

CONSTITUTIONAL DOCUMENTS OF THE REIGN OF JAMES I A.D. 1603-1625 WITH AN HISTORICAL COMMENTARY

Introductory

It has been said that as we pass from the sixteenth to the seventeenth century, we appear to emerge into a new age.

(1) It is said that the Tudor period reconstructed English civilisation. The two great powers in which medieval civilisation had centred had been the Church and the Baronage, and both these had been overthrown by the Tudor Kings. The Dissolution of the Monasteries was a visible social revolution; and scarcely less of a revolution was involved in the more silent and gradual subsidence of the baronial power. The fresh industrial energy of the towns was everywhere replacing the declining industrial energy of the monastic foundations; and as the Reformation swept away the monasteries, so the Civil War was about to dismantle the baronial strongholds,—now only relics of a military power which had long since spent itself. The danger from great lords and retainers had completely passed away; the King's writ ran everywhere; the long arm of the Privy Council reached into every corner of the kingdom. What men needed now was not protection from the great lords, but protection from tyrannical abuse of its authority on the part of the power by which the great lords had been overthrown.

(2) The same strong dynasty which had thus accomplished a social revolution had also achieved an ecclesiastical revolution. The Reformation had been carried through; on the whole, its results were accepted; and the crusade of the Catholic powers against it had had the effect of identifying the cause of national independence with the repudiation of the claims of Rome. The long reign of Elizabeth, by bringing the greater part of the nation into the fold of the national Church, had put an end to the danger of a war of religion within the realm. The adherents of Rome had ceased to be dangerous. They were a small minority which could organise an assassination but could not raise a rebellion.

(3) The Tudors had also lifted the fear of foreign invasion from the English mind. It was not only that the Spanish Armada had been defeated; but also that there had been an immense improvement in the defensible position of England. The success of the United Provinces against Spain had placed the ports of Holland—the natural base for a flank attack upon the English coasts—in the hands of a friendly power. Somewhat the same thing had happened in Ireland—the most vulnerable point in the dominions of Elizabeth. 'Ireland hath very good timber and convenient havens,' says a letter-writer of 1580¹; 'if the Spaniard might be master of them, he would

¹ Thomas Bawdewyn to the Earl of Shrewsbury (Edmund Lodge, *Illustrations of British History*, ii, 231).

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in short space be master of the seas.' This was clearly understood by Spanish statesmen, and as long as Ireland was full of semi-independent chieftains who were hostile to the Reformation, it was easy for Spain to stir up and co-operate in rebellions. But the relentless suppression of rebellions by Elizabeth's vigorous viceroys had, at any rate, closed the door to foreign intervention. And now at last the accession of James VI of Scotland to the throne of England had barred another road, and had deprived another foreign power of its traditional opportunity for intervention. The alliance between France and Scotland, which had weighed heavily upon the judgments of English statesmen, was now determined in the course of nature, and ceased to affect the direction of English policy. England was finally delivered from the nightmare of the North.

One result of this new security was a change of emphasis in politics. In the reign of Elizabeth it was foreign policy that was of transcendent importance, and determined the issues of national life and death. The causes which governed foreign policy lay for the most part outside England, and the whole matter was, from its very nature, bound to be in the hands of the Queen and the group of experts in diplomacy which surrounded her. But in the reign of James the greatest foreign questions had been already settled, and it was therefore possible for constitutional questions to come to the front. Foreign affairs were a region where statecraft might exercise itself, but they no longer involved issues that were vital; the subtle and discerning instinct of the political classes saw that they need no longer eclipse all other questions. 'Just as after the Napoleonic wars,' says Seeley¹, 'a period of reform set in, and the kind of stagnation in which legislation had fallen was broken up, so at the end of the Spanish war, Parliament was relieved from a pressure which had paralysed it.'

James I was a scholar rather than a statesman. Like his predecessors the Tudors, he had been precocious, being able at the age of ten 'extempore to read a chapter out of the Bible out of Latin into French and out of French after into English,' and exhibiting a 'surprising command of general knowledge.'² This precocity was the forerunner of a genuine interest in things of the mind, but ever since the days of Pope and the *Dunciad* it has been the fashion to call him a pedant.

