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Kingship by Descent or Kingship by Election? The Contested Title of James VI and I

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Abstract Throughout the reign of Elizabeth I, a steady stream of tracts appeared in English print to vindicate the succession of the most prominent contenders, Mary and James Stuart of Scotland. This article offers a comprehensive account of the polemical battle between the supporters and opponents of the Stuarts, and further identifies various theories of English kingship, most notably the theory of corporate kingship, developed by the Stuart polemicists to defend the Scottish succession. James's accession to the English throne in March 1603 marked the protracted end of the debate over the succession. The article concludes by suggesting that, while powerfully renouncing the opposition to his succession, over the course of his attempt to unify his two kingdoms, James and his supporters ultimately departed from the polemic of corporate kingship, for a more assertive language of kingship by natural and divine law.

On 21 May 1614, the lower house of Parliament engaged in a heated debate over whether to grant James VI and I impositions taxes, which the king hoped would alleviate soaring royal debts. In defending the controversial taxation without parliamentary consent, Sir Henry Wotton provoked an exchange of speeches by touching upon the nature of Jacobean kingship. The power of impositions was a special privilege, he said, granted only to hereditary, not elected, princes. Comparing the French and Spanish kings to the German and Polish-Lithuanian electorships, he asserted, "a prince that comes in by descent has greater power than an elective."[1] Wotton's statement was immediately refuted by the members of the Commons, such as Roger Owen, Thomas Wentworth, and Edwin Sandys. They retorted that there was no difference between elected and hereditary kings. James himself, for one, may be called a hereditary and an elected king, they argued. Some added that the Spanish and French kings were "tyrants" whose example was not to be followed by England.[2] In fact, Wotton's failed argument seems to have approbated the difference between elective and hereditary monarchies

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[1] Maija Jansson, ed., *Proceedings in Parliament 1614 (House of Commons)* (Philadelphia, 1988), 310.

[2] See also the account of John Chamberlain communicated to Dudley Carleton, 26 May 1614, in *Letters of John Chamberlain*, ed. Norman Egbert McClure, 2 vols. (Philadelphia, 1939), 1:533. The Venetian ambassador also reported later that the members' reference to foreign kingdoms angered the French ambassador. Antonio Foscarini to the Doge and Senate (27 June 1614), *Calendar of State Papers Venetian, 1613–5*, ed. Allen B. Hinds (London, 1907), 138.

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that had been voiced by James, then king of Scots, in *The Trew Law of Free Monarchies* (1598), published shortly before his English accession. In his treatise, James acknowledged that in some countries the king was first chosen by the people. "[B]ut," he continued, "these examples are nothing pertinent to us." Anticipating the future English crown, he claimed that English and Scottish monarchies were "absolute" and "free." They had begun with the utter subjugation of the people and descended subsequently to the heirs of the conqueror. The distinction between hereditary and elected monarchies was important for him to make in order to justify a number of privileges that the hereditary prince should enjoy. One, notably, was that unlike an elected prince, it is, he wrote, "unlawful and against the ordinance of God" to resist and depose a hereditary prince.[3]

Despite their variant classifications of European monarchy, Wotton and his opponents assumed that James's succession posed a set of unique questions to the rules underpinning English monarchy. Although he descended from the English royal line, he was not the direct issue of his predecessor, Elizabeth I, who left the question of the next heir unresolved until her death in 1603. Nevertheless, by 1614 the Elizabethan succession crisis had been long over. Despite the much anticipated fear of civil war and Catholic uprising, James's opponents at home and abroad countered no serious attack on his accession. As Conrad Russell has rightly remarked, it was a "*fait accompli*."[4] Yet the fact that both Wotton and James himself endeavored to distinguish his kingship from election points to some enduring questions about the Jacobean succession. The Jacobean interpretations of English monarchy and James's succession enshrine competing ideas of the origin of kingship, the length and limits of royal power, and the rules of succession. What were the general rules of royal succession? And what exactly was the perception of James's title to the English crown before and after 1603?

Modern historiography on the Elizabethan succession crisis has not always afforded serious consideration to these questions. There seems to be substantial opacity in our understanding of the Jacobean succession and, more precisely, the English perception of James's title before and around 1603. The question of the royal successor occupied the minds of Elizabeth I's advisors and members of Parliament throughout her reign, and it increased in importance following the queen's bout of smallpox in 1562. Studies on the Elizabethan succession debate have tended to attribute the dominant sense of alarm and insecurity to the existence and political activities of her rival Mary, queen of Scots (1542–87).[5] Historians have also stressed how the succession provoked a confessional conflict between English Catholics and Protestants, each supporting the candidate of their faith. The fractured Anglo-Scottish relations from the late 1560s throughout the 1570s also required that

[3] James, *Trew Law of Free Monarches*, in *Political Writings*, ed. J. P. Sommerville (Cambridge, 1982), 73, 74.

[4] Conrad Russell, "1603: End of English National Sovereignty," in *The Accession of James I: Historical and Cultural Consequences*, ed. Glenn Burgess and Rowland Wymer (London, 2006), 4.

[5] For the Catholic/Protestant tension related to Mary, see Jane E. A. Dawson, "The Two John Knoxes: England, Scotland, and the 1558 Tracts," *Journal of Ecclesiastical History* 42 (1991): 555–76; Jane E. A. Dawson, *The Politics of Religion in the Age of Mary, Queen of Scots: The Earl of Argyll and the Struggle for Britain and Ireland* (Cambridge, 2002), 137–42, 165–70; Anne McLaren, "Gender, Religion, and Early Modern Nationalism: Elizabeth I, Mary Queen of Scots, and the Genesis of English Anti-Catholicism," *American Historical Review* 107, no. 3 (2002): 739–67.

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the succession question be considered as part of England's bipartite policy toward Catholic Scotland and Ireland. Mary's series of attempts at sedition eventually prompted the wrath of the English Parliament, which repeatedly demanded that Elizabeth take resolute action against the Scottish claim to the crown.[6] The debate between Mary's supporters and her opponents in England involved not just religious but also legal discussions, and Mortimer Levine and Marie Axton have shown that this debate was characterized by a series of legal ambiguities and conflicting political principles with regard to the succession of the English crown.[7] In contrast to these studies that underscore the centrality of legal arguments to the debate, Patrick Collinson and Stephen Alford have argued that the early succession debate was "more than a tricky legal problem," since the queen of Scots was viewed as the key agent by militant Catholics in Europe who aimed at Catholic subversion in England.[8] Based on this view, James's modern biographers assumed that the king of Scots enjoyed a relatively easy ride to his English throne. England had long awaited a new ruler under the childless queen, and the prospect of the Protestant James VI as king of England would have been nothing but favorable to Englishmen.[9] Rather than being a matter of Jacobeans debating the correct interpretation of legal arguments, it seems more viable to assume that the use of such arguments was chiefly motivated by political and religious interests. These studies seem to suggest that in the crucial moments before Elizabeth's death, the political circumstances were working in James's favor. Unlike his mother, he endeavored to earn the favor and trust of Elizabeth by supporting her war in Ireland.[10] Moreover, the reputation of one of his rivals and cousin Arbella Stuart was publicly smeared, and James had the support of the now unchallengeable secretary Sir Robert Cecil (1563–1612), who promised to support the king of Scots' English succession.[11] The current historiographical view of the succession debate has emphasized the

[6] John Neale, "Peter Wentworth: Part II," *English Historical Review* 39, no. 153 (January 1924): 177–79.

[7] Mortimer Levine, *The Early Elizabethan Succession Question* (Stanford, CA, 1966); Marie Axton, *The Queen's Two Bodies: Drama and the Elizabethan Succession* (London, 1977); Christopher W. Brooks, *Law, Politics and Society in Early Modern England* (Cambridge, 2009), chap. 4.

[8] Patrick Collinson, "The Religious Factor," in *The Struggle for the Succession in Late Elizabethan England: Politics, Polemics and Cultural Representations*, ed. Jean-Christophe Mayer (Montpellier, 2004), 143–73; Stephen Alford, *The Early Elizabethan Polity: William Cecil and the British Succession Crisis, 1556–1569* (Cambridge, 2002), 1.

[9] For the heightened sense of security and alarm for the unsettled succession, see J. A. Guy, "The 1590s: The Second Reign of Elizabeth I?", in *The Reign of Elizabeth I: Court and Culture in the Last Decade*, ed. John Guy (Cambridge, 1990), 1–19.

[10] Although, Susan Doran argues that James suffered a fractured and fragile relationship with Elizabeth. See Doran, "Loving and Affectionate Cousins? The Relationship Between Elizabeth I and James VI of Scotland," in *Tudor England and Its Neighbours*, ed. Susan Doran and Glenn Richardson (Basingstoke, 2005), 203–34.

[11] Arbella's numerous attempts to escape, her connection with the earl of Essex, and her secret marriage to the earl of Hertford failed to earn the credit of chief courtiers such as Robert Cecil. See Leanda De Lisle, *After Elizabeth: How James King of Scots Won the Crown of England in 1603* (London, 2004), 96–115. On James's correspondence with Cecil and Henry Howard, see Alan Stewart, *A Cradle King: A Life of James VI and I* (London, 2003), 164–85; Diana Newton, prologue to *The Making of the Jacobean Regime* (London, 2006); D. C. Andersson, *Lord Henry Howard: An Elizabethan Life* (Cambridge, 2009), 177–78. Cecil's religious stance broadly matched James's liberal policies. See Pauline Croft, "The Religion of Robert Cecil," *Historical Journal* 34 (1991): 773–96.

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subordination of its arguments to the religious and political interests of its practitioners and has characterized the debate as a complex amalgamation of responses to Mary Queen of Scots' actions, the leadership of Elizabeth's councilors, and the presence of a strong providential creed in English policy toward Catholics at home and abroad. This view leaves no space for the debate on the actual nature of the Stuart title.

