



This is a peer-reviewed, final published version of the following document, © 2014, All rights reserved. and is licensed under Creative Commons: Attribution-Noncommercial 4.0 license:

**Hutchinson, Mark A ORCID: 0000-0003-1413-6382 (2014) The Emergence of the State in Elizabethan Ireland and England, c. 1575-99. The Sixteenth Century Journal, 45 (3). pp. 659-682.**

Official URL: <https://www.jstor.org/stable/24245958>

EPrint URI: <https://eprints.glos.ac.uk/id/eprint/13244>

### **Disclaimer**

The University of Gloucestershire has obtained warranties from all depositors as to their title in the material deposited and as to their right to deposit such material.

The University of Gloucestershire makes no representation or warranties of commercial utility, title, or fitness for a particular purpose or any other warranty, express or implied in respect of any material deposited.

The University of Gloucestershire makes no representation that the use of the materials will not infringe any patent, copyright, trademark or other property or proprietary rights.

The University of Gloucestershire accepts no liability for any infringement of intellectual property rights in any material deposited but will remove such material from public view pending investigation in the event of an allegation of any such infringement.

PLEASE SCROLL DOWN FOR TEXT.

## **The Emergence of the State in Elizabethan Ireland and England, ca. 1575–99**

Mark A. Hutchinson

*Lichtenberg-Kolleg, The Göttingen Institute of Advanced Study*

This article examines the emergence of the concept of the state in Elizabethan Ireland and England. It argues that in Ireland early shape was given to both principal assumptions associated with a modern abstract notion of the state, in that government in Ireland came to conceive of its authority as distinct from both the person of the prince and the wider Irish polity. This came about because Irish government had to function at a distance from Elizabeth, who remained resident in England, whilst on the other hand government sought to act independently of a wider Irish polity, which it deemed to be corrupt. This article will argue that such a development preempted a wider shift in English and European political philosophy, and what followed was a use of the term state in Irish government correspondence which reflected the notion that the authority government possessed was distinct from both ruler and ruled.

IN THE OFTEN DAILY EXCHANGE of correspondence between the lord deputy and council in Ireland, and Elizabeth and the Privy Council in England, it is possible to find the emergence of something close to a modern notion of the state as early as the 1580s. For Quentin Skinner, however, it was in the work of Thomas Hobbes that a modern abstract notion of “the state” was first given full form. Hobbes described the state as an “artificial” man, an impersonal entity distinct from both ruler and ruled. In doing so Hobbes articulated both principal assumptions associated with a modern idea of the state—the first assumption being that the authority of government is absolute and as a result distinct from the wider polity, and the second that that authority is inherent in the apparatus of the state and so distinct from the person of the prince or magistrate.<sup>1</sup> This raises the question as to why developments in Elizabethan Ireland were able to move ahead of developments in wider English and European political philosophy, and this article will suggest that it was the particular political conditions of the Irish kingdom that gave early shape to a modern notion of the state.

This came about because Elizabeth’s lord deputy and council in Ireland had to act independently of both the person of the prince and the wider Irish polity. Irish government had to function at a distance from Elizabeth, who remained

<sup>1</sup>See Quentin Skinner, “From the State of the Prince to the Person of the State,” in *Visions of Politics*, vol. 2, *Renaissance Virtues* (Cambridge: Cambridge University Press, 2002), 368–69, 394–406.

This article has been written with the support of an IRC Government of Ireland Postdoctoral Fellowship. All spelling has been modernized apart from Philip Sidney’s “Discourse on Ireland” and Edmund Spenser’s *A View of the Present State of Ireland*.

resident in England. As Wallace MacCaffrey notes, the office of Irish lord deputy was an “anomalous constitutional position,” with the lord deputy being referred to as the “head of the ‘state at Dublin’ in local terminology.”<sup>2</sup> The Irish administration also faced the problem of perceived Irish civil disobedience, since the queen’s writ did not extend much beyond Dublin and its localities, and it remained a central objective of government in Ireland to reform the island to a long-term civil obedience. It was in an attempt to further this objective, without always gaining the consent of the wider Irish political community, that government began to argue that its authority was absolute and so distinct from the wider polity. Hiram Morgan and Ciaran Brady have both pointed to the absolutist pretensions of Ireland’s deputies, where in line with a desire to bypass the wider political community no Irish parliament was called between 1587 and 1613.<sup>3</sup> This, however, raised an awkward question in respect to contemporaneous political philosophy, because it was the lord deputy and not the person of the prince who exercised such authority in Ireland. It was here, this article will argue, that developments in the Irish kingdom began to move ahead of a wider European debate concerning the nature of political authority.

An important step on the way to a modern notion of the state was the French political philosopher Jean Bodin’s *Six Books of the Commonwealth* (1576), in which sovereign authority was first defined as an “absolute and perpetual” power.<sup>4</sup> Bodin was as a result to draw a distinction between the sovereign authority held by government and the wider polity. He was unable, however, to draw an equally clear distinction between sovereign authority and the ruling estate which possessed it. As Julian Franklin notes, his “celebrated principle that sovereignty is indivisible . . . meant that the high powers of government could not be shared by separate agents or distributed among them, but that all of them had to be entirely concentrated in a single individual or group.”<sup>5</sup> As Bodin put it, “inferior magistrates,” such as Elizabeth’s Irish lord deputy, could not possess any degree of independent political authority.<sup>6</sup> In Ireland, however, because the lord deputy attempted to exercise absolute authority independently of the prince,

<sup>2</sup>Wallace T. MacCaffrey, *Elizabeth I: War and Politics 1588–1603* (Princeton: Princeton University Press, 1992), 355–56.

<sup>3</sup>Hiram Morgan, “Overmighty Officers’: The Irish Lord Deputyship in the Early Modern British State,” *History Ireland* 7 (1999): 17–21, and Ciaran Brady, “Sidney, Sir Henry,” *Dictionary of Irish Biography*, ed. James McGuire and James Quinn (Cambridge: Cambridge University Press, 2009).

<sup>4</sup>Jean Bodin, *On Sovereignty*, ed. Julian H. Franklin (Cambridge: Cambridge University Press, 1992), 1.

<sup>5</sup>Julian H. Franklin, “Sovereignty and the Mixed Constitution: Bodin and His Critics,” in *The Cambridge History of Political Thought*, ed. J. H. Burns with the assistance of M. Goldie (Cambridge: Cambridge University Press, 1991), 298–99, 307.

<sup>6</sup>See Quentin Skinner, *The Foundations of Modern Political Thought*, vol. 2, *The Age of Reformation* (Cambridge: Cambridge University Press, 1998), 284–301, and Skinner, *Visions*, 2:387–99, where he revises the conclusions he drew about Bodin’s significance in *Foundations*, 355, and clearly sets Bodin at least one step behind Hobbes.

a distinction would have to be made between sovereign authority and the ruling estate.

For instance, whilst the Irish lord deputy's powers were extensive, in that he had the right to appoint many of his officials, grant pardons, and issue various commissions, he could not make appointments to higher offices in church and state, all of which remained the preserve of the prince. He was also required to consult with the council in Ireland in the exercise of his duties. Furthermore, the deputy's powers were clearly delegated to him by the prince, in that they were set out in written instructions and letters patent, and Elizabeth frequently intervened by sending extra instructions directing the lord deputy in his choice of lesser officials or commenting on policy.<sup>7</sup> Elizabeth's Irish lord deputy, therefore, did not have any clear right to exercise crown authority in full; and it was in response that government in Ireland came to act on the basis that sovereign authority in Ireland lay neither with the Irish polity nor with the prince, but within the general apparatus of the state. As a result political authority started to be conceived of as something distinct from both ruler and ruled and a change in the use of the term state in Irish government correspondence followed. The term had of course been used to describe the condition or state of the island. It started to be used, however, to denote the authority possessed by the lord deputy and council in Ireland. Christopher Maginn has also noted how, in more general terms, Irish sovereignty was highly contested. The Gaelic high kingship, the papacy's grant of the Lordship of Ireland to the English crown, and the act of kingly title in 1541, which followed Henry's break with Rome, all represented very different ideas of where exactly political or sovereign authority lay in Ireland.<sup>8</sup>

This article then will begin by examining the use of political authority under the reformed protestant Henry Sidney's second term as Irish lord deputy from 1575 to 1578.<sup>9</sup> Sidney was to make use of crown prerogative powers in Ireland in an attempt to further government policy. This marked the beginnings of a discussion over the nature of the authority possessed by the lord deputy, and Sidney would have to justify his use of specific prerogative rights. This article, however, will also turn to examine developments under the lord deputyships of Arthur Grey (1580–82), John Perrot (1584–88), William Fitzwilliam (1588–94), and finally Edmund Spenser's *View of the Present State of Ireland* (1597). It was in the 1580s, in response to the near complete disintegration of political order, as a result of the rebellion of various Old English and Gaelic Irish lords, that a general absolutist statement on the nature of political authority emerged in Ireland and a particularly modern use of the term state followed. The frequent exchange of

<sup>7</sup>See Morgan, "Overmighty Officers," 17, as well as the various extant instructions issued to lord deputies such as The National Archives (hereafter TNA), SP63/14/2, SP63/15/4, SP63/25/50, SP63/91/4 and SP63/132/55.