O, cried the goddess, for some pedant reign!
Some gentle James to bless the land again;
To stick the doctor's chair into the throne,
Give law to words, or war with words alone,
Senates and Courts with Greek and Latin rule,
And turn the Council to a grammar-school!

It is true that James belonged to an age when scholarship was often pedantic; it would, however, be nearer the mark to speak of him as a scholar.

Although there was nothing about James I to inspire devotion, or to strengthen the hold of the monarchy upon the nation, his ability and learning were both real, and they raised him to a level at which he was capable of

¹ *Growth of British Policy*, i, 258.

² *Dictionary of National Biography*, xxix, 161.

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appreciating large ideas and taking a statesmanlike view¹. On two important questions, in particular, he was far in advance of his time,—on a union with Scotland which should be real as well as personal, and on toleration for the Roman Catholics. It is true that he was inclined to over-value himself: ‘I am neither a god nor an angel,’ he thought it necessary to inform his Council, ‘but a man like any other,’² but in the monarchical age in which he lived this defect was not as serious as it seems. Where James really failed was in his want of steadiness of purpose; in his imperfect understanding of his English Parliaments due to his Scotch upbringing and early experience; and, above all, in his unfortunate weakness for favourites. Someone says of him that he suffered from a ‘partiality to worthless Scotsmen, if only they were sprightly and active,’³ and of this the promotion of Robert Carr is the most important instance. But Carr was not so dangerous as Buckingham, for he left affairs in the hands of the trained administrators, while Buckingham, ‘brilliant, ambitious, vain-glorious, impulsive, and passionate, with just capacity enough to go splendidly astray,’⁴ would be satisfied with nothing less than an effective personal control of both policy and administration. A Government in which the wise Burghley and the wise Burghley’s son came to be replaced by men of this type, was certain, sooner or later, to find itself in political difficulties.

¹ *Dictionary of National Biography*, ii, 336. Anyone reading the King’s speeches to his Parliaments with a mind free from the influence of a hostile tradition, might very well come to the conclusion that James I has been underrated by historians.

² *Ib.* lviii, 328.

³ *Ib.* xxix, 171.

⁴ Goldwin Smith, *The United Kingdom: a Political History*, i, 453.

The Succession Question and Divine Right

A principal danger of the reign of Elizabeth had been the danger of a disputed succession. At one time it must have appeared doubtful whether a disputed succession would not, after all, follow upon Elizabeth's death; for James of Scotland did not appear then in the light in which we are accustomed to regard him now,—as quite the obvious heir. If the succession was to be determined by the will of Henry VIII, the crown would go to the descendants of his younger sister Mary, who had married Charles Brandon, Duke of Suffolk. But if the will of Henry VIII was set aside, and it was held that the descendants of his elder sister Margaret had the prior claim, then it was at any rate arguable that James as an alien could not inherit; and in that case the crown would pass to the descendants of Margaret's second marriage, who were represented by Lady Arabella Stuart. But fortunately for the union between England and Scotland, the advantages which the accession of James would bring were present to the minds of English statesmen, and especially to the mind of the one whose word carried the greatest weight—the aged Queen herself. As death drew near, she abandoned her habitual reserve on the succession question and spoke out plainly in favour of James. 'I told you,' she said to Nottingham and others on March 22, two days before she died, 'my seat had been the seat of Kings, and I will have no rascal to succeed me; who should succeed me but a King?' Cecil asked her what she meant by 'no rascal shall succeed me'; and she replied, 'My meaning was, a King should succeed me; and who should that be but our cousin of Scotland?'¹ Thus it came about that the Stuart House succeeded to the throne of England without opposition; and when their title was once established, there was an end to disputed successions, for the curse of childlessness which had descended upon the House of Tudor spared the House of Stuart. At the time of his accession James had two sons.

