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1983

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Magic, Prophecy, and the Law of Treason in Reformation England

by JONATHAN K. VAN PATTEN*

I. INTRODUCTION

Betrayal, whether it be of a personal relationship or of a country, is a serious offense. To betray one's trust indicates a failure of character which runs deeper than the typical range of moral shortcomings. There is the example of Judas Iscariot, of whom Jesus said it would have been better if he had never been born.¹ The betrayal of a political leader can bring a similar condemnation, as witnessed by Dante's placing of Brutus and Cassius with Judas at the same level of Hell.² The betrayal of one's country, one's fatherland, can engender a new word, such as "quisling," to express the indignation and disgust at that kind of treachery.

Although a general opprobrium attaches to the concept of betrayal, there is less agreement on the precise nature of the offense. Is it primarily a matter of will, a breach of allegiance, or is it fundamentally a concern with treacherous actions? May it be accomplished by thoughts and words alone or must it be accompanied by some act? There is, for example, Jesus' teaching that adultery, a form of betrayal,³ can occur in the heart.⁴ Words can sometimes betray a trust

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1. Matthew 26:24.

2. DANTE, *THE DIVINE COMEDY: HELL*, Canto XXXIV, 61-69 (D. Sayers trans. 1949).

3. Professor George Fletcher has observed that the Hebrew word—*bgidah*—refers both to adultery and treason. Fletcher, *The Case for Treason*, 41 MD. L. REV. 193, 200 (1982).

4. Matthew 5:28.

more effectively than any deeds.⁵ However, the law, with some exceptions,⁶ does not condemn a person for thoughts and words alone. Some act manifesting the betrayal is usually required.⁷ This is in part due to the limited capacity of the law to search a person's mind or heart, but also it is due to the general recognition that people commonly experience inner struggles and the law will not condemn until the inner struggle has resolved itself in favor of a treacherous act.

Nevertheless, there is a long tradition of overreaching with respect to the law of treason. Rulers have, from time to time, pushed the sanction of the treason laws in the direction of condemning disloyal words.⁸ It is therefore somewhat ironic that the law of treason has at times come under as harsh criticism as has the act of treason itself. Blackstone quoted Montesquieu's observation that if the crime of treason is indeterminate, "this alone is sufficient to

5. Betrayal in many of Shakespeare's tragedies is not simply a betrayal by acts, but primarily a betrayal in the heart. In *Othello*, Iago's betrayal is in presenting himself as one who loves Othello when in truth he is jealous of him and hates him. The betrayal is accomplished through Iago's speech. In *King Lear*, the division of the kingdom is a result of false speech. W. SHAKESPEARE, COMPLETE PLAYS AND POEMS, *King Lear*, Act I, Scene 1. The rest of the play deals with the consequences of trust in untrue words. In *Macbeth*, Shakespeare makes it clear that the betrayal of Duncan is consummated in speech before the murder takes place. At the end of Act I, Macbeth says:

I am settled, and bend up
Each corporal agent to this terrible feat.
Away, and mock the time with fairest show;
False face must hide what the false heart doth know.

Id., *Macbeth*, Act I, Scene 7, 79-82. So complete is the betrayal that Macbeth suffers terribly from guilt before the deed is done. *Id.*, Act I, Scene 7, 1-28. In all three plays, we see that betrayal lies not in hatred, but in the deception of the one who places the trust.

6. See, e.g., MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 4-1 (1979). (A lawyer should preserve the confidences and secrets of a client.)

7. See, e.g., U.S. CONST. art. III, § 3, cl. 1; SOUTH DAKOTA CONST. art VI, § 25.

8. See, e.g., 1 A. SOLZHENITSYN, THE GULAG ARCHIPELAGO 61-67 (Whitney trans. 1973). Solzhenitsyn details the fullest extension of the treason laws to cover treason by intent:

One important broadening of the section on treason was its application "via Article 19 of the Criminal Code"—"via intent." In other words no treason had taken place; but the interrogator envisioned an *intention* to betray—and that was enough to justify a full term, the same as for actual treason. True, Article 19 proposes that there be no penalty for intent, but only for *preparation*, but given a dialectical reading one can understand intention as preparation. And "preparation is punished in the same way [i.e., with the same penalty] as the crime itself" (Criminal Code). In general, "we draw no distinction between *intention* and the *crime* itself, and this is an instance of the *superiority* of Soviet legislation to bourgeois legislation."

Id. at 61-62. See also H. ARENDT, THE ORIGINS OF TOTALITARIANISM 387 (new ed. 1966).

make any government degenerate into arbitrary power.”⁹ James Madison praised the Constitution’s definition of treason and the attendant procedural restrictions saying that “new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other. . . .”¹⁰ Thus, the law of treason itself can provide an important measure of the character of a regime and its willingness to respect the rule of law.¹¹

Blackstone reserved special criticism for “the bloody reign of Henry the eighth,” when “the spirit of inventing new and strange treasons was revived.”¹² Historians have long condemned Henry, and his Lord Chancellor, Thomas Cromwell, for adding the offense of treason by words alone.¹³ This episode in English history deserves special attention because it illustrates the continuing tension between disloyalty in action and disloyalty in attitude. In particular, the study of the law of treason during the reign of Henry VIII shows the response of government to opposition on the battlefield as well as opposition in the realm of ideas, opposition which sometimes took the form of magic and political prophecy. The cases of opposition through magic and prophecy are especially interesting because the traditional demarcation between words and acts is blurred. Examination of the government response to this opposition will also provide a basis for observations on rationality and political realism during this revolutionary period. The manner in which the law of treason is enforced becomes more crucial than the law itself.

II. THE LAW OF TREASON FROM EDWARD III TO HENRY VIII: A BRIEF REVIEW

“Treason is a crime which has a vague circumference, and more than one centre.”¹⁴ With this geometric image, Maitland began his discussion of the law of treason. One center was the betrayal of clan or realm, of family or fatherland. Flight from battle or aid of the

9. 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 75 (Univ. of Chicago ed. 1979) (hereinafter cited as BLACKSTONE), quoting MONTESQUIEU, THE SPIRIT OF THE LAWS, Bk. XII, ch. 7.

10. A. HAMILTON, J. MADISON, J. JAY, THE FEDERALIST PAPERS 273 (Rossiter ed. 1961) (No. 43—Madison).

11. See Fletcher, *The Case for Treason*, 41 MD. L. REV. 193 (1982).

12. 4 BLACKSTONE, *supra* note 9, at 86.

13. See, e.g., G. CONSTANT, THE REFORMATION IN ENGLAND: THE ENGLISH SCHISM AND HENRY VIII, 1509-1547, at 134, n. 193, 135, n. 194 (Scantlebury trans. 1934).

14. 2 F. POLLOCK AND F. MAITLAND, THE HISTORY OF ENGLISH LAW 503 (Camb. ed. 1968).

enemy were examples of this type of betrayal. The bond of personal allegiance to lord or king constituted another center. Causing injury or death to the king (*lese majesty*) was an example of personal betrayal. One can see the potential for conflict between these two centers. The circumference of treason included not only harmful results, but also "compassing" or "imagining," that is, plotting, the harmful results.¹⁵ This departure from the general drift of the common law, which usually focused on results, was due to the gravity of the offense. In addition, treason, as a common law crime, was liberally construed along with the similar offense of "acchoaching" or usurping royal power¹⁶ to cover such offenses as highway robbery,¹⁷ abduction and rape of a woman under the protection of the royal household,¹⁸ and murder of a justice of the peace.¹⁹ This caused great concern to the lords who were thereby losing their escheats. A conviction of treason or acchoaching royal power resulted in a forfeiture of the defendant's lands and possessions to the Crown, whereas a conviction of a felony resulted in escheat to the lords. It was this loss of escheats, together with an underlying residue of uneasiness at past political trials of disloyal lords, that prompted petitions in the parliament of 1348 which attacked the government's treason policy.²⁰ The 1352 Statute of Treasons resulted from the debate.²¹

The statute set forth a definition of treason and, in so doing, departed from the medieval practice of common law definition of crimes.²² Under the statute, treason was defined as:

compassing or imagining the death of the king, his consort, or his eldest son; violating his consort, or eldest unmarried daughter, or the wife of his eldest son; levying war against the king in his realm, or adhering to his enemies in his realm, giving them aid and comfort in the realm or elsewhere; forging the great seal or the coinage, and knowingly importing or uttering false coin,

15. *Id.* at 503-04.

16. Blackstone says that "acchoaching," or attempting to exercise royal power, was held to be treason. 4 BLACKSTONE, *supra* note 9, at 76. However, a recent study by Professor J.G. Bellamy demonstrates that although acchoaching royal power appears to have carried the same penalty as treason, it was not identical with treason. J. BELLAMY, *THE LAW OF TREASON IN ENGLAND IN THE LATER MIDDLE AGES* 73, 80 (1970) (hereinafter cited as *THE LAW OF TREASON*).

17. *Id.* at 91; 2 J. STEPHEN, *A HISTORY OF THE CRIMINAL LAW OF ENGLAND* 246-47 (1883).

18. *Id.* at 69-71.

19. *Id.* at 72-73.

20. *Id.* at 79-80; 2 F. POLLOCK AND F. MAITLAND, *THE HISTORY OF ENGLISH LAW* 508 (Camb. ed. 1968); T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 443-44 (5th ed. 1956).

21. 25 Edward III, st. 5, c. 2. *printed in* G. ADAMS AND H. STEPHENS, *EDS.*, *SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY* 121-22 (1906).

