

## 17 PEREZ ZAGORIN

### *The Royalists and Sir Robert Filmer*

Although much has been written about the importance in the seventeenth century of the theory of the divine right of kings, I cannot find that it played a conspicuous role in the doctrines advanced by English royalist writers either before or during the revolutionary decades. According to Dr Figgis, the divine-right theory of royal power meant not only that monarchy is ordained by God, that its hereditary right is indefeasible, and that, by the law of God, it may not be resisted; entailed as well was the view that kings are legally unlimited and that positive law is solely the product of their will. Now this last article was upheld by scarcely any royalist theorist. Before 1640, we may find much fulsome rhetoric in adulation of kingship, and much talk of non-resistance: the well-known sermons of Roger Manwaring are an example. But James I seems to have been the only writer to state unequivocally that the king alone, and without the consent of Parliament, can make law. This claim, however, was advanced by James in a purely speculative manner, and he never urged it, and even repudiated it, in his dealings with his Parliaments. After 1640, the same position was maintained by but a single royalist thinker, Sir Robert Filmer. In doing so, moreover, Filmer placed himself well outside the main body of royalist publicists. For the latter, while they certainly agreed that the king was, in some sense, above positive law, were also clear that he could not make law without the concurrence of his Parliament. Indeed, it was just this which appeared to some of them the chief advantage and special glory of the English monarchy.

If the majority of royalist writers had asserted that the king could make law of his sole will, or that the privileges of Parliament were merely a concession which the king could at any time revoke, they would have been unequivocally adopting the doctrine of sovereignty. But they made no such assertion, and we must be careful to read them accurately on this point. They may say that there must be some power above law in every government and that, in a monarchy, such a supremacy is the king's. They may even characterize the king as absolute. But almost always they go on to explain that in England, the king's supremacy or his absoluteness does not exclude the right of Parliament to share in the making of law. On this subject, the statement drawn up by Charles I's advisers in reply to Parliament's Nineteen Propositions (1642), is characteristic. 'Nothing . . . is more (indeed) proper for the High Court of Parliament,' wrote Culpepper

From Perez Zagorin, *A History of Political Thought in the English Revolution* (Routledge and Kegan Paul, 1954), pp. 189-192, 196-202. Footnotes have been deleted.

and Falkland, 'than the making of Laws, which not only ought there to be transacted, but can be transacted nowhere else . . .

In thus denying that the royalists were claiming for the king a power to make law, I do not mean to overlook the aggressive measures taken by Charles I and his ministers before 1640. It is necessary, however, to understand clearly what these measures amounted to. No doubt, the Laudian attempt to suppress Puritanism and impose a strict religious uniformity was disturbing to Commons. No doubt, too, the king's endeavour after 1629 to rule without summoning Parliament, and his exaction of forced loans and ship-money, aroused justifiable anxiety. But these, and much else which Charles undertook to do, had their basis in the legal position of the crown and were no more than his Tudor predecessors had done before him. Supremacy over the Church had been vested in the crown ever since the Reformation. It had always lain with the king whether or not to summon Parliament. Moreover, the ship-money case is significant as showing that the judges were not upholding an unlimited power on the king's part to impose what taxes he pleased without Parliamentary consent. Such a power was expressly denied. What was held lawful was the king's power to exact an extraordinary tax for purposes of national defence when, in his judgement, the kingdom was in danger. The obvious reply, of course, is that the kingdom was not in danger. But this, as we shall see, was a question which, under the king's prerogative, he alone had, legally, power to decide.

Was there, then, no real danger of a royal despotism in the decade before the Long Parliament met? The answer, I think, is that there was. But such a danger lay in prospect not because the crown was claiming new powers, but because the existing constitution had ceased to correspond to reality. After its long apprenticeship during the sixteenth and early seventeenth centuries, Parliament, and Commons especially, had achieved maturity, and could no longer be expected to remain in its traditional subordination to the king. It was absurd to the royal prerogative should enable the king to disregard Parliament's will, exclude the Houses from considering crucial questions of policy, and carry out measures which they opposed. Despite all the limitations which that age placed upon the franchise, Commons was representative in a sense that the crown was not. Together with the Lords, it spoke for the bulk of the economically dominant class in the country. That the king should act against Parliament's wishes, that he should summon and dismiss Parliament as he willed - this was despotic. Inevitably, Charles's effort to rule without Parliament and to raise extra-Parliamentary forms of revenue called forth alarm and opposition. It seems probable that the king's continued enforcement of policies which Parliament condemned would only have led to further repression and, eventually, even to the virtual nullification of those rights and privileges which Parliament had come to possess.