The sense of relief with which the nation saw the accession of James is described in one of Bacon's Fragments². It had been generally supposed, he tells us, especially abroad, that when Elizabeth died, 'there must follow in England nothing but confusions, interregns, and perturbations of estate; likely far to exceed the ancient calamities of the civil wars between the Houses of Lancaster and York, by how much more the dissensions were like to be more mortal and bloody when foreign competition should be added to domestical, and divisions for religion to matter of title to the crown.' But when it fell out that James succeeded without opposition, 'it rejoiced all men to see so fair a morning of a Kingdom, and to be thoroughly secured of former apprehensions; as a man that awaketh out of a fearful dream.' Thus it had come about, as Seeley remarks³, that 'England in 1620 was not the same State that she had been under the Queen. England and Scotland were united in the person of the King, and united in the Reformation. All those dangerous and terrible discords which in the Queen's time had laid the island open to foreign

¹ Robert Carey's account, quoted in Creighton, *Queen Elizabeth*, p. 302.

² 'The Beginning of the History of Great Britain' in *Works* (ed. Spedding), vi, 277.

³ *Growth of British Policy*, i, 258.

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invasion were extinguished. There were no longer two sovereigns in the island, and two evenly balanced religions; no longer two systems of alliance and of royal affinity. The State ruled by James was as much greater than the State ruled by Elizabeth as James himself was less great than Elizabeth.'

The political thought of James I and his contemporaries was coloured by the doctrine of the Divine Right of Kings; but in order to understand how they conceived this, it is necessary to deal first with Prerogative. It has been the fashion with some writers to regard prerogative as if it were something illegitimate and tyrannical; but, strictly speaking, the royal prerogative is neither more nor less than the legal exercise of the royal authority. Its province, at different times in English history, has varied in extent. Before 1377 it had included powers of legislation and taxation. It has always included the power of summoning and dissolving Parliament, of coining money, of creating peers, and of pardoning criminals. In the Tudor period its scope was greatly extended, for by the Reformation the control of the Church fell to it, and it was even strong enough to develop permanent institutions, for the Star Chamber and High Commission Court, although they had a basis in statute were not limited by statute, but were dependent on and controlled by the authority of the Crown. But all this does not exhaust the meaning of prerogative. In every State there must be some ultimate power to deal with emergencies and exceptional situations—the power which modern jurists speak of as 'sovereignty.' This also was prerogative, and in the seventeenth century the emergency power was unquestionably vested in the Crown.

This doctrine of prerogative was essential to the existence of a civilised State; and it came to the Crown by right of inheritance, for in early days, when the State was as yet imperfectly developed and the province of law small, it was to the right 'of *kings* to rule and *princes* to decree justice' that the country owed internal security as well as military glory. And it belonged to the Tudor Kings also because there was no other serious claimant, for in their day no statesman ever dreamed of entrusting emergency powers to an assembly. Thus when James I came to the throne, he succeeded to a prerogative which was stronger than it had ever been before. The Commons read the history of the preceding century rightly when they complained in the *Apology* of 1604 [p. 217]: 'the prerogatives of princes may easily and do daily grow,' although they grossly misrepresented the Parliamentary history of the Tudor period in their next sentence: 'the privileges of the subject are for the most part at an everlasting stand.'

Now this salutary prerogative, when it fell into the hands of literary persons with a taste for broad philosophical conceptions, could easily be transformed from something necessary into something intolerable. It only required a few touches to convert the Tudor doctrine of 'royal prerogative' into the Stuart doctrine of 'absolute power.' Singularly enough, the first thinker and writer to tamper with the idea of prerogative was James I himself. It has been said of him that he lived in an intellectual world of his own¹. For him 'pompous definitions and sweeping generalities' possessed an 'irresistible fascination.' And so we find him in his *True Law of Free Monarchies*, published anonymously in 1598, claiming an independent legislative power for

¹ *D.N.B.* xxix, 170.

