸ See Peter Blayney, *The Stationers Company and the Printers of London 1501-1557*, Vol. 1 (Cambridge: CUP, 2013), 297.

⁷³⁹ James C. Warner, “A dialogue between Clemente and Bernard, c. 1532: A Neglected Tract Belonging to the Last Period of John Rastell’s Career,” *The Sixteenth Century Journal*, 29 (1998): 60.

⁷⁴⁰ Librarian, scholar and cataloguer of manuscript works. David McKitterick, “Bradshaw, Henry (1831–1886), librarian and scholar.” *ODNB* (2004).

⁷⁴¹ Warner, *Dialogue between Clemente and Bernard*, 63.

God in an argument buttressed with a pair of scriptural citations which appear together in fuller lists of similar texts in later treatises of St German's.⁷⁴²

In addition to this, Warner argues that St German's use of the term 'Church' to mean not just the clergy but the people too is uncharacteristic of him, as he notes that Bernard refers to Clement as 'you whiche call your selfe of the churche.'⁷⁴³ Rex is quite right to correct this error. As discussed earlier in chapter one (and throughout), St German follows the Marsilian definition of the 'universal Church' as also including the laity (and minus the Pope), a point he reinforces in many of his later works, such as the *Additions of Salem and Bizance* (1534), *Constitutions Provincial* (1535), *Answer to a Letter* (1535), and *Things Necessary to Salvation* (1537).⁷⁴⁴ Therefore, dispensing with objections to St German's authorship of the work on these grounds.

Turning to dating the piece, it likely belongs to the early 1530s. Blayney suggests early 1532, as it could not have been written before the third session of the Reformation Parliament (which opened 15 January 1532), and there would have been no point in printing it after the Submission of the Clergy (which occurred on 16 May 1532).⁷⁴⁵ Warner agrees with this dating and Rex also suggests approximately the same, with Rex noting that Clement's first words in the dialogue closely mirror the first article of the

⁷⁴² Rex, *New Additions on St German*, 289.

⁷⁴³ Warner, *Dialogue between Clemente and Bernard*, 64. For examples of usage of this phrase, see St German, *Clement and Bernard*, sigs. B5v, B8v and C7v.

⁷⁴⁴ Rex, *New Additions on St German*, 288.

⁷⁴⁵ Blayney, *The Stationers Company*, 297.

Supplication against the Ordinaries (1532),⁷⁴⁶ which lamented the independent legislative power of the Convocation. As Clement says:

Brother Bernarde I meruayle moche that you of the parliament repyne at the lawes made by spirytual fathers assembled in the conuocacyons of this realme of Englande, and some of you sey that they haue none auctoryte to make any lawes to bynde the kynges subiectes, as to ponysshe them by bodily payne of prisonente, nother by payment of money nor losse of theyr lands or goodes.⁷⁴⁷

Rex feels that Clement's defence of the Church also replicates the *Answer of the Ordinaries* (also 1532). However, he prefers a date of 1533, just after St German's publication of *The Division* (published at the end of 1532). This seems sensible as, after this date, St German is not coy in referring to the Pope as the 'Bishop of Rome' which was 'the formulation officially preferred from December 1533 onwards.'⁷⁴⁸

In this earlier work St German's focus is upon starting to inveigle popular doubt as to the authority of the Pope and to begin to reinforce the idea 'that papal authority rests on human law rather than the word of God.'⁷⁴⁹ The divine origins of the authority of the secular monarchs of Britain is highlighted and the position of the monarch as the 'vicar of God' within the realm is explicitly stated, with the Parliament identified as the makers of the law:

And that the kinges of Englande had this power in the makynge of suche lawes. It appeareth by a pystell whiche pope Eleuterius dyd sende to Lucius y[e] fyrst chrystened king of Brytayne. whan he requyred

⁷⁴⁶ Warner, *Dialogue between Clemente and Bernard*, 61; Rex, *New Additions on St German*, 289.

⁷⁴⁷ St German, *Clement and Bernard*, sigs. A2r-v.

⁷⁴⁸ Rex, *New Additions on St German*, 290. Rex discusses this further in Richard Rex, "The crisis of obedience: God's word and Henry's reformation," *Historical Journal*, 39, no. 4 (1996): 863-894.

⁷⁴⁹ Rex, *New Additions on St German*, 290.

Eleuterius to sende to him the lawes of the Romaynes whyche he wolde vse in Bryttayne/ And he answered thus, thou hast taken by the grace of god in the kyngdome of Bryttayne the lawe and faythe of Cryste / and by y[e] same by the counsell of thy realme take the lawes, and by the same gouerne thou the kyngdome of Bryttayne / thou arte the very vycar of god.⁷⁵⁰

This association between the authority of the King as deriving directly from God, once again links this dialogue with the later works of St German, such as the *General Councils* and the *Power of the Clergy*, where this continued to be reinforced.⁷⁵¹ Additionally, Rex notes that the similarity between the sections of Scripture that are cited and the story from the above quotation of King Lucius as closely overlapping with the (previously mentioned⁷⁵²) *De Vera Differentia*, published in 1534 by Berthelet, authored by Edward Fox (but also attributed to Henry VIII himself).⁷⁵³ *De Vera Differentia* again ‘repudiated papal claims to jurisdiction within England, asserting the independence of the provincial English Church under the authority of the King. Foxe also appealed to history to prove his case, citing Anglo-Saxon, Anglo-Norman and Old Testament kings.’⁷⁵⁴ As Sowerby highlights, though the works supporting the royal supremacy were independently produced, ‘they had much in common, utilising as they did the *Collectanea satis copiosa*,’ which lent them what Sowerby describes as an ‘essential coherence.’⁷⁵⁵ St

⁷⁵⁰ St German, *Clement and Bernard*, sig. D1v

⁷⁵¹ Rex, *New Additions on St German*, 289, n. 31.

⁷⁵² See chapter 1.1.

⁷⁵³ STC (2nd ed.)/11218.

⁷⁵⁴ Tracey A. Sowerby, “The Early Polemics of Henry VIII’s Royal Supremacy and their International Usage,” in *Authority in European Book Culture*, ed. Pollie Bromillow, 153-170 (London: Routledge, 2013), 157.

⁷⁵⁵ *Ibid*, 169.

German's works seem to fit into this body of work produced by authors such as those of *The Glasse of the Truthe* (1532), Edward Foxe in the *De Vera Differentia* (1534) and Gardiner's the *De Vera Obedientia* (1535), and even the heretical William Tyndale's *Obedience of a Christian Man* (1528). Tyndale's *Obedience* may have included what Eppley describes as 'a persistent championing of Lutheran doctrinal positions and a virulently anti-clerical vein running throughout, [yet] it also presents a vision of the royal authority over the realm and Church that was influential throughout the 1530s.'⁷⁵⁶ In words strikingly similar once again to those used by Bernard in describing the King as the 'vicar of God,' Tyndale confirms how 'God hath made the king in every realm judge over all, and over him there is no judge. He that judgeth the king judgeth God.'⁷⁵⁷ However, Tyndale's work is more extreme than the others, suggesting rather a version of 'royal absolutism' as suggested by Eppley.⁷⁵⁸ Or, as Duerden explains, '[t]he principle of obedience to ruler temporalizes [*sic*] this spiritual and eternal subjection; one acknowledges an almost unlimited subjection to a very much reduced set of earthly authorities.'⁷⁵⁹ This would have been viewed as impractical by St German. Though Duerden highlights that Tyndale's view of the people's subjection as 'almost unlimited,' as Eppley acknowledges, this does not mean much. He cites Daniell, who in his biography of Tyndale notes that '[t]he difficulty, of course, is that the monarch won't act according

⁷⁵⁶ Eppley, *Royal Supremacy*, 19.

⁷⁵⁷ Tyndale, *Obedience*, 39.

⁷⁵⁸ Eppley, *Royal Supremacy*, 20.

⁷⁵⁹ *Ibid*, 20-21; citing Richard Duerden, "Justice and Justification: King and God in Tyndale's '*The Obedience of a Christian Man*,'" in *William Tyndale and the Law*, ed John Dick and Anne Richardson (Kirksville: Truman State University Press, 1994), 71.

to the Law of God and nothing can be done about it – a difficulty inherent in the whole doctrine of non-resistance.’⁷⁶⁰ However, Tyndale’s version of the royal supremacy was influential throughout the course of the 1530s. Haas argues that Elton’s claim that it was Foxe’s *Collectanea* that ‘contain[ed] all the evidence ever alleged in support of this new line’⁷⁶¹ is too extreme. However, Rex supposes also that Haas has ‘too readily supposed that there was a direct and immediate impact of Tyndallian doctrine upon the political theology of the Henrician regime.’⁷⁶² Yet, it is from works such as Tyndale’s *Obedience* that ‘Lutheran obedience doctrine’ became ‘an integral part of [the] network of new ideas.’⁷⁶³ Rex goes further (agreeing with Elton) and identifies that it was those intellectuals involved in Cromwell’s circle who were at the heart of ‘the first full-blooded official statements of the obedience theme.’⁷⁶⁴ Thereby dissenting, as he says, from the thesis put forward by Haas supporting the arguments adopted by Scarisbrick and Nicholson that the King was the central figure in the emergence of these new ideas in the

⁷⁶⁰ Ibid, 21; citing David Daniell, *William Tyndale: A Biography* (New Haven: Yale University Press, 1994), 242.

⁷⁶¹ Elton claimed that the *Collectanea* was ‘to be used repeatedly to provide the basis for officially inspired tracts and the arguments for certain acts of Parliament.’ Geoffrey Elton, *Reform and Reformation England 1509-1558* (London: Edward Arnold Ltd, 1977), 135. For Haas’ argument, see Haas, *Martin Luther’s Divine Right*, 318-19.

⁷⁶² Rex, *The Crisis of Obedience*, 264.

⁷⁶³ Ibid.

⁷⁶⁴ Ibid.

early 1530s.⁷⁶⁵ The two *De Veras* and St German's work cannot have helped but to have been influenced by this doctrine, yet they are also distinguished from it. Incidentally, Baumer identified Gardiner's *De Vera Obedientia* as 'important as a piece of polemic' whilst arguing that it 'lacked the vision of St German's works.'⁷⁶⁶ Nevertheless, it was immensely popular and not just domestically, it was printed by Berthelet's press at its first printing in 1535, but:

early in the following year, the pastors of Strassburg were so delighted with the book's anti-papal arguments that they arranged for another printing locally with a new preface (probably by Bucer) praising England's bishops and saying nasty things about their own pseudo-bishops; and also in January 1536 the book seems to have been sent for reprinting by the Council of the Schmalkaldic League in Hamburg, though of that edition no copy survives.⁷⁶⁷

Elton notes that it was Henry's hope to try to convert the King of France to his corner with its help.⁷⁶⁸ What these works do have in common with St German's texts is the focus on the 'central authority of scripture, the legal authority of parliament and the burden of the historical evidence against papal jurisdiction in England.'⁷⁶⁹ This second point distinguishes the works ideologically from the *Obedience*, making the royal supremacy practically workable. St German's works are, therefore, clearly a part of the broader push

⁷⁶⁵ Scarisbrick, *Henry VIII*, 289-90; and Graham Nicholson, "The Act of Appeals and the English Reformation," in *Law and Government under the Tudors*, ed. Claire Cross, David Loades and John Scarisbrick, 19-30 (Cambridge: Cambridge University Press, 1998).

⁷⁶⁶ Baumer, *Christopher St German*, 631, n. 2.

⁷⁶⁷ Elton, *Policy and Police*, 187. The work would not be translated into English until 1553, when 'Gardiner's enemies dug it out against him.' *Ibid.*

⁷⁶⁸ *Ibid.*, 187-88.

⁷⁶⁹ Sowerby, *The Early Polemics*, 169.

towards securing popular domestic support for royal rather than papal supremacy in the realm, but a supremacy crucially protectively bordered (for St German especially) by the simultaneous growth in the authority of Parliament.

Yet, as noted the *De Vera Differentia* was published in 1534 and St German's dialogue seems to have been published a year earlier in 1533, if Rex has the dating right. Rex highlights, this 'poses a knotty chronological problem.'⁷⁷⁰ The works are not just broadly similar, they are strikingly so. 'For the Anglo-Saxon laws cited in English in [*Clement and Bernard*] follow the same order as those cited in Latin in the [*De Vera Differentia*].'⁷⁷¹ However, the *De Vera Differentia*'s treatment of the texts cited is fuller suggesting that, in putting together his dialogue, St German relied upon the *De Vera Differentia*. But, therefore, St German's caution over references to the Pope seem odd, as the *De Vera Differentia* argues strongly against the Pope's interpretation of the critical scriptural passage of Matthew 16:18,⁷⁷² which underpins the claims to authority of the Roman Catholic Church holding that Peter was selected by Christ to be the first Pope and it was upon him and his primacy above the other Apostles that the Church of Christ would be built. So why the need for reticence from St German? Rex asserts that the 'most satisfactory explanation is that the author of the [*Clement and Bernard*] had access to a manuscript draft of the [*De Vera Differentia*],' therefore, suggesting that 'the author of

⁷⁷⁰ Rex, *New Additions on St German*, 291.

⁷⁷¹ Ibid.

⁷⁷² 'et ego dico tibi quia tu es Petrus et super hanc petram aedificabo ecclesiam meam et portae inferi non praevalent adversum eam.' Matthew 16:18, Vulgate.

'And I saye also vnto the that thou art Peter: & vpon this rocke I wil bylde my congregacion. And the gates of hell shal not preuayle agaynst it.' Matthew 16:18, Great Bible (1539).

the *Dyalogue* was close to the intellectual centre of Henrician policy-making in the early 1530s.⁷⁷³

5.4 A Treatise concerning the Power of the Clergy and the Laws of the Realm (1535[?])

A Treatise concerning the Power of the Clergy and the Laws of the Realm continued St German's earlier attack on the Church's ability to evade the jurisdiction of the common law, an issue he had discussed previously in the second dialogue of *Doctor and Student*. Guy dates the publication of the *Power of the Clergy* towards the end of 1534 or the beginning of 1535, meaning that it was passed about the time of the enactment of the *Act of Supremacy* in November 1534, or shortly thereafter,⁷⁷⁴ but this time by Thomas Godfray rather than Berthelet. According to the opening statements of the *Power of the Clergy*, the focus needed to be on clarifying the authority of the monarch before it would be possible to clearly delineate the rights of the clergy, and also before 'the question of the jurisdictional competence of statute and common law could [...] be satisfactorily resolved.'⁷⁷⁵ St German is once again keen to secure as broad a readership as possible as he confirms that the various scriptural references presented in Latin will also be accompanied with their English translations 'for them that understa[n]de nat the latin tonge.'⁷⁷⁶ However, Guy crucially reminds us here that St German had in July 1534 refused to join the official circle of propagandists at Blackfriars so he clearly had some

⁷⁷³ Rex, *New Additions on St German*, 291.

⁷⁷⁴ Guy, *St German*, 38.

⁷⁷⁵ *Ibid.*

⁷⁷⁶ St German, *Power of the Clergy*, sig. A1v.

reservations about so closely associating himself with this group, and that he was perhaps by this point taking ‘stock of his ideas and goals.’⁷⁷⁷ Though the letter itself does not state a ‘refusal’ to engage as such but rather confirms that St German was ‘excusing’ himself from meetings.⁷⁷⁸ However, this resistance may still be significant as St German’s ideas do start to deviate in fundamental ways within the *Power of the Clergy* to some of the other propaganda being published at the same time as, for St German, the power of Parliament increasingly takes centre stage. However, this would rely on St German being aware of the distinction between his and the other ideas proliferating at the time. Rex’s identification of *General Councils* as St German’s own work, which was published in 1538 by Thomas Berthelet also requires us to take stock about whether this was actually the case. However, this will be considered in more detail when assessing that work.

Returning to *Power of the Clergy*, St German chose to explore the jurisdictional competence of the clerical judges of the Church courts (and whether they were bound by the laws of the realm) through investigating ‘the status of England as a unitary sovereign state.’⁷⁷⁹ Within the work, St German once again asserts that the sovereign obtained their authority directly from God. This forms the focus of the first chapter which opens upon Proverbs 8:15; ‘*Per me reges regnant / et legum conditores iusta decer[n]unt,*’ or in the English; ‘By me kinges raygne / & makers of lawes dyscerne thynges that be rightwyse.’⁷⁸⁰ Amongst many other biblical references confirming the authority and importance of kings and princes, this is also followed by Wisdom 6 which is most direct

⁷⁷⁷ Guy, *St German*, 38.

⁷⁷⁸ *LP* 7:1008.

⁷⁷⁹ Guy, *St German*, 38.

⁷⁸⁰ St German, *Power of the Clergy*, sig. A2r.

on the responsibility of rulers to be aware that the ‘power is gyven you of god.’⁷⁸¹ Thus, re-enforcing the crux of the *Act of Supremacy*. Chapters two and three also continue the theme of citing relevant biblical quotations. Chapter four considers the question on whether the statute of *Silva Cedua*⁷⁸² is against the law of God. This is something St German had discussed previously in the second dialogue of *Doctor and Student*. The Doctor’s position is summarised by Walters who states that the statute:

which permitted temporal courts to interfere with actions for tithes on timber before ecclesiastical courts, violated church liberties, and, even if the Act merely confirmed a prescriptive right, that right was void because the payment of tithes is grounded upon the laws of God and reason.⁷⁸³

The Student responds that there was a prescription before the enactment of the statute and that ‘it can not be thought that a statute that is made by the authorytye of the hole realm/ as well of the kynge & of the lords sprirytuall and temporall as of all the comons/ wyl recyte a thyng agaynst the trouth.’⁷⁸⁴

Eppley notes how the discussion of the statute of *Silva Cedua* also appears in the *Additions of Salem and Bizance* and notes that by this point ‘[i]n the early 1530s, St German increasingly acknowledges the importance of perceived contrariety to God’s will as a source of disobedience of statutes ordering ecclesiastical affairs.’⁷⁸⁵ By the time we get to *Power of the Clergy* there is no longer any debate on the matter, the statute ‘standeth well with the law of god / and ought in conscience to be observed / as well by the clergy

⁷⁸¹ Ibid, sig. A2v.

⁷⁸² 13 Hen 7 c. 21.

⁷⁸³ Walters, *St German on Reason*, 349.

⁷⁸⁴ St German, *Doctor and Student*, 300.

⁷⁸⁵ Eppley, *Royal Supremacy*, 79.

as by the people in this realm.’⁷⁸⁶ There is even biblical authority for this in the form of Leviticus 27:30, which specifies that tithes are due on grain from the soil and the fruits of the trees, but not on the trees themselves. And in addition to this, although the fact that tithes are to be paid to maintain the clergy according to the law of reason and of God, the fact that a tenth part is to be paid comes from the law of man. So, if a tenth part proved insufficient in a particular country, the people would be bound to pay a bigger portion. Thus, suggesting that national churches should be administered at a national level. Here St German refers to Gerson’s *Regules Morales* confirming that the calculation of the tithe belongs to the law of man. Therefore, tithes are a temporal matter and:

so parliament hath full power to ordre them / so that the lawe of god be nat broken by their ordre. And it is nat to thynke that the ki[n]ge and his lordes spyrituall & te[m]porall and the come[n]s that were at that parliament would haue ben so farre ouer seen / to haue made a statute againste the lawe of god.⁷⁸⁷

If such matters are to be dealt with at the national level, it should be Parliament ordering them according to the national interest.

In the sixth chapter, St German goes on to consider whether, after kings and princes were converted to Christianity, they had less power than before and confirms quickly that he cannot see why this would be the case. He argues that the words of a particular part of Scripture cannot be taken literally on their own, they have to be considered within the broader context of other scriptural references.⁷⁸⁸ Indeed, sometimes Christ’s words are to be taken with a broader interpretation and sometimes with a

⁷⁸⁶ St German, *Power of the Clergy*, sig. A7v.

⁷⁸⁷ Ibid, sig. B1r.

⁷⁸⁸ Ibid, sigs. C4v-C5r.

narrower one, considering his intention.⁷⁸⁹ There is plenty of scriptural evidence ‘whereby it appereth that oure lorde neuer intended by his commyng in to this world to take any power fro[m] princes / but that they shulde haue lyke power ouer their subiettes after his commyng as they hadde before.’⁷⁹⁰ Christ refused to be a king and to take power from the princes of the world; rather he lived in poverty (unlike princes) and, therefore, his Apostles should follow him in that respect and not seek to take power from princes. If the clergy, as the descendants of Christ’s disciples, do decide to try to wrest power from the temporal princes, then ‘princes maye resyst their declaration theri[n]. Yea / & ar[e] boun[n]d to do it / & there princes ought to be iuges takyng such of the clergie vnto the[m] as they shall thynke conuenyente.’⁷⁹¹ Turning to the issue of the two swords (temporal and spiritual) and how some argue that Christ gave his disciples powers over both and that princes have their power after the Church and not directly from God, St German denies that these words were ever said in this literal sense.⁷⁹² Indeed as per Baumer, in *Power of the Clergy*, St German:

descants on the priestly character of kings in the Old Testament, shows how Christ never wielded the temporal sword, and cuts to pieces the various arguments which had been advanced in time past to prove that the clergy should exercise both spiritual and temporal power.⁷⁹³

Within the *Power of the Clergy*, we also see the Marsilian definition of the universal Church put to use in St German’s reference that ‘by that worde chyrche is nat

⁷⁸⁹ Ibid, sigs. C6v-C7r.

⁷⁹⁰ Ibid, sig. C7r.

⁷⁹¹ Ibid, sig. D1v.

⁷⁹² Ibid, sigs. D3r-v.

⁷⁹³ Baumer, *Christopher St German*, 635.

vnderstande only the clergye / for they vndoutydly make nat the chyrche / for the hole congregation of Christe[s] people maketh the chyrche.⁷⁹⁴ The work is also significant as in contains ‘[t]he process by which St German narrowed down his definition of the church from the “hole congregation of Christen people” to the English parliament.’⁷⁹⁵ A theory he would complete in *Answer to a Letter*. To do this, St German refers to the previously familiar Matthew 28:15-17, which states that, where a temporal offence has occurred, the following process should occur:

If thy brother offend the[e] corecte him betwen him and the[e] onely / And if he here y[e] thou hast wone thy brother / and if he here the[e] nat / take with the[e] one or two wytnes / and if he here the[e] nat than / than shewe it to the chyrche [...] and that in somoche that the gospell commaunded to shewe the offence to the chyrch / [it] sheweth nat in what cases that it shall therefore be vndersta[n]de in all cases / and that bycause it is sayd / shewe it to y[e] chyrche / that it was mente thereby that it shulde be shewed to the clergye: To that it maye be answered that by that worde chyrche is nat vnderstande only the clergye [...] It is to be vnderstande therby / that it shall be shewed vnto the[e] that by the lawe & custo[m]e there vsed haue auctoritie to corect the offe[n]ce.⁷⁹⁶

Therefore, the Church as per the Marsilian definition includes the entirety of the people. As it is not possible to show the offence to all of the people in any practical sense, the offence must be shown to the law; ‘[w]herfore he sheweth it to the kynge or to his iuges / or to his iustyces of the peace i[n] the co[n]trey / or other offycers that after the lawe & custome of the realme may reforme it. He hath right well fulfilled the gospel.’⁷⁹⁷ Spiritual

⁷⁹⁴ St German, *Power of the Clergy*, sig. D4r.

⁷⁹⁵ Guy, *St German*, 40.

⁷⁹⁶ St German, *Power of the Clergy*, sigs. D3v-D4v.

⁷⁹⁷ *Ibid*, sig. D4v.

offences should be shown to the Ordinary or his officers.⁷⁹⁸ As Guy confirms, ‘the wider significance of this passage was that in “temporal” matters St German’s supreme head was to be in charge of a church regulated by legal institutions.’⁷⁹⁹

St German then moves on to consider holy days and Sundays, again he notes that the clergy have been able to identify and make these days only with the consent of the people and princes. They do not have this power from the law of God. Therefore, princes could dispense with these holy days and even move the sabbath from Sunday to another convenient day. The clergy has represented to the people and to princes that they do have their authority to make these days directly of God and have ‘extended their power upon the people very greuously where upon great grudges haue rysen in manye places among the people.’ Princes now have a duty ‘for reformacyon,’ they are ‘boundon to knowe their own power’ in this respect.⁸⁰⁰ If holy days are given to ‘rather increase vyce than vertue’ then ‘the parlyament hath good authoritie to reforme it.’⁸⁰¹ However, he does point out that holy days honouring the Virgin Mary, the Apostles and other ancient saints are worthy of observation ‘though they be nat merely grou[n]ded by auctoritie of the lawe of god.’⁸⁰² Thus, in St German’s conception, kings have the authority to arrange these matters as per national convenience.

In the seventeenth chapter, considering what the highest commonwealth is, St German confirms that the King has no new authority now that he is confessed by the

⁷⁹⁸ Ibid, sigs. D4v-D5r.

⁷⁹⁹ Guy, *St German*, 41.

⁸⁰⁰ St German, *Power of the Clergy*, sig. E1r.

⁸⁰¹ Ibid, sig. E1v.

⁸⁰² Ibid.

clergy or authorised by the Parliament as head of the Church of England, as ‘it is but only a declaracyon of his fyrst power by god commytted to the kynglye & regall auctoritie / & no newe graunte.’⁸⁰³ However, the King has no power to minister the sacraments or any claims to other spiritual powers as these powers Christ left to his disciples. Also, as princes have generally not been aware of their own powers, it is:

expedyent that they haue trewe / iuste and indyfferent counseyle / as well spyritual as temporall / the whiche as minysters vnder them / maye fro tyme to tyme declare their power vnto them and put them in mynde what is expedyent to be done for ‘[the] comon welthe.’⁸⁰⁴

Therefore, as Guy concludes:

St German’s sympathy with Henrician orthodoxy as proclaimed in the act of supremacy was not unbounded: his rhetoric on the subject of kingly power should not beguile us into classifying him as a wholehearted supporter of Henry VIII. St German exalted kingly power as the means to regulate the clergy and subordinate canon law to English law, but he deviated from the official interpretation of the supreme headship when he articulated his opinion [...] that royal authority over church and clergy should be exercised in practice by the king in parliament, not by the king or his vicegerent alone. *The Power of the Clergy* signals St German’s dissent from the official position.⁸⁰⁵

The King should not, therefore, sit alone in his decision-making and nor should he be advised only by lay counsellors. There is a place still set at the table for the ecclesiasts, they are just no longer to sit at the head of it and have the only say in matters. Other voices deserve to be heard for the benefit of the ‘universal Church’ i.e. the entire body of Christendom under the realm.

⁸⁰³ Ibid, sig. G2r.

⁸⁰⁴ Ibid, sigs. G2r-G2v.

⁸⁰⁵ Guy, *St German*, 39.

5.5 A Treatise concerning divers of the Constitutions Provincial and Legatine

(1535)

A Treatise concerning divers of the Constitutions Provincial and Legatine pursues the theme from *Power of the Clergy*. It follows St German's review of the canons made by past provincial assemblies in England in the earlier work to see how many of the provincial and legatine constitutions of Otho and Octobone (papal legates) were set against the common law and the 'royal prerogative.' *Constitutions Provincial* can be definitively identified as St German's as two of its chapters are identical to *Power of the Clergy*, whilst an additional five are 'strikingly similar' to the second dialogue of *Doctor and Student*, and three more to the *New Additions*.⁸⁰⁶ Thus, in this study, as much of the work deals with repetition of material already covered in detail elsewhere, only limited discussion of pertinent aspects of the work will need to be examined further.

With respect to the usual details, the work was again printed by Thomas Godfray and dated to circa. 1535 due to the nature of the debate contained within. Baumer dates this work to after St German had written *Power of the Clergy* as it considers the issues raised in that tract in a more specialized and in-depth manner.⁸⁰⁷ As Guy notes, 'several canons were ruled *ultra vires* and others were deemed vexatious to the people and uncharitable – but after the Submission of the Clergy this sort of inquiry had become secondary to St German's main concern about royal supremacy.'⁸⁰⁸ Further, as Eppley states, *Constitutions Provincial* focusses little on biblical interpretation and should 'be

⁸⁰⁶ Ibid, 18. Guy identifies these as *Constitutions Provincial*, chapters 8, 14, 17, 20-21; second dialogue of *Doctor and Student*, chapters 32 and 55; and *New Additions*, chapters 4-6.

⁸⁰⁷ Baumer, *Christopher St German*, 636.

⁸⁰⁸ Guy, *St German*, 41.

understood as the culmination of St German's calls for parliamentary reform of clerical abuses.⁸⁰⁹ Though he does once again take the time to repeat the Marsilian definition of the universal Church within the work during a discussion on the fifth of the Ten Commandments, which directs that one must honour thy father and mother. The spiritual mother is taken to mean the Church, but the Church does not simply identify the clergy 'for all the Catholyke people make the churche.'⁸¹⁰

Additionally, he once again uses the opportunity to reinforce the evidence from Scripture which proves the royal supremacy, when he discusses in the twenty-first chapter that:

It is resyted in a Constitucyon / that is in [the] third boke / in the tittle of churches liberties / and begineth thus : [...] That lay men be forboden / as well by the lawes of god as of man / to ordre and dyspose the churche goodes : by the which terme churches goodes / spirytuall men vnerstande / as well landes and tenementes / as chatel personels. And I suppose / that there is no lawe of god that dothe prohibyt laye men to dyspose and determyne the right of la[n]des and goodes of the church : but that it most properly appeteyneth to theym / and nat to the clergie. And that semeth to appere. Luc. Xii. Whan our lorde refused to denye the enheritaunce bytwerte [*sic*] the two brethern. And it is to suppose / that as he refused to medell with the iudgme[n]t of suche temporall matters him self / that he wolde his appostels and discyple / to whom the clergie be successours shulde doo the same. And it semeth he wolde also that the Emperour that tyme beinge / and his lawes shulde doo it and nat he.⁸¹¹

Therefore, it is not against the law of God for lay men to dispose of Church goods, it is a positive duty that they do. As Christ made clear by his own non-intervention, it is not for the clergy to interfere in such matters, but Scripture makes clear that it is up to the

⁸⁰⁹ Eppley, *Royal Supremacy*, 89, n. 84.

⁸¹⁰ St German, *Constitutions Provincial*, sigs. A8r-A8v.

⁸¹¹ *Ibid*, sigs. E6r-E6v.

temporal rulers (such as the Emperor) to take responsibility here. Thus, Eppley neatly summarises the point of *Constitutions Provincial* when he notes that:

In his works of controversy with More, St German assumes the authority of Parliament to reform ecclesiastical laws ordering temporal affairs if they are sources of division or contrary to the laws of the realm. In *Constitutions Provincial*, however, he goes beyond this to demonstrate that the civil authorities are authorized [*sic*] to order the temporal affairs of the Church by the will of Christ as expressed in scripture.⁸¹²

Christ himself has identified the temporal leader as the appropriate authority to deal with such matters. Therefore, should the clergy continue to intervene in such temporal affairs, this is not only to offend the law of the realm, but to actively act in direct contravention of Christ's own direction through the medium of the Scriptures.

St German continues to carefully promote the royal prerogative and the laws of the realm, which he makes direct and specific reference to in various places throughout the work, such as in his discussion of the competency of courts in the eighth chapter, wherein he explains how there is a constitution which claims that pensions are spiritual matters. However, the law of the realm makes clear that annuities and pensions which begin by composition or agreement between the parties, or by prescription belong in the secular courts and not the spiritual courts. Yet despite this, there are some who claim that the statute *Circumspecte agatis*⁸¹³ is not a good statute. St German confirms that this point (and any constitution relying upon it) is void as it is 'dyrectely agaynste the kynges

⁸¹² Eppley, *Royal Supremacy*, 89, n. 84.

⁸¹³ A statute passed in 1285 by King Edward I which establishes the jurisdiction of the ecclesiastical and secular courts and restricts the Church courts to ecclesiastical causes. For more information about the role of *Circumspecte agatis* in the enforcement of jurisdictional rules between Church and state, see David Millon, "Circumspecte Agatis Revisited," *Law and History Review*, 2, no. 1 (1984): 105-27.

lawes & his prerogatyf / & was also made without his asse[n]t or any of his p[ro]genitours.⁸¹⁴ Thus, the King has the power to set aside this constitution, as would any of his predecessors, as they too would have had the necessary power by their own royal prerogative to set aside a constitution of the Church that was not commensurate with the law of the realm. It is also against the prerogative of the King that the Articles of Faith ‘as they be contayned in the decrees decretals and Constitucyons prouincyall or Synodals’ cannot be challenged. For example, it is not within the law of God that images should be worshipped, thus, St German cannot see why images they are, though he declines to discuss his reasons for thinking so further.⁸¹⁵ For after all, the law of God is supreme, not the laws made by the clergy who have made heresies out of things not against the law of God. And for the record, he takes a moment to define heresy as falling from faith and the truth of Holy Scripture.⁸¹⁶ Scripture clearly is the key to unlocking the will of God and acting in accordance with his law, thus explaining St German’s increasing preoccupation with the topic, who should have the power to define and discern it and what precisely should constitute it.