22. T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 443 (5th ed. 1956).

slaying the treasurer, chancellor or judges while sitting in court. . . .²³

The statute provided that any further definitions for cases not covered by the act would be made in Parliament.²⁴ This provision became the basis for the later notorious acts of attainder. The statute defined [petty] treasons which did not involve forfeiture of land to the Crown but escheat to the appropriate lord. It also expressly disclaimed as treasonable offenses, riding about the countryside armed, robbery, and kidnapping for ransom.²⁵

Although the statutory enumeration narrowed the scope of treason offenses, there remained some flexibility in definition for those still covered. To "compass" or "imagine" the death of the king was, as Blackstone put it, primarily a design of the mind or will.²⁶ Adhering to or giving aid and comfort to the enemy could also be so described. The statute provided that proof of these offenses must be demonstrated by some open or overt act.²⁷ Coke praised the wisdom of this requirement²⁸ and, indeed, the dropping of the requirement by amendment in 1397 proved to be short-lived. In 1399, after the deposition of Richard II and the ascension of his cousin, Henry IV, to the throne, Parliament annulled the 1397 amendment.²⁹ However, even though the overt deed requirement remained popular in theory, its practical effectiveness was subject to question. There were several instances in the reign of Henry IV, and generally throughout the fifteenth century, where treasonous words constituted the overt deed.³⁰ In 1402, there were five cases where men

23. *Id.*

24.

Because other like cases of treason may happen in time to come, which cannot be thought of or declared at present, it is accorded, that if any other case supposed to be treason, which is not above specified, doth happen before any judge; the judge shall tarry without going to judgment of the treason, till the cause be showed and declared before the king and his parliament, whether it ought to be judged treason, or other felony.

4 BLACKSTONE, *supra* note 9, at 85.

25. T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 444 (5th ed. 1956). The statute rescinded recent judgments to the contrary and restored the lands taken by the Crown as forfeitures to the lords as their escheats. *Id.*

26. 4 BLACKSTONE, *supra* note 9, at 78.

27. 25 Edward III, st. 5, c. 2, *printed in* G. ADAMS AND H. STEPHENS, EDs., *SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY* 121 (1906).

28. E. COKE, *INSTITUTES OF THE LAWS OF ENGLAND, THIRD PART* 14 (5th ed. 1671).

29. *THE LAW OF TREASON, supra* note 16, at 115-16.

30. *Id.* at 116-20. *See also* Thornley, *Treason by Words in the Fifteenth Century*, 32 *ENG. HIST. REV.* 556, 557 (1917); G.R. ELTON, *POLICY AND POLICE: THE ENFORCEMENT OF THE REFORMATION IN THE AGE OF THOMAS CROMWELL* 288 (1972) (hereinafter cited as *POLICY AND POLICE*); F. MAITLAND, *THE CONSTITUTIONAL HISTORY OF ENGLAND* 228 (Camb. ed. 1965).

were charged with saying King Richard was alive and would return to reclaim his kingdom.³¹ It was believed that they had spread the report to incite the people against the king to the destruction of the realm. On these grounds they were convicted and executed as traitors.³² During the reign of Henry VI, there were convictions of treason in Canterbury "for hyr talking a gayne the Kyng" in favor of the duke of York.³³ There were also instances of treason by the use of necromancy.³⁴ The attempt to communicate with the dead in order to make predictions concerning the King's death provoked a number of legal investigations in the fifteenth century and, in a few cases, convictions of treason were obtained.³⁵

As one would suppose, treason was treated as a capital offense, but the manner of execution shows the special disgrace and notoriety which attached to the crime. It was felt that simple hanging was insufficient punishment.³⁶ Blackstone described the manner of execution:

1. That the offender be drawn to the gallows, and not be carried or walk; though usually a sledge or hurdle is allowed, to preserve the offender from the extreme torment of being dragged on the ground or pavement. 2. That he be hanged by the neck, and then cut down alive. 3. That his entrails be taken out, and burned, while he is yet alive. 4. That his head be cut off. 5. That his body be divided into four parts. 6. That his head and quarters be at the king's disposal.³⁷

Maitland suggests that the drawing of the offender on a sled may have been less out of a sense of compassion than a desire to secure for the hangman a yet living body.³⁸ In addition to the corporal

31. Thornley, *Treason By Words in the Fifteenth Century* 32 ENG. HIST. REV. 556-57 (1917).

32. *Id.* One of the executed defendants was a Franciscan friar. THE LAW OF TREASON, *supra* note 16, at 116. High treason was an offense for which the general defense of benefit of clergy did not apply. 1 F. POLLOCK AND F. MAITLAND, THE HISTORY OF ENGLISH LAW 446 (Camb. ed. 1968); T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 443 (5th ed. 1956).

33. POLICY AND POLICE, *supra* note 30, at 288.

34. THE LAW OF TREASON, *supra* note 16, at 126-27.

35. *Id.*

36. *Id.* at 8-9; 2 F. POLLOCK AND F. MAITLAND, THE HISTORY OF ENGLISH LAW 500 (Camb. ed. 1968). Is there not some of the same feeling today with regard to the penalty for political assassination? The public outcry in connection with the potential parole of Sirhan Sirhan would indicate that many believe the murder of a political figure justifies the imposition of special punishment. See *Should Sirhan be Paroled?* Newsweek, May 10, 1982, at 43.

37. 4 BLACKSTONE, *supra* note 9, at 92.

38. 2 F. POLLOCK AND F. MAITLAND, THE HISTORY OF ENGLISH LAW 500 (Camb. ed. 1968).

punishment, the offender's lands and goods would be forfeited to the King.³⁹ As previously mentioned, the difference between forfeiture to the King for treason and escheat to the lord for felony made the distinction between treason and felony a point of contention among kings and magnates.⁴⁰ The forfeiture included not only lands held in fee simple, but also, as attempts to avoid forfeiture gained, lands held by another for the use of the offender and fee tails.⁴¹ Acquisition of lands through forfeiture was an important basis for expanding royal power.⁴² The use of attainder by act of Parliament, particularly when the offender was already dead, shows the value of forfeiture to the enhancement of royal power.⁴³

Treason trials in the courts and acts of attainder in Parliament were relatively common in the fourteenth and fifteenth centuries.⁴⁴ After the comparatively successful and stable reigns of William I, Henry I, Henry II, and Edward I, England experienced a period of over 150 years of plague, agricultural depression, social turmoil, and civil war. The crown changed hands by murder or battle more than once.⁴⁵ Many of those charged with treason were simply men who had fought on the losing side in a civil war.⁴⁶

The Wars of the Roses were the culmination of such civil strife and the crown was worn by Henry Tudor on the battlefield near Bosworth in 1485.⁴⁷ The accession to the Crown by conquest posed a

39. *Id.*

40. It was in part to preserve this distinction that King John agreed in the Magna Carta to return the land of a felon to the lord after use for a year and a day. *Id.* at 501-02. See L. WRIGHT, *MAGNA CARTA AND THE TRADITION OF LIBERTY* 56 (1976).

41. THE LAW OF TREASON, *supra* note 16, at 191-97; 4 BLACKSTONE, *supra* note 9, at 374-75. J.M.W. Bean suggests that the desire to avoid loss of lands through treason or felony hastened the development of the *cestui que use*, the precursor of the modern trust. J. BEAN, *THE DECLINE OF ENGLISH FEUDALISM, 1215-1540*, at 137-39 (1968).

42. See B. WOLFE, *THE CROWN LANDS, 1461-1536*, at 46-47 (1970).

43. THE LAW OF TREASON, *supra* note 16, at 183-202. If the offenders were captured in open warfare against the King, there was also available the summary procedure under the law of arms in a court of chivalry. However, conviction in this court did not involve the forfeiture of lands. G. SQUIBB, *THE HIGH COURT OF CHIVALRY* 25 (1959). Thus, acts of attainder usually followed these convictions. POLICY AND POLICE, *supra* note 30, at 263. See also Keen, *Treason Trials under the Law of Arms*, 12 TRANS. ROY. HIST. SOC. 85 (1962).

44. See generally, THE LAW OF TREASON, *supra* note 16.

45. Edward II was deposed and then murdered in 1327. B. LYON, *A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND* 486 (1960). In 1399, Richard II was defeated in battle and deposed. The next year, while in prison, Richard II died. *Id.* at 495. Edward IV assumed the throne in 1461 and defeated the Lancastrian claimants in battle. *Id.* at 581. The reign of Richard III ended on the battlefield at Bosworth, where he was defeated by Henry Tudor. *Id.* at 584.

46. POLICY AND POLICE, *supra* note 30, at 263.

47. See G.R. ELTON, *ENGLAND UNDER THE TUDORS* 1 (1955).

continuing problem of legitimacy for Henry, and later for his second son, Henry VIII.⁴⁸ The divine designation of Kings was less compelling when obtained by human hands. Henry VII spent several years solidifying the Tudor claim to the throne and defending against the same kind of venture by which he ascended.⁴⁹ A measure of his success is indicated by the fact that his son, Henry VIII, succeeded to the throne upon his death in 1509. This was the first time since 1422 that the son succeeded to his father's throne.⁵⁰ The early years of Henry VIII's reign were marked with successes—more foreign than domestic—and the realm appeared to have achieved a domestic peace after such a long period of civil strife.⁵¹ However, whatever domestic peace there was ended with the advent of the King's "Great Matter." Henry VIII had married his older brother's widow, Catherine of Aragon, within a few months after his accession. Because of the former marriage, Henry obtained a special dispensation from the Pope to marry Catherine. The marriage produced no male heir and once again the disquieting specter of succession was raised. Some time between 1525 and 1527, Henry fell in love with Anne Boleyn, one of the young ladies at court. By 1527, the King resolved to obtain an annulment of his marriage to Catherine and to marry Anne.⁵² The attempt to gain a papal dispensation, first through diplomatic means and later through more overt pressure, failed.⁵³ Henry was determined that there would be no cloud on his marriage to Anne and finally in 1532 Henry assumed leadership of the English church and broke with Rome.⁵⁴ The centuries-old allegiance to Rome was declared to be contrary to the laws of God and scripture. Assumption by Henry of leadership of the English church was ac-

48. *Id.* at 18-20. See also Gohn, *Richard II: Shakespeare's Legal Brief on the Royal Prerogative and the Succession to the Throne*, 70 GEO. L.J. 943, 953-55 (1982).