<sup>8</sup>Christopher Maginn, "Whose Island? Sovereignty in Late Medieval and Early Modern Ireland," *Eire-Ireland* 44 (2009): 229–47.

<sup>9</sup>Sidney first served as Irish lord deputy from 1565 to 1571.

letters with the English Privy Council, the Irish section of Holinshed's *Chronicles* (1586), the wide circulation of Spenser's *View*, and the second Earl of Essex's assumption of the lord lieutenancy of Ireland in 1599, also meant that the Irish idea of state sovereignty gained a clear presence within England. Overall this article will argue that Ireland had an important part to play in the emergence of a modern absolutist notion of the state, though it should be noted that developments in the Irish kingdom nevertheless remained a significant conceptual step away from Hobbes's state as an "artificial" man.

\* \* \*

The initial application of absolutist notions of political authority in Ireland was piecemeal and reactive. Henry Sidney, who was brother-in-law to the Earl of Leicester, the head of the reformed Protestant grouping at the English court, as Irish lord deputy in 1575 looked to replace cess in Ireland with an annual fixed payment. Cess was an ad hoc customary charge levied on the Old English community of the Pale (the area of Dublin and its localities) and a prerogative right of the crown. In doing so Sidney hoped to set the administration on a firmer financial footing by freeing government from Elizabeth's often erratic financial assistance. There was, however, already some potential for dispute with the Old English community over Sidney's use of cess because the charge, known as purveyance in England, had been extended to cover the maintenance of the entire military establishment. Originally it had been levied for the specific purpose of supplying the royal household, i.e., the lord deputy and his entourage. Sidney also hoped to gain the community's consent when it came to replacing the charge with an annual fixed payment by overinflating what he proposed to levy so that the commutation of cess would clearly appear to save Elizabeth's subjects money. Dublin and the surrounding area, however, were suffering from the plague and there was a scarcity of resources. As a result Sidney had to lower what he proposed to levy before he even got to broach the replacement of the charge, and many within the Pale concluded therefore that the deputy had come to "take" the country to farm.<sup>10</sup>

In response the community sent three agents to the English court, Barnaby Scurlocke, Richard Netterville, and Henry Burnell, who objected to Sidney's behavior on the basis of a popular view of sovereignty which saw political authority as resting throughout the Irish polity. The agents argued that Sidney could not impose cess without first consulting with a grand council. They also suggested that the crown's prerogative right to the charge was limited by statute. William Gerrard, the Irish chancellor, reported that the agents argued "that without parliament or grand council there could be no imposition laid upon the subject; that

<sup>10</sup>For details of the cess dispute see Ciaran Brady, *The Chief Governors: The Rise and Fall of Reform Government in Tudor Ireland 1536-1588* (Cambridge: Cambridge University Press, 1994), 141-47, 216-17.

by the statute of 27 H: 8, grants of freedom had continuance."<sup>11</sup> They referred to a statute passed in Ireland in 1537, which allowed that those who had to attend hosting (i.e., those required to provide armed assistance to the lord deputy in an emergency) were discharged "from all coigne and livery and of carting and cartages."<sup>12</sup> Coigne and livery was a system of bastard feudal exactions, whereby the forces of the major lords in Ireland were billeted on the population in lieu of fixed rents, the lord deputy often following suit and billeting crown forces on the Old English community. What was being suggested then was that the crown did not have the authority to act independently of the wider Irish polity, and because the dispute concerned the actions of a lord deputy, and not the actions of the person of the prince, it seems that any sense of *lèse majesté* had been sufficiently diminished to allow the crown's prerogative right to cess to be directly examined.

Sidney, however, could not allow the authority of his government to be limited in this way, as he needed to act independently of the Old English community, who would probably never freely agree to fund government at the level required. He also had to ensure that the basic financial support government received from cess continued, whilst he negotiated its commutation. Sidney had no choice, therefore, but to make a clear statement on the type of authority he thought government in Ireland possessed, and he argued that crown prerogative powers in Ireland were absolute. He suggested that "it were good they [Scurlocke, Netterville and Burnell] were taught her majesty's prerogative is not limited by *Magna Carta* nor Littleton's *Tenures*, nor written in their year books," and this view was given greater clarity by Sidney's son Philip, who in a "Discourse on Ireland," written in 1577, defended his father's use of cess at the English court.<sup>13</sup>

Philip Sidney's time in France in the early 1570s, along with time spent in Venice, Padua, Genoa, and Florence, all suggest that he was *au fait* with contemporary developments in European political philosophy, and here there is a clear suggestion that contemporary political philosophy was being directly applied in Ireland. Philip framed the dispute over cess by asking where exactly sovereignty lay in Ireland? He explained that the right to cess directly touched upon Elizabeth's authority, arguing that if government was not allowed cess and could not fund a garrison then that was the equivalent of the respective community in Dublin saying they wanted "her [Elizabeth's] authority out of the country." He even went on to point out that in general "skarsely she [Elizabeth] hath the acknowledgement of sovereignty"; and whether Philip intended to or not, in tackling the question of sovereignty in Ireland, in conjunction with defending his father's actions as lord deputy, an inferior magistrate, he started to mix ideas

<sup>11</sup>See C. McNeill, ed., "Gerrard Papers: Sir William Gerrard's notes of his report on Ireland 1577-78," *Analecta Hibernica* 2 (1931): 132.

<sup>12</sup>*The Statutes at Large Passed in the Parliaments Held in Ireland*, vol. 1 (Dublin: George Grierson, 1786-1801), 28 Henry VIII, c. 22.

<sup>13</sup>Sidney to Walsingham, 15 May 1577, British Library (hereafter BL), Cotton MSS Titus BX, 92r.

about the rights of inferior magistrates with ideas about the absolute authority of the prince.<sup>14</sup> Philip's "Discourse" seems to have had some impact as the lord deputy's right to levy cess was in the end upheld, though the Pale did argue that the proposed commutation of the charge would cost the community too much and so an alternative proposal was accepted.<sup>15</sup>

Furthermore, the Irish lord deputy and his son, in adopting such a position, set out a view of political authority that their reformed Protestant colleagues in England were unlikely to voice. Henry Sidney's contemporaries in England, like the community in Dublin, held to a popular view of political authority, where it was argued by Commonwealth thinkers such as John Aylmer that sovereignty in England lay throughout the polity, with the Lords, Commons, and the Privy Council, as well as with the prince.<sup>16</sup> This view allowed all estates a say in government, and this was reinforced by a division which existed between Elizabeth and her reformed Protestant councillors. Patrick Collinson and Stephen Alford have both explored how Elizabeth's reluctance to agree to a more thorough reformation of the church, or to listen to counsel that pressed her to marry and secure the succession, encouraged her reformed Protestant councillors to attempt to bypass the queen as much as possible in the process of government.<sup>17</sup> Any attempt, therefore, to define aspects of sovereign authority as absolute was unlikely to be welcomed by Elizabeth's English councillors, as this would have denied the other estates of the mixed polity a voice in certain aspects of policy. The reformed Protestant Sidney, however, did not face this problem, because Elizabeth was physically absent from Ireland. Instead, in adopting an absolutist position, the lord deputy could only strengthen his ability to act, hence his willingness to address directly the urtexts of the mixed polity view in England—English custom/common law as expressed in *Magna Carta* and Littleton's *Tenures*, which it was argued placed limits on the authority of the crown.<sup>18</sup>

The peculiarity of the Irish situation is also highlighted by Philip Sidney's friendship with the French Huguenot writer Philippe Du Plessis Mornay, in that the absolutist position adopted by the Sidneys, both father and son, followed very much the position outlined in Jean Bodin's *Six Books of the Commonwealth*. The Catholic Bodin, however, in arguing that sovereign authority was by definition an "absolute and perpetual" power, had made a direct attempt to undermine the

<sup>14</sup>Philip Sidney, "Discourse on Ireland," June 1577, BL Cotton MSS Titus BXII, 577–79.