5.6 An Answer to a Letter (1535)

St German’s next work, *Answer to a Letter*, is considered one of his most significant in relation to his development of his theories of royal and parliamentary supremacy. The work is formatted as a response to a letter from a fictitious correspondent from ‘abrode’ requesting the writer’s thoughts on the ‘great dyuersitie of opynions’ in London. St

⁸¹⁴ St German, *Constitutions Provincial*, sig. B7r.

⁸¹⁵ *Ibid*, sig. F3r.

⁸¹⁶ *Ibid*, sig. F4r.

German, as the respondent to the letter, happily presents his opinions on the question of the sovereignty of the King-in-Parliament. As per Guy (and earlier Baumer), the views expressed within this work do represent St German's 'mature opinions' on the topic.⁸¹⁷ Throughout his earlier works, he had an opportunity to hone his ideas. Within *Answer to Letter*, St German finesses his ideas from *Power of the Clergy* and reaffirms the limitations of the King's power as Supreme Head of the English Church. The work is also associated with the *Writs of Subpoena* as it 'contains a lengthy and complex analysis of the question of the restitution of things to which a man has no right in conscience, and the cases discussed closely resemble learned argument on this topic' from the earlier work.⁸¹⁸ *Answer to a Letter* was printed most likely in 1535,⁸¹⁹ once again by Thomas Godfray and certainly falls within the category of 'controversial' as favoured by that publisher, as it represents 'St. German's [...] most extreme statement on the subject of church and state.'⁸²⁰

The main issue of the work seems to be 'to discover the best method by which "semi-spiritual" matters might be governed in a manner consistent with divine law and royal responsibility, when precise guidance on individual issues was not available in the Bible.'⁸²¹ This required the interpretation of Scripture and, as it turned out, St German

⁸¹⁷ Guy, *St German*, 41; and Baumer, *Christopher St German*, 635.

⁸¹⁸ Guy, *St German*, 18.

⁸¹⁹ Baumer points out that 1535 is the most likely year of publication, due to the references made to statutes passed in the twenty-sixth year of Henry's reign – i.e. the 1534 *Act of Supremacy*. Baumer, *Christopher St German*, 635.

⁸²⁰ *Ibid*, 649.

⁸²¹ Guy, *St German*, 42.

believed that neither the King nor the clergy were right for the job, this power was to be vested in the King-in-Parliament. Or as Rex summarises, in the absence of a general council, Parliament and statute are the tools selected by St German to resolve any issues arising over the meaning of Scripture.⁸²² Though power was not to pass to either the King or the Parliament absolutely in purely spiritual matters. This St German makes clear from the outset, in his acknowledgement that though princes could be ministers their first honour was in ensuring that justice was done within the realm, and to ensure that their ministers were not negligent in ministering to the people.⁸²³ He also cites the *Books of Chronicles*⁸²⁴ at 2 Paralipomenon 19 which details Jehoshaphat's charge to the judges and to the Levites and how, though Jehoshaphat ordained judges in Juda and in Jerusalem he ordained Levites and priests, he did not *make* them priests. They were priests already and he merely appointed them to their offices, as he did when he appointed Amariah to be the chief priest.⁸²⁵ In short, the power of the King is limited in relation to spiritual matters as:

⁸²² Rex, *New Additions on St German*, 297.

⁸²³ St German, *Answer to a Letter*, sig. A5r.

⁸²⁴ These form part of the historical books of the Old Testament following the Books of Kings. The word Paralipomenon derives from the Greek 'things left on one side.' It offers a 'comprehensive history of the people of Israel, beginning with Adam, it brings an appropriate closure to the whole canon which began with Genesis.' The *Chronicles* form a single book but the division into two parts was first made in the *Septuagint* (considered as the earliest existing translation from Hebrew into Greek of the Hebrew Scriptures). The division was introduced into the Hebrew editions of the Bible in the fifteenth-century. See, Sara Japhet, *I and II Chronicles: A Commentary* (London: Westminster John Knox Press, 1993), 3.

⁸²⁵ St German, *Answer to a Letter*, sig. A4v.

Also trowth it is / that euery kyng is bounden to minister iustyce vn to his people / accordyng to the lawes of his realme. And may therefore to that intent be called a minister : but yet that ministration is all in a nother maner / than in the ministeration of the successours of the apostles : for the ministration of a kyng / is the ministration of power / iustyce & souerayntie.⁸²⁶

Therefore, had the Parliament or the Convocation tried to grant the King spiritual authority (i.e. those powers that Christ gave specifically to his Apostles and disciples⁸²⁷), then that grant by Parliament would have been void, ‘for they haue no auctorite to chaunge the lawe of god.’⁸²⁸ As Baumer notes, this comment is interesting as here St German identified the possibility of Parliament making a mistake despite ‘his conviction throughout the crucial years of the early English Reformation that an uncorrectable parliament was the only antidote to an absolute papal power and an aggressive ecclesiastical jurisdiction.’⁸²⁹ This is particularly interesting considering Walter’s interpretation of St German’s writing in *Answer to a Letter* where St German identified that God endowed humanity with an ability to seek out knowledge and truth about religious doctrine, i.e. through obedience to temporal princes appointed by God to govern them and that their word is final in order to establish and maintain order. If this is the case, then it seems that it would essentially sit that the King and Parliament would have

⁸²⁶ Ibid, sig. A5r.

⁸²⁷ St German identified these ‘mere spiritual’ powers earlier in the text as ‘[t]he consecration of the sacrament of the auter / the makynge of absolucyons / the gyuyng of orders / & the ministratyon that Saynt Paul speke of. ad Corin. iiii Whan he sayd of hi[m] self & of other Apostles & discyples of Christ thus / Let euery man esteme vs as ministers of Christ / & as dispe[r]satours of [the] misteryes of god / wherby he vnderstode princypally the ministratyo[n] of the sacramentes.’ Ibid, sigs. A3v-A4r.

⁸²⁸ Ibid, sig. B3r.

⁸²⁹ Baumer, *Christopher St German*, 651.

the ability to craft the law of God as they saw fit, which Walters states has led some to view St German's limit of the law of God as 'unreal.' However, as is clear from *Answer to a Letter*, St German also contends that the law of God exists *a priori* and, therefore, that it is binding upon temporal law and princes, which again raises the question for Walters of whether St German is promoting absolute parliamentary infallibility or a rebuttable presumption of parliamentary infallibility. Walters comes to the conclusion that:

[St German] thought that the King, Lords and Commons were wise, that statutory error was extremely unlikely, and that challenges to statutes were dangerous to social and political stability; *but*, if sufficient proof rebutted the presumption of parliamentary infallibility and an error was made out, then the impugned Act of Parliament was void and not binding upon the people.⁸³⁰

Further:

For St German, the constraints of reason and religion on legislative power were matters of *English law* that could and should be the subject of a distinctly legal discourse. This point, first made in *Doctor and Student*, is confirmed, not denied, by his subsequent political pamphlets.⁸³¹

On the point of scriptural interpretation, St German notes how the clergy alone could not be relied upon to interpret Scripture as there was a significant conflict of interest in that some of the most controversial issues surrounded their power and authority. Therefore, it should be up to kings and princes to be the judges. According to *Answer to a Letter*, kings do not just have the power to judge on temporal matters, they also have the power to judge on matters 'that apperteineth to the soule.'⁸³² As per Ecclesiasticus 17

⁸³⁰ Walters, *St German on Reason*, 355.

⁸³¹ *Ibid*, 358.

⁸³² St German, *Answer to a Letter*, sigs. G2v-G3r.

wherein God commanded every man to take account of his neighbour's soul. Therefore, if every man has a responsibility to live a good life and example to his neighbour, then 'a kynge hath a more speciall charge ouer his subiettes : & [he] is specially bounde to prohibyt all thinges as nigh as he can wherby his subiectes sprirytuall or temporall might haue occasion to breke the lawes of god' and thereby endanger their soul.⁸³³ Therefore, kings do have power to judge on matters pertaining to the spiritual wellbeing of their subjects, both lay and ecclesiastical. Kings also have the power to resolve any issues pertaining to disputes arising from the interpretation of Scripture. However, the power to interpret Scripture does not lie with the King, this power lies with the Catholic Church. Rehearsing again that the Marsilian definition of the Catholic Church, for St German this included the laity as well as the clergy. This was the body which St German identified as appropriate to expound upon Scripture.

However, it was vastly impractical to try to gather together the whole of the Church and, therefore, there needed to be another body able to represent the interest of the whole Church in the exposition of Scripture:

[T]herefore it semeth that kynges & princes who[m] the people haue chosen & agreed to be their rulers & gouernours / and which haue the whole voyces of [the] people / maye with their counsell spirituall & temporall make expsycyon of such scrypture as is doubtfull / so as they shall thynke to be the true understandyng of it / and none but they / & their subiectes be bounden euen by the lawe of god to folowe their expsycion for the goodnesse of oure lorde is such that he wyll nat leue his people in suche doutes but they maye haue some meanes whereby they maye come to knowlege of the trouthe so as to be necessary to their saluatyon.⁸³⁴

⁸³³ Ibid, sig. G3v.

⁸³⁴ Ibid, sig. G5r-v.

This has led some, such as Alan Cromartie to argue that St German ascribed to the King the power to determine Scripture alone.⁸³⁵ However, St German then moves onto an exposition on the powers of princes using the Fortescuean model of royal authority once again, referring to the *jus regale* and the *jus regale politicum*. The *jus regale* relates to ‘kingely gouernaunce’ whereby ‘he that hath that power maye with his counsell make lawes to bynde his subiectes / and also make declaration of Scypture [*sic*] for the good order of his subiectes.’⁸³⁶ The *jus regale politicum* refers to ‘kinglye and polytyke gouernaunce:’

which is the most noble power that any prince hath ouer his subiectes / and he that ruleth by that power / maye make no Lawe to bynde his subiectes without their assent / but by their assent he maye so that the lawes that he maketh be nat agaynste the lawe of God / nor the lawe of reason.⁸³⁷

This power is wielded by the King of England and therefore, ‘with the assente of his lordes spirituall and temperall : and of his commons gathered together by his commaundement in his parlyamente maye make lawes to bynde the people.’⁸³⁸ Therefore, as Rose notes the King shares his powers here with the Parliament.⁸³⁹ Further, the laws previously mentioned need no special proclamation because the Parliament represents the entire estate of the people ‘that is to say the whole catholyque churche thereof.’⁸⁴⁰ If

⁸³⁵ Alan Cromartie, *The Constitutionalist Revolution* (Cambridge: CUP, 2006), 56.

⁸³⁶ St German, *Answer to a Letter*, sig. G5v.

⁸³⁷ *Ibid*, sig. G6r.

⁸³⁸ *Ibid*.

⁸³⁹ Jacqueline Rose, *Godly Kingship in Restoration England: The Politics of the Royal Supremacy 1660-1688* (Cambridge: CUP, 2011), 38.

⁸⁴⁰ St German, *Answer to a Letter*, sig. G6v.

it is the Parliament which represents the Catholic Church within the realm, then why should it not expound on Scripture, particularly when the Convocation only represents the estate of the clergy. As Baumer notes, ‘St German, [...] had the foresight to see that if Henry VIII’s Reformation were to be made complete, the king in parliament must be given the “plenitudo potestatis” which the papacy and clergy had formerly enjoyed.’⁸⁴¹ However, their interpretation was only to be binding within the realm, which raises questions about the unity of the Christian faith.

At this timely moment, St German then goes on to consider the general council, a topic which would continue to appear in his later writings, and in particular his *General Councils* to which we will turn in due course. In *Answer to a Letter*, St German confirms that it is kings and princes who have the authority to judge at a general council, or anyone else that they specifically appoint as they, after all, are the voice of all of the people of Christendom, which is to say that they represent the whole Catholic Church therein.⁸⁴² General councils are not likely to do much good until monarchs understand their own power received from God to order the Pope and to settle on the clergy the power that they should hold according to the law of God. The power that the bishops of Rome have claimed over princes has been ‘a great occasyon of the desolaycon of manye countreys that nowe be esteemed amonge vs latyns as scysmatykes & desparate persones.’⁸⁴³ Thus, St German makes another attack of the power of the Pope. He calls upon the Emperor, kings and princes and the clergy to consider the matter and to see whether those countries that have fallen into disrepute as heretics and schismatics have done so for any cause

⁸⁴¹ Baumer, *Christopher St German*, 650.

⁸⁴² St German, *Answer to a Letter*, sig. G6v.

⁸⁴³ *Ibid*, sig. G7r.

other than disobedience to Rome. Has any effort been made to reform them? Or have they been treated ‘maliciously’ for their disobedience and not following the ‘heed of Christes church?’ For the salvation or damnation of a man’s soul does not rest on whether Rome is the head of the Church or not.⁸⁴⁴

Indeed, earlier in the work St German noted how at the Council of Nicaea Rome was not specified as head of the Church and all the bishops were of equal authority.⁸⁴⁵ Further, during the Nicaean Council, the Bishop of Alexandria was spoken of before the Bishop of Rome, and if the Bishop of Rome had been of higher authority, then this would not have occurred. Even after the Council there was a dispute among the bishops as to who was the more supreme. It was Emperor Phocas (c.547 – 610 – the Byzantine emperor between 602 and 610) who appointed Boniface III as ‘heed of all bysshops and prestes.’⁸⁴⁶ Therefore, they were not the head of the universal Church, but merely the head of other bishops, as if they had claimed to be the head of the universal Church, then they would have been claiming supremacy over Emperor Phocas and over all kings and princes, and the Emperor simply would not have assented to this.⁸⁴⁷ Therefore, since this time when bishops of Rome have claimed authority over kings and princes, they have done so out of pretended power and brought the people to think that to doubt the power of the Pope is to commit heresy.⁸⁴⁸

⁸⁴⁴ Ibid.

⁸⁴⁵ Ibid, sigs. A8r-v.

⁸⁴⁶ Ibid, sig. B1r.

⁸⁴⁷ Ibid, sig. B1v.

⁸⁴⁸ Ibid, sig. B2r.

Returning to the penultimate chapter, St German refers briefly to the point of understanding Scripture. St German says that if a man has doubts upon any matter concerning Scripture and there is no counsel to guide him, or if his counsel be in several minds about the issue, and the King is too busy to determine the matter, then the man should turn his questions to God who will not leave him without counsel, so that he does not err. Here St German cites the second *Book of Chronicles* again at 2 Paralipomenon 20, which details Jehoshaphat's defeat of Moab and Ammon and states that 'whan we be ignorant & wot nat what to do / this only remayneth to vs for our confort / that we lyft our eyen vp to the.'⁸⁴⁹ St German is confident that if this is done, God will not fail to provide the counsel that is necessary, though he does not specify in what way necessary (i.e. he does not differentiate whether God will ensure that man does not err generally or damnably), or in what form such counsel will appear. God alone remains the only absolute authority on the matter, one which no earthly power can usurp. However, St German still falls short of any open association with Lutheranism and the notion of *sola fide*, it is simply that a man cannot commit heresy from mere ignorance alone. This is not a totally new notion from St German, as he also made this point in *The Division* when discussing the 'common' conception amongst Church Doctors which holds to the same point.⁸⁵⁰ However, he does now demonstrate what a man is to do if he cannot get his spiritual questions answered, and this does mark a departure distinguishing his previous approach where, in cases of spiritual confusion or potential spiritual transgression, he would have asserted explicitly that a man should take his matter to the Ordinary for their

⁸⁴⁹ Ibid, sig. H1r.

⁸⁵⁰ St German, *The Division*, 21.

spiritual guidance.⁸⁵¹ Yet here when a man may well mis-interpret Scripture (meaning that, by St German's own prior definition, he may fall into heresy), when a man's unspecified 'counsel' fails, and the King is too busy to resolve the matter, the man opening his heart to God is sufficient as God will provide him with the proper counsel and knowledge 'necessary.'

The remainder of the response is then given over to the eighth chapter which deals with various other questions sent in the letter which deal with other perceived abuses of power that the clergy or the canon law have demonstrated, and that St German considers should be resolved. For example, the King and his Parliament should have the authority to prohibit from preaching those who may speak against the Catholic faith or whose speech would create division within the realm.⁸⁵² However, also couched here is some material pertaining to the practice of the faith within the realm, as here St German discusses the opinion that those who work to refocus the minds of the people on the worship of Christ and thus away from the 'inordynate goynge on pilgrymages / prayend to sayntes / & worshippyng of them : And from worshippyng of ymages and relyques' actually do more to honour the saints who would want the focus of the people to be on Christ.⁸⁵³ St German feels that this is true.⁸⁵⁴ He concludes with a confirmation about the

⁸⁵¹ For example, in his discussion of what a man should do when he suspects another of heresy and cannot bring him to reject his possible heresy, he says the man should take his concerns to the Ordinary. St German, *Salem and Bizance*, 353-54. Even in *Power of the Clergy*, he asserts that spiritual offences should be taken to the Ordinary. St German, *Power of the Clergy*, sig. D5r.

⁸⁵² St German, *Answer to a Letter*, sig. H3r.

⁸⁵³ *Ibid*, sig. H5r.

⁸⁵⁴ *Ibid*, sig. H5v.

central role of Scripture to the Christian faith, whilst noting that Doctors of the Church have over-extended their interpretation of this in favour of the clergy but that, in dealing with the moral living of the people, they probably have interpreted the Scripture correctly. This is important as Scripture is the ‘hyghest auctorytie in the churche of god’ and the ‘ladder to paradice and the very true fode of the soule,’ far more powerful than the saying of doctors or even of the saints.⁸⁵⁵ Though at this point St German refrains from entering into a further discussion of who, therefore, has the power to discern Scripture should there be a variance of opinion. Though Baumer noted that St German’s principle of parliamentary sovereignty had reached ‘unprecedented heights’ in *Answer to a Letter*, he also believed that this was St German’s last treatise on the matter.⁸⁵⁶ However, we now know that there was more discussion still to come, and it is hard not to feel that within *Answer to a Letter*, as controversial and ‘unprecedented’ as it was, St German was yet setting the stage for his next forays into the debate, or still working matters out in his own mind.

5.7 A Treatise concerning General Councils, the Bishops of Rome and the Clergy (1538)

Rex’s identification of *A Treatise concerning General Councils, the Bishops of Rome and the Clergy* as St German’s own work, signals a significant change in the standard historiography relating to the chronology of St German’s writings. Prior to this identification *Answer to a Letter* was thought to be St German’s last published work, with the (yet to be considered) unpublished 1537 religious works written but not made public.

⁸⁵⁵ Ibid, sigs. H6r-v.

⁸⁵⁶ Baumer, *Christopher St German*, 644.

In supposing *Answer to a Letter* to have been St German's last publication, Guy considered that this was due to the fact that St German had 'gone full circle' – that he had begun his writing with a discussion of the foundations of the English law and its relationship with the law of God in *Doctor and Student*, and that *Answer to a Letter* returned to this and considered publicly for the final time 'the ultimate question of the mechanics by which the law of God, revealed for mankind and written in the Bible, might be declared in England,' and that after *Answer to a Letter* he had nothing more to say on the subject.⁸⁵⁷

General Councils suggests otherwise, as in eight chapters St German explodes the myth of papal authority in his most unabashed attack on Rome's assertion of spiritual and temporal power. In it, he denies the Bishop of Rome's power to declare on disputed scriptural questions and the pretence that ecclesiastical law is in some way supreme above temporal law. Bishops of Rome have no power to depose kings or excommunicate and have no power to call general councils of the Church and call kings and princes to assist them therein. In fact, the Bishop of Rome and the clergy through their abuse of power have led the people act against the Scriptures. Here St German is unflinching in his attack, arguing that the Bishop of Rome and clergy have led the people to heresy no less.⁸⁵⁸

Rex identified the work as St German's in his 2008 article, along with St German's *Epistle of St Bernard* (chapter six), *Treatise against Mohammed* (also chapter six), and his *Clement and Bernard*.⁸⁵⁹ *General Councils* was published in 1538 by Thomas Berthelet and had previously been attributed to Alexander Alesius by Paul

⁸⁵⁷ Guy, *St German*, 45.

⁸⁵⁸ St German, *General Councils*, sigs. B3r-B4rv.

⁸⁵⁹ Rex, *New Additions on St German*, 281.

Sawada in a 1961 article⁸⁶⁰ and the attribution was then taken up by the revised *STC* (and the attribution remains the same to this day). Rex argues immediately that the work is unlikely to have been Alesius's and asserts several increasingly compelling arguments. Firstly, based on draft instructions to Edmund Bonner and Simon Hayes (in 1538) who were to act as ambassadors to Holy Roman Emperor Charles V in order to explain Henry's position on Pope Paul III's actions in trying to convene a general council. In the instructions, Rex notes how Bonner and Hayes were directed to make use of various works, including those of Alesius. Rex's objection to Sawada's thesis here lies in the fact that Sawada was working from a version of the treatise preserved at Hatfield House that was written in English, and 'only documents in Latin would have been of any use to those representing Henry VIII's views to the imperial court.'⁸⁶¹ In any event, the two works which Henry's instructions did specifically mention were in Latin, giving further emphasis to Rex's argument.⁸⁶² Secondly, the work was not in Alesius's hand, but is written in secretary script and Alesius was not wealthy or busy enough to have warranted having a secretary.⁸⁶³ Thirdly, it also fails to express any overt Lutheranism evident in other of Alesius's works, such as his 1536 exposition of the psalms. Fourthly, Alesius was Scottish, and did not publish in English. Finally, and perhaps most persuasively, Bale did not attribute anything like the treatise to Alesius, despite the pair having been close

⁸⁶⁰ Paul A. Sawada, "Two Anonymous Treatises on the General Council," *Journal of Ecclesiastical History*, 12, no. 2 (1961): 197-214.

⁸⁶¹ Rex, *New Additions on St German*, 292.

⁸⁶² *Ibid*, 292, n. 45.

⁸⁶³ *Ibid*, 292.

since the 1530s. Therefore, if Alesius had indeed written the work, Bale would have known about it and would have provided an appropriate entry in his lists.⁸⁶⁴

The arguments for St German's authorship are also sufficiently convincing to warrant including the work within this thesis. Again, though the hand was written by a secretary, St German did employ secretaries. His own poor hand was well known, considering the previously discussed criticism from More⁸⁶⁵ and St German's holograph letter to Cromwell,⁸⁶⁶ making clear that a secretarial copy would have been practically necessary should he wish to engage others with his writing prior to publication. For example, his unpublished 1537 works are written in a mixture of secretarial and St German's own hand. The title of the treatise is also reminiscent of that of his other works beginning '*A treatise concerning,*' thus the title can be said to be 'typical of his style.'⁸⁶⁷ Most compellingly, several themes which appear elsewhere in St German's works also make an appearance in *General Councils* and, as his other works have demonstrated, St German was not shy about recycling ideas (or even entire chapters) out of his other works. Rex is particularly scathing about an argument in *General Councils* which also appears in *Things Necessary to Salvation* which uses Matthew 16 and 28 in support of the divine authority of kings and princes to call general councils. The argument appears in full in *Things Necessary to Salvation*, as St German uses the texts to argue:

⁸⁶⁴ Ibid, 292-93.

⁸⁶⁵ More, *Debellation of Salem and Bizance*, 4.

⁸⁶⁶ SP 1/152 f. 249.

⁸⁶⁷ Rex, *New Additions on St German*, 294.

whatsoever thowe byndeste vpon erthe shalbe boundon in heuon, and whatsoever thowe loseste in erthe shalbe losed in hevon, for that tixte spoken to petre yn the name of all the Appostles and of the vniu[er]sall churche till kinges were conu[er]ted that were hedes over the churche.⁸⁶⁸

Matthew 28 then goes on to reconfirm the Apostles' power to convert and baptise the nations. St German then confirms that:

if bothe the saide textes shulde be vnderstoude to be spoken to the appostles and bothe to be of oon lyke effecte, then the oon or the other of theym was surplisage and spoken in vayne, specially seing that bothe the saide textes were spoken by oon self evengeliste and so mighte to gethere, And to saye that they therbye may make lawes and bynde king[es] and theyre people it is agaisnte many scriptures that gyve that auctoritie to king[es] and princ[es] and so it is herisie to affirme it[.]⁸⁶⁹

Rex notes that:

Only rarely in the long and tortuous annals of scriptural exegesis can anything more bogus than this have been produced, and it is hard to imagine anyone other than the proud progenitor of this absurdity as having had the gall to put it forward not only in manuscript but also in print. That this idiosyncratic argument from *Things necessary to salvacion* appears in summary in the *Treatise concernynge generall councilles* is almost enough in itself to show that both were the work of one man.⁸⁷⁰

Indeed, the argument does appear in *General Councils* in the fifth chapter which discusses 'By what auctoritie the catholyke generall councilles fyrste began, and what power they haue.' Here, St German says that when a man makes a testament he does so because he wants to see it upheld. Therefore, when Christ in his good wisdom made a testament which was to be carried out until the end of the world, he explained how that

⁸⁶⁸ St German, *Things necessary to salvation*, 36-37; Matthew 16:18.

⁸⁶⁹ *Ibid*, 44.

⁸⁷⁰ Rex, *New Additions on St German*, 295.

testament was to be carried out and assigned certain powers to ensure that it was.⁸⁷¹ St German splits the history of the Church into two phases; (i) when the Church was in its infancy after Christ's passion but before kings were converted, and (ii) from the time when kings were converted to the end of the world. Thereby, during the first period, as per Matthew 16, he gave power to his Apostles and disciples as merely an interim provision until such times a kings and princes were converted and took over the power (as per Matthew 28). The Apostles and disciples held this power originally being the only ones converted to the Christian faith. Thus they governed alone in order to increase the love and honour of the people for Jesus.⁸⁷² However, when others did start to be converted, 'they toke the seniours of the peple with them in councylls, in the name of the hole church.'⁸⁷³ But when kings and princes were converted, as per Matthew 28:

[T]hat texte is the verye grounde and warrante of the keyynge of all catholyke generall councilles, that haue ben or shall be to thende of the world. And here it is to be notid, that when Kynges and prynces were infidels, they had theyr power of god ouer the people: and wen they became crystened, they loste none of that power, but had it and to this daye [...] And vnder this maner beganne the auctoritie of the catholike general councilles of the churche of god.

Therefore, confirming the biblical authority of kings and princes in relation to the general council. Christ himself, therefore, granted the power to call general councils to his universal Church, i.e the totality of the Christian people united, or pragmatically, to those they had chosen to lead them. On who should hold authority within them, St German returns to arguments that he had already made in *Answer to a Letter*, where he had

⁸⁷¹ St German, *General Councils*, sig. B5r.

⁸⁷² Ibid, sigs. B5v-B6v.

⁸⁷³ Ibid, sig. B6v.

claimed that Parliament had the power to expound on Scripture. In *General Councils*, he then argues that kings should be judges within general councils as they are the chosen leader of the people who make up the Catholic Church.⁸⁷⁴

Thus, as late as 1538, St German is producing ‘royalist propaganda’ and this is emanating from the King’s own printer once again.⁸⁷⁵ Therefore, rebutting Guy’s argument that St German isolated himself from the government after *Answer to a Letter*. He did of course refuse to provide assistance in July 1534 as has been noted previously.⁸⁷⁶ This has led Rex to argue that St German was not distancing himself from the government, but was instead distancing himself from ‘the proposed Henrician revision of canon law.’⁸⁷⁷ This seems sensible, as those others named in the letter; John Olyver, Edward Karne, Wylliam Bretten, John Hughes, along with Thyrlaby, were themselves canon lawyers who had been ‘charged with compiling the first post-Reformation code of canon law for the Church of England.’⁸⁷⁸ Rex continues by explaining that St German’s hesitations regarding the promulgation of such a code ‘are hardly surprising in the light of his radical common law ideology, which left no room at all for an autonomous ecclesiastical legislature or judiciary, a point made perfectly clear in the *Dyaloge betwene Clemente and Bernarde*.’⁸⁷⁹ St German was right to have reservations, as the code would never be promulgated. Instead, Cromwell would ban the study of canon law at Oxford

⁸⁷⁴ Ibid, B7v.

⁸⁷⁵ Rex, *New Additions on St German*, 296.

⁸⁷⁶ LP 7:1008.

⁸⁷⁷ Rex, *New Additions on St German*, 296.

⁸⁷⁸ Ibid.

⁸⁷⁹ Ibid.

and Cambridge in 1535. Indeed, the issue of general councils was front and centre at the time that the treatise was written, considering that Pope Paul III had called for a general council to be opened in the Italian city of Mantua in June 1537. Rex, therefore, theorises that *General Councils* evinces that St German was ‘among several scholars commissioned to write in justification of Henry VIII’s refusal to have anything to do with the plan.’⁸⁸⁰ This seems a sensible assertion based on the facts.

Elsewhere in *General Councils*, St German opens his first chapter with a now familiar consideration of the authority of kings and princes, once again reinforcing that monarchs hold their powers directly of God. The next three chapters then go on to discuss the powers that the clergy have of the law of God. They have the powers to preach and to perform the sacraments, but this exposition of their legitimate power quickly falls to a more usual discussion of their usurpation and abuse of power. Once again, St German takes clear and direct aim against the usurpations of the Bishop of Rome. As Eppley summarises, St German focusses on the powers they have only by custom or human law, i.e. ‘[m]inistrations of the clergy that are theirs merely by custom or human law but claimed as theirs by the divine law are listed, including judicial and institutional authority, as well as authority over virtually all ceremonial aspects of worship.’⁸⁸¹ Chapter four then goes on to list the powers that the bishops of Rome and other clergy have neither by the law of God, or via any valid human law, and ‘[p]rimary among these are claims by the Bishop of Rome to absolute authority over institutional Church affairs as well as claims

⁸⁸⁰ Ibid, 297.

⁸⁸¹ Eppley, *Royal Supremacy*, 120.

that the Bishops of Rome has all spiritual and temporal power, including the power to depose princes.’⁸⁸²

The Marsilian definition of the universal Church, touted throughout his works, now receives scriptural authority in *General Councils*:

And surely to say, that byshops and priestes, make the vniuersall churche, is a great erreure: for the vniuersall churche is the congregation of all faithfull people, and not onely of the byshopps and priestes. And of that church saint Paule speke, Ephes. v. whanne he sayde, that for his churche Christe gaue hym selfe : and no man wylle say, that Christ gaue hym selfe only for the clergie. Also sainte Paule spekyng of the particular churche of the Corinthians saith this [...] I haue espoused you to gyue your selfe a chaste virgin to one manne, that is Christe. And by those wordes, a chaste vigne, he understandeth the vniuersall churche of the Corinthians, and not onely of the clergie there.⁸⁸³

St German goes further, asserting that this definition is even acknowledged by the clergy as:

Howe be it the byshops of this realme are clere fro that errour : for they right well and catholically haue confessed in their boke, called the Institution of a christen man, in the title of matrimone, that the congregation of al faithfull people maketh the vniuersall churche.⁸⁸⁴

Again, St German points out the practical conflict of interest in trying to establish a general council, tasked with trying to consider the abuses of the clergy when the clergy are the only ones with the voices therein.⁸⁸⁵ Are they likely to ‘be dilygente’ and ‘abate

⁸⁸² Ibid, 120. See, St German, *General Councils*, sigs. B2v-B4r.

⁸⁸³ St German, *General Councils*, sigs. C5v-C6r.

⁸⁸⁴ Ibid, sig. C6r.

⁸⁸⁵ Ibid, sigs. C6r-C7r.

their accustomed vsurped honour, power, riches, libertie, and suche other, as in this worlde be thinges right delectable and pleasant?’⁸⁸⁶ Probably not, it seems.

The general council has no right to encroach into the jurisdiction that God has directly granted to kings and princes. Kings have power over all temporal powers. As per Ecclesiastes 5, kings command the whole country, therefore, no one else may punish within the King’s realm as it is against Scripture.⁸⁸⁷ As per Matthew 18:

Whiche was spoken to the vniuersall church, as is sayde before, is to be vnderstand thus, what so euer ye bynde vppon erthe, not offendynge scripture, ne the power that is gyuen to kynges by the lawe of god, shal be bounden in heuen. For certayne it is, that the intent of Christ was, neuer to speke any thyng againste scripture, neither of the old testamente, ne of the newe.⁸⁸⁸

Even if kings and princes lived against Scripture and against the law of God, his subjects ‘might nothing do therein : but only pray to almightye god for his amendment.’⁸⁸⁹ Therefore, as Eppley points out, ‘[a] corollary to the claim that kings exercise exclusive authority over the means of coercive enforcement is that coercive correction of kings is the prerogative of no human power but of God alone.’⁸⁹⁰ Similarly, if the clergy or the general council try to pass decrees ‘against the prerogayue of kingis and princes and also against scripture’ they would be ‘voide’ because they would be against the law of God.⁸⁹¹

⁸⁸⁶ Ibid, sig. C7r.

⁸⁸⁷ Ibid, sig. B8r.

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid, sigs. B8v-C1r.

⁸⁹⁰ Eppley, *Royal Supremacy*, 124.

⁸⁹¹ St German, *General Councils*, sig. C1r.

