

AN INQUIRY INTO THE POLITICAL THOUGHT
OF SIR ROBERT FILMER

An Abstract of a Thesis
Presented to
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In Partial Fulfilment
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Philip Origene Bonin
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Sir Robert Filmer was a seventeenth century writer who directed the greater part of his writings towards defending the cause of the king against the twin threats of Catholicism, with its extra-mundane authority, and against the Puritans, whose beliefs led them to consult their consciences too readily in preference to the dictates of the sovereign king. He was a man of order who found himself in a country where increasing demands, by the professional people and growing middle class, for liberty and a greater share in government, were constantly jeopardizing peace, order and security. It was his firm belief that peace and "godliness" could only be achieved and maintained where a monarchical form of government existed and where the king commanded absolute and arbitrary authority.

Filmer, more specifically, was an advocate of the theory of the divine right of kings. Unlike his predecessors, however, who relied principally on widely scattered scriptural materials to defend the doctrine, he attempted to build his theory on the immutable basis of natural law. As he saw it, what was divine, i.e., revealed in the scriptures, was natural, and thus he set out to submit evidence which would prove that absolute monarchy was the form of government instituted by God - that it was part of the natural ordering. From this endeavour emerged his patriarchal theory which, in essence, stated that the all-inclusive rights of kings were

nothing else but the natural rights of fathers.

Filmer, however, has much more to offer besides his patriarchal theory. The whole of his thought is actually based on what has been called the political theory of order. It provides the metaphysical foundation and philosophical justification of his thought, and enables the reader to understand the basis of his many assertions concerning authority and obligation. More specifically, it provides the conceptual framework within which all of Filmer's legal, historical and scriptural evidence can be linked into a coherent whole.

Filmer's thought revolves around two poles: authority and obedience. The authority or power of the king, as he sees it, has to be absolute and arbitrary if it is not to be a legal fiction. He believes that the ravings of the individual conscience are readily blinding men to what their real interests are and thus elaborates on the need for a strong moral authority in government to ensure absolute obedience. The sovereign king, in his opinion, is aware of their true interests and will pursue them with all the power at his disposal. The king is thus the final arbiter in matters of law, morals and religion, and all chains of command ascend to him. A stable society cannot be founded on a vague sense of common interest backed by force; rather, it requires a moral sense of duty to obey the king. Filmer firmly believes that his theory provides the means to institute this sense of

moral obligation, and, by the same token, the means to curb the drift towards anarchy.

Every question or problem, in Filmer's estimation, required a decision to be made. As a result of his logical extremist stance, so evident in his argumentation, decisions, he felt, could be made only by the sovereign prince or by the people whom, he asserted, usually rated their own consciences above that of the magistrates and the king himself. From this basis he found it an easy task to submit evidence that the rule of one was much more efficient and stable than the rule of the many. When he is through, the choice one is left with is one between order and security, and anarchy or "no government at all".

Filmer, for the most part, has been treated unfairly. While critics have constantly ridiculed his purpose and method of argument, they have been at little pains to understand his naturalism and the basis of his argumentation. The theory he presented did fill a contemporary need and did have its theoretical justification. The rejection of a political theorist's thought may have its place in political philosophy, but it is of far greater importance that one direct his energies towards the proper understanding of that theorist's thought. From this point of view Filmer's thought merely provides one set of answers to the permanent problems of politics.

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CHAPTER I

INTRODUCTION: THE ESTABLISHMENT OF A BASIS FOR ANALYSIS

Generally speaking, it would be quite accurate to say that the fundamental problems of political philosophy remain essentially the same in all ages and all places. While such problems may not have always been explicitly realized or brought into focus, there can be little doubt that they have always been present. Essentially these problems are concerned with reconciling opposite aims or ideals. They involve, for instance, reconciling privilege with equality, law with liberty, progress with stability, the State or government with the individual, and the concentration of power with the dispersal of power.¹ In the course of human history an infinite number of solutions have been advocated but none has always been fully accepted; hence the search continues. Solutions, it seems, shift as do circumstances. For example, we generally find that in periods where anarchy threatens or where disorder and civil war prevail emphasis tends to be put on law, stability, privilege, and the concentration of power in the State or government, while in periods of relative peacefulness emphasis tends to be put on

¹ L. Lipson, The Great Issues of Politics (Englewood Cliffs, N.J.: Prentice-Hall Inc., 1960), pp. 12-16.

liberty, equality and progress. It is also true that in times of unrest people tend to become sympathetic to myth and the irrational, while in times of social stability rational conceptions of politics flourish because of greater faith in reason and free institutions.² Whatever the situation, solutions to the fundamental problems of political philosophy are forever being sought.

Sir Robert Filmer, in seeking to find a solution to such problems,³ stressed, as we shall see, stability, order, privilege and the concentration of power or sovereignty in the person of the king. Generally speaking, the history of political theory has labelled him as one of the "twin dragons of theoretical absolutism"⁴; (the other being James VI of Scotland, who, in 1603, was to become James I of England). While such an observation may certainly be accurate it is indeed unfortunate because, it seems, by simply being identified with the cult of royal absolutism one is relegated,

² L. Lancaster, Hegel to Dewey, Vol.III of Masters of Political Thought, Sait ed. 3 vols. (Boston: Houghton Mifflin Co., 1964), p. 180.

³ Filmer is really interested in more immediate problems, but in attempting to solve these, he is actually unconsciously propounding solutions to the more fundamental problems of government.

⁴ J.G.A. Pocock, The Ancient Constitution and the Fundamental Law (Cambridge University Press, 1957), p. 49.

by mere implication, to a position of subordination or inferiority insofar as political theory is concerned. In fighting for a losing cause, Filmer was deprived of adequate and objective analysis, thereby suffering the usual fate of the vanquished. The primary purpose of this thesis will thus be to inquire into the political thought of Sir Robert Filmer with a view of putting it into its proper perspective and according the honour due him, however little that may be. It is the contention of this writer that Filmer has been judged unjustly by a partial and biased jury, and that the lowly position of inferiority accorded him has not been entirely justified.

Contributing in no small way to the inferior status awarded Filmer were the writings of John Locke; especially the first of his Two Treatises of Government wherein his castigation of Filmer⁵ in effect sounded the death knell for all proponents of the doctrine of the divine right of kings. It is indeed unfortunate that Sir Robert is remembered chiefly by the caricature presented by Locke since it contributes very little to an adequate understanding of his thought. When Locke's criticism is considered in conjunction with his authoritative and dominant position in political

⁵ Locke, for instance, felt that "so much glib nonsense was never put together in well sounding english". Quoted in the Dictionary of National Biography, Vol. VI, (London: Smith, Elder and Co., 1908), p. 1305.

philosophy it is easy to imagine how he could influence critics and commentators on political theory in dismissing Filmer as a sort of irrationalist and Filmer's writings as the epitome of feebleness. We find, for instance, Benjamin Furly, one of Locke's acquaintances, speaking of "Sir R. Filmer's maggot".⁶ Furthermore it is almost certain that Hallam and Macaulay, Whig historians of the nineteenth century, neither read Filmer nor understood the basis of his writings when the former noted that it was "hardly possible to find a more trifling and feeble work", while the latter referred to "Filmer's absurd treatise on the origin of government".⁷ If such statements may serve as commonplace examples, it seems almost certain that the point has been approached where Filmer's name is mentioned in no other context but as the object of Locke's criticism, except in cases where he is grouped with many others as just another supporter of the absolute monarch's untenable position. As mentioned, this is unfortunate since a reading of Locke is almost useless to anyone who wishes to grasp a real understanding of the thought of Sir Robert Filmer.

⁶ Quoted in J. Locke, Two Treatises of Government. Introduction and Notes by Peter Laslett, (Cambridge Univ. Press. Mentor Book Edition, 1963), p. 65.

⁷ Quoted in H.D. Farrell, An Introduction to Political Philosophy (London: Longman's, Green and Co., 1917), p. 145.

To view Filmer simply as an exponent of the patriarchal theory⁸ and to consider his argumentation to be based solely on a medley of scripture would be to perpetuate Locke's mistake. (although with respect to his immediate purpose it need not be considered a mistake). Since Locke, for the most part, had no rational basis in his attack on Filmer, it may be said that he either missed the point, which is unlikely, or engaged in deliberately misleading polemic by ignoring Filmer's sounder arguments and emphasizing the argumentation based on subjective biblical interpretations. While Locke tended to project an image of genuine sincerity in the course of his criticism one cannot help but think that J. W. Allen may be close to the truth when he refers to the First Treatise as "a shameful piece of party journalism".⁹ Whatever the case it is certain that Filmer was a much deeper thinker than Locke made him out to be, although perhaps not as profound and original as J.W. Allen considers him to be.¹⁰

⁸ Of this theory J.N. Figgis says: "The Patriarchal theory, the most unqualified form of which Filmer and others profess to find in Genesis, forms the basis of the most symmetrical form of the doctrine of Divine Right." See J.N. Figgis, The Divine Right of Kings (Cambridge Univ. Press, 1922), p. 8.

⁹ In F.J.C. Hearnshaw, The Social and Political Ideas of Some English Thinkers of the Augustan Age, 1650-1750 (London: Harrap and Co. Ltd., 1928), p. 27.

¹⁰ Ibid., p. 28.

Furthermore, unlike most writers of his time, he at least makes a sincere effort to answer on rational and historical grounds some of political philosophy's fundamental questions, such as those concerned with the nature and basis of political obligation, and the relationship of the individual to the State.¹¹ The answers he provides to these questions may not be very satisfying to our tender democratic ears, and his argumentation may lack cogency when confronted with modern criteria of acceptability, but as will be explained below, these are not real reasons to refer to his thought as being irrational, feeble and generally absurd.

At first glance, Filmer's doctrines seem to be based essentially on theological and scriptural arguments; yet a closer analysis will reveal clearly their sociological, historical and philosophical elements. Locke's vicious attack, we will find, tends to be directed solely towards the biblical foundation of Filmer's thought. One can hardly deny the validity of his specific criticisms in these matters, but surely one can question the validity of applying such criticisms to the whole of Sir Robert's thought. Thus, in the course of this thesis, we will occasionally examine some

¹¹ The questions referred to here are those posed by William of Ockham as well as those suggested by Alan Gewirth in his book entitled Political Philosophy (New York: Macmillan Co., 1965), p. 4.

of Locke's criticisms with the intention of indicating their limited scope. In such a manner it will be clearly exhibited that in most respects Locke does not meet Filmer head on;¹² this especially is seen in the latter's negative argumentation. Filmer's negative arguments in fact, may have been instrumental in the shaping of Locke's political positions in that they posed problems that had to be resolved.

If any political thinker is to be studied properly it is required that special attention be directed towards his general purpose, his method of argument, and his basic assumptions concerning the nature of things. Too often critics look no further than to the general purpose and mode of argument, then proceed to render judgment on the basis of modern criteria of acceptability and of personal or democratically oriented values. This is no way to achieve an adequate understanding of a political theorist for often

¹² We do, however, find J.N. Figgis, op. cit., p.157, saying that "nothing was easier than to meet Filmer on his own ground and Locke did so". His opinion is based on the idea that both argued from the same basis thus making a head on clash inevitable. It is true that both argued from a natural rights basis yet there was a considerable difference between Locke's secular naturalism and Filmer's religious naturalism. The former simply reasons what is natural to man and thereby eliminates the need for a divine author, while the latter considers God to be the source of nature. See Gaines Post, Studies in Medieval Legal Thought (Princeton, N.J.: Princeton Univ. Press, 1964), pp. 494-5.

the rationale of his thought can be seen or understood only through his basic assumptions. Furthermore, if his purpose is considered to be somewhat anti-democratic in direction he is approached in a biased manner and readily dismissed.

To demonstrate the above we need only look at Filmer's general purpose, which was to prove that monarchy was the first, the best, and the most natural form of government. He maintained that the king possessed absolute and arbitrary power, and, in order to add a moral sense of duty, insisted that monarchy was of divine origin and that therefore the king ruled by divine right.¹³ The record, as far as he was concerned, had to be set straight because of the writings of the Puritans and the Catholics by whom, in his opinion, "monarchy hath been crucified between two thieves, the pope and the people".¹⁴ In effect what he tried to do was find a basis for belief in a moral authority in government and a duty of absolute obedience. That is, he sought a basis upon which belief in the doctrine of the divine right of kings could be justified.

¹³ We must remember that to Filmer's way of thinking that which is Divine is considered as natural. It is in this way that he is considered as a natural rights theorist.

¹⁴ The Anarchy of a Limited or Mixed Monarchy, p. 229; printed in Patriarcha and Other Political Works (P. Laslett ed.; Oxford: Basil Blackwell, 1949)

Recent commentary readily shows that a defense of the theory of the divine right of kings is viewed as something less than a credible purpose. As a result many have "unfairly denegated his acumen and ability in controversy".¹⁵ One authority for instance, considers the doctrine to be "an impossible theory", which "does not deserve to be taken seriously",¹⁶ while another, considering it to be absurd and without merit, says, "it was not rational, it was not ingenious, it was not even ancient".¹⁷ Others, meanwhile, such as A.D. Lindsay¹⁸ and G. Sabine, feel that the doctrine cannot be rationally analysed or defended without ridicule. The latter, for instance, has said that, "it never received, and indeed was incapable of receiving, a philosophical formulation", and that it "defied analysis or rational defense".¹⁹ Such attitudes are by no means exceptions; rather they are the rule as well as the cause of much misunderstanding and a great number of misconceptions concerning writers such as Filmer who have defended the doctrine.

¹⁵ W.H. Greenleaf, Order, Empiricism and Politics (London: Oxford University Press, 1964), p. 94.

¹⁶ C.E. Vaughan, Studies in the History of Political Philosophy (Manchester University Press, 1925), pp. 130-32.

¹⁷ Sir F. Pollock, History of the Science of Politics (London: Macmillan and Co. Ltd., 1920), p. 69.

¹⁸ A.D. Lindsay, The Modern Democratic State (New York: Oxford University Press, 1962), pp. 73-5.

¹⁹ G. Sabine, The History of Political Theory (London: G.G. Harrap and Co. Ltd., 1963), p. 343.

In some respects such views may be warranted, but the fact remains that, "those, who have exhausted their powers of satire in pouring scorn upon the theory, have commonly been at little pains to understand it. That the doctrine is absurd, when judged from the standpoint of modern political thought, is a statement that requires neither proof nor exposition. But the modern standpoint is not the only one, and the absurdity of the doctrine in our eyes is the least interesting or important fact about it, except as driving us to seek further its real meaning and value."²⁰ Indeed the doctrine has had a definite function to fulfill in the development of society for as Sabine points out, "divine right was a defense of order and stability against a view widely believed to augment the danger implicit in religious civil war".²¹ Apart from the fact that it has filled a contemporary political need, the doctrine, in many ways, has been amenable to philosophical formulation as will be explained below.

²⁰Figgis, op.cit., p.1. He further notes that "large numbers of men may embrace a belief without good reason, but assuredly they will not do so without adequate cause. And it is commonly of far greater importance towards the right understanding of a doctrine to know the causes which lead to its prevalence or decay, than it is to be able to criticize its reasoning". Ibid., p.2.

²¹Sabine, op.cit., pp. 391-2. Figgis, op.cit., pp.4-5, is also of the opinion that such a widely held belief "was surely the product far more of practical necessity than of intellectual activity", or that it was "the outcome of facts far more than it was of thinking".

The point to be made here is that the theory of the divine right of kings represents but one answer in history to the fundamental problems of political obligation and authority. Changing circumstances or undesired effects may result in the rejection of a solution, but the simple act of rejection should not automatically relegate that solution to the category of the irrational. There are not always right and wrong answers to the problems of political life; rather there are alternative answers. Some may make more sense than others, some may be more valid than others, and some may be based on sounder arguments than others, but in the final analysis our judgment will depend upon particular circumstances and our criteria of acceptability, cogency, validity and sensibility.

Apart from a writer's general purpose, his method of argument must also be understood. As it was with most writers of his time, Filmer's mode of argumentation differed with the circumstances. Usually it depended on which approach he felt would render his position more convincing at the time, or on which means would counter the arguments of his opponents most effectively. Thus it was that on some occasions he elaborated on legal and constitutional history, while at other times he stressed biblical evidence. His historical arguments on occasion were ill-founded and open to sound criticism, but, as one author points out, "Filmer

is not to be ridiculed for a lack of historical sense all but universal among the Englishmen of his century".²² In their more positive aspects, however, his views are dependent upon correspondence arguments which, essentially, involve drawing analogies or similitudes between things and events. As was the case with his purpose this mode of argumentation is usually readily dismissed as being absurd. It, for instance, is viewed as "a pleasant trope of rhetoric",²³ as a "banal anthropomorphic comparison", or as "fancied analogy".²⁴ Gierke, meanwhile, notes that argumentation of this sort led "to some anthropomorphic conceits and fallacies", but still takes cognizance that it has led "to some fruitful thinking".²⁵ While this predominantly negative attitude towards this mode of argument is certainly well-grounded in many instances, we should not allow it to influence our analysis of Filmer's thought in a very meaningful way. What is of importance is our recognizing its acceptance as a rational means of argumentation in Filmer's time.

²²Pocock, op.cit., p. 189.

²³V. Harris, All Coherence Gone (Chicago: University of Chicago Press, 1949) p. 198.

²⁴Quoted in Greenleaf, op.cit., p.6.

²⁵O. Gierke, Political Theories of the Middle Age, edited by Maitland (London: Cambridge Univ. Press, 1927), p.22.

Indispensable in establishing the credibility of a political theorist's purpose, and in determining the cogency of his arguments are his basic assumptions, which very often are overlooked because of their implicitness or vague explicitness. They are,

"the more or less unconscious mental habits, operating in the thought of an individual or a generation. It is the beliefs which are so much a matter of course that they are rather tacitly presupposed than formally expressed or argued for, the ways of thinking which seem so natural and inevitable that they are not scrutinized with the eye of logical self-consciousness, that often are most decisive of the character of a philosopher's doctrine, and still oftener of the dominant intellectual tendencies of an age."²⁶

Thus it is that while a theorist's basic assumptions may provide valuable insights into the rationale of his thought, as is the case with Filmer, they are often overlooked because of their implicitness. In no instance does Filmer formally express or explain his assumptions, with the result that he is often taken at face value and thus misunderstood. If understood, his assumptions actually will be found to constitute the metaphysical foundation upon which his thought is based. One writer, we find, refers to this metaphysical structure as the philosophical justification of the "political theory of order", and goes on to say that through

²⁶A.O. Lovejoy, The Great Chain of Being (Harvard University Press, 1942), p.7.

it the various arguments presented by Filmer can be viewed as a coherent whole.²⁷ The theory is based principally on basic assumptions derived from Christian and pre-Christian cosmology, and since it constitutes a rational basis for Sir Robert Filmer's political philosophy an attempt will be made to explain it in the second chapter of this thesis. This is not to say that historical argumentation has not played a major role in his writings for, in fact, Filmer, as well as most writers of his time, has made extensive use of historical data to strengthen his case.²⁸ The fact, however, that political theory and history go hand in hand is general knowledge and thus need not be explained as we must explain argument by correspondence and the philosophy of order, which are not so obviously related to political theory.

²⁷Greenleaf, op.cit., pp.8-9. This is in opposition to Laslett's opinion that "Filmer's political writings do not present anything like a coherent theory of politics." See P. Laslett, Patriarcha and Other Political Works, op.cit., p.11.

²⁸Those who doubt the compatibility of historical method with a metaphysical structure such as the philosophy of order can only be referred to Lovejoy, op.cit., pp.330-38, and Greenleaf, op.cit., pp.95-141, wherein the opinion is expressed that historical data without question can be fitted into a framework of order as a means of strengthening argumentation. In view of the fact that the philosophy of order merely served as an implicit conceptual framework incapable of being understood except by the more learned men, it was only natural for theorists who based their thought on order theory to argue in historical terms when it suited their purposes. Furthermore, historical argumentation had a much greater appeal to the common man than did philosophical explanation.

How then must we judge the political philosophy of Sir Robert Filmer? From what has been said hitherto it seems clear that we must judge his ideas in accordance with the standards of reason, logic and acceptability prevalent in his day for the rather simple reason that what has been accepted as rational and logical in his age may not be so accepted today. If we do otherwise we will, in effect, be guilty of committing what Maitland has called the "technical historical error" of "retrogressive modernism".²⁹ Mis-understandings and misconceptions will, in fact, thrive in the absence of specific knowledge concerning "the tradition of the style of the thought in which the text is cast, and, especially, the particular mode of reasoning which it uses".³⁰ Usually such knowledge can be acquired by careful scrutiny of the writings of the philosophers, poets, and other literary men of the age. More specifically, however, it is said that "it is in literature that the concrete outlook of humanity receives its expression. Accordingly, it is to literature that we must look if we hope to discover the inward thoughts of a generation".³¹ And indeed literature and political

²⁹Quoted in Greenleaf, op.cit., p.4. See also G.Post, op.cit., p.10.

³⁰Greenleaf, op.cit., p.5.

³¹Quoted in Lovejoy, op.cit., p.17. Along these same lines of thought another writer is of the opinion that, "historical thought helped to shape the mind of the seventeenth century". See Pocock, op.cit., p.47.

writings do give clear indication that correspondence arguments have been very popular in Filmer's time, and have been quite acceptable as rational and logical explanation.³²

Thus it should suffice to reiterate the view that we cannot justly assess a political theorist's ideas and modes of reasoning, or adequately understand him, in the absence of knowledge concerning his tradition.

Our first task thus will be to outline the essentials of the political theory of order, and to give evidence of its widespread and often unconscious acceptance and influence. In such a way it is hoped that a greater understanding of his thought and method will be achieved. If understood, the inherent political implications associated with the acceptance of this theory should become clear. A second task will be to put Filmer into perspective in the history of political thought to his time. This will require very brief summaries of late medieval thought,³³ and of political thought in

³²Cf. chapter II of this thesis. One should not make the mistake of pointing to the great minds of an age to demonstrate the tradition of that age for it is a fact that, "the tendencies of an age appear more distinctly in its writers of inferior rank than in those of commanding genius". See Lovejoy, op.cit., p.20.

³³I use the term "late medieval thought" with hesitation in view of the fact that it can hardly be distinguished from what is labelled "early modern thought". Cf. chapter III of this thesis.

France and England in Filmer's era. Our final task will involve explaining Filmer's positions, positive and negative, and his argumentation, which, no doubt, will be more competently understood in the light of the political theory of order. When appropriate, we will examine in the process some of Locke's criticisms with a view of eliminating some of the stigma attached to Filmer as a result of the former's castigation. After all is done, it is hoped that we will be in greater sympathy with Filmer; not a sympathy for his political beliefs, but rather a sympathy for the way he most usually has been judged. At the least it is desired that what follows will convince us that Filmer has not been absurd, and that he had something of significance to contribute to the development of political philosophy.

CHAPTER II

THE THEORY OF ORDER

The Essentials of the Theory of Order

It has been said by a political commentator that, "the idea of order was a world view compounded of neo-Platonic philosophy, Scripture and Christian theology. Its basis was metaphysical and its emphasis in an important sense otherworldly".¹ As we find it, the political theory of order consists primarily in the acceptance of a scale of creation derived from a combination of three principles concerning the nature of the universe. The first of these is the principle of plenitude which assumes that, "the fullness of good is attained once and for all in God; and 'the creatures' add nothing to it".² Plato, it is believed, has been one of the first to identify the "Good" with the "One" or "God", and to assert that, "the Good gives being to the objects of knowledge and so is, as it were, the unifying and all-comprehensive Principle of the essential order, while itself excelling even essential being in dignity and power". By giving being to the forms or essences of the intellectual

¹Greenleaf, op.cit., p. 106.

²Lovejoy, op.cit., p. 43.

order the "Idea of the Good is inferred to be 'the universal author of all things beautiful and right, parent of light and the lord of light in this world, and the source of truth and reason in the other'.³ Thus God, the 'Good', or the 'One' becomes the origin of right and all possible goodness. Ideas, which are the creation of His will, demonstrate the fullness of His rational will as well as the plenitude of His power.⁴

In the words of one commentator, the principle of plenitude is "a strange and pregnant theorem of the 'fullness' of the realization of conceptual possibility in actuality," through which, "a timeless and incorporeal One became the logical ground of a temporal and material and extremely multiple and variegated universe".⁵ Two ideas come to mind when one considers this principle. First we find that if sovereignty is made to correspond with the plenitude of power the sovereign prince will be seen as transcending the body politic in much the same way that God transcends the cosmos.⁶

³See F. Coplestone (S.J.), A History of Philosophy Vol.I, Part I, (New York: Image Books, 1962), pp.201-3. Actually the idea of the "One", or of monism was first seen in the thought of Xenophanes, Parmenides, and Melissus, all of whom rejected plurality as an illusion. See Copleston, Ibid., pp.64-77, for a brief explanation of their ideas.

⁴Greenleaf, op.cit., p.16.

⁵Lovejoy, op.cit., pp.49, 52.

⁶Jacques Maritain, "The Concept of Sovereignty" American Political Science Review, Vol.44, 1950, pp.344-6.

Secondly, it seems quite obvious that those in sympathy with this world view usually will seek answers to their problems in the will of God, which, it is generally assumed, will be revealed most completely in scripture. Thus it was that throughout the Middle Ages as well as in the early modern era answers to political problems were often sought within the theological framework of scripture, and in the writings of authoritative theologians. Sir Robert Filmer as we shall see sought many answers in scripture, but differed from most of his predecessors in that he equated the will of God as revealed in scripture with an immutable and inflexible law of nature and reason.⁷

The second principle involved is that of unilinear gradation which, essentially, determines the form the first principle is to take. It appears in at least a vague way in Plato's "Republic", but it seems that it is only with Aristotle that it becomes a definitely formulated doctrine. More specifically it is said to have arisen from the Aristotelean belief that, "all individual things may be graded according to the degree to which they are infected with (mere) potentiality".⁸ In combination with the first

⁷The qualification is made here since a number of canonists and legists of the twelfth century "personified in nature the natural law that originates in God and thus made nature one of God's instruments in the ordering of human society". G. Post, op.cit., pp. 503, 522, 551.

⁸Quoted in Lovejoy, op.cit., p.59.

principle this gives rise to the belief that the whole of creation takes the form of an unilinear gradation or hierarchy of being wherein each part, animate or inanimate, has, as the result of God's will, a definite place allotted to it within the structure as well as definite duties and obligations assigned to it. As Gierke says, "to every Being is assigned its place in that Whole, and to every link between Beings corresponds a divine decree".⁹ Order, perfection or justice is thus said to exist only when every part is in its assigned place, or when every part has at least a tendency to being in its place. As one can plainly see, the system, in sanctioning monism and privilege, is directly opposed to the modern democratic beliefs in pluralism and the natural equality of mankind.¹⁰ We will find that Filmer's ideas are to a large extent implicitly based upon these fundamental beliefs concerning the nature of things.

The third principle, that of continuity, is functionally the same as the second in that it concerns itself with the form of the first principle. It leads to the assumption that within the hierarchical structure of the universe there is generally the least possible difference between things immediately above and below one another. The universe, as a

⁹Gierke, op.cit., p.8.

¹⁰For an explanation of these opposing beliefs one should consult Lipson, op.cit.; especially chapters 4-6 inclusively.

result, is viewed as a continuum along which each part has its special characteristics. Each level thus will be different from the other levels but by no means wholly exclusive. In this way the universe will be considered as a whole, the parts of which will all be linked together in accordance with God's will.

The combination of the above three principles constitutes the basis of the political theory of order. Their synthesis provides a conception of the plan and structure of the universe, which in most respects was accepted without question in the Middle Ages and in the early modern era; although at this latter time it did run into considerable opposition. This was the conception of the universe as a "great chain of being" made up of an infinite number of links extending or ranging in hierarchical order from the most minute type of being to the most inclusive. As one writer put it, "all the universe was included in a closely linked hierarchy of forms. Every unit held its appointed place in a magnificent harmony extending downward from God to the angels to man; from the heavens to the elements of fire, air, water and earth; from macrocosm to microcosm; from man to woman; from rational humanity to the brutish beasts...."¹¹ This conception was by no means absent in English political

¹¹Harris, op.cit., pp.1-2.

heritage for it is a generally accepted fact that, "in medieval England...parliament, and for that matter every other authority, however exalted, from the king downwards, was conceived of as being under the obligation to respect certain general principles of reason or nature: ultimately moral principles, or the will of God".¹² While the author in this instance is referring to medieval England such views were still prominent in the early modern era when Filmer wrote.