<sup>15</sup>See H. R. Woudhuysen, "Sidney, Sir Philip (1554–1586)," *Oxford Dictionary of National Biography* [ODNB], ed. H. C. G. Matthew and Brian Harrison (Oxford: Oxford University Press, 2004).

<sup>16</sup>See A. N. McLaren, *Political Culture in the Reign of Elizabeth I: Queen and Commonwealth 1558–1585* (Cambridge: Cambridge University Press, 1999), esp. 59–68.

<sup>17</sup>See Patrick Collinson, "The Monarchical Republic of Elizabeth I," in *Elizabethan Essays* (London: Hambledon, 1994), 31–58, and Stephen Alford, *The Early Elizabethan Polity: William Cecil and the British Succession Crisis, 1558–1569* (Cambridge: Cambridge University Press, 1998), 2–8.

<sup>18</sup>For a more detailed discussion about common law and the limits placed on government see Alan Cromartie, *The Constitutional Revolution: An Essay on the History of England, 1450–1642* (Cambridge: Cambridge University Press, 2006), 35–58 and *passim*.

validity of a Huguenot mixed polity position. Philip and his father, therefore, despite their Protestantism, and a European friendship network, adopted a view largely antithetical to the standard Protestant position. For example, for Huguenots such as Mornay, who had been denied freedom of worship in France, inferior magistrates had the right to resist an ungodly ruler in order to defend the political community they represented, both by virtue of their office and because the community had entered into a covenant with God.<sup>19</sup> Similarly, A. N. McLaren argues that within England a mixed polity or Commonwealth view dominated, because the kingdom was perceived to be a godly community, thus reformed Protestants had both a constitutional and a spiritual right to participate in government.<sup>20</sup> Ireland in contrast was very far from such a godly model.

In particular, Irish government sought to reform the island to a long-term civil obedience and continued to fail to achieve its objective. Ciaran Brady has discussed how the introduction of an English system of land tenure and law was thought important in the island's longer-term reform, where it was argued that an English model of government would bring Ireland's lords to understand the benefits of civil society and therefore accept crown government.<sup>21</sup> Government nevertheless remained reliant on force of arms as a means of maintaining a basic level of obedience. More importantly, Nicholas Canny and Brendan Bradshaw, writing in the late 1970s, both argued that a Protestant emphasis on original sin had encouraged Irish government to embrace a more coercive policy and judge the island to be beyond reform.<sup>22</sup> This position has recently been revised, and it has been suggested that reformed Protestants did not simply judge the Irish to be beyond help—that for Henry Sidney and his associates it was through the dissemination of God's word and the operation of God's grace that true change would be brought about at the level of man's conscience. The problem here was that various administrations faced difficulties in reforming church finances and in making provision for a preaching ministry, the very thing that would bring about man's reform and allow government to construct a godly community.<sup>23</sup> This meant Elizabeth's unreformed subjects needed to be excluded from

<sup>19</sup>See *Vindiciae Contra Tyrannos*, ed. George Garnett (Cambridge: Cambridge University Press, 1994), lv–lxxvi, which discusses the authorship of this classic resistance text and concludes that Mornay was at least co-author, and Skinner, *Foundations*, 2:329–31.

<sup>20</sup>McLaren, *Political Culture in the Reign of Elizabeth*, 59–68.

<sup>21</sup>Brady, *The Chief Governors*, which discusses the place of English law in Irish government's reform plans, 72–158.

<sup>22</sup>See Nicholas P. Canny, *The Elizabethan Conquest of Ireland: A Pattern Established, 1565–76* (Hassocks: Harvester, 1976), 119–36 and passim, and Brendan Bradshaw, "Sword, Word and Strategy in the Reformation in Ireland," *Historical Journal* 21 (1978): 475–502.

<sup>23</sup>See Ciaran Brady and James Murray, "Sir Henry Sidney and the Reformation in Ireland," in *Enforcing the Reformation in Scotland and Ireland, 1550–1700*, ed. Elizabethanne Boran and Crawford Gribben (Aldershot: Ashgate, 2006), 14–39, and Mark A. Hutchinson, "Reformed Protestantism and the Government of Ireland, c. 1565 to 1580: The Lord Deputyships of Henry Sidney and Arthur Grey," in "Sir Henry Sidney in Ireland and Wales," ed. Thomas Herron and Willy Maley,



government, an absolutist position being at some level a response to the failure to further religious reformation.

\* \* \*

In the short term, however, it was through an examination of the legality of some of Sidney's actions as deputy, after his departure from office in 1578, that more questions began to be asked concerning the type of political authority the lord deputy actually possessed; although this did concern Sidney's attempt to make provision for a preaching ministry and so further the island's longer-term reform. The lord deputy had made a number of requests that the queen take action over farmers of impropriated benefices, which were held from the crown, in cases where farmers did not make sufficient provision for clergymen who could preach. Elizabeth had done nothing, and her reluctance to support the implementation of religious reformation in Ireland was preventing the lord deputy from gaining access to the financial resources he needed to establish a preaching ministry on a firm footing.<sup>24</sup> In response Sidney decided to erect a court of faculties in Ireland in March 1577. The court would allow Sidney to act where the queen would not, as it had the authority to sequester clergy, grant dispensations, examine clerics' rights to livings and give admission to benefices which had devolved to the crown. Sidney's decision to erect the court, however, rested on two contestable assumptions, and it was as a result of a dispute which took place over the validity of the court in December 1578 that these two assumptions came to be outlined in open political debate. Once again, the fact that Sidney had made use of the prerogative, and not Elizabeth, meant any sense of *lèse majesté* was avoided, because any discussion would concern the actions of the lord deputy and not the prince.

As in the case of cess it was assumed that the prerogative, in this case the ecclesiastical prerogative, was absolute, since the court undercut the existing visitatorial jurisdiction of the archbishop of Dublin. More importantly, Sidney also made the assumption that as lord deputy he could exercise crown authority in full and delegate such authority to others, i.e., erect a court and appoint judges to it.<sup>25</sup> In doing so Sidney continued a trend whereby the powers set out in the letters patent issued to lord deputies tended to be interpreted in quite broad terms. The letters patent issued to governors did not exactly specify that lord deputies could delegate crown authority in this way, although it was accepted that the lord deputy could appoint commissioners to deal in affairs of state in areas remote from crown government. In particular, lord deputies tended to issue commissions for the exercise of martial law in response to violent disorder, though they were simply authorized "to punish all persons invading or intending to plunder

---

special issue, *Sidney Journal* 29 (2011): 71–104, for a revised account of the place of religious reformation in the programme of government in Ireland.

<sup>24</sup>Hutchinson, "Reformed Protestantism," 87–88.