In contrast, historians of late Elizabethan England in recent years have provided powerful evidence for the presence of a polemical counterblast in which James's title was seriously contested while he was attempting to gain English support. Examining the political literature relating to the succession, Anne McLaren, Peter Lake, and Susan Doran underlined the importance of one particularly controversial treatise. Written by the Jesuit exile Robert Persons (1546–1610), *A Conference about the Next Succession for the Croun of Ingland* (1594/95) seriously damaged James's potential succession by making two controversial claims: first, since monarchy was not divine invention, people may freely depose a tyrant and elect a new prince; second, it was not the king of Scots but the Spanish infanta who was the true Lancastrian heir. The heated exchange between Persons and his opponents characterized much of the late Elizabethan succession debate. Studies of Persons and his network within the continental Catholic alliance demonstrate that his belligerent tone was not a new characteristic in Catholic literature of the period and suggest that continental and English Catholics abroad intensified their polemical battle against Elizabeth's religious policy.[12] Despite the lack of definitive evidence, it appears that English Catholics had access to several Catholic pamphlets and Jesuit texts circulating in manuscript, so in this respect Persons's treatise was far from a useless attempt to mold the opinion of English Catholics.[13] His violent attack on James's claim forced the king of Scots, hitherto confident of his ultimate succession, to publish his own riposte and to also recruit several tract writers to vindicate his case.[14]

[12] Robert McCune Langdon, "William Allen's Use of Protestant Political Argument," in *From the Renaissance to the Counter-Reformation: Essays in Honour of Garrett Mattingly*, ed. Charles Howard Carter (London, 1966); Thomas H. Clancy, *Papist Pamphleteers: The Allen Party and the Political Thought of the Counter-Reformation in England, 1572–1615* (Chicago, 1964).

[13] T. H. Clancy, *Papist Pamphleteers: The Allen-Parsons Party and the Political Thought of the Counter-Reformation in England, 1572–1615* (Chicago, 1964), 14–43; Nancy Pollard Brown, "Paperchase: The Dissemination of Catholic Texts in Elizabethan England," *English Manuscript Studies 1100–1700* 1 (1989): 120–34.

[14] In response to Jenny Wormald, who thought that James's *Trew Law of Free Monarchies* (1598) was an academic exercise, Peter Lake has argued that it was written specifically to rebut Parsons's theory of elective monarchy. See Jenny Wormald, "James VI and I, *Basilicon Doron* and *The Trew Law of Free Monarchies*: The Scottish Context and the English Translation," in *The Mental World of the Jacobean Court*, ed. Linda Levy Peck (Cambridge, 1991), 36–54; Peter Lake, "The King (Queen) and the Jesuit: James Stuart's *Trew Law of Free Monarchies* in Context/s," *Transactions of the Royal Historical Society* 14 (2004): 243–60. Marie Axton focuses primarily on the cultural manifestation of succession anxieties (Axton, *Queen's Two Bodies*, chap. 7). Susan Doran, "Three Late-Elizabethan Succession Tracts," in *Struggles for the Succession in Late Elizabethan England: Politics, Polemics and Cultural Representations*, ed. Jean-Christophe Meyer (Montpellier, 2004), 91–117; Susan Doran, "James VI and the English Succession," in *James VI and I: Ideas, Authority, and Government*, ed. Ralph Houlbrooke (Aldershot, 2006), 25–42; Anne McLaren, "Challenging the Monarchical Republic: James I's Articulation of Kingship," in *The Monarchical Republic of Early Modern England: Essays in Response to Patrick Collinson*, ed. J. F. McDiarmaid (Cambridge, 2007), 165–81. All three, however, identify Persons's *Conference* as the watershed for the polemics for the Jacobean succession, producing a "Protestant Stuart counterblast" (Axton, *Queen's Two Bodies*, 95).

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These tracts justified James's royal title as one received by inheritance and rejected Persons's claim that the people of England may freely depose and elect their ruler. The extent to which James was shocked and threatened by the *Conference* is evinced by his staunch defense of his title and the theory of divinely ordained kingship in the *Trew Law*.[15] Similarly, the *Conference* fundamentally transformed James's relationship with England and Catholic Europe, as suggested by Pauline Croft, so that he began to actively solicit Catholic support.[16] Rumors that James was ready to convert to Catholicism and to invade England had disturbed the English's perception of him.[17] Studies on the post-1595 political tensions seem to suggest that James's journey to the English throne was hardly easy to navigate. In England, the court became the center of rivalry between the earl of Essex, Walter Raleigh, and the Cecils, both of whom kept vigilant watch over the matters of succession as well as the wars in Ireland and with Spain.[18] Anglo-Scottish diplomacy needed constantly to keep in mind the wider British and European contexts.[19] These accounts convince scholars of the heightened sense of alarm and threat in the second half of the 1590s surrounding the contested succession of James. His quest thus required not only political maneuvering but also persuasive arguments to convince his future subjects of his title and, more important, of his status as a hereditary prince rather than an elected one.

In a different context, another group of scholars, affording printed literature the same weight attached to it by James, have discovered another prominent group of legal and historical treatises that surfaced in the early years of his reign. Although James's peaceful accession of 1603 essentially put a protracted end to the succession debate and attack on his title, the new king's proposal to unite his two kingdoms, England and Scotland, prompted another political discourse that explored the nature of English monarchy. The political development of the Anglo-Scottish Union has been studied by Bruce Galloway, Brian P. Levack, Jenny Wormald, and Conrad Russell from both English and Scottish perspectives.[20] While Wormald

[15] Lake has argued that James's absolutist theory in his *Trew Law* is indisputably a riposte to Parsons. See Lake, "King and Jesuit," 250–57. James's aversion to elective monarchy remained unchanged later in his reign, as he was extremely reluctant to support his son-in-law, Elector Palatine Frederick, who had been elected the king of Bohemia in 1619. See W. B. Patterson, *King James VI and I and the Reunion of Christendom* (Cambridge, 1997), 303–05.

[16] Pauline Croft, *King James* (Basingstoke, 2003), chaps. 1 and 2; also see Doran, "Loving and Affectionate Cousins," 223–24.

[17] G. B. Harrison, *The Elizabethan Journals, being the record of things most talked about during the years 1591–1594* (New York, 1929), 168, 213.

[18] Paul E. J. Hammer, *The Polarization of Elizabethan Politics: The Political Career of Robert Devereaux, 2nd Earl of Essex* (Cambridge, 1999); Alexandra Gajda, *The Earl of Essex and Late Elizabethan Political Culture* (Oxford, 2011), 142–51.

[19] Jane E. A. Dawson, "Anglo-Scottish Relations: Security and Succession," in *A Companion to Tudor Britain*, ed. Robert Tittler and Norman L. Jones (Oxford, 2004), 169. Also see Wallace T. MacCaffrey, *Elizabeth I: War and Politics, 1588–1603* (Princeton, NJ, 1992), chap. 21. Andersson thinks that the separation of favor between Howard and Essex around 1600 marked the earl's fall in court. See Anderson, *Lord Henry Howard*, 173–218.

[20] Bruce Galloway, *The Union of England and Scotland, 1603–1608* (Edinburgh, 1986), 80–81. Jenny Wormald has most extensively studied anti-Scottish sentiments in the union debate. See Jenny Wormald, "Gunpowder, Treason and Scots," *Journal of British Studies* 24, no. 2 (April 1985): 141–68; Jenny Wormald, "James VI and I: Two Kings or One?" *History* 68 (1983): 187–209; Jenny Wormald, "The Union of 1603," in *Scots and Britons: Scottish Political Thought and the Union of 1603*, ed. Roger Mason (Cambridge, 1994), 17–40. The recent work of Diana Newton follows this view stressing

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has highlighted the place of English patriotism and anti-Scottish prejudice as contributing to the eventual breakdown of the union project, Galloway and Levack have convincingly analyzed the interaction of politics with literature, based on their study of a large number of tracts written on the union in both countries.[21] In particular, their edition of six tracts on the union published in 1604 reveals how the constitutional and legal issues surrounding the union drove some English lawyers such as John Dodderidge and Henry Spelman to a search for ancient and modern precedents of union of European kingdoms in their legal briefs.[22] James's proposal for union contained not only the union of the two crowns but also the union of English and Scots laws as well as the naturalization of Scots in England, and as Russell suggested, on more than one occasion, the opposition to the union of laws was motivated by English propensity to nationalism as well as their fear of autocratic kingship. For the English, alteration of their law by the foreign king meant, Russell argued, the loss of their sovereignty.[23]

New interpretations of the debate over union have important implications for our present inquiry. While the existing studies have expanded the intellectual horizon of the Elizabethan succession crisis, they have not yet been extended to the long-term consequences of the succession debate in the discussions of James's title and accession after 1603. One means by which we may probe the continuities between these debates is by looking at the issue of the important distinction made for the Stuart title. The crux of the Jacobean succession debate centered on the differing concepts of English monarchy and on which one was most applicable to James's kingdom. This article aims to examine the long-term development of pro-Stuart polemics in the Elizabethan succession debate and to consider the English perceptions of James's title and succession before and after 1603. The focus is on the arguments made by three groups of Stuart supporters: Marian polemicists in the 1560s,

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English xenophobia. Diana Newton, *Making of the Jacobean Regime: James VI and I and the Government of England* (Woodbridge, 2005), 37–41. Conrad Russell argued that the union anticipated James's wish to settle the succession without an act of Parliament. See Conrad Russell, "1603: The End of English National Sovereignty," in *The Accession of James I: Historical and Cultural Consequences*, ed. Glenn Burgess, Rowland Wymer, and Jason Lawrence (New York, 2006), 1–14; Conrad Russell, "The Union," in *King James VI and I and His English Parliaments: The Trevelyan Lectures Delivered at the University of Cambridge 1995*, ed. Richard Cust and Andrew Thrush (Oxford, 2011), 123–39, esp. 129.

[21] Keith Brown thinks that the issue of union was of marginal importance except at specific moments like James's accession, while Brian Levack argues that the union was one of the most controversial topics of the seventeenth century. Keith Brown, *Kingdom or Province? Scotland and the Regal Union, 1603–1715* (New York, 1992), 2; Brian P. Levack, *The Formation of a British State: England, Scotland and the Union, 1603–1707* (Oxford, 1987), 14.

[22] Bruce Galloway and Brian P. Levack, *The Jacobean Union: Six Tracts of 1604*, (Edinburgh, 1985). On the union of laws, see Charls Drummond, "The Jacobean 'Union of the Laws,' 1603–1608" (MPhil diss., Cambridge University, 2010). Also see Alan McColl, "The Meaning of 'Britain' in Medieval and Early Modern England," *Journal of British Studies* 45, no. 2 (April 2006): 248–69.

[23] Conrad Russell sheds light on the issue of succession in the union debate ("The Anglo-Scottish Union, 1603–1643: A Success?" in *Religion, Culture and Society in Early Modern Britain*, ed. Anthony Fletcher and Peter Roberts [Cambridge, 1994], 249–51). In her study of early modern drama, Lisa Hopkins has also suggested that Jacobean literary productions continued to address the legal and constitutional questions raised by the succession debate, perceiving the issue to be unresolved. See Lisa Hopkins, *Drama and the Succession to the Crown, 1561–1633* (Farnham, 2011).