Argument by Correspondence and Its Acceptance

Within the "great chain of being" there are various planes of being, or hierarchies of being. There is, for example, a celestial or sacred plane of being, wholly intellectual and consisting of supernatural beings such as God and the angels, as well as a physical hierarchical order made up of various degrees of humans, zoophytes, plants and inanimate beings. According to the dictates of the above-mentioned principles none of these parts is wholly exclusive; rather they are all linked together in a manner reflecting the law of God and reason.

Man's position along the continuum is unique in that he has a special status making him the pivotal link in the

¹²J.W. Gough, Fundamental Law in English History (Oxford University Press, 1955), p.22. See also Gaines Post, op.cit., pp. 562-3.

"great chain". He "was seen as the epitome of the world - its map, sum, symbol, index, and quintessence - as well as the end for which the world was created".¹³ As a result man will be viewed as a microcosm or as a miniature of the whole, and every inquiry made will begin from within the framework of the whole, but not without ascribing "intrinsic value to every Partial Whole down to and including the Individual". The universe will be considered as "one articulate Whole and every Being - whether a Joint-Being (Community) or a Single-Being - as both a Part and a Whole: a Part determined by the final cause of the Universe and a Whole with a final cause of its own".¹⁴

While there may be different planes of being, and several degrees of being within the hierarchy, the whole universe nonetheless is seen as "One Organism", divinely ordered. It is a world of natural and theological plenitude, the beginning and end of which is circumscribed; it is a finite world and not eternal as Aristotle believed. It follows that, "since the World is One Organism, animated by One Spirit, fashioned by One Ordinance, the self-same principles that appear in the structure of the World will appear once more in the structure of its every Part.

¹³Harris, op.cit., p.5.

¹⁴Gierke, op.cit., p.7.

Therefore every particular Being, insofar as it is a Whole, is a diminished copy of the World; it is a Microcosmus or Minor Mundus in which the Macrocosmus is mirrored".¹⁵ Herein lies the reasoning upon which argument by correspondence is based. To those who have accepted the world view of order described above argument by correspondence would be accepted without question.¹⁶ This general acceptance in fact explains why most medieval writers and many early modern authors have often drawn similitudes between things in different planes of being and sought political allegories in the passages of scripture.

The conceptual framework of the political theory of order in itself provided a means of rationalizing certain phenomena. For instance, if a sovereign were found to exist on one plane, then by necessity he would have to be found on another as well. Man as microcosm, in effect would be a reflection, however imperfect, of the macrocosm. Thus, if the angels and other supernatural beings were ordered in degrees, then humans had to be ordered in a similar fashion. In such a way what was not known in one plane could be made known by what was supposedly known in another plane.

¹⁵Ibid., p.8.

¹⁶There were of course writers in the Middle Ages, such as John of Paris and William of Ockham, who did question such argumentation but their ideas were only to take hold at a later time.

While such a method of procedure is regarded as somewhat dubious today, this must not blind us to the fact that it has proved to be useful at one time by offering satisfaction to many and providing a means of finding unity in the universe. Although many seemingly ridiculous correspondences and similarities have been drawn, the fact remains that in the Middle Ages, as well as in the early modern era, when Filmer wrote, it was still accepted as a rational mode of argumentation.

Today we no longer attempt to find a basis for philosophical truth in a metaphysical order or a self-sufficient whole; rather we seek this basis in the independence and integrity of the parts. The ancients, as we tend to call them, usually began with axioms or so-called self-evident principles from which they constructed theories of knowledge which in their essentials were complete. The moderns, generally speaking, tended to begin with empirical facts and through inductive method arrived at a kind of knowledge which is quite fragmentary, although more acceptable as real knowledge. Thus while the latter group has focused its attentions on individual facts and related them logically to generalize about certain phenomena, the former group paid particular attention to broad principles and scriptural writings which they believed explained and made

"rationally apprehensible the nature of God, man, and Heaven".¹⁷ Political philosophy as a result may be viewed as having developed from both approaches. The point to be made is that we should not consider Filmer in isolation when in reality he, in many respects, was part of a necessary tradition in the evolution of political philosophy. What Filmer represented, as Hegel would probably see it, was a necessary moment in the process of actualization.

The Popularity of Order Theory and
Argumentation by Correspondence

There are innumerable examples from the Middle Ages which could demonstrate quite conclusively the acceptance of the notion that the universe was a "great chain of being", and which could illustrate the general acceptance of argument by correspondence. The Old and the New Testaments were laden with images, symbols, and allegorical passages which were only too acceptable to a predominantly religiously oriented

¹⁷J. Gold, William Faulkner: A Study in Humanism From Metaphor to Discourse (University of Oklahoma Press, 1966), p.4. The distinction between ancient and modern in this case defies chronological ordering since philosophers of the Middle Ages in many instances were familiar with empirical methods, while some writers of the modern age have used the method which we have termed as ancient.

community; a community which sought first principles and final answers in scripture. Of the age, it was said that, "learned men deemed that no great writer could write save in allegories".¹⁸ This was quite understandable if it were believed that medieval man had "no clear eyed perception of the visible world. What he saw he looked upon as a symbol; what he heard he understood as an allegory. For him reality lay behind and beyond, in that which the symbol symbolized and the allegory veiled".¹⁹ Upon such a mind, it need hardly be said, argumentation by correspondence by all means would be accepted as rational, and surely would leave a deep and lasting impression.²⁰ Generally speaking, then, one would have to say Taylor was quite accurate when he said,

¹⁸H.O. Taylor, The Classical Heritage of the Middle Ages (New York: Macmillan Co., 1929), p.98.

¹⁹Ibid., p.18. One cannot really generalize about the medieval mind in the way Taylor has here for it is well known that the medieval Renaissance of the twelfth century represented a sophistication in political thought to which the generalization is hardly applicable.

²⁰The writings of John of Salisbury, Gelasius, and Dante serve as good examples of the popularity of argument by correspondence, as does the work of Dionysius. The latter's Celestial Hierarchy and his Ecclesiastical Hierarchy in fact became authoritative works in the Middle Ages. Cf. Taylor, op.cit., pp.78ff. The polemical tracts of the Church-State controversy also illustrate the acceptance of this sort of reasoning. Cf. Tierney, The Crises of Church & State, 1050-1300 (Prentice Hall, 1964). For the relevance of symbolism, consult E. Kantorowicz, The King's Two Bodies (Princeton, N.J.: Princeton Univ. Press, 1957).

"the magic mystery, the symbol taken for the fact symbolized, allegorical interpretation. These mental processes are of dominant moulding influence, upon the personalities of those with whom they constitute usual modes of thinking; and they are very representative...of the medieval personality in general".²¹ This peculiar way of thinking and reasoning was, generally speaking, what separated the medieval personality from the classical and modern personality. Yet medieval thought has left its imprint upon modern thought in much the same way that classical thought left its mark upon medieval thought.²²

Many are inclined to believe that with the Renaissance and the Reformation there came an abrupt change; that the old ways of thinking and doing things were immediately replaced by new ways. That is, that argument by correspondence lost its acceptability and that theological justification was no longer relevant. This, however, was not the case since "throughout the Renaissance the image of man as microcosm remained a valid way of portraying the structure of the universe, and not simply a 'pleasant trope of rhetoric'".²³

²¹Taylor, op.cit., pp.92-3.

²²See J.B. Morrall, The Medieval Imprint (London: C.A. Watts & Co. Ltd., 1967).

²³Harris, op.cit., p.198.

Furthermore, Felix Raab pointed out that in the sixteenth and seventeenth centuries "ultimate political justification" had to be "divine". The same author, commenting on the years of the Interregnum (1640-60), referred to the era as "an age in which the ideological apparatus of social change and the language of political upheaval were still predominantly theological".²⁴ Thus, while new ways were emerging and the older mode of reasoning came to be questioned from several fronts, the fact remained that in the years of transition the latter was still deemed as valid and acceptable.

We find, therefore, that when Filmer wrote, it was by no means exceptional to witness authoritative writers drawing correspondences between the human body and the body politic, between the family and the political community,²⁵ and between the beehive and the political community.²⁶ Other rationally

²⁴F. Raab, The English Face of Machiavelli (London: Routledge & Kegan Paul, 1964), pp.262, 102.

²⁵We find that Thomas Starkey drew an analogy between the "corpus mysticum" of the Church and the natural body of man, and that Alexander Pope and Jean Bodin both drew correspondences between the family and the body politic. Cf. Greenleaf, op.cit., pp.21-3. See also Kantorowicz, op.cit., pp.14-15.

²⁶For examples see Greenleaf, op.cit., p.24. One will also find Aquinas saying, "the bees have one king, and in the whole universe there is one God, Creator and Lord of all. And this is quite according to reason: for all plurality derives from unity...it follows of necessity that the best form of government in human society is that which is exercised by one person." See Aquinas: Selected Political Writings. Edited with an Introduction by A.P. D'Entreves. Translated by J.G. Dawson (Oxford: Basil Blackwell, 1965), pp.12-13.

acceptable correspondences between things on different planes of being also were drawn as is evidenced by the frequent reference to God as the head of the universe, to the King as the head of the human community, to the eagle as the head of the birds, and to the lion as head of the beasts. The implications in respect to the human community, however, were somewhat unique due to man's special status as microcom.

There was considerable criticism levied against the above sort of argumentation,²⁷ but, generally speaking, in the seventeenth century such correspondences were not viewed as "specious analogy or poetic license"; rather they provided cogent arguments and "great intellectual and aesthetic satisfaction as evidence of an ordered universe".²⁸ This was indeed important in an age where the idea of a decaying or mortal world was widely accepted, and where a sense of human incapacity and discord existed.²⁹ In effect there was no serious or concentrated challenge to the notion that the world was created for God's glory and that it must conform to His will if it were to survive.

²⁷For the standard criticisms see Harris, op.cit.

²⁸Greenleaf, op.cit., p.26. See also M. Walzer "On the Role of Symbolism in Political Thought", Political Science Quarterly, Vol.82, June 1967, pp.191-204, wherein it is pointed out that debate was made meaningful in seventeenth century England only by the use of symbolism.

²⁹G.A. Wilkes, (ed.), The Remains (Oxford Univ.Press, 1965), p.7.

Within such a community the maintenance of order would no doubt be of paramount importance. It was said to exist in much the same way as justice was said to exist in Plato's Republic; that is, it would exist when each part maintained its natural place within the hierarchical structure and when the lower parts obeyed their superiors.³⁰ The importance of maintaining this divinely willed order was evident in the writings of Calvin and Luther. Calvin, for instance, seemed definitely to have believed in a scale of creation, and most certainly desired strict discipline and order. He in fact had said that, "we have need of some order and check, which keeps us in our place", and "God does not permit that this order should be so overthrown by the wickedness of men". He also noted that, "all power comes from God", and referred to rulers as the "lieutenants of God", and the "vicars of God".³¹

³⁰The importance of the notion of order can be seen in the Greek ideal of eunomia, which consists in "a vision of world order where laws not good in themselves are good if they uphold the universal world order". In this way goodness was divorced from its moral context and viewed in terms of political stability and unity, itself a higher goodness. See Michael Wilks, The Problem of Sovereignty in the Later Middle Ages (Cambridge Univ. Press, 1964), p. 154.

³¹Quoted in R.H. Murray (S.J.), The Political Consequences of the Reformation (New York: Russell and Russell, 1960), pp.87, 94, 99, 101. See also Aquinas: Selected Political Writings (D'Entreves ed.), pp. 99-103, for a popular view concerning the ordering of things.

Why was so much importance attached to the maintenance of order? Simply put, it was generally believed that in the absence of order or at least a tendency towards such order, decay, corruption and disaster would be the price to pay. The degeneration of humanity itself was thought to be caused by man's disobedience to God. Because of man's pivotal position in the "great chain" (microcosm), there was a widespread belief that when man sinned the effects would be felt by the world at large; i.e., that it would cause disruption within the entire hierarchy of being. In such a way, sin or disobedience was related significantly to the decay of the world. As Harris has pointed out, "the concept of man as microcosm seemed to be the most completely satisfactory and illuminating expression of the idea of decay, not so much because man thereby became a little world, as because the world became simply the greater man".³² As the "judicious Hooker" noted, sin "cannot be done without the singular disgrace of Nature, and the utter disturbance of that divine order".³³ Thus the cause of discord in the world would be man himself, and unless he obeyed the law of God or reason

³²Harris, op.cit., p.5. To make his point the author has analyzed Sir Richard Barckley's A Discourse of the Felicitie of Man, and Godfrey Goodman's The Fall of Man, both of which emphasized the ideas of decay, discord and disharmony within the context of the philosophy of order.

³³R. Hooker, Of the Laws of Ecclesiastical Polity, Vol.I, R. Baynes ed. (London: J.M.Dent and Sons, 1905), p.173.

the world would continue along the road to decay. Discord then had to be prevented at all costs since it "bringeth in consyderacion of conspiracye and retencion, which for the more parte engendereth murder, extorcion and ryott, and oftetymes rebellion".³⁴ Thus it was no accident that such high priority was attached to obedience to God's will or to that of his deputy on earth.

For those who reasoned along the lines of order theory it was only logical to conclude that monarchy was the best and most natural form of government, and that the monarch was the wielder of absolute and arbitrary power on earth so that he could maintain the divine order. Problems still arose even when such beliefs were universally accepted, but they did not manifest themselves in terms of the acceptance or rejection of the system. Rather they debated about who was supposed to be at the summit of the hierarchy, and about who was to be the final judge in matters concerning the divine will. While in the Middle Ages the controversy was principally between the king and the pope, the early modern period witnessed a struggle of the same nature between the king and Parliament.

³⁴E. Dudley, The Tree of the Commonwealth, edited by D.M. Brodie, (Cambridge Univ. Press, 1948), p.40. The idea of disorder was also stressed by Andrea, a Florentine painter, who said, "we struggle vainly to re-establish order; but it is precisely our rejection of the hierarchic system which has landed us in tragedy and ruin". See Gaines Post, op.cit., p.562.

With the emergence of the sovereign nation-state, order theory logically led to the conclusion that only one sovereign could be present within each country. To have more than one was generally thought to be unnatural (like a two-headed monster), - a violation of the law of nature.³⁵ It was only natural to believe absolute and arbitrary monarchy to be the only form of government which could promote stability and order. This was principally why Raab said, "it seemed that in seventeenth century England there could be no viable alternative to the rule of one man".³⁶ Since opposition to the ruler was believed to be the cause of anarchy, disruption and the degeneration of the whole, it was considered to be illegitimate and sinful.³⁷ There was indeed good reason in advocating such obedience since experience taught that a kingdom in the absence of an absolute ruler would soon dissolve into "warring factions of the nobility".³⁸

³⁵As a result of the multiplicity of legally sovereign states some feel that mankind is "anarchichally ordered" in today's world. The view is put forth that there is a tendency for the many sovereign states to become "one" in the same way that the city-states in history have formed empires. See R. Aron, "The Anarchical Order of Power", Daedalus, Spring 1966, pp.479-502.

³⁶Raab, op.cit., p.118.

³⁷See Dudley, op.cit., pp.90-91.

³⁸M. Gibbs, Feudal Order (London: Cobbett Press, 1949), p.63. See also Francesco Guicciardini, Selected Writings, edited by C.Grayson (London: Oxford Univ.Press, 1964), pp.104ff.

Within the system of thought provided by the philosophy of order little room was left for tyranny or the deposition of a ruler. Being above human law and the interpreter of the divine law, the king, whether he be a tyrant or not, could not be deposed legitimately by the people of the community, since they were below him in the hierarchy and thus incompetent to judge him.³⁹ It was God who had entrusted this power with the king and thus it was only God who could judge and punish him. In the absence of a mechanism for peaceful change, passive obedience had to be advocated, even to a tyrant, for it was believed that no tyranny could be as bad as anarchy or civil war. The idea seemed to prevail in seventeenth century England for, as one author wrote, "the memory of the Wars of the Roses was so vivid that it seemed preferable to the ordinary citizen to bear with one tyrant than to be subject to the caprices of the fifty [or the multitude]".⁴⁰ The idea was, of course, that under a tyrant only a few would suffer while in a situation of anarchy all would suffer.

The object of order theory, as we have seen, is to demonstrate that society was founded on two poles: authority

³⁹Needless to say, many theories justifying tyrannicide were developed but usually they were vague and evasive. See O. Jaszi and J. Lewis, Against the Tyrant (Glencoe, Ill.: The Falcon's Wing Press, 1957).

⁴⁰Sir Charles Petrie, Monarchy in the Twentieth Century (London: Andrew Dakers Ltd., 1952), p.14.

and obedience. It is quite evident that the structure of authority it suggests leaves little room for the notions of natural freedom and equality. Within the hierarchical structure each man has his place assigned to him, and any attempt to deviate from this station will be considered as destructive to the natural order. Duties, rights and obligations are viewed as being assigned from above, and are beyond appeal.

From what has been said, it should be clear that Filmer wrote in an era when it was commonly believed that the world was "One Organism", divinely ordered. That is, the universe was viewed as a "great chain of being", hierarchically structured. Thus, if humans were so ordered, it was thought that he at the summit had a divine right to command obedience for the purpose of maintaining God's order. As one writer noted with regard to the seventeenth century, "monarchical absolutism, the popular predilection for ideas of divine right, and the persistence of feudal survivals were all standard for the age".⁴¹ As we have seen, the mode of reasoning by correspondence, logically derivative from the above conception of the universe, was also standard for the age. Once accepted, its conclusions concerning the nature of political society were virtually inescapable.

⁴¹C.J. Friedrich, ed., Nomos IV - Liberty (New York: Atherton Press, 1962), p.14.

Only in the light of these seventeenth century realities could one properly understand and judge Filmer.

As we proceed, we will no doubt find that the framework of order and the notions related to it are definitely used by Filmer. As the metaphysical foundation of much of Filmer's thought, the political theory of order tends to give credibility to his purpose as well as cogency to many of his arguments, and thus, in a philosophical sense, it may be said that Filmer, in many respects, presents a coherent theory of politics. There are of course several questionable deductions in his position created by his lack of historical sense and his biblical exegesis; yet even in these areas he is by no means as ludicrous as he is often made out to be.

CHAPTER III

THE BACKGROUND

The Medieval - Modern Controversy

In one form or another the doctrine of the divine right of kings is as ancient as the history of political philosophy. Considering the purpose of this thesis it is, of course, unnecessary to trace in any detail the development of the doctrine;¹ yet it may be helpful to make note of a few medieval conceptions concerning the nature of the State and kingship. By so doing it will become clear that, insofar as changes in the nature of political thought are concerned, neither the cultural Renaissance nor the religious Reformation are as significant as they are often made out to be. Unfortunately, the comprehensiveness of such a task and the innumerable problems involved permit us to do little else but make a few observations which may be of significance to the thought of Sir Robert Filmer.

Medieval political thought usually is defined as that thought pertaining to the Middle Ages; i.e., the one thousand

¹For the development of the doctrine see J.N. Figgis, The Divine Right of Kings (Cambridge University Press, 1922), and the introduction to the 1965 edition (Harper and Row) by G.R. Elton, which is most helpful. See also Kantorowicz, op.cit., for a detailed account of its development in the later Middle Ages.

years between the fifth and the fifteenth centuries. As a result, we often find authors writing in terms of an acute break between modern and medieval thought,² and continuously making sharp distinctions between them. The fact, however, is that the subject matter defies rigid chronological ordering. One who adheres to such a dichotomizing process is bound to deprive himself of knowledge concerning the continuity which exists between classical, medieval and modern ideas. One cannot deny that there are differences between modern and medieval thought. Yet one can be certain that the schematization is not "self-evidently valid". As J.B. Morrall points out, we can still "account for this 'otherness' without recourse to unsubstantiated theories of cataclysmic break".³ Thus, while one may differentiate between modern and medieval thought, it is doubtful if one can do so fruitfully in terms of the rigid separation offered by the Reformation. Our task here will be not so much to differentiate but rather to make note of the similarities between early modern and late medieval thought.

²The Middle Ages are usually said to have ended in 1485. See Raab, op.cit., p.256.

³J.B. Morrall, op.cit., pp.17-18. See also the analogy the author draws comparing the relationship between modern and medieval thought to the relationship between father and son. "In each", he says, "there is change but not radical discontinuity."

Indeed, one can find it a difficult task to differentiate between late medieval and post-Reformation thought since in one respect or another nearly all early modern thought, whether royalist or anti-royalist, can be traced back to the writings of the legists, philosophers and canonists of the twelfth and thirteenth centuries. Sharp distinctions, as a result, can hardly lay claim to comprehensive accuracy or finality. About all one can say with certainty is that there was a movement away from the Latin Catholic form of expression and the feudal structure, and a general tendency towards the secularization of politics. Very briefly, then, we will limit ourselves to a few notions relevant to Sir Robert's thought and indicate their medieval origin. Thus, we will find that notions such as sovereignty and nationalism, usually attributed to the post-Reformation era, are much more than hinted at in the Middle Ages, as was a naturalistic conception of politics.

The first problem we must attempt to explain concerns the relationship between the king and the law. Involved in this question, of course, is the notion of legislative sovereignty, commonly believed to have been virtually absent in medieval thought. Indeed, it is generally said that the medieval structure is characterized by the conception of the supremacy of the law; that is, the idea of a fundamental law which cannot be altered by humans and which has to be obeyed

by all, rulers included. Those thinking along these lines are usually of the opinion that beliefs become standardized and thereby contribute to the stagnation of political thought.⁴ In other words, they feel that, due to the absence of a legislative sovereign, change can only take place through the slow processes of custom and usage. To an extent this may have been the case in view of the major role played by fictions and the presence of the doctrine of "descending power".⁵ Yet it is equally true that such notions do not detract from "the vitality and force" of medieval political thought.⁶ Political thought in the Middle Ages in fact does much more than hint at the notion of legislative sovereignty or of a king above the law.

In historical terms it is said that medieval thought was a mixture of classical Roman ideas, which glorified the predominance of the law, and of Hellenistic thought which

⁴Figgis, for instance, says, "it is certain that...the idea of the complete supremacy of one body or person in the state did not enter the heads of those who wrote of the English polity in the middle ages." Figgis, op.cit., p.13. Of a similar opinion are A.D. Lindsay, op.cit., Sir F. Pollock, op.cit., and C. Vereker, The Development of Political Theory (London: Hutchinson Univ. Press, 1957).

⁵The reader may be referred to W. Ullman, Principles of Government and Politics in the Middle Ages (London: Methuen and Co. Inc., 1966), wherein the doctrines of "ascending" and "descending" political power are discussed.

⁶Wilks, op.cit., p.524.

generally asserted that the law itself was embodied in the person of the ruler. As the Middle Ages wore on, the author insists that the latter view overshadowed the former.⁷ Consider, for instance, certain conceptions concerning kingship. The existing hierocratic system, we find, viewed society as a corporation existing as a juristic entity over and above its members, and attached extreme importance to the office at the apex.⁸ Thus we find the king to be "a Corporation in himself that liveth ever".⁹ It was recognized that the responsibilities of the office required far-reaching powers. The king thus was identified with the common good or welfare of the community which he had to preserve at all costs. From his office or status, synonymous with the general good, all other statuses descended. It is in this capacity that

⁷Wilks, op.cit., pp.151ff. For a summary of the contribution of Roman law to medieval political thought see Post, op.cit., pp.561ff.

⁸The question was often pondered as to which group within the corporate structure should have the exercise of sovereign power. Should it be the head? the collegia of princes? or the whole communitas fidelium? The natural choice in most instances was the head due to its continuity of presence and because of its decision-making capabilities as opposed to that of the many. See Wilks, op.cit., pp.525ff.

⁹Kantorowicz, op.cit., p.27.

the king or the "one" was viewed as being above the law.¹⁰ Thus, in accordance with the maxim non potest esse magis lex quam legislator (the law cannot be greater than the legislator), the king was considered as the legislative sovereign.

While in his public capacity the king was above the law, he was not so as a private person. The king, it was believed, had two bodies; a "body natural" which was mortal and a "body politic" which was invisible and immortal.¹¹ He was a persona mixta or a persona geminata, and thus was both human and divine. In practice, of course, the human aspect of kingship usually was ignored except when opposition grew to the point where it was felt that there was justification for "fighting the king to defend the King",¹² i.e.,

¹⁰He was actually above the law only as a public person, and because of the superiority of the utilitas publica. The French legist, Jacques de Revigny, and others, such as Peter the Chanter, Johannes de Deo and Vincentius Hispanus were all of the opinion that the king had no superior in the realm and that he must preserve the "state of realm" at all costs. For example, it was said that, "a king can demand whatever taxes are necessary for the preservation of human society, for it is the duty of the king to care for the common welfare". See Post, op.cit., pp. 447, 463, 533, 565. It was also said that as "the minister of public utility", he could shed what blood he wished. Kantorowicz, op.cit., pp. 95-6.

¹¹For a very complete analysis of the king's two bodies see Kantorowicz, op.cit.

¹²Ibid., p. 23.

fight his "body natural" to defend his "body politic". Thus, while the king was limited in his actions, theoretically and practically, the assertion of the view that "what pleases the Prince has the power of law",¹³ was still very relevant. This pronouncement of legislative sovereignty, developed essentially by the papalists, led ultimately to the early modern theory of divine kingship.

The conception of legislative sovereignty furthermore was always implicit in the papal claim to the plenitudo potestatis. It was, as Wilks puts it, "sovereignty pure and simple".¹⁴ It in fact became quite significant with the secularization of politics, as the corpus mysticum was simply transferred from the theological sphere to that of the state where the king was head.¹⁵ With the strong religious strand in political theory the king came to wield a power similar to that enjoyed by the pope. Thus, one could be certain that notions concerning legislative sovereignty and the divinity of the office of the king were well thought

¹³Ibid., p. 151.

¹⁴Wilks, op.cit., p. 169.

¹⁵Kantorowicz, op.cit., p. 16.

out long before the Reformation.¹⁶

It usually was thought that the emergence of sovereign states and the phenomenon of nationalism came only with the Reformation. This tradition of thought had it that the idea of a religiously oriented supra-national state was to all extents abandoned and that, as a result, politics and political life were to begin on the road to secularization. The major effect, it was said, was that the authority of the Church or the Empire was replaced by the supreme authority of the sovereign state,¹⁷ thereby subordinating the problem of moral obligation to that of political obligation.¹⁸ To an extent this was all true but certainly not accurate. While we

¹⁶While there were many arguments which supported the king's position above the law, there were also several theories developed which attempted to limit the ruler, and which, in fact, anticipated many of the seventeenth century anti-royalist arguments. Both sides, however, in their eagerness to produce universal harmony took extreme positions in much the same way that the royalist and anti-royalist sides did in Filmer's time. See especially Wilks, op.cit., pp.201ff., 527-9, and Kantorowicz, op.cit., pp.220ff.

¹⁷Indeed many of these changes were "effects", but they were more the effects of medieval political thought than of the Reformation.

¹⁸Laslett, for instance, says that the problem of political obligation "did not arise in an urgent form until 1679". See J. Locke, Two Treatises of Government (Laslett ed.), op.cit., p.43. The truth of the statement of course, depends on what is meant by "urgent form", but still, the fact remains that public law theories of the twelfth and thirteenth centuries did deal with this problem in considerable detail.

cannot delve into these problems here, we can say with certainty that medieval nationalism was very much a political reality, and that the problem of political obligation was indeed of major significance as was seen in important theories of public law and the State developed in the Middle Ages.

Patriotism we find developed in the twelfth and thirteenth centuries, usually at the king's command. At first nationalism served principally as an instrument to strengthen the public authority of the king and therefore of the State. We find for instance that much was written concerning the defense of the patria, and the means of dealing with those guilty of treason against Respublica.¹⁹ Obedience to the patria, it was said, should be as complete as obedience to one's parents.²⁰ Indeed the question was often pondered as to what one ought to do if he were summoned both by Rome and his patria. Invariably opinion had it that he was to remain in his country to perform his duty.²¹ Thus it could be said that "each kingdom is a fully independent sovereign nation, and nationalism in the modern sense of the word is almost fully at hand even in legal theory, as it is in fact."²²

¹⁹Post, op.cit., pp. 435-7.

²⁰This was said by Accursius (1228). See Post, op.cit., p.441. As we shall see later Filmer was of the same opinion, although he identified the patria with the king.

²¹Ibid., p.447.

²²Ibid., p.449.

Thus it could be said that sovereign states and the phenomenon of nationalism did exist in the Middle Ages, although the idea of the unity of Christendom continued to flourish.