49. G.R. ELTON, *ENGLAND UNDER THE TUDORS* 20 (1955).

50. Henry VI, the infant son of Henry V, succeeded to the throne in 1422. B. LYON, *A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND* 578 (1960). The reign of Henry VI was for the most part in name only. He was nine months old when he succeeded to the throne in 1422. A figurehead for most of his reign, he became insane in 1453. *Id.* at 581. He was finally succeeded in 1461 by Edward IV, the son of Richard, duke of York. *Id.* Edward IV had two sons, but he died while they were still of minority age. His brother, Richard, duke of Gloucester, was named protector during the minority of Edward V. Richard, however, assumed the throne in his own right and had the two young boys murdered. *Id.* at 583-84. Richard III's reign lasted two years until he was killed in battle by the Tudor army. *Id.* at 584.

51. G.R. ELTON, *ENGLAND UNDER THE TUDORS* 70-84 (1955); A.J. SLAVIN, *THE PRECARIOUS BALANCE: ENGLISH GOVERNMENT AND SOCIETY, 1450-1640*, at 85-113 (1973).

52. G.R. ELTON, *ENGLAND UNDER THE TUDORS* 98-101 (1955).

53. *Id.* at 116-26.

54. *Id.* at 130-34.

accompanied by a reformation of doctrine and practice.⁵⁵ This engendered opposition from the institutional church as well as generally from English society.⁵⁶ While some expressed this opposition from the pulpits and universities through traditional means, others used prophecy and magic in an attempt to influence political events.

One of the most widely known instances was the affair of Elizabeth Barton, the Nun of Kent.⁵⁷ Arising from humble origins, she became regarded as a holy woman with a gift for prophetic visions. She was known to the spiritual elite of London—Cardinal Wolsey; William Warham, the archbishop of Canterbury; John Fischer, the bishop of Rochester; and Thomas More.⁵⁸ Henry VIII himself sent for her and listened as she spoke plainly against his project.⁵⁹ She began to prophesy against the second marriage and predicted that Henry would soon die.⁶⁰ Her predictions attracted the attention of an uneasy government, especially as she had a loyal following in the already volatile shire of Kent. She was arrested in November of 1533 and examined several times by the Council and in the Star Chamber. The King pressed for a conviction of treason, but the Council and the judges would not make this finding for words alone.⁶¹ Desirous of eliminating opposition to the second marriage, Henry pursued the matter further and, in February of 1534, the Nun of Kent and several associates were attainted in Parliament. On April 21, 1534, they were executed.⁶² As far as one can tell from the record, the basis for the treason charges lay in the idea that she was causing a division between the King and his people.⁶³ This was similar to the old charge of usurping royal power. Although usurpation was no longer part of the law of treason, it was felt that her activities warranted the serious measures taken by the government. As Thomas Cromwell wrote of her in a letter to Bishop Fischer: "For if credence should be given to every lewd person as would affirm himself to have revelations from God, what readier way were there to subvert all commonwealths and good orders of the world?"⁶⁴ To a government intent upon restraining opposition to the

55. POLICY AND POLICE, *supra* note 30, at 1.

56. *Id.* at 1-170.

57. For a more comprehensive account of the story of Elizabeth Barton, see 3 D. KNOWLES, THE RELIGIOUS ORDERS IN ENGLAND 182-91 (1959).

58. *Id.* at 183-84.

59. *Id.* at 184.

60. G.R. ELTON, ENGLAND UNDER THE TUDORS 138 (1955).

61. *Id.*; 3 D. KNOWLES, THE RELIGIOUS ORDERS IN ENGLAND 188 (1959).

62. 3 D. KNOWLES, THE RELIGIOUS ORDERS IN ENGLAND 190 (1959).

63. See THE LAW OF TREASON, *supra* note 16, at 210.

64. A.J. SLAVIN, ED., THOMAS CROMWELL ON CHURCH AND COMMONWEALTH: SELECTED LETTERS, 1523-1540, at 37 (1969).

King's new policies, the Nun of Kent affair indicated that there were some shortcomings in the law of treason.

Government efforts to revise the treason laws had begun as early as 1530.⁶⁵ However, it was not until 1534, after the case of Elizabeth Barton had arisen, that these efforts were completed. The Act of Succession⁶⁶ expanded the 1352 definition of treason by adding to compassing the King's death, any attempts to harm the King's person, attacks on the security of the crown or against the marriage of Henry and Anne Boleyn.⁶⁷ These treasons could be committed by writing or printing as well as by other overt acts. The inclusion of writings, while new in form, probably did not change the substance of the law as it had been interpreted by the judges.⁶⁸ Also brought within the scope of treason legislation were verbal attacks "without writing, or by any exterior deed or act" which slandered the King's second marriage.⁶⁹ Such attacks would be punishable as misprision of treason, with imprisonment and loss of possessions the applicable penalties. The revisions of the treason law showed the government was determined to control opposition to the new policies. However, if the government was seeking a monopoly on opinion, it soon found that the Succession Act was insufficient. The problems and issues engendered by the break with Rome went far beyond the legitimacy of the marriage. For example, much of the opposition came from within the Church where Henry was repeatedly labeled a heretic.⁷⁰ Moreover, by attacking the authority of the Pope, Henry implicitly raised the issue of his own authority. In the North especially, where defeat in the Wars of the Roses had fallen the heaviest, there were those who saw the Tudor claim to the throne coming undone. None of this opposition, which was significant and substantial, was cognizable under the existing treason legislation and thus the Crown resolved to further revise the statutes. In November of 1534, Parliament passed a new treason statute.⁷¹ Protection of the King's person was expanded to include the Queen and the heirs apparent. More significantly, opposition to Crown policy, by the expression of words or writing, to the effect that the King was a "heretic, schismatic, tyrant, infidel or usurper of the crown" was

65. POLICY AND POLICE, *supra* note 30, at 265-67.

66. 25 Henry VIII, c. 22, printed in G. ADAMS AND H. STEPHENS, EDs., SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY 240-42 (1906). This act later became known as the First Succession Act.

67. POLICY AND POLICE, *supra* note 30, at 277.

68. See text accompanying note 31, *supra*.

69. POLICY AND POLICE, *supra* note 30, at 277.

70. *Id.* at 278-82.

71. *Id.* at 282.

declared treason.⁷² This gave the government authority to deal with those like the Nun of Kent who spoke out against the new policy. There still remained a loophole in that one could defend the Pope without expressly attacking the King. This was made punishable (although not treasonable) by the 1536 Act Extinguishing the Authority of the Bishop of Rome.⁷³

With these revisions of the treason laws, the government possessed the legal tools to prosecute its political and religious opponents. We see the expansion of the treason laws from protection of the king's person to the protection of the king's policies. For this expansion, the regime of Henry VIII and Thomas Cromwell has been condemned by many observers.⁷⁴ Nevertheless, as Professor Elton has argued, one cannot draw conclusions until one looks at the implementation of the new treason policies.⁷⁵ A charge of treason still required a lawful conviction under the procedures of common law. Moreover, it was not uncommon for a jury to find a defendant innocent or to be sympathetic to an accused who, on the basis of the evidence presented, apparently had committed the acts charged.⁷⁶ Thus, although the government had the tools of tyranny at hand, it did not, for the most part, choose to utilize them in a tyrannical manner.⁷⁷ Most persons executed under the new treason laws had been apprehended in open warfare against the Crown, activity which had always been treasonable under the law of England.⁷⁸ The changes in the treason laws appear to have been more for symbolic purposes—an indication of the seriousness of the Crown in carrying out policies of reform in religion and society. A more careful analysis of the symbolic struggle is necessary in order to comprehend what was at stake.

III. MAGIC AND PROPHECY: POLITICS ON THE MARGIN AS SEEN BY THE CENTER

The popular effectiveness of opposition politics is evidenced by the response of a government which perceives a threat to its posi-

72. G. ADAMS AND H. STEPHENS, EDs., *SELECT DOCUMENTS IN ENGLISH CONSTITUTIONAL HISTORY* 240-41 (1906).

73. *POLICY AND POLICE*, *supra* note 30, at 291.

74. See, e.g., 4 BLACKSTONE, *supra* note 9, at 86; G. CONSTANT, *THE REFORMATION IN ENGLAND: THE ENGLISH SCHISM AND HENRY VIII, 1509-1547*, at 134, n. 193, 135, n. 194 (Scantlebury trans. 1934).

75. See *POLICY AND POLICE*, *supra* note 30, at 293-326.

76. *Id.* at 306-07, 314-17.

77. *Id.* at 325-26, 383-400. Nevertheless, the quick series of revisions in the law of treason cannot be viewed as a healthy sign.

78. *Id.* at 388-89.

tion. The bold reformation policy initiated by Henry VIII engendered opposition not only from the institutional Church, but also more broadly from English society. The extent and strength of the opposition, by no means unified, caused the government to devote considerable energy to maintaining order. The struggle to maintain order—both religious and social—had to be waged on several fronts because in addition to the conservative opposition to the break with Rome, those who believed that the ecclesiastical revolution signaled a broader revolution in society also posed problems for the government. The religious reformation must be placed in context with the social and economic changes brought about by the decline of feudalism and the emergence of mercantile capitalism.⁷⁹ We should note Professor Tawney's haunting line: "Villeinage ceases but the Poor Laws begin."⁸⁰

With the fabric of the social order in many areas very fragile, the government took note of all forms of opposition, including prophecy and magic, and in many cases used measures and pressures against it.⁸¹ It can be said in defense that the government did not have the benefit of hindsight. It had to deal with all attacks on the authority of the King, even the less rational attacks. Against the background of an already volatile society and with limited means of communication and enforcement, the government could not always know whether the attack by way of prophecy or magic represented a serious threat. Moreover, some opposition to the Crown was effective; the use of prophecy and magic could upset a social order only tenuously achieved. The northern region, already a volatile area because of the large landed families who opposed the Tudors, produced a serious rebellion which became known as the Pilgrimage of Grace. The Pilgrimage of Grace was an outgrowth of social, economic, and political problems in the North and was fueled by several prophecies which helped to mobilize a force of over 30,000 men.⁸² In the South, the Nun of Kent prophesied against the King and incited people to opposition. Her public display attracted support and eventually she was attainted and executed for treason.⁸³ Under these and many other situations, the government felt compelled to mitigate the effectiveness of these attacks.

