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Historical Imaginary in the Political Literature of the French Wars of Religion: The Case of François Hotman's Francogallia

Abstract: During the Middle Ages, appeals to the past were a pretty common recurrence in the political discourse: the past was always surrounded by a mystical aura, constantly seen as a time of purity and prosperity in contrast with the decadent present. The medieval concept of history, in particular, was focused on the idea of devolution, of a constant slide from an original, better state to a worse one. Therefore, the concern was for a return to that better original situation. This mindset was prevalent especially among the many reformist movement within the Church, from the eleventh century onwards, whose main purpose was the recovery of the original lost purity of the Church as instituted by Christ. The deference towards the models of the past continued during the early modern era as well: but it was a past which did not necessarily correspond with historical reality. This paper aims to examine such a particular case which occurred within the context of the French Wars of Religion: François Hotman's tract *Francogallia*, published in 1573, where the author, an established Huguenot jurist, built a case for a constitutional model of government in France, as a reaction to the massacre of Saint-Bartholomew, based on an imagined historical tradition.

Keywords: France, Wars of Religion, Hotman, *Francogallia*, Huguenots

1. The Historical Context of François Hotman's *Francogallia*

The French monarchy of early sixteenth century was an interesting hybrid: no longer a feudal monarchy, but not yet an absolute one, it was a monarchy in transition which shared traits from both constitutional models. Its style of rulership was also heavily depended on the personality of the monarch, more so than it will be the case of the Bourbon monarchy: under Louis XII (1498-1515), who, called the "father of his people", came to be seen as the archetype of the benevolent king, it was often described, rightfully, as a consultative monarchy, only to revert under his successors, Francis I (1515-1547) and Henry II (1547-1559) to a more authoritarian model of government. The same clash of styles could be seen also in the ideological arena: many political theorists held dearly to the idea of the

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French monarchy as a "bridled" form of government, where the power of the king was limited by external factors. The best known proponent of this model of government was Claude de Seyssel, who, in his work *La Grande Monarchie de France*, identified three elements which acted as "bridles" on the king: religion, justice and "police" (Seyssel 1558, 28-37). Seyssel's vision of the French government was undoubtedly influenced by his long service under Louis XII. But there was also a push in the direction of a more powerful monarchy, less restrained by such rules and regulations, especially by royal officials trained in Roman law, who were numerous at the court of Francis I, but also by humanists such as Guillaume Budé – who regarded royal authority as lacking any limitations except for the principles inscribed in the divine and natural law. This was not yet the seventeenth century absolutism, which was to gain such force in France in the aftermath of the Wars of Religion: in the words of William Far Church, instead of a complete theory of divine right of kings, we see only "a multiplication of statements magnifying the dignity and the quasi-divine quality of the rulers", a kingship "interpreted as originating through a direct gift of authority to the prince by god" and "a glorification of the majesty of the kingship to such a point that the monarch was placed at great heights above his subjects, often resembling a *potestas legibus solutus* in action, rather than the closely hedged ruler pictured by Seyssel" (Church 1969, 45-48).

Originally, the Reformation tended to side more with those arguing in favor of less limitations placed on the royal power: while steadfastly maintaining that all men owed obedience to God first and those royal commands which were contrary to divine law should not be obeyed – a position which was entirely traditional and which not even the most ardent proponent of royal absolutism would not have thought to deny –, the main religious figures of the Reformation supported the idea of complete obedience and deference towards the earthly rulers, based in particular on the Pauline recommendation from Romans 13. The Reformers might have hoped for the support of the civil authorities: they received it in some situations, but both the imperial government of Charles V (1519-1556) and the French monarchy of Francis I and Henry II showed them implacably hostile to the Reformation and tried to suppress it by force. This slowly forced the Protestants to reconsider their previous attitudes and, gradually, the opinion that, if the true Church of God faced persecution, then resistance to the oppressor was permitted, started to gain ground. In France, with the start of the civil wars in 1562, there were more and more voices which argued in this direction: already Calvin had accepted, in a letter addressed to the French Huguenots, that a rebellion against lawfully-constituted authorities might be justified if certain forms were respected – more specifically, if legitimate political actors, such as the princes of the blood or the Parliaments, supported the action (Allen 1957, 59). This idea,

that opposition to the unjust actions of the monarch was lawful if the "magistrates" of the kingdom were the ones carrying it out, was to become the cornerstone of Huguenot resistance literature.