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the Crown [p. 9]. Again, in a speech to Parliament in 1610 [p. 14] and in a speech to the judges in 1616 [p. 17] he argues that it is not lawful to dispute the 'absolute prerogative' of the Crown. James himself did not press his own premisses to their logical conclusion—the destruction of the English parliamentary system—but there were others who were quite prepared to do so. In 1607 Dr John Cowell, the Professor of Civil Law in the University of Cambridge, published *The Interpreter* [p. 12], a kind of law dictionary, in which he took occasion to define various political terms. In the article 'King' he wrote: 'He is above the law by his absolute power,' a phrase that at once converted the constitutional doctrine of prerogative, which gave the King powers *outside* the law—to deal with emergencies for which the law made no provision—into a doctrine by the authority of which the King would be enabled to override the law. Under 'Parliament' he stated that 'to bind the Prince' by laws made in Parliament 'were repugnant to the nature and constitution of an absolute monarchy.' Under 'Prerogative' he held it to be incontrovertible that the King of England is an absolute King; and under 'Subsidy' he implied that the King might of his absolute power levy taxes independently of Parliament.

It is not surprising that doctrines such as these were repudiated by the House of Commons, and that Dr Cowell's *Interpreter* was ordered to be burned by the common hangman. But although the House could thus destroy the book, it could not destroy the habit of thought which had produced the book. James himself never went as far as Dr Cowell, for he admitted in a message to Parliament that although 'it was dangerous to submit the power of a King to definition,' yet 'withal he did acknowledge that he had no power to make laws of himself, or to exact any subsidies *de jure* without the consent of his three Estates.' But Archbishop Laud in the next reign taught that it was sacrilege to dispute the King's judgments; and Dr Sibthorp in 1626 and Dr Manwaring in 1627 worked out that further refinement of the doctrine which was to play so important a part between the Restoration and the Revolution as the 'doctrine of non-resistance.' 'If a Prince,' said Sibthorp, 'impose an immoderate, yea, an unjust tax, yet the subject . . . is bound in conscience to submit.'¹ And Manwaring went further: 'All the significations of a royal pleasure are and ought to be to all loyal subjects in the nature and force of a command . . . No subject may, without hazard of his own damnation in rebelling against God, question or disobey the will and pleasure of his sovereign.'² And the same principles found their way freely into the sermons of the Arminian clergy, who were unable to resist the temptation offered them by the first two verses of the thirteenth chapter of the Epistle to the Romans, lying ready to hand as a text: 'Let every soul be in subjection to the higher powers, for there is no power but of God, and the powers that be are ordained of God. Therefore he that resisteth the power, withstandeth the ordinance of God, and they that withstand shall receive to themselves judgment.' In this body of teaching, which might so easily be turned against the whole parliamentary constitution of the country, we have, as it were, the philosophical cause of the Great Rebellion.

¹ *Sermon on Apostolic Obedience*, p. 16.

² *First Sermon on Religion and Allegiance*, pp. 10, 11.

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The Divine Right of Kings is closely connected with the doctrine of extraordinary prerogative, but it starts from a different point. In its earlier seventeenth century form it is little more than a right of inheritance,—the right of James to succeed Elizabeth. As her life drew to a close, it came to be realised more clearly than before what possibilities of mischief lay in a disputed succession. Yet in 1594 a Jesuit was proving in an able book how uncertain the succession was¹. James, he said, was a reigning monarch who was an alien; the whole House of Suffolk was illegitimate, for Charles Brandon had a wife alive when he married the sister of Henry VIII—and so, by a series of plausible disqualifications, he traced the inheritance to a Roman Catholic heir, pronouncing finally in favour of the Infanta of Spain. These arguments had the effect of calling into existence a set of counter-arguments in defence of James's title.

'The King is barred by being an alien,' say the Jesuits; but his hereditary claim overrides this. 'He is barred by the Act of Parliament which gave Henry VIII power to devise the Crown by will'; but his right to the throne is derived from a higher source than an Act of Parliament. Heaven has given him, as next in the succession, an indefeasible Divine Right. Thus the doctrine of Divine Right comes into existence as the only answer which would be a valid one to the Roman Catholic controversialists who attacked James I's title to the throne; and it was supported by the terms of the Succession Act of 1604 [see p. 10] which refers to the King's 'inherent birthright' under 'the laws of God,' and also by the practice of touching for the King's evil, which was to the common people a visible sign of the sanctity of the royal House.

