RESTORING LOST LIBERTY

François Hotman and the Nationalist Origins of Constitutional Self-Government

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ABSTRACT

The rise of constitutional self-government in early modern Europe, I argue, owes much to a nationalist liberation narrative pioneered by French Huguenot François Hotman in *Francogallia* (1573). In response to appeals by absolutist thinkers to Roman law, which put the power of the king beyond legal or constitutional restraint, Hotman wove together tales of the heroism of ancient Gauls and Franks wresting their native liberties back from the Romans with a theory of constitutionally limited government grounded in the common law of France. This type of narrative was adapted by Dutch and English thinkers who sought to defend constitutionalism in their respective countries. Through this examination of early modern liberation narratives, I argue we can gain insight on the relationship between nationalism and resistance to autocratic governments and the formation of regimes consistent with the principles of constitutional self-government.

KEYWORDS: *Constitutionalism, Nationalism, Social Contract Theory, Common Law, Popular Sovereignty, Monarchomachs, François Hotman, Hugo Grotius, John Selden*

INTRODUCTION

Since the end of WWII, nationalism has had a bad reputation. While prominent liberal and cosmopolitan theorists have reformulated conceptions of constitutional democracy to transcend nationalism, important historians of political thought have effectively expunged nationalism from the history of constitutionalism, presenting the latter as a process that leads teleologically to John Locke's universalist, natural rights based theory of government, in which the concept of nationhood does not figure.[1] Other scholars who acknowledge the importance of nationalism to the development of constitutional self-government, or who posit a relationship between certain kinds of nationalism, nevertheless miss what is politically distinctive about early-modern nationalism.[2] The purpose of this essay is to show how nationalism grounded early-modern arguments for constitutional self-government. This study will demonstrate, at the least, that existing understandings of the growth of European constitutionalism should be reconsidered. Beyond this it is suggested that the examination of the link between nationalism and early modern constitutionalism may be of use to those engaged with the problems of preserving constitutional self-government where it now exists, or establishing or restoring it where it is now absent.

This essay proceeds in five parts. First I explore what is lacking in universalist accounts of constitutional self-government in general, and how the secondary literature on the monarchomachs, with its focus on Roman and natural law, tends to ignore the important question of what makes the notion of a permanent pre-political community with imprescriptible rights plausible. Second, I describe how the absolutist arguments of the period effectively denied the existence or the relevance of a pre-political community, and appealed specifically to Roman public law and Roman history to debunk common law restrictions on the power of princes, and the principle of government by the consent of the governed. Third, I demonstrate how Hotman's nationalist account supplies the conceptual and rhetorical deficiencies of abstract formulations of popular sovereignty and constitutionalism, drawn, in this case, from the abstractions of the Roman public and private law, and later from claims about the natural rights of human beings. I also point to some of the features of the nationalism of the *Francogallia* that make it compatible with a regime restrained by law and accountability to the people in ways that other forms of nationalism may not be. In the fourth section of this essay, I show how

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1. Of the contemporary theorists, see Habermas (1996), Hayward (2007); Muller (2007). Of the historians, see Franklin (1979), Salmon (1959), Skinner (1978), Tuck (1982).

2. See Greenfeld (1992) and Hont (1994).

seminal texts in the development of Dutch and English constitutionalism, namely, Hugo Grotius' *Antiquity of the Batavian Republic* and John Selden's *The English Janus*, were modeled on the *Francogallia*. Finally, in the Conclusion, I suggest some possible valuable lessons that modern political theorists might learn from Hotman's form of nationalism.

I. THE FAILURES OF THE UNIVERSALIST ACCOUNT

My essential claim is that the national-historical arguments of thinkers such as François Hotman contributed to the development of modern constitutional self-government something fundamentally different from what has been acknowledged hitherto. Hotman was an important and influential member of a school of Huguenot thinkers known as "monarchomachs" who challenged the idea of absolute monarchy in the late 16th century, a group that included Theodore Beza and Phillipe de Mornay. For the monarchomach writers, a nation is not a voluntary association of individuals, and the attachments to it are not defined by individual self-interest or agreement on universal principles. The tradition of popular self-rule is thus associated not with individualism, but with the republican idea of civic virtue located in a pre-political community. (Canovan 1996, 22–3; Yack, 2001). In Hotman's account, in particular, liberty and self-rule require that citizens have a primordial attachment to a specific fatherland.

As Margaret Canovan observes, the Lockean liberal tradition has a tendency "to blur the differences between polities and voluntary associations, and to represent the democratic polity as a kind of expanded tennis club" (1996, 21).[3] Hotman's account appealed not only to reason, but also to the common sentiments, experiences and memories that generate and sustain communities. Hotman and his imitators rhetorically reconstituted "confused multitudes" as "nations" who possessed sufficient solidarity, virtue, and experience to govern themselves, and mobilized support for specific established institutions which had real potential for the realization of restraint on political power and self-government.[4] One should not overstate

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3. See Locke ([1690] 1994): What "constitutes any *Political Society*, is nothing but the consent of any number of Freemen," §89. See also §116: children are "born . . . Subject of no Country or Government."

4. The phrase "confused multitude, without order or connexion" appears in the final chapter of Locke ([1690] 1994), §212, §219. There, in spite of the assertion that the "community," once formed, is a permanent body, which continues even when government is in abeyance, Locke's rhetoric suggests that the dissolution of the legislative assembly or the non-enforcement of the laws by the executive is liable to cause the death and dissolution of the community as well. This actually makes sense, if, as Locke's

the value of Hotman and other similar writers to political theory. On broader questions of human nature, justice, and the good life, they cannot compete with more abstract thinkers, and their assertions are also often question-begging. But their focus on the relationship between general principles, national identity, and existing institutions provides a useful complement to the theories of more celebrated political philosophers.

Historical scholarship, especially that of Quentin Skinner, Richard Tuck, Julian Franklin, and John Salmon tends to treat monarchomach writers as figures who produced various conceptual nuggets all of which John Locke was able, in the fullness of time, to bring together in his universalist theory of human rights and constitutional government based on the consent of rational, rights-bearing individuals (Skinner 1978, vol. 2, 239–40, 318, 338; Franklin 1979, 71–79, 94–97).[5] Franklin credits the monarchomachs' bold assertion of two ideas: popular sovereignty and institutionalized restraint on royal power (1969, 12–13). In fact both ideas had been commonplace in mediaeval Europe, and, though not ascendant, were voiced frequently in early modern France (Ullman 1965; Church 1941, 86). Other scholars focus on the relationship between Hotman's constitutional theory and Roman law (Lee, 2008). But in *Francogallia*, such arguments are overshadowed by appeals to native history and nativist sentiment.[6] Rhetorically, in fact, Roman law and the Roman people are more useful to Hotman as enemies and oppressors of the French nation and their ancestral liberties, which is another reason why he "obscures his own reliance upon civil law concepts" (Giesey 1961, 20).[7]

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theory suggests, the only bond of unity for a community is its members' recognition of a common legislative power and obedience to the same laws.

5. Salmon (1959) mentions the nationalist cast of Hotman's *Francogallia*, but he ignores how Dutch and English authors mimicked this kind of nationalist narrative. Tuck (1993) mentions Hotman's Franks and Gauls, Grotius' use of the Batavian myth, and Selden and Nathaniel Bacon's use of the Anglo-Saxon myth, but these discourses are stops along the way to the "great natural law theories of the mid-century."

6. Hotman's emphasis is in contrast with the works of Beza (1576) and de Mornay ([1579] 1994), in which all sorts of arguments are employed in more or less equal measure, including a wide range of evidence from the Bible, histories of ancient Greece and Rome and of mediaeval European states, Roman law, and natural law. French history does not receive significantly more emphasis than other materials. *The Rights of Magistrates* does not have the nationalistic tone of Hotman's *Francogallia* at all. The postscriptal poem of *Vindiciae Contra Tyrannos*, with its call to restore the ancient honor of Gaul, is reminiscent of *Francogallia*, but the rest of the work does not have this quality.