<sup>25</sup>James Murray, *Enforcing the English Reformation in Ireland: Clerical Resistance and Political Conflict in the Diocese of Dublin, 1534–1590* (Cambridge: Cambridge University Press, 2009), 298, makes a similar observation about Sidney's use of the ecclesiastical prerogative.

or lay waste to the kingdom.”<sup>26</sup> This further complicated the absolutist position in Ireland, in that the authority to use martial law, in other words the authority to act outside the law, located by Bodin with a particular estate in society, was shared out amongst the various minor offices of state. As Rory Rapple notes, provincial presidents, seneschals, and captains started to conceive of the authority they held as an extension of the crown’s *imperium*, the development of provincial institutions feeding into a discussion over the nature of sovereign authority in the Irish kingdom.<sup>27</sup> Michael Braddick and Steven Ellis have drawn attention to the increase in county institutions in England and Ireland, which they argue was integral to the process of state formation. This reduced government’s dependence upon the local nobility thus strengthening the unitary character of the state. In Ireland, where provincial presidencies had been established in Munster and Connaught, these institutional developments sat alongside the more abstract debate concerning the nature of sovereign authority.<sup>28</sup>

With regard to the Court of Faculties, it was the archbishop of Dublin, Adam Loftus, in a document dated 20 December 1578, who attacked the legality of Sidney’s decision to erect the court, no doubt because his archiepiscopal authority had been undermined, and Loftus reasserted a mixed polity view. The archbishop, as an English reformed Protestant, had mainly supported Sidney’s church reform program when Sidney had been in office.<sup>29</sup> Loftus explained that the two judges appointed to the court by Sidney, Dr. George Acworth and Robert Garvey, could only “have authority to grant all manner such licences [etc.] ... as may be given and granted by an act of parliament holden at Dublin ... in the 28<sup>th</sup> year of the reign of King Henry the eighth, entitled act of faculties.” The problem, however, was that the statute which governed faculties gave only the monarch the authority to set up such a court in Ireland and make appointments to it, and Loftus suggested that that right could not be passed to the lord deputy. The archbishop continued, “it is thought that this commission granted by the lord deputy of Ireland, is not warranted by law, for that such commissions are specially reserved to her

<sup>26</sup>*Calendar of the Patent and Close Rolls of Chancery in Ireland*, ed. James Morrin (Dublin: A. Thom and sons, for H.M. Stationery Office, 1861), 1:370. Letters patent took a standard form and the above quote is taken from the letters patent issued to Lord Deputy Sussex in 1556/57. The text of the various letters patent issued to Sidney were not recorded by Morrin, and the originals were destroyed with the destruction of the Four Courts in Dublin in 1922. Also see David Edwards, “Ideology and Experience: Spenser’s *View* and Martial Law in Ireland,” in *Political Ideology in Ireland, 1541–1641*, ed. Hiram Morgan (Dublin: Four Courts, 1999), 130–33.

<sup>27</sup>Rory Rapple, *Martial Power and Elizabethan Political Culture: Military Men in England and Ireland, 1558–1594* (Cambridge: Cambridge University Press, 2009), 162–99.

<sup>28</sup>Michael J. Braddick, *State Formation in Early Modern England, c. 1550–1700* (Cambridge: Cambridge University Press, 2000), 136–71, 180–280, and Steven G. Ellis, “Tudor State Formation and the Shaping of the British Isles,” in *Conquest and Union: Fashioning a British State 1485–1725*, ed. Steven G. Ellis and Sarah Barber (London: Longman, 1995), 40–63.

<sup>29</sup>See Mark A. Hutchinson, “Sir Henry Sidney and His Legacy: Reformed Protestantism and the Government of Ireland and England, c. 1558–1580” (PhD diss., University of Kent, 2010): 62–63, 110–12.

majesty, her heirs and successors by the words of the statute.” Sidney’s authority, therefore, was held “*durante bene placito* [during the pleasure of the crown].”<sup>30</sup> For Loftus then the ecclesiastical prerogative was governed by statute law, i.e., parliament, and the prince or deputy could not step outside those limits, and in setting out such an argument Loftus touched on the two assumptions upon which Sidney had acted. The archbishop argued that the ecclesiastical prerogative was not absolute, and that such authority could not be freely delegated by the person of the lord deputy, an inferior magistrate.

The dispute developed further when Robert Garvey, one of the judges in the court, responded to Loftus’s position, no doubt in an attempt to preserve his own authority in the court, and what Garvey argued gave extra clarity to the two assumptions upon which Sidney had acted. Garvey began by addressing how other crown officers, in other words inferior magistrates, had made use of crown authority, and he described how bishops could and had delegated their authority in full to their subordinates. He explained that

the bishops by their commission do give the jurisdictions ecclesiastical ... to their chancellors, professors of laws as men of better skill ... by means whereof the archbishop of Canterbury’s chancellor, the archbishop of York’s and Dublin’s chancellors have authority over all bishops ... within their provinces, and over all other in laws ecclesiastical that are to be corrected and reformed by the said archbishop’s authority.

Garvey argued that the authority which came with the offices of state could be delegated to others, which meant Sidney had the right to appoint judges to the court. He then moved on to discuss Thomas Cromwell’s viceroyalty in ecclesiastical affairs under Henry VIII. This was a particularly significant example since it had been under Henry VIII that the idea of an imperial monarchy had first been voiced: the idea that the English crown had absolute authority, or *imperium*, in both temporal and spiritual matters. He explained that Thomas “Cromwell (as I have heard by credible report) had in many respects a far larger and a more ample commission than this is, being appointed vicegerent in ecclesiastical causes to the king, and exercised in his time all the ecclesiastical jurisdiction belonging to the king.”<sup>31</sup> Garvey suggested both that the ecclesiastical prerogative was absolute and that it could be exercised in full by an officer of the state. The dispute over the Court of Faculties subsided with the appointment of Loftus to the court.<sup>32</sup> Nevertheless, by the end of 1578 a greater degree of shape had been given to the two assumptions we associate with a modern abstract notion of the state, both

<sup>30</sup>“A brief note of certain defects,” 20 December 1578, TNA SP63/63/49.

<sup>31</sup>“Certain notes delivered by Robert Garvey,” 2 January 1579, TNA SP63/65/2.

<sup>32</sup>Hutchinson, “Sir Henry Sidney and His Legacy,” 182–83. Loftus was appointed to the court in March/April 1579.

the idea that the authority of government is absolute and that it is inherent in the offices of state.

\* \* \*

It was at this point that the beginnings of a change in the use of the term state started to take place in Irish government correspondence. The term state had of course been used to refer to the condition or state of the island. Sidney, for example, wrote on 12 September 1577 of “the state of the North” and about “the state of the realm.”<sup>33</sup> The term, however, began to be used to denote the authority of crown government in Ireland, and in this respect it seems that Irish government was starting to search for a term to express the idea that the authority it possessed was somehow distinct from the person of the prince. No doubt government’s constant need to report on the condition or state of the country encouraged such a linguistic shift.

In February 1578, for instance, Sidney wrote of the Earl of Desmond, an Old English lord who held lands in Munster and like most was protective of his autonomy, “that he [Desmond] meant no harm to the state nor would be author of any disorder.”<sup>34</sup> Lord Justice William Drury, Sidney’s immediate successor as head of the Irish administration, also began to use the term state to make a distinction between Elizabeth in England and the authority possessed by government in Ireland. Drury wrote, for example, in November 1578, just before the dispute over the Court of Faculties began, of Walter Gall, a citizen of Kilkenny, who had submitted to the Irish Council, and Drury described how Gall had “disobediently behaved himself towards” not only “her majesty,” but “the state.” His comment also reflects the idea of the prince’s two bodies.<sup>35</sup> Furthermore, Drury wrote in December about Hugh O’Neill, the Baron of Dungannon in Ulster, that “the baron [was] the metest of any other [lord in Ulster] to be countenanced by the state.”<sup>36</sup> It would not be until the mid-1580s, however, that the term would also begin to be used to make an equally clear distinction between the wider Irish polity and the authority exercised by Irish government.

Nevertheless, it would appear that developments in Ireland had begun to move ahead of developments in England. For example, we find that the use of the term state in England expressed simply the idea of a sovereign territorial unit. John Guy argues that it was “by the 1590s [in England that] they began to conceptualize ‘the state,’” whilst beforehand “politicians had spoken only of ‘county,’ ‘people,’ ‘kingdom,’ and ‘realm.’”<sup>37</sup> Wallace MacCaffrey also notes that around the same period the Privy Council in England began to write “of the queen and

<sup>33</sup>Sidney and Irish Council to Elizabeth, 12 September 1577, BL Cotton MSS Titus MSS BX, 124v–27r.

<sup>34</sup>Sidney to English Privy Council, 20 February 1578, BL Cotton MSS Titus MSS BX, 146r.

<sup>35</sup>“Walter Gall’s submission in Kilkenny,” 6 November 1578, TNA SP63/63/15.

<sup>36</sup>Drury to English Privy Council, 16 December 1578, TNA SP63/65/6.

<sup>37</sup>John Guy, *Tudor England* (Oxford: Oxford University Press, 1988), 352–53.

the state” to refer to the wider English political community.<sup>38</sup> No doubt Elizabeth’s physical presence in England prevented government there, i.e., the English Privy Council, from making use of the term to draw a clear distinction between its authority and the person of the prince. Moreover, the distinction that was being made in Ireland was further clarified in 1579 by the chance use of an Irish statute.