The purpose of the general council is to ensure the unity of Christendom i.e. the unity of the universal Church. They are there to:

declare the trewe catholyke fayth, accordynge to the rules and groundes of scripture : and to declare also, what is to be iuged to be agaynste scripture, and what not : and to expounde the doubttes therof: and also to determine, what bokes are to be obeide and taken as bookes of scripture, and what not.⁸⁹²

The ordering of ceremonies, such as fasting days or holy days, clerical apparel at mass etc is under the authority of kings to determine nationally according to their laws. General councils are there to see that ‘in one faythe and in one hoole and full assente vpon scripture, and vpon the expositions therof, all christen people muste of necessitie agree [...] and to that intent onely it shulde seme that Christ ordeyned generall councilles.’⁸⁹³

Therefore, general councils shuld not become a new ‘Rome,’ usurping the rightfully held powers of kings and princes nationally within their own territories. General councils may declare that a law is against Scripture but that is as far as their power extends.⁸⁹⁴

Reforming this would lie with the relevant national parliament. As per Eppley, general councils still carry no ‘coercive authority,’⁸⁹⁵ it is up to the King within their own realm to make ‘refourmation’ of those laws. General councils, therefore, have authority only over the essentials of the faith, but ‘[p]lacing such a limitation on the power of the general council is, however, problematic because the issue of what is to be considered a matter “of the faith” is left undetermined.’⁸⁹⁶ Previously, the power to determine what matters

⁸⁹² Ibid, sig. B7v.

⁸⁹³ Ibid, sigs. B2v-B4r.

⁸⁹⁴ Ibid, sig. C1r-v.

⁸⁹⁵ Eppley, *Royal Supremacy*, 125.

⁸⁹⁶ Ibid, 126.

did fall into this category lay with the general council as they held the power to determine Scripture. Yet:

The only way that the laws of Christian kingdoms ordering temporal affairs can be effectively safeguarded from infringement by the determinations of general councils would be if it were argued that no temporal affairs are essentials of the faith. We have seen, however, that St German does identify some beliefs impacting temporal affairs as being amongst the essentials of Christianity; this position is not denied, but rather reaffirmed in *General Councils*.⁸⁹⁷

As already mentioned, kings have power over fasting and holy days etc, i.e. authority over all non-essential faith matters within their own kingdoms. However, an exception to this according to St German is the ‘vii. day,’ i.e. the sabbath, which must be kept holy.⁸⁹⁸ This is binding in conscience ‘because in doing so they are asserting an essential of the faith decreed in Scripture.’⁸⁹⁹ However, as per *Power of the Clergy*, St German pointed out that kings could move the sabbath from Sunday to a more convenient day, if they so wished. However, Eppley posits – what if a general council were able to provide scriptural evidence to support that the sabbath must be observed on a Sunday (or indeed any specific day)? How might a king object to this? Would Christians be bound in conscience to obey these laws, particularly if they were against the domestic laws of the realm?⁹⁰⁰ Well it would seem so, for:

If a general council is the highest source of insight into the judgments of the universal Church, it would be assumed that Christians are bound in conscience to obey the teachings of a general council even in the face

⁸⁹⁷ Ibid.

⁸⁹⁸ St German, *General Councils*, sig. C2v.

⁸⁹⁹ Eppley, *Royal Supremacy*, 127.

⁹⁰⁰ Ibid.

of human laws to the contrary. Such authorization of the council would extend as far as the council itself declared that it should extend based on its interpretation of scripture.⁹⁰¹

This would seem rather contradictory considering St German's prior situation of the power to determine Scripture with the King-in-Parliament in *Answer to a Letter*. Why now situate this power with a general council and undermine the carefully crafted jurisdiction supporting the King and his Council's pre-eminence in such determinations? This is a point to which we will return shortly in chapter six, as St German had dealt with this in his unpublished 1537 *Things Necessary to Salvation* (which of course, preceded *General Councils* chronologically). However, as Eppley notes, St German does resolve this in chapter seven of *General Councils*. He does this simply by stating that there were no current plans for the establishment of any valid general council and, anyway, in the absence of such councils the King-in-Parliament's interpretations are binding interpretations in conscience.⁹⁰² Kings and princes were central to a validly constituted general council, after all. For the people not to accept that the King-in-Parliament had the power to authoritatively determine Scripture puts their souls and, therefore, their ultimate salvation at risk. Validly constituted general councils are indeed the ultimate authority to discerning the true and binding interpretation of Scripture; Parliament is technically a secondary authority. However, as the conditions for forming a valid general council are strict and also as a validly conceived general council, as per St German's construction, does not seem to be on the cards for the foreseeable future, St German 'uses the authority of church councils itself to claim for Parliament, as a national Church council, the

⁹⁰¹ Ibid.

⁹⁰² Ibid, 129.

authority to interpret scripture in the absence of a valid general council.’⁹⁰³ This was timely as the convention of a general council was far from inconceivable at the time. Thus it seems that St German was preparing for the eventuality of a council of which he would disapprove.

Finally, in another point of critical importance which further links St German to the heart of Henry’s plans in the later 1530s is seen in Nicholson’s 1977 unpublished doctoral thesis.⁹⁰⁴ Rex highlights how the attribution of *General Councils* to St German links him to ‘an important body of manuscript material among Cromwell’s papers in the Public Record Office.’⁹⁰⁵ These papers were examined in Nicholson’s thesis, but Nicholson followed Sawada in his attribution of *General Councils* (and so the other works) to Alesius. These papers also included *Things Necessary to Salvation* (attributed to St German by Guy), therefore with *General Councils* attributed to St German also, this leads to the conclusion that the remainder of the papers, which Rex notes includes a number of draft statutes, must have been St German’s also.⁹⁰⁶ One of these statutes demonstrates ‘similarities in argument and wording between this draft statute and the dialogue *Things necessary to salvacion* make it almost certain that they are by the same author.’⁹⁰⁷ So again, even though these statutes remained drafts, they again offer us opportunities to observe the ‘paths not taken’ thus building a clearer picture of the

⁹⁰³ Ibid, 135.

⁹⁰⁴ Graham D. Nicholson, “The Nature and Function of Historical Argument in the Henrician Reformation,” PhD diss., (University of Cambridge, 1977).

⁹⁰⁵ Rex, *New Additions on St German*, 297.

⁹⁰⁶ Ibid.

⁹⁰⁷ Ibid, 298, n. 73.

ideologies abounding in the period and also ‘give good reason to conclude that St German was an important figure in the King’s or at least Cromwell’s counsels not simply in the early 1530s but right up until his death.’⁹⁰⁸ It has not been possible to include any proper consideration of these works here in this thesis, but these do offer a tantalising opportunity for further future research and investigation.

5.8 Chapter Summary

English government, for St German as for Sir John Fortescue before him, was by *ius regale politicum*. The doctrine of the royal supremacy in the Church, however, was based on divine law as revealed in Scriptures, particularly in Old Testament material relating to kingship (suitably edited and interpreted, of course). The trouble was that the biblical evidence indispensable for justifying the royal supremacy said nothing about popular consent or parliamentary representation.⁹⁰⁹

However, this was no an insurmountable problem for St German, and his *New Additions, Clement and Bernard, Power of the Clergy, Constitutions Provincial, Answer to a Letter and General Councils* form the essential body of his written works set up to support and establish the supreme authority of the King-in-Parliament. Though, technically the clergy retain powers over ‘spiritual matters,’ they can no longer be trusted with the power to authorise and determine what matters fall within this domain as they have historically interpreted Scripture for their own personal benefit and gain, leading them astray from the path Christ set them on in the Scriptures.

This power rather lies with the one body practically able to establish the true voice of the universal Church, i.e. the general council. But just as St German sets up the

⁹⁰⁸ Ibid, 298.

⁹⁰⁹ Ibid.

authority of the general council in this respect, so too he knocks it down. For how would it be possible to convene a valid general council in St German's eyes? Practically, it seems nigh on impossible. Therefore, domestically within the realm it is the King, adequately advised by a mixed clerical and lay body of advisors sitting in the form of the Parliament, who wield the due power to authoritatively determine and authorise the Scriptures, for the benefit of the universal Church within the realm. It is this issue that St German would hammer home in his unpublished 1537 manuscript works.

6.1 The Early Religious Works: *The Epistle of St Bernard ... [and] Four Revelations of St Bridget (1531[?])* – and – *A Little Treatise against Mohammed and his Cursed Sect (ca. 1531)*

The Epistle of St Bernard ... [and] Four Revelations of St Bridget and *A Little Treatise against Mohammed and his Cursed Sect* were also identified as St German's works by Rex in 2008. The *Epistle of St Bernard* was published by Thomas Godfray and the *Treatise against Mohammed* by Peter Treverys. These two works will be treated only briefly within this study, as they largely offer a detour from the themes followed elsewhere in St German's writings. However, they are illustrative in relation to the broader themes of the thesis as they 'disclose an interest in private relations, apocalyptic, and the more arcane areas of theological speculation,'⁹¹⁰ and there are other specific points contained within them that have the potential to be highly relevant. Specifically, they demonstrate a developing arc in St German's approach to matters of faith. St German's religious background, as perceived via the *Epistle of St Bernard*, is demonstrated to be 'thoroughly traditional, albeit learned,' and stands in rather stark contrast to the distinctly unorthodox position demonstrated in his unpublished works of 1537, which make up the rest of this chapter.⁹¹¹ However, one point in *Treatise against Mohammed* suggests a much earlier reflection on the issue of scriptural interpretation than previously conceived, so this does need to be explored.

⁹¹⁰ Rex, *New Additions on St German*, 285.

⁹¹¹ *Ibid.*

Once again, Rex identified these early works as St German's, following Bale's list which named two works entitled: *Doctrina Barnardi et Brigidae* and *In Mahumetem et eius sectam*. These did not fit in with the known canon of St German's works. Thus, they were considered lost until Rex's identification. The similarities between the titles from Bale's list and the works identified by Rex are so close as to suggest that St German's authorship of the works is highly likely. Rex definitively dates the *Treatise against Mohammed* to 1531 and dates the *Epistle of St Bernard* similarly to around the same time, though likely a little before the *Treatise against Mohammed* as parts of the translation from the *Epistle of St Bernard* appear in the *Treatise against Mohammed* (hence the reference to the noted date of c. 1530).⁹¹²

The *Epistle of St Bernard* opens with a familiar inscription for St German that the work is written to 'encrease of the deuotion of them that can rede Englyshe and vunerstande nat the latyn tonge / it is translated out of latyn in to Englysshe.'⁹¹³ As Rex points out, '[i]t is not to be confused with another "Golden Epistle" or "Golden Letter", namely that classic of spiritual writing which was often erroneously ascribed to Bernard, but was in fact the work of William of St Thierry.'⁹¹⁴ The work is also noted to be 'in some bokes imprinted in the later ende of the boke called in latyn Imitatio Christi.'⁹¹⁵ This leads to the supposition that 'the translation is likely to have been originally produced for that purpose, and only later issued as a separate title.

⁹¹² Ibid, 284.

⁹¹³ St German, *Epistle of St Bernard*, sig. A1r.

⁹¹⁴ Rex, *New Additions on St German*, 283.

⁹¹⁵ St German, *Epistle of St Bernard*, sig. A1r.

The *Treatise against Mohammed* sees St German treat ‘Islam as a rival form of law, and is distinctly unimpressed by its claims.’⁹¹⁶ Further ‘his critique of Moslems for their reluctance to allow rational discussion of the Qur’an is reminiscent of his later critique of the Catholic clergy for seeking to smother healthy criticism and honest discussion with blanket accusations of heresy.’⁹¹⁷ St German also discloses his early colours as a supporter of the English vernacular Bible in his comments on how the Islamic faith actively prohibited the translation of the Qur’an into the vernacular. Rex cautions here that this does not suggest any ‘evangelical religious implications’ as by this point the King and even Thomas More had signalled potential personal approval in certain circumstances for vernacular scriptural translation.⁹¹⁸ Thomas More in his debates with Tyndale over the issue ‘agreed that the provision of English vernacular scripture was desirable in principle.’⁹¹⁹ However, whilst also maintaining that circumstances in England would mean that the publication of vernacular Scripture ‘would only exacerbate the threat of doctrinal innovation, and that the bishops were therefore justified in withholding it.’⁹²⁰ Henry would of course go on to approve the *Coverdale Bible* in 1535, and then Miles Coverdale’s production of the *Great Bible* (1539) was established to satisfy a 1538 decree to ensure that a copy of an English translation of the Bible would be made available in every church for the use of its parishioners, though restrictions on such use would once again follow due to the people’s ‘abuse’ of its availability, wherein

⁹¹⁶ Rex, *New Additions on St German*, 285.

⁹¹⁷ *Ibid.*

⁹¹⁸ *Ibid.*

⁹¹⁹ Rex, *Henry VIII*, 118.

⁹²⁰ *Ibid.*

certain vulgar songs had begun to appear, sung in taverns and alehouses, much to Henry's disapproval.

As Rex notes, More was not the only prominent Catholic to feel this way about vernacular Scripture. Thomas Starkey, in his *Dialogue between Pole and Lupset* (c. pre-1530), notes Reginald Pole's approval on the matter, though of course Rex warns that the Pole of the dialogue was fictive and, therefore, care must be taken in assuming any correlation of opinion with the real Pole, though he does feel that there is 'good reason to think this is a true reflection of Pole's views.'⁹²¹ Rex notes that whilst Archbishop of Canterbury under Mary I, Pole took no action against the ownership of a vernacular Bible. There was also support expressed by the Bishop of Rochester, Fisher who wrote an unpublished treatise which 'laid great emphasis on the absolute necessity for the early Church of having the scriptures available in some language more readily accessible than the original Hebrew.'⁹²² This looks potentially a rather extreme position for an English Bishop, but Rex notes Fisher's close friendship with Desiderius Erasmus as the explanatory factor. Indeed, Erasmus was crucially connected to many of the English bishops (for example, Rex note his connections to Warham, Wolsey, Ruthall, Fox, Tunstall, and Longland) who:

[a]ll seem to have been contented with or even enthusiastic for his *New Testament* (1516), in which he outlined his ideal for a Bible-reading laity. And several were involved in one way or another with enterprises which take their place in the rise of vernacular religious culture.⁹²³

⁹²¹ Ibid.

⁹²² Rex, *Henry VIII*, 119.

⁹²³ Ibid.

However, despite this seeming careful support for the general idea of English translation of the Bible, it must of course be noted that the notion of English vernacular Scripture was peculiarly politicised due to the English experience of Lollardy, wherein vernacular Scripture was associated with followers of John Wycliffe, perceived as heretics and radicals. This meant that in the fifteenth and sixteenth-centuries that England was ‘slow to develop printing, and to have a printed vernacular Bible.’⁹²⁴ The fear was from both the spiritual and temporal spheres, therefore, that should the Bible be provided in English it would promote people to further heretical and radical behaviour.⁹²⁵ There were also fears that the introduction of an English Bible would also lead to the overturning of the social hierarchy. James notes how this is highlighted in More’s *A dyaloge of syr Thomas More knyghte* (1529) and of William Tyndale’s *Obedience of a Christian Man* (1528), from opposing perspectives, with More supporting the clergy’s traditional authority and status and Tyndale, of course, promoting a radically different social structure:

It was made up of children, parents, servants, and rulers. All power was allocated to fathers, husbands, masters, and kings. Individual access to a vernacular Bible was essential reading for those in positions of power because it would teach them to exercise their authority righteously. In Tyndale’s eyes, the vernacular

⁹²⁴ David Daniell, *The Bible in English: its history and influence* (New Haven: Yale University Press, 2003), 11.

⁹²⁵ Ibid. Although, Daniell notes that when the printed Bibles did appear, they were ‘of such outstanding quality that in the sixteenth century the Bibles in English were unique – in scholarship and of use of language, in the numbers of fine translations made (ten separate versions made from Tyndale’s first in 1526 to the famous 1611 KJV), and in influence on national life and culture.’ Ibid.

Bible was the source of a divine social structure and the instrument by which social harmony was maintained.⁹²⁶

In England in 1409 the *Constitutions of Arundel* had not proscribed the production of English translations of the Scriptures, but they had required that any translation be Church approved. However, on the continent vernacular Bibles started to appear from the 1460s onwards, so England was significantly behind the times when the *Coverdale Bible* appeared in 1535.⁹²⁷ Therefore, St German's promotion of vernacular translation does not present completely 'radically,' by the 1530s. However, the fact that St German was considering the potential issues surrounding scriptural interpretation much earlier than previously conceived, does cast other of his earlier writings in a rather different light, particularly considering the uniquely English experience of and associations with vernacular scriptural translation.

Though, that is not at all to say that St German was a Lollard. He fails to qualify by Foxe's fourfold description of Lollard belief, which included (i) opposition to the worship of saints, and of (ii) pilgrimages, (iii) a denial of transubstantiation, and also (iv) a demand for the translation of the scriptures into English.⁹²⁸ St German certainly made his own noise against the observation of saints days (despite his traditional attachment to St Bridget and Bernard) and pilgrimages, and certainly promoted English vernacularism. However, as Walker states:

⁹²⁶ Janice James, "Establishing an English Bible in Henry VIII's England: Translation, Vernacular Theology, and William Tyndale," PhD diss., (University of York, 2011), 64.

⁹²⁷ Diarmuid MacCulloch, *Reformation: Europe's House Divided 1490-1700* (London: Allen Lane, 2003), 73, discussing the increasing prominence of religious reading within the laity.

⁹²⁸ Greg Walker, "Heretical Sects in Pre-Reformation England," *History*, 43 (1993): 41.

in reality to believe any of these things need not necessarily make one a Lollard, or even a conscious heretic, if that implies someone who thought of themselves as in some senses in opposition to, or rebelling against, the established church. Each of these views had a complex history. Criticism of pilgrimages undertaken for the wrong reasons was a commonplace of religious and moral literature and many resolutely orthodox figures, including More himself, had made such criticisms.⁹²⁹

Additionally, as we shall see from his 1537 manuscripts shortly, St German was certainly no denier of transubstantiation (though Walker notes that not all Lollards followed the denial of transubstantiation), believing in the literal conversion of the bread and wine into the body and blood of Christ and believing that if anyone should deny this literal interpretation they should be duly punished by King and Parliament.⁹³⁰

Additionally, within *Treatise against Mohammed*, St German once again signals his commitment to vernacular publication confirming ‘I haue thus set yt in Englysshe to the intente that euery man that can rede Englysshe maye the more lyghtely perceyue the falsnes of the sayd lawe [of Islam].’⁹³¹ By the later 1530s St German had further developed his interpretation of the faith. There had been a significant shift in his approach to orthodoxy (at least taking the *Epistle of St Bernard* as a starting point) and he had become increasingly outspoken in relation to certain matters of doctrine as we shall now discover from reviewing St German’s unpublished 1537 works *Things Necessary to Salvation* and *Discourse of the Sacraments*.

⁹²⁹ Ibid, 42.

⁹³⁰ St German, *Discourse of the sacramentes*, 13-14.

⁹³¹ St German, *Treatise against Mohammed*, sig. A2r.

6.2 The Unpublished 1537 Religious Works

The unpublished 1537 works, *Discourse of the Sacraments* and *Things Necessary to Salvation* can be found among the theological tracts of the reign of Henry VIII in the State Papers held by The National Archives (UK). *Things Necessary to Salvation* comprises eighty pages, whereas *Discourse of the Sacraments* is much shorter at just twenty pages. Both works were identified as St German's by Guy in 1985. As Guy points out, the identification of the documents as St German's can be supported by a comparison of the corrections to the pieces, in the author's own hand, with St German's holograph letter to Thomas Cromwell penned in July 1539.⁹³² The amending handwriting is once again unmistakably St German's and confirms that he again had editorial control over his documents. Guy dates the works to 1537, due to how closely their contents reflect the subject matter of the debates of that year regarding the nature and number of the sacraments. The manuscripts were then sent by St German to Cromwell, in his position as vice-gerent of spirituals.

Considering the expeditious nature of change in the period that St German's 1537 manuscripts were contrived within, it is not particularly surprising that they remained unpublished, i.e. paths not taken. The formulary of faith to be followed in the English Church was still in flux. The *Ten Articles* published in 1536 had referred to just three sacraments: baptism, penance, and the eucharist. The monasteries had also begun to be dissolved and Cromwell had begun to issue his injunctions against such matters as images in churches, pilgrimages and against some of the holy and saint's days, which, as has been noted, St German similarly attacks in his works, including those from 1537. The

⁹³² SP 1/152 f. 249.

country had faced the backlash of popular uprising in the form of the Pilgrimage of Grace (1536), incidentally where St German himself had been identified and denounced as a heretic whose works were to be destroyed by the northern rebels.⁹³³ Therein, the rebels associated St German's works with those 'heretical' works of Tyndale, Wycliffe, Huss, Luther and Zwingli.⁹³⁴ As will be seen, St German's 1537 offering in *Things Necessary to Salvation* and *Discourse of the Sacramentes* promoted a more doctrinally regressive formulary even than the one officially followed at that time, though St German was in no way a Catholic conservative. A cumulative reading of his works suggests that though his works did push the boundaries of controversy as events in the period progressed he remains idiosyncratically unclassifiable, but keenly attuned to the critical (and naturally inflammatory) issues of the day. Holdsworth described him, a 'moderate reformer,'⁹³⁵ but such a description relies on an accurate interpretation of what 'moderate' means.

St German's unpublished manuscripts seem to have been inspired by the debates centred around *The Institution of the Christian Man* (also known as *The Bishops' Book*) published in September 1537. June and July of that year had observed the height of the debates on the nature and number of the sacraments and a two-day meeting was convened by Cromwell at the House of Lords. As Guy notes, Cromwell's emphatic address to the assembled prelates is important for two reasons:

First it throws welcome new light on the vicegerent's own attitudes and methods [...] Secondly, [it ...] identified two specific points of controversy in 1537 upon the sacraments: the authority of learned doctors

⁹³³ Richard W. Hoyle, *The Pilgrimage of Grace and the Politics of the 1530s* (Oxford: OUP, 2001), 350.

⁹³⁴ Williams, *St German*, 72.

⁹³⁵ Holdsworth, *History*, 5:266.

and church councils in the matter of spiritual exegesis, and the status of ‘unwritten verities’, or traditional doctrines and articles of belief, hitherto accepted by the church but not actually based on the Bible.⁹³⁶

The close connection between the matters discussed at the meeting and the treatises produced by St German make Guy’s dating of the manuscripts seem highly likely. Additionally, in amongst other notes it is clear from Cromwell’s *Remembrances* of November 1537 that he had commissioned St German’s opinion on the matter as a reminder is recorded; ‘To show St. Jermayn's opinion upon the Bishops' book.’⁹³⁷ The focal concern of the meeting was described by the Scottish theologian Alexander Alesius, who was present:

Sacraments be signs or ceremonys which make us certen and sure of the wil of God. But no man’s hart can be certen and sure of the wil of God with out the word of God. Wherefore it foloweth that there be no sacramentes without the word of God, and such as can not be proved of the Holy Scripture ought not be called sacraments.⁹³⁸

From the close of the decade and onwards, there were seeming official retreats towards what could be considered as a more traditional orthodoxy with the enactment of *The Six Articles* in 1539, which reaffirmed transubstantiation, confirmed that priests should remain unmarried, that vows of chastity and widowhood should be upheld, that private masses be continued and that those refusing confession, or the blessed sacrament should

⁹³⁶ Guy, *St German*, 46. Cromwell’s address is helpfully replicated by Guy in his book from Alexander Alesius’ tract which recorded what Cromwell said as he addressed the assembled bishops at the meeting at *ibid*, 46 n. 140.

⁹³⁷ *LP* 12/2:1151. Though it is also clear that St German did not always acquiesce to these requests, having in 1534 declined a request from Cromwell’s agents to assist in the debates at Blackfriars as highlighted earlier.

⁹³⁸ Guy, *St German*, 47.

be punished as felons. These articles would remain the formulary of faith observed under the English Church until Henry's death in 1547.

Dialogue showing what we are bounde to believe and things necessary to salvation and what not (1537)

Eppley summarises Guy in explaining how *Things Necessary to Salvation* 'presents a call for a general council convened by Christian kings and princes to clarify the canonical status of apocryphal books and to expound Scripture to foster uniformity in the Church and to clarify the teachings of the faith.'⁹³⁹ For Guy, this was a rejection of St German's earlier position locating the ultimate authority to determine the Scriptures with the King-in-Parliament.⁹⁴⁰ Rex also sensibly notes the ideas presented in *Things Necessary to Salvation* have the potential to represent somewhat of an ideological chasm between St German's prior advocacy of Parliament in *Answer to a Letter* and his focus on a general council in *Things Necessary to Salvation*. However, it is important to remember that it is St German's position that general councils are only able to legislate with each of Christendom's monarchs in consensual agreement. There are indeed many 'conditions' which he believes must be fulfilled for a general council to be considered legitimate. These are so demanding, in fact, that they are likely practically impossible to satisfy. Therefore, despite a later advocacy for the general council, this could be considered as a *faux* support as the real power remains with Parliament, which has all the practical and

⁹³⁹ Eppley, *Royal Supremacy*, 128.

⁹⁴⁰ Guy, *Later Career*, 414. Where Guy also notes that, in his opinion, this signalled that St German had 'lost his grip on practical reality.' Ibid.

theoretical power to legislate where needed.⁹⁴¹ Indeed, as Eppley points out conciliar authority relies on the council in question being valid and, who constitutes a valid general council, but the kings and princes of Christendom who represent the universal Church. ‘Interpret this passage as applying individually to each Christian ruler, and it is a restatement of the claim made in [*Answer to a Letter*] that the Crown in Parliament authoritatively interprets scripture.’⁹⁴² Further to this, if one rather interprets this ‘collectively of all Christian kings and princes, and one has the hermeneutical principle [...] that a valid general council called and presided over by kings and princes is the highest interpretive authority.’⁹⁴³

As the full title makes clear, *Things Necessary to Salvation* is once again presented in the dialogue format, but rather than the Student voicing St German’s opinions on the common law through the text, this time it is the Doctor who expresses the author’s opinions on matters pertaining to faith.⁹⁴⁴ The work opens with a request from the Student to the Doctor to explain what the Doctor thinks needs to be believed in matters of faith for one to obtain salvation. The Doctor responds simply with the facts that it is Scripture which needs to be believed. Therein begins a discussion of what writings are perceived to be a part of scripture. The Student asks whether the writings of doctors or saints are to be included in this class of materials, and the Doctor says no as they do not form a part of the Scripture, they are only to be believed as far as they are

⁹⁴¹ Rex, *New Additions on St German*, 299.

⁹⁴² Eppley, *Royal Supremacy*, 128.

⁹⁴³ Ibid.

⁹⁴⁴ Guy, *St German*, 49.

grounded upon Scripture.⁹⁴⁵ For how is anyone to know what has been legitimately written by doctors or saints and not some other?⁹⁴⁶ The Student comments that if this is the case then:

no man shulde be bounde to byleve nor to gyve faithe to, legendes, cronicles, stories Deedes, writinges or yet recordes and that shulde be a greate confusion and Disordre and in maner a distracion of all the politique ordre and gou[er]nauce[.]⁹⁴⁷

Here, the Doctor progresses the argument to the critical point of the dialogue that of what a man is indeed bound to believe as necessary to salvation.

Doctoure to beleve suche thinges as thowe haste remembred as thinges necessary to salvacion no man is bounden: but for to knowe what is myne and what thyne, and howe iustice aughte to be ministred, Deedes, writinges, prouffes and recordes ^ar to be bileved^ and faith muste be geven to theym, as if an obligacion/of the testato[r] be shewed to the execut[or] that he neuer harde of bifore and ~~that is~~ there is sufficiente witnes to prove that the testat[or] borrowed the money of the partie and that he made the obligac[i]on, Dothe not the executours offende if he paye ^not^ the money if they have asses [&c] and is he not boundon to bileve that that obligacion and the witnes also be trewe, seying that he hathe no evidence nor knowlege to the contrary

Studente I thinke yes

⁹⁴⁵ St German, *Things Necessary to Salvation*, 1. Please note that all references to page locations for *Things Necessary to Salvation* and *Discourse of the Sacraments* relate to the paginated transcribed versions attached as appendices to this thesis and do not correspond with the page locations from the manuscript versions of the works contained in the State Papers. For associated folio references for these versions, please refer to the appropriate State Papers reference and calculate the page locations accordingly. *Things necessary to salvation* can be found at SP 6/2 fos. 89-168, though the page locations cited for *Discourse of the Sacraments* incidentally remain the same as the work is located at SP 6/8 fos. 1-20.

⁹⁴⁶ Ibid, 2.

⁹⁴⁷ Ibid, 3.

Doctoure but then when he hathe paid the moneye, admyt that he beleve verilie that the obligacion is forged bicause he never harde his testato[r] speke of it ~~And~~ therefore he thinketh also that the witnes were vntrewe howbeit he dothe not so reporte it ne hurtith theym not therefore : but in his herte forgevith it and in that belefe he Dith: And yet the trouthe is that the obligacion is trewe, what offence is this in hym

Studente I thinke noon

Doctoure And yet thowe haste agreed that if he wolde not have paid the money having asses therto that he had offended

Studente that is trouthe for he helde fro his neighbo[ure] as ferre as he coulde knowe after the lawes, that was his

Doctoure And so it is in many other cases in man[er] infinite conc[er]nyng the Doing of iustice to oure neighbour; that is so saye for the Doing of iustice and righte to oure neighbour we be boundon to bileve many things that we be not necessarilie boundon to bileve in oure hertes as articles of oure faithe, and so it is of crownicles and legendes and other stories And therefore if a man wolde saye that there was never any bishope of Rome called Cletus or that kyng leyre made not leycestre, he were no heretique nor he aughte not be punysshed therefore : for the stories therof be not sufficiente to bynde any man to a full belyve of it: howbeit any murmoure or vnquyetnes happened to rise among the people by any suche opynyons, kinges and princes mighte prohibite them : but the Clergie hathe no powere to prohibite them:⁹⁴⁸

Anything that is not Scripture need not be believed in order to obtain salvation. Stories that fall short of Scripture cannot bind a man in conscience and a man is, therefore, not bound to believe them. Kings, therefore, have the power to silence such opinions, not the clergy who are proactively prohibited from doing so.

Thereafter, as Guy highlights, St German notes:

⁹⁴⁸ Ibid, 3-5.

that there were two categories of received truth in human affairs: the ultimate truth of divine purpose that sprang from a union of metaphysics and theology and the mundane truth of human justice that was most fully represented in England by the notion of good conscience.⁹⁴⁹

As men are lawfully permitted to doubt anything that they do not know of their own knowledge, except for Scripture or writings expressly based upon Scripture.⁹⁵⁰ When the Doctor refers to knowledge here he is referring to knowledge and conscience, as the later reference to what a man knows of his ‘i[n]ward senses’ makes clear. If a man denies what he knows of his own conscience/inward senses, then he ‘alwaies offendithe.’⁹⁵¹ Here we almost seem to come full circle back to a discussion of issues raised in *Doctor and Student*, and as Guy notes, St German had intended to return to the Doctor and Student in a third dialogue, and this could have been his moment, but he swiftly moves on to a discussion of ‘unwritten verities’ instead.⁹⁵²

Regarding ‘unwritten verities,’ St German’s Student questions whether these should be believed as things of Scripture? The Doctor challenges the name ‘verities’ as no man can speak against the truth, he would prefer to refer to them as ‘opynyons,’ which the Student accepts without further comment.⁹⁵³ The ‘unwritten verities’ that the Student wishes to query are the perpetual virginity of Our Lady, the opinion that the apostles made the common crede and that by now overly familiar topic that the clergy make up the universal Church. Additionally, that the Bishop of Rome is head of the ‘universal

⁹⁴⁹ Guy, *St German*, 50.

⁹⁵⁰ St German, *Things Necessary to Salvation*, 6.

⁹⁵¹ *Ibid*, 6.

⁹⁵² Guy, *St German*, 50.

⁹⁵³ St German, *Things Necessary to Salvation*, 8.

Church' and, therefore, has the power to summon general councils. That the clergy have the power to discern Scripture and that bishops have the authority from Christ and the Apostles to make holy oil and cream. The discussion will also cover the setting up of images, whether Peter was at Rome and also whether Peter and Paul were martyred on the same day.⁹⁵⁴ The Doctor summarises his response by stating that the first two issues (the perpetual virginity of Our Lady and the articles of the common creed) are to be believed as they have been 'sufficiently proved by scripture and muste therfore of necessitie be beleved.'⁹⁵⁵ However, the clergy do not make up the universal Church, the Bishop of Rome is not head of that Church and to assert that he, therefore, has power to call a general council and can send a binding summons to kings 'ar directlie againste the power of kinges whiche they haue by scripture and therefore it is heresie to afferme those articles.'⁹⁵⁶ With respect to the other issues raised, none constitute articles of the faith and, therefore, they do not need to be believed for the purposes of salvation, as:

saint hierome⁹⁵⁷ saith, that that whiche hathe no auctoritie of scripture maye as lightlie be Denied as it is affirmed, And sainte Augustyne saith, yn scripture is founde whatsoev[er] is profitable, and whatsoever is noyous or hurtfull is thereby Dampned, vpon whiche wordes it followethe that no catholique trouthe necessarie to be beleved for salvac[i]on, can be founde owte of scripture.⁹⁵⁸

The Student then notes that many have said that the words of St Jerome and Saint Augustine are not meant to be taken as Scripture. Therefore, what is meant to be

⁹⁵⁴ Ibid, 8-9.

