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Edited by J. P. Kenyon

Excerpt

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INTRODUCTION

The study of the seventeenth-century constitution is dominated by the work of the great Victorians, Gardiner and Macaulay, interpreted and to a limited extent amplified by Sir Charles Firth and J. R. Tanner. Both Gardiner and Macaulay were often extremely acute, realistic and, of course, well informed, and they still have a great deal to offer the student; but their Whig interpretation of the seventeenth century in general – of an aggressive but incompetent dynasty, whose attempts to suppress the rights of the subject to free speech, property and due process of law were resisted in manly fashion by a representative assembly which mirrored all that was best or most important in the nation – is long out of date.

Today we believe that there was no right or wrong solution to the problems of the seventeenth century. The Revolution of 1688 stamped England as a wildly eccentric country outside the mainstream of European political development; indeed, it is doubtful if more than half the governing classes accepted it, and if they could have foreseen its consequences, or even if they had realised clearly what they were doing at the time, that proportion would have sunk to 5 per cent or less. The natural bent of European government was towards enlightened despotism and centralisation, which involved the sacrifice of the medieval estates or representative assemblies; England in the 1630s and to some extent in the 1680s was moving down that road. The Diet of Brandenburg was soon to follow the Cortes of Castile and Aragon and the States General of France into obscurity, and the Parliament at Westminster might well be next. Its counterparts at Dublin and Edinburgh were already the obedient tools of king and Council.

But to emulate their European colleagues the Stuarts needed two things they did not possess: a paid bureaucracy in the provinces, and a standing army. (It would be advantageous also to be able to secure a steady supply of money, but this was not essential; most European monarchs were chronically short of money, and periodically went bankrupt altogether, without endangering their regimes.) So, despite a background of contestation over forms of worship, taxation and the administration of justice, which was merely a continuation of similar squabbles under Elizabeth, in the foreground of the disputes between the Stuart kings and their parliaments lay foreign policy and the army. All these kings hoped to fight a successful war, which had always

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eluded their predecessors, and at the end of that war establish a permanent army. Thus Charles I, Charles II, even James I, spent the greater part of their time and energy – more than is commonly supposed – in fashioning their foreign policy. It was their misfortune that these policies were not only unsuccessful but bitterly unpopular. Up to 1618 James I's attempts at a *rapprochement* with Spain were regarded with indulgence, but the outbreak of the Thirty Years War brought an immediate revulsion of feeling. From then on parliament was obsessed with the danger of the Counter Reformation, and despite the war with Spain from 1625 to 1630 the policy of Charles I was so ambiguous that in 1640 it was easy for his opponents in parliament to associate him in the public mind with the great European conspiracy for the suppression of Protestantism. It was this suspicion that led to the outbreak of the Civil Wars. Of course, Charles I's fiscal and ecclesiastical policies were a source of irritation, and made accommodation much more difficult, but in the summer of 1641 he and the Long Parliament reached agreement on a series of reforms which satisfied all the demands they had put forward, except one. And Charles went to war in 1642, not in defence of his right to levy taxation at will (he had abandoned that), nor in defence of his right to control the Church (he might have done, but parliament had not yet seriously challenged that control), but in defence of his right to command the army and to choose his own advisers. Contemporaries, at any rate, were quite clear on this point.¹

The Civil Wars broke down temporarily the exceedingly strong and well-organised assumptions that maintained the pre-war social structure, and subsequent inability of parliament to reach agreement with the defeated king or deal effectively with its own captains left the way open for some of the most daring experiments that have ever been made with the English constitution. For a few wild months in 1647 and 1648 it seemed that England might even topple into democracy. But the massive inertia of the class structure was far too strong. The king was executed, but only to make way for a narrow, oligarchic republic on the Dutch or Venetian model. Cromwell overthrew the republic, but by then the messianic radicalism of his fighting years was fast sloughing away, and his consolidation or consummation of the 'Revolution' was only superficially experimental. By 1657 the retreat on monarchy had begun, and on Cromwell's death it became a rout, which ended in the confusion of the Restoration.

The *status quo ante bellum* restored, the situation of 1642 soon recurred. Charles I had tried to rule without parliament, his son kept his parliaments too long; and in 1678 the Popish Plot of 1640 returned in a more virulent and

¹ Edmund Ludlow said bluntly in 1659: 'The great quarrel between the king and us was the militia. Either he or we were guilty' (Burton, *Diary*, III, 145). Charles I said on the scaffold, 'All the world knows that I never did begin a war with the two Houses of Parliament . . . They began upon me, it is the militia they began upon' (p. 294 below). It is strange that this is still a matter for debate.