The Irish Council had recourse to “an act for the election of a lord justice,” originally passed in 1541, which allowed government to continue in the absence of the person of the prince. The Irish Council acted on the basis of this Irish statute when Sir William Drury, who had been appointed lord justice to head the Irish administration immediately on Sidney’s departure from office in 1578, died suddenly whilst involved in action against rebels in Munster in 1579. This produced an emergency situation allowing for the appointment of a new lord justice as an interim arrangement without first consulting the prince. It is important to note that though the council acted without consulting Elizabeth, it did so by virtue of a statute which the crown had approved for emergencies and the appointment would either be confirmed or revoked by the prince at a later date. The statute allowed

that immediately upon the avoidance of every the king’s lieutenants, deputy or justice of this realm, by death, surrender of their letters patent of office, [or] departure out of this realm ... [the] king’s councillors ... shall by authority virtue of this act to elect and choose one such person, as shall be an Englishman ... to be justice and governor of this realm of Ireland.<sup>39</sup>

In choosing Sir William Pelham as the next lord justice in 1579, therefore, the Irish Council came very close to acting as though a degree of sovereign authority came with the offices of state.<sup>40</sup> The Irish statute may even have informed a later draft English bill for “the queen’s majesty’s safety,” drawn up by the lord treasurer in England, Lord Burghley, in 1585. Burghley’s draft bill would make provision for the Privy Council to retain its authority in the event of Elizabeth’s death, where “the government of the realm ... [was to] continue in all respects” until a parliament had elected an acceptable successor.<sup>41</sup> Burghley was responding to a specific problem, the possibility that Elizabeth might die without an heir, which would mean the succession might pass to the Catholic Mary Queen of Scots, and in doing so he followed government in Ireland and separated crown authority from the person of the prince and positioned it within the apparatus of government. For Patrick Collinson, this was the paradoxical situation where Elizabeth’s Privy Councillors in England, though acknowledging Elizabeth’s authority as

<sup>38</sup>Wallace T. MacCaffrey, *Queen Elizabeth and the Making of Policy, 1572–1588* (Princeton: Princeton University Press, 1992), 214.

<sup>39</sup>*The Statutes at Large Ireland*, 33 session 2 Henry VIII, c. 2.

<sup>40</sup>Edward Fenton to Walsingham, 16 October 1579, TNA SP63/69/64.

<sup>41</sup>Collinson, “Monarchical Republic,” 53–54.

queen, attempted to govern as much as possible without her. Collinson describes this as the English “monarchical republic,” and Burghley’s bill, unlike the Irish statute, would remain in draft form.<sup>42</sup>

Moreover, whilst Collinson stresses the temporary nature of the Elizabethan monarchical republic and its lack of modernity, which he argues was “unique and bizarre,” contemporaries reverting to a more received notion of dynastic rule with “James and his fruitful progeny,” this could never be the case in Ireland where the prince would always be physically absent.<sup>43</sup> In this respect, Stuart governors acted in a similar way as their Elizabethan predecessors and they continued to make the assumption that sovereign authority was inherent in the Irish offices of state and could be exercised freely by the officeholder.<sup>44</sup> It is also the case that from a reformed Protestant perspective the corrupt nature of the Irish political community meant that Collinson’s local self-governing English polity, identified in the town of Swallowfield and other “gentry republics,” could never be tolerated in Ireland.<sup>45</sup> The notion of popular sovereignty, therefore, which was so integral to the “gentry republic” and government in the English localities, remained absent in Ireland, further encouraging Irish government to think of sovereignty in more institutional terms and therefore separating state from polity.

\* \* \*

Within a couple of years of the publication of Bodin’s *Six Books*, then, political conditions in the Irish kingdom had added a significant twist to Bodin’s definition of sovereignty, where the actions of the lord deputy, as an inferior magistrate, had begun to separate Bodin’s “absolute and perpetual power” from the person of the prince and reposition it within the apparatus of the state. But there was still a degree of tentativeness surrounding where exactly sovereignty lay in the Irish kingdom, since no direct statement on the nature of sovereign authority in Ireland had yet emerged. Most statements were simply reactive and they involved the examination of a particular prerogative right, such as the ability to levy cess or the erection of the Court of Faculties. The seriousness, however, of the disintegration of political authority in Ireland in 1580, as a result of the rebellion of various Old English and Gaelic Irish lords, was to take these piecemeal developments that final step forward and elicit a more general absolutist statement on the nature of political authority in Ireland.

Arthur Grey was appointed lord deputy in 1580 after rebellion had broken out throughout Ireland. On top of this, the Old English community of the Pale, the usually loyal area of Dublin and its localities, had also risen in rebellion. Viscount Baltinglass, a Pale lord, rose in support of Sir James Fitzmaurice who had returned to Munster to raise the standard of counter-reformation revolt, and

<sup>42</sup>Collinson, “Monarchical Republic,” 31–58.

<sup>43</sup>Collinson, “Monarchical Republic,” 56.

<sup>44</sup>Morgan, “Overmighty Officers,” 18.

<sup>45</sup>Collinson, “Monarchical Republic,” 32–39.

William Nugent, the baron of Delvin's son, quickly followed Fitzmaurice and Baltinglass. This posed particularly serious questions concerning the integrity of crown government in the Irish kingdom, in that crown government appeared to have very little sovereign authority left. Moreover, the Irish situation chimed with the problem Bodin had tackled in the *Six Books*. Bodin had argued not only against the constitutionalist claims of French Huguenots, he had suggested that the breakdown in political order, which had resulted from confessional division and the French Wars of Religion, had been fuelled by Huguenot arguments, because they had been able to justify, in constitutional terms, taking up arms against the ruler. Most importantly, Bodin had defined sovereign authority as absolute because he believed that only in maintaining the integrity of government's authority, which left no room for Huguenot dissent, would a polity divided along confessional lines be prevented from pulling itself apart. In other words, by framing the question of political stability in terms of the maintenance of the authority of the state, Bodin was able to sidestep the more difficult issue of religious division.<sup>46</sup>

In this respect, Grey's actions in Ireland would appear to have followed a similar rationale, in that the new lord deputy, as Vincent Carey notes, did conceive of the breakdown in order in Protestant apocalyptic terms, especially considering the arrival of Papal forces at Smerwick in Kerry in 1580.<sup>47</sup> He was also all too aware of the failure to make provision for the dissemination of God's word and further religious reformation, as well as government's continued reliance on the sword to maintain a basic level of outward obedience.<sup>48</sup> Strikingly, however, Grey chose to frame the problem strictly in terms of the authority of the state, and the new lord deputy refused to countenance any hint of civil disobedience. For example, two leading Pale lords, the Earl of Kildare and the Baron of Delvin, were arrested, not because they had been involved in the Pale revolts, but because it was believed they may have had foreknowledge of what was being planned.<sup>49</sup> Similarly, Grey arrested and attempted to indict many members of the Old English community for involvement in William Nugent's conspiracy, even though they were only vaguely connected with the conspiracy. If there was any common

<sup>46</sup>See Skinner, *Foundations*, 2:284–86, and Bodin, *Sovereignty*, 110–26.

<sup>47</sup>The counter-reformation overtones of rebellion clearly played a significant part in the ferocity of Grey's response. This has been discussed in Vincent P. Carey, "Atrocity and History: Grey, Spenser and the Slaughter at Smerwick (1580)," in *Age of Atrocity: Violence and Political Conflict in Early Modern Ireland*, ed. David Edwards, Pádraig Lenihan, and Clodagh Tait (Dublin: Four Courts, 2007), 97–94. Also see Hutchinson, "Reformed Protestantism," 91–101, which suggests, in contrast to Carey's article, that Grey's response was not only informed by a Protestant apocalyptic viewpoint, but also a Protestant evangelical outlook. Grey concluded that the means to evangelize the Irish had not been made available by Elizabeth and the Privy Council in England, and this left him without the means by which to effect Ireland's long-term reform.

<sup>48</sup>Hutchinson, "Reformed Protestantism," 96–102.