⁹⁵⁵ Ibid, 9.

⁹⁵⁶ Ibid.

⁹⁵⁷ Saint Jerome.

⁹⁵⁸ St German, *Things Necessary to Salvation*, 10.

understood as Holy Scripture? The Doctor confirms rather simply that ‘surelie by that worde scripture : hathe ben alwaye vnderstaude the bookes conteyned in the bible whiche be called canoycall and non but they.’⁹⁵⁹

On the issue of general councils, the Student once again questions whether the decisions emanating from these ought to be taken as scriptural. The Doctor thinks not.⁹⁶⁰ After a slight deviation in discussing whether the canons of the Apostles should be considered to be Scripture (again a negative from the Doctor), the Student returns to the issue of the determinations of general councils. In clarifying what definition the Student holds in relation to the general council, the Doctor strikes the definitive blow for their authority arguing:

verilie I knowe not that any oon counsaile sith the tyme of thapostles and sithe the tyme that kinges were conu[er]ted to the faithe, hathe ben gathered and ^orderyd^ ordeyned according to scripture, ne by auctoritie of scripture, and yet I meane not therfore that thexposicions and determynacions made in suche counsailes as thowe spekeste of, shulde be taken vtterly voide to all intentes, for vndoubtidlie many of theym declare tharticles of the faithe and expounde some places of scripture very well, And also in suche counsailes have ben ordeyned Divers ceremonyes and ministracions that be righte conueniente to be still ~~and~~ vsed in the churche, but then it is as litle to be doubted, but that they have many tymes for the maintenaunce of their owne honoure, power, and riches, p[er]u[er]ted the trewe vnderstanding of scripture in many thinges, And over that for the mayntenaunce of ^a^ singularitie ^&^ ~~an~~ excellencie on the clergie above laye men, haue boughte in many cermimonyes and ministra-cions and also made many Divers lawes, that haue done greate hurte to the comon welthe and to the charitable ordre of ^the^ people, and yet had they no auctoritie to have made theyme[.]⁹⁶¹

⁹⁵⁹ Ibid, 11.

⁹⁶⁰ Ibid, 15.

⁹⁶¹ Ibid, 33-34.

Kings should have the power to gather and keep general councils. Here we see more borrowing from Marsilius and his idea of the ‘faithful legislator.’ This legislator ‘summoned and assembles the council and enforced its decisions, although news of the abortive Council of Mantua [...] caused St German to deviate from the strict populism of *Defensor Pacis* by substituting christian rulers for the ‘legislator.’⁹⁶² Therefore, this is far more reminiscent of Marshall in his translation of the *Defensor* wherein he deviated from Marsilius’s ideology that it was the legislator (as in the ‘elected’ representative body of the people) who held coercive power, and rather attributed the power of the legislator to the King himself.⁹⁶³ Kings must ensure that they ‘expounde the doubtes of scripture and maynteyne oon catho-lique feithe thoroughte all cristen realmes, but as for ~ ceremonyes every king in his contreye may ordre theym.’⁹⁶⁴

From this discussion, we see that once again, for St German, orthodoxy changes with time. This was clear from *Answer to a Letter* in which it was discussed whether the decrees of a general council are binding (in conscience) or not. St German notes that what ‘Christians are “bound” to believe can and does vary from time to time, and one is obligated to believe only those “truths” that have been certified to one by an authoritative exposition of scripture.’⁹⁶⁵ As has been noted, this is a familiar line of thought from ‘middle-wayer’ Thomas Starkey’s 1536 *Exhortation*. So in a discussion of the Council

⁹⁶² Guy, *St German*, 51.

⁹⁶³ For a discussion of the instances where Marshall replaces Marsilius’ references to the ‘legislator humanis’ or ‘legislator fidelis’ with references to the monarch, see Lockwood, *Marsilius of Padua*, 108-109.

⁹⁶⁴ St German, *Things Necessary to Salvation*, 35.

⁹⁶⁵ Eppley, *Royal Supremacy*, 133.

of Nicaea which had pronounced Rome as the head of all churches, the pronouncement was only binding on those kingdoms whose princes had adequate warning to attend the council. And, as there was no sure-fire way to know whether the King of England had attended, there was conveniently no way to know whether the realm was indeed bound from that time to accept Rome as the head of the Church.⁹⁶⁶ But as Eppley notes, this means that headship is interpreted as an essential matter of faith. If the only thing binding in Christianity is the Scriptures, then to say that the Nicaean Council *bound* those realms whose princes attended means that this decree must have emanated from a binding interpretation of Scripture handed down by the Council. But St German had also confirmed that later councils had the power to do away with a decree of an earlier council, so therefore; '[o]rthodoxy, defined as what one is obligated to believe in order to obtain salvation, changes with time, as general councils reveal more fully the meaning of the scripture and mend the pronouncements of earlier councils as necessary.'⁹⁶⁷ Beyond this, orthodoxies also vary between national churches and this is acceptable. Parliament is identified as a national council with the power to determine Scripture authoritatively. They are validly identified as a national council as they are 'speaking for the entire community of Christians in England.'⁹⁶⁸ Though, as previously noted, St German makes no explicit mention of the Parliament in *Things Necessary to Salvation*, this is something he reserves for the next and final work considered in this thesis; his *Discourse of the Sacraments*.

⁹⁶⁶ St German, *Answer to a Letter*, sigs. B7r-B7v.

⁹⁶⁷ Eppley, *Royal Supremacy*, 133.

⁹⁶⁸ *Ibid*, 134.

In summary, *Things Necessary to Salvation* presents us with what Guy describes as ‘an immediate programme for reform.’⁹⁶⁹ The Doctor calls for the formation of a general council on the basis of the ‘universal Church’ to ensure the proper maintenance and unity of the Catholic faith. Crucially, it must be decided what books are to be included in the canonical books of the Bible, including the Apocrypha, for the sake of the people. The bishop of Rome must no longer ‘be suffred to lyve so ferre fro the gospell of Criste,’ and kings must come to know their own power to command the Church.⁹⁷⁰

Discourse of the Sacraments: how many there are (1537)

Turning to the text of the *Discourse of the Sacramentes*, the ‘opening lines’ raise some immediate suspicions about whether we are dealing with a complete copy of the work. The main text begins with the words ‘Also we’ (which recur throughout), and to the left of the title is the notation ‘xiimus’ (i.e. twelfth). In conjunction with the ‘ffinis’ at the end, this suggests that the document we now call *Discourse of the Sacramentes* may have at some point formed the final part of a potentially much more substantial work, currently unlocated. The words after ‘Also we’ establish a beseeching plea to the King to provide guidance to the people on what must be believed of ‘the vii sacraments of the churche’ as there are ‘dyvers men that will saye that they knowe no reason why they shulde be called the vii sacramentes of the churche.’⁹⁷¹ Thus, St German’s main focus is identified from the outset and even more brazenly than it was in the unpublished *Things Necessary to Salvation* as one of authority, and specifically in the framing of Church-state relations

⁹⁶⁹ Guy, *St German*, 52.

⁹⁷⁰ St German, *Things Necessary to Salvation*, 79.

⁹⁷¹ St German, *Discourse of the Sacramentes*, 1.

going forwards. In framing the work as a plea to the King's grace, St German preemptively identifies the King as an authority with the power to resolve the issue – indeed he has a positive duty to do so. The anticlerical sentiment, so abundantly evident from *Doctor and Student* onwards through each of St German's works, finds an immediate voice in *Discourse of the Sacramentes* and continues throughout. However, despite this the work does demonstrate that St German's anticlericalism was operating independent of any specific crypto-Protestant agenda. As we shall see, based on what he says about the sacraments, St German was no still Lutheran.

Following the plea to the King, *Discourse of the Sacramentes* opens with a discussion of that most controversial sacrament in Henrician England – marriage. It is noted that matrimony was not a sacrament in the old law, and that Christ himself came of such non-sacramental marriages. The Jews who married before the passion of Christ did not need to be remarried thereafter. Therefore, why should marriage be called a sacrament in the new law? St German can find no sufficient proof why it should be.⁹⁷² To call marriage a sacrament, and to more broadly name the sacraments as the 'seven sacraments' would be to uphold the authority of the Pope. The entire identification of the sacraments as sacraments is inextricably linked with the authority of the Bishop of Rome, or the clergy more broadly, and this is the central issue for St German.⁹⁷³ It is no defence to argue that the name sacrament has been handed down by general councils as 'non had voices in the [...] gen[er]all counsailes but oonly the clergie.'⁹⁷⁴

⁹⁷² St German, *Discourse of the Sacramentes*, 2.

⁹⁷³ *Ibid*, 3.

⁹⁷⁴ *Ibid*.

St German argues that the clergy have usurped powers, and the ignorance of the people as to the definition of the word ‘Church’ (as meaning only the clergy) allows this usurpation to continue.⁹⁷⁵ Accordingly, in *Discourse of the Sacramentes*, St German points out to the King that the ignorance of the people and the abuse of the clergy will continue unless they are ‘put away by youre grace and youre parliament.’⁹⁷⁶

At this point it would be useful to consider again the authorities invoked by St German in attributing this authority to the King and Parliament. Aside from obvious biblical reference to Christ’s origins from a non-sacramental union, St German does not evidence any of his arguments within *Discourse of the Sacraments* through explicit reference to other authorities. This ties in with Rex’s thesis that the Henrician royal supremacy was typified by its claims as to ‘biblical status.’⁹⁷⁷ After all what other authority would carry the same weight as the Bible in securing popular support for the supremacy? However, that St German was influenced by other scholars’ ideas pertaining to the construction and justification of monarchical authority, particularly those which saw it held in check by the power of Parliament, is clearly in evidence despite the lack of acknowledged citations within the work. As both Guy and Rex have noted, ‘St German’s parliamentary legal philosophy sat uncomfortably with the doctrine of the royal supremacy, particularly in the theocratic form beloved of Henry himself and of his clerical advisers (notably Stephen Gardiner and Edward Foxe).’⁹⁷⁸ As Rex further notes, biblical sources in support of the royal supremacy failed to mention anything about the

⁹⁷⁵ Ibid, 3-4.

⁹⁷⁶ Ibid, 4.

⁹⁷⁷ Rex, *St German on Scripture*, 266.

⁹⁷⁸ Rex, *New Additions*, 298.

popular consent of the people.⁹⁷⁹ Therefore, in his designation of authority with the King and his Parliament, St German deviates from the typical form of monarchical authority demonstrated in the Bible, with *Discourse of the Sacramentes* instead invoking once again the Fortescuean theory of *ius regale politicum*. This is a familiar component incorporated from his earlier works, such as his *Answer to a Letter* (1535) wherein in the seventh chapter he questions ‘[w]ho hath the power to declare & expounde scrypture’?⁹⁸⁰ As he does in the *Discourse of the Sacramentes*, St German highlights in his *Answer to a Letter* the fact that the King’s authority is affirmed in the Bible. He once again identifies the ‘Church’ as made up of the collective of both clergy and laity, therefore, following this logic, the people of the realm must be represented in this definition of authority. Thus meaning that, for St German, the authority over the Church in England must be wielded by the King-in-Parliament.⁹⁸¹ The logic seems so obvious to St German that rather than labouring over the sources justifying such a conclusion, and possibly to avoid bringing more explicit attention to his reservations over a theocratic monarchy, St German ‘abruptly introduces the vocabulary of the “king-in-parliament”, offering no theoretical

⁹⁷⁹ Ibid.

⁹⁸⁰ St German, *Answer to a Letter*, sig. F6r. The discomfort St German felt in tackling this topic is evident in his designation of the question of one of ‘so grete difficulty that I shal desyre you to holde me excused though I fully satisfy nat your mynd therein for surely I wyl protest that it passeth my power to speke in the mater as were necessarye to be spoken as I take it that moore requyeth to be playnely touched & declared than that doth.’ Ibid, sigs. F6r-F7v.

⁹⁸¹ But for as moche as the unyuersall catholique / people can nat be gathered togyther to make suche exposycion / therefore it semeth that kynges & princes who[m] the people haue chosen & agreed to be their rulers & governours / and whiche haue the whole voyces of y[e] people / maye with their counsell spirituall & temporall make exposycyon of suchy scripture as is doutfull.’ Ibid, sig. G5r.

justification for why nor any practical explanation of how a power which resides in kings by divine law is now suddenly shared by the political nation.⁹⁸² As Allen notes, comfortable with this stay on the King's power, for St German the King-in-Parliament has an unlimited authority to bind in law, and now building on the foundations laid in *Doctor and Student*, to practically bind in conscience too as:

[i]n one place [namely his *Dialogus de fundamentis Legum Angliae et de conscientia* (1528)], indeed, St. Germain says that no law made by man is binding unless "consonant to the law of God." But since Parliament can decide authoritatively what the law of God is, the restriction becomes unreal.⁹⁸³

From this consideration of marriage St German moves on to explain how penance brings the clergy to the sin of pride, through their belief that they have the power to forgive sins. St German moves away from the traditional approach to the sacrament and indeed from the official determination of the sacrament as laid down in the *Ten Articles* of the previous year, which determined the sacrament as a necessity to salvation and required the presence of confession, contrition and satisfaction to be present for it to be complete.⁹⁸⁴ The *Ten Articles* also confirmed the role of the clergy in the granting of absolution 'for the absolution given by the priest was institute of Christ to apply to the

⁹⁸² Rex, *New Additions*, 298-99.

⁹⁸³ Allen, *A History*, 166.

⁹⁸⁴ 'That the sacrament of perfect penance, which Christ requireth of such manner persons, consisteth of three parties ; that is to say, contrition, confession, and the amendment of the former life, and a new obedient reconciliation unto the laws and will of God ; that is to say, exterior acts in works of charity, according as they be commanded of God, which be called in scripture, *the worthy fruits of penance*.' The text of *The Ten Articles* from John S. Brewer, *The Church History of Britain; from The Birth of Jesus Christ until the Year M.DC.XLVIII*, ed. Thomas Fuller. Vol. 3 (Oxford: Oxford University Press, 1845), 148.

promises of God's grace and favour to the penitent.⁹⁸⁵ The people were to believe that 'the words of absolution pronounced by the priest be spoken by the authority given him by Christ in the gospel.'⁹⁸⁶ Alternatively, for St German:

contricion is the very pen[au]nce that puttith away synne : And satisfaccion was ordeyned oonly to endure the people to love good warkes so that they mighte meryte therby and the rather recouer agayne their former estate of grace and merite that they loste thoroughe their synne.⁹⁸⁷

Under the *Ten Articles*, without performing and bringing forth the fruits of penance those who had sinned would 'never be saved.'⁹⁸⁸ Yet, according to St German, the people remain confused that satisfaction itself signifies the penance, as the clergy fail to make clear that it is only contrition which can do this.⁹⁸⁹ Therefore, he sees no reason why the people should be made to believe that the sacrament of penance has three parts, or face the threat of heresy.⁹⁹⁰ Nor why the sacrament should not be known as a 'gracious gifte' or some other name. After all, the name sacrament was given by the clergy and not by God.⁹⁹¹

⁹⁸⁵ Brewer, *Church History*, 149.

⁹⁸⁶ *Ibid*, 150.

⁹⁸⁷ St German, *Discourse of the Sacramentes*, 5. For more on the development of the doctrine of contrition from the medieval period to the Reformation, see: Ashley Null, *Thomas Cranmer's Doctrine of Repentance: Renewing the Power to Love* (Oxford: OUP, 2006).

⁹⁸⁸ Brewer, *Church History*, 151.

⁹⁸⁹ St German, *Discourse of the Sacramentes*, 5.

⁹⁹⁰ *Ibid*, 7.

⁹⁹¹ St German, *Discourse of the Sacramentes*, 8.

Baptism is treated next, and St German confirms that the ceremonies surrounding it do not matter as baptism is effective with or without them.⁹⁹² This clarification was likely important as, aside from enforcing the necessity of baptism for salvation, the *Ten Articles* was silent with respect to the relevance of the observance of the associated ceremonies in the pursuit of salvation.⁹⁹³ St German is extremely forthright that the issue concerning ceremonies needed to be addressed as the observance of such ceremonies was yet a further abuse on the part of the clergy and the Pope. Though, St German does offer a glimmer of hope in his statement that perhaps current bishops will not follow this prior bad example.⁹⁹⁴ Thus, there yet remains space within St German's new world order for those ecclesiasts who are prepared to conform to and remain within the designated boundaries set for them. This is a point which he considers further with the next sacrament.

According to St German any priest, and not just bishops, should be able to perform confirmation. This would ease the people in terms of the effort, cost and time of finding a bishop and would save children from the 'greate dangeo[ure]' of remaining unconfirmed. This point is particularly interesting for, in a country with just eight bishops, the clear majority of English Christians would have been unconfirmed. Thus, if anything, St German's position on this point is even more extreme than that of the Catholics. St German proceeds by stating that he cannot understand how it pleases God that the effect of confirmation is to place bishops so high above priests in the people's estimations, but if the King and his Parliament can see reason in this then St German is

⁹⁹² Ibid.

⁹⁹³ Brewer, *Church History*, 146-48.

⁹⁹⁴ St German, *Discourse of the Sacramentes*, 9.

contented – for these are the points of ultimate authority on the matter. However, this does reflect once again St German’s ‘anticlericalism’ or his general distaste for the lack of parity between clergy and laity in society, which has been one of the most persistent notions throughout his works and again it is the King and his Parliament who he considers as having the appropriate authority to deal with such matters.

As if the point is not sufficiently made already in *Discourse of the Sacramentes*, St German then goes on to clarify explicitly that it should be established that the bishops derive their authority from the King and Parliament ‘and not [...] by the ymmedaite powere [...] and gifte of god to bisshops only.’⁹⁹⁵ In thinking that they do derive their power directly from God, the clergy have claimed various jurisdictions and the power to hold courts. This is where St German rehashes his already well-treated discontent with the clergy’s perceived abuses as he highlights their various false powers. He again questions the authority of general councils where the clergy are the only ones to have a voice and he assigns the fault for these issues to those monarchs who have allowed these abuses to continue.⁹⁹⁶ St German preferred the general council wherein the laity were clearly represented, a precondition of a validly constituted council.

From this, St German moves on to consider Holy orders. Here, St German, the determined anticlerical might have been expected to reveal some Lutheran attitudes. However, he is plain and denies outright that every man is a priest.⁹⁹⁷ Semantically, in old times any man under the term ‘presibiter’ may have been known as a ‘priest’ as this

⁹⁹⁵ Ibid, 10.

⁹⁹⁶ Ibid, 11.

⁹⁹⁷ Ibid, 12.

word was once also taken as a word also meaning a lay-man who is ancient or senior, but this does not mean that any man can minister spiritually to the people. Crucially, anyone claiming this to be the case should be punished. This is a critical point in the question of authority. To turn the power of the priesthood over to the people themselves is a step too far. The point of this text is to channel this power in spiritual affairs via the royal supremacy specifically and, in particular, a version of the royal supremacy bordered by the authority of Parliament. Thus, St German beseeches the King that, should anyone argue that any man is a priest, it 'be enacted that he shall haue lyke punyshmente as they shulde haue had that had ben founde of that opynyon.'⁹⁹⁸

With respect to the eucharist, the literal transubstantiation of the bread and wine into the body and blood of Christ is upheld. This follows the same line as the *Ten Articles*.⁹⁹⁹ Any one believing the words of Christ at the Last Supper to be figurative, rather than literal, is to face great pain, which is once again to be appointed by the King and Parliament.¹⁰⁰⁰ St German also reinforces the point that the importance of the consecration of the bread is not the enhancement of the position of the priests who perform it, but rather due to Christ's love of laymen as 'he lovith and then lovid many a laye man more than he did many a priest.'¹⁰⁰¹ The 'words, winking or any other waies' associated with the consecration of the bread is another example of the Pope's attempt to

⁹⁹⁸ Ibid, 13.

⁹⁹⁹ Brewer, *Church History*, 152-53.

¹⁰⁰⁰ St German, *Discourse of the Sacramentes*, 13-14.

¹⁰⁰¹ Ibid, 16.

hoodwink the people as to his power over them.¹⁰⁰² Therefore, St German returns to the issue over the definition of the Church and requests, then beseeches, the King:

that it may be comaunded by p[ar]liamente that the ~~vii~~ said vii gracioux giftes of god may be called the ^vii^ sacramentes of Cristes vniu[er]saill churche / and non to call them the vii sacram[en]tes of the churche for if they be suffred still to call them ~~still~~ so : the vnlernd people will thinke that they were ordeyned by the clergie for by that worde : churche : the comon people vnderstaunde the clergie as is saide before : And if that name ^vniu[er]sal chyrch^ be appoynted vnto them : we doubte not but that the people w[ith]in fewe yeres thorough the good adu[er]tisement and doctrne of the clergie : will knowe that they come oonly of the graciouse gifte of god and also more regarde the wirking and op[er]acion of the holy goste therin then the name of the thing[.]¹⁰⁰³

The people require further instruction regarding their inclusion in the definition of the Church and it is the responsibility of the King and his Parliament to ensure that the people come to a true understanding of the true place and power of the clergy.

Finally, St German discusses Extreme unction, and explicitly requests parity between the laity and the clergy with respect to where the sick are anointed and also that the sick should be anointed as many times as their sickness requires. Again, this is reminiscent of his *Parliamentary Draft* where St German confirms that ‘no curate shall sey that he *is* not bounde to offre the sacrament of the awter [*sic*] ne extreme unccion to his syke parysshyners, but he be requyred.’¹⁰⁰⁴ Within *Discourse of the Sacramentes*, the point of authority in reinforcing the responsibility of the clergy and ensuring they do indeed perform their responsibilities is once again the King-in-Parliament as:

¹⁰⁰² Ibid, 17.

¹⁰⁰³ St German, *Discourse of the Sacramentes*, 18-19.

¹⁰⁰⁴ Guy, *St German*, 133.

to extreme vnccion we beseche youre grace that it may be vsed hereafter as it hathe ben in tymes paste and that it may be prohibite by p[ar]liamente that non shall saye that non shulde be annoyled but oons as thoughe the oyle were so holy that no man aughte to be twice annoyled with it : but [^][that] eu[er]y man[^] ~~he be~~ annoyled as ofte as necessitie of siknes shall requyre[.]¹⁰⁰⁵

The use of associated superstitions has once again erroneously convinced the clergy of their own power, doing both them and the people harm. With that St German appends the note ‘ffinis.’¹⁰⁰⁶

6.3 Chapter Summary

Therefore, in terms of placing St German’s ‘religious’ works within the broader framework of his other writings, the overall flow of his ideas is encapsulated in a rethinking and reallocation of the role of the state in the creation of the law. Specifically, the conduit through which biblical law was to be understood in the world was remoulded and ultimately domesticated. It was now to be filtered through an interpretive system in which the state, in the form of the King and Parliament, would play the central role. It is at this point that St German had come full circle from the ideas first presented in *Doctor and Student*. His later religious works helped to provide and explain the justification for situating the supreme authority over determining scriptural interpretation with the King-in-Parliament in as plain a way as possible, without recourse to direct reference to confusing scholarly authorities, once again reinforcing St German’s aim to reach as broad an audience as possible. Thereafter, seemingly anticipating the Elizabethan religious settlement of 1559, works like *Things Necessary to Salvation* and *Discourse of the*

¹⁰⁰⁵ St German, *Discourse of the Sacramentes*, 18-19.

¹⁰⁰⁶ *Ibid*, 20.

Sacramentes also demonstrate how, for St German, the formulary of faith of the English Church should represent a middle ground focussed primarily and actively upon repairing the relationship between clergy and laity. The laity are thus again represented in St German's theory as a critical component in the definition of the universal Church.

CHAPTER 7: CONCLUSIONS

In conclusion, this thesis has demonstrated how St German's extant identified works (both published and unpublished) produced during a single decade (1528-1538) form a considerable body of material with the potential to profoundly assist in developing a greater understanding of the Henrician Reformation period in England. The bundle of papers identified in Nicholson's thesis and now purported by Rex to be St German's, along with his still lost works, based on Bale's list, *Quid ecclesia sit* and *Dialogus de utraque potestate* offer tantalising potential prospects for future research.¹⁰⁰⁷ St German's writings consider some of the key issues at the heart of legal, political and religious worlds cast into turmoil following the advent of the King's 'Great Matter' and the resultant break with Rome. Indeed, even prior to this canon and common lawyers had already been engaged in an ongoing jurisdictional battle for dominance. As noted in the introduction to the study, St German's works asked and attempted to provide answers to some of the fundamental questions of the day:

1. Where should the jurisdictional boundaries lie between the common law and other forms of authority?

¹⁰⁰⁷ Rex asserts that the work on the Church may well be a successor to *Clement and Bernard*, considering that the work ends with the words 'Here endeth the fyrst dyalogue.' *Dialogus de utraque potestate* is likely another unfound St German dialogue, considering that it does not fit the description of any of his extant dialogues. Rex theorises that due to Bale's specificity in noting the dialogue form in the title, that he may actually have seen a copy of it. These works could still be in manuscript form or otherwise misattributed to another author. Rex, *New Additions on St German*, 300.

2. More broadly, where should the authority between the temporality and spirituality lie?
3. After the break with Rome, what should the formulary of faith of the English Church look like?

It is to these questions that St German's works return repeatedly throughout the period, but the overall answers he provides are as follows.

On the question of jurisdictional boundaries between the secular and ecclesiastical law, the balance of power should swing in favour of the common law. After all, the common law is ultimately based upon and follows the law of God. However, there is space for the canon law to act within clearly defined parameters, where it is kept in check and does not encroach upon the powers of the common law. Throughout his legal works and beginning with *Doctor and Student (Dialogus* in 1528, and amended English translation 1530), St German systematically rejected the primacy of the canon law over the procedures of the Chancery and equity more broadly, reinforcing a common law basis for what were seen by common lawyers as pre-existing common law ideals. The Church was effectively displaced from the position it had enjoyed with respect to law and government by his works, yet his works also established some areas which were not within the remit of the common law and remained within the scope of private conscience, and the Church thereby. Thus, 'in some case[s] there is no remedye for suche an equitye by way of compulsyon/ but all the remedye therein must be commytted to the conscyence of the partye.'¹⁰⁰⁸ *Doctor and Student* dealt with the ongoing jurisdictional battle between the canon and common laws. Conscience was put to use by St German as a practical tool

¹⁰⁰⁸ St German, *Doctor and Student*, 103.

offering a practical remedy to the encroachments by the canonists into common law territory. Common law and equity were, for St German, two sides of the same coin with conscience as the link, as the conscience referred to in Chancery was that of the King. It was his conscience which was synonymous with justice within the realm and formed his ultimate prerogative. However, St German still saw a place for theologians to deal with matters of pure faith.

The *Replication* railed in a *faux* argument against the power of the Chancellor. St German's dislike of investing power in one man was made plain in his setting up of the authority of the King-in-Parliament. The conscience of one man was too unreliable and the law would become too uncertain if vested this way. Yet the common law must stand up against spiritual encroachments. Thereafter, *Writs of Subpoena* defended the jurisdiction of the Chancellor against the attack of the Serjeant. The Chancellor's conscience was not to be considered arbitrary.¹⁰⁰⁹ He is appointed by the King, a man of sound conscience, and the law he applied is the law of the realm, which is formed of and acts in accordance with the law of God itself. Further, the Chancellor's authority derives of the King and his council. Therefore, if you question the Chancellor, you question the authority of both the King and Parliament. Throughout the work, the power of statute was

¹⁰⁰⁹ Thereby, denying Selden's centuries later famous quotation regarding the variance of equity and conscience with the length of the incumbent chancellor's foot: 'Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.' John Selden, *Table Talk* (Holborn: Printed by Joseph White, 1786), 45-46.

also enforced. If you act against statute you act against both the law and conscience. The only forum with the power to void statute is the Parliament itself.

Then the battle with More ensued. In his *The Division*, St German sets out the issue causing resentment between clergy and laity. King and council should oversee the *ex officio* procedures and the management of cases of heresy within the realm. The temporal power has responsibilities in repressing heresy. The King and Parliament are required to end the division between the spirituality and the temporality. Overall, St German believes that the clergy should lead by their own example. *Salem and Bizance* continues the battle with More stemming from More's *Apology* and claims authority once again for the King and Parliament, who have the power to arrest the possessions of the clergy and also affirms once again that the King and Parliament are the high authority in cases of heresy. The *Additions of Salem and Bizance* marks the final point in the debate with More, simultaneously also marking the starting point for the idea that the general council is the authoritative voice of the universal Church and has the authority to settle disputes over doctrine.

With respect to where the ultimate authority should lie following the break with Rome, the answer for St German is resoundingly clear – it lies with the King *and his Parliament*. To illustrate this point, as early as *Doctor and Student*, St German highlights the connection between the King's ultimate power to make law to God's own power to govern creation. Returning to a previously cited quotation, in his discussion of the law eternal, he states:

And as the reason of things which are to be fashioned by craft is called the art or exemplar of the things made, so likewise the reason of him who governs the acts of his subjects obtains the reason and name of a law, the other requisites of law being present [...] And according to this view, the law eternal is nothing

else than that supreme reason in God for governing things; or that supreme reason of the divine wisdom whereby God wills all things established by him to be moved and guided to a good and due end.¹⁰¹⁰

He then (using Proverbs 8:15 in support) advances further, connecting the power of kings to God directly; ‘by [God] kynges Reygn/ and makers of lawes descerne the trewth.’¹⁰¹¹

The *New Additions* situated various previously conceived spiritual powers with the King and, in particular, with the Parliament as rightly wielding authority, as the matters highlighted were actually temporal and not ecclesiastical. The work also enforced the idea of the King’s responsibilities as extending to the well-being of the souls of his subjects. Then *Clement and Bernard* saw St German take direct aim at the Pope, arguing that papal authority ultimately rests on human law rather than the word of God. Kings are ordained to their station by God and Parliament are the law makers. The work demonstrates further links between St German and the intellectual centre of the anti-papal campaign through its links with the *De Vera Differentia*.

This may look rather anachronistic considering his later view of church polity which it was not possible to support by direct reference to scripture as likely not being required to be believed as a matter of salvation.¹⁰¹² And it is really. St German did not ascribe to the notion of ‘divine right’ in the way that others of the propaganda party of the 1530s did. It cut directly across his notion of the King-in-Parliament as being the true supreme domestic authority. He clearly did not support the same form of royal absolutism as touted by some of the period. But he did still refer to the monarch’s authority stemming

¹⁰¹⁰ St German, *Doctor and Student*, 9.

¹⁰¹¹ Ibid, 13.

¹⁰¹² We can simply look, for example, to his comments on the ceremonys surrounding baptism in his *Discourse of the Sacarments*.

directly from God in building up to the full expression of his notion of the King-in-Parliament and to lend it legitimacy. He would have defended his use of the divine right theory by his ability to reference scripture to support its legitimacy whilst ignoring other scriptural references to the contrary.¹⁰¹³ But this really brings us back to Allen's point discussed in the aims of this study as to how St German could be distinctly and unapologetically mercenary at times in respect of his arguments and did have a tendency to move from 'bald assertion'.¹⁰¹⁴

In his 1535 *Power of the Clergy*, St German progressed (thus deviating from the official position of the supreme headship of the King) 'when he articulated his opinion (shared by Thomas Cromwell) that royal authority over church and clergy should be exercised by the king in parliament, not by the king alone or his vicegerent alone.'¹⁰¹⁵ Where the Bible failed to address the difficulties at hand, parliamentary statutes were to be preferred as 'it is not to be presumed that so many noble princes and their council, nor the lords and nobles of the realm, not yet the commons gathered in the said parliament, would from time to time reign in to so great offence of conscience as in breaking the law of God.'¹⁰¹⁶ *Power of the Clergy* demonstrated how the power of Parliament took centre stage. So too did the idea of various national churches being administered at a national level, with the country's Parliament having the power to legislate as per that nation's particular circumstances on non-essential matters of faith (such as whether tithes should be counted as a tenth part, or some other figure). Again, the work also started to explain

¹⁰¹³ Such as 1 Samuel 18.

¹⁰¹⁴ See p. 12.

¹⁰¹⁵ Guy, *St German*, 39.

¹⁰¹⁶ St German, *Power of the Clergy*, 41.

the justification for why the Parliament was to have such power, and this rested on St German's Marsilian-inspired definition of the universal Church, as who else was there to appropriately represent the interests of that Church considering the impracticalities of gathering the entire body of Christendom together to decide on such matters? No, there needed to be a more logistically manageable and practical solution. For St German that solution was to vest such power with the Parliament. This was how to order society in accordance with the gospel. However, the King and Parliament still had no claim to the powers expressly left by Christ to his disciples in Scripture – these remained ecclesiastical property and thus the council surrounding the King should be mixed, containing lay and spiritual advisors.