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hysterical form. Probably only the cult of the martyred Charles I and visceral fear of another civil war saved the monarchy. James II's remedy, naturally, was to raise an army, which he found it remarkably easy to do, and if he had not at the same time played on his subjects' nerves by attempting to secure complete toleration for his co-religionists, and if he had not quarrelled with the ruling classes in the process, he might well have succeeded.

But even in 1689 the measures taken to deal with the central problem of the seventeenth-century constitution, military power, were feeble and hesitant. It was solved indirectly, even furtively, by parliament's refusal to vote William III a regular income. Because 1689 saw the inauguration of 'parliamentary monarchy' it is too easily assumed that the opposition programme triumphed. In fact, it is difficult to see that the opposition to the Stuarts had any programme, except the preservation of what they conceived to be the 'ancient constitution' and the maintenance of their own class power. The years 1640 to 1645 were the great years of the parliamentary gentry, but then they were swept aside; and they were swept aside not only because there were no leaders to replace Pym and Hampden, but because neither Pym nor Hampden nor their successors had any viable programme for the future. They were 'conservationists' just as much as Charles I or Strafford. And subsequently the quality of the Commons gentry shows a remarkable decline; from Pym's Middle Party to the Exclusionists, and from the Exclusionists to the October Club of 1710. What these groups had in common was a dislike of efficient, centralised government, extreme gullibility and a poor tactical sense. They produced plenty of demagogues and incendiaries, like Eliot, Russell and St John, but only one statesman, John Pym – and even he would have lost his opportunity but for the intervention of the Scots. (It is often forgotten that Charles I's defeat was precipitated by his failure to control Scotland and Ireland, not England.) Pym and his immediate associates were selfish, narrow minded and class orientated, but they had a sense of public and national responsibility lacking in their sons and grandsons. An opposition that became increasingly reactionary and irresponsible won the plaudits of posterity but lost the day, and the broad stream of statesmanship that stemmed from Pym, Hampden, Brooke and Holles petered out in the eighteenth-century inanities of Sir John Hinde Cotton and Sir Watkyn Williams-Wynn. Who gained by the revolution of 1688 has yet to be decided, but it was not the House of Commons.

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BOOK I

THE ANCIENT CONSTITUTION 1603–40

He that goeth about to persuade a multitude that they are not so well governed as they ought to be shall never want attentive and favourable hearers; because they know the manifold defects whereunto every kind of regiment is subject, but the secret lets and difficulties, which in public proceedings are innumerable and inevitable, they have not ordinarily the judgement to consider. And because such as openly reprove supposed disorders of state are taken for principal friends to the common benefit of all and for men that carry singular freedom of mind, under this fair and plausible colour whatsoever they utter passeth for good and current. That which wanteth in the weight of their speech is supplied by the aptness of men's minds to accept and believe it.

RICHARD HOOKER

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CHAPTER I

THE MONARCHY

Samuel Rawson Gardiner's services to scholarship were many and great; his greatest disservice was his persistence in describing the Great Rebellion as 'The Puritan Revolution', implying that Charles I's opponents were united in a desire to change the nature of the Church and of the state. Nothing could be further from the truth. In fact, the opponents of the monarchy were for the most part sturdy reactionaries who wanted nothing more than to restore the 'ancient constitution' of a century, perhaps even two or three centuries, before. Sir Arthur Haslerigg was one of the most radical men in the Long Parliament, yet in 1659, when he looked back on the crisis of 1642, he was quite sure that 'there was at this time no thought to alter government', and all he and his kind had wanted was 'our ancient liberties with our ancient government'.¹ Perhaps this does not need restating, but Gardiner is certainly not dead when a modern professional historian can entitle his book *The Rise of the Revolutionary Party in the English House of Commons, 1603-1629*.²

Political theory in the early seventeenth century was simple, patriarchal and authoritative – but not authoritarian; it was virtually untouched in terms of practical politics by the work of Bodin, for instance. From Adam descended the heads of families, from heads of families chiefs of tribes, and from chiefs of tribes, kings. To this extent the patriarchal theories of Sir Robert Filmer were a commonplace (1). The opposing theory, of elective kingship and government by the people, was familiar enough, too, but sturdily rejected (2).