During the first phases of the French Wars of Religion, between 1562 and 1572, the Huguenots tried to maintain the idea that their rebellions were not aimed at the king per se, but only at his "evil advisers". Thus, the attempted kidnapping of the king Francis II in 1560 by a group of Huguenot conspirators was supposed merely to "free" the king from the domination of the Guise family, the king's in-laws, whom, in the Huguenots' opinion, had tyrannically taken over the government of France. In the aftermath of this event, there was a polemical war between critics and justifiers of the plot: François Hotman (1524-1590), the one who would later write the *Francogallia,* accused the Guises of usurping the authority of the crown and perverting justice by expanding the venality of office (Salmon 1979, 125). The main target of the Huguenot accusation was the Cardinal of Lorraine, one of the most prominent members of the Guise family and, at that time, probably the richest and the most powerful Catholic prelate in France: he was denounced by the same Hotman, in a pamphlet which Donald Kelley called the "*J'accuse* of the religious wars"*,* as the true conspirator and the one guilty for the blood spilled in the reprisals which followed the failed conspiracy (Soman 1974, 192). Similarly, at the start of the first religious civil war, in 1562, the Huguenot leader, the prince of Condé, issued a manifesto expressing the same intentions, that his actions was not directed against the king, but only against "evil" counselors. Since one of the most frequent charges levied at the Huguenots by their enemies was that about their seditious nature and disrupting the civil order in the state, it had always been a concern for the Protestants to emphasize the falsehood of such accusations and their obedience towards legitimate authority.

But, if the majority of the Huguenots – with some exceptions – stayed clear, for a long period, of openly advocating rebellion against the king himself, their attitude significantly hardened after the massacre of Saint-Bartholomew, on 23-24 august 1572: if the event was met with open joy by hardline Catholic figures, such as the pope and the king Philip II of Spain, at other courts reactions were much less laudatory. Even a moderate Catholic like the emperor Maximilian II expressed his disapproval, while in England or the German Protestant states the mood was one of shock and horror (Soman 1974, 15-95). It has been argued in historiography that the event became much bloodier than its initiators – king Charles IX, his mother, queen Catherine de Medici, and their closest advisors – intended, by accident: while the original purpose was to eliminate only the Huguenot leadership, in particular the admiral Coligny, the deeply Catholic population of Paris interpreted the actions of the royal guards as a signal for a general

massacre of *all* the Huguenots in the capital and took the opportunity for releasing all their pent-up fears of Protestant conspiracies and frustrations against the previous edicts of pacifications (Diefendorf 1991, 93-106). Regardless, the royal family was seen as the one responsible for the massacre – both by the fervent Catholics relieved that the king was finally fulfilling his duty of destroying the heresy and by the Huguenots who had to find an ideological answer to the situation, faced as they were with a monarchy which seemed intent on their extermination and with the former fiction, of fighting only against the "evil advisors", no longer sufficient. This resulted in some of the most elaborate tracts of political theory of the sixteenth century, published by some of the most important figures of the Huguenot movement in the years after 1572. What characterized the new Huguenot ideology was its constitutionalism: in the words of Quentin Skinner, the Huguenots needed to construct an ideology capable of defending the lawfulness of resisting on grounds of conscience and, at the same time, one which was less sectarian, in order to broaden their support (Skinner 2004, 310). The Huguenot resistance theories were less radical that the ones developed by the Catholic League after 1584, to confront a deeply unsatisfying monarchy, were going to be. There was no support for the possibility of tyrannicide and there was still a lot of deference for the institution of the monarchy: but since individual kings could be, as some had proved themselves, tyrants and persecutors of the faith, the Huguenots theorists developed, based on the French political traditions of a "bridled" monarchy and the opinions of Protestant figures such as Calvin himself, the idea that tyrannical acts of the king could be lawfully resisted by legitimate magistrates of the state, who were not only allowed, but they were even constitutionally bound to protect those within their jurisdictions against the depredations of tyrants. According to Arlette Jouanna, the Huguenot resistance theorists were aware of the necessity to give greater weight than before to the guarantees of the subjects and "regulate more strictly the powers of the prince, so as to consider the potential royal perfidy less a transgression against loyalty (to which only moral objections were possible), but more of a «constitutional» transgression which incurred a legal punishment" (Jouanna 2007, 262).