Thereafter, *Constitutions Provincial* focussed yet again on the calls for Parliamentary reform of clerical abuses. The work also reinforced the Marsilian interpretation of the Church and reinforced the biblical origins of the royal supremacy. We see references to certain articles of faith (i.e. the setting up of images) discussed in relation to them being set against the royal prerogative. The King may, therefore, quite rightly, amend such articles of faith.

Answer to a Letter was a critical work in relation to St German's conceptual advancement of his ideas on royal and parliamentary supremacy. How were 'semi-spiritual' matters to be decided? Who would have the authoritative power to pronounce on them? Well, once again, the King-in-Parliament – with the understanding that purely spiritual matters would still remain within the jurisdiction of the clergy. However, the identification and interpretation of Scripture itself could not be entrusted to the clergy alone as there was too much of a conflict of interest present. They simply had too much to gain (as they had for years) from manipulating the interpretation of Scripture to their

own benefit. Kings could be trusted, and thus the distinction between the sovereign's temporal and spiritual responsibilities began to blur around the edges. The Marsilian definition of the Church was again a critical tool for St German, as it provided the vehicle by which to provide a theoretical justification and link between the King and the power to define and determine Scripture. The King was the leader, at the national level, of the Church. Therefore, as their representative, he should have this power for practical purposes, whilst being guided by his spiritual and temporal counsellors. Within the work there is also some reference to the general council, where St German determined that Kings have the authority to judge at general councils, and further references were made to certain articles of faith (such as pilgrimages, the cult of saints and the worshipping of images) which were attacked by statute.

Finally, *General Councils* presented an obliteration of the Pope's spiritual and temporal authority. The Pope was determined to have no power to declare Scripture. Ecclesiastical law did not sit above temporal law. Bishops of Rome had monstrously overstepped their powers in asserting rights to call general councils or to excommunicate or depose Kings. The bishops of Rome had endangered the salvation of Christendom in leading the people to heresy by directing them to act against the Scriptures. St German identified within the work the scriptural basis for his assertion that Christ granted the power to his universal Church (i.e. the entire totality of Christendom united) or, due to seemingly impossible logistics, to their chosen leaders. To argue against this is thus to argue against Scripture, which of course itself is to commit heresy. The Marsilian definition of the universal Church had metamorphosed into the scriptural definition of the universal Church (as per Saint Paul to the Ephesians). Within *General Councils*, the general council was styled as the supreme authority in determining Scripture. This

obviously seems at odds with the arguments he had earlier proposed in relation to the supremacy royal and parliamentary authority. However, convening a valid general council is a tricky business, so tricky in fact that it may not be possible to so convene one. The King-in-Parliament, therefore, remains the supreme national authority on the matter.

The *Epistle of St Bernard* demonstrated that St German's initial approach to religion was thoroughly traditional and marks a significant point of comparison when contrasted against his unpublished works of 1537. However, his discussion of Islam's reluctance for a vernacular version of the Qur'an, necessitates a significant reassessment of his early position, indicating that he was considering the issues of vernacular scriptural interpretation much earlier than previously conceived. Then, in 1537, his *Things Necessary to Salvation* returned to the issue of the authority of a general council (amongst other matters). Crucially, the issue had become how to accurately define what texts hold the authority of Scripture. Adherence to Scripture as the word of God is obviously the strongest way of ensuring one's ultimate salvation. Anything that sits outside of the definition of Scripture, however, cannot bind in conscience. Exhibiting a very extreme view that even most Protestants would not have held (as mentioned, as most had some regard for the first four general councils), St German ultimately confirms that there are likely no general councils held which could be considered legitimate and, therefore, their determinations up to this point could not be considered binding. The opportunity to begin the reconstitution of English orthodoxy with a *tabula rasa* emerged. Above this, the clergy had manipulated the format of the general council to their own benefit setting themselves above the laity in the process, to the great detriment and damage of the commonwealth. Kings have the responsibility to maintain Christian unity throughout Christendom ensuring that all realms practice one self-same 'Catholic faith.' However,

Christian unity ends there, and the rise of the national church is emphasised through the fact that ceremonies are to be ordered by Kings after the particular conveniences and requirements of the individual realms they head. Therefore, for St German, orthodoxy was not necessarily fixed.

Discourse of the Sacraments unsurprisingly deals more specifically with the issue of the sacraments themselves and which so-called sacraments should still be considered as such. The work is framed as a direct plea to the King's grace, thereby automatically presupposing the King as the authority over the matter. The sacraments needed to be divested of their papal colours and the historic primacy of the Roman Church over such matters. The prior authorisation of a general council on the issue of the Scriptures cannot provide them with any legitimacy as the universal Church was not adequately represented within them. The King-in-Parliament is again touted as the supreme authority, reinforcing St German's key deviation from the typical form of monarchical authority provided for in the Bible. Here, St German leaves biblical authority, rather favouring Fortescue's *ius regale politicum*. Indeed, according to St German's *Discourse of the Sacraments*, bishops themselves shall stand under the authority of the Parliament, with the interlineal insertion of the King too of course.¹⁰¹⁷

Considering religious orthodoxy, St German's ideas do seem to become more outspokenly progressive and in deviation from the official position as time advanced. The

¹⁰¹⁷ St German *Discourse of the Sacraments*, 10 – 'but then we beseche youre grace that it may be knowen that that yo[ure] powere frohensforthe as to the bisshops oonly as to the bisshops shall stande by ~~vndre~~ the auctoritie and powere ^yo[ure] g[ra]ce & of^ youre parlimente and not of ^by^ the ymmediate powere of god and gifte of god to bisshops oonly as many haue pretendid in tyme paste it shulde be.'

[The carets '^' identifying the interlinially inserted text.]

New Additions (1531) supplementing the issues discussed in *Doctor and Student* and reviewing the pros and cons of the controversy between church and state marks a shift in St German's writing to a 'polemical consideration of the constitutional crisis between church and state.'¹⁰¹⁸ This is a theme which runs throughout all his subsequent works. The *Parliamentary Draft* (1531), though never laid before Parliament, evinces St German's practical commitment towards resolving the dispute between Church and state, and ultimately clergy and laity. His religious leanings were most obviously highlighted by the unpublished 1537 works. Ultimately, these demonstrate that he was no Catholic conservative (railing against the clergy in typical anticlerical form throughout his writings). However, on balance, he is also no Lutheran, Lollard, or Erasmian and is anticlerical to the extent of resenting the current clergy's historical abuse of the system. Though he espouses the idea that the universal Church is indeed made up of the laity as well as the clergy, no lay-man should thereby consider himself to be a priest.¹⁰¹⁹ The clergy remain a class separate from the laity, and any lay-man asserting that he is a priest should be duly punished.

In short, in a period defined by its extremes, St German is neither conservative, nor fanatic. Though he argues emotively on issues which clearly appear to move him on a fundamental level, he was above all else a 'man with an (idiosyncratic and ever developing) plan.' He borrowed from ideas from others when needed (such as Marsilius, Gerson and Fortescue), without declaring his colours for any particular ideological camp, in his endeavour to provide a logical passage through turbulent times. Therefore, it is unlikely that he was working on the basis of any preconceived religious premise from the

¹⁰¹⁸ Walters, *St German on Reason*, 337.

¹⁰¹⁹ St German, *Discourse of the Sacraments*, 13.

outset of his writing career. For St German, the common law as the law of the land should reign supreme – but there is space, even if it is limited, for an alternative jurisdiction in the body of the canon law. The Pope is demoted to Bishop of Rome, but the power vacuum should not be set unchecked within the grasp of a theocratic monarchy. That power is instead carefully, and shrewdly, embedded within Fortescuean language of *ius regale politicum*.¹⁰²⁰ As Rose notes, that '[i]f the king was supreme, he shared this position with parliament.'¹⁰²¹ Crucially, St German promoted the idea that the formulary of faith of the nascent national English Church should be a 'middle ground,' focussed primarily upon repairing the relationship between clergy and laity, who together make up the universal Church. The clerical abuses of the past are to be put away and the people are to have access to a greater direct understanding of their faith. In St German's new world order, the playing field between clergy and laity is more evenly levelled, with the clergy returning to their biblical mission and following the path set for them by Christ in the Scriptures.

¹⁰²⁰ Rex, *New Additions on St German*, 298; Rose, *Godly Kingship*, 38.

¹⁰²¹ Rose, *Godly Kingship*, 38.

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A Note on the Transcriptions

In preparing these transcriptions for print, I have of course endeavoured to remain as faithful to the original texts as possible, so original spellings and punctuation have been retained. However, there are a few relevant notes that the reader should be aware of. The documents contains many examples of what, at first glance, look to be abbreviation marks. However, sometimes these have been included within these manuscripts where it is not obviously possible to expand a word further. For example, over words such as *mighte*, *thoughe*. Therefore, these have been taken as flourishes of the pen and have not been expanded or highlighted in the transcriptions. Indeed, to avoid working on the basis of assumptions and to stay as true to the text of the manuscripts as possible, abbreviations have only ever been expanded where necessary for the word to make sense. So abbreviation marks over a vowel in the middle of a word, such as *comaundment*, where the mark hovers over the ‘o’ and potentially indicate that an additional ‘m’ should be added (i.e. *co[m]maundment*) have not been expanded, as these marks are not used consistently, and the expansion is not needed for the reader to gather the meaning of the word. Where abbreviations have been expanded, these expansions have been identified by placing the letters added into squared brackets, i.e. *conuted* to *conu[er]ted*. The spelling of the expansion is based on the most likely spelling of the word, considering examples either from elsewhere within the current text, or elsewhere in St German’s writing more broadly. Additionally, all words ending ‘con’ have been silently expanded to ‘cion,’ such as *salvacion*. Similarly ‘es-marks’ have also be silently expanded to demonstrate pluralisation, i.e. *thinges* and *sacramentes*. Rarely where a letter or word is

indecipherable, the number of missing letters have been indicated with a period mark ‘.’ and there may also be an accompanying explanatory footnote. As the documents were works in progress, there are many examples of inter-lineal insertions and these have been identified between carets (^). Where text has been struck from the page with the editing process, the text has been retained in the transcriptions and similarly struck-through to demonstrate St German’s thought processes in editing his document. Finally, for the sake of readability, where on the rare occasion I have had to use subjective judgment on the most likely word (for example, where the word is otherwise illegible through being struck-through), this text is highlighted with braces i.e. {}, or highlighted in a footnote. Original page and line breaks have also been retained.

Things Necessary to Salvation

The manuscript is available via State Papers Online at:

Dialogue showing what we are bound to believe;

Main ref: SP6/2/45;

sequence 0035-0075.

However, the digitised copy is poor and makes for difficult reading in places. Therefore, this transcription has been made from the original manuscript held by The National Archives (UK).

^A dyalogue shewing^ What we be bounde to byleve as thinges necessary

to salvacion and what not. The chapitre /

Studente I pray the shewe me nowe what we be bounde to
byleve as thowe thinkest as thinges necessary to salvacion and what
not / **Doctoure** Scripture is fully to be beleved as a thing
necessary to salvacion thoughe the thing conteyned in scripture
p[er]teign not merelie to the faithe as that Aaron had a berde and
suche other / **Studente** And what be the sayinges of
Doctours specially of them that be canonised and be taken of
all the people for holy and blessed, are not all men bounde to
beleve them **Doctoure** no verilie oonles their seyinges
be grounded of Scripture and may be deryvied owte therof
in a probable consequente, as it is of this seying of Sainte
Augustyne / non Dimittitur pam nisi restituatur ablatum
that is the synne is not forgyven but the thing taken awaye
be restored : for that saying is grounded vpon this comaundm[en]t,

Page 2

thowe shalt not coveyte the thing of thy neighbour, for sithe we
we¹⁰²² be prohibite to coveyte the thing of oure neighbour it followeth
that we more stronglie be prohibite to take it away fro hym,
And in that we be prohibite to take it away from hym : it followeth
consequentlie that if we take it fro hym that we be bounde to \o
restore it agayne / and so that saying of saint Augustyne is to be
bileved not bicause saint Augustyne said it : but bycause scripture
witnessith it, howbeit there is oon speciall cause why we be not
boundon vpon payne of Dampnacion to belyve the sayinges of
Doctours ne othere wrytinges excepte oonly scripture / **Stude[n]t**
^what is that. **Doctoure**^

That it canot be affirmedly knowen that the Doctours said it, for
thoughe it be in his bookes as they be called, yet it mighte be
put in by some other man (the Doctoure not knowing of it) and
so as it hathe ben reported Dyvers thinges were added in to
the ~~books of orig~~ warkes of Origene and sainte Gregorie and
Dyvers other also aftere their Dethe : And bycause it canot

¹⁰²² Duplication of word in the manuscript.

Page 3

be surelie ^knowen^ whether it be so or not no man is bounde of necessitie
to bileve theym / **Studente** by ^that^ ~~what~~ reason no man shulde
be bounde to byleve nor to gyve faithe to, legendes, cronicles, stories
Deedes, witinges or yet recordes and that shulde be a greate
confusion and Disordre and in maner a distracion of all the
politique ordre and gou[er]naunce / **Doctoure** to
beleve suche thinges as thowe haste remembred as thinges
necessary to salvacion no man is bounden: but for to knowe
what is myne and what thyne, and howe iustice aughte to
be ministred, Deedes, witinges, prouffes and recordes ^ar to be bileved^ and faith
muste be geven to theym, as if an obligacion/of the testato[r] be
shewed to the execut[or] that he neuer harde of bifore and ~~that~~ ~~is~~ there is
sufficiente wites to prove that the testat[or] borrowed the money
of the partie and that he made the obligacion, Dothe not the
executours offende if he paye ^not^ the money if they haue asses [&c]¹⁰²³
and is he not boundon to bileve that that obligacion and the
wites also be trewe, seying that he hathe no evidence nor
knowlege to the contrary **Studente** I thinke yes
Doctoure but then when he hathe paid the moneye, admyt

¹⁰²³ A common early modern abbreviation for et cetera, or etc.

Page 4

that he beleve verilie that the obligacion is forged bicause he never
harde his testato[r] speke of it / ~~And~~ therefore he thinketh also that the
witness were vntrewe howbeit he dothe not so reporte it ne hurtith
theym not therefore : but in his herte forgevith it and in that belefe
he Ditth: And yet the trouthe is that the obligacion is trewe, what
offence is this in hym **Studente** I thinke noon **Doctoure**
And yet thowe haste agreed that if he wolde not haue paid the
money having asses therto that he had offended **Studente** that is
trouthe for he helde fro his neighbo[ure] as ferre as he coulde knowe
after the lawes, that was his **Doctoure** And so it is in many
other cases in man[er] infinite conc[er]nyng the Doing of iustice to oure
neighbour; that is to saye for the Doing of iustice and righte to
oure neighbour we be boundon to bileve many thinges that we
be not necessarilie boundon to bileve in oure hertes as articles of
oure faithe, and so it is of crownicles and legendes and other stories
And therefore if a man wolde saye that there was never any
bishoppe of Rome called Cletus or that kyng leyre made not
leycestre, he were no heretique nor he aughte not be punysshed
therefore : for the stories therof be not sufficiente to bynde any
man to a full belyve of it: howbeit any murmoure or

Page 5

vnquyetnes happened to rise among the people by any suche
opynyons, kinges and princes mighte prohibite theym : but the
Clergie hathe no powere to prohibite theym : but yet trewth it
is that if a man Denye any suche stories or comon opynyon
wherby hurte maye growe to any other he offendeth oonles
he ^{^have^} ~~hathe~~ a sufficiente cause to move hym to it, as if a man wold
say that there was never any Duke of Normandie that
conquered this realme, he offended greatlie therby for aswell
crownicles and other auctentique writinges as a comon oppyno[n]
among the people testifie that there was suche a Duke of
Normandie, and that saying shuld be hurtefull to the kinges
grace and shulde est[ra]nnge¹⁰²⁴ hym fro the title that he hathe to
Normandie as righte heire to the said Conqueroure, And suche
avermentes no man maye with conscience take to the hurte
of iustice or of ^{^the^} righte of his neighbo[ure] oonless he ^{^haue^} ~~hathe~~ sufficiente
profe of his avermente, but where suche avermentes be not
to the hurte of any other, if he that maketh the avermente
thinke that he saithe trewlie, he may speke it withoute offence
of conscience; thoughe it be againste legends, cronicles, or seyinges

¹⁰²⁴ Word seemingly abbreviated due to the presence of an abbreviation mark. The word is not entirely clear due to the fact that a number of letter combinations are possible in addition to the abbreviation mark, though given the context, ‘estrangle’ seemed a sensible word choice.

of Doctours, or againste the comon oppynyon so his saying be not

Page 6

againste scripture ^nor againste that that is dirived vpon scripture^ nor againste the
lawe of nature **Studente**

What if a man be in doubtte vpon a cronicle or other writing that
prouithe the righte of his neighbo[ure], and yet in Deede it is trewe, what
offence is that so doubtte at it **Doctoure** I ~~thinke~~ it is no
offence ; to doubtte thereat, for it is lawfull for all men to doubtte at
every thing that he dothe not knowe of his owne knowlege,
excepte it be of scripture or that that is expreslie dirived vpon
scripture by an apparaunce and an evident conclusion, but of
scripture no man may doubtte whether it be scripture, or not, nor
whether it be trewe or not **Studente** what if a man will
sey that he doubtithe at suche a thyng whiche in Deede he knowethe
of his owne knowlege to be trewe, and his seying hurtith no man,
as if he saye be doubtithe whether fire be hote, what offence is
that **Doctoure** he seithe vntrewlie for he seith he Doubtith
where he doubtithe not for no man can doubtte whether ~~to~~ he
knowe that, that he knowethe perfittlie by his owne i[n]ward senses :
& he that wittinglie seithe vntrewlie alwaies offendithe, And also
that seying provithe to be in hym a greate folie and larke of witte
orells a greate wilfull stobo[ur]nes **Studente** well I will lette
that matier passe, but yet me thinkethe alwey that suche thinges

as haue ben agreed among Doctoures concernyng the faithe, and that ^{haue} ~~hath~~ bene-also accepted of the people throughe all Cristen realmes to be thinges necessary to be beleved, that they aughte withoute contradiccion to be bileved of all Cristen men though they be not expressed in scripture ne cannot be directlie Dirivied owte therof, And of this matiere as many men thinke be Divers thinges that be called vnwritten verities, whiche for the longe contynuaunce of theym, that is to saye even fro the tyme of thapostles as many affirme, they think that they aughte to be fully bileved as if they were expreslie conteyned in scripture, And surelie me thinkeste that that oppynyon is sumwhat reasonable, **Doctoure** forasmuche as it shuld seme that thy mynde is sumwhat bente towarde suche vnwritten verities as they be called, I will firste putte the in mynde to considre howe thowe vnderstoudeste that name vnwritten verities: for verilie : is asmoche to sey as / trouthe or a trewe thing : And if I shulde confesse theym to be trewe : then I mighte nothing sey againste theym, for againste the trouthe no man may speke, and so by thadmytting of that name : vnwritten verities : I shulde estop my self to speke any thing againste theym : but if

Page 8

thowe wilte call theym vnwritten opynions, I will shewe the my conceite whether all men be boundon to beleve theym to be trewe or not **Studente** I am contente thowe take theym as opynions not written in scripture, but that nevertheles they haue ben alwaye taughte by the clergie to be trewe and haue ben therupon vniu[er]sally accepted by the people through all cristen realmes withoute contradiccion or resistance to be trewe, and they haue also ben writen in the bookes of many Doctours and of other also, and so I wolde thowe shuldeste take theym as oppynions vnwritten, oonlye by cause they be not written in scripture

Doctoure I praye then shewe me some of those opynions, and then I will shewe the my conceyte therin with a good will **Studente** oon is that oure ladie is perpetuel virgyn, an other that thapostles made the comon crede, ~~that bisshops haue auctoritie by Criste and his Appostles to make holye oyle and Creme, and that thapostles Did so theym self: that the Appostles comaunded setting vp of ymages: that Peter was at Rome: And that Peter and Paule were martired at Rome that the clergie make the vniu[er]sall church: And that the Apostles comanded setting vp of ymages : that Peter was~~

Page 9

that the clergie make the vniu[er]sall church, and that the bisshop of Rome as hed of that church hath auctoritie to gather gen[er]all counsailes and that kinges be bounde to obeye his sumons, and that the clergie shall haue the hole voices therin and non but they, that the bisshop of Rome and the clergie haue auctoritie texpounde Doubtes of scripture . that Bisshops haue auctorite by Criste and his Appostles to make holy oyle and creame . And that the Appostles Did so theym self . that ~~that~~ the Appostles comaunded setting vp of ymages . that peter was at Rome, and that Peter and Paule were martired at Rome bothe on oon Daye, these be parte of thaym, but yet there be Diu[er]s other whiche be here omitted **Doctoure** the perpetuel virginitie of oure ladie and all tharticles of the said comon crede, by sufficiently proved by scripture and muste therfore of necessitie be beleved, but to sey that the clergie make the vniu[er]sall church, or that the Bisshop of Rome as hed of that church hathe auctoritie to gather gen[er]all counsailes, and that kinges be boundon to obeye their sumons, ar directlie againste the power of kinges whiche they haue by scripture and therfore it is heresie to afferme those articles, and as for all thoder articles that thowe haste remembered that is to saye ^{^that^} thapostles made the said comon crede, that the bisshops haue auctoritie by criste and his

Page 10

Apostles to make holie oyle and creme and that the Appostles Did so theym self, that they comaunded setting vp of ymages, that Petre was at Rome an that Peter and Paule was martired bothe on oon Daye at Rome, no man is boundon to bileve theym as articles of the faithe : for saint hierome¹⁰²⁵ saieth, that that whiche hathe no auctoritie of scripture maye as lightlie be Denied as it is affirmed, And sainte Augustyne saith, yn scripture is founde whatsoev[er] is profitable, and whatsover is noyous¹⁰²⁶ or hurtefull is thereby Dampned, vpon whiche wordes it followethe that no catholique trouthe necessarie to be beleved for salvacion, can be founde owte of scripture, though p[er]adventure in some case it is not lawfull to denye some thinges that be not in scripture for the causes that I haue partelie touched before **Studente** Yea: ~~bu~~ but many writers haue said that the said wordes of sainte hierome ne yet of sante Augustyne, are not to be taken that they mente by that worde: holie scripture : oonlie suche thinges as be conteyned in the canonicall bookes of scripture called the bible : but that they mente thereby after a gen[er]all and large significacion all goddes lawe, which hathe either ben shewed by revelacions and hathe ben acceptid of the churche as thinges sente of god (be they

¹⁰²⁵ Jerome.

¹⁰²⁶ Meaning annoying or troublesome.

written in the bodie of the bible or not) or ~~that they~~ haue be[n] oonlie
broughte and received by mouthe, and therefore they that be of this
¹⁰²⁷opynyon ^sey^ that they thinke no Cristen man will Deny but that
it is necessarie to put in ^to^ the consercracion of the bodie of Criste
water ^w[ith]^ wyne, and yet it is not founde written in any parte of
the bible that it is necessarie so to bee . **Doctoure** surelie by
that worde : scripture : hathe ben alwaye vnderstaude the bookes
conteyned in the bible whiche be called canonycall and non but
they : And it is moche to be m[ar]veyled that any man Durste take
vpon hym to affirme that sainte hierome And sainte Augustyne
by that worde : scripture : shulde vnderstande all that hath ben
shewed by reuellacion and hathe ben accepted by the church as
thinges sente by god, for of that affirmanaunce it shulde followe that
we shulde be bounde to take for scripture all that the clergie
shulde accepte for scripture were it revelated or shewed by god
or not, for it is no Doubte but ^that^ the said writers that thowe
speakeste of, vnderstode by that woorde : church : the bisshops and
the clergie : And they vndoubtidlie maye erre, for they make
not the church : And it shulde followe therupon that

¹⁰²⁷ Between this and the line below there is a mark in the left hand margin that looks like a capital O followed by another character that is otherwise indecipherable.

if we shulde be alwayes boundon to beleve all thinges that they accepted as thinges sente by god to be sente by hym in Deade, that we mighte erre in oure faithe as they myghte Do, for they be men ignoraunte and fraile and may disceyve and be disceyved for that they represente not the churche as I haue seid before, And then there shulde be no certeyntie what we shulde be boundon to bileve and what not : but vndoubtidlie oure lorde loved his people better then so, and wolde note leave theym in suche perplexitie but hathe leaste theym an infallible rule of scripture whiche if they beleve and followe they shalbe saafe,¹⁰²⁸ wherfore I thinke verilie that the said sayings of saincte hierome ar oonlie to be vnderstaude of the scripture conteynede in the bodie of the bible canonised, and that noon other man of writing maye be called scripture, but that, And where they seye that it is necessarie for the consercracion to put water to the wyne, surelie I thinke that it is right conueynyente that it be so, but that ^{^it^} is necessarie to be so, I thinke it ca[n]ot be proved, for thoughe as some men haue said all men in ^{^th^} the parties where the said

¹⁰²⁸ Spelling correct as per the manuscript.

consecracion was firste ~~used~~ instituted for the hete of the contrey, vsed to put water to theire wyne : and that of likelihod oure maister Criste at his maundie followed that custume, yet that prouith not expreslie that Criste Did so ~~there~~, myghte haplie at that tyme after the custume to haue the wyne more pure of it self, And if it were admytted that he Did put to watre, yet he put not somoche but that it was wyne still so that the water was turned into the strengith of the wyne and not the wyne into the water, and therefore it is no doubte but that the puttyng to of water is not necessary for the p[er]fecion of the consecracion, And that water shulde be put to for the intente that it shulde signifie the manhod of Criste as ^{^the^} wyne doth the godhed, that significacion is litle to be regarded, for after consecracion there is very Criste hym self whiche is bothe god and man, so that to haue any significacion of his godhed and manhod that are there p[re]sent it nedithe litle, And I thinke verilie that vnder the coloure of significacions moche pride and ypocrisie haue ben maynteyned in many thinges among the clergie in tyme paste, And nevertheles the lawes made by the clergie of puttinge water to the wyne, haue ben so highlie esteemed, that the grekes bicause they wolde not obeye the Decree of Rome therin haue ben taken for heritiques, And thoughe the grekes

haue erred in other thinges yet the said Disobedience of the grekes to the saide Decrees was oon speciall cause whie the grekes were severed fro Rome, and likewise Divers other nacions as the, Surians, the Iacobites, the Nestorians, the Armyns, the Georgians, and the Abasyns, and Diu[er]s other contreyes also, be taken as scismatiques and heretiques, and if the causes were thoroughlie looked vpon whie they be so taken, it wolde appere that the moste chief and principall occasion therof is : bicause they refused to be obediente to the Decrees of Rome, for as it semeithe all theire other articles mighte w[ith] Diligence and zeale of theire soule healthe, haue well ben reformed, but when they disobeyed the powere of Rome it is very like that they were esteemed as men not worthie salvacion that wolde not obey the vicare of Criste vpon erthe and the hed of the worlde as they called hym, And therefore they were accursed and cruelly handeled whiche gave theym occacon rather to be the more indurate then to be reformed, and even nowe the bisshop of Rome wolde of liklihod if he had powere vse the same fasshon withe Divers good catholique contreyes : that nowe in these Daies vpon good iuste and

reasonable causes resist his extorted powers, but with the mercie
of our lord the truth shall shortly appear and make him and
all his to cease of that enterprise, And I dare boldly say that
all Christian kings are bound in conscience to search and examine
with all diligence whether the countries that I have named
before were charitable handled or not and to do that in
them is to reforme that is a duty in that behalf, And till
that be done and that the power of Rome be thoroughly
examined and brought into the right course: the truth
of Christes Doctrines with meekness and charity will not
appear among the people **Students** I pray the now
show me this mynde whether the counsailes that have been
gathered and kept in time past by the authority of the bishops
of Rome and have been called general counsailes ought to be
taken as scripture **Doctours** I thinke nay and that they
may lawfully be denied in many things and it may be
doubted also whether all such things were agreed by the
counsailes that are put into the booke called the booke of the general
counsailes or not, And also some men be of opinion that
nothing of that booke of general counsailes, is of authority,
but that that is put into the Decrees, and it were to
dangerous to all the people that they should be bound

of necessitie to be bileve thinges that be of suche vncerteintie

Studente And I pray the what thinkeste thowe of the Canons

that be called the canons of thapostles ar not they of like

auctoritie as scripture is **Doctoure** No verilie, for it is Doubted

howe many be of theym, and it is doubtid also Dist xvi ca Canones,

whether the Appostles made theym or whether they were put

in by some other in the name of the Appostles, and some lawes

there following affirme that there be lxxxv canons of the

Appostles, and some that there be lx and some that there be . l .

and in Deede . l . be putte in the begynnyng of the ^sayd^ booke called the

booke of gen[er]all counsailes, and thinges of suche vnc[er]teyntie may

not be compared to scripture **Studente** I perceive well by

the reasons that thowe haste made ~~in this place~~ that thowe

takeste nothing to haue the strength of scripture but oonly

suche thinges as bee conteyned in the bookes canonised of the

bible, and that thowe thinkeste also that no man is bounde

to bileve is thinges necessary to salvacion any opynyons or

revelacions though they haue ben accepted allowed and

auctorised of the clergie as it is of suche vnwritten opynyons

as be bifore rehersed, and of the revelacions of Methodius,

furseus, hildegardes, and suche other, nor yet that we be not bounde to bileve any counsailes gen[er]all or provinciall, canons, or ^legends^ or Decrees of the bisshops of Rome and of the clergie, or saying of Doctours, oonles they be warranted by scripture, Do I not take the after thy meanyng in these matiers **Doctoure** yes verilie **Studente**

And what thinkest thoue of suche canonysacions as haue ben made by the bisshop of Rome and his clergie, be not all the people boundon to bileve that all they whom he and his clergie haue canonised for holie and blessed be in Deede holie and blessed **Doct[oure]** No verilie, for the witines that provid their vertues and miracles whereby they were canonised, And also they that toke the witines mighte disceyve and be disceyved, and also Doing of miracles prove not a man to be holie and blessed ne to be in the favoure of god as appereth math xii[th] and act[s] xix[th], and ou[er] that in the laste poynte when a man is paste speche he may fall fro god wherof no man can haue knowlege, howbeit righte good and charitable it is mekelie to truste that they and also all other that haue Dep[ar]ted in feith of Criste, excepte suche as scripture witnessithe to be Dampned, be holie and blissed and specially a good truste maye be taken of theym whiche by a long contynuaunce among the people as it were by an instincte of the holie goste, haue ben taken for holie and blissed, that they be in deede holie and blessed, but a full

faith is not to be taken of any p[er]sonne that he is surelie holie and blessed: but oonly of theym that be canonised by scripture as it is of oure ladie, thapostles, and Divers other of whome it is fully to be bileved of all Cristen men that they are holie and blessed

Studente I pray the nowe lette me yet sumwhat nowe thoroughly heare thy mynde in Dyvers of these matiers that we haue treated of bifore, **Doctoure** wherin is that **Studente** moste specially in suche opynyons as we haue spoken of before, and that seme to be favourable to the faith and to thincreas of vertue and wherof no hurte can come ^{^for^} it shulde seme reasonable that every man ^{^shuld^} be bounde to bileve it as their Auncesters did, as it is of this opynyon that the Appostles made the comon crede and suche other **Doctoure** It may be that some other gathered tharticles of the crede to ether and not thapostles, and there is nothing to endure any man to bileve of necessitie that the Appostles did it **Studente** It hath ben knowen by revelacion of the Appostles and so hath continued in the church from oon to an other to this Daye **Doctour** there is no prooffe that the Appostles made any suche revelacion **Studente** It is is a comon proverbe that all men say is mooste comonly trewe **Doctoure** Yea: but yet it

Dryveth no necessitie of bileve, for all comon seyinges be not trewe, for though it be a comon saying that every man shall go to sainte Iames quyk or Deed yet the trouthe is not so, and no man is boundon of necessitie to bileve as an article of the faithe any thing that may be vntrewe : but for doing iustice and righte vnto oure neighbour and to knowe what is myne and what is thyne, we shalbe bounde to bileve such a comon opynyon and witnes as I haue spoken of bifore, but not as an article of the faith **Studente** fro the tyme of Adam to Noe, and likewise from Noe to the lawe written, all the faithe of the incarnation and of the laste iugemente, contynued by revelacion from oon to an other and they that herde it were boundon to bileve it as articles of the faithe, And so likewise after the passion of Criste til mathewe wrote his gospels whiche was aboute xiii yeres after the passion of Criste; there was no scripture written of the newe lawes, and yet were many people then conu[er]ted to the faithe whiche were boundon to bileve as they were taughte and that was by hearing and by revelacion of thapostles and of other w[ith]oute and scripture; And it is no doubte but that the Apostles speke many thinges that is not in scripture and that appereth [ii ad]¹⁰²⁹ thessal ii where sainte Paule writing to the thessal, seith thus