England had the additional complication of a native system of law which appeared to have grown up with the monarchy. The king enjoyed many privileges at Common Law, but whether he was outside it or above it or not was a question that had never been settled, largely because it had so very rarely been raised. It was raised often in the reigns of James I and Charles I, for three reasons. First, the steady fall in the value of money made it impossible for the king to live on his hereditary revenues, even in peace time, though Elizabeth's financial prudence and the long war against Spain (1587-1604) had disguised the fact. Secondly, James I was uncertain in his handling of the House of Commons, Charles I still more so, yet the Commons was a proud and sensitive body whose members were subject to much the same economic pressures as the Crown. They were reluctant to authorise additional taxation which might become permanent, so in the intervals of parliament the king tried various ways of supplementing his income, including devices like impositions and ship-money, which had never specifically been declared illegal, but which depended on the assumption that the king – in certain matters at least – had absolute power. The next parliament often felt

¹ Burton, *Diary*, III, 87 (7 February 1659).² By Williams B. Mitchell (New York 1957).

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obliged to debate these illicit methods of supply before it even thought of voting any itself, and a vicious circle was established. At the same time the king's position as supreme governor of the Church was never wholly accepted by the Commons, who argued that since their predecessors had passed the legislation establishing the English Church in 1559 they were free to amend the terms of that establishment. And finally the king, with the support of certain lawyers and clerics, publicly laid claim to powers as full and complete as those of any monarch in Europe.

Some of James I's pronouncements are notorious. In *The Trew Law of Free Monarchies* he asserted that kings were God's vice-gerents on earth, that there were no legal limits to their power, and that the sole function of elected assemblies was to give advice (*TCD*, pp. 9–10). But in the event his absolutism was confined to the realm of theory, and though he continued to believe that he stood in a special relationship with God, in an important and carefully argued speech to parliament in 1610 (4) he made a distinction between kings in their first creation, whose powers knew no limit, and kings of settled states, who ought to abide by the law their predecessors had helped create; they were not forced to respect the rights and customs of their subjects, but if they did not they would answer for it to God. He himself regarded his coronation oath with great seriousness, and by that oath he had promised to respect the laws and customs of England (*PCD*, pp. 391–2). Thus he was careful always to operate within the framework of the Common Law, he never promulgated new law of his own accord, though he may have believed he could, and in some ways he was more moderate in his behaviour, more 'constitutional' than Queen Elizabeth.³ Particularly significant was his reaction in 1610, when the Commons complained that he was abusing his right to issue proclamations, creating new crimes not hitherto recognised in law, and transferring known crimes from one jurisdiction to another. He consulted the two chief justices, Coke and Altham, and meekly accepted their decision against him, though in *The Trew Law of Free Monarchies* he had declared, 'The king makes daily statutes and ordinances, enjoining such pains thereto as he thinks meet, without any advice of parliament or estates.' In the same year Dr John Cowell's law dictionary, *The Interpreter*, said much the same thing, but when parliament objected James himself drew up a proclamation suppressing the book (p. 126 below) and authorised Salisbury to tell parliament that he regarded himself as 'king by the Common Law of the land' (3).

In fact, James was sensible enough to realise that England, like Scotland, lacked the practical attributes of despotic monarchy, such as a standing army, and without these it was best to accept with grace what could not be amended, and in his later parliaments he relaxed his theoretical position still further. His opening speech to parliament in 1624 (p. 43 below) is particularly significant in this respect.

Charles I was much less of a theorist, and much more pragmatic than his father. For instance the long *apologia* he published after the dissolution of parliament in 1629 (pp. 71–3 below) reviews recent events in detail, and asserts his immediate right to levy tunnage and poundage, but it does not enunciate any general theory of kingship. Clearly he tended to regard his duties as supreme governor of the Church more

³ F. D. Wormuth, *The Royal Prerogative 1603–1649* (Ithaca, New York 1939), p. 93.

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THE MONARCHY

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emotionally, more personally than his predecessors, perhaps because he was the first monarch to be raised virtually from birth in that Church, but he did not necessarily agree with the advanced theologians of his reign, like Sibthorpe, Manwaring and Montague, who would have him enforce the royal supremacy in matters temporal as well as spiritual – no doubt he would have liked to do so, but it is not clear that he regarded it as practical politics. The theme of the age was patriarchalism, as we have seen, not absolutism. No doubt Charles listened complacently enough to Manwaring's sermons on *Religion and Allegiance*, delivered before him in 1627, but when the Commons protested the following year he agreed to suppress them without entering upon a discussion of their contents (5).