<sup>49</sup>See "Interrogatories to be ministered to the Earl of Kildare," [19 July] 1581, TNA SP63/84/36 and "Interrogatories to be ministered to Baron Delvin," 24 October 1581, TNA SP63/84/37.

denominator in the arrests it was their previous opposition, in the late 1570s, to the crown's prerogative right to cess as exercised by Sidney, with many of those arrested being related to former spokesmen sent to England to protest against cess.<sup>50</sup>

Grey made his position clearer when he explained why he had allowed Nicholas Nugent, the chief justice of Common Pleas, to be executed. Once again Nugent was not suspected of direct involvement in the Pale conspiracies, only of possible foreknowledge of his nephew's, William Nugent's, plans. It is also the case that the lord deputy had received instructions from Elizabeth, which made it clear that he should not proceed against those who may have known of the conspiracies, if they had not been directly involved in rebellion. This meant that Nicholas Nugent's trial and execution should not have gone ahead, because Nicholas had been "made privy" to William's conspiracy but he had not given his "consent to it."<sup>51</sup> Grey understood this and in justifying his decision to disobey Elizabeth's instruction he took very much an absolutist view of the prince's prerogative powers. The lord deputy acknowledged that what linked Nugent to the conspiracy was simply the fact he was "uncle to William now in rebellion." He even reported how Nugent had "submitted and confessed his fault in full." Grey explained, however, that because Nugent had called into question the extent of Irish government's authority in the past, he could not now be shown leniency; and he illustrated his point with reference to John Cusack, a man who was on trial with Nugent. Cusack had been pardoned as Elizabeth had instructed, because Cusack had agreed to be "received to a better estate and course of life and to do her majesty some acceptable service to repair this his offence." Grey argued, however, that Nugent could not be shown the same leniency because he had supported the Old English community's opposition to cess which had arisen in the 1570s. The lord deputy referred to Nugent's "wonted disposition to repine and impugn her majesty's prerogative as was not many years past tried to his punishment." Grey executed twenty members of the Pale community in total before Elizabeth stayed his hand.<sup>52</sup>

There followed as a result another conceptual shift in the way Irish government understood political disorder in Ireland. For instance, at a basic level the widespread civil disorder government confronted had tended to be understood in terms of the distribution of force of arms, where it was the military strength of the leading factions in Ireland that was considered to be the primary challenge to crown government.<sup>53</sup> John Perrot, however, in a treatise on reformation in Ireland written in 1581, came to restate this well-known refrain in Irish policy debate in a

<sup>50</sup>Loftus to Walsingham, 24 October 1581, TNA SP63/86/30 I. Also see Hutchinson, "Sir Henry Sidney and His Legacy," 220–22.

<sup>51</sup>"Instructions... to be communicated to her deputy and council," 3 April 1582, TNA SP63/91/4.

<sup>52</sup>Grey to English Privy Council, 12 April 1582, TNA SP63/91/22.

<sup>53</sup>See Brady, *The Chief Governors*, 74–76.



slightly more abstract way, and he drew a distinction between the political community, “the multitude of people,” and the “superiority” or sovereign authority possessed by the “prince.” As a result Perrot came close to suggesting that it was the attempt by Ireland’s lords to retain a share in the sovereign authority of the Irish state that was the underlying problem. Perrot was appointed lord deputy in 1584 and the treatise was part of an early bid for the deputyship. He explained:

It is to be considered, that where a multitude of people is, in any land acknowledging by word a superiority unto their prince, not living under his law, but each strong man calling unto himself a number [of men and] ... end[ing] laws according to his own will ... the ground thereof being never so ill ... [that there] must follow confusion in the whole.<sup>54</sup>

Furthermore, the appointment under Grey of Geoffrey Fenton, as secretary to the Irish Council, and Lodowick Bryskett, as clerk of the Irish Council, no doubt added needed intellectual ballast to Irish government’s theorizing about the nature and extent of its authority. Bryskett and Fenton were well aware of developments in European political philosophy, and as secretary and clerk to the council they would have penned official correspondence. As a result they had the opportunity to set policy discussion within the framework of the emerging concept of the state. Bryskett was of Italian descent and was clearly aware of developments in Italian republicanism which had revived notions of popular sovereignty from the Roman republican tradition.<sup>55</sup> Fenton was similarly aware of Italian republican thought, having translated Francesco Guicciardini’s *Storia d’Italia*, which had been published in 1579 as *The Historie of Guicciardin*.<sup>56</sup> The focus in Italian republicanism on how to maintain a state, through putting in place the appropriate structures and institutions of government, would have no doubt resonated with the Irish situation.<sup>57</sup> Fenton, in his preface to *The Historie of Guicciardin*, even used “the state” to denote sovereign territorial units, describing *The Historie* in his preface as a “discourse of state and government.”<sup>58</sup> Fenton’s translation of *A Discourse of Civil Wars and Late Troubles in France* (1570) further suggests he had an interest in French political thought.

\* \* \*

What followed was a use of the term state that began to express for the first time the idea that the authority government possessed in Ireland, was not only distinct from the person of the prince, but was also absolute and so distinct from the wider Irish polity. In other words, Bodin’s “absolute and perpetual” power was openly located within the general apparatus of the state, and it was Geoffrey

<sup>54</sup>BL Add. MS 48015, 309r.

<sup>55</sup>Richard A. McCabe, “Bryskett, Lodowick (c.1546–1609x12),” *ODNB*.

<sup>56</sup>Andrew Hadfield, “Fenton, Geoffrey (c.1539–1608),” *ODNB*.

<sup>57</sup>See Skinner, *Foundations*, 1:152–80 and 248–50.

<sup>58</sup>Edward Fenton, *The Historie of Guicciardin* (1579), 1v.

Fenton, with his clear awareness of European political philosophy, who seems to have been the first to use the term state in this way. In September 1581, for instance, Fenton, in discussing the surrender of Feagh McHugh O'Byrne, a Leinster lord who was in confederacy with Baltinglass, used "the state" both to denote the authority held by the lord deputy and council in Ireland, and as a way of making a distinction between the authority held by government and that possessed by the wider polity, in this case Feagh McHugh as a Gaelic Irish lord. Fenton remained suspicious of McHugh's intentions and suggested that "if at his coming in he [McHugh] had put himself into the hands and possession of the state ... [only then would] his reconciliation to the state ... [have] been void of suspicion and holden more firm and assured."<sup>59</sup> A similar use of the term can be identified in Fenton's discussion of the behavior of an Ulster lord Shane O'Reilly. O'Reilly had executed two sons of the now dead arch rebel Shane O'Neill because, it would appear, he thought Grey's government would agree with what he had done. Fenton, however, reprimanded O'Reilly because he had been instructed to place O'Neill's sons "into the hands and possession of the state."<sup>60</sup> In other words, the right of O'Reilly to act as a member of the political community against O'Neill's sons was something very different from the authority possessed by Irish government or "the state."

This idea continued to bed down after Grey's departure from office. Adam Loftus and Henry Wallop were appointed lord justices and so joint heads of government immediately after Grey. This was in many respects a stopgap measure until a decision had been made on the appointment of a new lord deputy. Nicholas Malby, however, the New English president of Connacht, referred to this gap between lord deputies as "this *interregnum* when the government is not established."<sup>61</sup> Malby clearly did not mean that this was a period when Ireland did not have a reigning monarch. Instead, it seems he was searching for the right word to express the peculiar nature of the authority held by lord deputies and a gap in the exercise of that authority. Furthermore, with the appointment of John Perrot as lord deputy in 1584, references to the state in Irish government correspondence became near commonplace, whilst any ambiguity that surrounded Irish government's, and in particular the lord deputy's, use of absolute authority would pretty much disappear.

Elizabeth, for instance, in a letter to the Irish Council dated 26 February 1586, complained of Perrot's unwarranted actions in Ulster to expel the Scots, whose activities in the province had been a prime cause of disorder there since the Earl of Sussex's lord deputyship in the early 1560s. Elizabeth's main concern was the cost of military action in Ulster, the "extraordinary increase of charges." She went further, however, and explained that the Irish Council should

<sup>59</sup>Fenton to Burghley, 14 September 1581, TNA SP63/85/41.

<sup>60</sup>Fenton to Burghley, 21 September 1581, TNA SP63/85/54.