The secularization of politics was closely associated with the emergence of the sovereign state and the phenomenon of nationalism. By the same token it usually was identified with the Reformation and more specifically with the political thought of Machiavelli.²² However, as we have seen, national states and the accompanying problems of political obligation and sovereignty were firmly established in the Middle Ages, and thus it would be a mistake to associate the secularization of politics solely with the Reformation. In fact Machiavelli's secularism was anticipated in most respects during the medieval Renaissance of the thirteenth century, especially by the radical lay writers who viewed religion principally as a support for civil government.²³ Thus, while secularism may be used as a criteria to differentiate

²²Raab conceives of two kinds of secularism: that of separation and that of rejection. The former merely separates politics and religion while the latter, usually associated with Machiavelli, rejects religion as a force in politics but considers it as an effective instrument of the State. See Felix Raab, op.cit., p. 105. One, however, must realize that Machiavelli's secularism is not as revolutionary as is usually thought, for in most respects what he has said merely reflected the political realities of his age. See especially Francesco Guicciardini, op.cit., pp. 80-110.

²³Wilks, op.cit., p. 527.

between modern and medieval thought, one should realize that it was a process which began in the Middle Ages and which in some respects has not yet been completed.

Generally speaking, the transition period was characterized by changes which necessitated a new approach to defend the doctrine of the divine right of kings. The theory had to take a new form and had to be defended on a somewhat different theoretical basis - a task to which Filmer quite admirably rose. The usual defense of absolute monarchy was based primarily on theologically oriented arguments, as was evidenced by the frequent use of selected scriptural texts by both papalists and imperialists. Such argumentation was popular well into the seventeenth century, but long before the groundwork had been laid whereby theology no longer had to be stressed in debates concerning authority and obedience. More specifically, a renewed interest in Roman jurisprudence in the twelfth century, and the rediscovery of Aristotle in the thirteenth century, laid a new foundation upon which ideas concerning the State and the individual could be based. It was principally upon this foundation that the modern theory of the divine right of kings was grounded.

In most respects the abandonment of purely scriptural argumentation by many writers represented a return to the Greek conception that the basis of political life was to be found in man's nature - a nature discoverable through reason.

The influence of the Roman conception of natural law also was to become evident. In the words of Cicero its basis was "the existence of a universal and world wide law, which is one with reason both in nature and human nature, and which accordingly knits together in a common social bond everything that possesses reason, whether God or man".²⁴ While reason was, in such a way, to find its way back into political theory it was not to dominate. The influential works of both St. Thomas Aquinas and Richard Hooker have given cognizance to the fact that the authority of the Bible would continue to play an important part in political thought. Both have seen the role of Christian revelation as being very important for the law of reason and both have considered the rational and political animal to be subordinate to the spiritual animal.²⁵ Knowledge as a result was as much, if not more, dependent upon faith as reason. There was no disintegration of the idea of God's plenitude, of a naturally ordered universe, or of an ultimate purpose to existence, and metaphysically based propositions were still widely accepted as rational, although, at this time, quite severely questioned

²⁴Quoted in R.H. Soltau, An Introduction to Politics (London: Longman's, Green and Co. 1951), p. 139.

²⁵See R.K. Faulkner, "Reason and Revelation in Hooker's Ethics", American Political Science Review, Vol.59, Sept. 1965, pp. 680-90.

by empiricists and pure rationalists such as Machiavelli and Descartes.

The important thing to remember is that in the twelfth and thirteenth centuries a process began which led to the abandonment, in most cases, of purely theological argumentation for a more rational sort of approach which sought to base the political system on the nature of man. What then was the nature of man? Generally speaking some sought to establish man's nature through observation, while others, such as Filmer, searched for it in scripture or the word of God.²⁶ Figgis is perhaps clearer as he explains that when we move from the notion that government is "established by Divine command to the notion that...God is the author of nature" and so whatever has His sanction is natural we are moving from a "theological conception of politics" to a naturalistic conception of political life.²⁷ He goes on to

²⁶The first approach is usually referred to as secular naturalism since it attempts to eliminate the need of a divine author, while the second approach usually is termed Christian religious naturalism. The latter, it is said, was much more popular and contributed more to the development of political theory because of its association with "the enterprise of kings, the sentiment of the corporate community of the realm, the principles of public law, and secular naturalism". Post, op.cit., pp. 494-5.

²⁷Figgis, op.cit., p. 152. Figgis on this matter mistakenly associates the naturalistic approach as a post-Reformation phenomenon. The fact, however, is that it was quite popular in the Middle Ages, even before the rediscovery of Aristotle in 1260. For an excellent analysis see Post, op.cit., pp. 494ff.

say "the change is great", yet if we examine it closely we will find that the latter can be simply viewed as the former in disguise. Thus, although the distinction in most respects was hardly significant it nonetheless signalled that new theories of the State would seek their basis in natural law, as revealed by God or otherwise. Man's nature and the necessity or naturalness of civil society thus would constitute a starting point in the search for the changeless principles of civil government and the laws governing political obligation.

While the basing of political theory on natural law may in some respects relegate scripture to the background, it in no way necessarily represents a rejection of biblical authority in political matters. As Figgis says, "the next stage in its development is the idea that all political systems must find their sanction in the Bible as the complete revelation of the Divine Will".²⁸ This development of course may, and in fact on occasion has proceeded along different lines, but nonetheless it should be clear that faith in the political authority of the Bible has remained as a powerful force. It should also be obvious that with the retention of faith in the process of reasoning the metaphysically based political theory of order has been perfectly

²⁸Figgis, op.cit., pp. 152-3.

compatible with the new direction taken in the search for answers to the problems of authority and political obligation.

The above constitutes in its bare essentials the pre-Reformation background to the thought of Sir Robert Filmer. We have seen that the notion of the king's divinity, the idea of the naturalness of political society, and the phenomenon of nationalism and sovereign states have been very much in the forefront in the Middle Ages. The Reformation, it is true, has its place in the history of political thought, yet it is obvious that many of the notions associated with it have been in the process of development both long before and after it. Thus it is hardly wise to differentiate between ancients and moderns on a before and after the Reformation basis. We find, for instance, that Filmer is viewed as a modern "for seeing that a natural system of politics was more likely to prove well founded than a purely theological scheme".²⁹ On this basis many twelfth century writers would also have to be viewed as moderns. By the same token the many royalist supporters of the seventeenth century who based their positions totally on scriptural authority would have to be classified as ancients. The point is that we cannot use any specific date as the basis for differentiation nor can we use, in most instances, specific approaches which

²⁹Ibid., p. 154.

have developed over the course of many centuries.³⁰

It is interesting to note that both Locke and Filmer seek the changeless principles of politics by means of a natural rights approach; that is, they both argue from the basis of immutable natural rights. The major difference of course is that while Locke proceeds from the natural rights of the individual, Filmer argues from the natural rights that fathers have over their children and from there arrives at the natural rights of kings over their subjects. Locke, however, more so than Filmer, bases his position on reason, raises it above considerations of temporary expediency, and takes into account the principle of utility. As a result his theory is much more acceptable to the common man as well as much more practical as a working system of civil government. Filmer's positions, meanwhile, may seem more logical within the framework of order theory and may seem better founded in historical terms, but his failure to take into account the important considerations of utility or practicality, and his lack of common sense has led to his downfall. Thus, on the whole, Locke's system tends to be much more artificial than Filmer's, but his conclusions and arguments turn out to be much more acceptable.

³⁰Figgis, for instance, attributes much importance to the Reformation in explaining the different approaches used to defend the theory of divine right. See Figgis, op.cit., pp. 15-16, 258, 260.

We must realize, however, that Filmer's total position is not based on natural law. The fact is that he also argues from constitutional history or biblical history as well as in terms of expediency and logic. If we wish to follow his thought it is important to remember, that in his patriarchal theory he is arguing essentially from a natural rights position and not from a medley of scripture; that when he is arguing against parliamentary sovereignty he is basing his position essentially on constitutional history; that when he is arguing for the rule of one he is depending principally upon order theory, and so on. If we keep this in mind along with his basic assumptions, it will become obvious that he simply is making a case for the rule of one as against the rule of the many, and arguing for order against anarchy. By viewing him in this fashion, we may learn to refrain from associating him solely with the patriarchal theory and we will certainly acquire a better understanding of his thought, but no doubt the fact will remain that he will "be remembered, less as the most perfect exponent of the theory of divine right⁷, than as the herald of its decadence".³¹

³¹Figgis, op.cit., p.152.

The Immediate Background: Divine Right

While political philosophy is not a history, it most definitely is historically conditioned.³² It consists primarily in reflection on the right or best kind of political order and the proper political relationships, but it always begins within a definite concrete historical situation and usually consists in a set of related propositions which tend either to oppose or justify a particular state of affairs. Any brief look at the history of political theory will confirm that significant political thought is usually a response to a particular environment. As Figgis says, "no belief could be more the child of circumstance than that in the Divine Right of Kings".³³ Since political theory often delves into the very foundations of the political system it also usually involves explicit inquiries into the nature of man and into theories of knowledge, and is thus closely related to philosophy.³⁴ With Filmer, however,

³²See Vaughan, op.cit., p.1. While political philosophy is usually historically conditioned, it is also true that some philosophies are more revolutionary than evolutionary in that they are the product more of intellectual genius than of social tendencies. Rousseau's philosophy for instance was revolutionary in that it made history, while Marx had a history of philosophy part of which was not yet history.

³³Figgis, op.cit., p.16.

³⁴For a good analysis of what political philosophy involves see M. Curtis, The Great Political Theories (New York: Avon Books), pp. 13-21.

this is not the case in the sense that an explicit epistemology and treatment of the nature of man is absent. As a result, we have attempted above to shed light upon the implicit philosophical foundation of Sir Robert's thought through his historically conditioned basic assumptions. In effect, we will find that his thought is principally a response to then existing political realities and that it is based essentially on an appeal to divine Providence and to a metaphysical abstraction. More specifically, he has attempted to justify the king's absolute power by appealing to a natural and divinely ordained order. As it was for Plato, the natural order is the ideal and any change is conceived of as a degeneration. This is in direct opposition to the emerging Aristotelean conception of an open system where rational change was viewed as a progression towards the ideal.

If we turn to history for a moment we will find that political thought concerning the rights and duties of the king and the people gained impetus in the form of modern political theories in France at the end of the sixteenth century and in England during the course of the seventeenth century. In both cases opinion and theory began to crystallize in a situation of disorder - a disorder the roots of which usually were traced to the time of the Reformation. Civil strife, in effect, gave rise to political philosophy in much the same way as war in the twentieth century gave

impetus to advances in science and technology. Thus, in England, significant political theory, generally speaking, was not to appear until civil war threatened, then became a reality.

In France, meanwhile, the monarchical form of government had been well established by the sixteenth century. However, with the passage of time, lack of communication and the granting of privileges from the centre led to the strengthening of autocratic elements in the cities and provinces. Thus, when the centralized monarchy attempted to exert its authority both on the Church and the nobility, a reaction was forthcoming which culminated in civil war. By emerging victorious and restoring order to a situation of virtual anarchy, the king consolidated his position by appearing as a saviour in the eyes of the people. His defeat of reaction and revolution created an image which made him appear as a victor over disorder and certain disaster. His success on the battlefield virtually assured the success of his literary supporters whom it can be said initiated the modern theory of the divine right of kings.³⁵

On the literary plane, many writers, mostly Calvinists and Jesuits, constructed both royalist and anti-royalist

³⁵The term "modern" is used here more because of the date of the theory than because of the novelty of the ideas pertaining to it.

theories which were to have an enormous influence in England in the following century. The anti-royalists usually attempted, in one way or another, to derive the king's power from the people or the community, and defended the people's right to active resistance under certain circumstances. The Calvinist positions could be associated with the Huguenot provincialists³⁶ who, without doubt, were strongly influenced by Aquinas and the medieval thinkers who subscribed to the thesis of ascending power. Opposition to royal absolutism was also forthcoming from the Jesuits or Roman Ultramontanes³⁷ whom, generally speaking, were of the opinion that the pope could dictate his will to the temporal sovereign in matters of ecclesiastical interest and could

³⁶The more prominent Huguenots were Francis Hotman who, in his Franco-Gallia (1573), attempted to find constitutional limitations to the king's authority in French history, George Buchanan, author of De jure regni apud Scotos (1579), who insisted that the king's authority was limited by the people's representatives, and Theodore Beza who, under the pseudonym of Stephen Junius Brutus, wrote the Vindiciae Contra Tyrannos (1579), (A Defense of Liberty against Tyrants), wherein he limited the authority of the king by means of a double contract. See Sabine, op.cit., pp. 374-88, for an analysis of this work and an explanation concerning the authorship of the last mentioned. See also Murray, op.cit., pp. 169-211; Curtis, op.cit., pp. 250-68; Jaszi and Lewis, op.cit., pp. 59ff.

³⁷The better known Ultramontanes were the Cardinal Robert Bellarmine, and the Jesuits Mariana and Suarez. For a brief account of their views concerning the people's right to resist, and the pope's position vis a vis the king, see Jaszi and Lewis, op.cit., pp. 67-72; Sabine, op.cit., pp. 388-96; and Curtis, op.cit., pp. 251, 259ff.

punish the king for disobedience. Under certain circumstances, of which the pope was judge, they felt that the spiritual head could depose the temporal head, and could incite the people to rebel. Filmer, we will find, was quite familiar with, and attacked, both of these classes of anti-royalists.³⁸

In the midst of Jesuit and Calvinist writings attacking the king's absolute authority, a royalist response was inevitable. The king's supporters were virtually forced to develop a doctrine which would justify absolute obedience to his majesty the king. The doctrine first of all had to have a force sufficient to bind the conscience, and secondly it had to justify absolute authority. As a result it had to be characterized by an appeal to divinity, and an emphasis on the concept of sovereignty.

Gallicanism,³⁹ which politically asserted that nothing justified papal interference in temporal affairs, and which theologially asserted that the pope had infallible authority jointly with the bishops, provided the basis to fulfill the first need. The joining of the political and the theological aspects provided a means by which one could be a good citizen

³⁸Cf. supra, p.8

³⁹Cambridge Modern History, Vol.V; "The Age of Louis XIV" (Cambridge University Press, 1907), pp. 74-7. See also McGovern, op.cit., pp. 39-41, and Wilks, op.cit., pp. 332ff.

as well as a good Catholic. Working from this basis, with the concept of sovereignty, a group collectively known as the Politiques⁴⁰ devised the modern theory of divine right to consolidate the king's absolute authority. The group by no means supported tyranny but felt that the concentration of authority in the office of the king was the only way peace and order could be maintained, and national unity preserved. Their works, as it turned out, were to be very influential in seventeenth century England when civil war was imminent and the king needed theoretical justification for his proclaimed position of superiority.

Sixteenth century England was characterized by the absolute rule of the Tudor Kings, and the development of a doctrine of non-resistance, but, in view of the fact that they were not tyrannical and ruled efficiently, the doctrine was not seriously challenged until the following century. It was said, "the most striking peculiarity of England in the sixteenth century, was the general refusal to admit that any case can be made for a right of rebellion."⁴¹ There

⁴⁰The more prominent Politiques were William Barclay, author of De regno et regali potestate, 1600, wherein the arguments of Buchanan, Hotman and Beza were systematically rejected; and Jean Bodin who, in his Six livres de la republique, developed the concept of sovereignty and helped remove it from the limbo of theology. In this way he paved the way for a more secularized version of the theory of divine right.

⁴¹J.W. Allen, A History of Political Thought in the Sixteenth Century (New York, 1928), p.131.

was also a general acceptance that there was room for but one ruler and that "this ruler is the keystone of the whole structure of civil government".⁴² Kings were considered generally as analogous to gods due to the widely accepted belief that they were the vicars of God entrusted with preserving the divine order.⁴³ In view of the horrors of anarchy, rebellion and civil war, the people were only too willing to accept a philosophy of passive obedience if it would preserve order.

When crisis did appear in seventeenth century England, there was no real question of national unity involved as there had been in France; rather it was a question of whom should represent national unity. English kings had for centuries enjoyed a position of superiority but were now, due principally to economic and sociological changes, being challenged by Parliament and its supporters. A modern understanding of Stoic and Aristotelean philosophy encouraged the belief that political relationships were natural phenomena open to study by observation and inductive analysis.⁴⁴

⁴²Wilks, op.cit., p. 173.

⁴³Allen, op.cit., pp. 127-32.

⁴⁴Ideas concerning the naturalness of society and the State were, however, developed in the twelfth century by the legists and the canonists. Cf. Post, op.cit., chapter XI for an excellent analysis.

As a result, appeals were made to custom and natural law in support of individual liberty and representative government which, of course, meant a challenge to the absolute authority of the king. In this way, the recurring problems of political philosophy concerning the nature of society, law, obligation, rights, duties and obedience, re-emerged in the context of strongly advocated alternate solutions. The solutions invariably led to royalist and parliamentary theories largely influenced by the ideas of the canonists and legists of the later Middle Ages, and those of the Huguenots and Politiques of the preceding century.

Thus, in seventeenth century England, we find the king's supporters using the doctrine of divine right, the related concept of sovereignty, and, on occasion, constitutional history in an effort to justify absolute royal authority. Generally speaking, they maintained that the monarchy was a divinely ordained institution and that the king ruled in accordance with the laws of God and reason. As a result, he was held to be accountable to none other but God, and resistance, it was thought, was sinful in that it could do little else but contribute to the degeneration of God's natural order and hence result in general anarchy. It was true that royalist doctrine was to a large extent based upon faith, revelation and scripture, all of which became less acceptable with the advent of scientific method

and the trend towards the secularization of politics, but Filmer seemed to have been at least vaguely aware of this. This becomes apparent as we find him arguing from the concept of sovereignty, from the theory of order, from a natural rights position as well as from a legal-historical position. Thus in more ways than one, Filmer, as well as many medieval writers, could be classified as a modern. It was, however, unfortunate that his flurries into the future were overwhelmed by his attachment to the past. Even so, his alleged non-modern assumptions concerning the natural order and the structure of authority are by no means totally irrelevant or ignored today. Having stated the problem, outlined his all-important basic assumptions, explained his principal mode of argumentation, and established the background to his thought, we can now explore in greater depth Sir Robert Filmer's life, works and political thought.

CHAPTER IV

THE FILMERIAN ATTACK ON THE CONTRACTUAL SCHOOL

Filmer: Life and Works

In the year 1588¹ Sir Robert Filmer was born, the eldest son of a prominent English family. Both his mother and his father came from highly respected aristocratic families whose sympathies lay with the Crown. Because their wealth, like that of other aristocrats, was dependent upon the status quo, a mutual interest was created with the Crown in maintaining the existing system. Filmer's social position guaranteed him a good education as was evidenced by his graduation from Trinity College, Cambridge in 1608. His formal education, however, was to play a secondary role to the influence of the intellectual elite in his community, in the developing and maturing of his political ideas. In the midst of abundant leisure time, the elite group would meet often for the express purpose of solving contrived as well as existing problems.²

¹There seems to be general agreement as to the date of his birth except in The Harleian Miscellany (London: White and Co., 1810) Vol.X, p.105, wherein it is said he was born at the beginning of the seventeenth century.

²For a more detailed biography see the Dictionary of National Biography, Vol.VI (London: Smith, Elder and Co., 1908), pp. 1304-5; and Hearnshaw, op.cit., pp. 28-9.

Sir Robert's career as a writer began as a direct result of his association with the community intellectuals. Since all were rich and quite interested in investment, they became concerned with the acceptability of charging interest on loans, especially after Roger Fenton in his A Treatise of Usurie came out strongly against interest. After investigating the matter, Filmer wrote a pamphlet entitled Quaestio Quodlibetica; or a Discourse, whether it may be lawful to take Use of Money³ wherein he voiced the opinion that reasonable interest was justified although not to be recommended.

In this same manner, Filmer became both familiar with and involved in politics, for in the years prior to the outbreak of civil war (1642), the group, spurred on by existing controversy, became concerned with questions relating to the nature, origin and extent of political power. Family ties, his upbringing, and his formal relationship with the monarchy,⁴ naturally led Sir Robert to defend the king's position against the parliamentarians. The result was his first significant and best known work which was entitled Patriarcha: A Defence of the Natural Power of Kings against the Unnatural Liberty

³The complete text, published in 1653, can be found in The Harleian Miscellany, Vol.X, pp. 105ff.

⁴He had been knighted in 1618-19.

of the People.⁵ Written between 1635 and 1639 at a time when Charles I was exerting his authority by ruling without a Parliament, it embodied all the major components of his patriarchal theory as well as his unrefined constitutional arguments. Many of the criticisms he leveled against the Crown's adversaries also were included but they were not as poignant as they became in his later works. His refusal to have Patriarcha published, however, limited its actual influence to a small circle of friends. As a result its full effect was not felt until it was published during the "Exclusion Controversy"⁶ in 1680, and adopted as official Tory ideology.

With the outbreak of civil war it was quite obvious where Filmer's sympathies lay, but there was no evidence that he took a physically active role in support of his position.⁷ He was constantly under suspicion, however, and the parliamentary armies continually harassed him by

⁵Hereafter referred to as Patriarcha. Page numbers cited in reference to Filmer's works will all be from Laslett, Patriarcha and Other Political Works, op.cit.

⁶This refers to the controversy which arose when the parliamentarians introduced a bill in Parliament, known as the Exclusion Bill, which sought to exclude the future James II, a Catholic, from succession to the throne.

⁷Laslett, Patriarcha and Other Political Works, op.cit., pp. 4-5.

plundering his East Sutton residence ten times.⁸ Finally in 1643 they took a more drastic action by accusing him of hoarding arms and subsequently imprisoning him. The time served in prison only strengthened his beliefs since it enabled him to develop and formulate his opinions concisely. Thus in 1645, a mature mind, capable of enunciating positions and arguments thought out to the full, emerged from enslavement.

Filmer's first published political treatise following his release was entitled The Freeholder's Grand Inquest Touching our Sovereigne Lord the King and His Parliament⁹ (1647-8), and was actually a much improved version of the last five chapters of Patriarcha. In it Filmer disclosed his constitutional arguments for royal absolutism, and presented his answer to such parliamentary supporters as Edward Coke, Sir Henry Spelman and John Selden,¹⁰ all of whom argued that the English government was customarily a mixed monarchy. The Freeholder probably represents Filmer's

⁸Dictionary of National Biography, op.cit., p.1304.

⁹Hereafter referred to as Freeholder.

¹⁰Edward Coke in his Reports attempted, through common law, to limit the King's prerogative and establish parliamentary sovereignty. John Selden, in his study of English history, came to virtually the same conclusions in his Titles of Honour (1630), and in his Mare Clausum (1635).

most refined, scholarly and accurate treatise - at least more acceptable and accurate than most previous accounts of English constitutional history.

Shortly after, he supplemented the Freeholder with a critical essay entitled The Anarchy of a Limited or Mixed Monarchy¹¹ wherein he harshly appraised Philip Hunton's Treatise of Monarchie (1643),¹² and Henry Parker's (the Observator) Animadversions Animadverted (1642), and his Observations on His Majesties late Answers and Expresses (1642). In many ways it was simply a refinement of the, at the time unpublished, Patriarcha, but it was also a wise complement to the Freeholder which made but a passing reference to the problem of political obligation. While much of its argumentation had little positive value it did effectively sweep away most of Hunton's arguments which were very representative of anti-royalist thought, and which in many ways anticipated Locke. Also, in the process of criticizing, he refined his own arguments from the Patriarcha, and extended his critique of popular government by appealing more to order and natural law.

¹¹The text of the Treatise of Monarchie can be found in The Harleian Miscellany, Vol. VI, pp. 323-60. The author is given as "an earnest Desirer of his Country's Peace", but one can be certain that it refers to Hunton.

¹²Hereafter referred to as Anarchy.

Also published in 1648 was a short essay called The Necessity of the Absolute Power of all Kings, and in particular of the King of England.¹³ The work was a good indication of Filmer's dependence upon Jean Bodin's ideas concerning sovereignty and the nature of power. It was not until 1652, when he decided to challenge the influential works of Hobbes, Milton and Grotius, that he published again. The treatise, entitled Observations Concerning the Original of Government, Upon Mr. Hobs "Leviathan", Mr. Milton against Salmasius, H. Grotius "De Jure Belli",¹⁴ involved little more than an application of the ideas of the Anarchy and Patriarcha, revealing what he considered to be the weaknesses of these works. In view of the fact that Patriarcha was not yet published and that he had no intention of publishing it, we find his practice of lifting whole passages from it and using them verbatim to be quite understandable. In the same year, Filmer had published his Observations upon Aristotle's Politiques touching Forms of Government,¹⁵ the last of his political works. In the words of one commentator, it is

¹³Hereafter referred to as Necessity.

¹⁴Hereafter referred to as Obs. upon Hobbes, Obs. upon Milton, or Obs. upon Grotius.

¹⁵Hereafter referred to as Forms.

"extremely well worth the perusal of those who are fond of speculations upon government".¹⁶ Actually it was simply an extension and refinement of several chapters of Patriarcha, and was intended primarily to be an attack against those who looked to Aristotle for answers. Printed with the Forms was a short pamphlet entitled Directions for Obedience to Governors in dangerous and doubtful Times,¹⁷ wherein Filmer concerned himself with outlining the duties and obligations a subject had towards his ruler regardless of how that ruler came to the throne. Thus, while Filmer might not have defended his cause with sword in hand, he certainly did so with pen in hand.

Of all the above mentioned works, Patriarcha is usually considered as Filmer's only positive one in the sense that it is not an appreciation of someone else's work. To an extent, this may be true, but we must not lose sight of the fact that his other works do have positive value in that they add soundness and clarity to Patriarcha's arguments. The likes of Algernon Sidney, John Tyrell and John Locke, we find, have ignored this fact by simply concentrating their attack on Patriarcha. In this way they conveniently have bypassed many of the criticisms Filmer levelled at their own

¹⁶See The Harleian Miscellany, Vol.X, p.105.

¹⁷Hereafter referred to as Directions.

positions. As Laslett says they never "attempted to meet the force of these criticisms and that none of them even realized what he meant by his naturalism".¹⁸ Our first task will thus be to examine "these criticisms", or his negative argumentation.

Purpose and Negative Argumentation

It can be said that Sir Robert Filmer wrote with two general purposes in mind. The first of these was to discover the laws governing political obligation by establishing the true grounds and principles of civil government. In the process he attempted "to justify the existence of a necessary moral authority in the community",¹⁹ being interested solely in the welfare of the community. In every society governed by law, he insisted, there had to be an absolute and arbitrary power. While most agreed on the existence of such a sovereign power, Filmer was of the opinion that it was the property of the king and could only exist in a monarchy if it were not to be a legal fiction. More specifically, we find that he was concerned with the origin and nature of government, and the related problem of rights and duties for

¹⁸p. Laslett, Patriarcha and Other Political Works, op.cit., p.21.

¹⁹Hearnshaw, op.cit., p.31.

as he said, "my task is chiefly to inquire from whom these [rights] came, not to dispute what or how many there are, but whether they are derived from the laws of natural liberty or from the grace and bounty of Princes".²⁰

Filmer's second general purpose, meanwhile, was to reveal how the supporters of the parliamentary cause were actually destroying the secure basis upon which civil society was founded. This second purpose was of course negative, but no doubt we will find him much stronger as a critic than as a constructive theorist. Thus we will presently review his second purpose by examining in detail the arguments he used in his attempt to discredit the propositions and ideas of his opponents. This we will begin with a general view of these propositions and the general reasons why he considers them to be a poor basis for civil government.

Theoretically, anti-royalist theory is characterized by the conviction that man is born free; i.e., that he was naturally free and by nature under obligation to none other but God.²¹ As Filmer points out, they are of the opinion

²⁰Patriarcha, p.55. Later chapters of this thesis will dwell upon the arguments he presents to prove the necessity of an absolute moral power in the person of the king, and to support the view that all rights derive from the grace of the king.

²¹This conviction is also held by many liberals of the Middle Ages and it seems certain that their arguments were very influential in determining the anti-royalist position. In fact both the royalist and anti-royalist positions tend to be very similar to those of the papalists and the lay writers of the later Middle Ages. See Wilks, passim. Also see Post, op.cit., pp. 519, 553 and Kantorowicz, op.cit., pp. 95, 220ff.

that "mankind is naturally endowed with freedom from all subjection, and at liberty to choose what form of government it please, and that the power which one man hath over others was at the first by human right bestowed according to the discretion of the multitude".²² On earth they believe that men are under obligation to none other but themselves,²³ although ultimately under the will of God. As a result Filmer is quick to complain that "men are naturally willing to be persuaded, that all sovereignty flows from the consent of the people, and that without it no true title can be made to any supremacy".²⁴ Under these circumstances the people or their representatives will be sovereign and thereby ultimately will possess the only legitimate law-making power.

²²Patriarcha, p.53. The ideas here are essentially those of the Huguenot provincialists and the Roman Ultramontanes.