In 1640, however, matters had not gone nearly so far as this, and the issue was not the survival of Parliament. Nor was it a theory of

monarchy which ascribed legally unlimited power to the king. It was whether supremacy in the determination of public policy should remain where, legally and traditionally, it had always been, in the king. Already before 1640, by its encroachments on the king's powers, Parliament had been threatening this supremacy. Now the effect of the Long Parliament's demands was to deprive the king of it altogether. Nothing less than a declaration of Parliamentary sovereignty is embodied in the resolution which the Houses passed in March 1642, 'That when the Lords and Commons in Parliament . . . shall declare what the Law of the Land is, to have this not only questioned and controverted, but contradicted, and a Command that it should not be obeyed, is a high Breach of the Privilege of Parliament'. And in this same month, by their ordinance on the militia, the Houses did actually and constitutionally assume legislative power to themselves.

Under these circumstances, the standpoint which the royalist writers took up was a defensive one. Not by the utterance of new claims, but by the reaffirmation of the king's legal position in England - this was how they met the innovative measures of the Long Parliament. There is, accordingly, little that is new in royalist doctrine after 1640. Right through the previous decades, in reply to the growing attempts at resistance of the exercise of the king's supremacy, the details of the royalist position had been elaborated. Now these were marshalled and restated to comprise the royalist argument in the controversy that broke forth after the Long Parliament's assembling. There were a few able writers who performed this task, notably Dudley Digges and Henry Ferne. But neither of these, even, was of much significance, and the only thinker of real importance to appear on the royalist side was Sir Robert Filmer. [ . . . ]

For purposes of analysis, Filmer's ideas fall rather easily into three categories: first, his conception of the king's position; second, his criticism of the doctrine of popular sovereignty; third, his patriarchal theory of the state. We may proceed with these in order.

On the matter of the king's position, Filmer was unequivocal. He accepted as axiomatic the theory which defines law as a command of the sovereign power. Law is will, he pointed out, and signified his agreement with Hobbes's version of the attributes which pertain to sovereignty. It followed, therefore, that in a government which is properly called monarchy, the will of the king alone makes law. Filmer was at great pains to emphasize this point. Against both his fellow-royalist, Henry Ferne, and the Parliamentarian writer, Philip Hunton, he denied that there could be any such thing as a limited monarchy. If the king is really supreme, he asked, how can he be limited by law? It is a mere contradiction to speak of a supremacy which is limited. Either the king possesses legislative power or he is no king at all.

All this might serve well as a commentary on the meaning of political supremacy; it did not, however, throw much light on the actual position of the king of England. Did the king of England, in fact, make law? This, the location of legislative power, Filmer saw, was really the

constitutional issue which was at stake in the revolution. His answer was in the affirmative, and, by citing precedents, he sought to prove this in *The Freeholder's Grand Inquest* (1648), his sole writing devoted exclusively to the English constitution. He was not, I think, very happy in this enterprise, for his contention that the king legislated without consent of the estates of the realm ran counter to history. Perhaps he had been misled by Bodin's view of the English monarchy. He would have been on firmer ground if, like Hobbes, he had spoken of what the king (and in Hobbes's opinion, any sovereign power) ought logically to have the right to do, rather than of what the king had, in fact, done. As proof of his belief that the English king made law, Filmer pointed out that statutes were cast in the form of royal commands. But in explaining statutes, he expressed their character by the formula, 'the King ordains, the Lords advise, the Commons consent'. What did he think this consent signified? This is a question which he ignored, though it is the crux of the whole subject. Yet if the consent of the Commons was really required, then it is impossible to understand how the king could ordain without it.