2. *Francogallia* and the Imagined History

The most important Huguenot political treatises published after 1572 are François Hotman's *Francogallia* (1573), Theodore Beza's *Du Droits des magistrats* (1574) and the anonymous *Vindiciae contra tyrannos* (1579), whose likely author was Philippe Duplessis-Mornay. The significance of these three resides in the fact that they were more than simply polemical literature, written to cast blame in the aftermath of Saint-Bartholomew and,

instead, they put forward a well-developed constitutional theory. Unlike the later political tracts of the Catholic League, which were written also as a reaction to the events of the day (in their case, the period between 1588 and 1593) and, therefore, addressed them directly in the text, references to Saint-Bartholomew's massacre do not feature in the major works of Huguenot political literature. Instead, the Huguenot resistance theorists invoked historical tradition (both French and foreign), Biblical precedent and Roman law in order to build an argument for the necessity of limiting royal power, argument seemingly unrelated to the persecutions faced by the Huguenots during that period. Certainly, this did not deceive the contemporaries, but it proved sufficiently appealing to attract prominent figures among the Catholic moderates, such as the king's own brother, François d'Alençon, and the Marshal of Damville-Montmorency, who joined hands with the Huguenots in order to attempt imposing a peace on very favorable terms to the latter and call for an Estates General for the purpose of reforming the kingdom and finding a way out of the religious and political crisis which was gripping France.

Out of the three mentioned treatises, *Francogallia* is the only one which makes heavy use of historical references in order to justify its position. In one of his studies, Ralph Giesey even speculated that Hotman and Beza might had written their books as a "twin attack upon the corruption of the royal court in France: Hotman to show by historical example that the fundamental law of France with respect to the authority of a council to control the monarchy was being violated, Beza to demonstrate by political-philosophical argument that resistance to tyranny might be undertaken through the authority of lesser magistrates" – or at least that is how they were viewed by their contemporaries (Giesey 1967, 582-583). Yet, despite the fact that *Francogallia* came to be included in the resistance literature associated with Saint-Bartholomew – Hotman himself stated as much in his dedicatory preface –, there are some clues, analyzed in detail by Ralph Giesey in his study "When and Why Hotman Wrote the *Francogallia*", that this treatise was composed, at least in part, before the events of 23-24 August 1572, Strange as it may seem, for a book which came to be regarded as one of the Huguenot answers to Saint-Bartholomew, this is not such an unlikely possibility: Giesey connected the inception of *Francogallia* to Hotman's other scholarly pursuits, arguing that the treatise was born out of the need to address those aspects of French law which "were outside the scope of *Libri Feudorum*", as analyzed in Hotman's *De Feudis*, in particular the status of the king's council and the assembly of the estates, of which feudal law had nothing to say (Giesey 1967, 606-609). But, in addition to this, the issues which Saint-Bartholomew's night brought so painfully to light had existed before 1572 and there had already been voices in the Huguenot camp, albeit less numerous and less loud than after 1572, who

had advocated for resistance. Therefore, with a double incentive for Hotman to write *Francogallia* even in the absence of Saint Bartholomew's massacre, the fact that the genesis of his treatise predated the events of 23/24 august 1572 is thus explainable.

What characterizes *Francogallia* and distinguishes it from other Huguenot works is, as already specified, its massive appeal to French history. It was argued that there was also a strong sentiment of national pride at play in Hotman's heavy usage of French historical precedent: Ralph Giesey asserted that Hotman was much more nationalistic than his fellow Huguenot writers, not just because of the patriotic rhetoric of Francogallia's preface, but because the massive factual apparatus used in the work to show France's unique constitution was a far more impressive proof of the author's sense of national pride (Giesey 1970, 54-55). In this, Hotman followed in the steps of his great "constitutionalist" forerunner, Claude de Seyssel, who had also argued, in his *La Grande Monarchie de France*, about the superiority of the French constitution, where the king's power was wisely restrained by three "bridles", religion, justice and "police". Yet, in our opinion, the deciding factor was the fact that – as *Francogallia* was basically a constitutional treatise –, historical precedent had a massive significance for its argument, because "since the law was regarded as unchanging, to establish with certainty a given usage enjoying long acceptance in the past meant to give it validity in the present system" (Church 1969, 203). In the medieval and early modern period, accepted custom quickly gained force of law and a jurist like François Hotman could not have failed to make use of this principle in developing his theories. Nannerl Keohane asserted that Hotman "had provided the example for those who wanted to search the distant past for the «true» constitution of France", arguing for „popular sovereignty, which few later jurists did" (Keohane 1980, 316). In Julian Franklin's words, „the characteristics of the ancient constitution are thus presented as a standard against which subsequent changes must be measured and evaluated" (Franklin 1969, 20). Yet, Hotman's version of history relied on an imaginary past. He was not the only one, as some of the historical myths asserted in *Francogallia* were shared by others of his contemporaries: for instance, the idea that the ancient predecessors of sixteenth-century Frenchmen had chosen their king and had fashioned their laws according to their pleasure was elaborately set forth by the lawyer Simon Marion in 1570 (Church 1969, 86). But Hotman developed an entire fictional history of the Estates General and the origins of the monarchy. With respect to the former, it was the Huguenots' conviction that an Estates General was the most adequate institution to defend their rights and provide a solution to the religious divide of France, and, therefore, they constantly asked for such an assembly to be summoned – until the Estates from Blois, in 1576-1577, dominated by Catholics, proved how unfounded such hopes were.