7. Hotman expends much more energy attacking the "foreign" Romans and the *Corpus Iuris Civilis* than putatively native sources of interpretations of French constitution unfavourable to his own, for instance the Salic Law, which is discussed only in chapter VIII (see Geisey 1961, 20–21). Although

John Pocock comes closest to appreciating the nationalist aspect of Hotman's work, discerning in it a precursor to romantic nationalism (1987, 15). However, the essence of ancient constitutionalism for Pocock is a kind of legal thinking in which legitimacy is conferred upon a regime by its immemoriality (1987, 17). It is true that much of Hotman's account is framed in this way, but the legal argument serves, for the most part, as a vehicle for deeper claims about the nature of political communities, the rights of nations, and the national character of the French. His argument is designed to answer precisely the sort of questions that theories limited to abstract rights and legal principles cannot and that, as some scholars argue, must be answered to make constitutional self-government tenable. One has to know who the people are, what the community of sentiment is within which men owe special duties to one another, within which there is indeed a common good to be sought. There must also be some common basis for agreement on the constitutional form and the basic laws.

Hotman's account of the national past would not meet the standards of modern historiography.[8] But even if such stories can be shown to be mostly fictional, that does not mean that writers can invent effective political narratives *ex nihilo*, or even that such writers are aware that they are engaged in *mythopoesis*. If national identities are to some degree "constructed" by political entrepreneurs, this does not mean that nations can be "constructed, adapted, or dismantled to order" (Canovan 1996, 13). As Rogers Smith notes "forms of political peoplehood . . . are largely generated, motivated, and also meaningfully limited by the particular range of stories of possible political identity that they have inherited and long valued" (1999, 48). Political actors are largely constrained to work with narratives that are already familiar, both to themselves and to their intended audience. The same sort of genealogy of the French nation and constitution laid out by Hotman was arrived at independently by other political thinkers of his time who did not share his partisan commitments (Major 1980, 184–7). At least among the literate, there were some common ways of understanding the French past that did not accord with the universalist assumptions of Lockean liberalism.

Hotman also gives cause to re-examine some of the typologies of nationalism and the relationships some scholars have alleged between said typologies and

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Hotman draws upon the constitutional tradition of the Roman republic, and certain aspects of Roman law, he rejects those parts of the *Corpus Iuris Civilis* from the period of the Empire, which royal officials had used to support absolutism (Kinneging 1997, 111–112, 244, 271).

8. Compare for instance, Hotman's account of the "War of the Common Weal" against Louis XI, summarized on page 51, to that of a modern historian: Major (1960, 54–58).

political regimes. Istvan Hont (1994) and Liah Greenfeld (1992) both characterize French nationalism as an ideology aimed at the centralization of political power and the homogenization of a population not yet sufficiently "national." One of the more extreme forms of this nationalizing state is seen in Emmanuel Sieyes's proposal to liquidate, redivide, and homogenize the old provinces of France (Hont 1994, 200).

Greenfeld contrasts "collectivist" nationalism, which she traces back to Hotman, with the purportedly "individualist" nationalism of England (1992, 30–31, 108–109). On her account, collectivist nationalisms lead to authoritarianism, and individualist ones to democracy and prosperity. A closer look at the nationalisms of Hotman, Grotius, and Selden casts doubt on the veracity of these distinctions and claims. Unlike the authoritarian nationalism that Hont and Greenfeld observe in late 18th century France, the early modern nationalism of Hotman and his Dutch and English imitators is opposed to a centralizing and homogenizing state, and while it leaves room for the rights of individual citizens, its distinctive feature, which reveals its mediaeval roots, is the dignity it accords to the settled rights and privileges of the estates, the provinces, and other corporate bodies of nation. Properly understood, the mediaeval and early modern nation is a community of communities.[9] Historians of mediaeval nationalism argue that it was the enduring strength of such subordinate partialities, and the capacity of subnational communities to resist the central government, that prevented nationalism in the Middle Ages from developing into the extreme forms that appeared in the late 18th, 19th, and 20th centuries (Tipton 1972, 47, 88). Greenfeld sees a sort of Lockean individualism as the basis of a moderate nationalism consistent with constitutional restraint and protection of rights. But the influential early modern proponents of constitutional liberty examined here, in whose works no such individualism is evident, point to different conclusions.

II. HOTMAN'S REJECTION OF THE ABSOLUTIST POSITION

The *Francogallia* was written in response to narratives which declared the French king to be an absolute sovereign, accountable neither to the common law nor to the assembly of the estates. According to such stories the French people had no existence as a coherent body prior to the arrival of the ancestors of the present royal family, much less a power to rule themselves as one body. By this account the Franks were originally Trojans. Like those who went on to found Rome, these Frankish

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9. See Althusius ([1601] 1995), and chapter 5 of Levy (2015).

Trojans conquered the territory that is now France and established their kingdom there. Being of the same lineage with the founders of Rome when the Roman Empire fell, the French descendants of the Trojans inherited the Roman *imperium* (Foucault 2003, 115–116). Hence, the French king could base his right to rule on two ancient lineages. First, the French king is a descendant of the Trojans, who founded France. Second, the French king is the inheritor of the Roman *imperium*. The implication of first lineage is that the royal family is, physically and juridically, the founder of the nation. The French people, then, "derive their origin from their kings—as the Roman people is said to have been created by Romulus because there had not been an original people before but a multitude scraped together from a variety of nations and peoples" (Beza [1576] 1956, 44).[10] Before the first French King created the nation, as Romulus created the Romans, there was only a confused multitude of disparate tribes with no unity or coherence, no common customs or laws, and, hence, no capacity for self-rule. The implication of the second ancient lineage is that the relationship between the king and people in France is of the same character as that between the Roman emperors and the subjects of the empire (Foucault 2003, 116).

The essence of the absolutist doctrine, as formulated by such figures as Guillaume Bude, Michel de L'Hopital, and ultimately Jean Bodin, was the claim that kings had power to act as final interpreters of all laws, to take whatever measures they thought necessary for the common good without needing the consent of any other institution (Keohane 1980, 4). No absolutist claimed for the king a right to violate natural and divine law, but a king's submission to such strictures could only be understood as "voluntary," for no other institution or person in the kingdom had a right to restrain or resist the king (Keohane 1980, 61, 66, 72; Allen 1941, 285, 292; Church 1941, 61–63).

One of the arguments employed by Hotman against absolutist claims was the assertion that the people, as a body, was immortal, and as such, its rights as a collective were imprescriptible (Hotman [1573] 1972, 399–401; Salmon 1959, 42; Lee 2008, 389). The assertion was an attempt to negate absolutist claims from *usucapion* according to which long possession established ownership, in this case, the king's ownership of, and hence, his absolute authority over the realm (Lee 2008, 388–389). Claiming that the people is an immortal body is a typical early modern way of asserting the state's accountability to a pre-political community. Yet there

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10. Theodore Beza, fellow Huguenot and monarchomach, notes that this argument is deployed by absolutists, and takes pains to show that other nations, especially France, were *not* created by their kings as the Romans are said to have been (1576).

was something larger at stake. For if a people cannot exist as a coherent body without a king to bind its members together with his laws, if there was no French nation until ancient kings created it by imposing their will on confused multitudes, then it is absurd to speak of the original and imprescriptible rights of the people. For a people to have common rights, it first must *be* a people. In effect, the absolutist asks, The people has rights? What people? Hotman answers in the *Francogallia*—turning, as Bernard Yack puts it, to an "identification of the people with the nation" (Yack 2001, 524)—*this people here*, descended from these tribes, with this distinct national character, and these customs.