²³Hunton, we find, is of the opinion that man can be rightfully subjected only if he is bound by his own will. See The Harleian Miscellany, Vol.VI, p.332. Locke, however, is not really saying that we owe no obligation to laws unless they issue from our own wills; rather he is making a case for the rational recognition of the proper promulgation of natural law through positive enactment. That is, he believes in the existence of a "moral code known by all and existing prior to and in complete independence of any positive law", which must be followed by all. See Vaughan, op.cit., p.131. As Locke puts it, "the Question is not proper whether the will be free, but whether a man be free". Second Treatise, Sec.21.

²⁴Forms, p.226.

Both sides claimed that obedience was due to the commands of a higher power, and both sides were of the opinion that "Government is Potestatis exercitium, the exercise of a moral power",²⁵ but differed as to where this power existed in political society. Filmer of course felt that the power belonged to the king but the anti-royalists took the other extreme by insisting that it belonged to the people,²⁶ who would have a natural right "to use what form of government they pleased", and who would always retain "the same right to free ourselves".²⁷ Thus it was said "every monarch hath his power from the consent of the whole body",²⁸ and where a prince abused this power delegated to his good judgment most were of the opinion "that the people or multitude have power to punish the Prince".²⁹ In such

²⁵The Harleian Miscellany, Vol. VI, p. 223.

²⁶While the anti-royalists always spoke of the sovereignty of the people we must keep in mind that, "when the Parliamentarians talked about the people they meant nothing of the kind; they meant their own particular class, an arriviste bourgeoisie". Ivor Brown, English Political Theory (London: Methuen and Co. Ltd., 1920), p. 42.

²⁷Obs. upon Milton, p. 260.

²⁸The Harleian Miscellany, Vol. VI, p. 330, 333. Saul, for instance, says Hunton, was chosen by God but he did not become a real "king till the people's consent established him".

²⁹Patriarcha, p. 53.

a way tyrannicide was justified although there were differences of opinion as to what constituted a tyrant and as to who rightfully could punish an abuser of that power held in good faith.

Since political sovereignty was equated with the general will of the people, it followed that political power could only be acquired directly from the people or through their representatives. The king in this way would be merely a trustee who held his power in accordance with the terms of a contract which, if abused, would result in a forfeiture of power. The community in turn could re-delegate their natural power to another person or group of their choice. Basic to this notion, as well as other anti-royalist positions, were the people's natural liberty, the ideas of contract and consent, the notion of representative government, and the concept of majority rule³⁰, all of which were attacked in detail by Filmer.³¹ Most of his criticism in these matters

³⁰It is interesting to note that every one of these notions was quite popular in the Middle Ages, not only as theory but as fact. See Gaines Post, passim.

³¹Many supporters of the parliamentary cause also used legal-historical arguments in an attempt to limit the royal prerogative by the ancient and fundamental law of the kingdom. Filmer's answers to these are found primarily in the Freeholder, and since they are more positive than negative they will be discussed in a later chapter of this thesis.

consisted in attributing a particular extreme position to a writer, making him stick to it one hundred per cent, then proceeding to attack it with much vigour. Acceptance of the extreme enabled him to be a good critic; yet it left his own position open to extremist counterattacks. Still his criticisms of democratic government had a wide application and did make a good deal of sense.

Essential to Filmer's negative and positive positions, and a fact easily discernable in his writings, is his assumption that the Bible represents the complete revelation of truth. He considers the Bible as the basis of divine and natural law and the place where the Lord "will utter things hidden since the foundation of the world" (Matthew 13: 35). It represents the word of God and, as such, provides the social organism needed to prevent anarchy. Furthermore, in Filmer's opinion, it provides a much more solid basis for the continued existence of liberties and institutions than does an imaginary contract. Thus man is viewed as an instrument of God with a subordinate role in the forming of political institutions.

Filmer's belief in the sacred authority of the scripture is best illustrated by a few of his statements. Many writers of the time based their beliefs on Aristotelean conceptions rather than scripture, for, as he regretfully

points out, "what cannot be found in scripture, many do look for in Aristotle".³² While he has a great deal of respect for Aristotle whom he refers to as the one "whose natural reasons are of greatest authority and credit with all rational men, next to the sacred scripture",³³ he nonetheless assigns him secondary importance for as Filmer says, "we must not neglect the scriptures, and search in philosophers for the grounds of dominion and property which are the main principles of government and justice".³⁴ The importance he attaches to scripture is emphasized further as he says, "it is a shame and scandal for us Christians to seek the original of government from the inventions or fictions of poets, orators, philosophers, and heathen historians, who all lived thousands of years after the creation, and were (in a manner) ignorant of it: and to neglect the scriptures, which have with more authority most particularly given us the true grounds and principles of government".³⁵ Thus the first criticism he levels at the anti-royalist group is that they depend too much on the subjective opinions of

³²Forms, p. 193.

³³Forms, (Preface), p. 187.

³⁴Anarchy, p. 280.

³⁵Anarchy, (Preface), p. 278.

"philosophers" and "heathen historians" and as a result are led astray. Legitimacy must ultimately be established by Providence and not only by the opinions of great philosophers such as Plato, Aristotle and Hooker.

In Filmer's opinion, the anti-royalist notion that men are born free and equal, and have a natural right or liberty to choose the form of government they wish to live under³⁶ "contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature".³⁷ He conceives of such a liberty as little more than a fancy of the imagination designed to flatter the people. Natural freedom and equality as well are viewed as fictions, since, in view of political and social realities, and biblical evidence, he simply cannot see "how the children of Adam, or of any man else, can be free from the subjection of their parents".³⁸

³⁶Hunton agrees with Filmer that "it is God's express ordinance, that, in the societies of mankind, there should be a magistracy or government", but unlike Filmer feels that the form such government takes is left to humans to decide. See Harleian Miscellany, Vol. VI, pp. 323-4.

³⁷Patriarcha, p. 53.

³⁸Patriarcha, p. 57. Locke, it should be noted, takes delight in pointing to Filmer's use of the term "parents" since it denotes the supreme authority not only of the father but also of the mother. See Locke's First Treatise § 11, 96, 73-75, 110-19.

In fact, "every man that is born is so far from being free born, that by his very birth he becomes a subject to him that begets him".³⁹ On this matter he considers himself to be of the same opinion as Hobbes whom he feels believed "that originally the Father of every man was also his Sovereign Lord with power over him of life and death".⁴⁰ The Bible, his source of natural law, is of course laden with fitting examples of the extent of the fatherly power which he often has used to make his point.⁴¹ His observations naturally lead him to conclude that, "if it be allowed, that the acts of parents bind the children, then farewell the doctrine of the natural freedom of mankind: where the subjection of children to parents is natural, there can be no natural freedom".⁴² Thus Filmer's first objective is to destroy the idea of natural freedom and related concepts.

³⁹Directions, p. 232. Locke also discussed the problems created by this statement. Where authority is so related to the act of begetting, what will happen when the begetter dies? How can an heir have the same authority? (First Treatise, Sec. 74) The problem here is that Locke does not realize Filmer is arguing essentially by correspondence and thus merely is saying that the heir should be reputed as the true begetter.

⁴⁰Obs. upon Hobbes, p. 241.

⁴¹Patriarcha, pp. 58, 77.

⁴²Anarchy, p. 281.

Filmer attacks the notion of natural freedom in much the same way as he ridicules other anti-royalist ideas; that is, he destroys a paper tiger which he himself has built. Like most other critics, he sets traps according to his own rules and proceeds from there. In this instance, we find him defining natural freedom as liberty without restraint or the right to do as one pleases. His opponents of course do not intend this but what they have meant is not clear, thereby leaving Filmer with the opportunity of interpreting it to suit his own purposes. To be free can mean a host of different things and thus unless you take it upon yourself to define freedom, you can be sure your opponents will do it for you.⁴³ In Filmer's time we find Charles I on the scaffold saying, "For the People; and truly I desire their Liberty and Freedom...; but I must tell you, that Liberty and Freedom consist in having of Government, and those laws by which their Life and Goods may be most their own. It is not having a share in government, sir; that is nothing pertaining to them".⁴⁴ Liberty thus can be construed more

⁴³As one author puts it, "there is no one freedom but many freedoms; and they are as various as are constraints, impediments and burdens". The result, of course, is that only a "partial descriptive meaning" is possible. See Maurice Cranston, Freedom: A New Analysis (London: Longman's, Green and Co., 1953), pp. 6, 21, for an excellent history and analysis of the concept of freedom.

⁴⁴Cranston, op.cit., pp. 11-12 and Alan Barth, The Price of Liberty. (New York: The Viking Press, 1961), p.22.

as freedom from anarchy than as "participation in the control over the conditions of one's own living".⁴⁵ Where such participation has existed it has meant little more than the choice of an authority to which one owes absolute obedience.

Usually, the idea of liberty was presented in terms of a contract which recognized and guaranteed certain basic rights belonging to the people. While the anti-royalists viewed the contract more as a "charter of freedom" than as "an instrument of enslavement",⁴⁶ they nonetheless tended to overemphasize the former and made little mention of the contractual limitations. This led Filmer to comment that "they must take heed that they do not deny by retail that liberty which they affirm by wholesale".⁴⁷ The point made by Filmer might in fact have led to Locke's more refined and explicit formulation within the social contract wherein liberty was limited by the terms of the contract, yet guaranteed by the law of nature. He simply conceived it as "a Liberty to follow my own Will in all things, where the Rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, Arbitrary Will of another Man. As

⁴⁵Friedrich, op.cit., p. 3.

⁴⁶Vaughan, op.cit., p. 131.

⁴⁷Patriarcha, p. 55.

Freedom of Nature is to be under no restraint but the Law of Nature".⁴⁸ This was quite in line with the Aristotelean idea that "to live by the rule of the constitution ought not to be regarded as slavery, but rather as salvation".⁴⁹ Freedom, in this sense, would be obedience to rightfully constituted law; i.e., laws passed in accordance with the natural law. Since natural law, in Locke's estimation, guaranteed basic rights of life, liberty and property against subjection to an arbitrary will, positive law, to be rightfully enacted, had to respect these rights. In view of the fact the claims of natural freedom made by Locke and his predecessors were primarily moral rather than factual, Filmer, by pointing to political realities, was able to refer to their beliefs as a "mockery".⁵⁰

In response to Filmer's claim that children are naturally under the subjection of their parents, his opponents

⁴⁸Locke, Second Treatise, Sec.22. Cranston, op.cit., p.25, and Hegel for that matter, feel that this refers to vulgar or subjective freedom as opposed to the true or rational freedom where the individual is subjected to the objective rational will of the State.

⁴⁹The Politics of Aristotle (V, IX, 15-6). Edited and Translated by Ernest Barker, p.234. The view recognizes that liberty requires law or constraints to maintain order thereby establishing a close relationship between order and liberty. Filmer, however, differs in that he conceives of order as an end in itself while Locke sees it as a means to an end (liberty).

⁵⁰Forms, p. 198.

maintain that children are merely under the tutelage of their parents until the children come of age. Filmer dismisses this view as little more than a legal fiction since age is of little consequence in nature. Being naturally free is not like drinking alcohol or driving an automobile in that it be allowed only at a certain age, for in nature "there is no nonage".⁵¹ Their claim in effect will make freedom dependent upon human positive law and not natural law. If natural liberty "is a blessing we have received from God himself",⁵² it need hardly be dependent upon positive enactment as their claim will require it be.

In respect to the relationship between parents and children, Filmer takes pleasure in revealing a further difficulty his opponents will have to face if their beliefs were carried to their logical conclusion. If, for instance, we are free-born and at liberty to choose what form of government we wish to live under, will it not be logical that the children can control their parents in instances where the offspring are more numerous? If the children, by consent, agreed upon a certain relationship, will it not be binding

⁵¹Anarchy, p. 287. For a more detailed explanation of Filmer's views on natural subjection see Chapter V of this thesis.

⁵²Barth, op.cit., p. 19.

upon the parents?⁵³ While Filmer's observations on this matter are of little practical significance, they are of theoretical validity against a group which knows what it wants but cannot theoretically justify its claims. Filmer may at times seem over-zealous in his efforts to undermine their claims to natural freedom and equality but this is understandable in view of the fact that he believes their refutation will destroy "the main foundation of popular sedition".⁵⁴ In this sense his destructive criticism does have a positive aim in that, if the alternatives to his claims are swept away, it will tend to sway support towards his own position.

The second point Filmer takes up with his opponents concerns their conviction that the people have a natural power and right to live under the form of government of their choice. Of this Filmer says, "as for this natural power of the people they find neither scripture, reason, nor practice to justify it".⁵⁵ The first problem arising here is in defining the "people", for it must be found out who they are before one determines what natural powers they have and how

⁵³The significance of such statements will become apparent once his views on the notions of contract and majority rule are examined below.

⁵⁴Patriarcha, p. 54.

⁵⁵Anarchy, (Preface), p. 277.

they may alienate this power. Surely, if it is said that the people are sovereign and that government requires their consent, it must be determined who the "people" are.

In the first instance, when reference is made to the people, will this be taken to mean the populus universus?⁵⁶ That is, will it mean all the people in the world at a particular point in time? As Filmer points out, it can hardly mean this, for it will require the consent of every person, including the sick, the young and the insane, for this natural power to be exercised by the people or lawfully delegated to the king or a legislative body. If it is impossible for such a natural power to be exercised or even alienated, of what good is it? Filmer concludes with a reminder to his opponents whom he says, "must remember that by their own principles and rules, by nature all mankind in the world makes but one people, who they suppose to be born alike to an equal freedom from subjection, and where such freedom is, there all things must of necessity be common, and therefore without a joint consent of the whole people of the world, no one thing can be made proper to any one man, but it will be an injury upon the common right of all others".⁵⁷

⁵⁶Obs. upon Milton, pp. 255-6, and Patriarcha, p. 81.

⁵⁷Anarchy, p. 285.

What Filmer is saying here is that anyone who insists that we all have a moral right to an equal share of the gifts of nature is a communist.⁵⁸ At first glance the criticism may seem to be sound but it hardly takes into account the difference between ownership and use. Surely the common use of such gifts does not necessarily mean their common ownership.

Filmer carries his argument further by granting to his opponents the notion that God's splitting up of the world makes it necessary that only the consent of the people of a particular community is needed to institute lawful government in that area. He is thinking here of the Jesuit, Suarez, who is of the opinion that when God divided the world into different communities "this distinct power was in each of them".⁵⁹ As Filmer points out, however, even under these circumstances one will still be faced with the problem of defining the sovereign "people" in addition to the problem of determining of what a country consists. To begin with, will not the mere existence of separate countries require

⁵⁸It is interesting to note Locke's theory of property and inequality, (Second Treatise, Ch.V.), in that it seems to be aimed against what Filmer says here. See also Obs. upon Grotius, p. 273.

⁵⁹Patriarcha, p. 81, where he quotes from F. Suarez, Tractatus de Legibus.

the prior existence of governments in one form or another? How does one explain an agreement between the "people" and a king without positing the prior existence of a king? This indeed poses a problem for those who speak only in terms of a contract of government rather than in terms of Divine Providence or a contract of society.

In the second instance, Filmer points out, even if it were granted that particular communities can choose the type of government they wish and on their own terms, the consequences will be something less than desirable:

"since nature hath not distinguished the habitable world into kingdoms, nor determined what part of a people shall belong to one kingdom, and what to another, it follows that the original freedom on mankind being supposed, every man is at liberty to be of what kingdom he please, and so every petty company hath a right to make a kingdom by itself, and not only every city, but every village, and every family, nay, and every particular man, a liberty to choose himself to be his own King if he please; and he were a madman that being by nature free, would choose any man but himself to be his own governor". 60

As he puts it elsewhere, "if any man think that particular multitudes at their own discretion, had power to divide themselves into several commonwealths, those that think so have neither reason nor proof for so thinking, and thereby a gap is opened for every petty factious multitude to raise a new

⁶⁰Anarchy, p. 286.

commonwealth, and to make more commonwealths than there be families in the world".⁶¹ It is thus obvious why Filmer dislikes the idea of the natural freedom of mankind. General freedom, in his estimation, can only lead to anarchy, chaos and the destruction of any order, whether it be natural or contrived. This of course stems from his viewing freedom as the total absence of constraint, and from his failure to realize that freedom and authority can be reconciled.⁶² This combined with his views concerning the nature of sovereignty, power and the universe, leads him to believe that the only real alternative to anarchy is absolute monarchy.

The situation of anarchy just mentioned in effect would be analogous to the state of war prevalent in Hobbes' state of nature⁶³, or even to the many "inconveniences" inherent in Locke's state of nature. The gap between disorder

⁶¹patriarcha, p. 81.

⁶²As mentioned, most of the anti-royalists viewed law, whether it be constitutional or ordinary, as a fortification of freedom. A combination of order and liberty may, generally speaking, thought to be possible by constituting a government strong enough to enforce the law, yet not so strong as to become law unto itself. In other words, they advocated a government of law, not of men. See Barth, op.cit., pp.22,33,34.

⁶³It is of interest to note that Filmer thinks Hobbes' conception of the state of nature to be completely false since "the law of nature is a command to preserve life not destroy it". See Obs. upon Hobbes, p. 242, and John Bowle, Hobbes and his Critics (London: Jonathan Cape, 1951), p.57.

or inconvenience and order or security was breached in their cases by means of a social contract. The intolerable or undesirable situation led to an agreement amongst the people to forfeit all rights, except that of self-preservation, in the case of Hobbes, and some rights, in Locke's case, for the purpose of orderly existence. Filmer, however, did not bridge this gap for the simple reason that he saw no gap. As far as he was concerned political society was a natural phenomenon,⁶⁴ as was the allocation of power, and where people had natural rights or power there simply could not be a state of nature. The ultimate choice, then, could only be one between anarchy and order - an order he felt could be maintained and justified by absolute authority and assumptions of natural inequality and subjection.

Filmer continues by expressing doubts about the historical validity of the parliamentary belief that

⁶⁴The naturalistic conception of civil society was by no means a modern phenomenon for it was quite popular with both the liberals and papalists of the twelfth century and following. More will be said of this in the following chapter of this thesis, but, for the moment, it is important to recognize that Filmer, in the tradition of the papalists, identified natural law with the divine law and thus the supernatural. As opposed to the liberals, such as Aquinas and Ockham, who saw varying degrees of natural law, Filmer's was very rigid and inflexible as his position was to be.

government is founded on consent as he says, "was a general meeting of a whole kingdom ever known for the election of a Prince? Was there any example of it ever found in the world?"⁶⁵ This he leaves for his opponents to dwell upon, but not before he pushes the matter a little further. Of all the historical surveys done, none, he insists, supports the thesis that the whole multitude ever gathered for the purpose of setting up a government.⁶⁶ The whole idea, he maintains, is ridiculous since "the whole people cannot summon itself... where there is equality by nature, there can be no superior power."⁶⁷ Do the people all come together through a Divine calling? If not, it then will have been necessary for a government or superior power to have been in existence prior to the summoning of the people. If this were not the case, who can legitimately call such a meeting? Who will regulate it? Who will preside over it? In a situation where all men are considered equal, these problems will indeed prove difficult to resolve. Locke, of course, is of the opinion

⁶⁵Patriarcha, p. 81. It is of interest to note that Locke insisted the agreement amongst the people to form a society was pre-historical - that historical surveys did not go back far enough. Second Treatise, Sec. 101.

⁶⁶David Hume's historical survey, we find, supports Filmer's thesis in its conclusion that no governments were ever founded on consent. See Sir Ernest Barker ed., Social Contract (Oxford Univ. Press, 1962), p. 153.

⁶⁷Anarchy, p. 287. It will be seen later how Filmer makes use of the power of summoning by insisting that the king's power to summon Parliament is a manifestation of his sovereignty.

that nature's inconveniences are sufficient to draw the people together to contract into society but this is pure speculation. He does however, make note of Filmer's criticism, as we see him propounding the opinion that all men, sometime in their life, have a right to give their consent. This may eliminate the need for a general meeting of the whole multitude but it is hardly a satisfactory answer in that it will lead to as many inconveniences as it is intended to eliminate.

As is obvious, supporters of the parliamentary course usually handled the notion of consent by means of a contract. While some of the above criticisms applied to the idea of a contract, it should be mentioned that two approaches were taken by the anti-royalists. Some, we find, simply attempted to limit the king's prerogative by means of a contract between him and the people. Of this, Filmer said, "to imagine such pactions and contracts between King and people as cannot be proved ever to have been made, or can ever be described or fancied, how it is possible for such contracts ever to have been, is a boldness to be wondered at".⁶⁸ If a meeting for such a purpose were ever held, would those

⁶⁸Directions, p. 231. Hume as well would consider it "a boldness to be wondered at" since his survey revealed that all countries studied were founded either by conquest or usurpation; not consent. Greece, he felt, came the closest as 700 consented for 10 million. See Barker, Social Contract, op. cit., pp. 151-3.

absent be deprived of their rights? Could some people be deprived of their natural rights in this way? Filmer simply left it to his opponents to ponder such problems.

Others, meanwhile recognizing the weaknesses of the first approach, used a contract of society to effect the transition from the apolitical state of nature to political society, then followed this up with a contract of government. The first was seen simply as an act of consent expressing itself in the form of partnership, while the second was also an act of consent, but it expressed itself in the form of agency. Of this Filmer said, "as for the imaginary contract of people, it is a fancy not improbable, but impossible".⁶⁹ He further added, "though this first agreement cannot possibly be proved, either how, or by whom it could be made; yet it must necessarily be believed or supposed, because otherwise there could be no lawful government at all".⁷⁰ Ultimately, then, Filmer could not conceive how his opponents could attempt to build a theory upon such a flimsy structure - a fiction of the imagination.

⁶⁹Forms, p. 204. We find Hume concurs with Filmer on this as he says, "no compact or agreement, it is evident, was expressly formed for general submission; an idea far beyond the comprehension of savages". See Barker, Social Contract, op.cit., p. 153.

⁷⁰Forms, p. 225.

A further weakness of this line of thinking, Filmer points out, concerns the power delegated by the multitude. For instance, why is it that governments have a right to kill? Is this a right alienated by individual members of society? If it derived from the right of self-preservation, does the individual lose this right? If it is a natural right, can the individual alienate it and keep it at the same time?⁷¹ Indeed, in more ways than one, Filmer is a predecessor to critics of the social contract such as David Hume, Joseph de Maistre and the Marquis de Bonald. Its historical weaknesses and the logical difficulties it presents lead Filmer to dismiss it as an artificial contrivance designed to flatter the people in order to gain support for a position intended to limit the lawful absolute power of the monarch.

The impossibility of obtaining consent for either the establishing of a society or the setting up of a government is pursued even further as Filmer discusses the nature of the "people". It is his opinion that the instability, inconsistency and uncertainty⁷² of the "people" will in effect make

⁷¹See Obs. upon Hobbes, pp. 242ff.

⁷²It should be noted that Locke makes the same observation concerning the arbitrary will of the king in the Second Treatise, Sec. 22. Also we shall see later how Filmer pursues this point when he discusses the disadvantages and evils of democracy.

general consent impossible. As he puts it, "the people is a thing or body in continual alteration and change, it never continues one minute the same,⁷³...every minute one is born another dies; those that are the people this minute, are not the people, the next minute, in every instant and point of time there is a variation; no one time can be indifferent for all mankind to assemble".⁷⁴ The right of consent, possessed by all regardless of age, sex, mental or physical health, can be hardly effectively exercised where one insists that all have the same right by nature. Can one be deprived of this right without his consent? As Filmer says, "if it be imagined that the people were ever but once free from subjection by nature, it will prove a mere impossibility to introduce any kind of government, whatsoever, without apparent wrong to a multitude of people".⁷⁵ Thus, regardless of what one says, the idea of a popular government possessing real authority by consent or delegation will, in Filmer's mind, remain a myth.

⁷³Forms, p. 226.

⁷⁴Anarchy, p. 287. Filmer's observations on this matter might very well have influenced Hume who, a century later, noted that "one man every hour going out of the world, another coming into it". See Barker, Social Contract, op.cit., p.157.

⁷⁵Anarchy, p. 288. Locke, as we have seen, has attempted to eliminate the need for the gathering of the multitude at one time by insisting we all have a turn to consent when we come "to be of Age". Second Treatise, Sec.116ff.

This now brings us to those who are of the opinion that consent may be given indirectly. That is, it may be "express, or tacite: collective or representative: absolute, or conditioned: free, or enforced: revocable, or irrevocable".⁷⁶ The usual claim is that consent can be given by proxy or silent acceptance. Of the former, Filmer says, "it cannot be showed or proved that all those that have been absent...did ever give their voices to some of their fellows. I ask but one example out of history".⁷⁷ He is here referring to the election of any particular king but the same point can be made to apply to the contract of society where surely everyone is not present. The assumption of tacit consent or silent acceptance is viewed as equally invalid since it will leave an opening whereby any prince can claim to rule by the consent of the people whether he be a conqueror or usurper. Silence may mean consent but it may also mean enforced consent⁷⁸ as is well illustrated by the case of Thomas More during the reign of Henry VIII. "In such cases," says Filmer,

⁷⁶Forms, p. 226.

⁷⁷Patriarcha, p. 82. Early history supported Filmer on this matter, for it is said that before 1237 absence did by no means imply consent. See Gaines Post, op.cit., pp.231ff.

⁷⁸In fact Hume's historical survey led him to conclude that all consent in the past was "phony" and "irregular" in that it was based on force. See Barker, Social Contract, op.cit., pp. 154-9.

"the people are so far from the liberty of specification that they want even that of contradiction".⁷⁹ Although Filmer is not thorough on the matter, he does make it clear that proxy voting commands a large degree of uncertainty and that the notion of tacit consent by no means proves that consent has been given.

While on the subject, Filmer goes on to ask of his opponents whether or not a person is to consider himself permanently bound once he has given his consent. Can a man not withdraw his consent? Can he not change his mind and "say he will resume his natural right to community, and be restored unto his natural liberty and consequently take what he please and do what he list: who can say that such a man doth more than by right he may?" If one does this it then "will be lawful for every man, when he please, to dissolve all government and destroy all property".⁸⁰ Thus, when looked upon from this point of view, the natural freedom of mankind and his right of consent do pose obvious theoretical difficulties which Filmer leaves to his opponents to resolve.

⁷⁹Patriarcha, p. 82, and Forms, pp. 227-8.

⁸⁰Obs. upon H. Grotius, p. 274. In making this assertion, Filmer, of course, assumes that universal consent is required to validate a contract.

Filmer, thus far, has dealt principally with the notion of universal consent whether it has referred to the world at large or to a particular country, or whether it is by proxy or silent acceptance. As a result, there remains to inquire into the practice of majority rule which most anti-royalists have advocated. That is, is the consent of the pars major sufficient to carry the whole? Filmer's immediate answer to this is negative because it only seems logical to him that where men are free it cannot be shown or proven how the major part can bind the minor without restricting the freedom of the latter.⁸¹ As he says, "no man nor a multitude, can give away the natural right of another...unless it can be proved by some law of nature that the major part, or some other part, have power to overrule the rest of the multitude, it must follow that the acts of multitudes not entire are not binding to all, but only to such as consent unto them".⁸² The question thus ultimately comes down to whether or not individual rights can be subordinated to the will of the majority. In the writings of the legists and canonists of the Middle Ages, who deal in thorough fashion with action in a corporate body, we find both support for and opposition to Filmer's position. In the first instance,

⁸¹Obs. upon Milton, pp. 255-6.

⁸²Patriarcha, p. 82.

it is said that where the individual rights of the members are concerned, the consent of all is needed; i.e., the dissent of one member is sufficient to make action impossible. On the other hand, where matters touching upon the rights of the corporation as a whole are involved, the theory of the maior pars is applied. According to this theory, the minority have no legal right to maintain that the decision of the majority does not bind them since "what was approved by the majority was approved, as it were, by all".⁸³ The problem, of course, is that it has to be determined or agreed upon what it is that concerns individual rights and what concerns the realm as a whole. Thus there obviously will be a clash as to when the majority principle is to be applied. In the end it is a matter of choosing between inconveniences - a choice for which Filmer sees no need. Thus, while Filmer's criticism may be logically sound, it is significant as little more than political propaganda since it is hardly based on a practical working principle of government.

⁸³Post, op.cit., pp. 175, 212ⁿ, 157, 158ⁿ. Post, however, makes it clear that the theory only applies to a "personified corporation" and not a community of men having joint or common rights but no "personality". Ibid., p.213ⁿ. It is also made plain that the majority decision is not the final decision, which rests with the king. It simply means that the king should treat the decision of the majority as the decision of the whole.