3. Popular Sovereignty and the Fictional Estates General of *Francogallia*

In his book, Hotman put forward two principles which, according to him, formed the basis of the ancient French state, had been lost in recent times, but had to be reinstated in order to extricate France from the religious and political crisis it was mired in. The first principle was that of popular sovereignty, manifested through popular assemblies, which represented the supreme authority in the state, even above that of the king, whom they had the right to reproach, censor or even depose. Hotman argued that the tradition of public assemblies which controlled the affairs of the communities they represented even preceded the Roman conquest of Gaul, as the ancient Gauls, despite their lack of unity, „during all the years, at a certain time, they held a diet and a general assembly of all the country, where they deliberated on the affairs of state and the universal welfare of the commonwealth" (Hotman 1574, 2-5). This institution of a public assembly allegedly came once again into existence after the Frankish conquest of Gaul and much of the work discusses the ancient constitution of the Franco-Gauls, who had an elective monarchy with a public council possessing authority to depose a tyrannical king (Baumgartner 1995, 301). According to John Salmon, although Hotman had made his name as a historian of Roman law, he came to see the tribal customs of the Germanic Franks as more important to Frenchmen than Roman jurisprudence (Salmon 1987, 39). This was undoubtedly due to the fact that Hotman was greatly attracted by the notion of Germanic freedoms and their alleged tradition of an elective monarchy, which he saw as playing a decisive part in the formation, together with the already mentioned Gallic tradition of a public assembly, of such an institution in the new "Franco-Gallic" polity. Hotman referred to the existence of such an assembly of the Estates as early as the Merovingian and Carolingian period, whose role was to arbitrate the royal succession, by electing or deposing kings, and even making decisions on the royal domain (Hotman 1574, 72-80). Yet, the role of the Estates was, in Hotman's vision, far greater than merely deciding matters related to the succession and the royal patrimony. Because Hotman envisioned (or desired) the French government as a mixed one, of the kind praised by "Plato, Aristotle, Polybius or Cicero", it was necessary that, besides the king and the nobility, a permanently instituted popular assembly provide the "democratic" element of this "mixed constitution". Hotman's vision was anachronistic not only for the times of the Frankish monarchy, but even for his own period. In this case, a truly revolutionary idea was fictitiously anchored in an imaginary past: in Hotman's words, "it looks to me that our forefathers, in order to maintain their republic in this good state, which comes from having all three kinds of government, had wisely

established that a general assembly of all the kingdom should be held on the first day of May, where they would deliberate by the common council of the Estates on all the great affairs of the kingdom" (Hotman 1574, 99). The historical Estates General were as far from Hotman's depiction as they could be: they sprung into existence at a much later date, during the reign of Philip IV, the assemblies at Paris in 1302 and at Tours in 1308 being the earliest meetings (Major 1980, 11). More so, they were summoned only by the king, and certainly not on a regular basis: the 1302 and 1308 assemblies were each caused by special circumstances, the conflict with pope Boniface VIII and the arrest of the Templars, respectively, circumstances serious enough to make the king wish to explain his actions to his subjects. The idea of the Estates meeting on a yearly basis would have transformed this institution into something quite close to a modern legislative assembly – and it did not exist, nor could it have existed in the historical period indicated by François Hotman.