Similarly, Hotman asserts that the right of a people to government by the consent of the governed—based on the principle that "what touches all should be approved by all," and the "celebrated liberty of holding of common council"—is part of the law of nations. Such natural rights belong, potentially, to all peoples, excepting "the Turks, or those like them" whose absolute monarchs treat their subjects "like slaves or cattle" (Hotman [1573] 1972, 297, 301, 305, 317).[11] But to exercise a right of nations, a multitude must *be* a nation. Thus, one of Hotman's tasks is to show that the French have had such status since ancient times and do not owe their peoplehood to the genius or the violence of any king or lawgiver.

III. HOTMAN'S THEORY IN *FRANCOGALLIA*

In *Francogallia*, Hotman makes four major accomplishments. First, he substantiates the otherwise abstract notion of a pre-political community with a narrative about the origins and development of the French nation. Second, he grounds his arguments for a particular constitutional form on the immemorial traditions of the French nation, which many generations of courageous ancestors had fought to preserve, rather than in terms of a voluntarist narrative of self-interested agreement. By formulating his argument so, he transforms the nation and the constitution from abstractions into objects capable of engendering the sort of public affection and civic obligation which he regards as a necessity for citizens of a constitutional and self-governing polity. Third, Hotman gives an account of native liberty confronting foreign tyranny, using past examples of rebellion, deposition, and expulsion to inspire action against present tyrants who are shown to behave like the alien

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11. Hotman uses the civil law axiom, *quod omnes tangit, ab omnibus approbetur*, but speaks of it in general terms as "an attribute of liberty". All of his examples of peoples who have had or retain these rights are European: the ancient Greeks and Romans, the English, the Germans, the Spaniards (see [1573] 1972, 299–317).

oppressors of old. Finally, he defends a mixed constitution, in which sovereignty is shared between the provinces and the national government, and, at the national level, between the king and the three estates, as the ancient and authentic form of government of the French nation.

A. Hotman's Narrative of the Origin of the French Nation

Although Hotman uses various terms for "nation" or "people", (*gens, patria, populus, universitas,*) which can have different connotations, he holds consistently to a fundamental distinction between the nation and the state (*civitas* or *respublica*). Properly understood, a nation (*patria* or *gens*) is not a voluntary association of individuals; it is a given, a primordial, natural union based on blood, custom, language, and a tribal, familial affection for one's conationals. The state, on the other hand, is not a given; it is something that a nation, or nations choose to create. The nation is the permanent natural body and the state an impermanent artificial body. Hotman's claims about the pre-political unity of the ancient Gaullish and Frankish nations may strain our credulity, but one understands why he makes them. Given the absolutist theory that nations are, in essence, created by kings, and sustained in their unity by the power of kings, he cannot concede that having a king or common magistrates is a key factor in the creation of nations. It is therefore common ethnic factors, blood, custom, language, that are, in his account, constitutive of nationhood. This must be the case if the state is to be considered accountable to the nation, and it is on these assumptions that Hotman constructs his historical narrative.

In Hotman's account, the pre-political community has two different manifestations, first as the two nations described by Roman historians, the Gauls and the Franks, and second, as a French nation that developed over time from an amalgamation of Gauls and Franks. Hotman dismisses out of hand the absolutist Trojan myth of the origins of the French state, and begins his account with descriptions of these two nations (Hotman [1573] 1972, 197). Before the Roman conquest, says Hotman, the Gaulish nation (*gens Gallorum*) was divided into autonomous regions governed by individual princes or aristocratic assemblies. Yet Gaul was not merely a collection of autonomous communities; rather, there was much common to all: "they not only observed the same language, customs and laws but also recognized the same magistrates" (Hotman [1573] 1972, 149). The ancient Gauls were thus one nation, bound together in solidarity by common language, customs, laws, and leaders. The one thing they did not have was a king or sovereign of all the Gauls. Indeed, not only did they not require a sovereign to unify them as a nation, but they were intent on living without one. As Hotman affirms, "these people abhorred kingly rule. According to

Caesar, 'when Celtillus, the father of Vercingetorix, held the supreme power and authority and obtained control of the whole of Gaul, his people put him to death for seeking to acquire a crown' " (Hotman [1573] 1972, 153).

Hotman also catalogues the references of ancient and mediaeval historians to the "Frankish nation" (*gens Francorum)*. "[T]he original Franks," he concludes, "came from that area lying between the Elbe, the Rhine and the sea . . . 'a people (*populus)*', as Tacitus says, 'who were the most noble among the Germans, and maintained their greatness by following the path of justice' " (Hotman [1573] 1972, 191). This "people," the Franks, who won Tacitus' admiration, were like other Germans in that they elected their kings but unlike other Germans in that they refused to pay tribute to the Romans (Hotman [1573] 1972, 207). More will be said in section C (p. 47ff) about the characteristics Hotman ascribes to the Franks and the Gauls. At issue here is Hotman's insistence that the ancestors of the French were established, self-conscious nations, each with its own customs and identity, rather than raw human material that could be moulded into whatever shape a royal or imperial master might wish.

B. The Roots of the French Constitution

These two nations, the Franks and the Gauls, were, by Hotman's account, prior to the French state and the first "French" king. What would later be called the French state first arose from an alliance of the Franks and the Gauls against their common oppressor, the Romans. The first king of the Francogallia was elected at a public council of the "twin-born nations (*gemellae gentes*)" who had formed one state (Hotman [1573] 1972, 214):

> By the time of [Merovech's] death a single state had been created by the two peoples, the Gauls and the Franks (*e duabus Gallorum et Francorum gentibus civitate facta*), and with a common mind they all elected Childeric, the son of Merovech, as king. They placed him upon a shield according to their custom, bore him thrice upon their shoulders round the assembly and saluted him as king of Francogallia (Hotman [1573] 1972, 217).

Several aspects of this beginning merit attention, for Hotman's account differs markedly from more abstract conceptualizations of the establishment of communities and states. According to Hotman the state was a creation of the two allied nations, two historic communities each with long established bonds of kinship and custom. There is no hint of the conceit of later social contract theorists, such as

Locke and Rousseau, that political communities were first formed by an act of consent of free individuals. Hotman, moreover, specifies no precise founding moment, no original act of consent. "By the time of Merovech's death," he says, "a single state had been created" (Hotman [1573] 1972, 217).

The election of a king by the two peoples is significant in several ways. First, it establishes historically the priority of the people over the king; they created him, and not he them. Yet, the argument concerns not the chronology only, but also the nature of the things. According to his conception of nationhood, no king could ever create a nation by imposing his will on a multitude of individuals. A nation is more permanent than a king precisely because a nation cannot be created by a single act of will or consent, whereas a king can. In Hotman's conception, the members of the "pre-political" community have ties of kinship, common memories and experiences, heroes and villains, common customs and institutions. These are the sorts of things that make a nation. A body that has such bonds has already achieved a degree of permanence: no act of a conqueror or lawgiver can negate it or impose a new identity upon it.

The election of a king by the Gauls and Franks is significant, also, as a manifestation of the common experience and kindred political culture of the two nations, preserved through many generations, which allowed them to act "with one mind" on this occasion. This act by itself did not create the state, for it had already been created, nor, for that matter, did it weld the Gauls and Franks together into one nation. The creation of the Francogallican state was facilitated by the shared political traditions of the two nations, already so similar that it was "as if they were twin-born" (*quasi gemellae gentes*), and their long struggle against a common enemy (Hotman [1573] 1972, 284).