When we turn to Filmer's criticism of the doctrine of popular sovereignty, we see him at his keenest. Like almost every other political thinker of the time, he was much concerned to provide government with some durable moral foundation, and it seemed to him that no such foundation could possibly exist were the belief, so widespread in the later 1640s, really true that men are born free and that a lawful government is one only to which they voluntarily consent to subject themselves. Against this belief Filmer directed a variety of arguments which enabled him to show quite easily that it was open to every sort of objection. He pointed out that there is no proof that all the people of the world had ever assembled at some time in the past in order to consent to government. Nor is there proof that a majority had ever done so. If a majority had thus assembled, it could not have consented for those who were absent without robbing the latter of their natural freedom. Indeed, majority-rule and representative government at any time are nothing but thin legal fictions which absolutely contradict the supposition of a natural freedom in every man. On such a supposition there can be no rightful subjection at all. Parents would have no right to command their children nor masters their servants. The various kingdoms and other political divisions in the world would be illicit, for they do not exist by nature and they were certainly not created by popular consent. Moreover, men could withdraw obedience whenever they pleased, any petty company, any family, might establish its own kingdom, and no generation would be bound by the political order under which its predecessors lived. Let it but be imagined, Filmer said, that the people were ever but once free from subjection by nature, and it will prove a mere impossibility ever lawfully to introduce any kind of government whatsoever, without apparent wrong to a multitude of people.

As far as they went, these criticisms were unanswerable. The social

contract was a myth: the contract had never been made; it never could have been made. There never was a government in the world that rested on the universal consent of its subjects; to say so was a clear distortion of the facts. But these and Filmer's other arguments really miss the point of the doctrine of popular sovereignty. For the latter's significance, as we can see in retrospect, did not lie in its unhistorical notions concerning the origin of government. In reality, the doctrine was not a rendering of the past at all; it was a call for the reshaping of the future. By invoking a natural and pristine freedom, it was enabled to cast aside all the accretions of history, all inherited ranks and chartered privileges, all thrones and altars, and to appeal to a higher standard than these: the appeal was now to man and to what man could claim in virtue of his mere humanity. If the existing order could not provide the measure of freedom which man, simply as man, had the right to demand, then a new order must be created to do so. Thus the myth of a natural freedom propelled society forward, opening the way to the more democratic polities which resulted from the European revolutions of the seventeenth and eighteenth centuries.

Filmer, of course, could not have known anything of this, and to him popular sovereignty was only a principle of anarchy destructively at work in social life. The political order, he held, needed a firmer basis upon which to rest than the fancy of a subjection which might be withdrawn whenever men had a mind to do so. It required a doctrine of obligation which would be both morally irrefragable and historically in accord with the facts. As fulfilling these qualifications, he advanced his patriarchal theory of the state, the idea by which he is best known and which we must note as the final aspect of his political thought.

The patriarchal theory represented Filmer's effort to derive all political obligation from the obedience which children owe their parents and, ultimately, from the obedience which the descendants of Adam owed the latter as their father and first ancestor. Like the doctrine of popular sovereignty, the patriarchal theory also sought to gain the sanction of nature for its assertions. In this effort, however, it had a decided advantage over its rival, for to the seventeenth-century mind, nothing could seem more natural than the extensive control which the father exercised, both by law and custom, over his wife and children and over his household of dependants and servants. Paternal authority being the natural thing, how, in the face of this fact, could it be said that men are born free? The truth is just the reverse: men are born in subjection to their fathers.

This was the circumstance to which Filmer could point and which he insisted had always been the case. For proof, he referred his readers to Scripture, which was not only the most sacred of books, but also, as he was at pains to emphasize, the most ancient. It is, he declared, because people foolishly take their information from the heathen Greek and Roman writers rather than from Scripture, that they have succumbed to the error that men are born free. Scripture, however, tells a different

story. It tells how God created Adam as the first man and gave him entire dominion over all creatures. Adam, therefore, was a monarch, and the first government in the world was monarchical. The whole basis of obedience to superiors is contained, accordingly, in God's commandment, 'Honour thy father'. Thus from the very beginning, men have been tied in subjection to their fathers, and monarchy, as the specific form of paternal power ordained by God, alone possesses divine right.

With these conceptions as premisses, Filmer went on to contend that the right of Adam, the first king and father, can only be exercised by kings, and that all monarchs are to be regarded either as heirs of Adam or as usurpers of such heirs, but, in any case, as exercising the paternal power originally established by God. His reasoning was fanciful, and his conclusions far-fetched, to say the least. It required a fine stretch of the imagination to assume a link between Adam I and Charles I. All the same, with this argument, Filmer achieved his object. He vindicated monarchy and gave government a moral basis by connecting it directly with the unlimited power conferred by God upon Adam. Granted such a connection, resistance to kings must always be sin, for to resist them is to resist God's commandment of obedience to fathers.