Hotman's insistence on such an important role for the Estates General was determined by the fact that he viewed the institution as the best bulwark against tyranny, checking the influence of flatterers and evil advisors who might deceive a king and push him to favor private interests at the expense of the public good (Hotman 1574, 99-103). To a certain extent, this outlook was quite traditional, as the feudal and Renaissance monarchy, even under the most authoritarian monarchs, always involved a good degree of consultation and consent. It was basically an axiom of the political theory of that period that a good king must listen to the opinions of his wisest subjects assembled in some sort of council and his decisions must involve the consent of his subjects as much as possible. Yet, as William Farr Church pointed out, Hotman's insistence upon consultation of the Estates General concerning all weighty matters of government was revolutionary when coupled with his inference that final authority lay with the Estates and not with the king (Church 1969, 158). The historical role of the Estates General was a consultative one, to submit their grievances when assembled by the king and ask for redress – which was up to the king to grant or not: even though it was tacitly agreed that it was wiser policy for the king to try to provide a remedy, it was absolutely not a cause for deposition if he did not do so. They could, on occasion, give advice and consent, most often on matters of taxation and, sometimes, even on foreign policy. But they could not initiate policy. The Estates did not even have the right to send remonstrance to the king – a task which fell exclusively upon the Parliaments (but which Hotman regarded as having usurped the authority of the Estates). Yet, Hotman made a general statement, not restricted to France, that "this beautiful liberty of holding general assemblies of council is part of the *jus gentium*, and those kings which, by evil practices, oppress this holy and sacred liberty must not be regarded as kings, but as tyrants,

like those who violate the most holy right existing between men and who break all the ties of human society" (Hotman 1574, 106-107). But the examples Hotman employed in order to justify this assertion are of dubious historicity, to say the least, and this has been remarked by many scholars of sixteenth-century French political thought: John Salmon pointed out, for instance, that Hotman referred, among others, to a fictional oath of the kings of Aragon, which he regarded as evidence of the practice of all peoples who lived under a legitimate monarchy to hold public councils and preserve liberty (Salmon 1987, 127).

If Hotman's image of the relationship between the king and his realm and people was depicted in very conventional terms, like a "father and his family", a "guardian and his ward", a "pilot and his vessel", a "captain and his army" (Hotman 1574, 156), his description of the Estates' attributes certainly was not. It was a common trope in the Middle Ages and the early modern period to claim that a people was not created for a king, but a king for his people, but from this it was not inferred that there was another *locus* of sovereignty, residing in a popular assembly, who was above the king and could even manage the kingdom. In this respect, the powers which Hotman ascribed to his imaginary Estates General are utterly unconventional, going much further than what even the most ardent proponents of the Estates, both Catholics and Huguenots, tried to gain in the next phases of the religious wars:

> "We have reached now the proper place where we must consider what matters were decided in this solemn assembly and admire the good sense and prudence which our forefathers showed when they established and ordered the form of their polity. See, thus, briefly, almost all the matters upon which it deliberate: first, the election and deposition of kings; then, of peace and war, of public law, of offices, governorships and administration of public things, of assigning a part of the domain to the male heir of the deceased king and providing a dowry for his daughters (...). Finally, of all matters which we call right now affairs of state, because it is not lawful to decide on issues concerning the state of public thing, except in the assembly of the Estates" (Hotman 1574, 114).

According to Isabelle Bouvignies, Hotman developed the modern constitutional idea of a legislating people and expressed the modern idea of a constitution, containing laws whose content was clearly established and whose purpose was to preserve the authority of the public council and make it sacred and inviolable (Gaille-Nikodimov 2005, 132-135):

> "That touching the freedom that the people had to give their opinion, there is an article in the ordinance of Charlemagne, which says that one should ask and demand the opinion of the people for each new article to be added to the law, and, after they had all consented, they should put below the articles their signatures. From this it is clear that the people of France had not been bound to observe except those laws approved by their voices and votes" (Hotman 1574, 122).

Hotman basically performed an extraordinary substitution when he asserted that the *locus* of the royal majesty was not the person of the king, but the "solemn assembly of the Estates" (Hotman 1574, 151-152).

4. The Elective Character of Hotman's Imagined Monarchy

The second principle of the French ancient constitution as envisioned by François Hotman was that of an (original) elective monarchy, where, in the words of the author himself, the sons of a deceased king might have been given preference to assume the throne, but they did not succeed him automatically: instead, the right of election fell upon the already mentioned public assembly, who was free to pick even a candidate unrelated to the previous monarch. As it was often remarked in historiography, "Hotman argued that the French kingship had been anciently elective and the public council of the realm, the ancient *Parlamentum*, was coeval with the state itself" (Franklin 1973, 44). Basically, Hotman contended that the Estates had an existence independent of the kings and, more so, it actually played a decisive part in the selection of the monarch. As John Salmon remarked, Hotman's stress upon Frankish election was meant to demonstrate the former sovereignty of the estates, and when he referred to the need to return to the pristine constitution, it was this what he had in mind (Salmon 1987, 135). The implication of this revolutionary assertion, which run contrary both to French customary tradition and the majority-accepted political thought, was that, in this way, quite restrictive conditions could be attached to the office of king, upon whose observance the legitimacy of the monarch actually depended. French political thought agreed that kingship was an office, but it was one who was inherited (even though according to very strict regulations). It was also agreed that there were some fundamental laws which a king could not break or alter, more specifically the law of succession and the law forbidding the alienation of royal domain. Naturally, the king was expected to obey other positive laws as well, but, if he did not, he still could not have been lawfully deprived of his throne. Yet, in Hotman's opinion, "the obligation of the king to remain within the law could then be understood as the condition of his elevation" and "the institution of election was thus a contract between king and people that was repeated with every new incumbent" (Franklin 1973, 45). For François Hotman, there was a direct link between the manner of creating kings and the limited power they enjoyed after their ascension, a link which existed even in pre-Roman Gaul:

> "All these kingdoms possessed certain features which have to be noticed: first and foremost, they were not hereditary, but were conferred by the people on those who seemed good, based on the high opinion about their justice and

> righteousness; and, therefore, those kings thus elected did not possess an absolute and infinite power, nor could they do everything they wanted; on the contrary, limited by certain laws, they were under the power and authority of the people, just as the people was under theirs" (Hotman 1574, 10-11).

This fact explains Hotman's preference for Germanic legal traditions and his eschewance of the Roman law: according to the latter, the prince was also created by the people, but this precedent would have poorly served Hotman's purpose, because the legal tool employed, *Lex Regia*, involved a complete and (according to many interpretations) definitive transfer of authority from the people to the prince[1]. Hotman needed to demonstrate that the sovereignty still rested with the people, who had the last word on all affairs of the state, and, more so, whatever power was passed unto the prince, it could be revoked by the former. In order to do so, he offered a set of examples, from the Merovingian and Carolingian periods, of kings deposed either for personal vices, or for their inability, providing a set of legal (and rather simplistic) interpretations of the power struggles in the Frankish monarchy, from "the first man who was declared king of France and Gaul" to Charles the Simple in 926 (Hotman 1574, 66-71).

5. The Alleged Decline of the "Ancient Constitution"of France

While François Hotman depicted in this manner an institution which was basically a sovereign assembly *avant la lettre*, he also had to deal with the problem that, by the sixteenth century, the Estates General enjoyed none of the powers which *Francogallia* alleged that they had possessed. The elective feature of the monarchy had undeniably been lost, which Hotman himself admitted, but this, according to his interpretation, was not a change in the duties or status of the office, but only in the method of selecting an incumbent, as the kingship was still transmitted by the people's will, which was now expressed in customary public law (Franklin 1973, 45). A further alteration of the "ancient constitution" was the transformation, under Hugh Capet, of the "lordships and principalities of the kingdom" from elective to hereditary possessions. Since their grant originally belonged to the assembly, Hotman pointed out that this was a significant diminution of the authority of the Estates, but one which, in his opinion, was likely to have occurred with their own consent (Hotman 1574, 165-166). Still, even if Hotman attributed a certain decline of the Estates to the alleged evolution of this institution after the ascension of the Capetian dynasty, it was by no means rendered meaningless and, in the fictional account of the history of the Estates provided in *Francogallia*, they still continued to perform important functions long after the reign of the first Capetians. If the power to assign lordships was quickly lost, as already shown, Hotman emphasized that the

appointing to the high dignities and magistracies of the kingdom still fell among the assembly's responsibilities (Hotman 1574, 159-160)[2]. Similarly, Hotman attributed a decisive role to the Estates in settling the disputed succession of Charles IV in 1328, in favor of Philip de Valois, who, as a result, became king of France as Philip VI (Hotman 1574, 167-168).

But, if the Estates had, in the opinion of François Hotman, possessed such extensive powers even under the Capetians, how did they become only a consultative institution during the sixteenth century, utterly dependent on the king's will? Despite the fact that, in Hotman's opinion, the "ancient constitution" of France was universally praised and an unbridled monarchy was likely to turn into tyranny, the author pointed out that the relationship between the Capetians kings and his alleged Estates had not been exactly smooth. One of the presumed methods of diminishing the Estates' powers had been the increase of the authority of the Parliaments[3], whose membership was carefully manipulated by the kings, at the expense of that of the Estates (Hotman 1574, 200-201). But this opinion, even for the period when the Estates were actually in existence, during the fourteenth and fifteenth centuries, had little basis in fact. Contrary to Hotman's allegations, the Valois kings never saw the Estates as a competitor, but instead as a useful tool, especially for extracting financial concessions from their subjects: in fact, as John Russell Major convincingly demonstrated, the kings, especially Charles VII (1422-1461), would have preferred to deal with the Estates General rather than the numerous provincial assemblies, because the former would have been easier to persuade (Major 1960, 23-39). That does not mean that the attitude of the kings towards the Estates General was always appreciative: both them and their advisors could, at times, find them irritating, albeit not because of the overarching powers wrongly attributed to them by Hotman, but because the deputies were not always forthcoming in meeting the financial needs of the monarchy; and there were also practical difficulties in assembling the Estates, with trips being long and costly, which made many deputies reluctant to attend (Lewis 1971, 294-311).