79. See generally A.J. SLAVIN, *THE PRECARIOUS BALANCE: ENGLISH GOVERNMENT AND SOCIETY, 1450-1640* (1973).

80. R. TAWNEY, *THE AGRARIAN PROBLEM IN THE SIXTEENTH CENTURY* 46 (1912).

81. *POLICY AND POLICE*, *supra* note 30, at 46-82.

82. G.R. ELTON, *ENGLAND UNDER THE TUDORS 145-48* (1955); A.G. DICKENS, *THE ENGLISH REFORMATION 126-28* (1964).

83. See text accompanying notes 57-64, *supra*.

How was it that the less rational attacks on the authority of the Crown had some effectiveness? Why did these practices touch off a response in the society? To the modern observer these practices appear to be irrational and essentially harmless. The explanation that the government had to mitigate the effectiveness of prophecy and magic does not answer why people were inclined in the first place to use and believe in prophecy and magic. It could be argued that these practices were only means to political ends and thus their effectiveness in synthesizing and articulating frustrations warranted their use. This does not entirely answer, however, the question why people were inclined to believe in prophecy and magic. Further analysis of this question should provide a basis for some observations about rationality and political realism in Tudor society, beyond mere political utility.

If the analysis of prophecy and magic leads to a recharacterization of rationality and political realism in Tudor society, it will also force a re-evaluation of the political content of the response from the center of power. Before ascribing simple authoritarian or utilitarian motives to those in power, one should try to discern how Tudor rationality and political realism shaped government policy. The response of government to opposition by prophecy and magic may have been determined by a structure of understanding wholly different from modern thinking. For example, because of the pervasive influence of Christianity on Tudor society, it is clear that there was a much more compact understanding of the relation between symbol and object.⁸⁴ The act of striking a member of the King's household could be seen as striking against the King himself.⁸⁵ Analysis of Tudor rationality and realism may help to explain some government actions which have been largely ignored by historians. If the government was merely trying to maintain order, why did several persons in government circles circulate prophecies in an attempt to justify the break with Rome? Why did the government undertake an iconoclastic campaign in its seizure of Church property? Why did the government require the Pope's name to be stricken out of all writings? Why, in brief, did the government embody in its reaction to this threat some of the attitudes it was condemning, with respect to modes of thought? Analysis of these actions may show whether those in government were manipulative of public sentiment or themselves committed participants whose response was largely determined by a shared structure of understanding.

84. See, e.g., A.G. DICKENS, *THE ENGLISH REFORMATION* 1-21 (1964).

85. Cf. *THE LAW OF TREASON*, *supra* note 16, at 69-71, where Professor Bellamy relates the case of Margery de la Beche who had been raped and kidnapped while staying with the royal household.

In 1537, the government was engaged in restoring order to the North in the aftermath of the Pilgrimage of Grace. Attention focused on certain individuals and institutions which had supported the uprising. One of these institutions, the Furness monastery, appeared to be a center for anti-royal sentiment.⁸⁶ The monks aided the rebels with monetary contributions and commanded their tenants to cooperate with the rebels. The abbot ordered four monks who had been assigned to Furness after the suppression of the Salley monastery to return to Salley and to join the rebellion. Other monks made statements such as "no secular knave should be head of the Church" and "the King was not the right heir to the realm, for his father came in by the sword." Dan John Broughton predicted the Pope would be restored to power in England within three years, for he "was unjustly put down"; moreover, in such time "all would be changed, and the new laws annulled." The monk based this prediction upon a prophecy that "the decorate rose should be slain in the mother's belly." The monks of Furness interpreted this to mean the King (the rose) would be killed to priests (the Mother Church).⁸⁷ However, the monks did not take any overt steps to effectuate the prophecy and the quashing of the rebellion in the North soon assured the demise of the Furness monastery. After the investigation by the royal commission, the monastery surrendered its holdings to the Crown.⁸⁸

Although compassing the death of the King was clearly a treasonous offense, other priests also prophesied the King's death. William Byrd, vicar of Bradford, sympathized with the subdued rebels in the North because the King had suppressed the monasteries. He was so bold as to say: "[I]f the King go thither himself he will never come home again, ne none of them all which do go with him: and in truth it were pity he should every come home again."⁸⁹ Byrd considered the King a heretic and procured a chaplain and others to conjure and show how long the King should live. He was

86. 12 LETTERS AND PAPERS, FOREIGN AND DOMESTIC, OF THE REIGN OF HENRY VIII, i, 481 (J. Brewer, J. Gairdner, R. Brodie, eds., 1892-1932) (hereinafter cited as LETTERS AND PAPERS). The references to the materials on prophecy and magic were obtained principally from a compilation by Dr. A.J. Slavin. Most of the examples used are found in LETTERS AND PAPERS, *supra*, and many are recounted in POLICY AND POLICE, *supra* note 30, and K. THOMAS, RELIGION AND THE DECLINE OF MAGIC (1971) (hereinafter cited as RELIGION AND THE DECLINE OF MAGIC).

87. *Id.* M.H. Dodds has noted the similarity between this prophecy and the twelfth century prophecy connected with Thomas Becket: "The son shall slay the father in the womb of the mother." Becket, a father of the Church, was killed by Henry II, a son of the Church, before the altar. The monks of Furness inverted the prophecy to show that the King, as son of the Church, would be slain by a father of the Church. See Dodds, *Political Prophecies in the Reign of Henry VIII*, 11 MOD. LANG. REV. 276, 277-78 (1916).

88. G.R. ELTON, ENGLAND UNDER THE TUDORS 148 (1955).

89. 15 LETTERS AND PAPERS, *supra* note 86, at 498 (59).

later attainted of treason.⁹⁰ In London, William Barton, a priest, and Richard Smith reportedly said "the King was a cuckold and so should worthily die." Barton called the King a traitor to God in presuming to take upon the Pope's authority. Smith also had a book of prophecies, which he showed to Barton, wherein it foretold "the King's most honorable person should be torn in pieces with his own mule." In addition, Smith apparently made a chain composed of precious metals for the purpose of causing the King's death by a fall. Barton and Smith fared better than William Byrd as the matter appears to have gone no further than the filing of the information.⁹¹

A corollary to the predictions of the King's death and the overturning of the new laws was the belief that the priests would remain as the core of the true Church until the downfall of the King. An accusation against the abbot of Coggeshall charged him reading prophecies to others concerning "all the troubles the clergy should sustain, and how in the end there should be a new pope chosen by God."⁹² The abbot of Garadon said in 1533 that by 1535 "the Church, by my book, shall have a great fall, and by '39 it shall rise again and be as high as it ever was."⁹³

The desire to see the King put down and the church of Rome regain its power forms the political content of the opposition by prophecy to government policy. This core of political sentiment underlies even the more obscure and ambiguous prophecies. For example, after the uprising in the North had been quashed, a priest named James Fredewell predicted more rebellion for "there is another bird a breeding that came not forth yet which will come forth before Midsummer, that the King had never such since he was the King of England."⁹⁴ The identity of the "bird a breeding" was hinted in the prophecy spoken by the abbot of Garadon that "the Eagle shall rise with such a number that the King shall go forth of the realm; and the King shall come in again when he is at most highest and be slain at a ford."⁹⁵ The Eagle was generally regarded to repre-

90. *Id.*; POLICY AND POLICE, *supra* note 30, at 340-41.

91. 15 LETTERS AND PAPERS, *supra* note 86, at 1029 (21).

92. 10 LETTERS AND PAPERS, *supra* note 86, at 164. Besides his interest in prophecies, the abbot practiced divinations with "a book and a key and other crafts" to find things which had been lost.

93. 6 LETTERS AND PAPERS, *supra* note 86, at 685.

94. 12 *id.* at i, 990.

95. 6 *id.* at 685. Not all of the abbot's animosity was directed at the King as evidenced by another prophecy: "When the Tower is white and another place green, then shall be burned two or three bishops and a queen; and after all this be passed we shall have a merry world." POLICY AND POLICE, *supra* note 30, at 72. A letter to Thomas Cromwell attributed some political influence to the abbot's sayings: "The publication of these things has encouraged divers persons to rebellion." 12 LETTERS AND PAPERS, *supra* note 86, at ii, 800.

sent the Emperor Charles, who could marshal considerable forces against the Crown.

The use of images by opponents of the Crown had a couple of interesting effects. First, it tended to deflect or defuse the impact of the treason laws because the message was inherently ambiguous. We might say today that utilization of images allowed them to speak in code. Second, images tied in with an ingrained religious tradition and with a general folk tradition of myths and tales.⁹⁶ Imagery can reach deeply into the subconscious and move a person to decision and action. By feeding the imagination, imagery can stir the soul to greater religious insight, illumine the inner struggle and development of character, and stimulate fantasies about changes in the political and social order.⁹⁷

One of the most influential political prophecies was the story of the Moldwarp (mole). Popularly attributed to Merlin, the story derives from the medieval poem entitled *The Prophecy of the Six Kings to follow King John* and is summarized as follows:

Afterwards a Mole . . . shall be ruler of the land. This Mole shall have a hide as rough as a goat's skin, and shall be accursed of God for his misdeeds. He shall be greatly praised until he is overcome with pride. Then shall a Dragon raise war against the Mole. A Wolf, seeing the Dragon hard pressed, shall come to the Dragon's aid. Then both shall be joined by a Lion from Ireland. This combination is then to defeat the Mole and drive him from the land leaving him only an island in the sea where he shall pass his life in great sorrow and strife, and finally lose his life by drowning. England shall be divided into three parts between the Dragon and the Lion—and, . . . the Wolf. Then shall England be known everywhere as the Land of Conquest, and the heirs of England lose the heritage.⁹⁸

Although this prophecy was supposed to apply to the sixth king after John, who was Henry IV,⁹⁹ its popularity was quite evident among

96. A.G. DICKENS, *THE ENGLISH REFORMATION* 1-21 (1964).

97. See B. BETTELHEIM, *THE USES OF ENCHANTMENT: THE MEANING AND IMPORTANCE OF FAIRY TALES* (1976).

98. R. TAYLOR, *THE POLITICAL PROPHECY IN ENGLAND* 50 (1911).

99. Shakespeare mentions the prophecy in *Henry IV, Part One*, where Edmund Mortimer and Henry Percy (Hotspur) have the following exchange:

Mort. Fie, cousin Percy! how you cross my father!