Like his father, he was careful not to stray beyond the pale of the Common Law as he understood it, and though it is dangerous perhaps to lay too much stress on disconnected utterances, his political thought appears to have been entirely conventional, and essentially the same as that voiced by his opponents and critics. With remarkable unanimity early seventeenth-century Englishmen believed that they were bound to abide by the ancient constitution, which had existed without change time out of mind. Under that constitution the ruler had certain prerogatives, his subjects certain rights, and neither could be infringed without a dangerous imbalance resulting.⁴ Both sides were aware by the 1620s that an imbalance existed, or was imminent, and this was a decade of tension, a tension evident, for instance, in the clashing phrases of Thomas Wentworth's famous speech to the Council of the North in December 1628 (7). Similar tension lay behind Charles's denunciation in 1626 of those 'unquiet and restless spirits' whose sole aim was to 'break that circle of order which without apparent danger to Church and state may not be broken' (p. 139 below).

But if Charles I and Strafford were obsessed with the maintenance of the 'circle of order', 'the arch of government', so was John Pym. In June 1628, in the magnificent speech with which he launched Manwaring's impeachment, he gave one of the best expositions in this era of the classic contemporary view of the constitution (6). One of the main burdens of his discourse was that it was perilous to exalt the power either of the king or his people, but in 1641 Charles I, too, sternly warned the Commons of the danger of innovation or change: 'I make a great difference between reformation and alteration of government' (8).

Everyone spoke the same language. When Pym opened the case against Strafford on 25 November 1640 his words echoed the earl's in his speech to the Council of the North 12 years before – 'A king and his people make one body; the inferior parts confer nourishment and strength, the superior, sense and motion.' Strafford in his turn echoed Pym when he made his last speech in his own defence, in April 1641 (p. 193 below).

King Charles produced the most elaborate and reasoned exposition of the classic

⁴ The whole theory is discussed in Pocock, *Ancient Constitution*. At a lower stage of theorising G. L. Harris argues that the period 1460–1580 was one of stable mixed monarchy, whose incipient breakdown thereafter was a source of bewilderment and fear, 'Medieval Doctrines in the Debates on Supply 1610–29', in Sharpe, *Faction*, pp. 72–103. Also several historians have recently pointed to the contemporary emphasis placed on the *loving* nature of the king–parliament relationship; e.g. Derek Hirst, *ibid.*, p. 109. This is evident even in supposedly confrontational documents like the 'Form of Apology and Satisfaction' (p. 29 below).

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theory of the constitution in his Answer to the Nineteen Propositions, in June 1642 (9).⁵ He insisted that as king he was given certain powers, to defend the people against their social superiors, and the law against the encroachment of parliament, and the 'class' bias thus introduced into the theory of the constitution was again stressed at his trial in 1649, when he once more insisted that he was the only upholder of law and order, 'order' meaning the right order of society.⁶ Yet in the main he was only redefining principles already laid down by Pym and Strafford from opposite sides of the gulf which had opened beneath men's feet in 1628.

Wild claims were made by wild men on both sides, by Sir John Eliot as well as Roger Manwaring, but these were ignored, just as the theories of philosophers like Hobbes were rejected. In the sphere of practical politics the disagreement essentially lay in how to operate a constitution of whose nature few had any doubts.

1. Introduction to the Commons Journals, 19 March 1604

Liceat Praefari

The first frame of this earthly body of a Chaos became a distinct essence of Creatures. Man, the most noble by Nature, born to a Law, out of that gave law to others, and to himself. Hence Order, the lustre of Nature, guided by a First Essence, put all government into form: First, in two, who, by procreation, according to the rule of power (increase and multiply) made a Family, with one Head; by propagation, a Tribe, or Kindred, with one Elder, or Chief; by multiplication, a Society, a Province, a Country, a Kingdom, with one or more Guides or Leaders, of spirit aptest, or of choice fittest, to govern.

This division, sorting itself into proprieties, fell in parts of right, greater or smaller, to some Tribe, Kindred, or elective change of Person. *Vicissitudo rerum*, the herald of time, doth warrant this to be the true original pedigree of government; and by a present change, in our own eyes, hath made the demonstration more subject to our sense, by our loss of an excellent princess, by our gain of a successor, for eminent virtue and experience in government famous and peerless, leading us, by a momentary fear, to a better sight of a permanent happiness . . .

CJ, 1, 139

⁵ It was written by Culpeper and Falkland in Hyde's absence; Hyde strongly objected to their admission that the king was merely one of the Three Estates (Clarendon, *Life* (1759), 1, 130–2), and his suspicions were later confirmed when Sir Henry Vane used it in his defence to a charge of treason, in 1662 (*ST*, vi, 158). It was also pressed into service by the Exclusionists in 1680 (*State Tracts*, 1, 477ff.). See Corinne Comstock Weston, *House of Lords*, chs. 1–2.