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James's English supporters in the 1590s, and the legitimists of his union project in 1604–8. The first group includes English and Scottish Catholics in the 1560s. The foremost obstacles to Mary's accession were common-law rules against alien inheritance, in counter to which the Marian apologists developed the idea of kingship as corporation. Axton has stressed the place of the fundamentally *legal* polemics in the succession debate, but this section intends to further reveal how this position implicitly assumed that the English crown may not descend strictly according to the proximity of blood. The subsequent section of the article demonstrates the profound impact the Marian legitimists made on the arguments made for James after Mary's execution in 1587. James's title was subsequently challenged by Persons's *Conference* and the theory of contractual kingship, leading the pro-Stuart polemicists to considerable revision in the 1590s. James's peaceful accession in March 1603 seems to have resolved these legal and constitutional ambiguities of his title, yet the series of debates prompted by his proposal for union with Scotland show a conscious assumption of the continuity of these problems of English monarchy. The final part of the article looks at the range of political treatises and statements produced between 1603 and 1608. Instead of revisiting the whole union debate, the objective of this section is to ascertain the contribution of the earlier succession debate. As illustrations of the link between the Elizabethan and Jacobean discourses, it examines the debate over the naturalization of Scots, *Calvin's Case* (1606–8). By exploring these statements, the article aims ultimately to redefine the perceptions of James's English succession in the early years of his reign: how did the basic problems of English monarchy, raised in the succession debate, affect or challenge James's kingship after 1603?

THE ARGUMENTS FOR MARY: THE THEORY OF CORPORATE KINGSHIP

Let us start with the succession debate in the second half of the sixteenth century. Undoubtedly the crux of the question concerned the confessional identity of Elizabeth's heir, but the succession also suffered from legal confusion and a lack of legal principles and precedents. Henry VIII's obsession with securing a male heir resulted not only in three legitimate children who had different mothers but also a difficult legal problem relating to the succession of his two daughters, Mary and Elizabeth, whom he had bastardized at the time of Edward's birth. In addition to outlining the succession order of Edward, Mary, and then Elizabeth, the Third Act of Succession (1544) specified that if no immediate children were produced by Henry's children, the crown should pass to the heirs of his younger sister Mary, rather than the descendants of his older sister Margaret. The significance of this was less the inverting of the order of age than the matter of confessional divide: Mary was Protestant and Margaret was Catholic. By the 1560s, both sisters had produced legitimate heirs. If Elizabeth were to die without an heir, the two chief contenders for the English throne would be Margaret's granddaughter and grandson, that is, Mary Queen of Scots and Henry Stewart, Lord Darnley, or, on the Protestant side, Mary's granddaughter, Catherine Grey, who became unambiguously Protestant after her second marriage to Edward Seymour.

The repeated claims of the Catholic Mary Queen of Scots that she had the strongest title as a direct descendant of Henry VII led to escalation of the confessional

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conflict. To make matters worse for the Protestants, in 1565 Mary married Henry Darnley, the English son of the Catholic Lady Margaret Lennox. Since Lennox herself had a claim to the English throne, their marriage meant that in addition to the title the Scottish queen already had, any child they produced would have an even greater claim to the English succession than his parents did individually.[24] As historian William Camden noted, the problem was the existing "contrariety of Religion" in the kingdom. While English Protestants naturally favored the Suffolk line descending from the younger sister Mary and rejected the queen of Scots based on "the subtill construction of the Lawes," the Catholics maintained that Mary was the "true, right, and undoubted Inheritrix."[25] As recorded by Camden, the succession question developed into a legal debate between the proponents of the two confessional groups. The Suffolk supporter John Hales rejected the Scottish claimants in 1563 by arguing that, according to English law, no foreign-born heir could lawfully inherit English land or property, thus rendering Mary Stuart ineligible.[26] A powerful riposte to Hales was soon issued by the lifelong supporter of Mary, Catholic John Lesley [Leslie] (1527–96), bishop of Ross, who was involved in several conspiracies to restore her queenship.[27] His tract titled *A defence of the Honor of … Marie, Queen of Scotland* (1566) went through many editions and was widely copied in manuscript.[28]

To counter Hales's legal opinion that disallowed foreign inheritance, Mary's supporters needed an equally powerful counterargument grounded in law. They first grappled with the question of whether common-law rules of inheritance applied to the crown at all. In addition to maintaining that God ruled the inheritance of crowns, a more promising case could be made by claiming that the crown had its own rules of inheritance that were separate from those of common law. The most influential writer for the Stuarts was Lesley. In arguing persuasively for the exclusion of common-law rules of inheritance from succession law and focusing instead on the notion of the crown of England as a "corporation," he formed the foundation of all

[24] For the impact of Mary's marriage on Elizabeth's matrimonial negotiations, see Susan Doran, *Monarchy and Matrimony: The Courtships of Elizabeth I* (London, 1996), 78–98. Mary had long claimed her inheritance to the English crown from the beginning of Elizabeth's reign, supported by those at home and overseas unhappy with the settlement of religion and who believed that the queen of Scots was the rightful monarch to Mary Tudor. For the early Elizabethan discourse over Mary and her supporters, see John Guy, *Queen of Scots: The True Life of Mary Stuart* (Boston, 2004); Stephen Alford, *Burghley: William Cecil at the Court of Elizabeth I* (New Haven, CT, 2008), 104–05, 185, 191, 193, 254, 265.

[25] William Camden, *Annales of the true and royall history of the famous empresse Elizabeth* (1625), bk. I, 111.

[26] John Hales, *A Declaratyon of the Successyon of the Crowne Imperyall of England* (1563). For the detailed analysis, see Levine, *Succession Question*, chap. 7. However, Mary's marriage to Henry, Lord Darnley, in 1565 would effectively undermine Hales's argument since the children between them could claim to be English. For the "weakness" of the Elizabethan regime that the Darnley marriage exposed, see Alford, *Early Elizabethan Polity*, 121–38.

[27] The English questioned Lesley's involvement in the Rudolfi Plot. See *Proceedings in the Parliaments of Elizabeth I*, ed. T. E. Hartley, 3 vols. (Leicester, 1981) 1:271, 272, 320–23, 346–48.

[28] There is a manuscript treatise titled "A discors upon certen pointes touching the Enheritaunce of the Crowne: Conceaued by Sir Anthonie Browne Iustice, and aunswered by Sir Nicholas Bacon L: Chancellor of Englande," MS Harley 537, ART 4 (Harley 555), British Library, reported to be written by Nicholas Bacon. Levine pointed out that the tract was wrongly attributed to Bacon by Nathanial Booth, *The Right of Succession* (London, 1723), and a comparison of the two texts reveals that the tract attributed to Bacon is the second book of Lesley's *Defence of Mary* and that attributed to Browne is Hales's Declaration. See Levine, *Early Elizabethan Succession*, 220.

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subsequent pro-Stuart polemics throughout the remainder of the succession debate. In his view, the crown of England was a "corporation," in which "the kinge cometh to the crovvne not onlie by discente, but also and cheifelie by succession."[29] Based on this understanding, Lesley refuted the argument against alien inheritance that formed the thrust of the anti-Stuart polemic. Because the crown is "a thing incorporate," and thus not within the allegiance of England, an alien may claim its inheritance in the same way "a deane or a Parson beinge aliens and no denizens, might demaunde landes in respecte of theire corporations."[30] Lesley's tracts consistently stressed that it is "rare & strange" to discuss the "causes of Princes" by "any lawe or statute," and neither English common law nor civil law should meddle with "the direction of the right, and titles of kings, as with priuate mens causes."[31] Established by custom and usage, common law may provide rules but cannot restrict the king's title: "[E]uery reasonable man knoweth" that common law "take[s] no place in the succession of the Croune."[32] One of the objections against foreign-born contenders was that the statute of Edward III forbade aliens to inherit English land. Since royal succession is placed beyond such common-law rules, this obstacle to the Stuart title, the case of foreign birth, is rejected. Lesley's argument consisted of two points. One was that historically Scotland had paid homage to England. English chronicles all pointed to a feudal relationship between the two kings and especially the Scots allegiance to the English crown. Lesley highlighted this evidence and thus supported his claim that the queen of Scots was not alien. The other was that the English crown is "a thinge incorporate." The right thereof "doth not descend according to the common course of priuate inheritance, but goeth by succession, as other corporations do."[33]

Lesley's statement requires further scrutiny. In the first place, the use of the term "corporate" to refer to public offices was not uncommon. As F. W. Maitland discovered in his search for the legal origin of state, the nature of "corporation" in ecclesiastical offices and even Parliament was recognized in sixteenth-century legal proceedings.[34] A corporation was an organized group of permanent existence, "the 'body' of 'members,' which remains the same body though its particles change," and its succession was confirmed by the assent of the patron and the ordinary.[35] As renowned jurist Edward Coke added, the term was used to refer to the offices of "a bishop, abbot, dean, archdeacon, prebend, vicar," which he described as "sole corporation or body politic, presentative, elective or donative, which

[29] Lesley, *A defence of the Honor of … Marie, Queen of Scotland* (hereafter *Defence of Mary*) (1566), sig. 61^{v}.

[30] Lesley, *Defence of Mary*, sigs. 68^{v}–69^{r}.

[31] Lesley, *A Treatise touching the right, title, and interest of the most excellent Princess Marie, Queen of Scotland* (hereafter *Treatise*) (1584), sigs. D2.

[32] Lesley, *Treatise*, sigs. D3^{r}, D4^{v}.

[33] Lesley, Treatise, sigs. E2^{r}–E3^{r}.

[34] The term "corporate sole" was increasingly used to refer to parsons in their inheritance of glebes, but church was not described as a "corporation." See F. W. Maitland, *The Collected Papers of F. W. Maitland*, ed. H. A. L. Fisher, 3 vols. (Cambridge, 1911), 3:244–70; F. W. Maitland, *State, Trust and Corporation*, ed. David Runciman and Magnus Ryan (Cambridge, 2003), 11–15.

[35] Maitland, *State, Trust and Corporation*, 13, 25.