¹⁰²⁹ The most likely reading of this text.

brethern stende ye and holde ye the tradicions whiche ye haue herd
of vs, either by oure worde or by oure epistle, and it is no
doubte but that sainte Paule speke many thinges that he wrote
nothing to theym of in his epistles, And the thessal were as
fully bounde to bileve that that sainte Paule had spoken to theym
before as that that he then wrote to theym of, ^{^By^} his Epistle, and
whie shall not all cristen men be bounde to the same bileife
aswell as the thessalonians were **Doctoure** ffor¹⁰³⁰ the ~
Thessalonians herde his wordes and therefore they were boundon
to bileve theym, but we herde theym not nor scripture
witnessithe not what they were **Studente** we be bounde by
the saide wordes of saincte Paule to bileve ~~and~~ ^{^that} they were good & trewe and
necessary to the Thesselonians to bileve, and[^] that as fully as
that ~~that~~ he wrote to theym in his epistle as I haue said bifore
Doctoure that is trewe, but that he speke this sentence or that sentence
no man is boundon to bileve by any comon opynyon or Doctours
writing, for if we shulde be bounde therto, we shulde in proces of
tyme be boundon to the bilefe of infenite thinges, and surelie many men
haue ben greatlie desceyved in this poynte whiche haue thoughte
that bicause Criste and his Appostles speke good thinges and

¹⁰³⁰ Spelling correct as per the manuscript.

trewe that be not in scripture, that therefore we shulde be boundon
to bileve by revelacion of other that they speke this p[ar]ticuler sentence
or that ~~and vndoubtidlie we be not~~ whiche is not in scripture,
and vndoubtidlie we be not boundon therto, but if any p[ar]ticuler
sentence appere in scripture that Criste shulde speke, thoughe
it be not expressed in any of the foure ~~evangel~~ evangelistes yet
we be bounde to bileve it, as it is of this texte, It is more blessed
more to gyve then to take, for saincte Paule witnessithe act xx[th]
that Criste sepeke it, but if scripture had not wintessed that Criste
speke it, we had not ben boundon to bileve ^{^that he speke^} it, by reason of any
comon opynyon or writings of Doctours, but in scripture is suche
a vertue and efficacie that we be boundon vpon payne of
Dampnacion to bileve all that is conteyned in it **Studente** sithe
they that wrote scripture olde and newe and they also that
auctorised it, were men as doctours were, whie shulde scripture
be had in so highe estimacion above the writings of Doctours, for
many of the Doctours were ~~blessed and~~ holie ^{^and blisshed^} **Doctoure** if thowe
put me in remembraunce of that question hereafter I ~~may happen~~
~~te~~ will w[ith] good will shewe the my conceyte therin, but I will
nowe make answeare to that thowe haste seide before that is to sey,
I will agre that fro the tyme of Adame til the lawe written

the faith was known by reason of oon to an other, and so it was
fro the passion of Criste til scripture was sufficientlie auctorisid,
for there was then no other meanes howe the faith in Criste
might be known but by hearing, and w[ith]oute faith in Criste either
that he shulde come or that he is come was never non saved
nor never shalbe, and therefore every man was then boundon
to bileve it ^generally or specially^ by hearing of other, and it is to be thoughte that in
the begynnyng of the worlde and also in the begynnyng of the newe
lawe the goodnes of god was so greate vpon his people that he
wolde not suffre theym that Desired to knowe the trouthe, ~~to erre~~
~~therin~~ but that they shulde haue alwey some meanes to come to
the trewe faith, and that ~~nowe~~ before the lawe was written
was by relacion from oon to an other as thowe haste said
but when the faith aswell in the tyme of the olde lawe as in
the tyme of the newe lawe ^was^ ~~were~~ put in writing, and that somoch
was auctorisid by the instincte of the holie ghoste as shulde
suffise to salvacion, then was it not lawfull to any man to affirme
that any thing was necessarie to be bileved as an article of
the faith that was not auctorisid and put in writinge, And

it was verye expediente that it shulde be soo, for els many
sup[er]sticious articles and vntrewe invencions wolde in length
of tyme thoroughe falshod and crafte of the ~~felde~~ fende of
likleyhod haue ben broughte in as thinges necessarie to be bileved,
And thoughe it were admytted that some of tharticles wherof
pretence in made that they by reason of the long opynyon or
of seying of Doctours, shulde be bileved, ar trewe in Deade
and be right sufferable and wolde not mucche hurte thoughe
they were receyved as thinges necessarie to be bileved, yet
theaxmple therof mighte bring in other thinges whiche mighte
doo greate hurte to the vniu[er]sall church, and to all cristen
religion, wherfore oure lorde of his goodnes caused all thinges
that shulde be necessarye to be bileved, to be so gathered
to gether that they might surelie be knowen, and that gath[er]ing
to gether is called scripture, wherin after saincte Augustyne
is founde whatsoever is profitable, and whatsoever is noyous
is there reprovved, and therefore thoughe the faithe in those
tymes that thowe haste before remembred, was knowen by
relacion of mouthe fro oon to any other, yet it was not
expediente that it shulde so contynue for the cause that I haue
before rehersed, and no more it were that the seyinges of Docto[urs]

Cronicles : legendes : or the Decrees of the bisshops of Rome and the
clergie, shulde be bileved as articles of the faithe, and suche
opynions not conteyned in scriptures there be amonge the
the¹⁰³¹ Iewes whiche ^{do} ~~did~~ greate hurte, And they rose by this occasion,
After the tyme of the machabies when the phariseicall sorte
beganne to spring, they feyned that god gaue to Moyses yn the
mounte Syon two lawes, oon written in ^{the} two tables and yn the
fyve bookes of Moyses; the other by mouthe, and that the called
the seconde lawe, and therin were conteyned the phariseicall
tradicions, whiche lawe aboute an hundred yeres after the
Disctucion of the secunde temple was put in writting by oon
that was called Rabbi Monoa, and it was called amonge theym
mystria, that is to saye the ii ^{de} lawe; ^{after this abowte CCC yeres the said Mystia}
was expoundede^{at greate lengithe and}
broughte into a booke called Thalmuth, wherof were two bookes,
oon was made at Hier[ursa]lm the other at Babilon, and that is of
gretter auctoritie then the firste ; and is taken among the
Iewes for a very trewe exposition of that that is conteyned
in the said bookes of Moyses and in the said mistria, And yet
there be many thinges therin directlie againste the lawe of
god, and also againste the lawe of nature; and they endeavour[ed]

¹⁰³¹ Duplicated word; correct as per the manuscript.

theym self also all that they can to repugne and deprave the lawe of Criste; and for the vntruthe of the said exposicons conyened yn the said Thalmuthe againstainste¹⁰³² scripture, it were lawfull and also righte expediente for cristen princes vnder whome they lyve, to take it fro theyme, and if they did so it is very like that many of the iewes wolde in shorte tyme be conu[er]ted withe moche more better will then they will nowe, And if suche vnwritten opynions as be spoken of before shulde be suffered to contynue as thinges necessarye to salvacion, it is not vnlike but that they wolde hereafter be put in writing in greate numbere and be taken w[ith] their exposicions to be as highe auctoritie as scripture, and what inconvenyente and lengith of studie mighte followe therupon no man can tell, it semithe therefore righte expediente and also necessarye that it be comaunded that no man herafter vpon greate paynes, compare any suche vnwritten opynyons to the auctoritie of scripture **Studente** yet wolde I move the ^of^ oon thing conc[er]nyng the seying of Doctours, **Docto[ure]** what is that / **Studente** it is this, howe shulde the misteries of the trynitie be knowen if the oppynyons of Doctours Did not Declare it, **Doctoure** all that is necessarye to be bileved concernyng the trynitie maye be sufficientlie proved by scripture, **Studente**

¹⁰³² Spelling correct as per the manuscript.

howe can it be proved by scripture that in the trynitie is oon god
and thre p[er]sons **Doctoure** that there is oon god apperethe Deutr vi
where it is said thie lorde god is oon god, and that in that godhed
is the father, the sonne; and the holy ghoste : and ^{^that^} the father is god,
the sonne is god, and the holy ghoste is god, and that they thre
be oon, apperethe by scripture P ~ Io. vth, where it is ~~sede~~ seide,
thre thinges there be that gyve witnes in hevon, the fathere
the worde; and the holy spirite, and they thre be oon, and as for that
terme p[er]sones it is a terme geven by Doctours whiche thoughte
it be a righte convenyente terme, yet it is not necessary to
salvacion ^{^that they be namede^} by that name p[er]sons, And therefore to byleve that
god
is thre and oon [&c] suffisethe to salvacion. And ferthermore
by that that is said yn ~~this texte~~ the said texte; and these thre
be oon, appearethe that they be of oon powere, of oon substaunce
and of oon goodnes, and that all that oon dothe thother Doo, for
they all be oon, **Studente** yea : but where appereth it in script[ur]e
that the holie ghoste procedeth of the father and the sonne, **Doctoure**
it appereth Io. xvi where Criste said thus, when the holie
comforter comythe, who I shall sende to you fro my father,
the spirite of trouthe whiche procedithe fro the father, he

shall bere witnes of me, and sithe Criste sendithe hym, it apperethe that he procedith of hym, And likewise it Apperethe Io xvi that Criste sente the holie goste when he saide vnto his Disciples, It is expediente that I go, for if I go not the holie goste shall not come vnto you, And if I go I shall sende hym to you, And so it apperethe by scripture that the holie gooste procedithe boothe of the father and the sonne, and all other conclusions that Doctours haue written concernyng the Trinitie, they haue derevied theym owte of scripture, therefore to beleve that, that is conteyned in scripture conc[er]nyng the trynytie, suffised to salvacion thoughe the termes and conclusions inventid by Doctours conc[er]nyng the Trynytie be not particularly knowen **Studente** well I thinke thowe wilte not yet denye but that Doctours haue done muche good and that they haue opened many Doubtfull sentences of scripture that p[er]adventure wolde not els haue ben opened to this Daye; and they haue founde owte the Dyversities of the ^{^sences^} ~~sentences~~ sentences of scripture; and howe colde scripture haue ben declared and made vpon to the vnderstanding of the people w[ith]oute the knowledge of the said sences, And other that if the wryting of Doctours had not ben howe colde it haue ben knowen that these psalmes, Quare fremuerunt gentes, and this psalme Deus iudici[um] regi Da ; were spoken litterallye of Criste, And howe colde it haue ben knowen that this texte Genes xlix, The sceptre shall

not be taken from Iuda, and a ruler ^{^that^} shall come of hym, til he come that is to be sente, and he shalbe the expectation of the gentiles, was litterally spoken of Criste, but that the rabbies amonge the iewes, and the Doctours of the newe lawe haue expounded it so **Doctour** it is no doubt but that the writings of Doctours haue done moche good and haue opened as thowe seiste many doubtfull sentences in scripture whiche p[er]adventure wolde not els haue ben opened to this daye, and they haue also conbyned scriptures to gether and made a concordance betwixte theym whiche wolde not lightlie haue ben p[er]ceyved but thorough theire writings, and they haue also made the sences of scripture knowen and haue shewed the playne vnderstanding of theyme in many things whiche withoute theym wolde not haue ben knowen howbeit, there is no sence of scripture that provethe an argumente but the literall sence, but yet notwithstanding that their writings haue done moche good, they be not to be taken of suche effecte that the people shalbe boundon to bileve their seyinges as articles of the faithe oonles their seyinges be warranted by scripture, noo not thoughe all Doctours agreed in oon. ~ for they were men and mighte be disceyved, and therefore thoughe it were very like to be trewe that they saide; yet it shulde make

no necessitie of bileve but that vpon consideracion they mighte be Denied, ^{^as^} if all Doctours had affirmed that Peter was at Rome and that Peter and Paule were martired there bothe on oon Daye, that Criste made holie creame after his maundie and comaunded his Appostles ^{^[indecipherable]^} ~~ther~~by to do the same; and that the Appostles comanded setting vp of ymages, or that all men shulde resorte to Rome as the hed church, these and suche other ar not to be bileved as articles of the faithe, for scripture warrauntith not that they be trewe, and therefore they serve not to grounde any argumente vpon as the litterall sence of scripture dothe, nor nor thoughe they indure a presumption that ^{^it^} is trewe; yet they suffice not to prove a necessitie of bilefe, and that the said psalmes, Quare fremuerunt gentes, was spoken litterally of Criste, it appeareth by scripture Acts iiiith, where it is shewed by the felowes of Peter and Iohn at Ier[usa]lin that David made this psalme, Quare fremuerunt gentes [&c], and then it followethe in the said psalme and in the said iiiith chapitre in the nexte verse following (that is to seye in this verses) kinges stode vp and princes gathered to gether in oon, againste oure lorde and against his Criste, and then the saide felowes of Peter saide ferther by wey of prayoure to god, verilie there gathered to gether in this Citie against thy holy childe

Jesus who thowe haste anynted, herode and ponuce Pilate
with the gentils and the people of hier[usa]lin, to doo that thy
hande and cousaile had decreede to be done, and so appereth
playnlie by the said scripture acts iiiith that the ^seyd^ psalm is
to be vnderstoude litterally of Criste; and likewise script[ur]e
witnessethe that Divers other psalmes, as Deus laudem; &
Dixit D[e]us and other also ^were^ ~~was~~ spoken litterally of Criste, and
Doctours testifie the same wherfore it muste of necessitie be
bileved that they were so, not bicause the Doctours seye soo,
but bycause scripture witnessithe that it is so, and yet as I
haue said before Doctours ar moche to be comended whiche
thoroughe Diligente studie and whith helpe of grace haue
taken payne to sette furthe suche thinges playnlie to the
reders that els wolde haue ben very harde to haue ben
p[er]ceyved, but they thoroughe contynuel studie of scripture
and in the bookes of other that afore theyre tyme wrote vpon
scripture had clerer vnderstanding therof then any other
haue had but it haue bene thoroughe speciall grace,
Notwithstanding I thinke verilie that thoughe there had
never any Doctour written vpon scripture, that yet the
people by the very texte of scripture might haue knowen
all that is ~~is~~ necessary to salvacion and mighte haue lived

all after oon trewe catholique faithe, and haue also kepte the Comaundementes of god, and therefore every thing wolde be taken as it is, that is to sey, that thoughe Doctours thorough speciall grace haue opened playnlie many thinges that els wolde haue ben in greate doubte, that yet it is not co[n]uenyente to compare their sayinges in all thinges to scripture, for Doctours muste be ruled by scripture, and not scripture by Doctours, And as for the said psalme; Deus iudi[i]um tu[u]m regi Da [&c] it appeareth by the l[ett]re therof, that it was either spoken litterally of Criste or of Salamon and thoughe many haue thoughe that it was spoke litterally of Salamon, and that it was praioure of Daud for Salomon[ne] yet bicause there is oon verse in the saide psalme that cannot be vnderstoude ne be verified of any but of Criste, therefore it is nowe taken to be spoken litterally of Criste, and so it mighte to be in deede, and the vers is this, And he shall haue Domynyon from the see to the see, and fro the flode to the endes of the hoole worlde, and by that flode after moste writers is vnderstaude the flume¹⁰³³ Iurdan, and so it followeth therupon that he that the said vers was spoken of, shulde haue Domynyon over all the worlde, and bycause

¹⁰³³ Reference to a river, or stream of water. Here the River Jordan.

the Dominion of ^{Salomon} ~~salva~~ ^{ion} was but in the holie lande and

a fewe other cuntreies therabout, and therefore canot
be vnderstoude of hym, but of Criste that had and hathe
Domynyon over all the worlde, as he saide math xxviii[th]
all power is geuen to me in hevon and in erthe, it may be
conuenyentlie vnderstande, and ^ou[ght] that^ it may be also conuenyentlie
vnderstoude of Criste bicause his worde wente over all
the world, as it is said psalm xviii[th], The sounde of theym
that is to saye of the Appostles the sounde (of the Appostles)
wente into all the erthe, and their wordes into the endes of
all the worlde, And therefore no man may iustlie affirme that
the said psalme, Deus iudic[i]um [&c] was spoken literally of
Salomon, And as for knowing who made the psalmes of the
Psaltere or any booke of scripture the saying of Doctours can
Dryve no certeyntie therof, no not thoughe all Doctours
agreed in oon, And therefore all Doctours wolde w[ith] saincte
Augustyne and ludolf affirme that King Dauyd made all
the psalmes of the psaltere, no man were boundon of
necessitie to bileve theym, and this me thinkethe that the
seying of Doctours oonly dryvethe no necessitie of bileve
Studente Sithe I haue herde thy conceyte conc[er]nyng the
sayinge of Doctours, I praye the lette me nowe here thy

mynde conc[er]nyng the opynyons and Determinacions of generall counsailes,
for as to the canons called the canons of the Apostles I holde me
contented with that thowe haste saide before **Doctoure** what gen[er]all
counsails meaneste thowe of **Studente** I meane of such gen[er]all
counsails ~~meaneste thowe of~~ as haue ben gathered by auctoritie of
the bisshops of Rome, and wherin the most ^{^notable^} ~~noble~~ men and moste famous
clerkes of all cristen realmes as Archebisshops, bisshops, Archedecons,
Deanes, Abbotes, priours, Doctours and suche other haue had the
voices whiche haue expounded many Doubtes in scripture and have
ordeyned diu[er]s ceremonyes and ministracions in the churche, all w[ith]
counsails be gathered to gether in a booke called the booke of gen[er]all
counsails, and righte many be of oppynyon that Divers of theym
ar to be bileved and followed as fully as scripture or as the ^{^foure^}
evangelistes what thinkestesthowe therin **Doctoure** verilie I
knowe not that any oon counsaile sith the tyme of thapostles
and sithe the tyme that kinges were conu[er]ted to the faithe, hathe
ben gathered and ^{^orderyd^} ordeyned according to scripture, ne by auctoritie
of scripture, and yet I meane not therfore that thexposicions
and determynacions made in suche counsailes as thowe spekeste of,
shulde be taken vtterly voide to all intentes, for vndoubtidlie many of
theym declare tharticles of the faithe and expounde some places of

scripture very well, And also in suche counsailes have ben ordeyned
Divers ceremonyes and ministracions that be righte conuenyente
to be still ~~and~~ vsed in the churche, but then it is as litle to be
doubted, but that they have many tymes for the maintenaunce
of their owne honoure, power, and riches, p[er]u[er]ted the trewe
vnderstanding of scripture in many thinges, And over that
for the mayntenaunce of ^a singularitie [&] ~~an~~ excellencie on the clergie
above laye men, haue boughte in many cermimonyes and ministra-
cions and also made many Divers lawes, that haue done greate
hurte to the comon welthe and to the charitable ordre of ^{the} people,
and yet had they no auctoritie to haue made theyme, and aslonge
as suche gen[er]all counsailes be gathered by the powere of the clergie,
I thinke there wilbe but small reformacions in the worlde, for the
greate abusions be in the clergie ^{and therefore} if they shulde be iuges, howe
could it be thoughte that they wolde be aparte their owne
honoure and profite, and disprove that that they theym self and
also their precesessoures haue done **Studente** what gen[er]all
counsailes woldeste thowe ^{then} have **Doctoure** I wolde have a
gen[er]all counsaile gathered and kepte by auctoritie of kinges
and princes and wherin notable men of the temporalitie ^{as they be callede} shulde
have voices **Studente** And what auctoritie shulde they

have as thowe thynkeste **Doctoure** oonlie this, that in the name of the vniu[er]sall^churche they^ shulde agre what bookes ar to be taken as bookes canonised for scripture ^and what not^ and that they shulde also expounde the doubtes of scripture and maynteyne oon catho- lique feithe thoroughte all cristen realmes, but as for ~ ceremonyes every king in his contreye may ordre theym / **Studente** the clergie haue pretended that suche gen[er]all counsailes as haue ben kepte in tyme paste and haue ben gathered by auctoritie of the bisshop of rome haue represented the vniu[er]sall churche and that all ^that^ they Det[er]myn yn the name of vniu[er]sall churche aughte to be obeyed as a thing determyned by the vniu[er]sall churche **Doctoure** there can no gen[er]all counsaile represente the vniu[er]sall churche but suche as is gathered by auctoritie of the vniu[er]sall churche, And the bisshop of Rome, nor yet all other bisshops (taking all the clergie withe theym) make not the churche nor haue not auctoritie to gather any counsaile yn the name of the churche, And it is no doube but that suche counsailes as haue ben kepte yn tyme paste by auctoritie of bisshops of Rome and of the clergie have ben in maner a destrucion of all trewe Doctryne, ad haue maynteyned the sup[rem]itie of bisshops of Rome

^above all kinges and princes^

whiche is Directlie againste scripture, And I wote not howe
it is, many Cristen kinges even to this Daye dissemble the matir
and will not serche the trouthe of scripture to knowe what
auctoritie they haue receyved of god for the good ordning of
his churche, And surelie that is in theym a greate offence
in conscience and it is like that the abusions were vsed
amonge the people and clergie shalbe leide to their charge
for they mighte reform theym and will not **Studente**
it is greatlie to be merveyled that the clergie wolde make
the pretence if they had no auctoritie of scripture to bere
theym therin, and it is ~~no~~ merveyle also that kinges wolde
suffre it **Doctoure** surelie they pretendid that scripture
bereth theym therin, howbeit the trouthe is not soo, and
sumwhat as I thinke therin I shall shewe ~~thee~~ the The
Appostles in the begynnyng of the churche before kinges
were converted as hedes over the people for the tyme yn
the name of the vniu[er]sall churche had auctoritie to kepe
counsailles, And that auctoritie they had by this texte,
whatsoever thowe byndeste vpon erthe shalbe boundon
[text in the left margin above the line below – Matth xvi]
in hevon, and whatsoever thowe loseste in erthe shalbe
losed in hevon, for that tixte spoken to petre yn the

name of all the Appostles and of the vniu[er]sall churche till
kinges were conu[er]ted that were hedes over the churche and all
this tyme the stablenes of the cristen people rested in the
Apostles and in their succours, and the hole truste of the
people was in theyme, and the people were not therebie disceyved
for they as diligente shepardes and past..res¹⁰³⁴ endeavored theym self
to feede the people withe the trewe worde of god, and to make
theym knowe it, love it, followe it, and always to desire to knowe
more and more of it, and nothing was more ^labor^ better to theym,
all this tyme ^then^ ~~that~~ that they might encourage the people
thereto thoroughe prayoure, preching, fasting, watching,
and other good examples shweing, and it is not ~~like~~ ^vnlike^ but that holy
bisshops and prestes ^in this tyme^ ~~wolde of prestes~~ wolde of their charitie
counsaille to gether howe they mighte kepe the people conu[er]ted
in good lif ex[er]cise them in the trewe knowlege of Script[ur]e
and howe they mighte also conuert and bring othere to the
same knowlege, this was their principall intente and the
thing that they moste desirede, O this was a blessed tyme
for then there were good prechers and good hearers, and

¹⁰³⁴ The text has been overwritten here making it difficult to decipher. They look to have been inked over at a later date as the amending ink is darker/blacker. The amendment could indicate a vertical strike through the middle letters or the addition of two new letters over the top.

the holie goste wroughte so in the hertes of the people that
theire owne conscience witnessed that the Doctryne that

that the Doctryne that¹⁰³⁵ they had was trewe for it speke
inwardlie to their hartes and it was also many tymes
confirmede by miracles, thus was the lawe of the newe
testamente firste canonised in the hartes of the people, so
that it neded non other witnes, but aftere by a full assente
and calling on of the people for thconsternacion of theym that
shulde come aftere, it was put in writing and canonysed
by the vniu[er]sall[^]church[^] people as a thing necessarie to be bileved
of all men that shalbe saved, as it was to theym that firste
receyved it, and this canonysing was of likelyhod made, by
auctoritie of the said texte, quodcumq[ue] ligav[er]is [&c] math[ew] xvi
but the tyme when it was Done is not p[er]fitlie knowen, and yn
this tyme spirituall minnstres were had in greate
reputacion if the ~~people~~ cristen people for their good lif
and blessed Doctryne and suffred many tymes greate p[er]secucions
of cristes enemyes for the mayntenaunce of his trewe
Doctryne, after this canonisacion of scripture many kinges
were conuerted and the faithe was greatlie stabled and
quyeted and greate riches began to crepe in Dailie
among manye of the successours of the Appostles, and yet
they ofte reasorted to gether to counsaile howe the cresten

¹⁰³⁵ Duplication present on manuscript.

people mighte be kepte in the trewe faithe howbeit it [^]appearith in [^] ~~semeth~~ ~~thowe~~
the begynnyng of the saide boke of gen[er]all counsailes vnder this title origo ~~gen~~
[^]gen[er]alm consiliorum, that[^]
bisshops mighte not lawfully gather to gether in suche ~
counsailes withoute licence of kinges, And it is said ~~that that~~
there that the Empo[rer] Constantyne gave licence to cristen people
that they might gather to gether at suche counsailes, And yt
apperthe there also that the counsaile of Niceue was kepte
vnder thauctoritie of the said Emperoure, howbeit ~~an~~ non
after this tyme the clergie beganne to make pretence that they
had auctoritie by the said texte math xvi to gather counsailes
and to make lawes and canons for that they seid texte as they p[re]tendid
shulde be spoken to peter yn the name of hym and of all thapostles
and theire successours and also in the name of the vniu[er]sall churche
to thende of the worlde, but the trouthe is that is¹⁰³⁶ was spoken to
peter yn the name of hym and of the Appostles and of the vniu[er]sall
churche to the tyme that kinges shulde be conu[er]ted that were as
scripture witnessethe hedes of the people, And then fro [^]the tyme that kinges were
conuetyd [^] ~~thensforth~~
the vniu[er]sall churche had power to ordre scripture and to mayntey[ne]
the vnitie of the faithe vnder kinges whiche were hedes of the churche

¹⁰³⁶ Reads like a typographical error, but is correct as per the manuscript.

nexste vnder god, and that powere the churche had by this texte
mathe xviii[th], where criste saithe thus, whatsoever ye bind
vpon the erthe shalbe boundon yn heven, and whatsoever ye lose vpon

erthe, shalbe losed yn heven, for that texte was spoken to the vniu[er]sall
churche to contynue to thende of the worlde vnder the gouv[er]naunce
of kinges and princes as I haue saide before, and ^{^then^} ~~therefore~~ the hedship
of thapostles over the vniu[er]sall churche whiche they had by the said
texte mathe xvi[th] ceased, howbeit many of the clergie taake¹⁰³⁷ it not
soo, but ~~pretended and yet~~ pretend that bisshops and prestes
aughte to ordere and governe the vniu[er]sall churche to thende of
the world as thapostles yn theyre tyme Did **Studente** howe
can it be proved that the said texte math xvi[th] whatsoever thowe
byndest [&c] was spoken to peter in the name of all the Appostles
and also of the vniu[er]sall churche, for it shulde seme rather that
Criste speke it to peter in the name of the appostles oonlye, and not
in the name of the vniu[er]sall churche; ^{^for the Apostles confessed Criste to be the}
^{sonne of the lyvyng god and not the vniu[er]sall churche,^} And therefore it shulde seme
that all the auctoritie that was geven by that texte shulde remayn
yn the Appostles and their successours **Doctoure** the Appostles
for theym self and for the ^{^hoole^} vniu[er]sall churche whiche shulde be conu[er]ted
to thende of the worlde confessed that Criste was the sonne of the
lyvyng god, and therefore it muste nedes be taken that the
meanyng of Criste was to speke those wordes yn the
name of the vniu[er]sall churche and not oonly yn the name of

¹⁰³⁷ Maybe a misspelling by the original clerk, but this spelling is correct as per the manuscript.

thapostles, for scripture is not always to be taken according to

the wordes, but ~~is sometyme to be taken~~ according to the meanyng of
the holie ghoste that speke the wordes, for all scripture was
spoken of the instincte of the holye ghoste, And that that texte
was spoken to the Appostles yn the name of the vniu[er]sall church
[Act¹⁰³⁸] it appereth act ¹⁰³⁹ where the Appostles ~~take with the~~ them by
thactoritie of the saide texte math xvi[th] toke withe theym yn
there counsailes the senyours of the people, for if that texte
had not ben spoken in the name of the vniu[er]sall church aswell
as in the name of the Appostles, they mighte not haue taken the
seniours with theym yn counsailes, and it is not to be thoughte
that the Appostles Did that withoute auctoritie **Studente** well
I am contented with that thowe hast said as to this poynte;
but yet I praye the let me fele thy mynde what movethe the
to saye that the hedship of the Appostles over the vniu[er]sall church

^and that then it ceased ~ ^

contynued no longer then to the tyme that kinges were conu[er]ted
Doctoure this movithe me to sey it, for it appereth by script[ur]e
longe before the cumyng of Cryste that kinges were the
heddes over the people, and that the highe iugemente and the
highe comaundemente of the worlde stode yn them, And if the

¹⁰³⁸ Notation in the left hand margin of this line.

¹⁰³⁹ Gap in the text here.

Appostles and their successours shulde be the heddes of the churche,
then shulde they e the highe iudges and the highe comaunders

of the worlde, and therupon shulde folowe a contradiccion betwene the olde testamente and the newe, and that vndoubtidlie there is not, Criste also said mathe vth, I come not to breke the lawe but to fulfill it, wherby apperethe that Criste wolde that the power that kinges had before his cumyng shulde contynue, And if the vniu[er]sall churche shulde oon tyme haue power vnder the hedship of kinges and princes to order the churche and to expound the doubttes of scripture, and to do suche thinges as p[er]teyne to a gen[er]all counsaile, And an other ~~thing~~ tyme it shulde haue like powere vnder the hedship of the successours of the Appostles to doo likewise, there mighte followe a contradiccion betwixte their sentences and Determiynacions, whiche it is not to doubtte but that oure maister Criste prevented, nontheless when riches increased yn the clergie as I haue sumwhat touched before, many of theym endeoured theym self more thoroughlie then they had Done bifore, to sette fourthe the powere of the clergie, and pretendid still that the power and auctoritie of the said texte math vxi contynuied in the successours of the Appostles, as it did yn thappostles self, and kinges toke litle hede of suche maters, but gave alway credence to the clergie concernyng the exposition of scripture, wherby in processe of

tyme they have diryviéd owte therof an hedship yn the bisshops of Rome above all ~~things~~ kinges and their people and therby bisshops of Rome haue taken vpon theym to somon gen[er]all counsailes as we haue spoken of before when they liste, and to comaunde kinges to obey their somons vpon payne of exco[muni]cacion, and non shulde haue voices in suche counsailes, but bisshops and prestes ^And^ for the maintenia[un]ce of this pretence, they haue expounded many textes of scripture contrary to the mynde of the holie ghoste, as this, thowe arte petre and vpon this stone I shall buylde my chure,¹⁰⁴⁰ and this he that heareth yon heareth, and specially the said two textes, whatsoever thowe byndeste and whatsoever ye bynde [&c] they haue merueylouslie p[er]tred p[er]uerted, and somtyme haue affirmed that ~~that~~ bothe the saide texte were spoken to thapostles and their successours, and that they and every of theym haue had auctoritie therbye to make lawes gen[er]ally of all thinges sp[irit]uall and temporall as they call theym, to make exco[muni]cacions, absolucions, to kepe gen[er]all counsailes and to expounde the doubttes of scripture, and to adinge what bookes aughte to be taken for bookes of scripture, and what not, and that all men shulde be boundon to obey their exposicions, and that they shulde haue powere to graunte pardons, and also to lose and bynde the

¹⁰⁴⁰ Spelling correct as per the manuscript.

people fro their synnes, and if bothe the saide textes shulde be vnderstoude to be spoken to the appostles and bothe to be of oon lyke effecte, then the oon or the other of theym was surplusage and spoken in vayne, specially seing that bothe the saide textes were spoken by oon self evengelite and so mighte to gethere, And to saye that they therbye may make lawes and bynde kinges and theyre people it is agaisnte many scriptures that gyve that auctoritie to kinges and princes and so it is herisie to affirme it, and as for making of Absolucions they haue auctory¹⁰⁴¹ therin by this texte Io xx[th], whate synnes ye forgyve ar forgyven and by neither of the said twoo textes, and that they shulde ~~therbye~~ haue auctoritie by the saide two textes of eythere of theym to make exco[muni]cacions it canot be so taken, for it geveth theym no iurisdicion, and w[ith]oute a iurisdicion they canot make exco[muni]cacions, And therefore the firste of the saide two textes that is to saye math[ew] xvi[th] was spoken to the Appostles yn the name of the vniu[er]sall churche to gyve theym auctoritie to kepe counsailes vnder the power of the Apostles and to ordre the cristen people till kinges shulde be conu[er]ted yn suche manere as I haue towched bifore, And the other texte that is ~~to saye~~ math xviii[th] was spoken to the Appostles

¹⁰⁴¹ Spelling correct as per the manuscript.

yn the name of the vniu[er]sall church after kinges shulde be conu[er]ted
to thende of the worlde, that they from tyme to tyme shulde kepe
counsailes vnder the powere of kinges to the good ordre of the
people as I haue also touched before, And I thinke verilie that
sithens these abusions and these p[er]u[er]tynges of scripture be nowe
so vniu[er]sally opened not oonly in oon cuntrey, but in many cuntreys,
that all kinges and princes are boundon vnder no lesse payne then
dedlie synne to endeouere theym self to se theym reformed, and
they that haue moste powere and moste people vnder their
gou[er]naunce ar moste bound to it, And I thinke verilie that sithe
the tyme of the Apostles there hathe not oon gen[er]all counsaile be
gathered and holdon to all intentes according to thauctoritie of
scripture, for thoughe the said ^council of^ Niceue and some othere were
gathered, by auctoritie of the Empero[ure] and kinges, yet laye men had
never voices yn any of theym **Studente** Doste thowe then thynke that
all counsailes that haue not ben gathered by auctortitie of kinges
sithe the tyme of the Appostles, and wherin lay men had no voices
and all Decrees of the bisshops of Rome and also the Decrees of other
bisshops ~~to~~ be voide **Doctoure** naye I take it not soo, I take it to
be of more higher effecte then the seyinges of Doctours be,
for yn suche counsailes haue ben comonly many Doctours and
many of the, moste famous clerkes of cristendome, And therefore

theire seyinges are more to be ^{^regarded^} ~~gathered~~ then the seying of any oon man is, but yet howe many so ever they be, and howe greate lernyng so ever they have, ~~yet~~. I thinke no man is boundon to bileve theire seyinges oonles they be deryvied owte of scripture and ^{^be^} ~~he~~ warraunted by scripture, for theye were not made by auctoritie of the church, howbeit if any lawfull custume be risen amonge the people by reason of any suche Decree that is not merelie grounded vpon scripture, that Decree is to be holden by reason of the custume, ~~howbeit of any lawfull custume be risen~~, and not by reason of the counsaile, but as for opynnyons¹⁰⁴² that haue risen therby they cannot be maynteyned by any custume or long contynuaunce as I haue said before, **Studente** verilie I am righte hevvy and sad to heare the speke so farre yn these matiers as I have done **Doctoure** why so **Studente** for I thoughte that the clergie that haue ben the leaders and the lanterns to the people wolde ~~not~~ haue walked vpon so sure a grounde yn all theire Doyinges, that no many mighte iustelie haue founde any Defaulte thereat, but I p[er]ceyve now that thowe fyndest greate defaulte (and that withe good iuste cause as thou thinkest) (at theire Doyinges and teachinges yn Dyvers thinges) whiche thowe haste remembred bifore, and that in suche thinges as not oonly thouches c[er]teyne p[er]sones or certayne cuntreyes, but the hole

¹⁰⁴² Spelling correct as per the manuscript.

people and the vniu[er]sall state of cristes church, which Defaulte as it semythe hathe ben no lesse offence yn the moste parte of the clergie of all cristen realmes, then Dedlie synne, and of likelyhod ignourance coude not excuse men of suche lernyng, and though it mighte haplie excuse many of the laye people, yet they lacked therby the~~re~~¹⁰⁴³ trewe Doctrynes and good examples that shuld haue broughte theym to more p[er]fite waye of lyving and to more open knowlege of Criste and of his lawes, then they haue ben, and I thinke verilie that all they that may doo good to put away suche ignourance and vntrewe Doctrynes, that they ar yn conscience highlie boundon to it, **Doctoure** I thinke verilie that it is trewe as thowe saieste, and over that there haue ben grea vntrithe in many of the clergie, beside suche vntruthes as we haue spoken of bifore **Studente** wherin is that **Doctoure** yn that the clergie haue in man[er] vniu[er]sally claymed diu[er]s thinges ar by auctoritie of the lawe of god, that they haue oonly by custume and by the lawe of man and that somtyme by lawes made by theym self, and where they had no auctoritie to haue made any lawe howbeit I entende not at this tyme to speke to the any ferther of that mater **Studente** I praye the then lette me heare thy mynde yn oon thinge or we departe

¹⁰⁴³ Two indecipherable letters struck through.