The creation of one French nation also cannot be attributed to any act of a lawgiver or to the will of an aggregate of individuals. "French" nationhood came about through intermingling and assimilation of the Gauls and Franks. Hotman quotes the observations of chronicler Hunibaldus: "the Franks intermingled with the Gauls and took their daughters to wife. The children of these unions assimilated both their language and their customs, with which they have become increasingly familiar down to the present day" (Hotman [1573] 1972, 217–219). Two nations, already similar in their customs, melded into one. This one nation, whose members are all bound by ties of kinship, "one language and one set of institutions and customs," has, by Hotman's account, persisted over a thousand years (Hotman [1573] 1972, 285).

Hotman's account of the origins of French nationhood and statehood thus accomplishes at least two things. First, he gives substance to the abstract claim that the

common rights of the body of the nation ought to be understood as imprescriptible. The rights of the permanent body, the nation, are prior to those of the impermanent, the state. The reader knows the nation is the permanent body because Hotman has given it flesh and bones, he has traced its origins to historic communities, and he has shown the common endeavors of these communities—in this case the creation of a new state—and the continuity of the nation over time. Second, the defense of popular sovereignty in these terms before a mass audience, or at least before that portion of the population that is literate and participates in politics, will tend to inspire a deeper, more primordial national consciousness in the population.

Hotman's casting of the pre-political community, in which sovereignty ultimately resides, in racial, cultural, and historical terms suggests a relationship between the citizen and the community contrary to the individualism and voluntarism of the Lockean social contract. Membership in the nation, as Hotman understands it, is an inherited status and a feeling of connectedness akin to that of a tribe; it is not a matter of individual choice. Hotman makes this explicit in his preface to the *Francogallia*, where he argues that commitment to constitutional self-government requires that the citizens of a polity have a nationalist disposition. He refutes the old saying that "A man's country is wherever he finds content," an attitude he associates with Cynics, who style themselves citizens of the world free from obligations to any particular nation, and Epicureans, who value their own individual pleasure above all. Such a disposition is immoral:

> For if it seem a crime, and all but blasphemy to bear impatiently the humours, and even the asperity, of family elders, how much greater is it an offence to resent our native country, which the wise have always unanimously preferred to natural parents. He is a foolish man who would calculate his affection for his country in proportion to the advantages it brings him (Hotman [1573] 1972, 137).

In this analogy, typical of both ancient republicanism and modern nationalism, the duty of a citizen to his fatherland (*patria*) is like the duty of the son to his father.[12] Though the fatherland may provide fewer advantages to its native sons than other polities, or, worse, inflict undeserved torments on them, they still have irrecusable duties to it, just as sons have to their fathers, who raised and nurtured them.

On Hotman's account, such a commitment, irrespective of individual self-interest, is necessary for the preservation of liberty. Alluding to "the many monstrous

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12. The family is, for obvious reasons, the most common metaphor for the nation (see Grosby 2005, 43–56).

tyrants in Rome, who afflicted ordinary men, as well as those citizens deserving well of their fatherland," he asks rhetorically, "Should good citizens reject all care and solicitude for their country on that account?" If the Cynics and the Epicureans are right, then this is precisely what oppressed citizens should do: leave their fatherland, and settle wherever they find the most advantages, pleasures, and comforts. But such a philosophy hands victory to tyrants. Citizens should care for their fatherland "as one who is oppressed and unfortunate, and implores the aid of its native born" (Hotman [1573] 1972, 139). The suppression of tyranny and the preservation of liberty in a particular place require that citizens be patriots, that they value the liberty and the honor of their nation more than their own pleasure and comfort, more, even, than their own lives. Such patriotism is based on a primal affection and attachment to one's native land and people. The good citizen is like Odysseus "who preferred his native land of Ithica, fixed like some tiny nest to its harsh and jagged rock, to all the delights, and to the very kingdom, which Calypso offered him" (Hotman [1573] 1972, 137).

This primordial attachment of the citizen to his native people and land is central to Hotman's project in at least two respects. First, liberty is taken to be something that can be secured only in a *national* community, where most citizens have an affection for their conationals based on their shared national inheritance, where most possess "a certain inborn love of fatherland which can no more be renounced than any other human attribute" (Hotman [1573] 1972, 137). Second, the core of Hotman's rhetorical strategy is an appeal to citizens' piety for the "homes of their fathers and ancestors," and to the outrage they would feel if they saw them violated (Hotman [1573] 1972, 139). The text is meant to cultivate in his readers the same feeling for the "ancient constitution" he would have them "restore."

C. Native Liberty and Foreign Tyranny

In his historical account, Hotman establishes the Gauls and the Franks to have been valiant lovers of liberty, who won their independence at great cost from the tyrannical Roman Empire. He traces this theme through subsequent French history underlining the bravery of the French in preserving their birthright, a native constitution that protected their liberties and advanced the common good, in the face of corrupt kings who attempted to impose despotic Roman laws upon them. It is, in essence, a story of pristine native freedom holding out against depraved foreign tyranny. The call to restore the ancient constitution, and with it, the liberty and welfare of the nation, is framed as an appeal to expel a poisonous foreign element,

which in recent times has crept in, and to take inspiration from courageous ancestors who won such battles before.

The first few chapters of the *Francogallia* provide lineages of the Gauls and Franks as heroic races that loved liberty and as nations with recognized national institutions of popular government. The Gauls and Franks had a character suitable to self-government, a character which the French nation inherited. According to Hotman, all the regions of Gaul "accepted the general practice of holding a public council of the nation at a fixed time of the year . . . [where] they decided whatever seemed appropriate for the greatest good of the commonwealth" (Hotman [1573] 1972, 147). The existence of this national institution was confirmed by passages from Caesar: "They asked whether it was permitted to proclaim a council of the whole of Gaul for a certain day . . . A council of all Gaul was summoned at Bilbrax, and there a great multitude assembled" (Hotman [1573] 1972, 149). The ancient Gauls, then, in Hotman's interpretation of the ancient texts, had nascent national institutions of self-government, which they insisted on exercising even after the Romans had come among them. The regional princes and magistrates of Gaul, furthermore, exercised no authority like that of the Roman emperors. They did not inherit their power, and "did not possess an unlimited, free and uncontrolled authority, but were so circumscribed by specific laws that they were no less under the authority and power of the people than the people were under theirs" (Hotman [1573] 1972, 155). In ancient Gaul, then, the rule of kings was circumscribed by law and subject to the consent of the people, expressed at annual public councils.

Hotman also asserts that this political liberty was the key to the power and success of the ancient Gauls. While they remained free, they were among the most fearsome of the European nations in war. Even "the Romans feared the armed strength of no other nation as they did that of Gaul." He cites the judgment of Tacitus that "there was a time when the Gauls exceeded even the Germans in valour, and carried war to their furthest boundaries, sending colonies across the Rhine because of the pressure of their own numbers" (Hotman [1573] 1972, 173). Furthermore, the Gauls continued valiant in war as long as they remained free. Once they lost their liberty, however, their valor disappeared also (Hotman [1573] 1972, 175).

The Franks were no less to be admired for their political liberty, courage and martial prowess than the Gauls. The very name of the Franks indicates their freedom: "those who declared themselves foremost in the recovery of liberty called themselves FRANKS, by which they were understood among the Germans to mean free men, exempt from servitude" (Hotman [1573] 1972, 201). The Franks had the same relation to their kings as the Gauls had to theirs: "they considered

it their duty to keep their honest liberty, even when they were under the authority of kings . . . When they appointed kings for themselves, they were not appointing tyrants and butchers, but rather guardians, governors and tutors for their liberty" (Hotman [1573] 1972, 205). In the chapter on the deposition of kings Hotman recites at great length all the recorded instances of the Franks removing their kings for abuse of power or incompetence (Hotman [1573] 1972, 235–245). Frankish kings also possessed nothing resembling the Roman *imperium*. They were permitted to rule only if they protected the liberty of the people. Like the Gauls, the free Franks were also fierce in warfare. According to one account: "When the passions of Franks turn to war, their strength exceeds that of other peoples, and it propels them on with a surge of fury beyond the narrow seas, so that they have even infested the coasts of Spain with their armed might" (Hotman [1573] 1972, 195).