Hot. I cannot choose. Sometimes he angers me

With telling me of the moldwarp and the ant,

Of the dreamer Merlin and his prophecies,

And of a dragon and a finless fish,

A clip-wing'd griffin and a moulten raven,

A crouching lion and a ramping cat,

And such a deal of skumble-skamble stuff

As puts me from my faith.

W. SHAKESPEARE, *COMPLETE PLAYS AND POEMS, Henry IV, Part I*, Act III, Scene 1, 147-55 (New Camb. ed. 1942).

opponents of the policies of Henry VIII. John Hale, vicar of Istyl-worthe, called the King "the 'Molywarppe' that Merlin prophesied of, that turned all up, and that the King was accursed of God's own mouth."¹⁰⁰ For this prophecy, John Hale was hanged in 1535.¹⁰¹ The abbot of Garadon said "the King doth give the mole. . . . [w]hoever gave the mole is cursed of God's own mouth for he rooteth up the churches as the mole rooteth up the molehills."¹⁰² Another priest, William Thwaytes, repeated the conclusion of the Moldwarp prophecy by stating "the King would be destroyed by the most vile people in the world, 'and that he should be glad to take a boat for safeguard of his life and flee into the sea and so forsake his own realm.'"¹⁰³

The Moldwarp prophecy was part of a body of English prophetic literature which used animal symbols as the chief characters in the story. Known as Galfridian prophecy, the story could convey meaning because the aristocratic families were identified by the animal figures in their respective heraldic badges.¹⁰⁴ John Dobson, vicar of Muston, had a collection of such prophecies dealing with the change of political power in the North together with prophecies concerning the future of the whole realm.¹⁰⁵ However extensive Dobson's knowledge of prophecies, he probably lacked an understanding of political realities for he was apprehended for uttering prophecies against the King immediately after the rebellion in the North had been quashed.¹⁰⁶ The tone of his prophecies is shown in the accusation drawn against him:

"(1) For a year and a quarter he has not prayed for the King or set forth the Supremacy till Sunday, 25 Nov. last, after being remonstrated with by John Poskat . . . (2) He has said, both in the church porch and the alehouse of Mustone, that the King would be driven out of his realm, and would return, and be content with the third part of it. (3) Also that 'he that beareth the E[agle], which is the Emperor, shall . . . his wings over all this realm . . . and shall rule it all of his pleasure, and

100. 8 LETTERS AND PAPERS, *supra* note 86, at 556.

101. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 400.

102. 6 LETTERS AND PAPERS, *supra* note 86, at 605.

103. 9 *id.* at 791.

104. For a discussion of the origins and development of Galfridian prophecy, see R. TAYLOR, *THE POLITICAL PROPHECY IN ENGLAND* (1911). Keith Thomas has explained the popularity of Galfridian prophecy used in the political context by observing that it is "well-designed to appeal to a feudal society where heraldic emblems were identified with families and individuals in almost totemic fashion. . . . [The] Galfridian prophecies were immensely adaptable, and, so long as the monarchy and peerage used such emblems, they could be plausibly applied to fit contemporary events." RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 390.

105. 12 LETTERS AND PAPERS *supra* note 86, at ii, 1212.

106. POLICY AND POLICE. *supra* note 30, at 61.

after that shall never be king in England, but all shall be holden of the Emperor.' (4) Also, 'that the dun cow, which is the Bishop of Rome, is . . . casten in her stall, and she shall come into England jingling with her keys, and set the Church again in the right faith.' (5) Also, that 'When the Crumme is brought low, then shall be begin the Christus Cross row,' meaning by 'Crumme' by lord Privy Seal. (6) That 'the moon shall kindle again, and take the light of the sun, meaning by the moon the blood of the Perceis.' (7) That 'the cock of the North, which he saith is the lord Lomeley, shall be billed in the neck and the head, and after that he shall busk him and brush his feathers and call his chickens together, and after that he shall do great adventures.' (8) That 'the scallop shells shall be broken and go to wreck.' (9) The vicar had a book of the premises and other things.¹⁰⁷

The accusation was presented by three members of Dobson's parish and its accuracy appears to have been substantiated by Dobson's own petition to the Council of the North. He admitted collecting prophecies and was even so indiscreet as to cite further prophecies to the Council. From the account in the government records, it is clear that Dobson did not recognize the new authority of the King as head of the Church. He predicted the Pope would restore the English church in the "right faith." This prediction is at the core of these prophecies, and the other elements of the scenario fit around it. The King would be forced to flee the realm and recover only a third of it upon his return. Cromwell and Lord Dacre (represented by the scallop shells) would fall from power; the Percys and Lord Lumley would exercise greater political influence.

The government records do not indicate whether Dobson had any influence with these prophecies. Evidently his activities posed problems for the restoration of order after the Pilgrimage of Grace for he was executed by the government in 1538 for treason.¹⁰⁸ Professor Elton attributes this to Dobson's political naivete in making these remarks when the Council of the North was rounding up the agitators involved in the Pilgrimage of Grace. He also says that Dobson's prophecies were "a very real danger to a peace barely restored."¹⁰⁹ The question should be asked why Dobson's activities did present a real danger. From the face of the accusation, the activities appear harmless enough. There was no allegation of any overt activity or any actual harm caused. However, after the revision of the treason laws, the mere utterance of the prophecies was a

107. 12 LETTERS AND PAPERS, *supra* note 86, at ii, 1212.

108. POLICY AND POLICE, *supra* note 30, at 61.

109. *Id.* at 61-62.

sufficient ground for the treason conviction. The prophecies constituted treason by words because they denied that the King was not the rightful head of the Church.¹¹⁰ The treason label however only states a conclusion and does not explain why there was a real danger to the peace barely restored. At this point the problem cannot be fully resolved, although it should be remembered that the Imperial Ambassador Chapuys observed the English to be "peculiarly credulous and easily moved to insurrection by prophecies."¹¹¹

If John Dobson was the victim of a nervous Council in the North, William Inold, a curate at the parish in Rye, was the beneficiary of an indulgent government in the South. Inold preached openly against the King's new policies and observed many of the old forbidden practices. He refused to read the Bible in English; he observed many of the abrogated holy days and with his fellow priests retained the worship of images and relics. His actions provoked many disturbances in Rye and his activities were brought to Cromwell's attention on more than one occasion. In addition to Inold's outspoken opposition to government policy, he engaged in magical practices. The Rye parishioners accused Inold of being a witch because he attempted to cure a child's whooping cough through the use of magic. Inold's activities greatly incensed the parishioners and he was forced to spend some time in jail. However, unlike Dobson, he was soon released and even was allowed to obtain a modest income from clerical positions.¹¹²

While it cannot be ascertained from the government records whether Inold's interest in magic ever extended to the political arena, it is clear that other priests used magic in connection with political agitation. Necromancy, which is the practice of communication with the dead, proved to be a favored method among priests. An out-spoken opponent of the Reformation, friar Dr. Maydwell of London, said he "knew by his science of necromancy that the New Learning should be suppressed, and the Old restored by the King's enemies from beyond the sea."¹¹³ Cromwell had on several occasions ordered the investigation and, sometimes, the detention of certain priests who were believed to be involved in necromantic activities.¹¹⁴

110. See text accompanying notes 71-73, *supra*.

111. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 398.

112. 13 LETTERS AND PAPERS, *supra* note 86, at i, 1150; POLICY AND POLICE, *supra* note 30, at 20-21, 85-90.

113. 9 LETTERS AND PAPERS, *supra* note 86, at 846; POLICY AND POLICE, *supra* note 30, at 24, 57.

114. Sir Henry Capell reported that Richard Holande, a priest, was engaged in necromantic activities. 13 LETTERS AND PAPERS, *supra* note 86, at ii, 815. Gervase Tyndall was employed by Cromwell during an investigation of certain friars suspected

In at least one instance a priest used both prophecy and magic in connection with political events. This priest, known as Dr. Clene, used a stone or crystal to foretell the future. His story was related to the King by three men who had visited him in Holland. Dr. Clene had inquired about affairs in England and, in particular, wished to know if Lord Spenser and Constables of the North were still alive. The visitors could not remember but "they thought some of them had lost their lives for offending the Crown." When they met again, Dr. Clene informed them not all the Constables were dead for "one of them would destroy the King within 11 days before Christmas if the King did not see to it." He also said "he had for four years dwelt with my lord Cardinal, and had made him a ring with a stone that he wrought many things with, and told him how long he should prosper." Dr. Clene made many other predictions concerning the French king and the Emperor, including a prediction of war between England and France.¹¹⁵

In reviewing these materials on the use of prophecy and magic by the clergy, an initial reaction may be that the economic losses brought on by the dissolution of the monasteries provoked these extreme practices. Certainly, many clergy had vested interests in the affairs of the world and some opposition can be traced to the desire to protect these interests.¹¹⁶ However, opposition to the Crown by means of prophecy and magic was not limited to the institutional Church. Many laymen also engaged in such practices and often without any ostensible economic grievance. These materials are more difficult to evaluate because unlike those bearing on the clergy, they seem to be unrelated to the problems of a single institution. Indeed such incidents appear as individual outbursts, with no underlying connection between them. They have a *sui generis* character.

In late 1537 Mabel Brigge, a servant in the house of John Lockar, fasted for three days. When asked by Lockar why she did this, she replied that Isabel Bucke had hired her. Mabel had fasted once before in the hope that a certain man would die and when in fact the man broke his neck Mabel was believed by some to have magical powers. Mrs. Bucke had hired Mabel in the hope that the King and the duke of Norfolk would likewise die. John Lockar put Mabel out of his house and went to talk to Mrs. Bucke. She confessed to the hiring of Mabel for the purpose of causing the death of the King and the duke. Her husband, William Bucke, begged Lockar not to let

of necromantic activities. 9 *id.* at 740. The parson of Ockley, Henry Cowpar, organized a group of men to find buried treasure by means of necromancy. Cowpar was arrested and sent to Cromwell for making anti-royal prophecies. 13 *id.* at i, 1383.