Such, in brief, was Filmer's patriarchal theory. It was the most ambitious effort by any royalist writer in this period to evolve a theory of the state and to invest monarchy with the sanction of religion and nature alike. It was also the only royalist conception which deserves, in any strict sense, to be called a theory of the divine right of kings. As an argument against the right of the living, rashly to alter the political order inherited from the dead, Filmer's patriarchalism inevitably suggests a comparison with the thought of Edmund Burke. Though Burke was far Filmer's superior as a thinker, the two men have more than a little in common. Both exalted prescription and tradition, and warned against the innovating temper which sought to disrupt historical continuity in the name of natural rights. Both emphasized the importance of unreasoning sentiment and natural loyalty as the chief ties keeping men in obedience to superiors and the social order together. Filmer's *Patriarcha* and Burke's *Reflections on the Revolution in France* (1790) were, each in its own way, admonitions that the accumulated wisdom of generations is preferable to the inconsiderate counsels of one day. And finally, both Filmer and Burke, it is just to add, were decidedly obscurantist when they invoked the past as a bar against the struggle of the living to realize new possibilities latent in social life. Filmer's history, with its tale of Adam's absolute monarchy and of kings as Adam's heirs, is a piece of mystification; it is just as much of a myth as the social contract, and even more far-fetched; while Burke, with his exaltation of the state as 'the mysterious incorporation of the human race', and his celebration of 'eternal society, linking the lower with the higher natures, connecting the visible and the invisible world', only imposes an occult entity upon his readers which evokes awe at the same

time as it defies analysis. The social-contract theory, at least, suffered from none of these faults. It brought the state and society into the clear light of day for study and examination: it understood, even if but dimly and in a highly simplified way, what Filmer and, with less justification, Burke did not: that society is at every point the work of man, and that institutions at any time are a human creation, existing for human purposes, and to be altered in accordance with human intention.

Important as Filmer was among royalist writers, his work attracted little attention in his own time, and he became famous only after he had been dead thirty years. With the publication of *Patriarcha* in 1680 as a royalist weapon in new controversies, he acquired a posthumous renown that grew even greater when he was singled out for attack in the first of Locke's essays on civil government. But by this time, so far as political philosophy is concerned, the royalist cause had been lost. It had been lost in the years between 1640 and 1660, and no amount of talk later could nullify this defeat. It is an interesting fact that by 1648, when Filmer's first political writings began to appear, the quantity of royalist literature had markedly decreased; in the 1650s, it was a mere trickle. This is a testimony to the weakness which overtook the royalist cause. The king had been vanquished in the civil war, and the claims made on his behalf by the royalists had become dead issues compared with the new questions that were interesting political thinkers. Alongside the important writings of the Levellers, Winstanley, Hobbes, and the republicans, royalist doctrine was trivial. By the end of the 1640s belief in non-resistance had been fatally undermined and monarchy deprived of its aura. All the doctrines which were anathema in the royalist creed had come into wide acceptance. Popular sovereignty, as Filmer himself conceded, was regarded as an axiom in politics.

Thus royalism, it seems not unfair to say, had ceased to be of much importance as a theoretical force. In 1660, the king was restored as a result of the divisions on the revolutionary side, not because of the strength of royalist beliefs. The Presbyterians, who were the most influential agents in bringing about the recall of Charles II, were themselves exponents of the very ideas attacked by the royalist writers in the early 1640s. Despite the restoration, therefore, it is not a mistake, I think, to regard the revolutionaries as the victors and the royalists as the vanquished. This is true not only because much of the important work of the Long Parliament — the abolition of the king's conciliar jurisdiction and the rest — survived, not to be undone after 1660. It is true also, and above all, because the ideas of the revolution triumphantly lived on, working with undiminished force, subverting the old order in Europe. They were the basis of English Whiggism and the revolution of 1688; transmitted to later generations, they helped to inspire the great struggles in France and other countries against the *ancien régime*; they are written imperishably into the document in which the American colonies declared their independence. They live yet, a weapon in the hands of all who strive to-day for a freedom commensurate with the promise and the possibilities of the second half of the twentieth century.