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inheritances put in abeyance are by some called *haereditates iacentes*."[36] He further clarified, "[I]t is evident that to many purposes a parson hath but in effect an estate for life, and to many a qualified fee simple, but the entire fee and right is not in him."[37] The concept of corporation sole was quickly extended to another public entity, the crown. This theory was hardly "incompatible with hereditary kingship." As Maitland explained, in the early modern juristic view, "the king and his subjects together compose the corporation, and he is incorporated with them and they with him, and he is the head and they are the members."[38] As Levine has pointed out, there were potentially "dangerous" implications on the nature of kingship if conceived as a corporation.[39] Lesley took an example from ecclesiastical offices such as parson, vicar, and dean to elaborate on persons incorporate. The succession of parsons and vicars commonly went by presentation; that of deans was theoretically determined by election, involving nomination and assent. Lesley's perception of the Stuart title was evidently vindicated when he pointed to another difference between royal succession and private inheritance. The royal heir cannot invalidate the letters patents made by any previous usurper of the crown, while the heir to private inheritance may. For, "the King is incorporate vnto the Croune, & hath the same properly by succession and not by Descent onely."[40]

Marian legitimists endorsed the rules of royal succession as following the combination of inheritance and assent that applied to the members of the political corporation. Edmund Plowden (1518–85), the Catholic jurist and law apprentice at the Middle Temple, was one of the most eminent common lawyers in this period, and the teachings and writings in his *English Reports* influenced Elizabethan students of law such as Francis Bacon and Edward Coke. Plowden's defense of Mary's succession was the most influential one among the Marian writers. His theory, commonly known as the "king's two bodies," shaped the subsequent Marian polemic and beyond.[41] Originally developed in the *Duchy of Lancaster Case* (1561), the theory claimed that the English monarch had two bodies—one natural, the other politic—with the latter superior to the former. Medievalist Ernst Kantorowicz famously named his theory of the king's two bodies as the pillar of medieval and early modern theories of kingship in which the body natural and the body political were "incorporated into one Person" of the king.[42] In fact, in the *Duchy of Lancaster Case*, the king's two bodies helped Plowden oppose the queen's wishes while

[36] *Haereditates iacentes* are things belonging to an inheritance between the death of the parson whose estate it is and acquisition of the inheritance by the heir. See Maitland, *State, Trust, and Corporation*, li. Edward Coke, *The first part of the institutes of the laws of England: or a commentary upon Littleton* (1628), 342b.

[37] Coke, *Commentary on Littleton*, 341a.

[38] Plowden, *Commentaries or Reports*, (London, 1816), 2122, quoted in Maitland, *State, Trust and Corporation*, 46.

[39] Levine, *Succession Question*, 111.

[40] Lesley, *Treatise*, sigs. E3.

[41] The theory of the king's two bodies was originally advanced by Plowden as part of a legal dispute involving the Duchy of Lancaster in 1561. Marie Axton has most extensively analyzed Plowden's treatise. She argued that Plowden's theory of the two bodies was "popularised," seeing greater dissemination in theatrical and literary productions as "analogues" for a Stuart succession (Axton, *Queen's Two Bodies*, 36).

[42] Ernst Kantorowicz, *The King's Two Bodies: A Study in Mediaeval Political Theology* (Princeton, NJ, 1957), 9.

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confirming allegiance to her kingdom, and in his succession treatise he similarly supported Mary against royal intent. In the king's body politic, "his subjects, who be of divers degrees and sorts, be his membres [. . .] be incorporate to him and he to them, and they both make a perfect corpora*c*ion."[43] The basic components of the theory—the superiority of the latter over the former body and the immortality of the body political—were recognized not only by Plowden but also by other Tudor jurists. In this understanding, royal succession was the transfer of the king's political body from one natural body to another; hence, his political body is not subject to death.[44] The succession treatise further elucidated this immortality of the king's political body. In case there is no immediate child, Plowden argued, "the kynge [is] eligyble by the people of the realme." Based on this theory of the two bodies, the shift from one royal family to another is not unlawful, for the political body is immortal. Kingship "maie be placed in an other bloude in which it shall lykewise discende by the lawes of the realme." Like Lesley, Plowden considered the royal body to be one of the "bodies corporate," such as the ecclesiastical offices of abbots, deans, priors, or mayors and bailiffs, which descend "by succession, which succession cometh by elec*c*ion, presenta*c*ion, dona*c*ion, and other like means, and not by descent." He concluded that this body politic of the king was founded "without l*ett*res patents by common lawe only" and devised "for necessitie of the people."[45] The political body of the king can therefore effectively dispense with the common law of inheritance that serves in the case of private individuals who only possess the natural body. In addition, Plowden explained the legal significance of the homage that Scottish monarchs had done to their English counterparts. On three occasions throughout history, a Scottish monarch called the English his superior lord. This bond of allegiance evinced that the Scots were in fact not aliens, thus canceling the claim against Mary's foreign birth.[46]

Plowden's theory was more than legal experiment and contained significant political relevance. Although his succession treatise was not published independently, his theory of the king's two bodies was made available in his *Reports* (1571). Axton has shown how Plowden's theory was adapted by his friend Anthony Browne, justice of the Common Pleas, and published by John Lesley in his *Defence of the honour of Marie* (1569).[47] Thus, the impact of Plowden's theory on Lesley and the Marian conspiracies cannot be dismissed. When in 1571 Elizabeth's government questioned Lesley along with Mary upon receiving information about a plot against the English queen, Lesley named the books of Browne and Plowden as the chief source of inspiration.[48] Upon the exposure of this so-called Ridolfi plot, Parliament pressed harder for the removal of the former Scottish queen from the English succession.[49]

[43] Harley MS 849, f. 2^{r}, British Library. The theory of the king's two bodies was more officially elucidated in Plowden's *Commentaries*, available in *English Reports*, 75:213.

[44] Kantorowicz, *King's Two Bodies*, 10–13.

[45] Ibid, f. 7^{r}.

[46] Ibid, ff. 19^{v}–20^{r}.

[47] Marie Axton, "The Influence of Edmund Plowden's Succession Treatise," *Huntington Library Quarterly* 32 (1974): 209–26.

[48] *A collection of state papers relating to affairs in the reign of Queen Elizabeth, from the year 1571 to 1596*, ed. William Murdin (London, 1759), 122.

[49] See Hartley, *Proceedings of Elizabethan Parliament*, 302–10.

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Nevertheless, the corporation theory continued to shape the Stuart polemic. An anonymous treatise titled "Certain errors uppon the statute . . . of children borne beyond the sea conceived by Seriant Browne and refuted by Seriant Ferfax," composed after the Ridolfi plot, summarized the arguments for the Stuart title in the form of a dialogue between two lawyers.[50] The author reiterated the familiar case that a king's children born beyond the sea may inherit the crown of England, because the "crowne of Ingland ys not within the Legiance of Inglande."[51] The tract also claimed that the succession of the crown follows different rules than laws of private inheritance, by "the universall Law of nature and nac*i*ons."[52] Once again the royal heir's inability to vitiate letters patents made by a usurper is used to make this point. Displaying the indebtedness to Plowden, "Certain errors" likened royal inheritance to the succession of abbot, vicar, and dean as "person corporate." The king is "incorporate to the crowne and hath the same p*ro*p*ert*ie by successio*n* and not in consente."[53]

The author reiterated much of Plowden's argument, but then he presented a striking statement on English kingship: the crown of England, he writes, is similar to the electorships of the German states. The author first defined political corporation as "a lawfull bodie consisting of pluralitie of natural bodies" and stated that the word *corporate* or *incorporate* "sygnifieth to worke many bodies in one." In the law reports, a parson or a vicar is sometimes called corporation because his benefices descend not always according to descent but based on the assent of the bishopric: "Soe the person of a kinge noe more then of a vicar is a lawfull corporac*i*on in Lawe unless yow behold him in parlemente." This may be likened to the prince electors in Germany, the author argues, which is a "high dignitie and office in the Empire."[54] This dignity obtains feudal possession and public office when the princes are consented based on the "Discent & title of inheritance from theire Auncestors." The author continues:

> Likewise the heire of the kinge of Ingland hath title to the supreme office and royall dignitie that is to bee kinge to weare the crowne and therby to the p^r^rogatives threasures & possessions annexed to the same as in the right of the Crowne. Not with standing hee is to possesse (one and th'other by title of lineal discent in bloode) as from his auncestors & not by bare election as an Abbott, for the maxime *Le morte seisit le vive*. That is to saye the dead putteth the quick in season taketh noe such effect after the death of an Abbott without election to cast possession in lawe uppon any other Parson as it doth to the heritance of the crowne & in all othrs which goe likewise by Discent.[55]

The final part of the treatise claimed that Parliament may intercede to determine the succession of the crown since different countries had different methods of selecting

[50] Legal scholars suggest that it was composed by Middle Temple lawyer William Fleetwood (c. 1525–1594), sometime between 1571 and the 1580s. Multiple copies remain. See Brooks, *Law, Society and Politics*, 74–75; J. H. Baker and J. S. Ringrose, eds., *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Suffolk, 1996), 652–53. For the debate in the Parliament of 1571/72, see *Proceedings in the Parliaments of Elizabeth I*, 2 vols., ed. T. E. Hartley (Leicester, 1981), 1:1558–1581, 259–318.

[51] MS Rawlinson C. 85, f. 19^{v}, Bodleian Library, Oxford.

[52] Ibid., f. 20^{v}.

[53] Ibid., f. 21^{r}.

[54] Ibid., f. 23^{v}.

[55] Ibid., f. 24^{r}.

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their king, and "[t]he most common and best means for the perservac*i*on and conservac*i*on as well of private as publick tranquilitie and society used in all ages and by all means is by way of a lawful assembly [which] we call a parliament."[56]

Forged in the crucible of anxieties about the unsettled succession, the theory of corporate kingship became part of the wider campaign to usher in Mary's succession. Showing the unity in their arguments, the Marian polemicists likened royal succession to ecclesiastical offices because they saw no harm in pointing to the place of consent in the procedure of royal succession. The contribution of their arguments was more significant than the debate between English Protestants and Catholics over who possessed the strongest title to the crown. Sometime in the early 1560s, Elizabeth's chief advisor, Lord Burghley William Cecil, secretly drafted a proposal for a temporary republican government, in case of her untimely death. The draft argued that, if the queen died, it would be necessary for the Privy Council to direct public affairs in order to protect the nation from religious war on the Continent. As Alford has argued, Burghley's plan "explored the same distinction" made by Plowden, between the natural and political bodies of the prince. The theory of the king's two bodies enabled Burghley to propose that a republican council act as the "political" body of the queen, upon her death.[57] The corporation argument accompanied almost every case for the Stuart succession. Faced with the argument that the succession was subject to laws of private inheritance, Marian polemicists developed the argument that the crown was a corporation that had its own rules of succession, of which election was one. Nevertheless, the references to election and consent outlined in the corporate theory or the proposals for parliamentary appointment hardly contained subversive implications. In early Elizabethan political discourse, the word *succession* was increasingly associated with hereditary monarchy, while *election* tended to refer to ecclesiastical government. When Fulke Onslow spoke in the closing session of the Parliament of 1566–67, he presented four kinds of government: "successyon, election, religeon or pollecye." By the "successive" government he meant hereditary monarchy, and as an example of elective government he named the papacy.[58] At this point, the polemicists did not conceive the rules of royal succession as strictly following the proximity of blood alone, nor did they sharply distinguish hereditary and elective monarchies. As we shall see, this development occurred in the 1590s. Before then the pro-Stuart authors envisioned Mary to be "appointed" based on her English descent.