115. 13 *id.* at i, 487.

116. G.R. ELTON, ENGLAND UNDER THE TUDORS 140-50 (1955).

this matter be known. Upon leaving the Lockar household, Mabel went to a friend's house and began a Black Fast. This Fast on bread and water occurred one day a week for five weeks. During the first week Mabel fasted on Tuesday, the fourth on Friday, and in the last week on Saturday. On completing the Fast she said that all Holder-ness was bound to pray for her and Isabel Bucke.¹¹⁷

The Fast, however, produced only one tangible result: the parties were soon brought before a commission sitting to investigate the matter. Everyone denied that the fasting was directed at the King. Mabel claimed that Isabel Bucke had asked her to fast St. Trynzan's Fast for her. Isabel explained that she had lost some money, and if Mabel would fast in order to find the money, she would pay Mabel for her services. Isabel testified that she was faint and not able to fast herself and had permission from the chantry priest to have Mabel fast in her place. This second story is almost as interesting as the first. However, the commission was not as co-operative as were the witnesses, and thus Mabel Brigge was convicted and executed for treason. Isabel Bucke was also convicted but reprieved. William Bucke, who had tried to bribe the main informant, and Isabel Bucke's confessor were convicted of misprision of treason.¹¹⁸

Looking at the entire affair it is hard to discern how Mabel Brigge posed a danger to the King or the government. While she did contemplate the death of the King, a treasonable offense, it appears to be more a foolish incident. The reason for the severe outcome was due in part to the activities of a genuine rebel: Sir Francis Bigod. Bigod himself had an interest in political prophecy as recounted by the following incident. Bigod once dined at the house of William Todde, the prior of Malton. Todde revealed a prophecy he had seen on a parchment roll in Geoffrey Lancaster's hands. The parchment showed "a moon painted growing, with a number of years growing as the moon did, and where the moon was at the full a cardinal was painted, and beneath him the moon waned and two monks painted a rowe, one under another headless, to a certain number; and in the midst of that roll was a strike made as an overthwarde partition, and under that line in the nether part of the roll a child painted, with axes and butcher's knives and instruments about him."¹¹⁹

Todde had previously told Bigod about a prophecy where a King "should be fain to fly out of his realm and ere he came in again would be glad to part with two parts of his land, so that he might sit in peace with the third."¹²⁰ Todde said he had come to realize that it

117. 13 LETTERS AND PAPERS, *supra* note 86, at i, 487.

118. POLICY AND POLICE, *supra* note 30, at 57-58.

119. 12 LETTERS AND PAPERS, *supra* note 86, at i, 1023.

120. 12 *id.* at i, 1087.

was the year 1537 the prophecy spoke of.¹²¹ Another prophecy from Todde stated that "the Church should abide woe for three years, and then flourish as well as ever." Bigod was convinced by all this that Todde was more than sympathetic to the rebel cause, and so a week later, he sent a messenger to Todde requesting him to send his servants to aid in the cause. However, Todde's prophetic interests suddenly waned and no aid was sent. Todde proved to be a better politician than a loyal follower because he appears to have avoided the summary executions of the commissions in the aftermath of the Pilgrimage of Grace and Bigod's Rebellion. This was not the case with Francis Bigod and other northern leaders who did participate, such as Lord Darcy, Sir Thomas Percy, Sir Robert Constable, Sir John Bulmer, Sir Stephen Hamerton, and Nicholas Tempest, all of whom were executed for treason in 1537.¹²²

There are many other instances of prophecy and magic used by laymen to oppose Crown policy. Robert Payne revealed a prophecy learned from his master, who had been dead for fifty years, that the parish priests would rule the realm three days and three nights, "and then the white falcon should come out of the north-west and kill almost all the priests, and they that should escape should be fain to hide their crowns."¹²³ Richard Laund, pinner of Norwich, possessed a book of "congerations" and a paper of prophecies.¹²⁴ Richard Bishop was accused of spreading the "moldwarp" prophecy when he referred to the King as a mole who should be put down. He had a prophecy which said that "there shall be a rising of the people this year or never." Further, "three Kings shall meet at Moshold Heath and the proudest Prince in Christendom should be there subdued; and that the White Lion should stay all that business at length and should obtain."¹²⁵ Under interrogation, Robert Dalvell repeated a Scottish prophecy that the King of Scotland would rule England within three years.¹²⁶ In a letter to Cromwell, Robert Cowley made reference to a prophecy that "a pelican should come out of Ireland and should do many strange marvellous things in England."¹²⁷ Fi-

121. John Dobson had also attributed a prophecy to Merlin saying that 1537 was the year all the predicted events would take place. 12 *id.* at ii, 1212.

122. See A.J. SLAVIN, ED., *THOMAS CROMWELL ON CHURCH AND COMMONWEALTH: SELECTED LETTERS*, 1523-1540, at 64-65 (1969).

123. 8 *LETTERS AND PAPERS*, *supra* note 86, at 736. The white falcon was the badge of Anne Boleyn. *RELIGION AND THE DECLINE OF MAGIC*, *supra* note 86, at 399.

124. 12 *LETTERS AND PAPERS*, *supra* note 86, at ii, 602.

125. 12 *id.* at i, 1212. Professor Elton says that Bishop's fate is unknown. *POLICY AND POLICE*, *supra* note 30, at 142-43. Professor Thomas believes Bishop was executed in 1537. *RELIGION AND THE DECLINE OF MAGIC*, *supra* note 86, at 400.

126. *POLICY AND POLICE*, *supra* note 30, at 57-58.

127. 13 *LETTERS AND PAPERS*, *supra* note 86, at i, 470.

nally there is a letter by Henry VIII in which he himself alludes to a witch at York.¹²⁸

In light of these numerous instances of prophecy and magic used by both clergy and laity, it is understandable that an uneasy government concerned to preserve order would take steps to inhibit the undermining effect of these practices. Certainly, the most significant response by government was the concern and attention given to detecting and restraining these practices. The cases are all found in the government records and, by implication, show an attentive government. This instrumental understanding, however, is undermined somewhat by the government's own prophetic and magical activities. The King's supporters used prophecies to justify the break with Rome. Thomas Gibson gathered prophecies which could be interpreted favorably to the Crown. He wrote to Cromwell that prophecies told of a king who would "win the Holy Cross and also divers realms." He concluded that Henry VIII was the destined King and he should "overthrow the Devil's minister, the bishop of Rome."¹²⁹

The prophetic activity by Crown supporters was designed to counter certain well known prophecies used by opponents of the Crown. John Ryan drew from the prophecies of Merlin to refute the story that Henry VIII would be the last King of England.¹³⁰ Richard Morison "created" a prophecy to counter certain Welsh prophecies.¹³¹ The Moldwarp prophecy engaged the energies of Wilfrid Holmes, who attempted to show that Henry was not the Moldwarp but rather "he was more accurately identified with Merlin's Lions and Eagles."¹³² Finally, the preamble to the 1533 Act in Restraint of Appeals cites "divers sundry old authentic histories and chronicles" to support the proposition that "this realm of England is an empire . . . governed by one Supreme Head and King."¹³³ It is

128. 12 *id.* at i, 479.

129. 13 *id.* at ii, 1242; RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 402.

130. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 402-03.

131. *Id.* at 402. Richard Morison was one of the leading pamphleteers for the government's position who wrote a spirited defense—in Latin—of Henry's divorce. POLICY AND POLICE, *supra* note 30, at 186, 190-93.

132. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 403.

133. G. ADAMS AND H. STEPHENS, EDS., SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY (1906). This is a reference to the Arthurian legend created by Geoffrey of Monmouth. The legend has been summarized by Professor Scarisbrick:

According to these, ancient Britain had been conquered by Brutus, grandson of Aeneas of Troy and founder of a dynasty of British kings (culminating in King Arthur) who, under the symbol of the red dragon, had conquered all of Britain, Scandinavia and Gaul and defeated a Roman army in battle. Arthur's line had come to an end in Cadwalader, but not before Merlin had prophesied the even-

highly significant that the government chose to point to old stories as a support for its claim of empire. The link with the past helps to smooth over the revolutionary break caused by the Act. The Act is thus characterized as the fulfillment of the past, rather than a repudiation of it. However, it indicates the government's lack of confidence in its own authority; the old "histories and chronicles" supply additional authority because they forecast the wave of the future.

The problem of legitimacy was a very real one for Henry VIII as well as for his father before him.¹³⁴ During the Wars of the Roses, each of the warring factions attempted to legitimize its claim to the throne through genealogies proving its descent from the royal line of King Arthur.¹³⁵ The Arthurian legend, the myth of the eventual return of Arthur of his line to rule Britain, was still remembered by many persons.¹³⁶ This kind of myth could be very powerful for it kindled the desire for a great ruler who would bring peace and prosperity to the land once again. A new ruler who could make this identification would acquire much goodwill. After defeating the Yorkist faction at Bosworth in 1485, Henry Tudor took a significant step to solidify his claim to the throne. He named his first son, born in 1486 at Winchester, home of the Round Table, Arthur.

By resorting to prophecy and legends as a means of validating government policy, the government may have ensured the long range effectiveness of political prophecy. When a government executes a policy, the means of execution as well as the substance of the policy are implicitly legitimized by virtue of the government's authority. Restated in a modern context, a government's effort to secure substantive law and order will be undermined if the government itself fails to observe procedural law and order.

The Crown also used a subtle form of magic in its attempt to effectuate the religious reformation in England. Thomas Cromwell supervised the directives to the churches concerning the proclama-

tual triumph of the British over the Saxons, of the red dragon over the white. Moreover, by virtue of the fact that he had a British mother, the Emperor Constantine had united British kingship with Roman emperorship, and imparted a special status to Arthur and his line. Thus early Britain had sired a heroic dynasty upon which the first Christian emperor had bestowed a peculiar halo and from which would one day spring a conqueror who would reclaim the British heritage.

J. SCARISBRICK, HENRY VIII 271 (1968).

134. See text accompanying notes 47-56, *supra*.

135. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 416.