Doctoure what is that **Studente** thowe ^{^haste^} saide before ~~that~~

that thoughe it appere not yn many of the foure evangelistes that Criste saide; it is more blessed more to gyve then to take, ~~and~~ that yet bicause it appereth in scripture by the saying of sainte paule Act xx[th] that he saide soo, that we be boundon to bileve that he said ^it^ soo, but then thowe saideste ferther that if scripture had not witnessed that he had spoken those wordes that we had not ben boundon to bileve that he speke theym by reason and any co[m]en opynyon[ne] or sayinges of Doctours or other witnes, but in scripture thowe seydeste ^ys^ suche a vertue and effacacie that we be boudnon ypon payne of Dampnacion to bileve all that is conteyned in it to be trewe, and I pray the that I maye heare thy mynde thoroughlie whie thowe affimyste scripture to be of so highe auctoritie above all writings of Doctours or any other **Doctoure** I thinke v[er]ilie that the ~~apostles~~ gosselles nor any other parte of scripture be not of auctoritie bicause the Evangelistes or othere writers therof were of such holynes that they mighte not erre, but bicause the ^sayd euangelistes a[n]d other scryt[ur]es ^ were, accepted, allowed and canonised by the vniu[er]sall churche, as thinges necessary to be bileived, that is to saye eythee when the Apostles were hedde of the churche and that was yn the begynnyng efore kinges were conu[er]ted, orels after that kinges were conu[er]ted **Studente** ~~but~~ ye but in whethere of ~~them~~

the tymes ~~were~~ was it done **Doctoure** surelie I knowe not the certayne tyme therof, but certayne it is that it was done as the vniu[er]sall church hathe alwayes fermlie bileved, and the bookes therof canonised be putte into the bible, but when or by whome ^it is not knowen^ ~~I cannot tell~~ nor it nedithe not mucche to be knowen, **Studente** there be bookes putte into the bible whiche be not taken to be of auctoritie as the ~~thirde~~ ^thirde^ and fourthe book of Esdras, ~~the pra[yer] of manasses~~ nor the secunde bookes of the machabees and diu[er]s other, for they be neither in the canons of the Ebrues nor yet they be not affirmed by the counsailes of laodycenc nor by the thirde counsaile of cartaginence nor by the counsaile of Rome holden vnder the bisshop of Rome called Gelasius, and it is not ynoughe to prove that any booke is of the auctoritie of scripture bycause they be putte yn the comon bibles that go abrode amonge the people **Doctoure** that is truthe, and therefore by that terme (the bible) ^I vnderstande^ suche bookes as be in the bible and haue the auctoritie of scripture **Studente** yea : but yn that poynte, that is to saye, whiche of them be of that auctoritie and whiche not, standeth all the matiere, And therefore I thinke verilie it wilbe harde to prove that any man is boundon to bileve as a thing necessary to salvacion that this evangeliste wrote this gospell and another this, or that sainte Luke wrote the actes of the Apostles

and saincte paule the epistle to the Ebrewes or suche other
oonless better auctoritie be shewed for the profe of it then
thowe hast yet shewed, for thowe seiste that suche thinges
were done by the auctoritie of the vniu[er]sall church, but
thowe sheweste not where nor when, or by whome, nor
whethere it were done when the gou[er]naunce of the church
stode principally in the Appostles or after when kinges
were conu[er]ted, It semethe therfore that it may be verifiende
of thy self that thowe haste bifore recyted of saincte hierom
when he saide, suche thinges as haue no auctoritie of script[ur]e
maye as lightlie be denyed as they be affirmed, it semyethe
good therfore, that as concernyng the auctoritie of scripture
~~that~~ we stoude to the determynacion of the counsailes bifore
rehered, and not to leaue to thinges that be uncertayne
Doctoure as to suche gen[er]all counsailes as haue ben gathered
by the auctoritie of the bisshops of Rome, and wherein
bisshops and prestes haue oonlie had the voices, thowe
knowest my conceyte that bissops and prestes make not
the church, nor in suche counsailes they represente not
the church, And also it is certayne that the Decrees in
gen[er]all counsailes haue be[n] altered, and they cannot auctourise

any booke to be vnchangable and necessary to be bileved that
be changeable and alterable yn ^{the}[i]yth self, wherfore if all
suche gen[er]all counsailes as hathe ben kepte sithe that tyme and
all Doctours also wolde haue testified that Criste had spoken
the said wordes ^{it is better more to gyve then to take} non had ben bounde thereby
preciselie to ^{have} bileved [all one line]
it (if scripture had not witnessed it) and thoughe the Appostles
mighte by auctoritie of the saide texte, whatspever thowe
byndeste [&c] for a tyme kepe counsailes for the good ordre of
the churche, and haue ^{at} their determina
cions yet that auctoritie is ceassed ^{so} that bisshops and prestes
haue not the powere in suche counsailes nowe as the Appostles
had, And ferthermore as to the said counsaile of Cartaginence
it attributhe . V . bookes to salamon, and that canot be true
but the booke called caliasticus, be attribute to Salamon,
and it is certayne that Iesus filius Syrach made the saide
book of caliasticus, and as that counsaile did erre in that
poynte, so it mighte likewise do in ^{other} ~~many~~ thinges and so mighte
other counsailes doo also that were gathered by like auctoritie
as they were, and Innocente bissop of Rome in his epistle
to Ex[s]up[er]ius bisshop of Tholosae: errithe in the same poynte,
that is to saye in Attributing of the saide booke of caliasticus

to Salamon, and therefore there is no full faithe to be gevon
to suche counsailes, howbeit they make sumwhat a p[er]suascion
to prove wherin the very auctoritie of scripture sandithe
as me semithe, as I shall sumwhat touche after if thowe wilt
geve me the hearing **Studente** very gladlie, and I praye
the lette me evyn nowe ~~firste~~ heare thy full mynde conc[er]nyng
these maters of the auctoritie of scripture **Doctoure** it
was longe or the vse of l[ett]res and of writing were founde
and all that tyme the knowlege of thinges paste aswell
conc[er]nyng the faithe in Criste as otherwise, was had only
by worde and by relacion of oon to an othere, And in the
begynnyng there was greate faithe in the people so that
oon hole opynyon of thinges necessary to be bileved contynued
yn them all by suche relacion many yeres aswell before
noyes flode as aftre, but in proces of tyme when Dyvers
suche thinges as had ben done aswell before the fludde as
after and that were righte necessary to be knowen were
throughe ignoraunce fallen owte of knowlege, oure lorde
of his greate m[er]cie that evere hathe cure vpon his people,
showed to moyses all suche thinges as were necessarie to

salvacion fro the begynnyng of the worlde vnto ^{^that^} ~~the~~ tyme, all
whiche thinges moyses put in writing in v bookes whiche
bookes were and be of such auctoritie that all the iewes
and also cristen men are boundon to bileve theym and they
were not fro tensforthe boundon to bileve any other thing
as for necessitie of salvacion, but oonly that that was ^{^so^} putte
in writing, howbeit to the fulfillyng and observeinge of the
lawe of nature, they were alwayes bounde as all othere
people were, And ~~yet if it were asked when and where the saide .v. bookes
were canonised and by what parson I suppose noman can tell neyther among
the iewes ne yet amonge the cristen men, wherfore the greateste~~ ^{^stet^}¹⁰⁴⁴ auctoritie
that is of theyre canonising at this daye is that they have ^{^alway^} ~~already~~ ben
accepted and receyved of all cristen people lerned and vnlerned yn their
hertes ^{^to be true^} ~~haue alway ben geven full faithe vnto theym,~~ yn somoche that all
faiethfull people haue from tyme to tyme assented that it hathe ben
a greate offence to Denye any thing / that is conteyned yn theym,
And if a man will p[er]vse all the bookes of tholde testamente and serche
when and where and by whom they were gathered to gether and
canonised, he shulde never come to full knowledge of it, but shuld

¹⁰⁴⁴ This is an interlineal stet without caret marks in the text. Carets used here to signify the interlineal nature of the insertion. There is also the possibility that there is another word or symbol struck through, following ‘auctoritie,’ but this is indecipherable.

alwaye be compelled to assente that the spec[i]all auctourising of theym
haue bene vnder suche maner as I have bifore rehersed, and

and specially of the psaltere called David psaltere whiche
conteyneth . CL . psalmes, who can tell who gathered them to
gether and auctorised them that were made by Dyvers men
and at Dyvers tymes ^{^and^} likewise it is of the booke of iudicum,¹⁰⁴⁵ and
yet it is no doubt but that they were sufficientlie auctorised
by them that had auctoritie to do it, but that auctourising is
not recorded by any auctentique wryting, so that the comon
assente of the people is at this Daye the moste chief recorde
therof, And their recorde in this caase¹⁰⁴⁶ suffisethe though a
comon oppynyon of the people suffice not to prove any other
oppynyon to be of the strengith of scripture, that is not in
scripture, for it is to be bileved that criste wolde not leave his
people w[ith]oute sufficiente auctoritie wherby they myghte knowe
his trewe faithe, and that is the working of thaholy ghoste
wherby a full assente hathe risen yn the hertes of the people
to bileve and to thynke them self bounde to bileve suche thinges
as were written of instincte of the holy ghoste as thinges
necessary to be bileved for their salvacion, ~~and though all
the bookes of the bible be not of suce strengith, yet they all
seme to be of suche strengithe at this Daye excepte such as~~

¹⁰⁴⁵ Spelling correct as per the manuscript.

¹⁰⁴⁶ Double 'a' looks correct as per the manuscript.

~~for reasonable causes be not to be taken of suche strength,~~ And I thinke that after this manere all the bookes of the newe testamente ^{^were^} was canonised, for I doubt not but that thoughe it appere not, when, where, nor by whome they were canonised, that yet they were canonyed in dede and that by theym that had sufficiente auctoritie therto, And I thinke rather it to be done by auctoritie of this texte, whatsoever thowe byndeste [&c] then of this texte, whatsoever ye bynde [&c] for it was longe ^{^aftre^} the passion of Criste or that kinges were conu[er]ted that might gather counsailes to make that canonyng, And also it is very like that when kinges were conu[er]ted that mighte have done it, that they knewe not theyre owne powere therin nor that the clergie wolde not instructe theym therof, but rather biganne to make pretence, that they had the auctoritie therin by the saide texte, whatsoever thowe byndeste [&c] as the Appostles had as is saide before, And aslonge as the clergie is suffered to maynteyne that auctoritie; and that they haue also auctoritie to expounde scripture, it is not like that ~~the~~ kinges shall knowe the auctoritie that they haue receyved of god over his people, And I thinke also that there are fewe

things that haue done more hurte, then this p[re]tence wherbye
the bisshops and clergie haue affirmed that they haue like auctoritie
as the Appostles had, trouthe it is that they be sucessours to the
Apostles, but yet it is no doubtte but that the Appostles had Diu[er]s
auctorities and powers that they haue not, And thus I thinke
that thoughe therbe no sufficiente auctoritie to prove when or
where or by whome scripture was canonyed, that yet as
full faithe and bileve is to be geuen to it as if it were
vniu[er]sally knowen by whome it was Done **Studente** I
p[er]ceyve well that the very effecte and grounde of thy reason
conc[er]nyng the auctoritie of scripture standethe vpon this poynt
that thoughe it appere not when, nor where, nor by whome
scripture was auctored, that yet the assente that hathe
alwaye contynued in the hertes of all faithefull people to it,
is a sufficiente auctoring of it, Do I note take the as thowe
meaneste **Doctoure** yes verilie **Studente** I pray the
then lette me yet ~~ye~~ heare thy mynde more thoroughlie
whie an whole comon opynyon of all the people learned and
vnlerned of suche thinges as be not conteyned yn scripture
and as seme good and charitable, shulde not also Dryve all men
to the bilefe of it as well as it shall Dryve all men to bileve

scripture, for sith there is non other prooffe of scripture but
oonlie because the people haue accepted it and alway assentid
to it, me thinketh there is like reasons in the other opynyons
as there is in scripture, for the bilevyng of theym **Docto[ure]**
Oure lorde saide hierin xxxi, I shall gyve my lawes into
theire inwarde partes, ^&^ I shall write it yn their hertis
and I shalbe their god, and they shalbe my people, and these
wordes were spoken for the tyme of the newe lawe and
they were p[er]fourmed specialle on whitsondaye when the
holie goste descendid risen in a visible signe vpon thapostles
and othere instructing theym in all thinges p[er]teynyng to the
faith, and they haue ben also ofte p[er]fourmed in Dyvers
men that haue had knowlege therof by speciall grace as by
infusion of the holie ghoste withoute infourmyng of man,
and it is also Dailie p[er]fourmed in many that receyve the
faith of Criste, for that faith is so good and blissed that
the herte of every man that herithe it, and bilevithe it,
witnessithe that it is trewe and cumythe of god, and this
lawe colde not haue ben thus longe kepte in knowlege as it
hathe ben if it had not ben put in writing, for ev[er]y man

knowethe it not by grace infused, And therefore the faithe of
Criste had not ben p[er]fitlie broughte into the worlde to all
intentens nor his workes p[er]fecte in that behalf oonles it had ben
put in wryting ~~for~~ ^{so} that it mighte be knowen to theym that shuld
be conuerted after it was firste preached and receyved of the
people, And at that firste receyving of ^{the} ~~that~~ faithe many of the
prechers had knowlege therof by a speciall grace of the holy
ghoste, but all prechers sithe that tyme haue not had that grace,
but haue ben enforced if they wolde knowe it to cume to ~
knowlege therof w[ith] helpe of grace, by their owne studie, and
that they colde not haue done if it had not ben put in writing
wherfore sithe it is written, Deutr xxxii, Dei p[er]fecta sunt
opera ; that is the workes of god be p[er]fite, it semythe necessary
to be bileved and that vpon no lesse peyne then heresie, that
Criste orderred¹⁰⁴⁷ his lawe in suche p[er]fite man[er] that they that
Desired to haue knowlege therof shulde haue some meanes
howe they mighte come to it, and that they colde not haue
had if it had not ben put in writing as I haue saide bifore,
Semythe it therefore that it is necessary to be bileved that the
newe lawe and also the olde lawe was sithe the tyme of

¹⁰⁴⁷ Spelling correct as per the manuscript.

Criste sette in suche p[er]fite ordre that it mighte be assuridlie knowen to all theym that wolde desire to knowe it, and ^{^that^} could not haue ben but eithere by studie or by hearing of it of other that had studied for it, ~~no man eude~~, And ou[er] that it semithe also necessarye to be bileved evyn as an article of faithe that somoche was put in writing as shulde be necessary to salvacion, ofr els the worke of god therin had ^{^not^} ben p[er]fite, and so it apperithe that every man muste of necessitie bileve and confesse that somoche is leaste in writing as is necessary to oure salvacion to be bileved, And thoughe it be not ^{^known^} when nor where nor by whome, it was Done it forcithe litle, for oure salvacion standithe specially in bilevffe, and that bilevffe is corroborate and strengthed by the vniu[er]sall assente in the hertes of the people to that that is written for theirre salvacion as I haue said bifore, but as for such thinges as be not conteyned in scripture and wherof there is no necessitie of salvacion, the opynyon of the people can bynde no man to the bileffe of theyme nor there is not any parte of scripture that bydeth any man to it, And therefore the faithe of Criste and all thing necessarye to

Page 60

salvacion and all his workes yn that behalf are p[er]fite and
sufficente withoute any helpe of suche opynyons **Studente**
then thowe agreeste that the writing of the faithe was
necessary to oure salvacion, for thowe seiste thy self that w[ith]oute
it the faithe colde not haue ben kepte in knowlege, and of that
writing is no c[er]teyntie, where, when, or by whome it was
done, and so it appeareth that all oure faithe shulde stande in a
nonc[er]teyntie, **Doctoure** I say not that the writing therof is the
cause of oure bileve for the worde of god is the very cause therof
Studente no but thowe seyste that withoute writing it colde
not haue ben kepte in knowlege so longe as it hath ben, and
that we be bounde to bileve that somoche is put in writing
it is necessary to be bileved, And therefore it semyth necessary
that thaucloritie of that writing be certainly knowen, for
I agre well with the that in the knowing of the worde of god
and fulfilling of it, standethe oure salvacion, but howe that
worde may be p[er]fitly knowen I doo not yet perceyve,
Doctoure as I haue saide bfore, the gospels was preached
or that it was written and was canonysed by the holy ghost

Page 61

in the herthes of theym that gave faithe vnto it bifore it was
canonised by writing, And it may not be doubtid but that the
holie ghoste made bothe those canonisacions ^{^for^} ~~for~~ Criste said to his
disciples, math uli[m]o in the name of the vniu[er]sall church, I shalbe
with yon to thende of the worlde and Criste wilbe withe non but
with theym that haue p[er]fite faithe yn hym, and therefore he
that will saye that there is no certaiyne waye leaste wherby
the people may come to knowlege of that faithe, shulde shewe
hym self not to bileve the saide texte math ultimo, and that
wey is knowen by the bookes that be conteyned in the bible
that be canonyed, of the olde lawe and the newe, whiche is called
scripture, and that canonisacion stendethe in these Daies ~~prin~~
principally in that that all cristen men aswell bifore it was
canonised by writing as sithe haue bileved that all is trewe
that is written in it, for the vnccion that is the holie ghoste
hathe taughte theym to bileve it, And so the writing therof w[ith]
the contynuell faithe that the people haue had in it byndethe
all men to the bilefe of it, and not the oon withoute the other,
howe beit I meane not therfore that the people at the
canonying therof mighte haue refused it if they wolde, but

Page 62

that the contynuoll assente of the people therto supplyethe that wantithe of the knowlege when or by whome it was done,
And accordyng to the saying all cristen kinges rulers and gou[er]nours sp[irit]uall and temporall and all lerned men also eu[e]ry Degre, haue alwaye iuged them as greate offenders and worthy no lesse punyshmente then Dethe that did not fully bileve that all that is written therin was written of the instincte of the holy ghoste, and this is the booke ^{^that^} thys, is the scripture ~~wherpe~~ wherpon all Doctours tht be called catholique Doctours haue grounded them self in all their writings, and of any haue sweruide fro it yn any poynte, his doing hathe ben iuged of all men worthy to be reiected, and that is by the speciall working of the holy ghoste that hathe sette suche a confidence therto in the hertis of the people as I haue saide before; and therby the worthynes and excellency therof apperethe to be ferre above all mens writings lette no man therfore compare the sayinges of Doctours, to the textes of the bible, the braunches of the tre, to the tree; the vncerteintie, to that is very c[er]teyn and stable, and that so stable that it may not be altered by any power, no not by the vniu[er]sall church, And therefore

Page 63

ad Galth primo, ^it is seyde^ yf we or an angell from heven wolde shewe yon any other but that we haue shewed yon be he accursed as if he had said the gospell that I haue preched conteynyth suche trouthe that what so ever is contrary to it is ~~written~~ vntrewe, but as for the custome or longe continuaunce of other opynyons that be not in scripture nor be not necessary to salvacion they bynde no man to the bilefe of theym, for no man knowethe the very certayntie when they began nor vpon what grounde, And if the grounde therof be not trewe, the oppynyon, therof cannot make it trewe howe longe so ever it hathe contynued, and therefore the longer that the people be instructed that they be bounde to bileve suche ~~things~~ oppynyons as thinges necessary to salvacion the greter is the offence yn those that so instructithe theym, but in scripture the grounde is vndoubtidly so the faste and trewe, stabled and witnessed by the holy ghoste as I haue said bifore, An so there is an ^obydente^ ~~obediente~~ and an apparaunte Diu[er]sitie betwixte that that is conteyned in scripture and suce opynyons as go abrode amonge the people and be not in scripture, And I haue in this writing rehersed Dyvers tymes that I haue spoken of the auctoritie of scripture, and that I haue done to the intende that I wolde that the readers

Page 64

shulde p[er]ceyve that I thinke the matier is weightie and greate
and that I wolde therefore gladlie have ^the or^ some other to opon the
truthe therof more playnlie and more thoroughlie then I haue
Done **Studente** there be Divers bookes and stories put into the
bible ~ ~ which be taken but as Apochraphas, and as to
the secunde booke of Machubees it is not only taken as apochrypha
but is also taken in parte to be vntrewe, And I wolde gladlie
knowe the cause why partes of the bookes of the olde testament
shulde be taken of suche highe auctoritie as thowe spekeste of
and parte not, for therby it apperethe that the being of they
^in the bible^ is not the cause therof **Doctoure** there is conteyned yn
the bible that is to saye yn tholde testamente and the newe
bookes canonyed whiche suffice to salvacion to all theym that
will bileve theym and followe theym, and there be also in the olde
testamente Diu[er]s bookes which be not of so highe auctoritie as
the bookes canonyed be, for they be not founde in the hebrewe
bor in the caldey tongue, howbeit they haue bene putte yn
to the bibles of latyn tongue, and haue ben taken in the tyme
of the newe lawe to be expediente to be taughte and preached
to the people to instructe theym in good maners, for all that
is conteyned in theym is taken to be trewe, howbeit they be

Page 65

not taken to be sufficiente of theym self and determyn any doubte or contencion that may rise conc[er]nyng the faithe, And these bookes be called Apocryphaas as thowe haste said before, and thae name is geven theym eythere bicause the auctoritie of theym is not knowen, orels bicause they be not of auctoritie to endure the people to a full bileef of all that is conteyned in theym, for thoughe there be nothing conteyned in theyme that is againste the bookes of script[ur]e canonised, ne againste the truthe, yet they bynde no man to bileve that all is trwe that is in them, And it is very like that they were put into the latyn bibles yn the begynnyng of the churche whan the Appostles had auctoritie by the saide texte math xvi quodcumq[ue] ligav[er]is [&c], to order the churche, And it is nowe come to the poynte that as to the moste parte of them as full faithe is geven vnto theym vniu[er]sally of all people learned and unlearnid as is geven to the bokes canonised, in somoche that the said counsaile of cartaginens toke vpon theym to canonise a greate parte of theyme, and to accepte theym as bookes of script[ur]e And thoughe they had no auctoritie to haue done it, yet it app[er]eth therby what faithe and confidence all the bisshops and clergie yn the saide counsaile had in the saide bookes and it is no doubte but that suche confidence as the bisshops and the clergie had in

Page 66

theym the people had, so that it shulde seme that the putting of the saide bookes into the bible and the contynuall assente of the vniu[er]sall people learned and vnlearned to theym sithe tyme is a sufficiente occasion to haue theym all canonised by a catholique gen[er]all counsaile gathered according to scripture by auctoritie of kinges and princes and wherin all men aswell lay men (as they be called) as other may haue voices, and surelie it is sumwhat to be m[er]ueyled why the bookes of sapyence and caliaisticus haue not from the begynnyng ben taken as bookes canonised aswell as any other that be canonised **Studente** why they more then the othere bookes that be called Apocrophaas whiche thowe agreeste to be trewe and also to be vniu[er]sally accpeted among the people **Doctoure** for these causes, the book of sapyence spekethe very notably of the incarnation of criste, and it spekethe also of the passion of Criste more like an euangeliste then a prophete, And thoughe the iewes sumwhat Doubtid who made the booke and attributed it to oon called Philo yet the very letter ⁱⁿ it self shewethe evidently in Dyvers places and specially in the ixth chapitre that it was made by Salamon, howbeit that Phylo gathered it to gether into oon booke, and all that is conteyned in ^{it} is of all men that haue any knowlege taken to be as trewe as the othe bookes of Salamon be, And therefore

Page 67

it semithe reasonable that it shuld be accepted to be of as highe
auctoritie as the othere be, and of the saide booke called
caliascticus all men that haue any knowlege agre that full trouth
is also to be geuen vnto it, And in the xlv chapitre therof
it expressithe oon thing that is moche agreyng and helping
to the gospels that is not founde in any parte of tholde ~
testamente but there **Studente** what is that **Doctoure** it
is said Esaie xi et egredietur virga de radice iesse [et] flos de
radice eius ascendet, that is there shall goo forthe a rodde
fro the rote of Iesse, and a floure fro his rote shall ~~ass~~ ascende,
and by that flowere is vnderstaude the virgyn mary mother
of Criste ^And^ for a profe that she came of that rote it is shewed
math & howe she cam of David, and that David was the sonne
of Iesse, and yet in all the olde testamente it apperethe not
that the father of Daudid was called Iesse, but only in the
xlvth chapter of the saide booke called caliasticus and there
it apperethe that he was called ^iesse^ and by that appereth also
that the father of David which in the bookes that be
canonised of the olde testamente that speke of hym, is called
oonly by the name of Isaye, was also called Iesse, And though

Page 68

the newe testamente suffisethe to all faithefull men to cause them bileve that the fathere of David was called Iesse w[ith]oute any testimony of tholde testamente, yet it dothe very well to haue the same also appere by tholde testamente, wherfore it semythe right conueniente, that the said two bookes be canonysed, And if all the other bookes that be called Apocraphas and that haue ben putte into the comon bibles and be suffred to be taught and preached vnto the people were also canonysed it were well Done, for the truthe of theym is vniu[er]sally agreed thoroughe all Cristen realmes ^Excepte^ oonly the thirde and fourthe bookes of Esdras and the secunde booke of machabies

Studente And why shulde not they as thowe thinkeste be canonised aswell as the othere **Doctoure** for as to the said thirde and fourthe bookes of Esdras, they be not put into all comon bibles, but in some they be and in some not, nor there hath not ben any expositio[n]-a¹⁰⁴⁸ that hath expounded those two bookes though they haue expounded the other that be called Aprocriphaas, and it shulde seme not to rise w[ith]oute an ~ especiall instincte of the holy ghost that the othere were

¹⁰⁴⁸ Indecipherable letter prior to 'a' struck through here.

Page 69

receyved and put vniu[er]sally into all bibles amonge the bookes canony
sed, and suffred to be taughte and preched amonge the people as
things that were morall and trewe, and as to the said secunde
booke of machabies it is in oon thing Directlie againste the firste
booke of machabies and therefore bothe may not stande as script[ur]e
for in scripture may be no repugnauncye, And that there is suche
a repugnanuncie betwixte theym it appereth thus, yn the ixth
chapitre of the firste book apperithe that iudas machabeus
diede in the Clii yere, And in the firste chapitre of the said
secunde booke it is saide that in the Clxxxviii yere the people
of hierusalem and the senate also in iudea and Iudas sent an
epistle to Aristebolus maister of the king pteolomye; And if any
~~may~~ ^man^ will say that it muste be taken that the saide l[ett]re was sent
by Iudas that was sonne to Eymon the highe preste and not
by Iudas machabeus, it may be aunswered that the said Eymon
and Iudas his sonne were slayne bothe on oon daye as apper[ethe]
yn the laste chapitre of the firste booke of the machabies and it
is not like that the sonne in his fathers liffe shuld with all
the senate and people or hier[usa]lin sende a l[ett]re conc[er]nyng the hoole
people (his father being the highe preste not named) and also
Dyvers other thinges be in the saide booke whiche haue ben longe

Page 70

^suspectyd^ not to be trewe by moche people, but no suche suspicion hathe ben of the firste booke, And therefore if any repugnauncie bee betwixte theym of matiere in deede ~~that~~ the Default is rathere to be imputed to the secunde booke then to the firste booke **Studente** the the¹⁰⁴⁹ saide secunde booke was suffred to be put in to the comon bibles when other bookes that be called Appocraphaes were, and ^thou^ ~~that~~ thy self haste saide that that receyvyng can of likelyhod of the instincte of the holie ghoste, and the holy ghoste favourethe nothing that is vntrewe **Doctoure** the tyme when the bookes that be called Apocraphaas were admytted to be put into the bible amonge the bookes canonysed, ~~it~~ is not c[er]tainly knowen, not whether that secunde booke was receyved when the other were no man can tell: but this is certayn if the booke of gen[er]all counsiales be trewe that in the counsiale of laodiceur neither the secunde booke of Machabies nor non other of the saide bokees that be called Apocraphaas were not expresely allowed ne admytted as bookes canonysed, but after in the counsaile of Cartagineno¹⁰⁵⁰ they were admytted as bookes canonysed, but for asmoche as the saide Counsaile of Cartaginens erred in that it attributed . x . bookes ^to^ ~~of~~ Salamon

¹⁰⁴⁹ Duplicated word correct as per the manuscript.