<sup>61</sup>Malby to Walsingham, 16 April 1583, TNA SP63/101/29.

have acted as a check on Perrot's behavior, that Irish lord deputies did not have "absolute authority to determine and proceed in matters of weight."<sup>62</sup> This was a signal for a series of complaints about Perrot's often dictatorial behavior, where it was identified that it was normal for Perrot to proceed on the basis that absolute authority came with the office of Irish lord deputy. One of the most damning criticisms came from the archbishop of Dublin Adam Loftus, although Loftus chose to object to Perrot's behavior on the basis of the other position he held, that of Irish lord chancellor. He explained to Burghley in a letter dated 4 December 1586 that it was usual for Perrot to ride roughshod over the jurisdiction of the courts in Ireland, including the Court of Chancery in which Loftus as chancellor was the chief judge. Loftus described how the lord deputy would

remove such cases as are begun in chancery out of that court and to call the same before himself to be ordered by him and his favourites of this council. And in case any person by me the chancellor be in court committed, either for disobedience, and contempt or upon an execution after judgement, his lord at his pleasure releaseth the parties by his authority, which he supposeth is absolute and neither can nor ought to be limited.<sup>63</sup>

Perrot was acting very much in line with Bodin's notion of sovereignty, where civil law was thought not to limit the actions of whoever possessed sovereign authority in a state. Bodin writes, "law is nothing but the command of a sovereign making use of his power" and that "absolute power extends ... to the setting of civil law aside."<sup>64</sup> Perrot also commented in respect to Elizabeth's attempts to curb his authority that he agreed with "the good [Roman] Emperor Trajan speaking of the Sicilians upon his return from his conquest of Asia: that servitude did conserveth citizens and liberty did destroy them."<sup>65</sup>

Furthermore, the lord deputy, like Geoffrey Fenton before him, used the term state to distinguish between sovereign authority as exercised by the government in Ireland, and that possessed by the wider political community. For instance, when Perrot wrote to Burghley in September 1585 to defend his government's record, he explained that his predecessors as lord deputy had not attempted to properly curtail the authority of Ireland's lords. In doing so, Perrot clearly distinguished between "the will" or authority of Irish lords and the authority possessed by "this state," arguing that his predecessors in office had been "content in all things to let them [the Gaelic Irish lords] have their wills [which he was not], where lately there was not one of them that durst have offended this state but did answer all commandments."<sup>66</sup>

<sup>62</sup>Elizabeth to Irish Council, 26 February 1586, TNA SP63/122/81.

<sup>63</sup>Loftus to Burghley, 4 December 1586, TNA SP63/127/4.

<sup>64</sup>Bodin, *Sovereignty*, 38–39.

<sup>65</sup>Perrot to Burghley, 10 April 1586, TNA SP63/123/39.

<sup>66</sup>Perrot to Burghley, 24 September 1585, TNA SP63/119/32.

Similarly, the lord deputy's reference to the state in describing his dealings with an Irish parliament called in 1585 comes close to a fully modern use of the term. Perrot had turned to an Irish parliament, as had Henry Sidney during his first appointment as lord deputy in the late 1560s, in an attempt to further political and religious reform in Ireland. Perrot, however, like Sidney, encountered opposition from the community of the Pale, and he explained such opposition by suggesting that the community disliked scrutiny into its affairs.<sup>67</sup> With typical self-advertisement he argued that he had more of a free hand than other lord deputies, because he had pacified Ulster and this had allowed him to deal more thoroughly in matters of crown finance and religion. He argued, however, that "some [members of the Pale community] cannot abide that the state should have any leisure through such an opportunity to look more narrowly into their doings, and to that end serve [*sic*] the factious instruments of the Pale to oppose themselves under good pretences against the state."<sup>68</sup> Here Perrot's deployment of "the state" to describe the actions of Irish government conveys the sense of a distinct entity overseeing the political community at large.

There followed a sea change in Irish government's relationship with the island's lords. In particular, in the first half of Elizabeth's reign the Gaelic Irish had tended to be left to their own devices as long as they acknowledged the authority of crown government in Dublin.<sup>69</sup> Perrot's attitude to Gaelic Irish lords, in contrast, became more uncompromising. The problem it seems was that Gaelic custom gave the heads of Gaelic clans and septs, such as the O'Neill in Ulster, a degree of sovereign authority. For example, the O'Neill, as Kenneth Nicholls notes, had "the power to cress troops and other followers at will upon the vassal."<sup>70</sup> Such autonomy may have been tolerated to a degree in the early 1560s, but by the 1580s it was in direct opposition to an absolutist definition of sovereign authority.

In Ulster, for example, Perrot decided to divide the province into three, giving Turlough Luineach O'Neill, the head of the O'Neill clan, control of one-third, and giving jurisdiction over the other two-thirds respectively to Hugh O'Neill, the Baron of Dungannon and competitor for the title of the O'Neill, and Nicholas Bagenal, the leading crown officer in the province. Perrot was clearly responding to the realities of power in Ulster, and as Hiram Morgan notes, the authority of Dungannon and O'Neill would remain pretty much unaltered, because they

<sup>67</sup>See Victor Treadwell, "The Irish Parliament of 1569–71," *Proceedings of the Royal Irish Academy (PRIA)* 65 C (1966): 55–89, and Treadwell, "Sir John Perrot and the Irish Parliament of 1585–6," *PRIA* 85 C (1985): 259–308.

<sup>68</sup>Perrot to Walsingham, 18 June 1585, TNA SP63/117/36.

<sup>69</sup>For a good brief account of the more flexible arrangements of the early Elizabethan period in Ireland see Ciaran Brady, ed., *A Viceroy's Vindication? Sir Henry Sidney's Memoir of Service in Ireland, 1556–78* (Cork: Cork University Press, 2002), in particular Brady's introduction to the memoir, 29–35.

<sup>70</sup>See Kenneth Nicholls, *Gaelic and Gaelicized Ireland in the Middle Ages* (Dublin: Gill and Macmillan, 1972), 26.

continued to billet their forces throughout the province as before.<sup>71</sup> Nevertheless, Perrot's intention was to try and ensure that Turlough and Hugh possessed the authority of crown officers, thus offsetting any potential indigenous claim to independent political authority. He commented that the "dividing of so great a territory as Tyrone is, will be very necessary to this state."<sup>72</sup> On top of this, the clan titles of the MacWilliam Burkes in Connacht were abolished, i.e., "the name of MacWilliam, with other like titles of M's and O's," whilst Perrot's successor as lord deputy, William Fitzwilliam, ruthlessly undermined the structure of the MacMahon clan in Ulster, removing the clan chiefs and persuading the remaining clan members to become freeholders thus atomizing clan lands and clarifying the distinction between state and unreformed polity.<sup>73</sup>

\* \* \*

Finally, by the late 1580s this emerging Irish idea of state sovereignty had also begun to gain a presence within the mainstream of English political culture. Not only had the various arguments over cess and the dispute over the Court of Faculties been conducted at the English court, the second edition of Holinshed's *Chronicles*, published in England in 1586, gave a full account of the discussion which had taken place in Ireland over state authority. In the extended *Chronicle of Ireland* emphasis is placed on the passing of the sword of state—the physical symbol of sovereign authority in Ireland—to each lord deputy or lord justice on their appointment as head of the Irish administration, making clear that crown authority was positioned in the high offices of state in Ireland.<sup>74</sup> A distinction is also drawn between the wider and unreformed Irish polity and the authority possessed by the administration. We are given the distinct impression that the political community is far from God and so cannot participate in political life. In particular, the dispute between Sidney and the Old English community over cess is recounted, where, in contrast to the standard mixed polity view in England, we are told that the crown's prerogative powers are absolute and cannot be limited by custom.<sup>75</sup> The chronicle also describes the various claims made by Gaelic Irish lords to some level of independent political authority, and the various rebellions as being "against the state" and as endangering the queen's "imperial state."<sup>76</sup>

Critically, however, it is with Edmund Spenser's *View of the Present State of Ireland* (1597) that another marked shift in discussions took place, and as

<sup>71</sup>For the detail of Perrot's plans see Hiram Morgan, *Tyrone's Rebellion: The Outbreak of the Nine Years' War in Tudor Ireland* (Woodbridge: Royal Historical Society, 1993), 39.

<sup>72</sup>Perrot to English Privy Council, 5 March 1587, TNA SP63/128/74.

<sup>73</sup>MacCaffrey, *War and Politics*, 349–71, and "Discourse of cause of the late rebellion of the Burkes," 18 November 1586, TNA SP63/126/83.

<sup>74</sup>John Hooker, *The Second Volume of Chronicles: Containing the Description... of Ireland; ... collected by Raphaell Holinshed and... augmented... by John Hooker...* (London, 1586), 109, 111, 119, 150, 162, 170, 188.