ENGLISH TRACTS FOR JAMES IN THE 1590S

The importance of these succession tracts in contemporary context is well attested by the increased government control over any printed works on the succession, issued

[56] Ibid., ff. 39^{v}–40^{r}.

[57] The Parliaments of 1571, 1572, and 1586/87 made many attempts to take matters in hand, and most notably, Lord Burghley William Cecil was prepared to erect a republican council and appoint the heir in case Elizabeth died without children. Many modern studies highlight the incentives of Parliament for their intervention in the succession. See Patrick Collinson, "The Elizabethan Exclusion Crisis and the Elizabethan Polity," *Proceedings of the British Academy* 84 (1994): 51–93; Alford, *Elizabethan Polity*, 110–15. Alford suggests that Cecil was involved in drafting the proposal as early as 1563.

[58] Hartley, *Proceedings in Elizabethan Parliament*, 169.

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from the beginning of the 1580s.[59] In the 1590s, Elizabeth still staunchly refused to settle the succession, but circumstances surrounding her potential successors underwent sea change.[60] The numerous conspiracies that implicated Mary Queen of Scots seem to have tarnished the public image and the position of her son James VI of Scotland. Especially damaging was the so-called Bond of Association, subscribed by Elizabeth's chief ministers shortly before Mary's execution, which swore to severely punish anyone charged with treason—that is, Mary—and, at the same time, sought to exclude not only her but also James from the succession.[61] Nevertheless, he successfully replaced her as the strongest claimant by distancing himself from the unpopular and scandalous policies of his mother and openly displaying his pro-English views and Protestant faith. Key English statesmen such as the earl of Essex secretly began to communicate with James in preparations for his accession, and after Essex's fall, the Cecils made the king of Scots believe that "Cecil provided the only means to the throne."[62] Besides James, his cousin Arbella Stuart was another contender, but ambiguities about her marriage essentially undermined support for her title. Catherine Grey, previously the principal rival to the Stuarts, had produced two sons with the earl of Hertford, whom she had secretly married. Although this contested marriage caused some to reject the Suffolk candidates as illegitimate, others still considered them to be the preferable alternative to the foreign Stuarts. Finally, the Catholics had in turn nominated Isabella Clara Eugenia, the infanta of Castile and sister to Philip III of Spain, who had been named as heir by her father, Philip II.

The most virulent attack on James's title came from the Catholics, most notably Robert Persons, an English exile in Spain, whose wide network won him abundant support from the continental Catholic league.[63] Closely communicating with the Spanish court and the papacy, the Jesuit published a treatise, *A Conference about the Next Succession to the Croun of Ingland*, under the pseudonym "R. Doleman." Compared to the works of the Catholic writers such as Lesley and Plowden, Persons's *Conference* demonstrated a sea change in the Catholic campaign over the English succession. Whereas the works of the earlier pro-Stuart authors such as Lesley, Plowden, and the author of Leicester's Commonwealth had supported James, Persons (and by association the Catholic league) advocated the title of the Spanish infanta. The *Conference* wholly abandoned the earlier support for James and instead advocated the title of the infanta. Persons's anti-Stuart position differed fundamentally from the earlier

[59] For the discussion on the activity of the High Commission in Cyndia, see Susan Clegg, *Press Censorship in Elizabethan England* (Cambridge, 1997), 48–49.

[60] For the level of general anxieties over the succession in the last months of Elizabeth's reign, see Maurice Lee, *Great Britain's Solomon: James VI and I in His Three Kingdoms* (Urbana, 1990), 106.

[61] The remaining drafts of the "Bond" are The National Archives: State Papers, 12/174, 12/178/81–4. Also see David Cressy, "Binding the Nation: The Bonds of Association 1584 and 1696," in *Tudor Rule and Revolution: Essays for G.R. Elton from his American Friends*, ed. Delloyd J. Guth and John W. McKenna (Cambridge, 1982), 271–334.

[62] Linda Levy Peck, *Northampton: Patronage and Policy at the Court of James I* (1982), 19. For the meeting that took place in London, 1601, between Robert Cecil and James's representative, the Earl of Mar, see David Loades, *The Cecils: Privilege and Power behind the Throne* (London, 2007), 220–22. For the letters exchanged between James and Cecil, see J. Bruce, ed., *The Secret Correspondence of Sir Robert Cecil with James VI* (1766), nos. 9 and 6.

[63] For the Allen-Parsons league of Catholic pamphlets, see Clancy, *Papist Pamphleteers*, 14–43. Clancy stresses the prevailing anti-Cecilian element in the Catholic campaign.

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English attack on the Stuarts in two radical ways. First, he claimed that the infanta, not James, was the true Lancastrian heir. Son of Henry III, Edmund Crouchback's title was passed to his granddaughter Blanche, who married John of Gaunt. Upon the death of Edward III, the crown was wrongly passed to Richard II instead of Gaunt, from whom the Spanish House descended; hence, not James but the infanta is the true Lancastrian heir.[64] Second, and more important, Persons argued that to resist a tyrant and elect a new ruler was not unlawful.[65] In part I of the *Conference*, Persons claimed that forms of government are entirely a human invention, and therefore it is not against divine will to disobey hereditary monarchy. The non-divine origin of monarchy was vital for Persons to justify deposition and popular election as remedies for the ills of hereditary monarchy, which was often prone to tyranny. In his words, "as election by succession, and succession by election is salved, the one made a preservative and treacle to the other: and this is the wisdom and high policy left by God and nature to every commonwealth."[66] The thrust of the *Conference*, as argued extensively by Axton, Doran, and Lake, was the theory of contractual kingship that sought the origin of royal power in positive law instead of divine or natural law. In late sixteenth-century Europe, the theory of contractual kingship was inseparably associated with theories of political resistance and, moreover, with the wars of religion in which both Protestants and Catholics claimed that it was lawful to resist, depose, or murder a tyrannical prince. Obviously, the idea that kingship is a human invention based on consent might not expect much support from Catholic writers who granted the pope with the sole authority of deposing princes. Yet that was seemingly no obstacle for Persons. He treated English kingship as consensual: one who is made king by consent may be deprived of kingship, if the party that gave him the consent wishes so.

What requires special attention is not his support for the infanta but the fact that Persons powerfully challenged the ideological underpinnings of the pro-Stuart position. The corporate kingship theory utilized by Marian apologists contained a logical flaw: that royal succession, like ecclesiastical, may depend on descent *and* consent. Persons's attack on the Stuarts concerned precisely this point in the theory of corporate kingship. The prince by consent, according to him, is not truly a sovereign; the people who consented to his kingship are the true sovereign and thus may lawfully depose him. The significance of Persons's renewed definition of contractual kingship was palpable: he exposed the internal flaw in the theory that formed the crucial pillar of the pro-Stuart polemic, making the potential succession of James precarious. James Stuart may be the heir to the throne, but having been made king by consent, the people of England may lawfully depose him and appoint someone else. In addition, Persons's suggestion that the people may also appoint an heir can

[64] R. Doleman [Robert Parsons], *A Conference about the Next Succession for the Crown of England* (Antwerp, 1595), pt. II, 32.

[65] For the composition and reception of Persons's *Conference*, see Peter Holmes, "The Authorship and Early Reception of a Conference about the Next Succession to the Crown of England," *Historical Journal* 23, no. 2 (June 1980): 415–29; Stafania Tutino, "The Political Thought of Robert Parson's *Conference* in Continental Context," *Historical Journal* 52, no. 1 (2009): 43–62; Victor Houliston, *Catholic Resistance in Elizabethan England: Robert Parsons's Jesuit Polemic, 1580–1610* (Aldershot, 2007), 79. For the Scottish reception of the *Conference*, see Doran, "Three Succession Tracts," 95–99.

[66] Doleman, *Conference*, pt. 1, 131.

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be viewed within the context of Spanish policy toward the English succession. Around 1602, the Spanish Council abandoned the previous plan to usher in the infanta and instead began to seek a twofold strategy of promoting a Catholic claimant and discrediting James's claim.[67] By then, the enthusiasm of the English Catholics for the infanta had considerably diminished, and the council thus reached the conclusion that the English Catholics should choose a candidate themselves and have him or her nominated by King Philip.[68] The plan was welcomed by the count of Olivares, who believed that English Protestants would prefer a native to the foreign king "in their hatred of the Scottish domination."[69]

The change in Spain's policy toward the English succession alarmed James and his English supporters. The gravity of its impact may be best measured in two tracts published in the 1590s by the Puritan MP Peter Wentworth (1524–97). As documented by John Neale and, more recently by Susan Doran, Wentworth's ideas on the succession had undergone a significant change when the second treatise was written, from one that advocated that the queen's heir be named in Parliament to the opposite case that Parliament should not intervene in the succession issue.[70] The treatises are important because they came from a long-standing member of parliament who continuously lobbied for the settlement of succession in Parliament, despite the queen's displeasure.[71] The sensitivities of the issue are demonstrated by her decision to send him to the Tower more than once. The first treatise, composed before Persons's *Conference*, proposed that the queen name her heir and that "all titles and claimes to the Crowne of England . . . throughlie to be tried & examined . . . with all convenient speede in Parliament."[72] That the issue required parliamentary appointment suggests that Wentworth considered no claimants—including James—to be capable of

[67] 1 February 1601, ibid., 682.

[68] 1 February 1603, ibid., 719–23. Also contributing to the course correction was the infanta's husband, Archduke Albert of Austria, who was much more interested in maintaining the Spanish Netherlands than the British Isles.