¹⁰⁵⁰ The spelling here may well have been intended to be ‘Cartaginens’, as it is below, and elsewhere. Though the final letter here is structured as an ‘o’ with a flourish.

as ^{is} saide bifore, ~~therefore it cannot be Denyed as~~ And ^{syth} it erred in

oon, therefore it cannot be denied that it mighte err in an
other, and specially conc[er]nyng the saide secunde booke of the machabies
they mighte lightlie be disceyved for after the pretence of many of
of the clergie that boke favorithe moche that there shulde be a
purgatorye, and what riches haue come to the clergie by that
opnyon no man can tell, and therefore the saide counsaile thorough
covetise mighte more lightlie be Disceyved yn that booke rather
then in any othere, and non had wone there but the clergie,
but of the other bookes called Apochraphaes they had no ~
occasion to receyve theym, but oonly for the truthe that they
thoughte was in theym, And thoughe as thowe knoweste I
always take it that the said counsaile of Cartag[inens] ne non
other counsaile gathered by thauctoritie of the bisshop of
rome, and wherin the clergie oonly haue had the voices haue
not ^had^ auctoritie to canonise any booke, yet it apperethe that
the saide counsaile of Cartaginens favoured the said bookes
called Apocraphaes ^excepte bifore exceptyd^ and that oonly for the trouthe of theym
and for non other affeccion, And vndoubtidlie suche favour
as was them to the saide bookes in the hertes of the clergie
hathe ben to theym in the hertis of the people, and therefore
me semithe that the tyme andthe matier serve very well to
haue theym nowe canonysed by the vniu[er]sall churche gathered

Page 72

to gethere by auctoritie of the kinges and princes according to scripture
as I haue saide before **Studente** I praye the shewe me w[here]
be those bookes ^that thowe spekeste of that^ thowe woldeste haue canonised **Doctoure**
they
be these, the secunde booke of Esdras, the bookes of Thoby, iudeth,
Sapience, calisticus, and the firste booke of machabies, **Student**¹⁰⁵¹
And what thinkeste thowe of the prophcie of Baruch **Doctour[e]**
Surelie thoughe it were not canonised amonge the iewes,
nor yet remembred in any counsailes before rehersed, yet I
thinke it is a boke that conteyneithe nothing but that is true,
And therefore seying that it hathe ben suffred to be put in to
the bible amonge the bookes canonised, I thinke it righte
convenyente, that it shulde also be canonysed as I haue said
bifore **Studente** thinkeste thowe then that such cou[n]sell
^as^ thowe haste spoken of bifore shulde haue auctoritie to decre
and determyn that suche bookes as in tyme paste haue ben taken
but as Apochraphaes, shulde fro thensforthe be taken as bookes
canonised so that all men shulde be boundon to bileve thyme
as they be boundon to bileve the bookes of scripture that be
alredie canonised **Doctoure** ye verlie, and I thinke that
nothing p[er]teynithe to the vniu[er]sall churche more appropriatlie

¹⁰⁵¹ Spelling correct as per the manuscript.

then that dothe, and it p[er]teynithe to the churche also to sette
scripture in suche order, that it may be surelie knowen what

the people be boundon to bileve and what not, and to expounde the
doubtis of scripture wherby diu[er]sitie of opynyons haue risen
in tyme paste in suche playne and charitable man[er] that no
¹⁰⁵²Diu[er]sitie be therin after, And it semythe by reason it shulde be
so, for sithe the vniu[er]sall churche hathe nowe as highe power by
the saide texte, quodcumq[ue] ligau[er]is [&c], and to thende of the
world shall haue, as it had in the tyme of the Apostles by
the said texte quodcumque ligau[er]is etc, it semethe that the
vniu[er]sall churche hathe nowe as highe auctoritie in all
thinges as the primative churche had then **Studente** ~~the~~
the churche may not nowe repell ne put away any booke
that is canonised nor altere any sentence therof **Doctoure**
this is trouthe nor if an angell wolde teache any thing
againste it, it c~~...~~¹⁰⁵³ coulde not be thoughte that it came ~~of that~~
¹⁰⁵⁴~~it came~~ of god, but to putte a texte in suspence for a tyme to
the more honoure of god it may, as if it wolde nowe for the
more hono[ure] to the name of Iesu : comaunde as the Apostles did
that every man shulde be baptised in the name of Iesu I thinke
it aughte to be obeied **Studente** I suppose naye, for the cause
why that the Appostles did was bicause the name of I[e]su

¹⁰⁵² There is an indecipherable notation in the left hand margin here.

¹⁰⁵³ Indecipherable word beginning with 'c' struck through here.

¹⁰⁵⁴ The same notation as above in the left hand margin is also recorded here.

Page 74

shulde then in the begynnyng of the churche be the more knowen
and had in honoure, And therfore what it was vniu[er]sally
knowen the churche reasorted to the fourme of baptisme
appoyntede by Criste, And I thinke it may not nowe any
more be altered, for there is nowe no suche consideracion why
it shulde be altered as there was then, And over that I
thinke that the churche may not ^{make} any newe articles of the faithe
nor make any man bileve that Criste spoke any thing that
is ^{not} in the foure evangelistes as paule ^{dyd}, And it was litle
marvaile thoughe paule was therin bileved, for ~~in~~ the ty[m]e of
^{the} primative churche whan scripture was canonised, was
as I thinke the moste holie and blessed tyme that hathe ben
sithe the begynnyng of the worlde, and the op[er]acion of the
holy ghoste then moste specially appered in stablissing of
the faithe, for ^{through} ~~thoughe~~ his grace and mercie somoche was then
stablissed and put in scripture as was necessary to manys
salvacion ⁱⁿ ~~it~~ somoche that it is said Apocal xxii, who so
puttith any thing therto god shall put vpon hym the plages
written in this booke that is to say in the Apocal, And those
wordes ar to be vnderstaude ^{of} that every booke of scripture

aswell as of the Apocal, And therefore it shulde seme that they that wolde auctoris the saide bookes called Apochrophaas, shuld put sumthing to scripture and so shulde runne into the Dangeo[ur] of the ^sayd^ plages **Doctoure** though it is that the church may not make newe articles of the faithe ne bynde the people to bileve any newe thinge as a thing necessary to salvacion, but yet ^it^ may declare the doubtis of scripture, and what necessarilie followethe vpon scripture, And what ministracions and powers of the bisshops and clergie haue by the lawe of god and what not, And if any doubte rise whether any booke that is in the bible be to be taken for a book canonyse or not, it p[er]teynith to the vniu[er]sall church gathered according to scripture to determyn that doubt, for the powere of the vniu[er]sall churche standithe most principallye in stablisshing of the catholique faithe ^And^ in maynteynyng of oon pure and sincere faithe, and that canot be done but it be surelie appoynted what bookes shalbe taken as bookes canonyse and suffred to be taughte and preached to the people and what not, but this seyng is not to be vnderstaude of suche bookes as be all redie canonyse, for those bookes may not be altered, and therefore the bookes that I mean or the saide bookes whiche be in the comon

Page 76

bibles and be comonly called Apochraphaas, for of theym haue
ben diu[er]s oppynyons whether they mighte be taken as bookes
canonyed or not, And thoughe they be taken by many to be
Apochaphaas¹⁰⁵⁵, yet there is greate diu[er]sitie betwixte theym and
all other, stories, legends and cronicles, and other writinges
that be called apochraphaes, for they be called apochraphaes
either bicause thauctoure of theym is vnknowen or els for
that they be suspected to be vntrewe, but of suche bookes as be
in the bible and be called Apochraphaes thoughe the auctours
of some of theym be vnknowen, yet there is non of theym
suspected of vntrewthe, but oonly the saide secunde books of
machabies, and therefore the especiall cause why they be called
Apochraphaes is bicause that in comparison of the bookes of the
bible that be canonised they be but of small auctoritie nor
bynde not any man to a full bilefe of theym as the odere doo,
and yet they be of all men estemed to be trewe, And by that
that they be not taken as bookes necessary to be bileved apperith
that the saide counsaile of cartag[inenes] was not estemed to haue
the powere to canonise theym for therin they be recited
as bookes canonyed; but thoughe they be not taken as bookes
canonyed, yet they be taken of highere auctoritie ~~then any~~

¹⁰⁵⁵ Spelling correct as per the manuscript.

then any other apocraphaas be and may be aleged as for auctoritie
to instructe the people with, and therefore as it semythe a
catholique gen[er]all ^counsel^ shulde do righte well if they made them
¹⁰⁵⁶ ~~and~~ ^of^ like auctoritie as the scripture is, and ^yet^ therbie they shulde
make no newe articles of the faithe, nor but only stablishe
that ^that as^ many men ^thynke mighte to haue ben stablished bifore, and this
shulde not be an adding to scripture, but a greate stablissing
of scripture, and furthermore ^I^ agre righte well that the tyme
of the primative church when scripture was canonised
was the moste holy and blessed tyme, that hath ben sithe the
begynnyng of the worlde, and that the operacion of the holy
ghoste moste specially appered then in stablissinge of the
faithe, and I thinke that that tyme beganne most principally
at the incarnation of Criste and contynued till scripture
was canonised, and it is no doubtte but that the holy ghoste
canonised it ^in^ ~~on~~ the hertis of the Apostles and the people
bifore it was canonised by writing, for he is the auctore of
scripture, but then I thinke also that the like as that tyme was
appoynted by god to canonise scripture and to make the faithe
of Criste knowen, that likewise there is evyn nowe a
blessed tyme ^cumnyge^ And that is also partlie begunne wherin many

¹⁰⁵⁶ The same left hand margin annotation from page 73 also appears here.

Page 78

abusions and vntrewe Doctrynes whiche haue ben broughte
vp thorough the crafte and malice of the fende sithe the said
stablisshing of the faithe, and the canonyng of scripture
shalbe clearlie advoided and sette aparte, wherfore I thinke
verilie it ^{^were^} ~~wolde~~ nowe in this tyme a moche more charitable
arte ^{^&^} ~~an~~ an arte more plesaunte to god if kinges and princes
wolde endevo[ur]e them self to advoid and put away suche
abusions and vntrewe Doctrynes as haue ~~ben~~ ben broughte
^{^up^} amonge the people sithe the tyme ^{^that^} of scripture was canonyed
as is aforesaide, And make it appere what auctoritie and
powere the bisshops and clergie haue by the lawe of god and
what not, then it were to endevo[ur]e them self to dryve all turkes
saryscyns, and other infidels owte of all contreyes that they haue
wrongfully taken from Cristen men ; ye or that it were to
conu[er]te them to the faithe, for what shulde it availe to haue
infidels conu[er]ted to the faithe if they aftere their conu[er]sion
shulde see more pride, couetise, and evill example amonge
cristen men and in especiall in the clergie whiche moste ^{^chye fly^} ~~che felie~~
before all other shulde be their teachers and enformers then
ever they sawe bfore in their infidelitie, trewlie litle or
nothing, but if kinges and princes wolde firste endevo[ur]e

theym to sette all cristen realmes in good ordre and endure the
people asmoche as in them is to lyve every man after his
callyng according to the Doctryne of criste, all abusions and
vntrewe Doctrynes inuentede sithe that tyme put away,
and then wolde also endevoure theym self to bringe ~~insidenee~~
infidels to the faithe of Criste it is not moche to be doubtid
but that the [^]worke [^]people shulde prospere in their [^]handes[^] ~~hadens~~ as the
canonisinge of scripture prospered in their handes that
wente aboute it, but if they put not away firste the
abusions that be in Cristen realmes the conu[er]sion of infidels
shulde be moche like to the making of p[ro]sellites wherof Criste
speke to the pharasyes math xxiii[th] when he said thus, ye go
aboute by londe¹⁰⁵⁷ and see to make a p[ro]sellite and when ye
haue done, ye make hym the sonne of hell doble asmoche as
yours self [^]And[^] abusions will not be advoyded aslonge as
the bisshop of Rome and othere bisshops also be suffred to
lyve so ferre fro the gospell of Criste as many of theym haue
done in tyme paste, And if that be trewe that I haue saide
howe ferre shulde a king offende god that wolde not oonly
maynteyne the Abused powers of the bisshops of rome
and othere ~~powers~~ bisshops whiche lyve Directlie againste

¹⁰⁵⁷ Spelling correct as per the manuscript.

Page 80

^the^ gospelle of Criste and his Doctrynes, but punyshe also all they that within their Domynions will resiste them, or that endeouere them to haue scripture sette fourth in as trewe and faithfull manere as it was in the tyme of the Apostles, I knowe no king that dothe so, And I truste there is non that will doo so, And if there be I besече our lorde shortlie to turne his mynde and to make hym p[er]ceyve howe ferre he worketh againste scripture, and againste the trewe Doctrynes in his so doynge. ~

Discourse of the Sacraments

The manuscript is available via State Papers Online at:

Discourse of the sacraments;

Main ref: SP6/8/1

sequence: 0001-0020

However, the digitised copy is poor and makes for difficult reading in places. Therefore, this transcription has been made from the original manuscript held by The National Archives (UK).

Page 1

xiimus

A discourse of the sacramentes howe many there {are}

{indecipherable text}

[paragraph mark] Also we beseche youre grace that forasmoche as some men haue of late

reported that there be many of youre subgietts that denye dyvers thinges

that in tyme passed haue ben vsed amonge the people and whiche in

very deede ar righte necessarie to be vsed amonge theyme / and that it

may therefore by comaundemente of youre highnes be thoroughlie

examyned whether the trouthe be soo as they sey or not and vpon

what grounde that reporte hath risen / the thinges that ^{it} is mente

of ar these : baptisme : confirmacion : consecracion of the bodie of

oure lorde : ordre : pen[un]ce : matrymony : and extreme vnccione

whiche be called by the clergie and also by the people by the

instruccion of the clergie by the vii sacraments of the churche : and

the people be so instructed that these vii muste be beleved and

acceptid vndre payne of heresie by that name of the vii

sacraments of the churche / and surelie we knowe non but

that they beleve theeffecte of theym : and take ~~th~~ theym as

speciall graces of the holy ghoste geuen to the Comforte of

Cristen people : but we thinke verilie that there be dyvers

men that will saye they knowe no reason why they shulde

be called the vii sacramentes of the churche or the vii sacrame[n]ts of

Page 2

the newe lawe / and that specially of some of theym : as of matymony
and penaunce / for they saye that in the tyme of tholde lawe
matrymony was lawfully ordenyed by almightie god in paradice
and was alway of that vertue that it preserved the man and
woman in the acte of matymonye fro synne and also made
~~make~~ their children ^to be^ lawfully begotton / And they saye farther
that oure lorde hym self came of many suche matrymonyes
in the olde lawe / and that yet they were not then called
sacramentes And therefore they saye that if a man and a
woman that were iewes were maried before the passion of
Criste and were after the passion of Criste conu[er]ted to the feith
Cristen feith that they nedid not to be newly maried for the
marriage before sufficed to theym aswell as to the mariages had
after the passion sufficed to other / and yet their marriage was
not then called a sacramente / And why the marriage after the
passion shulde be called the sacramente of matrymony more
then the other / they sey they knowe no reason in it / And we
thinke that if it canne be sufficiently proved that aughte nowe
in the tyme of the newe lawe to be called a sacramente / that

Page 3

they will with good will so call it : but we suppose that their meaning
is that that name hath been given by the clergy vnder the speciall
auctoritie of the bishops of Rome / which haue pretended in tyme
past that the people haue bene bounden vpon payne of heresy
to beleue all that the bishops of Rome and the clergy haue decreed
And if it be said that the said name hath been given by general
counsailes / it may be answered that non had voices in the
general counsailes but onely the clergy / And we thinke that
aslonge as that name of the Seven sacraments standith : it wilbe a greate occasion
to
mainteyne to powre of the bishop of Rome in this rellame
for his powere and the power of the clergy it was fyrste given / and
the effecte of all . vii . may be beleued and taken as speciall
grace and blessed giftes of god though they be not called by the
name of sacramentes / And furthermore in that that they be
called the sacramentes of the church many vnlearned persons thinke
that they were ordeyned onely by the clergy : for by that
name : church : moste of the comon people vnderstode the
clergy onely : and so will they doo continually onles it be
reformed / And by that meanes : vsurped powers : on the

Page 4

oon partie : and ignoraunce of the other parte will still
contynue oonles they be more thoroughlie put away by youre
grace and youre parliamente then they be yet
[paragraph mark] fferthemore pen[au]nce is called a sacrament in man[er] after the
same groundes as matrymony is : but for the more playne
declaracion therof it is to be vnderstaude that nothing puttith
away synne but oonly contricion obteigned thorough speciall
grace and that confession puttith away no synne but that
it may be an occasion to bringe in contricion and we thinke
that confession is comonly more profitable to the people then
it is to the clergie / for to many of the people it bringith in
mekenes thorough the shamefastnes of the synne / and to many
of the clergie it bringith in pride as thoughe they had powre
to forgyve synne / And we thinke that as longe as pride is
in the clergie that the people cannot be p[er]fitly meke : And
Satisfaccion as it is taken amonge the people is the pen[au]nce
that is enioyned to the penytente by the gostly fader after
the confession : as praiours : fasting : and almes deede / and
the moste parte of the people wene that the pen[au]nce

Page 5

puttith away their synne for they be not plainly instructed by the
clergy that contricion only puttith away synne / And on that
they thinke that if they doo not their pen[au]nce that is enioyned to
them that their firste synne is reuyved and [^][that][^] they muste
reiterate their firste confession / and thoughe it be trewe
that they offende in that they p[er]fourme not the pen[au]nce that they
haue promised to doo and haue comytted a newe offence therbye :
yet the firste synne is put away by the contricion for contricion
is the very pen[au]nce that puttith away synne : And satisfaccion
was ordeyned only to endure the people to love good warkes
so that they mighte meryte therby and the rather recouer
agayne their former estate of grace and merite that they
loste thorough their synne / And the good deedes that
they doo thorough their owne devocion shall shue to the
same effecte howe be it we thinke well that the good deedes
doone by waye of pen[au]nce may be more meritorious then the
other : bycause of the mekenes and obedience on the penytente
in accepting of them : And therefore the confessoure dooth

Page 6

well in enioynyng suche pen[au]nce : but it is not of necessitie
for putting awaye of the firste synne as it is said before
And if the penytente obteyne also absolucion then all the
good deedes that he shall doo after that absolucion being
still in state of grace whether he doo them by waye of
pen[au]nce or of his owne fre will shall serue by and by to thincrease
of his merite in hevon above the merite that he was in before ^{^he^} ~~hys~~
fell ~~laste~~ fro grace thorough dedly synne And that is a greate
mercy of oure maister Criste that he wolde leave suche a powre
behynde hym as the absolucion is to the comforte of his cristen
people / for thoughe in the tyme of the tholde lawe contricion did put
awaye actuell synne yet that grace of absolucion had they neu[er]
and that is oon of the speciall causes why the newe lawe may
conueniently be called the lawe of grace and sithe contricion in the
tyme of the olde lawe put awaye actuell synne ^{^as it doth now^} thoughe hevon {es}
gates bicause of the originall synne were not yet set open we
merveile why contricion confession and satisfacion shulde nowe be
called a sacramente of the newe lawe as thoughe contricion had

Page 7

begonne to profytte the people only in the newe lawe / And if it be said that the cause is for that in the olde lawe no man by his contricion and observaunce of the lawe mighte come to hevon bycause of thoriginall synne wherfore the contricion and fulfilling of the lawe then was nothing so meritorious as it is nowe and therfore it may nowe in the tyme of the newe lawe be conueniently said to begynne / To that it may be aunswered that the contricion in the newe lawe puttith not awaye the originall synne no more that it did in the olde lawe but baptysme oonly puttith it awaye / and the contricion in the newe lawe puttith awaye oonly the actuell synne as it did in the olde lawe and so in tholde lawe contricion beganne ^and yet it was not then called a sacramente^ and we agre also that confession aslong as it is suffred by the highe ^powers^ powre to contynue and satisfaccion also be righte expediente / ~~by~~ ^but^ why the people shulde be drevon by the lawes and by decrees of the bisshops of Rome and of the clergy vpon no lesse peyne then heresie to call theym the sacramente of pen[au]nce and to beleve that that sacramente hathe the thre partes before rehersed and may no lesse haue we cannot p[er]ceyve any reason in it / ne why it shulde

Page 8

not be called a gracioux gifte of pen[au]nce or suche other as for any necessitie of salvacion aswell as the sacremente of pen[au]nce we se no reason wherfore we humbly beseche yo[ure] grace that those matiers and other like may be sette in ordre and be broughte to a good peax and quyetnes by auctoritie of yo[ure] highnes and of yo[ure] p[ar]liamente / and that it may be knowen that that name sacramento was never geven by god but by the clergye only

[paragraph mark] Also we beseche youre grace that baptisme may be vsed after suche man[er] as hathe ben accustomed in tyme paste how be it : it semythe very expediente that the people be playnly instructed that they aughte not to sette any suche confidence in the Ceremonyes therof as for the amending or appeyring of the baptysme as whether ~~the~~ the water be hallowed or not hallowed / the oyle and the creame holy or not holy salte or orisons omytted or not omytted ^as they haue done in tyme paste^ for if the wanting of suche ceremonies shuld empeyre the baptisme : then were the baptisme at whome in tyme of necessitie of small effecte / neu[er]theles we knowe well that if any mynystre negligently or of purpose omytte any of the said Cerymonyes that he offendid greatly : but yet the baptisme were good and suffised to salvacion

Page 9

And surely there hathe ben but fewe greater abusiouns then that the clergie in tyme paste haue endeoured theym self asmoche or rather more to endure the people to observe and kepe the ceremonyes ordeyned by the bisshops of Rome and the clergie as they haue bene to endure theym to obserue – and kepe the ~~thinke~~ thinge self that was ordeyned by god : and wherfore the ceremonyes were ordeyned : but we haue a greate truste that the bisshops that nowe be will not followe their example ~~in~~ in that behalf.

[paragraph mark] Then as to the confirmyng of theym that be baptised we knowe non but that they thinke it righte expediente to be vused as a gacioux gifte of oure maister Criste to his cristen people to ~~strengith~~ strengthen theym agaisnste the malicioux stiringes of the ghostly enemye which [^]geyouse gyffte[^] the Iewes never had / but we suppose that there be many that thinke that every preste mighte do it aswell as bisshops and [^]many thynke[^] that if it were so ordeyned to be : that it wolde many tymes ease the people greatly of dyuers greate labours charges and losse of tyme that they susteyne by that occasion to seke the bisshop

and of greate daungeo[ure] that also fallith therby somtyme to the children / And we thinke that thoughe it were so ordered that the people wolde haue that grace of confirmacion in as highe hono[ure] and estimacion as the haue nowe : but p[er]adventure it was don to sette the bisshops in an highe estimacion of the people above the pristis : but howe almightie god is pleased therwith we knowe not neu[er]theles if it be thoughte expediente by your highnes and yo[ure] parliamente that it contynue as it doothe we are well contented : but then we beseche youre grace that it may be knowen that that yo[ure] powere frohensforthe as to the bisshops oonly ~~as to the bisshops~~ shall stande by ~~vnde~~ the auctoritie and powere ^yo[ure] g[ra]ce & of^ youre parliamente and not of ^by^ the ymmediate powere of ~~god~~ and gifte of god to bisshops oonly as many haue pretendid in tyme paste it shulde be / and that hath bene an other greate abusion in tyme paste that hathe caused greate ignoraunce and disordre amonge the people that is to saye that dyu[er]s thinges that the clergy haue had by custume : by sufferaunce of princes ^or^ ~~and~~ by mannes lawe : ~~that~~ they haue claymed by the ymmediate gifte of god and ^so^ to haue theym in suche suretie that they may not by mannys powere be taken fro theym / And

vndre this man[er] they haue claymed dyvers iurisdiccions as to holde courtes
to do correccions specially of heresie and make visitacions : that prestes
aughte not to be arayed before laye men / that the xth parte for
tithes in the newe lawe is by the lawe of god / that satisfaccion
is to be taken by the lawe of god as oon of the partes of pen[au]nce .
that they may gathere generall counsailes and oonly haue the
voices in theyme : make lawes and doo dyvers other thinges not
here remembred and if it be said they say trewe that bisshops haue
power of confirmacion by the lawe of god for they haue it and also
diu[er]s other powers by generall counsailes whiche is the lawe of
god it may be aunswered that decrees made in gen[er]all counsailes
gathered by the hole church of Criste may and not inconuenyetly
be called the lawe of god : but howe decrees made in counsailes
gathered oonly by auctoritie of bisshops of rome and of the
clergie and wherin the clergie haue oonly had the voices
shulde be called the lawe of god : we knowe not And here we
wolde if we ~~du~~ durste assign some defaulte in so many cristen
princes bicause they haue suffred suche thinges in tyme paste

Page 12

to the hurte of their owne powere and also to the grieffe and vnquietnes of their people ^to contynue^ so longe tyme as they haue done : but neu[er]theles we will no farther treate of that matier at this tyme but comytte it to the highe powers as a thing moste expediente for the mainten[au]nce of hono[ure] ~~and~~ vertue and iustice in kinges and princes : and of mekenes and of good counsaile geving in the clergie / and also of trewe obedience peax and quietnes amonge the people ./

[paragraph mark] And as conc[er]nyng the grace of geving of orders for sp[irit]uell mynystracions vnto the people we desire righte effectuously that men that haue good lernynge and that be of good lif and that will gyve example of mekenes and other vertues to the people may as ferre as they that receyve hym to it canne knowe : be appoynted to it but that any man shulde be of this opynyon that eu[er]ry man is a preste so that he may ex[er]cise such sp[irit]uall mynystracions as before appereth surely we know non of that opynyon : but we thinke that there be some men of this opynyon that laye men to some intente may be called prestes

Page 13

that is to say senyours or aunciente men : that may be trewe as
they seye : for presbiter in laten whiche nowe in these daies
is oonly taken ^laten ^ for a preste ^was some tyme^ is also taken for a laye man that is
for a senior or an aunciente man amonge the people / and
vnder that man[er] a laye man may be called a preste : but
that ^any man shuld saye [that]^ a laye man shulde be a preste to mynystre to the
people as is aforesaid : we knowe non of that opynyon
and if any man will reaporthe that there be some of that opynyon and
cannot proue it/ we beseche youre grace that it may be enacted that
he shall haue lyke punyshmente as they shulde haue had that had ben
founde of that opynyon

And then conc[er]nyng the grace of consecracion of the bodie of oure
lorde in forme of bred and wyne / we beseche youre grace that it
may be prohibite to all men by auctoritie aforsaide that no man
vndre greate payne to be appoynted by youre grace and yo[ure] p[ar]liamente
p[er]swade any man[er] of ~~people~~ p[er]son to thinke ^[that]^ these wordes of oure
M[iaister]
Criste when he toke bred : and blessed it : breke it : and gave it ^to^ his
disciples

Page 14

disciples and said take and ete ye : this is my bodie that shalbe betraied
for you : oughte to be vunderstaude figuratyvely and not litterally :
for sithe he that speke~~th~~ those wordes was and is of power to
p[er]forme theym litterally though no mannys reason may attenye
to knowe and serche howe that may be : yet they muste beleve it
and surelie they that beleve that god was of power to make all
the worlde of noughte may lightly beleve that he was of powre
to make of brede his very bodie / and it is nothing lyke to the
wordes that Criste speke of saint Iohn baptiste when he said
of hym : ip[s]e est Elias : he is Elias ^{ne} and ^{nor} yet to the wordes ^[that] of Crist
speke when he said : Ego sum vitis vera : that is : I am a very
vyne tre : for saint Iohn was not the very p[er]sone of helias : ne
Criste a vyne : ne it apperith not that the intente of Criste
was that either saincte Iohn shulde be the very p[er]sone of
helias ne Criste a very vyne in deede. for there coulde no
goodnes or profite any man[er] of waye haue followed of it :
and Criste never wroughte ne speke any thing but that greate
grace and goodnes followed therupon : but of the wordes :
:this is my bodie : hath followed : dothe followe : and shall followe

Page 15

greate grace and goodnes to the ^{ende} ~~ende~~ of the worlde / and what is
a greter comferte to Cristen men then to knowe that Criste
lovide them so moche that he wolde to their comferte leve w[ith]
them his very bodie to the ende of the worlde : And surely if
Criste had leaste with vs for a memory of his passion and of
his love and ^{godenes} ~~power~~ shewed to vs in suffering of his passion :
oonly a figure of his bodie orelles a memoriall oonly of the
Crucifix[ion] as they sette vp in churches : then had he leaste w[ith]
the Iewes a more highe and a more excellent memoriall of their
delyvery owte of Egypte then he had done to Cristien men
of his passion : for he leaste with the Iewes : manna : aungelles
foode whiche came owte of hevon and wherof parte remayned
with them in the arke of god many yeres as a memoriall
of the said delyvery / and if he had leaste with Cristen
men oonly a figure or a signe of his passion than had he
as it semythe haue esteemed the delyvery of the Iewes
oute of egipte more highlie then he did his passion : but
he did not so and therefore he leaste with Cristen men in memory

Page 16

of his passion his very bodie in forme of bred to the whiche the
manna of the Iewes was but a figure / and this memoriall
is moche more evidently knowen to many p[er]sons where then it
hath ben in tyme paste for the wordes of [^][the] sayd chryste in[^] the gospell be so
playne therin when he seith : this is my bodie do ye this in
remembraunce of me : that every man ~~th~~ that canne rede
Englishe and belevithe the gospell cannot but beleve it / And if
there were any cristen men that wolde endev[our] hym self to
prove the contrary he shulde worke so moche to his owne
hurte and to the demynysshing of his owne glory that we
thinke and also truste that there is non suche : And furthermore
we se no dyverstie what glory a preste aughte to haue for
the consecracion and vsing of it [^]more[^] then a laye man for a
devoute receyving of it : for it is certayne that is was more
rather insitute by oure M[^aister] Criste for lay men then it
was for pristes : for he knewe there shulde be of theym the
greter nombre / and he lovith and then lovid many a laye
man more then he did many a priste : And if any man

pryvely or openly wolde make any p[er]suasion to the demynysshing
of this blessed memoriall and gracioux gifte of ~~gifte~~ of god by
wordes or wynking or any other waies : we thinke that it
were greatlie to be doubtid that he favoured the title of sup[re]me
hedship for the bisshop of Rome : for nothing wolde fortyfie
and sette furthe ~~the~~ ~~trithe~~ his title therein more then [^][that][^] it
were noised that there were in this realme many heretiques
specially conc[er]nyng the said glorious bodie of Criste : for
then the bisshop of rome and his adherentes shulde lightlie
make the comon people belyve that there were many heresies
conc[er]nyng his title aswell as there were in other thinges
[^]notw[ith]standyng yf yt be thought [that] [that] name : sacrament aswell
conc[er]nyng [that]
seyd sacrament of baptyisme : And {the} seid sacrament of pen[au]nce as of[^]
any other of the saide vii gracioux giftes / of god will not lightly
be broken fro the people by cause they haue ben solonge accustomed
with that name : sacramente / for ~~suche~~ ~~trithe~~ it is that ~~suche~~
thinges as the people haue sene and vsed they will not lightlie
leave thoughe it were for a better thing : but either of
wilfulnes : ignoraunce : or Dulnes : will stiflie stik to that that they

and their auncestors haue sene and vsed : then we beseche yo[ure]
grace that it may be comaunded by p[ar]liamente that the ~~vii~~ said
vii gracioux giftes of god may be called the ^{^vii^} sacramentes of
Cristes vniu[er]sail church / and non to call them the vii sacram[en]tes
of the church for if they be suffred still to call them ~~still~~
so : the vnlearned people will thinke that they were ordeyned
by the clergie for by that worde : church : the comon people
vnderstaunde the clergie as is saide before : And if that name ^{^vniu[er]sal church^} be
appoynted vnto them : we doubte not but that the people w[ith]in
fewe yeres thorough the good adu[er]tisement and doctrne of the
clergie : will knowe that they come oonly of the graciouse gifte
of god and also more regarde the wirking and op[er]acion of the
holy goste therin then the name of the thing

[paragraph mark] And as to extreme vnccion we beseche youre grace that it may
be vsed hereafter as it hath ben in tymes paste and that it
may be prohibite by p[ar]liamente that non shall saye that non
shulde be annoyed but oons as though the oyle were so holy
that no man aughte to be twise annoyed with it : but ^{^[that] eu[er]y man^} ~~he be~~

annoyed as ofte as necessitie of siknes shall requyre : And surely
the setting of so greate holynes as hathe ben vsed to be sette in
tyme paste in hallowing and blessing of oyle : ymages : beltes : water :
fyre : and suche other hathe done greate hurte for it hathe
caused so many of the mynystres to satisfie theym self w[ith] the
holynes that the people haue estemed in theym by suche
hallowinges when there hath bene righte litle devocion
or holynes in their hartes / And ferthermore this abusion
we haue harde of conc[er]nyng anyling that some curates will
say they be not bounde to mynystre it but they be requyred to
it : and therefore we beseche youre grace that it may be declared
that eu[er]y curate having knowlege of the siknes : is bounde to
move the sike man to it : and to gyve a diligence that it be not
negligently omyttid : And also an other abusion we haue harde
of conc[er]nyng anyling and that is this : it is well ^knowen^ ~~done~~ that
lay men be anoynted vpon the navell as an helpe to put
away the rather the concupiscence ~~or~~ carnall desires that

haplie hathe ben in the sik p[er]sonne before : but as we haue
harde saye there hathe ben some curates that wolde annoynte
a preste vpon the navell for they haue pretendid that prestes
be so preserved by the holynes of theirre ordre : that they nede
not to be annoynted in that behalfe as laye men be : and howe
mighte that opynyon goethe to veynglorie and to a full
settyng of vertue in owtwarde thinges as is apparaunte :
wherfore we beseche yo[ure] grace that the said anyling may
hereafter be mynystred to every oon of the clergie as it is
to the lay people : ~~notwithstanding if it be thoughte that
the name of the sacramente that is to saye aswell of the
sacramente of matrimony as the sacramente of pen[an]ce~~

ffinis