In these chapters on the history of the ancient Gauls and Franks Hotman breaks the chain tying the French political order to that of Rome by pointing to the pre-Roman origins of a distinctive tradition of political liberty in the practices of the two ancient nations that later formed France. In addition, he shows that the liberty-loving ancestors of the French were able to make good use of their liberty; they were admired and feared by others for their strength and prowess. Such a portrait of these ferocious and free ancestors would also make them admirable to their descendants.

Hotman's account of the encounter of the Gauls and the Franks with the Romans is perhaps the most rabble-rousing portion of the text. It is a symbolic rejection of arguments for absolute monarchy derived from the conquest thesis and Roman law presented in the form of a paean to courageous ancestors who rebelled against a foreign oppressor and expelled the foe from their country. Though the Romans, under the command of Julius Caesar, managed to subdue Gaul, it was a feat that was accomplished only after many "disastrous setbacks" in a war that continued almost ten years. Gaul was reduced to a "threefold servitude" by the Romans. First, "they were held down by a garrison quartered upon them." Second, "they were obliged to receive tax-gatherers, or rather, harpies and leeches, who sucked out the blood of the provinces" (Hotman [1573] 1972, 177). "The third form of servitude," he continues, "was the prohibition of native provincial laws and the imposition of magistrates bearing the authority and insignia of the Roman people, with the power to declare law in the provinces" (Hotman [1573] 1972, 179). In some of Hotman's exchanges with critics, he makes the analogy between past and present even more explicit. Just as Gaul was once subject to Roman tyranny, today, he says, France is infested by Italian mercenaries and tax collectors and subject to the will of an Italian tyrant, Catherine de Medici (Kelley 1973, 242, 257).

Hotman insists that the Gauls did not endure the Roman yoke easily but in fact frequently rebelled against their conquerors: "Tacitus relates that when Tiberius was Emperor, not so very long after Caesar's conquests, the states of Gaul rebelled against the continuation of the tribute moneys, the ferocity of the extortioners, and the proud insolence of the soldiery." Hotman also credits the Gauls as the first within the Roman empire to rebel against Emperor Nero: "We cannot offer sufficiently high praise for the worth of our ancestors because they were the first in the world to begin to remove from their necks the yoke of so powerful a tyrant, and to claim for themselves release from so monstrous an oppressor" (Hotman [1573] 1972, 179).

Although the Gauls never lost hope of recovering their liberty, they did not have enough fighting men to throw off the Roman yoke, and for that reason "they took to that ancient custom of hiring German mercenaries to come to their aid. In this way the first Frankish colonies began" (Hotman [1573] 1972, 179). "Our Franks" were also victims of Roman tyranny and sought the recovery of their own liberty and independence: "When the Franks had left their own territories with this intent, they freed Gaul as well as their own German fatherland from Roman tyranny" (Hotman [1573] 1972, 209). The struggle of the Gauls and Franks for their liberty lasted some 200 years until at last, in 450 AD, they succeeded in driving the Romans out.

The ancestors of the French, the Franks and the Gauls succeeded in throwing off the yoke of the world's greatest empire, which had long robbed them of their freedom to rule themselves through their public councils and live in accordance with their own native laws. If they could recover their liberty then, the French nation today may do so again, and, unless the present generation wishes to dishonor and disgrace the ancestors, it must do so. The account is a call to arms to expel foreign occupiers and restore the ancient liberties of the nation, just as the ancestors did. Moreover, the authority and legitimacy of Roman law in France, alleged by absolutists because it put the king above the law, is overthrown. From the legal point of view, there could be no claim that Roman law continued to be in force in France, for it was expelled from France together with the Romans themselves.[13] But there is also a more emotive aspect to Hotman's answer to those who claim that the king of France should be absolute, just as the Roman emperors were above the law. It is as if to say "which laws would you have us adopt, the tyrannical laws of the Roman emperors, under which our great-souled ancestors groaned, until, at

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13. This is one reason it was important that Hotman show "French, (or Francogallican) fundamental law developed autochthonously" (Giesey 1967, 587).

last, driven by the memory of their former glory and pent up resentment, they rose up against these foreigners and their foreign laws and sent them packing out of our country?" The expulsion of the Romans negates the absolutist argument from conquest. Having seen their former conquerors off, the Franks and the Gauls were free to form a new state and constitution on the basis of their own native customs.

The constitution of France, according to Hotman, was preserved, in the same essential form since the Gauls and Franks threw off the Roman yoke, owing to their nation's courage and zeal for liberty. "Our commonwealth," he says, "which was founded and established upon liberty, retained that free and holy condition for more than eleven centuries, and even resisted the power of tyrants by armed force" (Hotman [1573] 1972, 447). The ancestors, then, throughout the ages, had been precisely the sort of citizens described in his preface: men who loved the fatherland as much as Odysseus did his Ithaca, and who, therefore, would not, for the sake of personal pleasure or comfort, abandon it, or its free constitution, to the tyranny of an ambitious or corrupt king. Members of all three of the great dynasties of French kings, the Merovingians, the Carolingians, and the Capetians had presented challenges to French liberty, but the nation held its own against them all. Charlemagne "acquired nearly all Europe as his kingdom," yet he was "unable to deprive the Franks of their pristine right and liberty" (Hotman [1573] 1972, 393). Most recently, in 1460 "the magnates of the kingdom . . . aroused by the continued queries and complaints of the common people" against the corruption of King Louis XI, assembled an army to prosecute what became known as "the War of the Common Weal" (Hotman [1573] 1972, 441–443). Their first demand had been to convoke the assembly of the three estates to redress the grievances of the commonwealth. This, he says, was done, following which, the assembly chose twelve guardians from each of the three estates with "authority to reform the commonwealth, and relieve the common people of the burden of taxes and exactions." King Louis XI agreed to abide by the decisions of the guardians and, when he broke his promise, was met with further armed resistance that continued for years. All of this, says Hotman, is proof that "less than century ago the liberty of Francogallia and the authority of the solemn council flourished" (Hotman [1573] 1972, 447).

In the final chapter of *Francogallia*, Hotman presents the reader with a new example of Roman tyranny, the current condition of France. Although he generally avoids explicitly Protestant polemic, here the Church of Rome is represented as a conduit for tyrannical and corrupt political practices based on Roman law. The Popes brought back to France the laws of the Roman emperors that the ancient Gauls and Franks had expunged. Hotman refers to a letter of Pope Leo to Louis II, in which he "begs that same emperor for his clemency and wishes the constitutions

of Roman Law everywhere to be observed" (Hotman [1573] 1972, 523). The popes kept Roman law alive and spread it, like an infection, to France by pleading that "the constitutions of Roman law be everywhere observed." The present institutional embodiment of Roman Law and Roman tyranny for Hotman is the *parlements* and chief among them the *parlement* of Paris. He compares the *parlement* to the Senate in imperial Rome, an assembly composed of lawyers who have gained the wealth and power of "satraps and kings" owing to privileges afforded them by their proximity to the imperial court. The *parlement* began as an attempt by the Capetian kings to increase their own power by subverting the ancient constitution of France: "As the authority of the council [the Estates General] was supreme, the Capetians endeavoured to diminish it and substitute a number of approved judges for the council. Then they transferred the august name of parliament to the Senate. . . ." (Hotman [1573] 1972, 503). The assembly of the three estates has been supplanted by a "spurious senate" not representative of or accountable to the nation (Hotman [1573] 1972, 499).