[69] Ibid., 726–27. Recent studies have argued that by appropriating Protestant rhetoric of lawful resistance theories of election, the *Conference* failed to earn papal support. On 9 December 1596, Thomas Phelips reported to Essex that Persons's book infuriated a papal nuncio, who stated that Persons had ruined himself. It was also said that the "Pope would detest his behaviour, and that he could never have done anything more disgustable to the Pope" (*Calendar of Cecil Papers*, 6:512–13). For the continental reception of the *Conference*, also see Tutino, "Parsons's Conference," 51–56; Houliston, *Catholic Resistance in Elizabethan England*, 87–88.

[70] Peter Wentworth's first tract managed to win Burghley's favor. Neale thought that Wentworth, who had earlier hoped for the Suffolk succession, had been "converted" at least by 1594 to supporting James following Mary's death. See Neale, "Peter Wentworth," 186–87, 195–98. Collinson further suggested that from extremely "Puritan" motives, Wentworth had decided on James after the execution of Mary Queen of Scots. See Collinson, "The Religious Factor," 243–73. Doran has successfully demonstrated that Wentworth's works, commissioned by the royal printer Robert Waldegrave, were part of James's campaign against Parsons. See Doran, "Three Succession Tracts," 99. Also see T. E. Hartley, *Elizabethan Parliaments: Queen, Lords and Commons, 1559–1601* (Manchester, 1992), chap. 7. Hartley stresses that as he became "patently" concerned for the succession toward the end of his career, the speech of 27 February 1587 on Parliament's freedom of speech was "undoubtedly a speech for the succession" (137). But Hartley hardly discusses the religious agitation in Parliament that contributed to Wentworth's support for James VI.

[71] Hartley, *Proceedings*, 1:427–28.

[72] Peter Wentworth, *A Pithie Exhortation to her Majesty for establishing her Successor to the Crown* (written in 1587), 5.

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inheriting the crown solely by their descent. Nevertheless, Wentworth's second treatise reversed this view. Composed after the *Conference*, it openly declared its support to James VI and vindicated his title by birth. Wentworth contended that the crown is an inheritance directly given by God, that the king is thus enthroned by his descent only, and that inheritance of blood is vital, "preferred before any parliament."[73]

Modern commentators have attributed the significant change in Wentworth's two works to the impact of the *Conference* and the concomitant polemical campaign waged by James.[74] James's strategy to underscore his descent may be observed in another succession pamphlet by the pseudonymous "Irenicus Philodikaios," whose *A treatise declaring, and confirming . . . the just title and righte of . . . Iames the sixt* (1599) articulately expressed the supremacy of James's claim. The first part of the *Treatise* set up an extensive genealogy of the Tudors, out of which the author concluded that James VI of Scotland surpassed other candidates in his indisputable "right by descent of blood."[75] The following sections engaged with James's foreign birth and Henry VIII's will, and as Doran has observed, like Wentworth's second pamphlet, the *Treatise* argued that the inheritance of the crown is held "immediately from God."[76] More important, the *Treatise* echoed the early pro-Stuart treatises by directly citing the theory of corporate succession. Just as Lesley and Plowden had described English monarchy as "corporation," Philodikaios argued that royal succession is different from private inheritance, since the crown is "a thing incorporate," which does not descend by the proximity of blood alone and no "maxime of law can touch . . . matters concerning ye crown" —with the passage directly quoting John Lesley's *Defence of Mary*.[77] In fact, the author drew much of his argument from the earlier debate, and his contentions chiefly reiterated the points made earlier. The resemblance between Philidikaios's *Treatise* and Lesley's tract, in particular, is very clear. Both works begin with a genealogical survey of the Lancastrian line from which the Stuarts are descended, subsequently evaluating the rules against alien inheritance and Henry VIII's will. Moreover, Philodikaios copied Lesley's discussion on "infant du Roy" almost word by word, claiming that the crown is inheritable not only to the king's first children but also by his nephews and nieces.[78]

Other writers similarly show the continued use of the earlier defenses of the Stuart title. The "State of England" (1600), written by the queen's nephew and principal secretary, Thomas Wilson (d. 1629), is another oblique refutation of Persons's tract. Wilson criticized that Persons's genealogical research was based on "480 years since Henry 2" and "540 years ago from Constance daughter to William the

[73] Wentworth, *A treatise containing M. Wentworths judgement concerning the person of the true and lawfull successor to these realmes of England and Scotland* (1598), 53–54, 55–56.

[74] See McLaren, "James's Articulation of Kingship," 171. Doran suggests that in addition to Wentworth, Alexander Dickson was part of James's campaign against Parsons. See Doran, "Three Succession Tracts," 101–04.

[75] Irenicus Philodikaios, *A treatise declaring, and confirming the just title and righte of Iames the sixt* (1599), sigs. 3r–4v. A manuscript draft survives in Cambridge University Library (MS Ii. IV. 33). The tract was given the first scholarly light by Susan Doran, who dates the work to be between 1598 and 1600. See Doran, "Three Succession Tracts," 106–11.

[76] Philodikaios, *Treatise*, sigs. B1.

[77] MS Ii. IV. 33, f. 51v, Cambridge University Library.

[78] See Lesley, *Treatise*, sigs. E3v–E4r.

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Conqueror," and therefore had little credibility.[79] Wilson's argument faithfully followed the polemical foundation laid down by Lesley and Plowden: that the crown of England is not a private inheritance but a political corporation. Succession of the crown is not an "inheritance by descent" alone but "an incorporation that goeth by succession."[80] Reiterating the familiar case of allegiance, Wilson suggested that a Scottish succession would pose no threat, since "the greater and better" England would "draw Scotland to it."[81] The discussion of the succession ends with an assertive note that the queen had officially named James the heir yet kept it secret for the sake of security. Another tract, John Harington (bap. 1560, d. 1612)'s *A Tract on the Succession to the Crown* (1602), similarly combined the emphasis on James's descent with the use of the corporation theory.[82] Harington first attempted to appease English fears toward the foreign king, in whom he described the two royal bloods of England and Scotland as "infalliblye and unseparately united."[83] James's just title to the crown was confirmed, he argues, "by the law of God, of nature, of nations, by common and civill lawe, and even by ordinary reason." With regard to the contested rules against alien inheritance, Harington followed in the footsteps of others: "[T]he Crowne is a thing incorporate, and descendeth not according to the common source of other private inheritances, but goeth by succession as other incorporations doe."[84]

Although united in their support for James Stuart, these treatises employed a wide range of arguments—some new, others familiar. The extensive genealogical arguments for James's title are testimonies to the gravity of Persons's attack and the king's anxiety caused by it. This is manifest in his attempt to vindicate his descent: in 1596 James moved the Scottish Parliament to pass an act that specifically made it "treasonable to slander the King's parents or progenitors."[85] Similarly, in 1598 James published *Trew Law*, which, as we have seen, vigorously asserted that he was the "heritable ouer-lord [of the nation] . . . by birth" and that Parliament could not appoint the king.[86] Nevertheless, as Elizabeth maintained her silence on the succession question, the king of Scots had only limited control over the English public. The unofficial manuscript treatises were an ideal means to bring about James's succession without displeasing the queen. While the polemical campaign for his succession gathered momentum, there also remained a critical question not only over his descent by blood but also over the exact nature of his succession. When his future subjects secretly ushered in his accession and sought to make a watertight case, was James truly a hereditary prince or an elective prince?

As far as his future subjects were concerned, James sought to work from behind the scenes, without the queen's knowledge. After the fall of Essex in 1601, James finally

[79] Thomas Wilson, "The State of England. Anno. Dom. 1600," *Camden Third Series* 52 (1936): 5.

[80] Ibid., 7.

[81] Ibid., 8.

[82] Harington had advocated the Stuart succession as early as 1584, and had long sought the patronage of James VI and William Cecil, by dedicating his works to them. See Jason Scott-Warren, "Harington, Sir John," in *Oxford Dictionary of National Biography.* For the composition of the tract and Haringon's association with James, see J.-C. Mayer, *Breaking the Silence on the Succession* (Montpellier, 2003), 223–26.

[83] John Harington, *A Tract on the Succession to the Crown*, ed. Clements R. Markham (1880), 16.

[84] Ibid., 46, 52, 57.

[85] David Harris Willson, *King James VI and I* (London 1956), 139.

[86] James, *Trew Law*, 82.

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obtained the official acquaintance of Robert Cecil, later earl of Salisbury and secretary of state under James.[87] In their secret correspondence, Cecil accurately identified the cause of public confusion: the problem was that "you [James] are written her successour in *corde*, though not in *ore aperto*."[88] But although the queen refused to name the heir, Cecil aptly assured that the king of Scots "may *dormire securus*."[89] He wrote: "When that day (soe grievous to us) shall happen which is the tribute of all mortall creatures, your shippe shalbe steered into the right harbour, without crosse of wave or tyde that shalbe able to turn over a cockboat, for which many that will talk now, and brave it, wilbe fitter pilots then yet they can be.[90] The preparations made for what proved to be a peaceful succession cannot help but lead us to speculation that it required collective endeavor, involving the future king as well as his supporters, who chose to defend his title.

THE LANGUAGE OF KINGSHIP AND ALLEGIANCE, 1604–8

It is a more difficult task to gauge how these polemics shaped the mind-set of Jacobean Englishmen following James's accession in March 1603. Despite the heightened sense of alarm and anxiety that Persons caused, the English tracts composed in the 1590s unanimously supported James, and the Jacobean succession was carried out with utmost efficiency. On 17 March, just a week before Elizabeth's death, her chief ministers were preparing for James's accession with tightened security in London. Preparations were being made for the king of Scots, as one of Cecil's associates wrote to him, "[E]uery man that hath offered themselves to me are wholy devoted to your right, . . . though some are silent and say nothing."[91] The initial reaction to James's succession was predominantly one of relief and jubilation, as John Harington rejoiced, "No enfant, nor no Queen! Whome then? A Kinge!"[92] However, amid the general sense of euphoria, those with foresight immediately knew that the much delayed settlement was soon to be followed by a grand proposal: the union of England and James's "dowry," Scotland. Robert Cecil, anxious to please his new master, quickly sent James a letter and a short discourse that extensively discussed the king's descent. The genealogical argument not only demonstrated Cecil's readership of the succession tracts but also contained the intention to align with the king's staunch emphasis on his hereditary title. At the same time, Cecil also spoke of the "effecting of a union." The new era would restore the glory of ancient Britannia, Cecil argued, and exhorted the king to "rebuild entire up this glorious Empier,"

[87] Cecil's negotiations for peace with Spain may have contributed to uncertainties of his position in the succession, and rumours spread that Cecil supported the infanta. For a detailed analysis of Cecil's part in the peace treaty, see Pauline Croft, "Rex Pacificus, Robert Cecil, and the 1604 Peace with Spain," in *The Accession of James VI and I: Historical and Cultural Consequences*, ed. Glenn Burgess (Basingstoke, 2006), 140–54.