Filmer, we find, took pleasure in attacking those who pointed to existing situations of majority rule and claimed that freedom existed in such countries. One such anti-royalist was Henry Parker who, in 1642, wrote a pamphlet entitled Observations on His Majesties late Answers and Expresses. Parker, to whom Filmer referred as the "Observator", was of the opinion that Denmark, Sweden, and Poland were good examples of countries where the people could be considered as enjoying their natural freedom since they, or at least a major part of them, chose the king. Parker went on to conclude that it was only possible for the people to enjoy their natural freedom where the monarchy was limited by the terms of consent.⁸⁴ Even if this were so, said Filmer, it would constitute a fact and not a right. He was, however, quick to point out that it was not even a fact in this instance for there were no collective representatives of the people but only a nobility which claimed it was the voice of the people. Thus, the people were in fact nothing more than a limited number of the aristocracy, and where such a nobility did choose the king "none...could prove they had a right or just title either by nature, or any otherwise for such

⁸⁴Filmer has much to say about the then prevalent conceptions of mixed and limited monarchy but this will be dealt with in chapter VI of this thesis.

elections".⁸⁵ As far as Filmer was concerned, the thing to do was to prove the right of the people to such elective powers, not the fact, which itself could not be proved.

Filmer's own examination of the facts leads him to the conclusion that in countries, such as Sweden and Poland, where Parliament is the stronger part "popery hath been".⁸⁶ And it should be pointed out that in his estimation popery "is the alienating and withdrawing of subjects from their obedience to their prince, to raise sedition and rebellion".⁸⁷ Ultimately, then, his survey of these countries reveals that their inhabitants are as far from possessing freedom as they could be: "the people or community in these three realms are as absolute vassals as any in the world".⁸⁸ Thus those who profess the natural freedom of mankind by pointing to contemporary examples of majority rule are, in Filmer's opinion, not only deceiving themselves but also contradicting themselves.

⁸⁵Anarchy, p. 288. Where it was claimed that the king was absolute it of course could be said that royal consent was sufficient to provide for such elections but the fact was that the king could not alienate "either the powers of kingship or the essential revenues and rights on which his public estate or authority was based". Thus he could not rightfully alter the means by which one inherited the throne. See Post, op.cit., pp. 400-401, 212, 398.

⁸⁶Anarchy, p. 312.

⁸⁷Anarchy, (Preface), p. 277.

⁸⁸Anarchy, p. 312.

One can see from what has been enunciated that the contract theorists have a tendency to believe that "when any number of Men have so consented to make one Community or Government, they are thereby presently incorporated, and make one Body Politick, wherein the Majority have a right to act and conclude the rest".⁸⁹ We have seen above how nonsensical Filmer considers such a statement to be. It is taken as a matter of expediency and not right for as he says, "there is nothing more destructive to the true nature of a lawful assembly, than to allow a major part to prevail when the whole only hath right".⁹⁰ For instance, can the minority be deprived of their basic rights by an act of the majority? Can any man be deprived of his natural right in an unnatural fashion? Is there any reason whatsoever, in the absence of human positive law, why any man should consider himself bound by an act of the majority? Corporate theory of course can justify the concluding power of the majority but can it justify the majority abusing this power to the detriment of the minority? As far as Filmer is concerned, "the major

⁸⁹Locke, Second Treatise, Sec.95. When a group of men agree to incorporate themselves, a state is created which may be defined as "a juristic entity, a personification of the national legal order, a politically organized society, and a subject of rights and duties". Within this context medieval legal thought has it that a majority can conclude the rest in matters pertaining to the whole. See Post, op.cit., pp. 7, 312.

⁹⁰Forms, pp. 243-4.

part binds, but where men at first either agree to be so bound, or where a higher power so commands".⁹¹ Locke, dismissing the latter possibility and using common sense, finds his solution in the nature of the contract wherein he postulates there is an agreement that in the future the majority decision will be binding on all.⁹² Filmer, however, lacking common sense and dismissing the contract as a fancy of the imagination, simply concludes that "where neither nature nor God appoints the major part to bind, their consent is not binding to any but only to themselves who consent".⁹³ By this standard we will have to agree with Locke that a Constitution will not "outlast the day it was born in".⁹⁴

Filmer, rather than letting the matter rest at this, chooses to pursue the matter by explaining the contingency and injustice of majority rule. Sovereign power, as he sees it, is not fleeting but permanent as well as absolute. Yet the power of the major part is obviously contingent in that it lasts but for a moment, in the act of voting after

⁹¹Anarchy, p. 286.

⁹²If one examines Locke's treatment of majorities, Second Treatise, Sec. 95-99, he will find reason to believe that it is principally an answer to the doubts which Filmer has raised.

⁹³Anarchy, p. 286.

⁹⁴Locke, Second Treatise, Sec. 98.

which "the major part instantly ceaseth".⁹⁵ Such a system he feels, by its very nature will lack permanence as well as stability, both of which a monarch, whose power never ceases, can provide. The criticism of course is somewhat shallow in that it fails to distinguish between act and presence. A monarch's permanence, it is obvious, will be equally fleeting in act.

The justice of majority rule is also questioned as he says, "justice requires that no one law should bind all, except all consent to it, there is nothing more violent and contrary to nature, than to allow a major part, or any other greater part less than the whole to bind all the people".⁹⁶ Furthermore, he views the ideas of natural freedom and majority rule as being diametrically opposed in that, "to say the people are free, and not to be governed by their own consent, and yet to allow the major part to rule the whole, is a plain contradiction, or a destruction of natural

⁹⁵Forms, p. 228.

⁹⁶Forms, p. 211. Rousseau agrees so far as the social contract is concerned; as he says, "since every man is born free and his own master, none, under any pretext whatsoever, can enslave him without his consent". Dissent to Rousseau, however, does not invalidate the contract but simply means that those in opposition will become foreigners. Yet, after the State is instituted, residence implies consent. To live in a /free/ country means to submit to its sovereignty. See Barker, Social Contract, op.cit., p. 272.

freedom",⁹⁷ - where freedom means "that a man is not bound by laws or that he is only bound by laws which he has made himself".⁹⁸ He concludes with more of a common sense approach by recognizing the need for expediency and condoning majority rule in some matters: "though by humane laws in voluntary actions, a major part may be tolerated to bind the whole multitude, yet in necessary actions, such as those of nature are, it cannot be so".⁹⁹ In its essentials then, his criticism is principally that the notion of majority rule cannot be reconciled with the idea of natural freedom as he defines it.

⁹⁷Forms, p. 218. Rousseau's explanation of this matter is of particular interest. He is of the opinion that the people, including the minority side, consent to all laws passed although they may not always realize it. That is, the "People" are asked whether or not a particular bill is "in conformity with the general will, which is their will". If one dissents and is on the minority side he is expected to realize that he has been "deceived" and that his will on that particular point has not been the general will. Simply put, this means "that all characteristics of the general will are in the majority". See Barker, Social Contract, op.cit., p. 273. Another writer, we find, is of the opinion that if enough time is devoted to debate and discussion, right, even when it is at first in the minority opinion, will find its way to the side of the majority. See J. Roland Pennock, "Responsiveness, Responsibility, and Majority Rule", A.P.S.R. Vol. 46, 1952, pp. 790-807.

⁹⁸Farrell, op.cit., p. 142. The author on this occasion feels that this is the more refined view of liberty and belongs more properly to the eighteenth century than to the seventeenth. At the latter time, he feels, liberty simply meant "the binding and disarming of the executive government, then represented by the king". Ibid., p. 141.

⁹⁹Forms, p. 225.

Finally there is Milton who is of the opinion that the sounder or wiser part, rather than the major part, has the right to conclude the rest.¹⁰⁰ It is the army or military leaders, according to Milton, who are best able to judge which part is the wiser, for as he says, "to wit the sounder part of which the army is the judge".¹⁰¹ Few words are wasted in dismissing this view. Filmer can see no way by which one can prove that the army or any other segment for that matter can lawfully possess this right of judgment. It is easy enough to say who should decide what part is the sounder and wiser but to give sound proof of this and their right to conclude the rest is quite another matter. Sound proof of course in Filmer's mind can come only from scripture wherein the natural laws or the moral commands of God are most completely revealed.

We have above been concerned simply with the idea of a major part or sounder part binding the whole without really

¹⁰⁰Obs. upon Milton, p. 252. Precedents supporting the thesis that the sanior pars can conclude the whole can be found in canon law. Usually, however, this sounder part is identified with the maior pars. See Post, op.cit., pp.42,183.

¹⁰¹Ibid., p.256. It is interesting to note that Locke, on the matter of majority rule, is of the opinion that the major part binds the whole, not because it is the sounder part, but because it has "the greater force", thereby implying that, where other things are equal, might is right. See Second Treatise, Sec. 96.

identifying them with a representative assembly. Recognizing the impossibility of pure democracy in larger nation-states, supporters of the parliamentary cause generally have voiced the opinion that the people can express their consent through their fully empowered representatives in the Assembly. The arguments Filmer presents against the concluding power of the major part of the multitude are also directed against the power of a major part of an Assembly, but with added vigour due to the inherent logical and practical difficulties of representative government. Anticipating Locke's proposition (Second Treatise, Sec. 96), he says that in an assembly "the power of a major part is grounded upon a supposition that they are the strongest part".¹⁰² In the first instance, the assumption is senseless, in Filmer's opinion, since any action by the major part is nothing more than an appearance of actual or real power.¹⁰³ Any majority, he says, will be both "uncertain and changeable", and since "the major part in every assembly, differs according to the several humours or fancies of men; those who agree in one mind, in

¹⁰²Forms, p. 227

¹⁰³It should be pointed out that power in Filmer's estimation must necessarily be absolute and arbitrary; if it were otherwise he will consider it as a mere appearance of power or "a privative power, that is, no power at all". Freeholder, p. 172.

one point, are of different opinions in another; every change of business, or new matter begets a new major part, and is a change both of the government and governors".¹⁰⁴ It follows that the power of the major part will be but a thing of the moment both incomplete and unrepresentative since the will of the majority "is not the whole and entire will of every particular person in the assembly, but that part only of his will, which accidentally falls out to concur with the will of the greater part".¹⁰⁵

The point Filmer seems to be driving at here is that such a system of government is contrary to the true nature of sovereign power which is both permanent and indivisible. Under the above circumstances each person in the Assembly will have but one small part of the sovereign power. In Filmer's opinion, the dividing of sovereign power in this fashion can hardly lead to an orderly procedure in the carrying out of the business of government. Furthermore, in such a situation of majority rule, the only agreement that can possibly be reached will be on the exact point voted on and no more. Since such activity proceeds from the subjective will, the exact point voted on can differ easily from person to person, thereby making agreement but a capricious thing.

¹⁰⁴Forms, pp. 205-6.

¹⁰⁵Forms, p. 228.

Thus, rather than viewing majority rule as an orderly and efficient means of proceeding in the affairs of government, Filmer sees it as an ingenious device used for deceiving the people into believing that ultimate power rests in their hands. Beyond this he can hardly see how such a conglomeration of capriciousness can rule effectively for any length of time.

Filmer continues his criticism of representative government by labelling it a fancy of the imagination as well as a legal fiction. Would not a government, to be representative in the real sense of the word, have to be representative of the whole "people"? Filmer's observations reveal that examples of representative government are far from approaching this ideal. As far as he can see, it springs from representatives being chosen by a very limited number of people from a particular district; not by the "people" of the country but by a majority or plurality of the people of that particular district. This leads Filmer to point out that "since such representers cannot truly be chosen by the people, they are fain to divide the people into several parts...and to allow to every one of those parts to choose one representer or more of their own: and such representers, though not any of them be chosen by the whole, or major part of the people, yet still must be surmised to

be the people".¹⁰⁶ The choosing of representatives as a result is not an act which proceeds from the will of the "people" but merely an act of a few people in a particular area. It must, however, be supposed that this act be an expression of a single will whether it be a few people voting for a representative or a majority of representatives voting for a particular point in the Assembly. If this is looked upon as democracy, then Filmer will consider democracy to be a mere imperfection of absolute monarchy.¹⁰⁷ Is monarchy not characterized by the expression of a single will, and does democracy not strive to express itself in this fashion?

Filmer also likens representative government to a situation of disorder and civil war in the sense that the representatives act like "a multitude of momentary monarchs" representing "their parties and factions", and are continually "fighting and scratching" in support of their causes.¹⁰⁸ "Their opinions", it is said, "are as variable and sudden as tempests: there is neither truth nor judgment in them: they are not led by wisdom to judge of anything, but by violence and by rashness, nor put they any difference between

¹⁰⁶Forms, p. 223.

¹⁰⁷This unique way of viewing democracy will be explained in greater detail in chapter VI of this thesis.

¹⁰⁸Forms, p. 206.

things true and false...they are prone to suspicions...they are apt to believe all views...they must either serve basely or domineer proudly, for they know no mean".¹⁰⁹ As a result, in such governments, "there is confusion...there can be neither reasonable discourse nor well founded resolution nor decisive action". Furthermore governments of this sort are usually short lived and characterized by "endless tumults and disorders".¹¹⁰ Walter Bagehot, we find, is of a similar opinion, as he describes the House of Commons as "a changing body of miscellaneous persons, sometimes few, sometimes many, never the same for an hour; sometimes excited, but mostly dull and half-weary - impatient of eloquence, catching at any joke as an alleviation...[and] there is the greatest difficulty in getting not only a right decision, but any decision".¹¹¹

¹⁰⁹patriarcha, pp. 89-90. The opinions given here comparing the people or a representative assembly to a herd of cattle are attributed to such great historians as Thucydides, Tacitus and Cicero, all of whom witnessed democracy and representative government in action.

¹¹⁰Guicciardini, op.cit., pp. 104-5. Francesco Guicciardini was a sixteenth century Italian who, after making the above observations concerning democratic government, concluded that, "where other things are equal there is more order, more discrimination, more resolution and firmness in one than in many". Ibid., p. 106.

¹¹¹W. Bagehot, The English Constitution, edited by R.H.S. Crossman (London: C.A. Watts and Co., 1964), p. 156. See also Forms, pp. 228-9, where Filmer attributes the indecisiveness and inefficiency of such an assembly to the fact that sovereign power is divided.

Filmer continues his criticism by pointing out that the actual workings of such an assembly detracts even further from the idea of a truly representative government. When matters arise, he says, over which there is continual disagreement, as there usually is, they are sent to small committees where further discussion and, invariably, dissension occurs. Yet, in the end, these small committees, hardly representative of the "people", decide in the name of the "people". How can it be claimed that this is government by the people? As Filmer puts it, when such assemblies meet "though not half be present, they proceed: and though their number be never so small, yet it is so big, that in the debate of any business of the moment, they know not how to handle it, without referring it to a fewer number than themselves, though themselves are not so many as they should be".¹¹² Thus, the representatives supposedly chosen by the "people", do themselves choose others to represent them in the carrying out of business - a procedure hardly in keeping with the earlier notions of freedom and consent. In this way, it "comes to pass that public debates which are imagined to be referred to a general assembly of a kingdom, are contracted into a particular or private assembly, than which nothing

¹¹²Forms, p. 223.

can be more destructive or contrary to the nature of public assemblies".¹¹³ His criticism in this case may certainly hold but once again he ignores the principles of utility by refusing to admit that the committee structure will promote both efficiency and order in the carrying out of governmental affairs.¹¹⁴ While specialization and departmentalization, as he makes note of, may depart from the principles of representation, he refuses to take into account its obvious advantages. All he can admit seeing is the formation of pressure groups and factions ready to use any means to achieve their particular goals. The result of course will be, "one man, for himself or his friend, may rule in one business, and another man for himself or his friend in another cause, till such a number of trustees be reduced to so many petty monarchs as there be men of it".¹¹⁵ It is of course a common criticism pertaining to a particular disadvantage of representative government for which Filmer, a logical extremist, can find no acceptable solution.

¹¹³Forms, p. 223.

¹¹⁴In the United States it usually is said that "Congress in action" is meant to mean "Congress in Committee". An examination of the system will no doubt reveal that the advantages outweigh the disadvantages which Filmer is so intent on emphasizing.

¹¹⁵Forms, p. 223.

In the end Filmer can conclude that his opponents, in their efforts to limit the royal prerogative by expounding the natural liberty of the people, have only confused and contradicted themselves in all they have said. The foundation of their thought is construed to be the "natural liberty" of the "people" - a basis which Filmer takes the liberty of interpreting for his own purposes. By interpreting freedom to mean the right to do as one pleases, and by taking the "people" to mean every single person it is an easy matter to reveal flaws and contradictions. Ultimately, the only liberty he can conceive of in a representative democracy is the liberty to play a very minute part in the legislative procedure. Also, he sees the minute possibility of anyone becoming a representative so that he too can act in his own interest or that of his friend. The only liberty here, says Filmer, is "a liberty for some men to rule and to be ruled", which is "no liberty at all". He continues, "to be a King in the forenoon, and a subject in the afternoon; this is the only liberty a popular estate can brag of". Finally he concludes that, "if the common people look for any other liberty, either of their persons or their purposes, they are pitifully deceived".¹¹⁶

Rousseau once said, "Man is born free, and everywhere

¹¹⁶Forms, p. 224.

he is in chains." Filmer, as we have seen, was fully aware of the fact that civil society bound men "in chains" but was unable to understand how this could be reconciled with freedom; to his way of thinking, it was simply a contradiction. The idea that "freedom without authority means anarchy, just as authority without freedom means slavery",¹¹⁷ was in most respects beyond his comprehension. All he seemed to be able to understand was that the absence of absolute authority in one person can only lead to anarchy.

We also have found that Filmer thought it ludicrous to say that government rested on the principle of consent when it obviously did not and could not, or to say that man was free when it was clear that he was "in chains". To his way of thinking, civil society was natural with the result that any degree of subjection which came with civil society was also natural. To Rousseau and others, however, civil society "comes not by nature",¹¹⁸ thereby making human bondage more a matter of convention than of nature. By making the restraint of freedom a matter of convention, one then easily could reconcile natural freedom with conventional bondage. To Filmer, however, this way of thinking was foreign, unnatural, artificial, very imaginative and served

¹¹⁷C.J. Friedrich, "Loyalty and Authority", Confluence, Sept. 1954, p. 308.

¹¹⁸Barker, Social Contract, op.cit., p. 170.

only as a means of flattering the people. To construct a theory of government on such a foundation was in his mind "a boldness to be wondered at".

Is Filmer's attack on democratic government justified? It is true that the principles of consent, majority rule, representation, and the principle that one man is as capable of governing as another may have their advantages, but, if nothing else, Filmer at least brings to light their practical and theoretical disadvantages and weaknesses. Democratic government, as we know, rests upon the idea of consensus and the processes of accomodation and compromise and as a result is easy prey for Filmer's doctrinaire politics which emphasizes principles which are stuck to one hundred percent.¹¹⁹ The difference, of course, is that Filmer's ideas on these matters completely ignore the need for a working apparatus in government which his opponents take into consideration. Yet, we must realize that democracy in Filmer's time was not what it is now. In fact it is said that men of intelligence prior to 1850,

¹¹⁹For an explanation of the differences between doctrinaire and consensus politics see T. Payne, "The Role of Consensus", Western Political Quarterly, Vol. 18, Sept., 1965, pp. 21-31.

"knew that democracy, in its original sense of rule by the people or government in accordance with the will of the bulk of the people, would be a bad thing - fatal to individual freedom and to all the graces of civilized being.... Democracy originally meant rule by the common people, the plebeians. It was very much a class affair: it meant the sway of the lowest and largest class. That is why it was feared and rejected by men of learning, men of substance, men who valued civilized ways of life". 120

It seems, then, that Filmer is quite justified, and certainly not alone amongst "men of learning" and "men of substance", in his attack on democratic government. Surely, in his time, the citizenry did not possess the requisite virtue and intelligence needed to make this sort of government practicable and advantageous.

¹²⁰C.B. Macpherson, The Real World of Democracy (Toronto: C.B.C. Publication of the Massey Lectures, 1965), pp. 1, 5.

CHAPTER V

THE PATRIARCHAL THEORY

As we have seen, political thought in opposition to Filmer concerning the origin, extent, and end of civil government was based primarily on the notions of equality, freedom, consent, and contract. Rather than conceiving of political society as being natural, the anti-royalists, in most cases, postulated a state of nature from which men entered civil society by means of a contract or an agreement which guaranteed them certain rights, and which took recognition of their natural equality and freedom. The less refined viewpoints merely postulated a contract between people and king which outlined the duties and obligations of each and thereby limited the king's powers. Others, however, recognizing the weaknesses of this approach, began with a contract of society, then followed this up with a contract of government.

Filmer, on the other hand, postulates that the state is a natural and organic growth which, in refuge from anarchy, requires an indivisible sovereign power. Filmer's naturalism, however, is not typical in that he makes no clear distinction between natural and supernatural. Usually it was thought that the State was of a lower nature since it was believed to have developed naturally in response to the natural needs

of men.¹ John of Salisbury, for instance, "thought of the State as a natural organism subject to the law of nature, but remaining subordinate to the supernatural end of salvation".² Thus the liberals usually spoke in terms of a hierarchy of naturalness wherein the moral commands of God are at the summit, human passions at the base, and the State somewhere in between. This, however, is not the case with Filmer who identifies all natural laws with the commands of God, thereby identifying the State with a higher naturalness. As he sees it, "nature is an agent of God, personifying the divine reason participating in the natural law, and signifying, on the highest level, the moral commands of God". Thus "nature and the natural law are instruments of God's reason, by which God orders the world and man".³ Hence, Filmer's naturalism is a Christian religious naturalism whereby the natural is synonymous with the supernatural. Political society as a result becomes directly associated with the inflexible moral commands of God, as interpreted by Filmer, in so far as its origin, structure, and end are concerned.

¹Post, op.cit., p. 551.

²Ibid., p. 515.

³Ibid., p. 522. See also pp. 495-505, 551-6, 575.

In view of the above, it is quite understandable why Filmer can conceive of no transition having to be made between the state of nature and society in order to establish government. "Society", he says, "cannot be imagined without a power of government".⁴ To his way of thinking, the individual in the absence of political society, is essentially incomplete - unnatural. Thus Gewirth's general question asking: "Why should men live in society at all?", in Filmer's opinion will be ludicrous since it assumes man has an alternative when in fact there is none. Certainly, when it comes down to historical realism, Filmer's initial postulation is much more convincing than that of his opponents, the contract theorists.⁵ "History", says one writer, "shows that the idea of state and government has developed unconsciously and gradually from the circumstances and necessities of men and families", and not from contract and consent.⁶

From this basis it would have to be determined what was natural; i.e., what are God's commands? By way of Filmer's basic assumptions we have seen how he considered the body politic to be a natural hierarchy of subjection wherein he

⁴Anarchy, pp. 289-90.

⁵C.N. Parkinson, The Evolution of Political Thought (London: Univ. of London Press, 1958), pp. 116-7.

⁶Farrell, op.cit., p. 135.

at the summit would have a natural right to command obedience from those below. This did not mean that Filmer advocated a system where each part only strived for its particular good to the detriment of the other parts; rather, like Plato and Rousseau, he was aware of the fact that society should work for the good of the individual but, unlike Locke and other individualists, he considered the good of the individual as being inherently constituted in the good of society. It followed that since the good society was the naturally ordered society, the good of the individual could only be achieved by adherence to the natural order.

What was the natural order? In the first place the natural order of persons and things was thought to be determined by Providence. The perfectly ordered society as a result would be one ordered in accordance with the dictates of God's will - thereby implying that government is the direct result of a divine ordinance.⁷ Where a society was not

⁷While this view was essentially a Christian outlook, it should be pointed out that a non-Christian conception of society began to develop in the thirteenth century. The "Averro-Aristotelians", we find, questioned the idea of a divinely ordained world and preferred to seek reasons for the necessity of public authority in human nature rather than in a commission from God. The latter, they felt, was based more on faith than on reason with the result that it could never be proved whether God decided on this or that. They (Marsilius of Padua, John of Paris, Dante, and Ockham) preferred, generally speaking, to use the inductive method and in this way paved the way for a secular approach to politics. See Wilks, op.cit., pp. 87ff.

ordered in this way, there was a widely held belief that anarchy, and hence destruction, was inevitable. Deviation as a result was thought to be destructive to God's natural order as well as sinful.⁸ Thus power was not derived from below via the people but directly from above from God.⁹ It was a power which was complete and which bestowed a natural right to command in all things not contrary to Divine Law. Indeed it was a power similar to the papal plenitudo potestatis.¹⁰

The next step would consist in determining what order was willed and on whom this all-inclusive power was bestowed. As we have seen, Filmer was of the opinion that the Divine Will was most completely revealed in the scriptures. The Bible, he believed, made known the origin of mankind and of

⁸The religious note was included for the purpose of establishing a sense of moral obligation towards authority.

⁹It is interesting to note that Locke's initial position is essentially the same in that he considers men as the workmanship of God - of "the one Omnipotent". Second Treatise, Sec. 6. They are viewed as His property and His servants sent into the world to carry out His business. He differs from Filmer, however, in that he feels men are naturally free and equal since he can find no evidence that God gave any one man or class of men superiority over the rest. "God has not", he says, "by any manifest Declaration of his Will set one above another." Second Treatise, Sec. 4.

¹⁰For a good analysis of the meaning of the term throughout the later Middle Ages, see Wilks, op.cit., pp.317-22, 480ff., and passim.

government, as well as the laws which governed the universe. He, for instance, found that it clearly revealed the divine allocation of property, power, duties, and responsibilities. However, did the Bible unobscurely reveal a foundation of facts and principles upon which a rationalist system of politics could be constructed? The application of biblical statements to politics was of course questionable, but even if we did not consider it to be acceptable, we must at least concede it some anthropological and historical authority. Besides, in Filmer's time, the procedure was no doubt acceptable as a rational approach since the Bible was taken very seriously in politics. It must also be remembered that the Bible at this time was, as a rule, used to teach children how to read, and thus must have had considerable importance attached to it as a guide in life and politics.¹¹

What is important to remember is that while Filmer believes in biblical authority, his theory is not based entirely on random selections of scripture. Earlier theorists wrote in defense of kingship at a time when monarchy was strong, popular, and relatively progressive and thus could afford meager arguments to defend the king's authority.¹²

¹¹R.J. White, A Short History of England (Cambridge University Press, 1967), p. 135.

¹²Referred to here are the defenders of the Tudor monarchy and of the French crown, and not the arguments of the medieval writers.

Filmer, on the other hand, wrote at a time when the monarchy was on the defensive and thus was forced to render more acceptable and refined arguments. As one writer noted, "Filmer had the good sense to abandon text mongering and to demonstrate that absolutism was historically justified, being a natural and constant expression of human nature."¹³ Another factor forcing Filmer to seek a sounder foundation was the fact that the king's opponents, the Puritans, could argue just as well from widely scattered scriptural materials to support their views. Thus, we find Filmer arguing essentially from a natural rights position and from the basis that what was divine was natural. In this sense it could be said that he paved the way for Locke and Rousseau,¹⁴ both of whom argued from essentially the same basis but stressed natural equality and the individual's natural freedom rather than the individual's duties and obligations or the king's natural right to command absolute obedience.

The patriarchal theory, as we will find, consists essentially in a synthesis of order theory and the traditional patriarchal and divine right theories. From divine right, the origin, extent and seat of political power is determined; from

¹³Brown, op.cit., p. 141.

¹⁴Figgis, op.cit., p. 152.

the patriarchal theory comes the idea of the state as the enlargement of the family; and from order theory comes the nature of political power, the idea of the correspondence between king and father, and the justification of the rule of one as opposed to the rule of the many. Briefly, the theory is as follows: the origin of the state is to be found in the family, political power is divinely bestowed to the father and descends intact to his heirs, and the king enjoys the same absolute power over his subjects as the father has over his family. With the lapse of time the family develops into the state wherein the office of chief father or patriarch comes to be the office of the king. Thus, as the father is the natural ruler of his family with God-given powers, so the king is absolute ruler over his subjects with the same powers. The state as a result is nothing else but a large family held together by a moral sense of obligation. It is based ultimately on human nature rather than force or the consent of the governed. Filmer seeks proof for the above propositions in the Bible - from the creation of Adam and subsequent biblical history. This, along with the correspondences drawn, is essentially what is attacked most vehemently by Locke and others, and not his method or his arguments supporting the rule of one as against the rule of the many.

The idea that all authority derived from God was of course not novel at the time but many theorists such as

Hooker, Aquinas, Bellarmine, and even Locke were of the opinion that this power was bestowed upon the multitude. The multitude in turn would either exercise it itself or agree to delegate it to a specific group or person under certain conditions. Filmer completely disagreed, insisting that this absolute power was by nature the property of kings by right of fatherhood.¹⁵ As he saw it, monarchy originated in the fatherhood and the rights of the monarch were nothing else but the natural rights fathers have over their children. Thus we find him saying that, "monarchies fetch their pedigree from the right of Fathers, and not from the gift or contract of people".¹⁶ Present kings, he believed, wielded a power similar to the all inclusive natural power first granted to Adam, the first father and monarch, and passed along by hereditary right to the Patriarchs of the Old Testament.