The ancient free constitution of Francogallia, Hotman concludes, has been utterly subverted and replaced with something like the tyrannical regime of the Roman Empire. The solution is announced already in the preface: the cause of France's present troubles is the subversion, some one hundred years earlier, of "the excellent institutions designed by our ancestors . . . our commonwealth will return to health when it is restored by some divine act of beneficence into its ancient, and, so to speak, natural state" (Hotman [1573] 1972, 143). Now, at the end, the reader is left to conclude that, just as eleven decades before, the French nation is afflicted by the same foreign tyranny. It becomes, therefore, a sacred duty for true sons of the fatherland, whose ancestors preserved their native, authentic liberty against tyrants foreign and domestic, to remember the unity and patriotic zeal their nation once possessed, to throw off that foreign yoke again and restore ancient French liberty.

D. Representing the Nation: the Francogallican Mixed Constitution

Not only did the Gauls and Franks elect their first king, Childeric I, but having found him to be given to insolence, luxury, and debauchery, they deposed him. Hotman comments: "this celebrated and remarkable deed of our ancestors should be noted all the more carefully because it was done near the beginning and in the infancy of the monarchy, as if it were a witness and declaration that in Francogallia kings were created by fixed laws and were not constituted as tyrants with unbridled, free and unlimited authority" (Hotman [1573] 1972, 237). From the first, then,

owing to the traditions of the Gauls and Franks, their courage and their love of liberty, the government of Francogallia was established and maintained as a limited monarchy. Nor did the commitment of the Francogallican nation to this form of government abate with the passage of time. Hotman recounts many subsequent instances in which kings of Francogallia were deposed by the leading men for arbitrary rule, sloth, or failure to preserve the territorial integrity of the kingdom (Hotman [1573] 1972, 239).

For Hotman, the public council, or assembly of the three estates, was much more than a "bridle" to constrain the king or to depose him in an extreme case: it was "the highest administrative authority in the kingdom of Francogallia" (Hotman [1573] 1972, 291).[14] "The royal majesty," he says "resides in that place where counsel is taken for the welfare of the commonwealth," that is, in the assembly, which, like the public councils of Gaul before the Roman conquest, met annually. This assembly possessed all the powers of sovereignty which absolutists attributed to the king alone: the power to decide all questions of war and peace; the making of public laws; the appointment of honours, offices, and regencies; and, generally, "all those issues which in popular speech are now commonly called affairs of state, since, by the highest authority of many generations there was . . . no right for any part of the commonwealth to be dealt with except in the council of estates or orders" (Hotman [1573] 1972, 333). By the highest authority of many generations, that is to say, by the common law of Francogallia, and, ultimately, France, the sovereignty of the nation lay in the council of the three estates, whose members, assembled together, represented the nation as a whole.

Hotman stresses the representative character of the assembly. The Estates General of France is not like a senate, which may offer advice to the king but, in practice, has no power. Such councils are not beholden to the nation and thus end up serving "the profit and convenience of a single man." The assembly of the three estates is superior because of the "amplitude of advice" from a "large number of men of prudence" drawn from "all the estates." Those office-holders "foremost in the great affairs of government" are "held in fear of this council, in which the requests of the provinces are freely heard" (Hotman [1573] 1972, 297, 299). Such a constitution as this was consistent with the principle of government by the consent of the governed, which, he affirms, was explicitly acknowledged by the ancient

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14. The other French monarchomachs, Beza and Du Plessis Mornay, emphasize the role of the estates chiefly as a "bridle" to the king, although both also describe the former legislative and administrative powers of the Estates and, like Hotman, lament their decline (Beza [1576] 1956, 60–61; de Mornay [1579] 1994, 86, 103, 117–118).

kings of France. For evidence he cites Charlemagne's Capitulary: "that, if any new clauses be added to the law, the people should be consulted about them and, when all consented to the additions, they should sign their names in confirmation of these clauses." Hotman interprets: "It is manifest from these words that the people of France were formerly bound only by those laws which they had approved by their own votes in the assemblies" (Hotman [1573] 1972, 347).

The ancient constitution was also a composite regime, like those described by the ancients and "approved before all others by Cicero in his *Republic*," "mixed and tempered from the three elements of monarchy, aristocracy and democracy" (Hotman, 293). The division of sovereignty among the king and the three estates, who sat and deliberated separately, is essential for a "tempered" government. Hotman concurs with Claude de Seyssel that such a constitution protects the interest of all: "so long as the legal right and dignity of each order is preserved, it is difficult for the kingdom to be overthrown. Each order has its fixed prerogative, and while that is maintained, one order cannot subvert the other. . . ." These estates were, in the earliest times, the nobility and two orders of deputies from the towns and provinces, one composed of merchants and lawyers, and the other of artisans and farmers (Hotman [1573] 1972, 293). Later, the clergy became one of the estates, and the two orders of commoners were merged to form the third estate (Hotman [1573] 1972, 445). The nobility play an essential role as intermediaries between the king and commoners since they "approach the status of royalty" in virtue of "the splendour and antiquity of their stock" but at the same time share with those of plebeian birth the status of subjects. The common good is better served when sovereign decisions require the consent of different orders with different interests and dispositions. As Cicero put it, "harmonious and agreeable concord is produced . . . through the consent of dissimilar elements, drawn, like the sounds, from the highest and the middling orders, from the lowest and the intermediate estates" (Hotman [1573] 1972, 295).

The notion of a mixed regime, promoted here by Hotman, in which the estates share sovereignty between them and watch over each other lest any one of them attempt to subvert the powers of the others or usurp all the sovereign powers for itself, is the source of the idea of constitutional checks and balances. In this, and in other descriptions of the ancient constitution of France, Hotman's debt to the Roman republican tradition is evident (Kinneging 1997). But he is keen to show that this is an ancient and authentically French practice. Hotman added to the 1586 edition of the *Francogallia* an excerpt from a speech of King Louis the Pious delivered to an assembly of the three estates:

[H]owever mighty this royal office may seem to be in our person, our office is known by both divine authority and human ordinance to be so divided through-out its parts that each one of you in his own place and rank may be recognised as possessing a piece. Hence it seems that we should be your counselor, and all of you should be our deputies. And we are aware that it is fitting for each one of you to have a piece of authority vested in you (Hotman [1573] 1972, 295).

By the testimony of the ancient kings of France themselves, then, the sovereignty of the nation was divided between the king and the three estates.

Hotman's notion of mixed government also reflects a view of the state as a community of communities, rather than as a mass of individuals with a "general will." This is brought out further by his remarks on the rights of the provinces according to the ancient constitution. "It is clear," he says, that no province "of France was reserved or granted to the king, and in this respect all power was not bestowed upon him in the manner which the Roman people gave it to the emperors" (Hotman [1573] 1972, 417). Citing a description of the provincial charters of Toulouse and Languedoc concerning their union with France, Hotman makes it clear that the provinces reserve certain corporate rights within the kingdom, of which, in addition to the most fundamental one, that is, the right of each province to summon assemblies "to take public council for the benefit of the province as a whole," three are listed: first, that all provincial privileges and local law will be preserved inviolate; second, that the king will appoint no governor who is not a member of a provincial family; third, that no taxes or other subsidies can be levied on the province by the king without the consent of the provincial estates (Hotman [1573] 1972, 417). The provinces remain in obedience to the king provided that he does not violate their privileges. If he does, then they have a right to disobey. It is clear, then, that Hotman's conception of nationhood and his understanding of the ancient constitution in no way imply centralization of authority or a power in the national government to dispense with or transform existing institutions, traditional customs, and rights. The French are all one nation (*gens*), but that nation is also divided into regions, each with variations in custom and law that are their own and with rights to local self-government. The public power to act in the name of the nation, or its various parts, is spread among the orders and provinces of which it is composed.[15]

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15. Hotman did support a plan to codify French national law (concerning which, see Geisey 1961, and Davis 2006), but this is a far cry from the programs of national homogenization of the French Revolution.