Nor was it long before the doctrine of the Divine Right of inheritance was brought to bear upon the doctrine of extraordinary prerogative and absolute power. If the King succeeded by Divine Right, he held his power of God, and therefore to disobey him was to disobey the ordinance of God. Such a logical inference was all the easier because there was a line of earlier thought which made in the same direction. In the Middle Ages the Popes had claimed sovereignty by Divine Right, disobedience to which was a mortal sin; and this claim had called into existence a counter-claim on behalf of the Emperors—that their authority existed by Divine Right, and had come to them, not by grace of the Pope, but by grace of God alone². It was now easy to make the same claim on behalf of monarchy—in France in defence of Henry IV, and in England in defence of James I, for they both obtained their thrones by right of birth alone, and without the sanction of the Papacy³.

The development of the principles of Divine Right and absolute power was the special business of the clergy, who were always convinced and earnest supporters of authority. As Fuller puts it: 'In all state alterations, be they never so bad, the pulpit will be of the same wood with the Council Board.'⁴ 'Severed from the Roman centre of ecclesiastical authority,' as a

¹ *A Conference about the next succession to the Crown of England*, by Robert Parsons writing under the pseudonym of R. Doleman.

² J. N. Figgis, *The Divine Right of Kings*, p. 65. 2nd Edition, 1914.

³ *Ib.* p. 173.

⁴ Quoted in G. P. Gooch, *Democratic Ideas in the Seventeenth Century*, p. 62.

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modern writer remarks¹, they 'had no support but the throne,' to which they 'clung with a loyalty often servile, giving to the King. . . more than a Catholic in the Middle Ages would have given to the Pope. Jesuitism, with a centre of support above monarchies, had preached tyrannicide: Anglicanism, having no centre of support but the monarchy, preached passive obedience and Divine Right.' The enemies of monarchy and the foes of episcopacy were the same, and 'No Bishop, no King'² was one of the wisest of James's *obiter dicta*³. If men began to enquire into the origin of monarchy, they were very likely to reach a conclusion which derived its authority from the consent of the governed, and this involved the inference that so far from being a divine institution it was not worth maintaining unless it was useful. But the same critics who were attacking monarchy might very well attack the English episcopacy, using the same weapons; and in fact the Roman Catholic writers had already marshalled their forces, while a different kind of criticism was shaping itself on the Puritan side. It was therefore natural that the clergy, led rather by instinct than by logic, should take a lively interest in the problem of monarchy as it was now being stated afresh. Thus from the principle of the Divine Right of inheritance they were led to enquire into the whole nature of political authority. In opposition to the Roman Catholic writers, who derived power from the people, they argued that resistance, even to an unjust King, was sinful, and they expounded the whole course of Old Testament history in accordance with these views.

It is curious that the most important single contribution to the literature of Divine Right in the seventeenth century should have proceeded from a layman. In 1642 Sir Robert Filmer wrote a treatise called *Patriarcha, or the Natural Power of Kings*, which was published posthumously in 1680 as an argument against the Exclusion Bill. It is difficult to condense Filmer's reasoning without caricaturing it, but it is practically this: Power in its origin was patriarchal. The earliest government was that of Adam over his family, succeeded by that of Noah over his sons. The confusion of tongues was the beginning of *kingly* power, for in all the nations formed at Babel 'God was careful to preserve the fatherly authority by distributing the diversity of languages according to the diversity of families'—as in the Scriptures may be plainly seen. The history of the world was then expounded on the same lines and carried by implication down to Charles I who, although not their 'natural parent,' exercised over his people the same absolute patriarchal power as Noah had exercised over his sons in the ark. But the patriarchs did not receive their power by vote of their children; they derived it direct from God. And so with the power of Kings. It is not derived from the people but is a Divine Right.

We are too ready in these days to regard the whole system of argument by which Divine Right was defended in the seventeenth century as simply absurd, and to think little of the intelligence of the generation which accepted it. But like the equally unhistorical theory of the original contract between King and people, which was the philosophical justification of the

¹ Goldwin Smith, i, 429.

² 'His Majesty concluded this point. . . and closed it up with this short aphorism, No Bishop, no King' (William Barlow, *The Sum of the Conference*, edition of 1625, p. 36).