<sup>75</sup>Hooker, *Second Volume*, 143–47.

<sup>76</sup>Hooker, *Second Volume*, 131, 133, 144.

Andrew Hadfield notes a *View* circulated widely in England in manuscript form.<sup>77</sup> Spenser not only argued in the *View* that the English kings of Ireland possessed “absolute power of principality,” he concluded at the end of the *View* that such authority should be exercised by the chief officer in Ireland. Spenser argues that there “should be one principall in appointing of the Lord Deputies authority, that it should bee more ample and absolute then it is, and that he [the lord deputy] should have uncontroled power to doe any thing, that he with the advisement of the Councell should thinke meete to be done.”<sup>78</sup> Even in Ireland to directly voice such a position was highly contentious, since this was to openly ask the crown to divest itself of its own sovereign authority.

Part of the reason Spenser seems to have reached such a conclusion is that unlike Sidney, Grey, and Perrot, he confronted head on the problem of the prince’s physical absence from the island and its implications for the integrity of the crown’s authority. Spenser points to the near immediate independence of the Anglo-Norman lords after Henry II’s brief sojourn to Ireland in 1171/2.<sup>79</sup> He notes how the presence of the Duke of Clarence as governor brought Ulster under control, but more critically how his departure in 1366 allowed O’Neill to make a claim to independent political authority.<sup>80</sup> He also describes the major Old English lords using the authority delegated to them through their palatine jurisdictions to pursue their own agendas, bending “that regal authority . . . one against another,” and we find the Gaelic Irish lord Feagh McHugh O’Byrne playing a “Rex” and “lift[ing] up his hand against that state.”<sup>81</sup>

Beside this Spenser also gives voice to the received view that the Irish polity is corrupt and unreformed. Common law we are told is unsuited to Ireland because Elizabeth’s Irish subjects cannot be trusted to serve on juries, the Old English are identified as having degenerated, and the whole community, it is noted, remains far from the right religion. A strong and settled authority, therefore, is required so that the necessary measures can be taken to begin reform, part of which means removing those lords who head rebellious factions, thus removing any sense in which the community at large has the authority to act against crown government.<sup>82</sup> Crucially, then, if sovereign authority is to be firmly established in Ireland, it cannot be located with the wider community which is corrupt, nor with the prince who is absent. It is logical, therefore, that it should be positioned with the deputy; but here we encounter another problem, because, as Spenser

<sup>77</sup>Andrew Hadfield, *Edmund Spenser: A Life* (Oxford: Oxford University Press, 2012), 336.

<sup>78</sup>Edmund Spenser, *A View of the State of Ireland*, ed. Andrew Hadfield and Willy Maley (Oxford: Blackwell, 1997), 159–60. Some similar observations are made over Spenser’s concern with dislocated sovereign authority in Andrew Hadfield “Spenser, Ireland and Sixteenth Century Political Theory,” *Modern Language Review* 84 (1994): 1–18.

<sup>79</sup>Spenser, *A View of the State of Ireland*, 21–23.

<sup>80</sup>Spenser, *A View of the State of Ireland*, 24.

<sup>81</sup>Spenser, *A View of the State of Ireland*, 67, 112.

<sup>82</sup>Spenser, *A View of the State of Ireland*, 100, 147.

explains, intrigue at the English court also tended to be used to undermine the deputy's authority. Here he raises the example of his patron Arthur Grey, who had left office in 1582 after much criticism of his actions at court.<sup>83</sup>

For Spenser, then, it is not good enough for the crown to delegate authority in an ad hoc and ill-defined manner to each individual lord deputy, as this left open the possibility that such authority could be curtailed, thus perpetuating the problem of a dislocated sovereign authority in Ireland which Spenser wished to avoid. It is this which leads Spenser to take that critical step and separate such authority from the prince and locate it fully within the institution of the deputyship, asking that the lord deputy have "uncontroled power to doe any thing." Spenser also asks that such a lord deputy be "of some of the greatest personages in Englande . . . uppon whom the ey of all Englande is fixed," and with the appointment of the popular figure of the second Earl of Essex as governor in 1599 all eyes became fixed on the emerging Irish state.<sup>84</sup> The letters patent issued to the earl effectively gave him the type of authority Spenser had suggested. Essex was granted the

power . . . to punish all persons offending—to ordain ordinances and statutes—to make proclamation, and demand the due execution therof . . . to grant full pardons to all seeking the same . . . to constitute all officers . . . to do and execute all other things in the king's name [*sic*], which his majesty should or ought to do, if he were there in his own person—to command and use . . . all the king's ships . . . to exercise marshall law; and for the execution therefore, to appoint, by letters patent, such and so many officers as to him shall seem expedient . . . permission to give, grant and demise to any persons, the castles, territories, lordships, manors, and lands within the territory called . . . Tیرهonnell; the county of Leitrim . . . ; the county of Fermanagh . . . ; and the territory called the Route . . . forfeited by the attainder of Hugh, late Earl of Tirone.<sup>85</sup>

The reference to "the king" as opposed to "the queen," though Essex was Elizabeth's representative, draws further attention to an increasingly abstract conception of sovereignty, although here the letters patent follow a standard rhetorical formula. There are also indications that Irish statist ideas had begun to spill over into English political discourse. As Alexandra Gadjia notes, the Earl of Essex and his associates also began to use the term state in order to frame their political actions in the English kingdom, as they became increasingly disheartened with

<sup>83</sup>Spenser, *A View of the State of Ireland*, 103.

<sup>84</sup>Taken from Hadfield, *Edmund Spenser*, 335, who suggests Spenser is making a direct reference to the second earl of Essex here.

<sup>85</sup>*Calendar of the Patent and Close Rolls of Chancery in Ireland*, 2:520.

Elizabeth and her Privy Council, drawing a distinction between the state and an English political elite from which they felt excluded.<sup>86</sup>

\*                      \*                      \*

Political conditions in Ireland then allowed the two principal assumptions we associate with a modern abstract notion of the state to emerge in Irish government correspondence ahead of developments in wider English and European political philosophy—the first assumption being that the authority of government is absolute and as a result distinct from the wider polity, and the second that that authority is inherent in the offices of state and so distinct from the person of the prince or magistrate. It was Henry Sidney who began the debate over the nature of sovereign authority in the Irish kingdom when he made use of the prince's prerogative rights in an attempt to further both the reform of Irish government finances and the reform of the Irish church. This posed two questions: firstly, could the prerogative be exercised by the lord deputy, independently of the person of the prince, and secondly, was the prerogative absolute? This began a process whereby political authority in Ireland was repositioned, not with the wider Irish polity or with the person of the prince, but within the general apparatus of the state. In this way developments in Ireland were to start to move beyond the definition of sovereignty as outlined by Bodin.

It was after Sidney's departure from office, however, that a broader absolutist statement on the nature of political authority in Ireland emerged. A Bodin-esque analysis was applied, which suggested that the reason political violence and disorder continued to pose a problem in the Irish kingdom was because both the Old English community of the Pale and Ireland's lords continued to claim a share in the sovereign authority of the state. The perceived corrupt nature of the Irish political community further encouraged government to make a distinction between the state and a wider polity that remained unreformed. By focusing on the question of state sovereignty the more difficult question of religious division could be avoided. It followed that if the Irish state was to be stabilized then the absolute authority of Irish government needed to be reestablished and maintained.

Grey's uncompromising view of civil disobedience, and Perrot's and Fitzwilliam's attack on an independent Gaelic clan structure, would appear to have been informed by such analysis, and against this background we find Edmund Spenser openly calling for absolute power to be positioned firmly within the apparatus of the state in Ireland. A progressive change in the use of the term *state* followed as government in Ireland searched for a new term to express the peculiar nature of the authority it possessed, where the lord deputy as an inferior magistrate was exercising absolute authority independently of both the person of the prince and the wider Irish polity. Finally, the flow of letters to the Privy Council in England,

<sup>86</sup>Alexandra Gajda, *The Earl of Essex and Late Elizabethan Political Culture* (Oxford: Oxford University Press, 2012), 164–74.



alongside the second edition of Holinshed's *Chronicles*, the wide circulation of Spenser's *View*, and Essex's appointment as governor, all meant that the notion of the state, as it emerged in Ireland, began to gain a clear presence within wider English political culture. ❧