As a result of the Creation and God's grant, Adam and all his successors were, by right of fatherhood,¹⁷ to enjoy

¹⁵Forms, p. 194.

¹⁶Anarchy, p. 304.

¹⁷Locke we find, takes all possibilities into account as he examines in tedious detail Adam's title to sovereign power by creation, by donation from God, and by right of fatherhood in chapters IV, V, and VI of the First Treatise. Scripture, he attempts to teach us, does not interpret itself, and thus you must use both observation and reason when dealing with scriptural passages if you wish to grasp their true meaning. In this way he reveals several inconsistencies in Filmer's writings, but by the same token makes it clear that the Bible is open to varied interpretations.

sovereign power over their families. As Filmer put it, "indeed not only Adam, but the succeeding Patriarchs had, by right of fatherhood, royal authority over their children,... as Adam was lord of his children, so his children under him had a command over their own children, but still with subordination to the first parent, who is lord paramount over his children's children to all generations".¹⁸ How could it be thought that man was born free when it was so obvious that children were naturally subjected to their parents? "No man", he said, "is born a servant or subject to the power of a master by the law of nature, yet every man is born subject to the power of a Father".¹⁹ This subjection of children we find was the basis of monarchical power for as he said, "this subordination of children is the fountain of all Regal authority, by the ordination of God himself. From whence it follows, that civil power, not only in general is by Divine institution, but even the assigning of it specifically to the eldest parent."²⁰ Filmer interpreted this last action

¹⁸Patriarcha, p. 57.

¹⁹Ibid., p. 74.

²⁰Patriarcha, p. 57. Filmer we find is inconsistent on this matter, as Locke points out (First Treatise, Sec. 108-9), in that he sometimes uses the word parents signifying that both the mother and the father are sovereign. There is no doubt, however, that Filmer subordinates the mother to the father.

as being God's sanction of the rule of one - of monarchy. Thus, not even the choice of the form of government was the people's; rather it was God's, and He made it clear, said Filmer, that His choice was monarchy.²¹

Of what nature was the power assigned to Adam and his successors? Was it limited or absolute?²² The basis of Filmer's position on this matter was to be found in Genesis I: 28 and Genesis III: 16, which he insisted were not, as many tended to believe, mere grants of power to the whole of mankind to subdue "every living thing upon the earth". The nature and extent of the Lord's grant can perhaps be illustrated best by means of an often quoted passage: "...God created Adam, and of a piece of him made the woman; and...by generation from them two as parts of them all mankind be propagated: also God gave to Adam not only the dominion over the woman and the children that should issue from them, but also over the whole earth to subdue it, and over all the creatures on it, so that as long as Adam lived no man could claim or enjoy anything but by donation, assignation, or

²¹Anarchy, p. 289.

²²Filmer in fact went to great lengths to make it clear that power necessarily had to be absolute and arbitrary, and that the phrase "limited power" was contradictory.

permission from him..."²³ Indeed Filmer interpreted Genesis I:28 quite liberally to suit his purpose. Yet, it was quite understandable in view of the vagueness of this biblical passage and the varied interpretations it was open to. Locke, in fact, we find, in his interpretation came to a conclusion quite the opposite to Filmer's. A further passage would perhaps give clarification, if any were needed, to Filmer's scriptural interpretation: "the first Father had not only simply power, but power monarchical, as he was a Father, immediately from God. For by the appointment of God, as soon as Adam was created he was monarch of the world, though he had no subjects, for though there could not be actual government until there were subjects, yet by the right of nature it was due to Adam to be governor of his posterity: though not in act, yet at least in habit."²⁴ In deriving monarchical power from the fatherly authority, Filmer was aware that there were several points which needed clarification and thus went on to further explain the nature and extent of the fatherly power and its relationship to the kingly power.

²³Obs. upon Hobbes, p. 241. For Locke's criticism of Filmer's interpretation, see especially chapter V of Locke's First Treatise.

²⁴Anarchy, p. 289. Locke's criticism of this can be found in chapter III of his First Treatise. He finds that the creation itself could give Adam no title, and that to have a "Title in Habit" is "in plain English" to have "no Title at all". First Treatise, Sec. 18.

Locke is no doubt close to the truth when he takes the liberty of describing Filmer's fatherly authority as "a Divine unalterable right of Sovereignty, whereby a Father or a Prince hath an Absolute, Arbitrary, Unlimited, and Unlimited Power over the Lives, Liberties, and Estates of his children and Subjects".²⁵ Indeed, as far as Filmer is concerned, it is a power of life and death, and of war and peace. In his words, it is "a power as large and ample as the absolutist dominion of any monarch which hath been since the creation".²⁶ He also draws our attention to the fact that, "the Judaical law of Moses giveth full power to the Father to stone his disobedient son, so it be done in the presence of a magistrate".²⁷ Numerous examples of this fatherly authority, correspondent to kingly power, are scattered throughout scriptural and Roman history. In Rome, for instance, a man called Cassius was said to have murdered his son, a tribune, in full sight of the magistrates and police who stood helpless out of respect for the fatherly authority. Echoing Bodin's opinion, Sir Robert looks upon this as

²⁵First Treatise, Sec. 9. Irritated by Filmer's evasiveness in defining the fatherly authority and his establishing only "by often repeating it" (First Treatise, Sec. 13), Locke searches his writings and offers the above definition.

²⁶Patriarcha, p. 58.

²⁷Patriarcha, p. 77.

"sufficient proof, this power of the father not only to have been sacred and inviolable, but also to have been lawful for him, right or wrong to dispose of the life and death of his children, even contrary to the will of the magistrates and the people".²⁸ This example along with others he has found in scripture and in writings concerning Persia, the West Indies and the Gauls leads him to conclude that "the parents have power of life and death over their children".²⁹

Simply stated, "supreme power was originally in the Fatherhood"³⁰ with the result that, "all power on earth is either derived or usurped from the fatherly power".³¹ It follows that, by right of nature, supreme power must remain a fatherly power until some other ordinance of God instructs otherwise. Thus, as far as Filmer is concerned, all power is derived from God's ordinances found in Genesis I:28 and III: 16. The first reads: "be Fruitful and Multiply and Replenish the Earth and subdue it, and have Dominion over the Fish of the Sea, and over the Fowl of the Air, and over every

²⁸Forms, p. 210, and Patriarcha, p. 77. For other examples, see Patriarcha, p. 58, and Obs. upon Hobbes, pp. 249-50.

²⁹Patriarcha, p. 77.

³⁰Anarchy, p. 284.

³¹Directions, p. 233.

living thing that moveth upon the earth",³² while the latter asserts that Adam had dominion over Eve. Was this a grant to Adam in particular as a father, or was it a grant to mankind in general? What is the nature of the power bestowed?

Commenting on these passages, Filmer says, "here we have the original grant of government, and the fountain of all power placed in the Father of all mankind; accordingly we find the law for obedience to government given in the terms of honour thy Father: not only the constitution of power in general, but the limitation of it to one king [monarchy or the government of one alone] and the determination of it to the individual person and line of Adam, are all three ordinances of God".³³ While Filmer's interpretation of the scripture on the matter of God's grant is clear, it is not altogether very convincing, especially in view of Locke's reasoned critique. Yet one must recognize it as a widely accepted interpretation in the Middle Ages as well as in the early modern era.

³²Locke's passage is used on this occasion because in later Bibles there seems to have been the realization of the broad interpretation it allowed, and thus the wording was changed. In many ways it seems Locke's criticism accurately reflects the new wording which gives dominion over "all the animals that crawl on the earth" rather than over "every living thing that moveth upon the earth". See Locke's First Treatise, Sec. 23-31, where through observation and reason he concludes it is a grant of power over the animals - non-rational creatures - of the earth to mankind in general.

³³Anarchy, p. 283. See also Directions, p. 233.

A number of anti-royalists, we find, accepted Filmer's initial premise that "Adam was made general Lord of all things", but were of the opinion that later ordinances nullified the original grant of power. Usually referred to were the Lord's dissatisfaction with the existing situation (Genesis III: 11-13) and the subsequent Flood and dispersion of nations. Filmer's examination of the evidence, however, led him to conclude that the building of Babel (Genesis XI) and the following dispersion merely clarified God's will. As he saw it, the resulting distinct nations were all headed by fathers or Patriarchs possessing supreme power over their subjects or children.³⁴ The building of the Tower of Babel was followed by a mass confusion of languages (Genesis XI:7-9), but as Filmer noted, "even in the confusion God was careful to preserve the fatherly authority by distributing the diversity of languages according to the diversity of families".³⁵ While opinion as to the actual means of distribution after Noah differed, it was "certain the division itself was by families from Noah and his children, over which the parents

³⁴Patriarcha, p. 58. For an account of the dispersion of nations see Genesis XI.

³⁵Patriarcha, p. 58, and Anarchy, p. 283.

were heads and Princes".³⁶ From this he concluded that, "the sons or grandchildren of Noah were Kings or governors by a fatherly right".³⁷

Filmer realizes that his position will force him to recognize a multiplicity of kingdoms concentrated within a very limited territory, but he nonetheless is certain that the reality of the situation is clearly revealed in biblical history.³⁸ One can hardly question his assertion that the first kings were heads of families but certainly his subsequent assertion that the king is merely a father exercising his natural authority is questionable. As Filmer puts it, "the Prince, whom you may justly call the Father of a country, ought to be to every man dearer and more reverend than any Father, as one ordained and sent unto us by God".³⁹ The rationality of such a statement, of course, depends essentially on one's interpretation of the Bible, and on the

³⁶Patriarcha, p. 59. Locke makes considerable use of the word "parents" in his criticism but it is certain that Filmer merely uses it as being synonymous with "fathers".

³⁷Anarchy, p. 290. It seems this is quite a logical conclusion from Genesis X.

³⁸Patriarcha, pp. 59-60. Filmer makes extensive use of the Bible here to make his point.

³⁹Necessity, p. 325.

acceptance of argument by correspondence.⁴⁰ Let it suffice to say for the moment that, in terms of political obligation and authority, the Bible escapes accurate and conclusive interpretation.

Returning to the matter at hand, we find that Filmer's belief in the supremacy of the fatherly authority was shared by Grotius, Selden, Hobbes, and Aristotle. They were, however, of the opinion, says Filmer, that the paternal power was lost and never to be regained "when the world was replenished with multitudes of people".⁴¹ They believed that when this happened true knowledge of whom should possess this supreme right of fatherhood was lost, thereby leaving man with the function of filling the gap. In answering this, Filmer points out that, "the paternal power cannot be lost; it may either be transferred or usurped; but never lost or ceaseth".⁴² It is true, however, that God, being the giver of power, may transfer it from the father to some other person when He sees fit. This in fact is what happened, says Filmer, when the Israelites were returned out of bondage

⁴⁰See chapter II of this thesis wherein evidence is presented making it clear that argument by correspondence was accepted as rational argumentation in Filmer's age.

⁴¹Directions, p. 231.

⁴²Directions, p. 231.

and God "out of special care of them chose Moses and Joshua successively to govern as Princes in the place and stead of the supreme Father". The transfer, however, was but of a temporary nature for when the time was right to give them kings "he re-established the ancient and prime right of lineal succession to paternal government".⁴³ Thus, while the fatherly authority might be transferred by Divine ordinance, it could not be lost. More will be said of this matter immediately below as well as in the following chapter.

While Filmer was of the opinion that Adam and the biblical Patriarchs enjoyed absolute and arbitrary power by right of fatherhood, he at no time suggested that present kings were their direct descendants or that Charles II was genealogically related to Adam. That is, he did not believe that the kings of his day were direct heirs to Adam's power, nor did he believe that they were the fathers of their subjects. He did, however, insist that the power wielded by kings corresponded to Adam's power, and that their relationship with their subjects was analogous to the relationship the

⁴³Patriarcha, p. 60. Locke questions Filmer's interpretation of the Bible on this matter in his First Treatise, Sec. 154-169, and in the Second Treatise, Sec. 105-110. Locke insists that the power exercised by both Moses and Joshua was far from being a paternal power. Kings, he says, were brought for purely military reasons. That is, strong kings with absolute powers were needed to prevent the newer nations from sinking "under the Weaknesses and Infirmities of their Infancy". Second Treatise, Sec. 110.

Patriarchs had with their families and subjects. As we can see then from his initial assertions, which it must be admitted are questionable, he was simply arguing by analogy or correspondence. It was clearly the nature, moreso than the origin, of kingship which interested him. Having established the nature of the kingly power via biblical history, it was an easy step to draw the correspondence. It was for this reason that the cogency of his argumentation was to be found within the framework of the political theory of order rather than in biblical interpretations.

So that a few matters may be clarified we must return to Filmer's continuing explanations. What happens, it is asked, if the power of the father is not divinely transferred but is usurped in one way or another? To this Filmer simply answers, "as the power of the Father may be lawfully transferred to aliened, so it may be unjustly usurped: and in usurpation, the title of a usurper is before, and better than the title of any other than of him that had a former right: for he hath a possession by the permissive will of God..."⁴⁴ Inherent in this answer is his recognition of the possible problem of finding the true heir to the fatherly authority after the lapse of a long period of time. Yet it poses no

⁴⁴Directions, pp. 231-32.

real theoretical problem as far as Filmer is concerned since the power is never lost and never ceases. What really matters is that someone should be recognized as the true wielder of this power whether he comes to it by election, succession, donation, or usurpation. Once again we see the value of argument by correspondence in understanding his thought. Any ruler, we find, enjoys a power like Adam's, or as Filmer puts it, "it is true, all Kings be not the natural parents of their subjects, yet they all either are, or are to be reputed, as the next heirs of those progenitors who were at first the natural parents of the whole people and in their right succeed to the exercise of supreme jurisdiction".⁴⁵ What happens then is that where the true heir is not known, he who happens to be king, regardless of how he comes to the throne, acquires "the right of that fatherhood his ancestors did naturally enjoy". It is in such a way, explains Sir Robert, that it becomes possible for a child to possess fatherly authority "over many a grey-headed multitude".⁴⁶

Criticism of the above is usually aimed at the words "are to be reputed" since they convey no explicit meaning as

⁴⁵Patriarcha, pp. 59-60. The emphasis is mine. Locke has much to say about Filmer's unwillingness to write in specific terms about the rules of inheritance. See especially chapters IX-XI of the First Treatise.

⁴⁶Patriarcha, p. 61.

to why kings should be looked upon in this way. It is clear, however, that Filmer feels they must be viewed in this light if a situation of disorder and anarchy is to be avoided.⁴⁷ It will provide a moral obligation or sense of duty which alone contributes to an ordered society. Where people feel from their inner-selves that obedience is due, the cohesiveness of the society will be guaranteed. It is Filmer's opinion that such a situation can only exist within a monarchically-structured government where the monarch possesses true sovereign power, and where law is the expression of the sovereign will. Order theory in this case provides the metaphysical foundation as well as the practical basis, while the scriptural element institutes a sense of moral obligation by adding an air of divinity and thus naturalness. Thus, while the scriptural element may be essential to his total position, it by no means is the only basis upon which he builds his theory.

⁴⁷Filmer, it seems certain, was influenced by Roman and Canon Law on this matter. For instance the concepts of "public utility", whereby individual and local rights were subordinated to the public welfare, and of "evident utility", whereby emergency situations gave the king more power, were no doubt in Filmer's mind. As the "minister of public utility", the king had the function as well as the power needed to provide for the common good, which of course could only be achieved within the well-ordered society. See Post, op.cit., pp. 175, 443, 453, 565ff., and Kantorowicz, op.cit., pp. 95-6.

Filmer's position perhaps would become clearer if we examined a few more of his statements. As was said, a prince, no matter how he came to the throne, had a right to the same natural power enjoyed by Adam. Filmer emphasized the point when he said, "it skills not which way Kings come by their power...it is still the manner of the government by supreme power that makes them properly Kings, and not the means of obtaining their crowns".⁴⁸ It was obvious then that he was concerned not so much with the person of the monarch as with the office or form of government. Even where it was known that he who held the highest office was an usurper, the mere fact that he held this office entitled him to exercise fatherly authority over the kingdom's subjects.⁴⁹ "A usurper in possession", as Filmer puts it, "is to be taken and reputed by such subjects for the true heir, and is to be obeyed by them as their Father".⁵⁰ Thus, it should be clear that Filmer in no way claimed that present kings were the actual heirs of Adam's sovereign power or that they were the actual fathers of their subjects. Even if such

⁴⁸Patriarcha, p. 106.

⁴⁹Filmer here seems to be thinking about the king's "Body politic" as opposed to his "Body natural". The former concerns the office, functions and powers of the king, while the latter is concerned with his person. For a brief explanation see Kantorowicz, op.cit., pp. 7-41.

⁵⁰Directions, p. 232.

a claim were made, it was doubtful that it would have been widely ridiculed in his time. In fact a number of serious scholars did pursue this line of thought, although without much success. Furthermore, the Tories would surely have not adopted his work as part of their ideology had they not thought that it provided appealing and convincing argument.

Filmer realized that his ideas concerning the succession to the throne were open to considerable criticism and thus made an effort to explain his thought further. No matter what happened there would always be a true heir to the crown, unless, of course, the earth was devoid of humanity. Loss of knowledge concerning this true heir, he insisted, could only come about through negligence or plain ignorance on the part of the people. Yet, even where such knowledge was lost, the fatherly power did not revert to the people to do with as they pleased. Under such circumstances "the kingly power...shall not escheat to the whole people, but to the supreme heads and Fathers of families".⁵¹ They in turn would "have power to consent in the uniting or conferring of their fatherly right of sovereign authority on whom they please".⁵² This did not mean, as some interpreted it, that

⁵¹Anarchy, p. 288. To support his position on this matter he quotes several biblical examples where he claims this has happened.

⁵²Patriarcha, p. 62.

they could do whatever they wished with this power, such as keeping it themselves or conferring it upon a group. Rather the law of nature necessitates that they bestow this power "upon one man alone".⁵³

This is as close as Filmer comes to sanctioning any type of election; but even this is dependent upon the possibility of a king dying in the absence of a known heir, which, as Filmer points out, is a very remote possibility. Even where this does occur the prime heads of families will have but a power to give away a power which, to Filmer's way of thinking, is no power at all. Also, when a king comes to the throne in this manner, Sir Robert makes it clear that the grant of power is not a gift or a donation and thus has no conditions attached to it. Once the grant is made, the king is said to possess sovereignty, thereby eliminating any need for him to be responsive to the whims and desires of those who chose him. Since the fatherly power derives from God, he should be considered as holding the throne and its absolute prerogative through the permissive will of God, and be responsible to none other but God. In his public office, he is viewed as being approved by God and as the "image of divine majesty" and thus was above other men but below God

⁵³Anarchy, p. 288.

whose laws he must obey.⁵⁴

Since the power of kings corresponds in all respects to the all-inclusive power a father has over his children, obedience to kings, says Filmer, may be seen as being confirmed by the commandment "Honour thy Father". While it is true that he conveniently omits the words "and thy Mother",⁵⁵ it is also true that the Bible in many instances supports the view that the father is the head. In comparing the head of the family to the head of the state, Filmer, it is certain, is influenced by the writings of King James I. The latter, for instance, has said, "by the Law of Nature the King becomes a naturall Father to all his Lieges at his Coronation...The King towards his people is rightly compared to a father of children, and to a head of a body composed of diuers members ...Kings are also compared to Fathers of families: for a King is Parens Patriae, the politique father of his people".⁵⁶ By comparing the father to the king and the family to the

⁵⁴See Post, op.cit., pp. 463, 512-22, 553ff., and Wilks, op.cit., pp. 85ff.

⁵⁵Locke on several occasions takes pleasure in pointing out this omission. He also questions Filmer's assertion that "to honour" someone means to "to surrender" oneself completely to that person. See First Treatise, Sec.55, 60-72.

⁵⁶M. Curtis, The Great Political Theories (New York: Avon Books, 1961), pp. 281-5. Quoted from extracts out of James' The Trew Law of Free Monarchies, and from a speech he made in 1609.

kingdom the arguments of James I and Sir Robert Filmer are essentially the same, but with one major difference. While James hints at it, Filmer argues explicitly from natural right rather than by mere analogy. Filmer not only draws a similitude, but by means of correspondence argumentation, transfers the natural and all inclusive power of the father to the king. Thus, along with arguing from the immutable basis of natural law, he adds a touch of divinity to kingship, whereas James and others merely have pointed to scriptural texts such as Romans XIII to arrive at the same point.

How is it that regal and paternal power are similar and conform to one another in all respects? As Filmer puts it, "if we compare the natural duties of a Father with those of a King we find them to be all one".⁵⁷ To Filmer's way of thinking, if their duties are similar, then so must their powers be. We later find him saying that "every King that now is hath a paternal empire, either by inheritance, or by translation or usurpation, so a Father and a King may be all one",⁵⁸ the only difference being in their scope. Where a father has an absolute natural power over one family, a king has an identical power over a multitude of families. While a father has a natural duty of preserving, clothing, feeding,

⁵⁷Patriarcha, p. 63.

⁵⁸Obs. upon Milton, pp. 255-6.

and protecting his family a king has the same natural duties vis a vis the commonwealth. The actions of a king, like the activities of a father, "tend only to preserve and distribute to every subordinate and inferior Father, and to their children, their rights and privileges, so that all the duties of a King are summed up in an universal fatherly care of his people".⁵⁹ Once again we find Filmer echoing the words of James I who years earlier said, "and as the Father of his fatherly duty is bound to care for the nourishing, education, and vertuous government of his children; even so is the king bound to care for all his subjects.... Now a Father may dispose of his Inheritance to his children, at his pleasure ...make them beggers or rich at his pleasure; restraine, or banish out of his presence, as hee finds them giue cause of offence, or restore them in fauour againe with the penitent sinner: So may the King deale with his Subjects."⁶⁰ Thus kings, like fathers, have certain natural obligations towards their children or subjects which require absolute powers if they are to be fulfilled properly. Nonetheless, we do see here that Filmer's rulers are limited, at least

⁵⁹Patriarcha, p. 63.

⁶⁰From extracts of the writings of James I, in Curtis, op.cit., pp. 284, 286.

theoretically, by the law of nature.⁶¹

Throughout his writings, Filmer is continuously attempting to clarify his position either by revealing the weaknesses of alternate viewpoints or by further explaining his own ideas. Thus it is that he refutes Grotius' conception of the Lord's grant to Adam as well as Selden's interpretation of the grant made to Noah and his children in order to add appeal to his own views. Grotius, and Locke for that matter, is of the opinion that God's initial grant bestowed a universal right on all mankind over things of inferior nature; i.e., over those things that have not reason to rule the relationships between them. Such an interpretation seems ludicrous to Filmer since at the time of the grant there was only Adam whom it must be assumed was made "the general Lord of all things". Ultimately the question comes down first of all to the nature of the grant, and, secondly, to whether

⁶¹In limiting the king in this way and ascribing to him particular functions or duties, it seems certain that Filmer was influenced by the writings of Jean Bodin. The latter, we find had said, "all the princes of the world are subject to the laws of God and nature...The absolute power of princes and sovereign lords does not extend to the laws of God and nature". The king, he goes on to say, is bound by "just covenants" or "just and reasonable engagements". Quoted out of extracts from Six Books of the Republic, in Curtis, op.cit., pp. 274-5. In fact it was said that Bodin enumerated so many checks as to limit the king's power quite markedly. See W.M. McGovern, From Luther to Hitler (Boston: Houghton Mifflin Co., 1941), pp. 56ff.

Adam should be considered as symbolic or representative of all mankind or as an individual father receiving full benefit of the grant. In the first place, does the grant bestow absolute power only over the animals of the earth or over the rest of mankind which are to make an appearance on the earth only at a later time? In the second instance, is the grant made to Adam as a father, or to Adam as representative of humanity? In the end it becomes merely a matter of interpretation which itself is usually very dependent upon one's end.

John Selden, on the other hand, agreed with Filmer's account of the original grant to Adam, but felt that the blessing bestowed upon Noah and his children revealed God's wish that things be held in common by all of mankind. As Selden saw it, God was dissatisfied with things as they were originally and thus chose to begin anew with Noah. However, Filmer conceived this to be pure communism and by the same token pure anarchy. He insisted that under such conditions moral law would in effect become dependent upon the will of every individual, thereby making it impossible to have any morally binding law against such things as adultery and theft.⁶²

⁶²This opinion stems from Filmer's logical extremism whereby he insists that the consent of all is needed to make a law morally binding upon all. The alternative in his opinion is for every man to follow his own will, which, of course, is nothing else but anarchy.

No doubt he would agree with John Pym who uttered the following opinion in Parliament in 1642: "every man will become a Law to himself, which in the depraved condition of Human Nature, must needs produce many great Enormities; Lust will become a Law, and Envy will become a Law, Covetousness and Ambition will become Laws".⁶³ Filmer simply could not conceive of a self-evident natural law known to all rational creatures for the reason that what might be morally binding upon one man's conscience might not be so upon another man's. It was for this reason that a sovereign prince, who might inform the people, was needed.⁶⁴ Furthermore, Selden's solution hardly made allowances for the possibility of change. It would in effect be dependent upon consent - a consent refuted earlier by Filmer. Also, even if there were an original consent, could it bind posterity? "There is no reason", stated Filmer, "that the acts of the fathers should bind the sons",⁶⁵ where all, including children, had a common interest by nature. Thus, rather than interpreting Noah's blessing as a donation to all in common, Filmer viewed it as a mere enlargement of Adam's commons.

⁶³Quoted in Barth, op.cit., p. 19.

⁶⁴The assumption is, of course, that the sovereign prince is a rational creature capable of comprehending the natural law, and willing to use it as a guiding principle in his positive enactments.

⁶⁵patriarcha, p. 66.

A further attempt is made by Sir Robert to crystallize his position concerning the usurper's rights and limitations. While he says the usurper "hath a possession by the permissive will of God", he adds a limitation by asserting that "the command of a usurper is not to be obeyed in anything tending to the destruction of the governor".⁶⁶ This simply means that the usurper is to be obeyed only if he acts in accordance with the will of him whose power has been usurped; i.e., the will of the true governor. This, of course, is no real limitation where the identity of the true governor is not known; in fact, even where it is known, the limitation is of little practical significance. As far as Filmer is concerned, the important thing is that there be a king exercising regal authority and commanding absolute obedience so that the state may be well ordered. It is his opinion that kings, whether they be usurpers or true heirs, will always have the same interests and thus will always act in accordance with such interests. In other words, it is assumed that no matter who holds the position at the summit of the hierarchy, his interests will always be essentially the same.⁶⁷ According to

⁶⁶Directions, p. 232.

⁶⁷It is assumed here that the king will always treat his subjects in the same way a father treats his family. That is, "the superior desires the preservation of them that should be subject to him". Directions, p. 234.

this logic, by obeying a usurper we in effect will be obeying the true governor simply because their ends and desires will be the same as will be their wills. While it is a noble assumption, its connection with reality is highly questionable. There is no obvious reason why all rulers or superiors will desire the preservation of all their subjects for surely there will be some intent on achieving personal ends regardless of whether it means the sacrifice of the lives of a number of their subjects. Yet, in terms of the political theory of order, it is a perfectly logical conclusion, for if they do not preserve them who will they rule or command? Furthermore, the king's function of preserving his subjects is a natural duty, of which he is supposedly aware, similar to a father's natural duty towards his family.

Filmer, nonetheless, attempts to explain that less obedience is due to a usurper than to a lawful superior. Absolute obedience, in his opinion, is due in things lawful as well as in things indifferent. Things lawful, being the law of God, are necessarily good and must be obeyed as we obey God. Where a king commands what is evil one is not obliged to perform the command but he must passively tolerate the consequences of not obeying. The problem, however, arises with things indifferent because "some things are indifferent for a lawful superior, which are not indifferent, but unlawful

for a usurper to enjoin".⁶⁸ In effect it is a meaningless distinction since it must be assumed that the lawful superior "would have commanded the same or the like laws" if he "had not been hindered" by the usurper.⁶⁹

Filmer, as one can plainly see, is interested in essentially one thing: in preserving the natural order by forbidding any dissent within the ranks. To achieve this, he goes so far as to advocate passive obedience, whether it be to an usurper or lawful governor, in all things even where they transgress the law of God and nature. His logical extremism is evident here in that he can conceive of only two alternatives: either the sovereign prince or the multitude must judge upon what constitutes the law of God and nature. As a result the only choice he sees is between order and anarchy. The conscience of mankind as a tribunal for judging the natural law is one thing in which Filmer has no faith. As is obvious, then, he is willing to prevent disorder at all costs to freedom.