[88] Cecil to James, *Correspondence*, 23.

[89] Cecil to James, *Correspondence*, 7, 19.

[90] Cecil to James, *Correspondence*, 23.

[91] 17 March 1603, Henry Earl of Northumberland to King James, in Bruce, *Correspondence*, 73.

[92] John Harington, "To my good friend Sir Hugh Portman. Of succession," in *The Letters and Epigrams of Sir John Harington Together with The Prayse of Private Life*, ed. Norman Egbert (Philadelphia, 1930), 288–89.

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which "may passe happily with all acclamac*i*on by the name of Great Brittaine or Britannia maior."[93]

Although James's peaceful succession quelled the succession debate, the concepts and the questions were translated into the new debate over the proposed union with Scotland, prompted by the king himself. A year after Cecil composed his discourse, the parliamentary session of 1604 examined the contentious issues over the kingdom's new name, law, and crown, followed by the king's proposal to unify the two kingdoms that he claimed to have inherited. James's speeches on the union, which aspired to frame a new model of Anglo-Scottish kingship, express as surely his belief in kingship by natural and divine law as his staunch rejection of elective kingship. In the first instance he mentioned the union project, James aimed to unify the two nations into "one people, brethren and members of one body."[94] His subsequent speech to the Parliament session repeatedly emphasized his inheritance of England and the union. In his words, "the Union of two ancient and famous Kingdomes . . . [were] annexed to my Person," and that this union was "made in my blood." James also used his English great-grandfather Henry VII effectively to highlight his English descent as well as the advent of peaceful union, drawing on the Tudor reconciliation after the War of the Roses. The union was therefore a likely consequence because his "right and title" to the two crowns were "in [his] person, alike lineally descended of both the Crowns." The speech ended with a plea: "[W]hat God hath conjoined then, let no man separate."[95] As Russell has argued, James's emphasis on the union by descent may be attributed to his concern for the danger of divergent successions in the future.[96] James's rhetoric stressing his descent and divine will—the "natural" and "divine" origin of monarchy—structured the course of the unionist polemic that vigorously employed natural and divine law. When Parliament disapproved James's request to be styed as "King of Great Britain," Sir Edward Grevill suggested that the king, who was "of the Blood of both England and Scotland," was entitled to change the name without recourse to Parliament.[97] The language of "union by descent" also dominated the report of the Union Commission, founded in 1604. The king's supporters argued that the union was "already begun and inherent in his Majesty's royal blood and person" and that James was a "natural sovereign" to both England and Scotland.[98] The unionist polemic was drawn from James's position in the 1604 Act of Recognition, which asserted that "the imperiall crowne of the realme of England" had descended to him "by inherent birthright and lawfull and undoubted succession."[99] The king and his supporters endorsed the understanding that both kingdoms were his inviolable inheritance and that the regal union was the work of God and nature.

[93] 26 March 1603, 14, 1, 3, The National Archives: State Papers, f. 9.

[94] 19 May 1603, in *Stuart Royal Proclamations: Volume I, Royal Proclamations of King James I, 1603–1625*, ed. J. F. Larkin and P. L. Hughes (Oxford, 1973), no. 9, 18.

[95] James VI and I, Speech on 19 March 1604, in *Political Writing*, ed. J. Sommerville (Cambridge, 1994), 134, 135, 136.

[96] Russell, "*The Union*," 67.

[97] 18 April 1604, *Journals of the House of Commons* (hereafter *CJ*), 1:176. All citations from *CJ* are from the first volume, unless otherwise indicated.

[98] *CJ*, 1:318. All references from the *Commons Journal* are from this volume.

[99] 1 Jac. 1 c. 1.

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By 1607, his proposal for the union was more concisely formulated into a desire for "a perfect union of laws and persons."[100]

With regard to the union of laws, the Union Commission that consisted of English and Scottish lawyers generally found more differences than similarities in the two legal systems.[101] Yet James moved the commission to consider possibilities for reconciliation, and the commissioners decided to bring a test case before English courts. The case chosen for this occasion was one concerning the naturalization of Scots. In 1607, two civil suits were disputed in the King's Bench and Chancery whether a Scottish infant named Robert Calvin (in fact named Colville), born after James's accession in 1603, might inherit his two estates in England. Upon the adjournment of the case from the two courts, the case was heard again in June 1608, at Exchequer Chamber. According to the defendants, Calvin was an alien because he had been born "within [James's] kingdom of Scotland, and out of the allegiance of the said lord the King of his kingdom of England."[102] *Calvin's Case*, or the case of *postnati*, was indeed a crucial test case for the union; for Bacon and James, it was to serve as the springboard for the union of laws.[103] When revisited in the Exchequer, the dispute unwittingly reopened the old questions over alien inheritance in the succession controversy: the defendants Laurence Hyde and Richard Hutton opposed the naturalization of *postnati* on the grounds that, as a Scot, Calvin was "born out of allegiance to the king [of England]."[104] Their argument comprised two points. First, they took the understanding of allegiance that was within the confines of the kingdom and its law, English common law—namely, "allegiance tied to laws." This understanding of the legal distinction between aliens and subjects in fact was central to the conventional position taken by fifteenth-century English jurists such as Thomas Littleton and John Fortescue, who propounded on the formation of a body politic through law.[105] Second, opponents claimed that allegiance was not due to "the person of the king"; allegiance was "tied to the kingdom, and not to the person of the king." It was essentially the phrase of the king's two bodies again—the opponents argued that James possessed two political bodies, the physical "person of the King" and the body politic consisting of "the people and the laws of them."[106]

As summarized by Francis Bacon, a proponent of the naturalization, the thrust of the opponents' case was that the allegiance required of subjects was to the "kingdom of England," that is, to the body politic, not to the person of the king.[107] This view was based on two points: first, that the body politic was bound by the exchange of

[100] James, "Speech, 1607," *Political Writings*, 161.

[101] See Galloway, *Union*, 145–47.

[102] *Complete Collection of State Trials* (hereafter ST), ed. T. B. Howell and C. Cobbett (London, 1809), vol. II, col. 380. All citations are taken from this volume.

[103] For Bacon, the naturalization of Scots was to serve as the springboard for union of laws. See Bacon, *Works*, 10:314. James's involvement is also testified by Ellesmere in his letter to the king. See Galloway, *Union*, 149.

[104] ST, cols 560–1.

[105] Keechang Kim, "*Calvin's Case* (1608) and the Law of Alien Status," *Journal of Legal History* 17, no. 2 (August 1996): 156–58.

[106] ST, col. 567.

[107] Francis Bacon, "The Case of Post-Nati," in *Collected Works of Francis Bacon*, ed. James Spedding, 14 vols. (London, 1868), 7:652.

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legal obligation, the protection offered by king, to subject and the obedience that subject pays to king, and second, that the law that binds the two parties was not the law of nature but the laws of the kingdom. The opponents of Calvin's claim drew from this tradition, which conceived allegiance as due to the kingdom and its laws, as well as Plowden's theory, according to which the natural body of the king was separate from the body politic of the kingdom. Because "*Postnati* in Scotland are not subject to the laws of England," they were not English citizens and thus not entitled to the benefits of the English laws.[108] The crux of *Calvin's Case* was the concept of allegiance, namely, that the subject's allegiance is due to the political body of the king, and the theory of the king's two bodies developed by the Marian polemicists partly corroborated the opponents' claim.

Seeing the two-body theory undermining the case for naturalization, the proponents of the union developed the idea of allegiance that was limited neither by national boundaries nor by positive law. Speaking on the plaintiff's side, Francis Bacon's speech in the Exchequer aimed at the legal reconciliation of the king's two bodies with the allegiance due to James, king of both nations. Unlike in other forms of government where magistrates or officers "receive their authority but by election," in "monarchies, especially hereditary, . . . the submission is more natural and simple." This "original submission" requires no precedent in law; it was "natural and more ancient than law," like obedience of the child to the father, or of the flock of sheep to the shepherd. In ancient times kings governed without law but by "natural equity" alone. Since people's subjection to the prince was guaranteed without law, it was "the work of the law of nature." According to Bacon, the law of nature is clearly "more worthy" than common or statute law, so a subject's allegiance to his king cannot be confined by common law.[109]

Following Bacon, Crown lawyers sought to dismantle the theory of the king's two bodies by appropriating the king's language of kingship by the laws of nature and God. Lord Chancellor Ellesmere's influential speech on the case, which was later published in 1609, crystallized the problem with the theory of the king's two bodies in advancing James's wish for naturalization and legal union. For Ellesmere, the theory of the king's two bodies was a "strange and . . . dangerous" view: it made "a dangerous distinction between the king and the crown, and between the king and the kingdom." Objections to the plaintiff stemmed from, as Ellesmere rightly identified, the legal exposition that separated the king's person (natural body) and the kingdom (body politic), hence yielding two kinds of allegiance. This was "absurd" and "dangerous." Rather, the bond of allegiance was, Ellesmere argues, "*vinculum fidei*"—a faith that "cannot be framed by policy."[110] Supplementing this philosophical approach, Coke also reiterated this position by amassing a vast number of statutes and legal evidence. Allegiance due to the prince "was by the law of nature," and English common law confirmed natural law was its "parcel." Similarly to Bacon, Coke likened the subject's relationship to the king to other personal relationships, such as ones of master and servant and of parent and child; in both cases, the

[108] ST, col. 567.

[109] ST, cols. 579–81.

[110] ST, cols. 691–92. Louis Knafla has demonstrated Ellesmere's later elaboration of the one body theory. See Louis Knafla, *Law and Politics in Jacobean England: Lord Chancellor Ellesmere* (San Marino, 1977), 67.

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obedience one pays to the other is "natural" and not ratified by human law.[111] The *postnati* were then "united in birth-right in obedience and ligeance" to the sovereign, James; thus, Calvin was entitled to inheritance in England.[112] Bacon and Coke's argument in *Calvin's case* was that the subjection owed to the prince had been in existence before the emergence of lawful governments and kingship.

These debates relating to the Jacobean union demonstrate the crucial yet bifurcated usage of the legal arguments given by the Elizabethan succession tracts. The Elizabethan supporters of the Stuarts developed the two-body theory in order to counter the case against alien inheritance, which divided the king's power into two. This became problematic as James began to advocate for union of the two kingdoms that he "naturally inherited" based on the laws of nature and God, over and above English common law. His position was founded on the premise that his natural body was superior to the political body. Yet this was not the only constitutional implication of the union debate. The discussions on union raised far-reaching, enduring questions on the relationship of Scotland to England and the nature of Anglo-Scottish monarchy. Above all, it was the growing awareness over the contested nature of English monarchy that calcified their redefinition of such constitutional topics as union, succession, and allegiance.