Even though their authority started to decline, the Estates, according to Hotman, retained their prestige: but the fact that, by the second half of the fifteenth century, they no longer possessed, in the version of history depicted in *Francogallia*, the same authority as before was made obvious by the fact that a noble rebellion was necessary for the Estates to be called again in 1468 to deal with the alleged abuses of Louis XI (Hotman 1574, 171-180). Hotman may have still asserted that "the authority of the Estates showed vigor against a king who had neither weakness of age, nor of spirit for government, but who was over forty years of age and was more cunning than any other king who had ever reigned in France" (Hotman 1574, 178), but it was conspicuous that, by that time, the convocation of the Estates

depended, in Hotman's narrative, on the king's will, something which finally started to correspond with the historical truth. The chapter devoted to Louis XI is one where the weakness of Hotman's fictional narrative of French history becomes the most apparent, because there is an obvious contradiction, within the text itself, between the author's desire to show the Estates as still fulfilling their traditional functions and the king's refusal to willingly summon them and his subsequent failure to abide by their decisions[4].

6. Conclusions

In the opinion of François Hotman, the main cause of the misery of France at that time was not the religious division, but this disruption of the "ancient constitution" of France and, in particular, the decline in the capacity of the Estates General to serve as a check on the royal power. According to Mack Holt, in the aftermath of the Saint-Bartholomew's massacre, the implications of the author's constitutional fiction were that the Protestants were not necessarily required to obey a king who threatened them, as he could be deposed. Mack Holt's assertion that the principle invoked, *salus populi suprema lex esto,* "took on a much more republican connotation" (Holt 2005, 101) is quite questionable though: as revolutionary as some of Hotman's notions were, there was still nothing "republican" in them. The concept of a "bridled" monarchy was still very much part of the French monarchical tradition and Hotman placing the responsibility of restraining the royal power in the hands of a specific institution, the Estates General, instead of letting it to abstract concepts, such as "justice", "religion" or "police", did not necessarily mean a move towards republicanism.

The problem which *Francogallia*'s historical argument faced was the fact that it depicted an imaginary version of the history of France, that it could be easily disproved. While there certainly were precedents in French medieval political thought for the idea of a limited monarchy, those did not provide solutions for the conundrum faced by the Huguenots, as they did not specify whom and how could resist a tyrannical king. More so, one of the actual historical aspects of the French monarchy which could have been invoked in this case, the coronation oath which stressed the obligations of the king, would have been dangerous for the Huguenots to appeal to, because it also mentioned the king's duty to protect the Catholic faith and destroy heresy – and for this reason it was frequently invoked by the Catholic radicals discontented with the inability of the Valois monarchy, during the reign of Henry III, to deal decisively with the Huguenots. A different type of argument was necessary in order to make the Huguenot resistance theory more convincing and, since Hotman's appeal to history was flawed, the Huguenots turned to scholastic and Roman law traditions

of radical constitutionalism, arguing that any legitimate political society originated from the consent of the people (Skinner 2004, 319-320).

Despite these flaws, *Francogallia* was republished, in expanded editions, in 1576 and 1586 and Hotman, who apparently was not yet done with looking for historical precedents, added to his last version some new constitutional laws which, in his opinion, had once limited the French Crown: inability of the king to remit punishment for a capital crime, irremovability of an officer of the commonwealth without trial by his peers, and the need for the Estates to sanction any change in the monetary system (Salmon 1987, 129). By that time, though, the political situation in France had radically changed: the Huguenots no longer saw the monarchy as implacably hostile, especially with a real prospect of their leader, Henry of Navarre, succeeding the throne, while their enemies, united in the Catholic League, were assuming the mantle of opponents of the Valois dynasty. Now, some of Hotman's own arguments and examples were employed by the League's propaganda: when emphasizing the preeminence of the supposed fundamental law which demanded the king of France to be Catholic, the Leaguer writer Louis Dorlèans repeated the instances of Merovingian and Carolingian deposition recited by Hotman, and argued that, if these kings had been dethroned for debauchery, treachery, and oppression, there was an even greater need to depose, or exclude from the succession, a king who was a heretic (Salmon 1987, 252). Hotman himself tried to refute the League's criticism of the Salic Law and the pope's excommunication of the Huguenot leaders Navarre and Condé – a position which appealed to some of his previous enemies, including the fiercely Catholic Parliament of Paris, who also protested the excommunication because of the "ultramontane tenor of the bull and its claim to powers to depose secular rulers" (Salmon 1979, 235).