IV. THE LEGACY OF THE *FRANCOGALLIA*: GROTIUS AND SELDEN

Hotman's argument for constitutional government did not prevail in 16th century France, but the *Francogallia* proved influential on a variety of English and Dutch thinkers. (Salmon, 1959; Hotman [1573]1972, 107–128). I focus on two important pro-constitutionalist texts in which the influence of the *Francogallia* is obvious: Hugo Grotius' *The Antiquity of the Batavian Republic*, and John Selden's *The Reverse of the English Janus*. Several scholars have perceived that these texts were modeled on the *Francogallia* and have catalogued their authors' various borrowings from Hotman (Christianson 1996, 13–15, Hotman [1573] 1972, 120; Toomer 2009, 102, 128). The same four nationalist themes seen in *Francogallia* appear here for Dutch and English audiences: Grotius and Selden both give flesh and bones to the pre-political community, the Batavians and the Saxons respectively; they describe community and citizenship in ethnocultural rather than in individualist or voluntarist terms; they tell a tale of native liberty confronting foreign tyranny; and they defend a mixed constitution as the ancient and authentic form of government of their respective nations. On the last aspect it should be noted that Grotius and Selden were themselves as familiar with original sources on the constitutional theory of the Roman Republic, especially the works of Cicero, as was Hotman. Like Hotman, they adapt the theory of the Roman mixed constitution to fit native institutions. Grotius' Latin text was immediately translated into Dutch and printed several times throughout the 17th century. Though Selden's text appeared in 1610 only in Latin, its contents were popularized in English by members of parliament and many other writers.

Grotius' *The Antiquity of the Batavian Republic* was commissioned by the States of Holland and West-Friesland, the government of the largest and most powerful province of the Dutch Republic. Grotius defends the mixed federal constitution of the Dutch against absolute monarchy, which, in spite of the struggle for independence from Spain, had many supporters at Dutch universities and among prominent citizens in general. Grotius begins with the origins of the community in ancient times. The people of the Dutch provinces descend from the Batavians, and other kindred Germanic tribes such as Frisians and Mattiaci. The only natural right mentioned is that whereby "a people of free origins" is entitled to take possession of unoccupied land, a right that he says the Batavians exercised as a community (Grotius [1610] 2000, 57). In Grotius' account, freedom is a thing that belongs to tribes and nations, and to citizens as members of those communities.

Grotius contrasts Batavian liberty with foreign tyranny. Unlike slavish Oriental nations, who submit to a sovereign master, says Grotius, the Batavians elected their

kings, and made decisions for their republic in public councils composed of nobles and deputies of the people (Grotius [1610] 2000, 57, 59). The Batavians, he notes, were famous for their martial prowess and courage (Grotius [1610] 2000, 73). The tyrannical enemy who threatened Batavian liberty and tested Batavian courage, however, was the Roman Empire. Grotius recounts the already well-known story of the uprising, led by the Batavian general Claudius Civilis in AD 69, to restore his nation's freedom and independence from Rome. This narrative had been used to inspire Dutch resistance against the King of Spain as early as 1575, by Janus Dousa, Grotius' predecessor as historiographer of Holland and a colleague of François Hotman. Dousa himself may have been taking a page from the *Francogallia* when he composed his poem praising the lifting of the Spanish siege of Leiden as a feat worthy of the Batavian ancestors who had repelled the Roman onslaught many centuries ago (Grotius [1610] 2000, 9). Grotius uses the story for an additional purpose: a defense of the constitution, noting that Civilis did not go to war against the Romans until the public council of the two estates, nobility and people, had been convoked and had given him a mandate (Grotius [1610] 2000, 65).

The constitution that Grotius defends is a mixed regime, a council of nobility and deputies from the towns "combined with a principate, subject to laws" (Grotius [1610] 2000, 55). The legislative assembly in each province was the provincial States. Executive power belonged to the provincial standing committees and, where applicable, to the prince, called the Stadholder. The Federal government, whose responsibilities were war, peace, and foreign alliances, had a similar structure: the States General, composed of deputies from the provincial States, was the national legislative body. Executive power was in the hands of the Stadholder, who was commander-in-chief of the army and navy, and his Council of State (Grotius [1610] 2000, 109–111). This constitution, Grotius insists, closely resembled that of the ancient Batavians. It avoided the abuses and errors that result from concentrating all power in one place and provided for the protection of the rights of citizens, the rights of towns and provinces to local self-government, and the defense of the nation from its enemies. National experience and national honor demand, concludes Grotius, that the Dutch maintain the constitutional order they inherited from their illustrious ancestors.[16]

While Grotius was defending the constitution of the Netherlands on Hotmanesque grounds, John Selden was formulating similar arguments about the ancient constitution of England. Two of his early works were modeled on the *Francogallia*:

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16. For a more thorough examination of Grotius' constitutionalism, see Alexander-Davey 2016.

Analecton Anglo-Britannicon (1605) and *Jani Anglorum Altera Facies* (1610). The former undermined the British version of the Trojan myth supporting absolute monarchy by describing the aristocratic constitutions of the ancient nations of Anglo-Britain: the Britons and the Anglo-Saxons. As in the *Francogallia,* the Romans are described as conquerors who robbed the natives of their ancestral liberty (Christianson 1996, 13–14). In *English Janus*, there is a shift in emphasis, reflected in the title, to the Anglo-Saxons. The account of the ancient Britons is not omitted, but Selden makes it clear that it is from the "Saxon Nation" that Englishmen inherit their customs and laws as well as their blood and bones. The first wave of Saxons, led by Hengist and Horsa, was followed by successive waves from other Saxon regions of the continent, who together conquered Britain and established in a new clime the customs and institutions by which they had lived in Germany (Selden 1683, 29). Here stands the pre-political community of the English state.[17]

The germ of Saxon liberty and Saxon government, says Selden, is the ancient public assembly which Tacitus had observed among the Germanic tribes on the continent. At these assemblies, the chief person would stand before his fellow citizens and "use the art of perswading, rather than the power of commanding" (1683, 32). Public decisions depended on the approval of those assembled. Such councils formed the basis of the local, provincial, and national governments of the Saxons in England. At the local level, a chief person administered justice together with a hundred associates chosen "out of the Commonalty." This institution survived in Selden's day as the Hundred Courts (Selden 1683, 32). English kings governed the nation together with *Wittena Gemotes,* councils of wisemen, and *Micel Gemotes*, Great councils (Selden 1683, 94). These practices were observed as customs of the nation for centuries: the constitution and the laws were finally collected and written down by order of King Edward the Confessor and known thereafter as St. Edward's Laws (Selden 1683, 38).

The foreign challenge to Saxon liberty came with the Norman invasion. King James I had published, before his accession to the English throne, *The Trew Law of Free Monarchies* (1598), in which he claimed that William the Conqueror had overturned the Saxon constitution and established an absolute monarchy in England (Alexander-Davey 2014, 465–469). Selden, like his elder and more prominent colleague, Sir Edward Coke, who had for several years asserted that the common law of England had survived the Conquest, rejects King James's account and offers

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17. George Lawson, a critic of the theories of Thomas Hobbes, would later treat the concept of the pre-political community with greater theoretical sophistication than either Selden or Hotman (Alexander-Davey 2014).

his own: that although William of Normandy desired to dispense with England's constitution and rule according to laws of his own choosing, he was thwarted by English Barons who demanded that he govern in accordance with St. Edward's Laws, in which point William acquiesced (Selden 1683, 48–49).[18] The Norman King failed to live up to his agreement, as did his successors, William Rufus and Stephen, but as England proved ungovernable without its ancient constitution, Henry I, in his first act as king, restored St. Edward's Laws (Selden 1683, 62). By Selden's account, then, liberty was preserved by the vigilance and the persistence of the English nation.