⁶ Muddiman, *Trial of Charles I*, pp. 231–3; 'His Majesty's Reasons against the pretended jurisdiction of the High Court of Justice' (see p. 292 below).

THE MONARCHY II

2. The canons of 1606⁷

* * *

II. If any man shall affirm that men at the first, without all good education and civility, ran up and down in woods and fields, as wild creatures, resting themselves in caves and dens, and acknowledging no superiority one over another, until they were taught by experience the necessity of government; and that thereupon they chose some among themselves to order and rule the rest, giving them power and authority so to do; and that consequently all civil power, jurisdiction and authority was first derived from the people, and disordered multitude; or either is originally still in them, or else is deduced by their consents naturally from them, and is not God's ordinance originally descending from him and depending upon him; he doth greatly err.

Cardwell, *Synodalia*, I, 331-2

3. The Earl of Salisbury's speech, 8 March 1610

His Majesty said further that for his kingdom he was beholden to no elective power, neither doth he depend upon any popular applause; and yet he doth acknowledge that, though he did derive his title from the loins of his ancestors, yet the law did set the crown upon his head, and he is a king by the common law of the land. Which as it is most proper and natural for this nation, so it is the most equal and just law in any kingdom in the world. He said further that it was dangerous to submit the power of a king to definition. But 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; and therefore he was so far from approving the opinion as he did hate those that believed it; and lastly he said that there was such a marriage and union between the prerogative and the law as they cannot possibly be severed . . .

Gardiner, *Parliamentary Debates in 1610*, p. 24

4. James I on monarchy: speech to Parliament, 21 March 1610

The state of monarchy is the supremest thing upon earth; for kings are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called gods . . .

⁷ James I declined to license these canons, chiefly because of no. xxviii, which stated, 'If any man shall affirm . . . that when any such new forms of government, begun by rebellion, are after thoroughly settled, the authority in them is not of God, or that any who live within the territories of such new governments are not bound to be subject to God's authority which is there executed, but may rebel against the same . . . he doth greatly err'. The king was posthumously justified when the canons were at last published in 1690, under the title of 'Bishop Overall's Convocation Book', and promptly used by divines like William Sherlock to justify their support for William III. See Charles F. Mullett, 'William Sherlock and the Revolution of 1688', *HLQ*, x (1946), 83.

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Kings are justly called gods for that they exercise a manner or resemblance of divine power upon earth, for if you will consider the attributes to God you shall see how they agree in the person of a king. God hath power to create or destroy, make or unmake, at his pleasure; to give life or send death, to judge all and to be judged not accountable to none; to raise low things and to make high things low at his pleasure; and to God are both soul and body due. And the like power have kings: they make and unmake their subjects; they have power of raising, and casting down; of life, and of death, judges over all their subjects, and in all causes, and yet accountable to none but God only. They have power to exalt low things, and abase high things, and make of their subjects like men at the chess – a pawn to take a bishop or a knight – and cry up or down any of their subjects, as they do their money. And to the king is due both the affection of the soul and the service of the body of his subjects . . .

But now in these our times we are to distinguish between the state of kings in their first original, and between the state of settled kings and monarchies that do at this time govern in civil kingdoms; for even as God, during the time of the Old Testament, spake by oracles and wrought by miracles, yet how soon it pleased him to settle a Church which was bought and redeemed by the blood of his only son Christ, then was there a cessation of both, he ever after governing his people and Church within the limits of his revealed will; so in the first original of kings, whereof some had their beginning by conquest, and some by election of the people, their wills at that time served for law, yet how soon kingdoms began to be settled in civility and policy, then did kings set down their minds by laws, which are properly made by the king only, but at the rogation of the people, the king's grant being obtained thereunto. And so the king became to be *lex loquens*, after a sort, binding himself by a double oath to the observation of the fundamental laws of the kingdom: tacitly, as by being a king, and so bound to protect as well the people as the laws of his kingdom; and expressly, by his oath at his coronation. So, as every just king in a settled kingdom is bound to observe that paction made to his people by his laws, in framing his government agreeable thereto, according to that paction which God made with Noah after the deluge, 'Hereafter seed time and harvest, cold and heat, summer and winter, and day and night shall not cease, so long as the earth remains'; and therefore a king governing in a settled kingdom leaves to be a king, and degenerates into a tyrant, as soon as he leaves off to rule according to his laws . . . As for my part, I thank God I have ever given good proof that I never had intention to the contrary, and I am sure to go to my grave with that reputation and comfort, that never king was in all his time more careful to have his laws duly observed, and himself to govern thereafter, than I.

I conclude then this point touching the power of kings with this axiom of