Yet, just as the intensity of the conflict in the first phase of the Wars of Religion dealt a decisive blow to the traditional French constitutionalism, which assumed that the need for consensus between the king and his subjects would prevent the emergence of a violent struggle, and led to the development of radical resistance theories such as the one espoused by François Hotman, the final effect of the civil war was to drive such theories from the frontispiece of French political thought. The Estates General, which the Huguenot writers like Hotman, Beza or Mornay put so much hopes in, were indeed assembled in 1576 and in 1588, but they were far from the idealized picture depicted in the Huguenot tracts and utterly failed to deal with the crisis gripping France. The painful consequences of the conflict and the inadequacies of the Estates, which ended up dominated by the Catholic factions, led most to believe that a strong monarchy was the best solution and made room for the domination of the theories of absolutism.

Notes

[1] The most authoritative voices in medieval law, Bartolus and Baldus, considered *lex regia* to be an irrevocable transfer of power from the people to the prince (albeit Bartolus was of the opinion that *lex regia* had not been so from the beginning, but it had become irrevocable only with time) (Burns 2008, 365). In 1596, Pierre Grégoire asserted the same principle in his work, *De Republica* (Burns and Goldie 2008, 234). Still, the problem of its revocability was contentious. As early as late eleventh century, a papalist writer, Manegold of Lautenbach, argued that it had been a revocable grant made by the Roman people to the Roman emperor (Ullmann 1975, 249). Several centuries later, the canonist Francesco Zabarella (1360-1417) claimed that the Roman people still ultimately retained the authority it transferred to the prince, because it could not make a law which it could not revoke (Carlyle 1962, 165), while humanists such as Alciato and Salamonio even argued, at the end of the fifteenth century, that "the grant of sovereignty embodied in the original *Lex Regia* ought to be interpreted in a constitutionalist sense" (Skinner 2004, 131-134).

[2] Here there is a difference between the text of the French version from 1574, which had been used for the quotations, and the first (Latin) version. The French version mentions a "Senate" or "general council", which was supposed to deliberate and provide advice to the king. The Latin version, though, referred to so-called "Seniores", who were to consult together and take part in the administration of the kingdom, besides advising the king, and those "seniores" were appointed by the assembly (Hotman 1573, 130-131). The difference is essential, because the Latin wording would suggest that Hotman referred to the high dignities of the kingdom. The French translator from 1574 is mistaken, because it would have made no sense for Hotman to suddenly introduce another public council in his constitutional template, while it was crucial for him to emphasize the existence of magistracies independent on the whims of the kings, as the whole Huguenot resistance theory depended on this.

[3] Hotman's contempt for the Parliaments is easily explainable, since they were dominated by Catholics and vehemently opposed the repeated edicts of pacification which tried to end the religious wars by granting a series of concessions to the Huguenots. The assertion of Nancy Lyman Roelker that the Huguenots' attacks on the royalist tradition after 1572 isolated them from the general population is fundamentally mistaken, because the deep hostility of the Catholic population long preceded any serious Huguenot opposition to the Valois monarchy; but, on the other hand, Roelker is correct that the Huguenot resistance literature did reinforce in the magistrates' minds their loyalty to the tradition of *un roi, une foi,* and the parliamentarians held up these works as confirming the irresponsibility and danger of religious dissent, a social evil that it was Parliament's duty to stamp out (Roelker 1996, 186-187).

[4] The idea that Louis XI played a decisive role in the suppression of the Estates' authority and the subversion of the "ancient constitution" of France was not unique to François Hotman. In fact, this was a common historical myth during the Wars of Religion, where both Huguenot and Catholic advocates of resistance theories and popular sovereignty portrayed the Louis XI as the quintessential tyrant. On the other hand, the reputation of Louis XI fared better at the hands of the supporters of the absolutist monarchy (Bakos 1990, 3-32).

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