³ W. H. Hutton, in Traill, iv, 18.

JAMES I ON MONARCHY

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Revolution of 1688, Divine Right played a necessary part in the history of political thought¹. It began by providing a form under which the Reformation could fight the Papal claims to sovereignty; and it gave an intellectual justification to the claims of the Stuart House to the throne. It was only after the Revolution, when all danger from the side of Rome was finally removed, that the theory ceased to be useful, and therefore began to appear absurd. If in the seventeenth century the danger from Rome had been greater, the doctrine might have carried everything before it; but under the Stuarts England was safe.

(1) James I on Monarchy, 1598

James I published the *True Law of Free Monarchies* anonymously in 1598.

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The Kings therefore in Scotland were before any estates or ranks of men within the same, before any Parliaments were holden or laws made; and by them was the land distributed (which at the first was wholly theirs), states erected and decerned², and forms of government devised and established. And it follows of necessity that the Kings were the authors and makers of the laws and not the laws of the Kings. . . . And according to these fundamental laws already alleged, we daily see that in the Parliament (which is nothing else but the head court of the King and his vassals) the laws are but craved by his subjects, and only made by him at their rogation and with their advice. For albeit the King make daily statutes and ordinances, enjoining such pains thereto as he thinks meet, without any advice of Parliament or Estates, yet it lies in the power of no Parliament to make any kind of law or statute without his sceptre be to it for giving it the force of a law. . . . And as ye see it manifest that the King is overlord of the whole land, so is he master over every person that inhabiteth the same, having power over the life and death of every one of them. For although a just prince will not take the life of any of his subjects without a clear law, yet the same laws whereby he taketh them are made by himself or his predecessors, and so the power flows always from himself; as by daily experience we see good and just princes will from time to time make new laws and statutes, adjoining the penalties to the breakers thereof, which before the law was made had been no crime to the subject to have committed. Not that I deny the old definition of a King and of a law which makes the King to be a speaking law and the law a dumb King; for certainly a King that governs not by his law can neither be countable to God for his administration nor have a

¹ On this see Figgis, chapter x.

² Decreed.

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happy and established reign. For albeit it be true, that I have at length proved, that the King is above the law as both the author and giver of strength thereto, yet a good King will not only delight to rule his subjects by the law, but even will conform himself in his own actions thereunto; always keeping that ground, that the health of the commonwealth be his chief law. And where he sees the law doubtful or rigorous, he may interpret or mitigate the same, lest otherwise *summum jus* be *summa injuria*. And therefore general laws made publicly in Parliament may, upon known respects to the King, by his authority be mitigated and suspended upon causes only known to him....

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James I, *Works* (edition of 1616), pp. 201-3.

(2) Succession Act, 1604

A most joyful and just recognition of the immediate, lawful, and undoubted Succession, Descent, and Right of the Crown

Great and manifold were the benefits, most dread and most gracious Sovereign, wherewith Almighty God blessed this kingdom and nation by the happy union and conjunction of the two noble Houses of York and Lancaster, thereby preserving this noble realm, formerly torn and almost wasted with long and miserable dissension and bloody civil war; but more inestimable and unspeakable blessings are thereby poured upon us because there is derived and grown from and out of that union of those two princely families a more famous and greater union, or rather a reuniting, of two mighty, famous, and ancient kingdoms (yet anciently but one) of England and Scotland under one Imperial Crown in your most Royal Person, who is lineally, rightfully, and lawfully descended of the body of the most excellent Lady Margaret, eldest daughter of the most renowned King Henry the Seventh and the high and noble Princess, Queen Elizabeth his wife, eldest daughter of King Edward the Fourth, the said Lady Margaret being eldest sister of King Henry the Eighth, father of the high and mighty Princess of famous memory, Elizabeth, late Queen of England: In consideration whereof, albeit we your Majesty's loyal and faithful subjects, of all estates and degrees, with all possible and public joy and acclamation, by open proclamations within five hours after the decease of our late Sovereign Queen, acknowledging thereby with one full voice of tongue and heart that your Majesty was our only lawful and rightful liege Lord and Sovereign, by our unspeakable and general rejoicing