Filmer, of course, does not sanction evil commands but he does make it clear that even they must be obeyed if

⁶⁸Directions, p. 235.

⁶⁹Ibid., p. 235.

anarchy is to be prevented.⁷⁰ In obeying such commands, however, the people will not be held responsible before God. The king, having full powers, will have to bear full responsibility and suffer any consequent punishment. In Filmer's estimation, the king is well aware that "God taketh a stricter account of princes than others",⁷¹ and that "he is more strictly bound than any of his subjects",⁷² and thus will make every effort to rule in accordance with God's laws. The subject's only recourse is to appeal to God through prayer that He may punish the king. As Filmer puts it, there is "no remedy in the text against tyrants, but in crying and praying unto God in that day".⁷³ In the meantime the people must continue worshipping the king for he remains their superior by the grace of God.⁷⁴

⁷⁰The critic, of course, might ask what would happen if the king commanded anarchy. Filmer would no doubt explain that such a command would be against the king's nature as well as contrary to the nature of government. Thus Filmer did limit the authority of the king by the law of nature as Jean Bodin did a century earlier.

⁷¹Necessity, p. 321.

⁷²These are the words of Jean Bodin quoted from an extract from the Republic, in Curtis, op.cit., p. 276.

⁷³Patriarcha, p. 97. The Bible, we find, supports Filmer on this matter: "Do all things without murmuring and without questioning, so as to be blameless and guileless... serve or obey in joy and fear". Philippians II: 14, 15.

⁷⁴See Necessity, pp. 323-4, where Filmer finds in scripture examples of kings who "defiled the sanctuary of God,...Slew the King", and pillaged countries but who were still worshipped as the "Lord's anointed".

The above constitutes the essence of Filmer's patriarchal theory which, as we have explained, is intended to be a naturalistic conception of politics. In establishing the natural rights of a father by means of God's grant to Adam and a few other scriptural passages, he draws a correspondence between these natural rights and the powers of a king. The correspondence is not meant to be taken as a comparison between primitive and modern society, as Brown suggests,⁷⁵ but rather is intended as a philosophical justification of the nature of the king's power. And as we have explained in an earlier chapter of this thesis, such correspondences were, in his time, considered as justifiable and rational as a means of explanation. We have seen also how he has compared the rights and functions of a father and a king, and how he has handled the problems of authority, obedience, and usurpation. Generally speaking, his explanations have been put forth in terms of scripture but they can also be explained and defended on a philosophical basis as the following chapter is intended to do.

Locke's tedious criticism is aimed principally at Filmer's biblical exegesis; that is, at his inability to define terms precisely and his failure to present more definite proofs for his assertions concerning the nature of

⁷⁵Brown, op.cit., p. 42.

the fatherly authority. As Locke puts it, "suppositions without Proofs put handsomely together in good Words and a plausible Style are apt to pass for strong reason and good Sense, till they come to be looked into with Attention".⁷⁶ In Locke's opinion, looking "into with Attention" means interpreting the scripture not simply through observation, but also through the use of reason. Scripture does not interpret itself and thus an exercise in observation may very well reveal the superiority of some over others; yet, when reason is applied, the nature of this superiority, he insists, becomes clear. It, for instance, tells us that a father's superiority over his children is but a temporary thing intended for the preservation of mankind, and that while a child in its infancy needs rule and guidance, this rule diminishes with age and the attainment of reason. Both have argued from a natural law basis and both have acknowledged God's superiority over all men,⁷⁷ but Locke thinks men to

⁷⁶Second Treatise, Sec. 20.

⁷⁷See Locke's Second Treatise, Sec. 6, where he states: "Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure."

be "equal and independent"⁷⁸ by nature since he can conceive of no Divine ordinance which makes one man or class of men superior. Filmer meanwhile claims that scripture does positively reveal that fathers are superior to their children, that men are superior to women, that the old are superior to the young, and that the king, by right of fatherhood, is above all others. Locke questions most of Filmer's biblical interpretations but since "the fountain of all regal authority" is established on the natural rights of fathers it is on this right that his attack is concentrated. While the First Treatise is, at first glance, impressive in its criticism, it is not really relevant in that it, for the most part, denies this right to absolute power by procreation simply by asserting that the mother has an equal, if not a greater, share of this power.⁷⁹ The Second Treatise,⁸⁰

⁷⁸Second Treatise, Sec. 6. When Locke refers to man's natural equality he means "that equal right that every man hath to his natural freedom, without being subjected to the will or authority of another man". Second Treatise, Sec.54.

⁷⁹See especially the First Treatise, Sec.50-55.

⁸⁰It should be noted that Peter Laslett has uncovered convincing evidence supporting the view that the Second Treatise, for the most part, has been written prior to the First Treatise, and that it too has been aimed principally at refuting and presenting alternatives to Filmer's ideas. Also from this point of view Locke's attack of Filmer's divine right ideas can be considered as a cause, rather than a defense, of the 1688 Revolution.

on the other hand, attempts to deal with the problem in a more positive manner.

Locke claims that it is only with reason that we can understand the direction of God's will. Interestingly enough, he, like Filmer, equates reason with the "Voice of God", but, unlike Filmer, insists that it is made available to all so that all may be free.⁸¹ "The Freedom then of Man and Liberty of acting according to his own Will, is grounded on his having Reason, which is able to instruct him in that Law he is to govern himself by".⁸² It follows that the relationships between men must be determined by reason if man is to enjoy his natural freedom.⁸³ Reason thus enables us to understand the subjection of children to parents in a different light than Filmer has viewed it. Children, it teaches us, are born in equality and not to it. Since both the children and the parents are the workmanship of God the

⁸¹Filmer on the other hand seems to be of the opinion that the king is the only one who is actually rational and that all others are only potentially rational. See Kantorowicz, op.cit., pp. 494ff.

⁸²Second Treatise, Sec. 63.

⁸³Where reason is accepted as the mode of co-operation between men it is generally believed that law ought to be the expression of such reason. On the other hand where a naturalistic relationship is thought to exist it is generally believed that the relationship between men is determined by law as the expression of the Divine Will. In Filmer's case the Divine Will is equated with the will of the king.

mere act of begetting does not, as Filmer claims, subject the begotten to the begetter. As Locke sees it, reason, the voice of God and vehicle to freedom, is sovereign over both children and parents, but since the child is not yet capable of using reason to guide his actions, he is directed and cared for by his parents during his infancy. Thus, when a child attains the age of reason, the father's temporary power subsides leaving "a Man at his own free Disposal".⁸⁴ Echoing the words of Locke, we find Rousseau saying that, "children remain bound to their father for only just so long as they feel the need of him for their self-preservation. Once that need ceases the natural bond is dissolved. From then on, the children, freed from the obedience which they formerly owed, and the father, cleared of his debt of responsibility to them, return to a condition of equal independence. If the bond remains operative it is no longer something imposed by nature, but has become a matter of deliberate choice. The family is a family still but by reason of convention only."⁸⁵ It is clear then that along these lines of thought the power of the father becomes in due time a matter of custom and not of nature as Filmer would have it. This leads Locke to

⁸⁴For Locke's explanation see his Second Treatise, Sec. 55-56.

⁸⁵Barker, Social Contract, op.cit., p. 170.

conclude that if fathers were at one time princes they have been so as a matter of convention and not of nature.⁸⁶

Since Filmer's position seems to be based solely on the fatherly authority, or Adam's grant of power, Locke goes to extraordinary lengths to deny Adam's title to sovereignty by donation, creation, and procreation.⁸⁷ Like Rousseau, Locke feels "that Adam was King of the World, as was Robinson Crusoe of his island, only so long as he was its only inhabitant".⁸⁸ While Locke's criticism may have been impressively rational and logical it, in effect, is not altogether relevant as a refutation of Filmerism. In fact, his relative success in this narrow encounter is in no way decisive for it hardly touches upon Filmer's theoretically and historically based criticisms, outlined in the previous chapter, or upon his defense of absolute monarchy to be discussed in the following chapter. His castigation of Filmer in fact consists of little more than a denial of Adam's sovereignty based on his own interpretation of scripture, his definition of political power, and his explanation

⁸⁶It seems almost certain that Locke, in attempting to find an alternative to Filmer's position, developed his own views in this matter. See the First Treatise, Sec. 50-72, and the Second Treatise, Sec. 52-56.

⁸⁷See chapters 3-7 of the First Treatise.

⁸⁸Barker, Social Contract, op.cit., p. 172.

concerning the difficulties of succession. By defining political power as "a right of making Laws with Penalties of Death...for the Regulating and Preserving of Property, and of employing the force of the Community, in the Execution of such Laws, and in the defence of the Common-wealth from Foreign Injury, and all this only for the Publick Good",⁸⁹ he makes it out to be something coercive exercised over rational individuals in the interest of the ruled.⁹⁰ As such, he feels it is not to be confused with the husband-wife or father-son relationship where a bond of love exists. Thus, while the nature of the fatherly authority and the nature of the regal authority are distinct in so far as Locke is concerned, they are synonymous so far as Filmer is concerned. Ultimately, then, it comes down to a choice of definitions.

Apart from disagreement over the meaning of the Bible and the notion of political power much of what Filmer says is sound. Not even Locke can deny the historical validity of the patriarchal theory. Indeed, on historical grounds,

⁸⁹Second Treatise, Sec. 3.

⁹⁰For a good analysis of Locke's conception of political power, see G. Parry, "Individuality, Politics and the Critique of Paternalism in John Locke", Political Studies, Vol. 12, June 1964, pp. 163-77.

and on philosophical grounds, where one accepts argument by correspondence, it is quite logical to view regal and paternal authority as being similar in terms of nature and function.⁹¹ There is little doubt that initial primitive groupings "centered around the domination of the father, who because he was the productive factor, imposed his will and principles on his family".⁹² As one typical writer points out, "it is far more true to say that society originates with the family and with natural patriarchy than to postulate an original anarchy and a consequent compact".⁹³ Even in Filmer's time patriarchy, as Laslett points out, had considerable social, economic, and political relevance.⁹⁴

Filmer's major problem of course consisted in trying to develop his patriarchy into a natural law theory of politics. To be accepted as such, the naturalness of the fatherly authority had to be established, and its correspondence with the kingly power had to be validated. To establish the first, he used the authority of scripture and history,

⁹¹See Parkinson, op.cit., Ch. I.

⁹²H. Marcuse, Eros and Civilization (Boston: Beacon Press, 1966), p. 30.

⁹³Brown, op.cit., p. 42.

⁹⁴Laslett, Patriarchy and Other Political Works, op.cit., pp. 20-8.

while the second could be validated through the political theory of order. In the end, even where it could be shown that paternal power was not natural and sovereign, and that it differed from political power, it must be admitted that there was much substance to what Filmer had said.

CHAPTER VI

THE RULE OF ONE

Filmer's thought, while obviously framed for the purpose of upholding the monarchical power at a particular point in time, is actually much more profound than any superficial examination will reveal. If his historical, logical, constitutional, and philosophical arguments are studied with attention it will be found that several doctrines or propositions emerge which are, for the most part, sound as well as philosophically rational when examined within the context of the theory of order. Namely, these propositions are: that monarchy or the rule of one is the only natural form of government and therefore is the only form of government with a moral right to command absolute obedience; that monarchy is essentially paternal; that, due to the nature of things (the natural order), monarchy, by necessity, must be absolute and arbitrary; that, strictly defined, democracies and aristocracies are merely fancies of the imagination, and in reality are nothing more than mutations of monarchy; that tyranny as a form of government cannot exist because of the nature of sovereign power; and that people are not naturally free and equal since they are subjected at birth.¹ If we keep in mind his earlier

¹Forms, p. 229.

criticisms of his contemporaries and the widely accepted theory of order, we no doubt will find that these propositions, in most respects, are related and that they are rational and logical deductions from his implicit assumptions.

It must be assumed, in Filmer's opinion, that society is based on a natural bond if one is to escape anarchy and communism. As revealed earlier, the principle of consent, the basic tenet of democratic government, can only lead to anarchy, while the principle of equality, whereby all have a moral right to an equal share of nature's gifts, can only lead to communism.² Thus, from within the framework of order theory, he proceeds to demonstrate the impossibility of democratic government, and of mixed or limited monarchy. As an alternative, he points to monarchy or the rule of one, indicating its naturalness, its stability, its continuity, and its efficiency in overcoming difficulties. Democracy, he will point out, lacks both continuity and stability due to its inherent tendency towards anarchy.

In all creatures, heavenly and earthly, there was, in Filmer's estimation, a natural tendency towards the rule of

²Adherence to the principle of equality need not, of course, lead to communism where one distinguishes between ownership and use. Filmer's conclusion on this matter, is derived, as is obvious, from his failure to recognize this distinction.

one.³ The excellency of monarchy, he said, was expressed clearly in God's will when He chose to originate human society in one man and bestow all power on that "one". Thus, if what was divine was natural, it followed that monarchy was the most natural form of government. As Filmer put it:

"God when he made all mankind of one man, did seem openly to justify that He rather approved the government of one man than of many....God showed His opinion when He endued not only men, but all creatures, with a natural propensity to monarchy... what form of government God confirmed by His authority may be gathered by that commonweal which He instituted among the Hebrews, which was not aristocratical but plainly monarchical." ⁴

To support his opinion further he used the words of St. Chrysostom: "God made all mankind of one man, that he might teach the world to be governed by a King, and not by a

³Generally speaking, it might be said that men of the later medieval period and of the early modern era "never seriously considered any constitution which did not have a single ruler". In fact even those writers, such as Marsilius of Padua, John of Paris, and William of Ockham, who believed in the ultimate political authority of the people always thought in terms of a single political head. See Wilks, op.cit., pp. 201, 86-116, and Raab, op.cit., p.119.

⁴Patriarcha, p. 84. We find support for Filmer's position in Wilks, op.cit., p. 171, where the opinion is expressed that, "government, having been instituted in this form /monarchy/ by Christ, must remain unchanged until the end of time".

multitude".⁵ Additional support was found in Aristotle's Ethics and Politics, both being accepted widely as authoritative works. In the latter it was claimed that monarchy "is the best form of government, and a popular estate the worst"; it is "the first, the natural, and the Divinest form of government, and...the gods themselves did live under a monarchy".⁶ It thus followed that "a pure absolute monarchy is the surest commonweal, and without comparison, the best of all".⁷

Monarchy, says Filmer, is not only the best form of government because God has willed it, but also because it has the most advantages. Any historical study, he insists, will reveal that "peace" and "godliness" can only be enjoyed under a monarchical structured government.⁸ "The best order,

⁵Patriarcha, p.80. Filmer, it may seem, is seeking theological justification for the rule of one, but it must be remembered that in the seventeenth century there was a general belief that the laws governing man could be found in the scriptures, thought to reveal God's will. To seek final truths elsewhere was considered by many to be sinful since it demonstrated a lack of faith. Great thinkers, in fact, were often thought to be great because they had some special insight into the meaning of scripture. See Laslett, Patriarcha and Other Political Works, op.cit., pp. 11-12.

⁶Patriarcha, p. 85. See Barker, The Politics of Aristotle, op.cit., p.158, where Aristotle says, "Kingship is the first and most nearly divine of the right constitutions".

⁷Necessity, p. 326.

⁸Forms, p. 207. Joseph de Maistre, in an historical study of his own, also came to the conclusion that paternal hereditary rule was much more stable than rule by the many. See E. Grierer, "Joseph de Maistre and the Reaction Against the 18th Century", American Political Science Review, Vol. 55, 1961, p. 594.

the greatest strength, the most stability and easiest government are to be found in monarchy." Any deviations from this form of rule are referred to as "mutations" and are described as "most bloody and miserable to the authors of them".⁹ The worst thing that can happen to a country is for it to deviate from monarchical rule, for by so doing it is inviting anarchy, horror, and virtual destruction.

Filmer's study of Greek democracy at its worst, of government by the people in Roman history, and of the governments of Venice and the Low Countries, render convincing evidence of the inherent evils of democratic government.¹⁰ His contempt for democracy is evident when he speaks of the "fury of the people", and refers to the era of Roman democratic government as the time when "the blood hath been sucked up in the market places with sponges: the river Tiber hath been filled with dead bodies of citizens, and the common privies stuffed with them".¹¹ Democracy itself, explains Filmer, was never freely accepted in Rome and Greece, as many

⁹Patriarcha, p. 86.

¹⁰Three centuries later we find George Sorel echoing Filmer's opinions when Sorel refers to democracy as the "decadence of the modern age", and as a form of government lacking "honour, purity, prudence, and sincerity". Like Filmer he believes that "government by the totality of citizens has never been anything but a fiction". See Lancaster, op.cit., pp. 278-80.

¹¹Patriarcha, p. 89.

tended to believe; rather it "secretly crept in by the back door of sedition and faction". Sedition, he claims, is the mark of democracy: "it cannot be denied but this one mischief of sedition, which necessarily waits upon all popularity, weighs down all the inconveniences that can be found in monarchy, though they were never so many".¹² Thus, in Rome, "the Gracchian, the Apulian and the Drusian seditions filled the market places, the temples and the Capitol itself, with the blood of the citizens...all shed an ocean of blood within Italy and the streets of Rome".¹³ Rome, after the expulsion of kings, he points out, experienced continuous internal strife and was in a state of perpetual war. In fact, over a period of seven hundred years of non-monarchical rule "only for one summer, the bowels of Rome did not sweat blood".¹⁴ Filmer's studies reveal this to be a natural consequence where power is bestowed upon a multitude who are prey to

¹²Patriarcha, p. 90. Filmer is so convinced about the inherent evils of democratic government that he cannot see how it can be freely accepted, and thus almost assumes that seditious elements force it upon the people.

¹³Patriarcha, p. 87. One cannot be too sure just how valuable "blood" was in Filmer's analysis. It is clear, however, that it was important as propaganda since the people of England feared it; especially after the Wars of the Roses. Yet Filmer's king, as the "minister of public utility", could shed what blood he wished. See Kantoriwicz, op.cit., pp. 95-6.

¹⁴Forms, p. 208.

passion, oblivious to reason, and who rely more on force and violence than reason and persuasion in seeking solutions to problems. In effect, he is convinced that "in a popular estate, the sovereign power is in the sword",¹⁵ which is thrust blindly and recklessly in defense of particular interests.¹⁶

The influence of the Bodinean concept of sovereignty¹⁷ is also quite apparent in Filmer's attempt to rationally justify absolute and arbitrary monarchical government. As he sees it, "the nature of the monarchy itself...must have the supreme power alone".¹⁸ Monarchy is "the government of one alone",¹⁹ and any attempt to divest this "one" of supreme power can only lead to inept, unstable, and disorderly government. As Filmer puts it, "to have two supremes is to have none, because the one may destroy the other, and is

¹⁵Forms, p. 199.

¹⁶See Guicciardini, op.cit., pp. 100-105, whose study of Italian democracy supports the thesis that democratic government is characterized by instability and "warring factions".

¹⁷Bodin usually is credited with developing the concept of sovereignty outside the context of theology where the medieval theory of divine right supposedly left it. However, any study of medieval legal thought will reveal that the idea, if not the word, of sovereignty was quite popular in the Middle Ages.

¹⁸Freeholder, p. 157.

¹⁹Anarchy, p. 281.

quite contrary to the indivisible nature of sovereignty".²⁰ This does not mean that a king should not have a council to advise him, or that he should not listen to public opinion; rather it means that he should not be bound by the desires of counsel or the whims of public opinion. While it may be true that, "designs are strengthened by counsels...and there shall be safety where there are many counsels" (Proverbs XX: 18; XXIV: 5-6),²¹ it is also true that the king is not obliged to act in accordance with such counsel.²² For efficient and orderly government "it is necessary to have a sovereign prince, which may have power to resolve and determine the opinions of his council".²³ This is based essentially on the idea that one mind can rule much more effectively than an unidentifiable general will. As it is put elsewhere: "there can be room for only one ruler and...this ruler is the keystone of the whole structure of civil government".²⁴

²⁰Forms, pp. 219, 228. See also Directions, p. 233, where he compares the existence of two supremes to a two-headed monster unsure of which direction to take.

²¹Quoted in D'Entreves, Aquinas: Selected Political Writings, op.cit., p. 101.

²²In many cases counsel was in fact considered as mandatory, yet the king could proceed without being compelled to follow the advice of his counsellors. See Post, op.cit., p. 205, and Kantorowicz, op.cit., p. 152.

²³Necessity, p. 326.

²⁴Wilks, op.cit., p. 173.

From the above it followed that authority must be vested in "one", and that law must be the expression of this "one" will. Power thus would be absolute and arbitrary but, as was mentioned earlier, it must be exercised in a fatherly way in accordance with the law of God and reason. If such power were to be divided, it could only result in a divided country characterized by faction, continuous civil strife, and anarchy. Thus, what choice was there? As was evident, Filmer's logical extremism led him to believe that the only real choice was between monarchy and anarchy, or rather between monarchy or no government at all.

In terms of the theory of order, one can hardly question the logic of the just-mentioned assertions. Where a natural hierarchical order is thought to exist it is inconceivable that the majority should rule the minority, or that the bottom of the hierarchy should rule the top. As the Austrian sociologist Ludwig Gumplowicz (1838-1909) has said, "the rulership of a majority over a minority is as unthinkable as it is absurd. It lies in the nature of things that a pyramid must rest on a broad basis, becoming smaller and smaller as it rises to the top. It is impossible to place a pyramid upside down, with its broad base suspended in the air. In like manner it lies in the nature of rulership that it can only exist in the domination of the minority [the "one" in this case] over the majority."²⁵ Power as a result must by

²⁵Quoted in McGovern, op.cit., p. 484.

nature be vested in the "one" at the apex of the hierarchy.²⁶ Thus, within the context of order theory, the logic of Filmer's views concerning rulership is quite understandable.

Related to Filmer's (Bodin's) conception of sovereignty is the notion that there can be no aristocracy or democracy as such. Both are considered as "impossible" and "incompatible" with the nature of things. That is, they are viewed as mutations of monarchy which are "incompatible with the majesty of absolute sovereignty, and contrary both to law and reason".²⁷ It is in fact interesting to note how, from Filmer's point of view, aristocracies and democracies are seen as mere imperfections of monarchy: "Those governments that seem to be popular are kinds of petty monarchies."²⁸ If, for instance, we look upon the ruling element as the "one", whether it be composed of five members, as it may be in an aristocracy, or of one thousand people, as it may be in a democracy, it can be considered monarchical if it rules with "one" mind according to "one" will. As he puts it,

²⁶Scripture also reveals that where sovereign power is divided destruction is inevitable: "Every kingdom divided against itself is brought to desolation, and house will fall upon house " (Luke XIV; 17).

²⁷Necessity, pp. 321-2. It, of course, must be remembered that a thing is rational to Filmer only if it is compatible with the natural order as willed by God.

²⁸Forms, p. 227.

"if we consider each government according to the nobler part of which it is composed, it is nothing else but a monarchy".²⁹ Thus, where democracies and aristocracies act in accordance with one will and where their end is "for the best of the governed",³⁰ they may properly be called monarchies. Yet, it is but wishful thinking since history and experience clearly reveal that the ruling element in such systems do not act with one will, and usually govern to promote particular interests. Thus, they will always remain mere imperfections of monarchy, the natural form of government.

Why is it that the power of the monarch is essentially paternal? Filmer's answer to this, as we have seen, consists primarily of social, historical, scriptural, and philosophical elements. From scriptural history we have seen how he has derived the monarchical power from Adam's all-inclusive and God-given fatherly power. While Locke's vicious attack of this element is convincing, we have seen that it is not definitive. Whom, after all, is so competent a judge on the implicit meaning of scripture? The socio-historical element of Filmer's argument, meanwhile, must certainly be accepted as sound for in the seventeenth century, and before, there is little doubt that the family has been the basic social

²⁹Forms, p. 206.

³⁰Forms, p. 145.

unit and that the father has exercised extensive authority in economic, social, as well as political matters. Furthermore it surely is not unusual to conceive of political society as originating in the family, then extending itself over a multitude of families with a supreme father at the head. Thus, in historical terms, it is quite acceptable to say that the first kings have been heads of families, and also to maintain that the power they have exercised is natural.

Order theory, as we have often mentioned, constituted the philosophical element of Filmer's argument. While today's behaviouralists might not have much faith in the correspondence theory of truth - a basic element of order theory - we have made it quite clear that men of the seventeenth century, generally speaking, accepted it as a rational explanatory device which needed no explaining itself. Where such a method of argumentation was accepted correspondences drawn between Adam's power over Eve, God's power over the angels and all other creatures, and the king's power over the people required a minimum of explanation.³¹ It only had to be established that monarchical rule was natural on one plane of being to infer that such rule was natural on another.

³¹See especially Patriarcha, p. 63, Directions, p.233, Anarchy, p.289, and Necessity, p.325, where he draws correspondences which reveal his philosophical assumptions.

Filmer, of course, tried to be much more explicit by ascribing sovereign and divine power to Adam as a father then relating it to monarchical power. While this biblical exegesis constituted a major, and in a sense essential, part of his total position it was by no means the sole basis to his thought. He needed only to have simply argued from order theory, but his desire to induce a greater sense of moral obligation in government and his intentness to produce concrete historical evidence, led him to develop his unique patriarchal theory. It was, in fact, precisely in this combination of sovereignty and patriarchalism that we find Filmer's originality.

The next issue Filmer deals with concerns the nature and extent of the monarchical power. It is no doubt a very important aspect of his thought, and will be best understood if we keep in mind what has been said earlier about his basic assumptions, the notion of sovereignty, and the power of the father. In this instance he makes the point that monarchical power must be absolute primarily by demonstrating the inherent weaknesses of mixed and limited monarchy, and by explaining in Bodinean terms the nature of sovereign power. This he does in his rejection of the arguments put forth by Philip Hunton in his Treatise on Monarchie,³² which has been

³²See The Harleian Miscellany, Vol. VI, pp. 323-60 for the text of Hunton's treatise. Also Cf. supra, pp. 73-6.

considered as one of the more sophisticated works supporting the parliamentary cause. Filmer will attempt to show that this tract "hath so much of fancy, that it is a better piece of poetry than of policy",³³ and will conclude that "instead of a treatise of monarchy, he hath brought forth a treatise of anarchy".³⁴

What is the extent of the king's power? To begin with, the king's power is of divine origin and thus can only be limited by the law of God, of which he is the judge on earth. Within his realm, his power is unlimited and he is unaccountable to any human positive law since he is its ultimate maker. In the same way that a father has absolute power over his family, the king exercises such power over his subjects. Thus, like the father, the king must govern according to the law, which is but the expression of his will. As Filmer sees it, "the Kingly power is by the law of God, so it hath no inferior law to limit it. The Father of a family governs by no other law than by his own will not by the laws or wills of his sons or servants".³⁵ In the same way, the king does not govern and is not bound by the wills of his subjects.

³³Anarchy, p. 300.

³⁴Anarchy, p. 294.

³⁵Patriarcha, pp. 96, 102.

As Filmer sees it, "a law in general is the command of a superior power",³⁶ and, as we have seen, supreme power rests at the top and not the base of the hierarchy. In other words law is the expression of the sovereign will, or as de Maistre put it, "law is only truly sanctioned, and properly law, when assumed to emanate from a higher will, so that its essential quality is to be not the will of all (la volonté de tous)".³⁷ In asserting that, "to majesty or sovereignty belongeth an absolute power not subject to any law",³⁸ Filmer, in effect means that, "the laws of a sovereign prince, although they be grounded upon reason, yet depend upon nothing but his mere and frank goodwill".³⁹

³⁶The importance of the law-making function is evidenced in further statements made by Filmer: "There can be no laws without a supreme power to command or make them ...that which giveth the very being to a king is the power to make laws...it is the difference only of the authors of the laws that alters the form of government, that is, whether one man or more than one makes the laws." Patriarcha, pp. 99-100, and Anarchy, p. 277.

³⁷J. de Maistre, On God and Society, Elisha Grierfer, ed. (Chicago: Henry Regnery Co., 1959), p.6.

³⁸What Filmer means here is that while the king may be subject to the law of nature he is not subject to human positive law. This is in accordance with the notion of the king's "two bodies" incorporated in one person and separated only by death. In this case, and throughout his works for that matter, Filmer has in mind the king's "body politic" which is invisible, free of natural defects and above all restrictions of the ordinary law. For an explanation of this notion of kingship see Kantorowicz, op.cit., Chap.I.

³⁹Necessity, p. 317.

Relying on the authority of Aristotle (Politics, III, 16), and for that matter of Bodin and James I, Filmer attempts to convince his readers that, "to be a King according to law, is no sort of kingdom or government at all", and that "a true King is he that ruleth all according to his own will".⁴⁰

As usual, Filmer can see but two alternatives: where supreme power is vested in the king we have order and where such power is put at the disposal of the multitude we have anarchy.