CONCLUSION

Whether these predominantly legal discussions on the nature of English monarchy drove the politics of the Jacobean succession is difficult to establish. The contested nature of English monarchy, the renewed rules of royal succession, and controversies over the Stuart title left James scarred and increasingly sensitive to the idea of election. Cecil's "clauses" and machination for a temporary republican government strongly recalled the constitutional framework of the king's two bodies. Moreover, James's involvement in the English treatises against Persons palpably signals the gravity of the succession polemics to the king himself. He obviously thought it was politically expedient or necessary to provide a coherent ideological position.

By contrast, Elizabeth ignored the calls for naming James as the heir. The need to put forward a definite legal position was lessened by her restriction on any discussion of the succession and strained Anglo-Scottish relations. The questions raised by the tract writers and the language of corporate kingship saw no infiltration into the parliamentary proceedings, and it is not the scope of this article to claim the centrality of legal arguments in the actual politics of the succession. Rather, those discussions touching the nature of English monarchy adumbrated future debates. This article has shown the palpable overlap between the arguments in the succession tracts and their contribution to the union debate. Questions like the naturalization of the Scots and the legal anatomy of royal power, originally elaborated in the 1560s, became major elements in the discussions that explored the meaning of the unprecedented Anglo-Scottish kingship and the proposed union. The Jacobeans revisited Plowden's point on homage to argue that Scotland was not a foreign nation. Moreover, the reemergence of the question of alien inheritance inexorably brought to the

[111] Levack, *Formation*, 183.
[112] ST, col. 629.

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surface the two-body theory, at which point the concepts of allegiance and kingship were modified by both proponents and opponents of the naturalization of Scots. The arguments and polemics of the succession debate stand therefore not only as products of a particular political milieu but also as documents that defined the terms of a debate relating to the nature of English monarchy, which lasted beyond the Jacobean succession.

At the same time, focusing on the development of legal theories, this article has demonstrated that the strict demarcation between hereditary and elective monarchies was not originally espoused by the participants of the early succession debate. Rather, its emergence owed largely to King James himself, as a result of Persons's *Conference*. The argument that the pro-Stuart polemicists perceived elective kingship as threatening seems therefore misleading. As the article has shown, in developing the theory of "corporate" kingship, Plowden appears to have viewed the Stuart title as a lawful shift from one royal family to another; this was deemed an essential component for defending Mary's and furthering James's title. The reference to elective kingship was therefore originally adopted not to bring about a succession by violent sedition or parliamentary appointment but rather to redefine English kingship as a "body politic" that was superior to common-law rules.[113] Similarly, "corporate" kingship was essentially conceived in strictly legal terms, likened to the rules of ecclesiastical property and inheritance, through which the Stuart claimants were said to prevail. However, while powerfully vindicating the case for foreign inheritance, the theory of corporate kingship had one critical shortcoming. In the same way as the ownership of a glebe was not attached to the parson but to the church itself, the king was likewise deemed the owner of the state not by descent but as a kind of political corporation.

The rules for the unsettled succession were continuously contested throughout Elizabeth's reign, and confusion remained after 1603 as to what type of monarchy the present polity represented. This is not to say that James's accession was an extremely troubled one to the extent that it consequently undermined the union project. Rather, the evidence above suggests that the language describing English kingship, which had been the indispensable component of the pro-Stuart polemic in the Elizabethan succession tracts, had to undergo significant change in the early years of James's reign. Persons attached to the idea of electorship a far more constitutionally subversive implication. At this point the Stuart polemic was required to take a significant revision; James and his supporters immediately turned to the supremacy of hereditary kingship. As seen in *Calvin's Case*, the language of the corporate body of the king backfired on James and made it inevitable that he resort instead to the language of natural and divine law. The king himself attempted to inculcate this vision of kingship in his subjects. The speeches delivered to his first two Parliaments show significant parallels to his *Trew Law* as well as the treatises of the lawyers, all unified in the language of divinely ordained hereditary kingship.

[113] The thrust of this argument is best exemplified by the civil lawyer John Cowell in his legal dictionary, *The Interpreter* (1607), which caused uproar in the parliament of 1607. For Cowell and his *Interpreter*, see S. B. Crimes, "The Constitutional Ideas of Dr. John Cowell," *English Historical Review* 64 (1949): 461–87; D. R. Coquillette, *The Civilian Writers of Doctors Commons, London: Three Centuries of Juristic Innovation in Comparative, Commercial and International Law* (Berlin, 1988), 79–90.

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The popularity of the corporate kingship theory in England may seem to support one of the major interpretations of Elizabethan politics in modern historiography—namely, Patrick Collinson's "monarchical republic" thesis. Collinson and others have stressed the political culture of "counsel" and the central role that Elizabeth's advisers played in religious and foreign policy, working sometimes against her political intentions.[114] One such indicator of the "monarchical republic" raised by Collinson and Alford was the plan drawn by Lord Burghley William Cecil, who prepared for a republican government to fill in the empty throne in case of the queen's untimely death—a plan that Collinson termed "the Elizabethan Exclusion Crisis."[115] The thesis has received some opposition and revision in recent years. Calling Burghley's plan "aristocratic republicanism *par excellence*," John Guy has suggested that the changing political tensions and prolonged war in the 1590s characterized the "second reign of Elizabeth I," replacing the political creed of mixed polity and counsel. Peter Lake's study of the fall of Archbishop Grindal has similarly estimated the demise of the monarchical republic to be starting around the execution of Mary Queen of Scots.[116] Using the political works of James himself and his principal defendant, Scottish lawyer Thomas Craig, Anne McLaren recently argued that this "monarchical republicanism" in fact ran in counter to James's vision of divinely ordained kingship.[117] Allowing parliamentary or conciliar elements in his succession was extremely precarious, after Persons purported that popular consent would justify deposition. The question that we may ask further, however, concerns not only the articulation but also the reception of James's theory of absolute kinship. How successful was James in convincing his future subjects of the divine origin of his title? The Elizabethan treatises that this article has examined demonstrate that James's English supporters (except Wentworth) were more likely to subscribe to the theory of corporate kingship than to his views that defined his title as given by God, immune from human law or agency. They embody the uneasy position that their authors occupied in the years before the Jacobean succession—unable to officially appoint James but reluctant to share his vision of absolute monarchy.

The cases both for and against the Stuart succession derived from a diversity of political and religious interests. The English motives for defending James's title differed from those for Mary's, on account, for example, of the confessional difference between the two, the Catholic activities in England and on the Continent, and the

[114] Patrick Collinson, "The Monarchical Republic of Queen Elizabeth I," *Bulletin of the John Rylands Library* 69 (1986–87): 394–424; reprinted in Collinson, *Elizabethan Essays* (London, 1994), 51–55; Alford, *Early Elizabethan Polity*, 110–15; Markku Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570–1640* (Cambridge, 1995), 12–14.

[115] Collinson, "Monarchical Republic," 44–50. Burghley and other ministers, against the queen's will, proposed either the continuance of the sitting Parliament or the calling of a new one, which would adjudge claims to the throne together with a ruling council. A bill planning for an interregnum was produced in Parliament in January 1585. These proposals failed to earn approval from the queen or Parliament, but they evince the degree of the readiness of the chief ministers to depart from the standard procedures of hereditary monarchy and accept an elective one. See Collinson, "Elizabethan Exclusion Crisis"; Alford, *Early Elizabethan Polity*, 116–18; Alford, *Burghley*, 124–25, 256, 280–88.

[116] Guy, "The 1590s," 7–9; Peter Lake, "'The Monarchical Republic of Queen Elizabeth I' (and the Fall of Archbishop Grindal) Revisited," in *Monarchical Republic of Early Modern England*, 144–45.

[117] McLaren, James's articulation of kingship, 166–70.

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development of the European Protestant cause.[118] Moreover, the English support that later made James's succession definitive came rather late. The Scottish king initially kept his distance from Robert Cecil, whose father played a pivotal role in his mother's death. Furthermore, Wentworth had initially favored the Suffolk candidates rather than the Stuarts, and it was only in the 1590s after Mary's execution that a group of the "godly" statesmen solidified their support for James.[119] Without this complex interplay of political and religious interests, which only came about two years before the succession, James would have struggled to overturn the opinions of the Suffolk supporters even if there had not been Persons's *Conference*. The speeches and tracts exchanged during the union debate also suggest, however, that the politics of James's succession was multidimensional in terms of political maneuvering and of constitutional and legal argumentation. In other words, the theory of "corporate" kingship that his supporters had used became an impediment to James, who ardently claimed that he had inherited the English crown by descent, the inalienable right guaranteed by the laws of God and nature.

Returning to the specific case of the English perceptions of James VI and I's title, this reassessment has demonstrated that the arguments produced for and against him and his mother were more complex and more significant than has been previously suggested. It also shows a great continuity in debates from the 1560s through to the 1600s that addressed questions relating to English monarchy. The ideas and theories on how best to settle the succession evince that at the time of James's accession the points raised over the nature of royal succession had failed to achieve consensus. Perhaps it was not just James's title but the origin of English monarchy that was in question. For Roger Owen, who disagreed with Wotton in the Parliament of 1614, the kings of England were not hereditary princes: for "the 1st original of kings" was crowned "at first by election and consent."[120]

[118] Pauline Croft, "'The state of the world is marvellously changed': England, Spain and Europe 1558–1604," in *Tudor England and Its Neighbours*, 139–77.

[119] Alan Haynes suggested that James had rather been an "Essexite" than "Cecilian," whereas Cecil was thought to support the Suffolk candidate Edward Seymour. It was not until the meeting of Cecil and the king's Scottish representatives in 1601 that the secretary made clear his unswerving support for the king. See *Robert Cecil: Earl of Salisbury, 1563–1612, the Servant of Two Sovereigns* (London, 1989), 88–89. For the specific role of William Cecil, who was convinced that Mary was the greatest threat to Elizabeth's throne, played for her execution, see Alford, *Burghley*, chap. 18. For Wentworth and his letter to Cecil, see Neale, "Peter Wentworth," 185. For the puritan motive for the Stuart claim, see Collinson, "Religious Factor."

[120] Jansson, *Proceedings 1614*, 311.

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