136. *Id.*; J. MERRIMAN, THE FLOWER OF KINGS: A STUDY OF THE ARTHURIAN LEGEND IN ENGLAND BETWEEN 1485 AND 1835, at 35 (1973). But see Anglo, *The British History in Early Tudor Propaganda*, 44 BULL. OF THE JOHN RYLANDS LIBRARY 17-48 (1961). For a collection of the Arthurian Legends, see R. BARBER, THE ARTHURIAN LEGENDS (1979).

tion of the King's title and the denunciation of the bishop of Rome. One order required the physical erasure of the Pope's name from all service books.¹³⁷ Merely covering the name was not enough. This is different from modern propaganda where the purpose is to manipulate appearances. An element of magic was present in that the striking of the name was seen as a strike against the person.¹³⁸ Some priests understood this point and refused on this ground to comply with the order.¹³⁹ A less subtle form of magic can be seen in the iconoclastic campaign against the monasteries.¹⁴⁰ Most dramatic was the decapitation of statues at the Cathedral of Ely during the reign of Edward VI.¹⁴¹ According to the magical tradition, this signified a strike at the soul of the person.¹⁴²

The materials on prophecy and magic suggest that there was substantial instability at the margin of politics. Moreover, to the extent these practices were also reflected by similar actions from the government, they show a measure of instability at the center of politics. At stake was the struggle for religious and political supremacy in England and this struggle took place on many levels. The struggle at the level of symbol, where magic and prophecy played active parts, may appear different in style from the reasoned argument of a university Humanist or the enlightened economic interest of the merchant, but it may have been closer in substance than

137. G. R. ELTON, *REFORM AND REFORMATION—ENGLAND, 1509-1558*, at 196 (1977); G. CONSTANT, *THE REFORMATION IN ENGLAND: THE ENGLISH SCHISM AND HENRY VIII, 1509-1547*, at 137 (Scantlebury trans. 1934).

138. It is akin to the voodoo practice of inflicting harm on an image in order to cause physical harm to the person. See *RELIGION AND THE DECLINE OF MAGIC*, *supra* note 86, at 511. During the Reformation period there were at least two instances of magical practices with images. In 1538, a wax doll was found in a London churchyard. The figure had been fashioned into the form of a young child and had two pins sticking through it. Because it was believed that the wax doll represented the young Prince Edward, a royal commission consisting of Thomas Wriothesley, secretary to the Lord Chancellor and later Lord Chancellor, Dr. Thomas Starkey, a well-known, Oxford-trained humanist, and Paul Withipol, a London alderman, investigated the incident. See 13 *LETTERS AND PAPERS*, *supra* note 86, at i, 41. A kitchen porter at Corpus Christi College told a story of another wax image, believed to be the Prince, with a knife sticking in it. 13 *id.* at ii, 1200.

139. *POLICY AND POLICE*, *supra* note 30, at 237.

140. J. PHILLIPS, *THE REFORMATION OF IMAGES: DESTRUCTION OF ART IN ENGLAND, 1535-1660*, at 53-70 (1973); D. KNOWLES, *BARE RUINED CHOIRS: THE DISSOLUTION OF THE ENGLISH MONASTERIES* 266-72 (1976).

141. J. PHILLIPS, *THE REFORMATION OF IMAGES: DESTRUCTION OF ART IN ENGLAND, 1535-1660*, at 95-96, Fig. 19 (1973).

142. The practice of scalping, a form of decapitation, signifies a capturing of the soul or life-force of the victim. Friederici, *Scalping in America*, ANN. REP. OF THE SMITHSONIAN INST. 437 (1906); Karsten, *Blood Revenge and War Among the Jibaro Indians of Eastern Ecuador* in P. BOHANNAN, ED., *LAW AND WARFARE: STUDIES IN THE ANTHROPOLOGY OF CONFLICT* 304 (1967).

appears from an initial examination. If so, then our assessment of the treason laws and their enforcement in the reign of Henry VIII may be affected.

IV. MAGIC AND PROPHECY: THE SYMBOLIC STRUGGLE FOR SUPREMACY

The essential content of the opposition by prophecy and magic shows a rejection of Henry VIII's claim to assume spiritual as well as temporal control of English society. Henry is portrayed as a heretic, an adulterer, an agent of the devil, and a false king, whose reign will end shortly to be replaced by virtuous rulers. In its essential form, the portrayal resembles a kind of tale or myth about the temporary ascendancy of evil and its eventual fall and replacement by good.¹⁴³ For villagers and townsfolk in Tudor England, this kind of tale could take root under the right circumstances.

It is certainly understandable that this kind of tale could find fertile ground within the Church. The Church as an institution had experienced a cyclical history of growth, decline, and renewal almost from its inception.¹⁴⁴ This, coupled with a sense of righteousness, could give the clergy an ample basis for viewing Henry's declaration as yet another temporary crisis to be endured by the saints. However, the use of magic and prophecy by the clergy casts this account in another light. If, indeed, the Church represented the remnant of the true faith, why were so many clergy thoroughly entrenched in rather worldly enterprises? Priests used magic in search for buried treasure, in attempts to cure sickness (or to cause sickness and death), and in attempts to foretell the future. They engaged in prophetic activities against the Crown, particularly after the government began to confiscate Church holdings. The economic threat seems to have accelerated the prophetic activities. Although there was a significant amount of principled opposition to the English Reformation, it is clear that opposition from the monasteries increased as the government began to confiscate Church property.¹⁴⁵ Of course, the fact that the Church had become a worldly institution should come as no great surprise. At the time of the Reformation, this was a familiar charge¹⁴⁶ and it did not require the talents of a

143. See N. COHN, *THE PURSUIT OF THE MILLENNIUM* 53-74, 99-124 (2d ed. 1961); B. BETTELHEIM, *THE USES OF ENCHANTMENT: THE MEANING AND IMPORTANCE OF FAIRY TALES* 66-73 (1976).

144. See C. DAWSON, *RELIGION AND THE RISE OF WESTERN CULTURE* (1950).

145. See 3 D. KNOWLES, *THE RELIGIOUS ORDERS IN ENGLAND* 320-35 (1961); G.R. ELTON, *ENGLAND UNDER THE TUDORS* 140-50 (1955).

146. See A.J. SLAVIN, ED., *HUMANISM, REFORM & REFORMATION IN ENGLAND* 15-21 (Dean Colet, *From a Sermon before Convocation*); 72-78 (Simon Fish: *Supplication for the Beggars*); 93-99 (The Common's Supplication against the Ordinaries); A.G. DICKENS, *THE ENGLISH REFORMATION* 90-102 (1964).

Luther or an Erasmus to make the point. That the Church had become a worldly institution was probably inevitable. However, if in a time of crisis, the health of an institution is measured by its ability to return to fundamental principles, then the resort by many clergy to magic and prophecy is not an encouraging sign.

There is, of course, a tradition of prophecy and certain types of magic in Jewish and Christian thought, but the activities described above are essentially different. The prophets of Israel warned against the corruption of the Chosen People; they called upon the children of Abraham to remember the covenant with Yahweh.¹⁴⁷ The prophet does not preach for his own purposes, he is a messenger. Likewise, the use of magic, more properly termed miracles, served as a witness to the power of Yahweh. The triumph of Joshua at the walls of Jericho,¹⁴⁸ the slaying of Goliath by the young David,¹⁴⁹ the saving of the three men in the fiery furnace,¹⁵⁰ the survival of Daniel in the lions' den¹⁵¹ are among the many stories designed to show the power for those who trust in Yahweh. By contrast, the resort to magic for personal purposes shows the impotence of those who no longer trust in Yahweh. There is the remarkable story of King Saul who visits the witch of Endor because she is said to be able to communicate with the dead.¹⁵² Saul does this because he says he can no longer communicate with Yahweh. According to the story, Saul talks to Samuel who tells Saul that he and his son, Jonathan, will die the next day in battle. His demise the next day brings to an end the tale of spiritual disorder in the person of Saul.

There is also a magical element in some of the prophetic writings, when the laws of mundane existence will be transformed by divine intervention.¹⁵³ The wish to see the lion lie down with the lamb¹⁵⁴ is magical because it desires to change the structure of reality into something which it is not. This strain of prophetic tradition exists alongside the theme of obedience of the Chosen People to the covenant with Yahweh and is the source of some tension within the Jewish religion.¹⁵⁵

147. See A. HESCHEL, *THE PROPHETS* 50-51, 122 (1962); I E. VOEGELIN, *ORDER AND HISTORY: ISRAEL AND REVELATION* 438-40 (1956).

148. Joshua 6:1-21.

149. 1 Samuel 17:1-51.

150. Daniel 3:1-30.

151. Daniel 6:1-28.

152. 1 Samuel 28:3-25.

153. See, e.g., Hosea 2:18-23; I E. VOEGELIN, *ORDER AND HISTORY: ISRAEL AND REVELATION* 449-58 (1956).

154. Hosea 2:18 and Isaiah 11:6.

155. See, e.g., A. HESCHEL, *THE PROPHETS* 195-220 (1962); M. BUBER, *THE PROPHETIC FAITH* 135 (Witton-Davies trans. 1949).

A similar tension exists in the Christian religion between the call to faith in Christ and the expectation of a transformation of the world by Christ's second coming. From its very beginning, the Christian church has had to fight against millennial and chiliastic beliefs which despised the existing order and hoped for a quick deliverance from the world.¹⁵⁶ The successful fight against these Gnostic heresies was one of the most significant achievements of the early Church Fathers.¹⁵⁷ They also had to determine the canonical books of Scripture and those which relied on magic, instead of miracles, did not make it in the canon.¹⁵⁸ The use of magic is not directed at revealing the works of God. It has the purpose of changing the laws of mundane existence through divine intervention.¹⁵⁹ As such, it is a form of Gnosticism which held that the changes could be accomplished through correct knowledge, *gnosis*, of the words which would compel divine intervention.¹⁶⁰

The use of prophecy and magic within the Church is evidence of a re-emergence of the long suppressed Gnostic heresies.¹⁶¹ The failure of many clergy to understand this is a reflection on the decreasing ability of the Church to articulate its orthodox position. Moreover, even if the clergy did not recognize the theological implications of prophecy and magic, they should have at least recognized the basic conflict between its advocacy of worldly moderation and

156. See E. VOEGELIN, *THE NEW SCIENCE OF POLITICS* 107-09 (1952).

157. *Id.* at 109-10; 1 H. LIETZMANN, *A HISTORY OF THE EARLY CHURCH: THE BEGINNINGS OF THE CHRISTIAN CHURCH* 264-95 (Woolf trans. 1953).