According to the mixed constitution that had survived from Saxon times, the law-making power in England is vested in a "General Assembly" of "the Three Estates, the *King*, the *Lords*, and the *Commons*, or Deputies of the People" (Selden 1683, 93–94). Selden quotes King Ina, in the original Anglo-Saxon, to show that the Saxon Kings did not make law without the consent of the assembled estates. He also quotes the same passage from Cicero that appears in the *Francogallia* (see page 54) to make the same point: that harmony and security are the fruits of a government that takes account of the will and the interests of the different orders that compose the nation. Selden gives no call to action in the *English Janus*, but his narrative appears repeatedly in the political speeches and tracts of other Englishmen throughout the century. In 1610, William Hakewill, Member of Parliament (MP) for Bossiney, challenged King James I's assertion of a right to impose taxes without consent of parliament on grounds that the power to tax, like other legislative powers, was vested jointly in King, Lords, and Commons (Greenberg 2001, 162). Several MPs appealed to the "laws of St. Edward the Confessor" in the debates on the Petition of Right in 1628 (Greenberg 2001, 166–168). After the conflict between King Charles and parliament had erupted into violence, William Prynne was commissioned by parliament to make a constitutional case for resistance against the King. Prynne, who also cites the *Francogallia* in his series of tracts, *The Sovereigne Power of Parliaments and Kingdomes* (1643), intensifies Selden's story about Saxon vigilance before Norman kings. William of Normandy acquiesced, says Prynne, because he feared he would be deposed and killed by Saxons who had begun a rebellion against him (Greenberg 2001, 220). Any King who denied the English nation its ancestral rights ought to fear the same fate. Prynne also later penned a

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18. See the prefaces to Sir Edward Coke's *Reports*. Selden's Saxon barons standing up for their native laws, however, have no part in Coke's telling of the story (Coke 2003, Vol. 1, 245–248). On the differences between Coke's account of the Norman Conquest, and that of Selden and other parliamentarians, see Sommerville (1986).

Hotmanesque defense of the rights of English counties and corporations to local self-government, free from the meddling of king or parliament (Prynne 1656, 34). Thus, in England also, constitutional liberty was defended by appeals to the honor, courage, and vigor of ancestors.

V. CONCLUSION: WHAT MODERNS MAY LEARN FROM FRANCOIS HOTMAN

The rise of constitutional self-government in early modern Europe owes much to a nationalist liberation narrative pioneered by François Hotman in the *Francogallia*. The text itself was influential in the battles for sovereignty in England and the Netherlands. For the political theorist it is a particularly useful text, for it presents with remarkable clarity and explicitness the whole range of nationalistic arguments and rhetorical devices employed by early-modern thinkers in support of constitutional liberty.

The fact that nationalist narratives such as that of *Francogallia* played an important role in the early modern battle for constitutional self-government lends additional support to many of the assertions of scholars of nationalism such as Canovan and Yack, that constitutional self-government, even in those countries where it has long been established, depends on feelings of national solidarity, that defenses of popular sovereignty tend to turn to the nation as a concrete historical entity with ethnic components, and that it is therefore problematic to assume that democratic politics can transcend nationalism or that nationalism can be fully transformed in the direction of liberal inclusivity.

The *Francogallia* also reflects a conception of nationhood much less given to the extremes of the nationalism that developed in late 18th century France and evolved into even more dangerous forms in the 19th and 20th centuries. The understanding of the nation as a society of orders or estates, with different humors and interests and as a body composed of provinces, each with their own variations on national customs, their own local interests and reserved rights and privileges, is not compatible with the rationalistic, homogenizing, and centralizing nationalism of Emmanuel Sieyes. For Hotman, and for his counterparts in the Netherlands and England, the latter form of nationalism was not even a possibility. Later thinkers, such as Montesquieu, Burke, and Tocqueville would explicitly defend a conception of nationhood in which the *corps intermediaires* were essential to preserving the liberties of the nation and its members. Indeed, this is the conception of nationhood that underlay the struggle for national independence in the Netherlands and for limited monarchy in England. It is perhaps here that we should look for the

difference between a moderate nationalism, compatible with the idea of constitutional government, and the extreme forms born of Enlightenment rationalism that Hont and Greenfeld describe, rather than in a turn away from a possibly mythical early-modern individualism to collectivism.

For those interested in the preservation and promotion of constitutional self-government, the *Francogallia* may merit study and contemplation. Without making any suggestion that Hotman's 16th century nationalism could or ought to be resurrected, it may be appropriate to consider some of the advantages of his conception. To speak of the advantages of a particular variety of nationalism is not to deny the dangers of nationalism as such. One could catalogue instances of nationalist violence through the ages *ad infinitum* and *ad nauseam*. The important question for the political theorist is how to respond to such historical facts. One possible response is to become a cosmopolitan and insist that national identities be overcome, or be so attenuated that no-one can be excluded from them, and no-one will wish to fight over them. Another is to conclude that the history of nations and nationalism points to an enduring quality in human nature, which cannot be expunged and therefore must be, as far as possible, contained and channelled toward positive political ends. The latter is the view of many scholars of nationalism, such as Steven Grosby (1994) and Walker Connor (1994). Hotman and those who wrote tracts like his in the Netherlands and England take it for granted that man is "a national animal" and make their appeals on that basis (Connor 1994, 195).

For its time, the nationalism of Hotman is a good example of one that is both contained and channeled toward positive political ends. In the first place, it is a telluric rather than a messianic nationalism. Telluric nationalism is concerned merely with the preservation of a people's way of life within its national boundaries (Schmitt 1962, 92). Messianic nationalism posits the superiority of a chosen nation, whether on account of divine favor, racial and cultural qualities, or a more advanced stage of enlightenment, and assumes a special duty and a unique ability to spread the true religion, to impose order or visit destruction upon the inferior, or to bring enlightenment to ignorant nations. Such nationalisms, which Eric Voegelin termed "political religions," are less susceptible to being contained, for their aspirations are universal and dogmatic (Voegelin 2000).

Although Hotman, Grotius, and Selden do not draw distinctions between different kinds of nationalism, there are explicit and implied moral judgments in the comparisons they make between their ancestors and the Romans. The Gauls, Franks, Batavians, and Anglo-Saxons, they tell us, were fierce and brave conquerors, but the signal achievement of these tribes was their success in carving out for themselves a national territory in which they could live in freedom and in accordance

with their own customs and laws. To preserve their distinctive way of life on their land these nations had to repel, subdue, or assimilate invaders, but they were not like the Romans who sought conquest throughout the known world and gloried in their dominion over other nations. Theirs is thus a telluric, a defensive, and not a messianic nationalism.

The other potentially advantageous features of Hotman's conception are disclosed more clearly in the texts. His nationalism is restrained by the mediaeval conception of the nation as a community of communities, in which the subordinate communities have strong claims on the loyalty of citizens and the institutional capacity to mobilize them. It assumes that national unity is maintained, in large part, by the good feelings of citizens for their conationals, by their recognition of what they have in common, by shared memories of past victories and sorrows, such that they have no need of a Louis XIV, much less a Robespierre, to tell them who they are and what they should do. Finally, and this is the central matter of the present essay, it is a nationalism whose energy is channeled toward a positive political end: the maintenance of constitutional liberty and self-government.

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