158. The Gospel of Thomas, for example, portrays Jesus as a magician with its instances of making pigeons out of clay and teaching many secret sayings. R. GRANT, *GNOSTICISM AND EARLY CHRISTIANITY* 182-90 (1959); H. JONAS, *THE GNOSTIC RELIGION* 112-29 (1958). The difference between this and the miracles of the canonical Gospels lies in the witness of the miracles to God's love for humanity. The healing of the blind man at Siloam is done so that the works of God might be made manifest. John 9:1-7.

159. H. BERGSON, *THE TWO SOURCES OF MORALITY AND RELIGION* 169-73 (Audra and Brereton trans. 1935); Voegelin, *Wisdom and the Magic of the Extreme* 17 *SOUTHERN REV.* (n.s.) 235 (1981).

160. E. VOEGELIN, *THE NEW SCIENCE OF POLITICS* 107-10 (1952); E. VOEGELIN, *SCIENCE, POLITICS AND GNOSTICISM* 37-39 (1968). St. Augustine's distinction between the two worlds—the city of God and the city of man—is denied by the use of prophecy and magic. Political prophecy is a denial of the proposition that mundane history has no meaning; it is premised on the idea that events in time have meaning and that such meaning is knowable in advance. See K. LÖWITH, *MEANING IN HISTORY* 160-73 (1949). Magic is a denial of the position that the sacred and mundane worlds are necessarily separate; it is premised on the possibility of compelling divine or semi-divine intervention in the mundane world. Voegelin, *Wisdom and the Magic of the Extreme: A Meditation*, 17 *SOUTHERN REV.* (n.s.) 235 (1981).

161. On the mysticism and magic of the English medieval church, see A.G. DICKENS, *THE ENGLISH REFORMATION* 1-21 (1964); *RELIGION AND THE DECLINE OF MAGIC*, *supra* note 86, at 25-50.

the extreme attempts of the clergy to protect their worldly goods. In this respect, the extreme activities on the margin reflect a lack of control—either persuasive or coercive—from the center.

Lack of ability to articulate its orthodox position indicates something about the state of the Church but does not explain why the clergy or the laity was inclined to engage in these practices. The explanation must go beyond the simple statement that prophecy and magic were used because they proved effective. This statement contains the conclusion and does not explain why there should be any inclination to believe in prophecy and magic. Keith Thomas has proffered the following explanation:

The truth seems to be that at the heart of the belief in prophecies there lay an urge to believe that even the most revolutionary doings of contemporaries had been foreseen by sages of the past. For what these predictions did was to demonstrate that there was a link between contemporary aspirations and those of remote antiquity. Their function was to persuade men that some proposed change was not so radical that it had not been foreseen by their ancestors. This had the effect of disguising any essentially revolutionary step by concealing it under the sanction of past approval. Prophecies, therefore, were not simple morale-boosters: they provided a “validating charter” (to adopt the anthropologists’ phrase) for new enterprises undertaken in the face of strong contemporary prohibitions. They justified wars or rebellions and they made periods of unprecedented change emotionally acceptable to those who lived in them.¹⁶²

Thomas says the “validating charter” was necessary because sixteenth century Englishmen still regarded political order as divinely sanctioned. In order to avoid divine wrath over the upsetting of the political order, innovation had to be placed within a larger framework of political history.

In support of this proposition, two cases in particular may be cited. The first is the previously mentioned preamble in the Act in Restraint of Appeals to Rome passed in 1533. The reference to the “divers sundry old authentic histories and chronicles” was intended to show that England had once been independent of papal jurisdiction. As Thomas notes:

Attempts were also made to show that Christianity had been established in Britain by Joseph of Arimathea, centuries before the Papal mission of St. Augustine, or by the Fabulous King Lucius of Britain in the second century AD. Failing that, the

162. RELIGION AND THE DECLINE OF MAGIC, *supra* note 86, at 423.

Anglo-Saxon Church was presented by the Elizabethan Archbishop Matthew Parker as the embodiment of perfect Protestant virtue, subsequently corrupted by medieval Catholicism but not restored to its pristine state. When ever this was reluctantly seen to be unhistorical, theologians fell back on the primitive Church of the New Testament as their model, or traced a pedigree of Pre-Reformation Protestants through Wycliffe and the Lollards to the Waldenses and Cathars.¹⁶³

As seen here, the attempt to justify the break with Rome on the basis of ancient history continued through the reign of Elizabeth. It indicates some lack of confidence in the Crown's authority to head the Church. Similarly, the Tudor rekindling of the Arthurian legend reflects this as well.¹⁶⁴

Another example is the influence of a prophecy which circulated at the time of the Pilgrimage of Grace.

Forth shall come a worm, an ask with one eye;
He shall be the chief over the meiny.
He shall gather of chivalry a full fair flock,
Half capon and half cock,
The chicken shall the capon slay.
And after that there shall be no [nay].¹⁶⁵

The "ask" is Robert Aske, the one-eyed leader of the rebels. The cock is probably Lord Lumley, identified by John Dobson as the cock of the North who would do "great adventures."¹⁶⁶ The last word of the verse is probably "nay" meaning that after the rebellion there shall be no refusal of demands. The prophecy served to sanction the activity of the rebels because it predicted the success of their venture. They would not incur divine wrath for upsetting the political order because their rebellion had been contemplated as the next phase of political order. In addition, the desire to know, in the face of uncertainty, is a perennial human need and the political prophecies could serve to assuage this anxiety.¹⁶⁷ The Pilgrimage of Grace was a rebellion with a complex list of motives, but it may be fairly said that the collecting of 30,000 armed men within a few weeks around the leadership of Robert Aske showed the strength

163. *Id.* at 424.

164. See text accompanying notes 134-37, *supra*.

165. Dodds, *Political Prophecies in the Reign of Henry VIII*, 11 MOD. LANG. REV. 276, 281 (1916).

166. See text accompanying note 107, *supra*.

167. The existence today of a multi-million dollar industry of astrology indicates that this desire is still quite strong.

and volatility of opposition to the Crown.¹⁶⁸ Only after clever maneuvering by Henry VIII and his army was the uprising subdued.¹⁶⁹

To understand why political prophecy and magic could take root and move people to act upon them requires some consideration of the function of symbols. The use of prophecy and magic indicates that many in Tudor society had a fairly compact understanding of the relation between symbol and object. That is, the symbols are not clearly differentiated from the real objects, if not understood as the objects themselves.¹⁷⁰ Why did these people have such a compact understanding of the world? Dogmatic learning and expression, fostered by the Church, gradually took over as the dominant intellectual tradition.¹⁷¹ This had come about as the Church increased its sphere of influence and faced the need to teach the tenets of religion to larger numbers of people.¹⁷² The reduction of the religious experience expressed in the New Testament to a series of doctrines about God, man, sin, and salvation represented a compacting of the Christian religion. The symbols of divine reality which are intended to point to God are themselves mistaken for the divine. God becomes personalized (and thereby diminished) and is eventually put to use resolving the various problems of daily living.¹⁷³ This is actually a form of magic—attempting to compel favorable divine intervention in human affairs.¹⁷⁴ Magic is an activist form of dogmatic understanding. Prophecy is related to dogma in that it is an attempt to restore certainty and concreteness to the world of events.

In developing a dogmatic tradition, the Church thereby aided the effectiveness of political prophecy and magic. It created a compact structure of understanding which gave validity to dogma, prophecy, and magic. The power of words to effect change was due in part to a self-fulfilling belief that words could affect the substance of the world. Thus, prophecy and magic could pose a real threat to

168. See G.R. ELTON, *ENGLAND UNDER THE TUDORS* 145-48 (1955); A.G. DICKENS, *THE ENGLISH REFORMATION* 124-28 (1964).

169. In rather Machiavellian fashion, Henry promised to meet the demands of the rebels and then when they had dispersed, he arrested the rebel leaders and had them executed. G.R. ELTON, *ENGLAND UNDER THE TUDORS* 145-47 (1955); A.G. DICKENS, *THE ENGLISH REFORMATION* 126-28 (1964).

170. E. VOEGELIN, *THE NEW SCIENCE OF POLITICS* 27-28 (1952); Voegelin, *Immortality: Experience and Symbol*, 60 *HARV. THEO. REV.* 235, 235-38 (1967).

171. See Voegelin, *Immortality: Experience and Symbol*, 60 *HARV. THEO. REV.* 235, 235-38 (1967); A.G. DICKENS, *THE ENGLISH REFORMATION* 1-21 (1964); *RELIGION AND THE DECLINE OF MAGIC*, *supra* note 86, at 151-73.

172. E. VOEGELIN, *THE NEW SCIENCE OF POLITICS* 122-23 (1952).

173. A.G. DICKENS, *THE ENGLISH REFORMATION* 14-21 (1964).

174. *Cf.* Matthew 4:5-7.

political and social order because people were willing to act on the assumed truth of these symbols.

When the government responded to prophetic and magical practices against the Reformation, it responded not only to the practical threat of rebellion, but also to the implicit challenge of authority. The use of the treason laws to back up government policy showed the seriousness of government resolve. In most cases, the treason laws were not applied differently than in the past.¹⁷⁵ The expansion of the treason laws in the reign of Henry VIII may be seen more as a symbolic response to a symbolic challenge, rather than as the precursor to modern totalitarianism.

People responded to prophecy and magic because they desired a more active role in controlling their lives. Prophecy supplied meaning and certainty to existence and magic was one means of actualizing this desire. The use of prophecy and magic began to decrease when it became apparent that another form of mundane activism—science—was more effective. But although science and its accompanying technology could give people greater control over their lives, it could not satisfy their desire for greater meaning. For this, people would turn to another form of mundane activism—revolution.

175. POLICY AND POLICE, *supra* note 30, 293-326.