More to the theoretical side we find Filmer insisting that "there never was, norever can be any people governed without a power of making laws, and every power of making laws must be arbitrary: for to make a law according to a law is contradicto in adjecto".⁴¹ Although Filmer is not speaking of natural or divine law in this case, but of human positive law, his failure to distinguish between constitutional or fundamental law and ordinary law puts him on weak ground. Yet, one can understand his position for, if it were said that law was supreme, it will be hardly logical to say that it is limited at the same time. Thus, in Filmerian terms, law made according to law is not properly called law, which must be an expression of the sovereign will.

⁴⁰Anarchy, p. 303.

⁴¹Anarchy (Preface), p. 277. See also Obs. upon Milton, p. 254, and Freeholder, p. 157.

As "a Corporation in himself that liveth ever",⁴² and as the "embodiment of truth and goodness",⁴³ the king had a special status and, consequently, special powers within the state. Since the public interest of the whole was viewed as being above the private rights of all subjects, including the king in his "body natural", the corporate head, it was felt, had supreme powers in the carrying out of his functions. As protector of the public interest "the king could delegate, but not alienate, those iura regis et regni which were considered to be indispensable for the public welfare; no alienation of the royal powers of legislation and jurisdiction was lawful". Thus the king was compelled to "hold and keep in his hands all those powers that were essential to the maintainance of the status regni".⁴⁴ This

⁴²See Kantorowicz, op.cit., pp. 27ff., for a more detailed explanation of the king's corporate powers.

⁴³Wilks, op.cit., p. 219. Related to the idea of the king as the "embodiment of truth" is the theory of the double truth. Simply put, "there were two levels of truth or goodness, human and divine, which might well be contradictory". Thus something good on the human level can also be something evil on the divine level, while something generally considered bad on both levels may be "supremely right" in certain circumstances. The ruler, as the embodiment of truth, as a result can utilize a double standard of morality. Wilks, op.cit., pp. 219-29.

⁴⁴Post, op.cit., p. 281. In effect, such ideas taken from Roman law aided the king immensely in his efforts to subordinate individual and local rights to the public welfare of the state, since it was he who determined what powers were essential to the carrying out of his duties.

essentially was what Filmer had in mind when he spoke of the king's powers. That is, a supreme authority which could act effectively in "cases of necessity"⁴⁵ was needed over and above the ordinary law and individual rights. The king, in his public right and as the Lord's anointed, fulfilled this need.

While Filmer is somewhat evasive and theoretical in limiting the royal power, Philip Hunton, we find, is much more explicit and concrete in his assertion that monarchy is both limited and mixed. Like Filmer, Hunton thinks of government as "an indivisible beam of divine perfection",⁴⁶ but differs in his belief that "every monarch, hath his power from the consent of the whole body".⁴⁷ Having discussed Filmer's opinions concerning the notion that kings are the creatures of the people in an earlier chapter of this thesis,⁴⁸ they hardly need be repeated here. Let it suffice

⁴⁵Post, op.cit., pp. 217-8. The king's absolute power, however, was hardly limited to "cases of necessity" since it was he who decided when such a case existed. As it was, he could do virtually anything if he did it in the name of public safety. See Post, op.cit., pp. 218, 453, 533ff.

⁴⁶Harleian Miscellany, p. 325. Filmer, as well, speaks of supreme power - in his case represented by the king - as "an indivisible beam of majesty". Forms, p. 189.

⁴⁷Harleian Miscellany, p. 330.

⁴⁸Cf. chapter IV of this thesis.

to say that, by using the arguments of a logical extremist, he demonstrates the impossibility of securing the required consent as well as the inability for such government to operate effectively.

Hunton, however, was also of the opinion, as were many common lawyers, that the monarchy was limited by the fundamental law of the land; i.e., the common law.⁴⁹ Filmer, meanwhile, simply could not conceive how common law, so flexible and uncertain, could be referred to as fundamental, for, as he pointed out, "it is contrary to the nature of fundamental for the building to stand when the foundation is taken away". Furthermore, being unwritten, "it is against the nature of a rule, which is and ought to be certain".⁵⁰ Hunton, however, claimed that it was certain, being imbedded in the conscience of all mankind. This, in effect, would make all the people judge insofar as the common law was concerned, as well as with respect to the king's actions. In Filmer's opinion, this was totally unacceptable: "truly the conscience of all mankind is a pretty large tribunal for the fundamental laws to pronounce sentence in...such a sentence surely must be upon the hearing of one party only; for it is

⁴⁹The more elaborate legal-historical arguments Filmer uses to refute this view and defend the king's absolute power will be the subject of the following chapter.

⁵⁰Anarchy, p. 297.

impossible for a monarch to make his defence and answer, and produce his witnesses, in every man's conscience, in each man's cause...the conclusion is...every man is brought, by this doctrine of our authors, to be his own judge" in deciding the legality or illegality of the king's actions. He simply could not conceive how the "conscience of mankind" could be homogeneous and thus appealed himself "to the consciences of all mankind, whether the end of this be not utter confusion, and anarchy".⁵¹

While speaking of common law, it is interesting to note the relationship Filmer claims exists between it and the king's will. As long as his opponents claim that common law is law immemorial Filmer can refute them convincingly with the counterclaim that kings have existed before laws. If this were so, for the common law to have been allowed to develop it will have had to have the king's sanction; for surely if a certain practice exists which the king dislikes he will have prevented its continued existence. Even where past kings have allowed a certain practice to develop, a present king, as the legitimate sovereign and as the protector of the public welfare, by the grace of God, need not abide by it for he is not subject "to the laws of his predecessors

⁵¹Anarchy, p. 297.

but...to his own just and reasonable conventions".⁵² Thus, when a king comes to the throne, he is free, within the bounds of the law of God and nature, to make his own laws contrary to all existing law whether it be statute or common law.⁵³

The parliamentary supporters also attempted to limit the king's prerogative by insisting that he was bound by his oath to office as well as by covenants. The latter, claimed Filmer, did in no way limit the king for they existed "to instruct the people their duty, not to teach the King his office".⁵⁴ The oaths of kings, meanwhile, bound them no more than did covenants. The oath taken by the English King, for example, instructed him only to observe upright laws,

⁵²Necessity, p. 318. Bodin's influence is very apparent on this matter. "Sovereign princes", he says, "are not bound...to keep the laws of their predecessors. If they are so bound, they are not properly speaking sovereign..." Bodin, however, is more explicit than Filmer in limiting the king with certain "constitutional laws of the realm" which sustain "his very claim to sovereign majesty", and with the laws of God. See Curtis, op.cit., pp. 274-80, and McGovern, op.cit., pp. 56ff.

⁵³The king actually was not as free in the making of laws as Filmer made him out to be. For instance, he could not alienate powers essential to the maintenance of his office; he had to present a sound argument to act in "cases of necessity", and had to act in accordance with accepted constitutional limitations. See Kantorowicz, op.cit., and Post, op.cit., pp. 281ff., 453.

⁵⁴Patriarcha, p.99.

and since he was the judge of what was upright it was hardly a real limitation of his power.⁵⁵ Simply then, as far as Filmer was concerned, for sovereign authority to be properly called sovereign, it had to be absolute and arbitrary. Anarchy, seen by Filmer as being contrary to nature, reason, and the will of God,⁵⁶ constituted the greatest of evils and thus had to be prevented at all costs. Order necessitated the existence of a sovereign authority, of a morally binding political authority, who could instruct the people in the right laws.

Hunton was also of the opinion that the monarchy was mixed; that is, he believed sovereign power was in all three Estates. As he saw it, the power of the monarch was not "so great as to destroy the mixture and not so titular as to destroy the monarchy". The court's function, in his opinion, consisted in more than giving counsel and advice; rather it

⁵⁵Patriarcha, pp. 103-5. Another author also points out that kings limit themselves with an oath to uphold the customs of realm, to preserve the private rights of their subjects, and to govern according to the laws, but recognizes that this is no real limitation since it is the king who decides what the customs, rights and laws are. See Post, op.cit., p. 216.

⁵⁶Actually disorder in the state was not always viewed as being against God's wishes for sometimes He willed it as a means of punishing the people. For instance, de Maistre, in viewing the events of the French Revolution felt that, "Providence decrees every blow struck." See Grierfer, op.cit., p. 595.

existed to actively resist things "subversive and unsufferable".⁵⁷ Filmer, of course, could consider such an arrangement only to be ridiculous and contrary to the nature of sovereign power. Rousseau echoed Filmer's thoughts when he said, "the sovereign authority is one and indivisible; it cannot be divided without being destroyed...the supreme authority can no more modify than it can alienate itself. To limit it is to destroy it. To argue that the sovereign can impose a superior upon himself is absurd and contradictory".⁵⁸ Of mixed government Filmer himself said, "the vanity of this fancy is too evident. It is a mere impossibility or contradiction. For if a King but once admits the people to be his companions, he leaves to be a King..."⁵⁹ Hunton's position in effect made it so the king "may not judge or govern at all", for a true judge or governor must have absolute powers.⁶⁰ Since "the power that limits must be above the power that is limited",⁶¹ there must somewhere in the state be an arbitrary sovereign power. "We do but

⁵⁷The Harleian Miscellany, Vol. VI, pp. 336, 356.

⁵⁸Barker, Social Contract, op.cit., pp. 257, 263.

⁵⁹Patriarcha, p. 93.

⁶⁰Anarchy, p. 299.

⁶¹Anarchy, p. 285.

flatter ourselves", said Filmer, "if we hope ever to be governed without an arbitrary power."⁶²

The power allowed the king in Hunton's mixed monarchy, in Filmer's opinion, would be but a negative power of dissent, which was but "a privative power, or indeed, no power at all".⁶³ As he stated elsewhere, "a King with a negative voice only, is but like a syllogism of pure negative propositions, which can conclude nothing. It must be an affirmative voice that makes both a King and a law, and without it there can be no imaginable government."⁶⁴ The power to choose officers "is the basest of all powers" and was a function fit for commoners. In fact such a power put the king at the bottom of the heap for, while he might choose officers, he might not be chosen himself. In effect it would make him the only one in the kingdom who could not govern: "his subjects may govern, but he may not".⁶⁵ What sort of government would this be?

Dividing sovereignty by limiting or mixing the monarchy as Hunton advocates may prevent the arbitrary use of power but it in effect leads to no monarchy at all, and

⁶²Anarchy (Preface), p. 277.

⁶³Anarchy, p. 300, and Freeholder, p. 157.

⁶⁴Freeholder, p. 172.

⁶⁵Anarchy, p. 299.

in fact no government at all since "it ends in confusion and destruction of all government".⁶⁶ The idea makes it so that there is no common judge on issues of vital interest where certainly such a judge is needed.⁶⁷ To throw such issues where the individual conscience may judge on them will be an act of suicide for it can only lead to anarchy. Consider, for example, the issue of the draft in the United States if it were left to the individual conscience to judge upon. Will individual judgment be influenced by particular interests or the public welfare? Can it ever be decided upon in an orderly manner? It seems that where the individual is left to decide on vital issues order can never be maintained. Filmer assessed the "judgment of the multitude" by looking at Roman history. In so doing, he finds that "many good emperors were murdered by the people, and many bad elected by them. Nero, Heliogabalus, Otho, Vitellus and such other monsters of nature were the minions of the multitude, and set up by them. Pertinax, Alexander, Severus, Gordianus, Gallus,

⁶⁶Ibid., p. 300.

⁶⁷In Hunton's opinion all three Estates are free and may defend themselves one from the other. Where a problem arises which requires decision and there is disagreement, then the solution is non-decision if it is tolerable. In the end he merely suggests that all should support that section with the best reason and judgment of the public good. See The Harleian Miscellany, Vol. VI, pp. 356-60.

Tacitus...all of them good emperors in the judgment of all historians, yet murdered by the multitude."⁶⁸ Whatever may be the case, there must be a sovereign judge whether it be the king or the people: "if the King be judge, then he is no limited monarch; if the people be judge, then he is no monarch at all. So farewell limited monarchy, nay farewell all government if there be no judge."⁶⁹

Hunton did realize that his position did have a slight tendency towards anarchy but felt it could be avoided if small transgressions were tolerated by the king's subjects. Filmer did not consider this an appropriate answer and, in fact, thought it to be ridiculous since a sovereign authority or judge would still be needed to determine which transgressions were minor and which were major. Also, some authority would be needed to decide what resistance or counter-action would be appropriate to a particular transgression. Could Filmer be this judge - a philosopher-king? Was he to be one of the ruled? Filmer, of course, was not explicit but no doubt he felt his will would be synonymous with that of the king. Whatever might be the case Hunton's position faced Filmer's common criticism: if the people were left to judge we would have anarchy, and if the king

⁶⁸Patriarcha, p. 94.

⁶⁹Anarchy, p. 295.

were left to judge we would have absolute monarchy and consequently order. Thus, in the absence of utilitarian considerations, we are left with a choice between anarchy and absolute monarchy.

This brings us to the question of resistance and obedience. Must the king be obeyed in all things? Have the people a right to resist or depose a king whom they feel has acted contrary to the intent of some imaginary contract or contrary to what they believe to be the law of nature? We find Hunton is of the opinion that the monarchy should be actively resisted where it "should so degenerate into a monstrous unnatural tyranny".⁷⁰ He then goes on to define tyranny in much the same way that Filmer defines absolute monarchy. In Filmer's opinion, to believe that the people have a right of resistance or deposition, is totally absurd for, "if this supreme power was settled by God himself in the fatherhood, how is it possible for the people to have any right or title to depose of it otherwise".⁷¹ Resistance and deposition are in fact viewed as the gravest of political sins for they are contrary to the nature of things, to the divine ordering, to any ordering, and to the will of God (Exodus XXII: 28). Furthermore, government

⁷⁰The Harleian Miscellany, Vol. VI, p. 327.

⁷¹Anarchy, p. 283.

itself "must rest upon the obligation of its subjects to obey it".⁷² As the French jurist Claude de Seyssal once said, there is a need for willing obedience "to prevent the ruin of the monarchy and the dissolution of this mystical body".⁷³ Thus, both scripturally and philosophically, absolute obedience is a necessary ingredient within the Filmerian conception of government.

What then does the will of God reveal with respect to obedience to superiors? A perusal of the scriptures will reveal that they are laden with divine ordinances on this matter:

"Slaves obey your masters according to the flesh with fear and trembling in the sincerity of your heart, as you would Christ (Ephesians V:5). Obey your superiors and be subject to them, for they keep watch as having to render an account of your souls (Hebrews XIII:17). By me Kings reign, and lawgivers establish justice. By me princes govern, and nobles; all the rulers of the earth (Proverbs VIII:15,16). Observe the precept of the king, and in view of your oath to God be not hasty to withdraw from the king; do not join in with a base plot, for he does whatever he pleases, because his word is sovereign, and who can say to him "What are you doing?" (Ecclesiastes VIII:2-4). Be subject to every human creature for God's sake, whether to the king as supreme or to governors as sent through him...For such is the will of God (Peter II:13-15)."

⁷²McGovern, op.cit., p. 51. Filmer can find support for his position in Wilkes, op.cit., pp. 55ff., where it is said that history has taught us "that to depose kings is to plunge into anarchy".

⁷³Quoted in Kantorowicz, op.cit., p. 220.

Besides Romans XIII, these are but a few of the scriptural passages which Filmer sees as commanding absolute obedience to all kings. They indicate that, although Filmer has a philosophical basis for his position, the scriptural element constitutes an essential element of his thought as a whole.

In the second instance, where there is an assumed contract between people and king, who will decide when the contract has been broken? Surely not the individual, for this undoubtedly will lead to a rapid turnover of kings. As has been said earlier, "the conscience of mankind is a pretty large tribunal" in which to judge the actions of a king. Thus, once again we find that anarchy or "no government at all" will be the end result of allowing the people to judge.

Grotius tempers the idea of active resistance somewhat by claiming that "men may resist their governors" when the danger is great or certain. Yet even this cannot escape the above criticism because a sovereign judge is still needed to determine certainty and greatness. Can every private man judge and punish kings "as oft as they misuse their power".⁷⁴ Grotius is of the opinion that they can if the terms of the original contract allows it to be so. It all depends on how much power the people have alienated in their compact with

⁷⁴Patriarcha, pp. 66-8.

the ruler.⁷⁵ He goes on to justify his position by arguing that in matters of dispute we must appeal to the highest authority which he claims is the people because they first instituted kings. Thus the people may punish kings but if they do so without good reason God will punish them as He sees fit.⁷⁶ In Filmer's eyes this is seen as a noble gesture perhaps capable of flattering the people but certainly not capable of establishing and maintaining orderly government. Apart from this, Filmer sees it as being contrary to the law of nature, of God, and reason.

A short digression at this point will perhaps aid us in our understanding of Filmerian doctrine. One may wonder, for instance, whether or not human frailty is inoperative in the king, whether or not Filmer believes in human rationality, or how Filmer knows the king is capable of unerringly interpreting the law of God, nature, and reason. Filmer never really is explicit on any of these matters but, nonetheless, through his assumptions, and through past political theory, an understanding is not beyond our grasp.

Is it only the king that is rational? Filmer is quick to realize that what may be rational for one man may not be

⁷⁵It is, in fact, Hunton's opinion that the form government takes is dependent on how much power the people alienate. The Harleian Miscellany, Vol.VI, pp. 325-9.

⁷⁶Patriarcha, p. 71.

so for another; so in typical Hegelian fashion he makes it so only the "one" is free. That is, if knowledge is freedom then the king is the only one with the required knowledge to interpret the law of nature. This can perhaps be explained better in terms of the king's "two bodies". It is said that the "Body politic annexed to his Body natural, takes away the Imbecility of the Body natural". This in effect means that the king in his "Body natural" is like all other humans - devoid of actual knowledge. That is, the king in his "Body natural" is mere potentiality while in his "Body politic" he is full actuality. As the latter he "is the actualization of royal potencies". From this it is plain that all men are potentially rational but it is only the king in his "Body politic" who is actually rational. His "Body politic", in effect, frees him from the imbecility of childhood and the defects of old age, and explains why he cannot sin or do wrong.⁷⁷ He is the father with full knowledge and power and his subjects are his children with potential knowledge and power. If this explanation is kept in mind, along with the fact that Filmer is consistently speaking of the king in his "Body politic", it will no doubt satisfy a few of the reader's queries.

⁷⁷For a more detailed explanation see Kantorowicz, op.cit., Chap. VIII.

Returning to the matter at hand, we find that Hunton, recognizing that his idea of appealing "to the conscience of mankind" had anarchic tendencies, attempted to moderate his position by asserting that the subject should obey only the king's will in all things so long as it did not subvert public liberty. Furthermore, he suggested, that where such liberty was infringed upon and the constitution subverted, redress should first be sought by means of a petition. Only after peaceful overtures for change had failed should active resistance be contemplated. Filmer, however, would apply his usual criticism, for, in the end, it would still be left to the individual conscience of each man to decide whether or not to oppose the king. The people would still be the final judges as to whether or not the king's actions were legitimate and thus, once again, anarchy would be the end result.

It is obvious there is no room for individualism in the Filmerian philosophy. In fact, one may wonder whether or not Filmer is a Christian for he seems to deny the individual any responsibility for his own soul. As he sees it, the king is responsible for the souls of his subjects and it is he, not they, who must pay if he leads them astray. Filmer would thus agree with Mussolini who once said, "all is in the state and for the state; nothing outside the state, nothing against the state".⁷⁸ In this sense, every-

⁷⁸Quoted in McGovern, op.cit., p. 16.

thing pertains to the State, including religion and responsibility for the individuals, so that all will come under the jurisdiction of the person responsible for the maintenance of the state; i.e., the king.

If it be said that the fundamental law limits the king and that obedience is not due in cases where the king commands contrary to such law, the problem will still exist, for a sovereign authority will still be needed to determine what the fundamental law consisted of. Even where such law is written, it cannot pass judgment; only the people can. As Filmer puts it, "they that say the Law governs the kingdom, may as well say that the Carpenter's rule builds the house and not the carpenter: for the law is but the rule or instrument of the ruler".⁷⁹ In other words, the meaning of the law, whether statute or common, will still have to be decided in each person's conscience. Thus, while the intention may be noble, the claim in effect will mean that every man has a right to rebel when he thinks he should, or at least when his conscience dictates that he should. In the end the right to dissent can only mean a right to anarchy.⁸⁰

⁷⁹Patriarcha, p. 107.

⁸⁰It was a common opinion at this time, as well as in the Middle Ages, that active resistance was permissible where tyranny was unbearable and where the effects of resistance would not worsen the existing state of affairs. Nonetheless, a sovereign judge, Filmer would claim, would still be needed to determine whether the situation was unbearable and whether resistance would improve the state of affairs.

Locke, on the subject of resistance, is not altogether clear. He does point out that subjects need not obey a ruler who has not secured his position according to the law on the grounds that the ruler does not rule by the consent of the people.⁸¹ Yet he does not condone resistance on the part of someone who finds "himself aggrieved" as a result of the king's actions. "This", he says, "will unhinge and overturn all Politics, and instead of Government and Order leave nothing but Anarchy and Confusion." It is better, he says, for a few private men to suffer than to chance the destruction of the whole "Body". One, however, must resist where his life is threatened against the law, where appeal to the law is not possible, and where the damage threatened is irreparable. In such cases, he says, it is doubtful that the "Right of resisting" will "disturb the Government". He is hesitant, however, in advocating a solution where the king's illegal acts extend to the majority of the people or even to a few under special circumstances. As he says, "if these illegal acts have extended to the Majority of the People; or if the Mischief and Oppression has light only on some few, but in such Cases, as the Precedent, and Consequences seem to threaten all...how they will be hindered from resisting illegal force, used against them, I cannot tell. This is an

⁸¹Second Treatise, Sec. 199.

Inconvenience, I confess, that attends all governments..."⁸²

Thus, while admitting his dislike for active resistance and revolution, Locke cannot see how they can be prevented under certain circumstances. At the same time he cannot see how a governor interested in the good and the preservation of his people can permit these "certain circumstances" to exist when "it is so easie to be avoided".

Meanwhile others insisted that active resistance was justified by the natural law of self-preservation. Filmer, however, claimed that such a right was non-existent since it would virtually mean that any villain could murder his sovereign if he thought his life to be threatened by that sovereign. If, for instance, one person killed another and was condemned to death for it by the sovereign judge, would that person have a right to attempt to preserve his own life by killing the person who condemned him?⁸³ Indeed, this was a somewhat specious argument but no doubt a logical one where the right of self-preservation was not limited.

What then are the results if we cannot judge or resist a king? Simply, it means a policy of passive obedience to

⁸²Second Treatise, Sec. 203-210.

⁸³Cf. Hegel's Philosophy of Right. Translated with notes by T.M. Knox (London: Oxford University Press, 1965), Par. 99, 100, where Hegel explains his strange theory of punishment.

even the cruelest of kings since his cruelty may be in the interest of the common good of which he is the judge. On earth the king is the maker of the law and thus above it, but still "he is accountable to God, and therefore not guiltless if he violates divine laws: human laws must not be shuffled in with divine, they are not of the same authority".⁸⁴ We must, as a result, "obey Princes in those things wherein the commandment of God is not hindered".⁸⁵ This, in effect, means that we must obey the king in all things since it is he who interprets the commandments of God.

Even where the king's commands are very obviously against the laws of God,⁸⁶ Filmer insists he must be obeyed or at least be tolerated since he is not answerable to the people but to God alone. All the people can rightfully do is pray and cry "unto God in that day",⁸⁷ for as the

⁸⁴Obs. upon Milton, p. 254.

⁸⁵Patriarcha, p. 99. Filmer has in mind here the scriptural passage commanding the people to "render to Caesar, the things that are Caesar's, and to God the things that are God's" (Matthew XIII:21; Mark XII:17; Luke XX:25). To Filmer this means that all powers are split between God and the king, leaving nothing for the people.

⁸⁶Cf. supra, p.178 where the theory of the double truth explains that what may obviously seem evil on the human level may not really be so on the divine level.

⁸⁷Patriarcha, p. 97. See Wilks, op.cit., p. 83, where it is also said that redress, in cases where the king has misused his powers, is with God, not man.

scriptures teach us, "Be patient in tribulation, persevering in prayer...Bless those who persecute you; bless and do not curse...Vengeance is mine, I will repay, says the Lord (Romans XII:11-21). Thus, if order is to be maintained and the commandments of God adhered to, absolute obedience is due the king.

Filmer, it is obvious, completely distrusts the abilities of the common man. In his view the people are so ignorant and so motivated by passion that they do not even know what is good for themselves.⁸⁸ How then can the people competently judge the actions of a king? Filmer reasons, for instance, that if the king raises the people's taxes it will no doubt be for the good of the country as a whole and therefore for the good of its inhabitants. However, not realizing this, and if they have the power, the people probably will depose the king for such an act. As God's anointed and as the protector of the public welfare, the king simply cannot be judged "by inferior breath", or be "subject to the breath of every fool".⁸⁹ Simply, then, Filmer believes that the

⁸⁸No doubt Filmer would have the same misgivings about the common man as did Adenauer, the former Chancellor of West Germany, who once said, "in view of the fact that God limited the intelligence of man, it seems unfair that he did not also limit his stupidity". Quoted in A.M.Schlesinger, A Thousand Days (Boston: Houghton Mifflin Co., 1965), p.291.

⁸⁹Kantorowicz, op.cit., pp. 27-8.

good of the individual is inherently constituted in the good of the whole. The question thus comes down to determining who should decide what constitutes the good of the whole. As a logical extremist he can see but two alternatives: the king or the ignorant multitudes.⁹⁰ Of course, to Filmer, this simply means a choice between order and anarchy.

The king was ordained by God for a certain end - the preservation of His order and the carrying out of His commands - and, thus, "when our refusal to obey, frustrates the end for which sovereignty was ordained, then there is no liberty to refuse".⁹¹ The judge of how this end could best be achieved, of how the natural order was to be preserved, must be the king, not the people acting in accordance with their particular interests. If anyone believed the king

⁹⁰It was a popular belief of the Middle Ages that if we devoted ourselves completely to the common good, as defined by the ruler, the good of the individual would follow automatically. Ockham, however, while agreeing that the good of the individual was synonymous with the good of the whole community, reversed the procedure by insisting that if we worked for the good of the individual the good of the whole would follow automatically. Political authority, it would follow, rested with the people and the continuance of the ruler would be made to depend upon his ability to carry out the wishes of his subjects. In this way government was put on a contractual basis. See Wilks, op.cit., pp. 135ff.

⁹¹Obs. upon Hobbes, pp. 246-7.

had done him an injustice he could do nothing, except perhaps pray, since "to resist the sword of the commonwealth in defence of another man, guilty or innocent, no man hath liberty: because such a liberty takes away from the sovereign the means of protecting us and is therefore destructive to the very essence of government".⁹² It was obvious Filmer would go to any lengths to keep the natural hierarchy intact. He was not willing to let the people have a shred of real power for he knew, as many others did, that "when people are given a little they at once demand more, ... revolutions are made not when tyranny [kingship to Filmer] is confident and absolute but when it begins to weaken".⁹³

Filmer will in fact go so far as to say that one cannot even contemplate action against the king without being guilty of treason or sedition. Scripture, he points out, prohibits speech against kings: "Thou shall not revile the Gods, nor curse the ruler of thy people" (Exodus XXII:28). Speaking against the king, he claims, will be the same as judging him: "to speak evil, or to revile a supreme judge, cannot be without judging him who hath no superior on earth to judge him".⁹⁴ Thus, it should be clear that within

⁹²Ibid., p. 247.

⁹³E. Crankshaw, Khrushchev: A Career (New York: Viking Press, 1966), pp. 224-5.

⁹⁴Obs. upon Milton, p. 259.

Filmer's hierarchical system dissent cannot be tolerated for it can only disrupt the natural order which at all costs must be preserved and maintained. In fact, within his system, resistance to the commands of the king is considered to be as unnatural as a child's disobedience to the commands of a father or the body's resistance to the commands of the brain. In the absence of a mechanism through which orderly change can take place, it is indeed a logical philosophy for someone who wishes to prevent revolution, anarchy, and bloodshed.

The notion of tyranny, it should be obvious, has no place within the Filmerian system. "Kings are free from the bonds of fault",⁹⁵ and thus cannot properly be labelled as tyrants. A monarch, no matter how good or how cruel he may be, remains a monarch since all his actions fall within the scope of his legitimate and divine power. When the Lord commands that all should obey kings He does not specify kings as being good, evil, or tyrannical. A king, as a result, is in the position of God Himself. The natural law, commonly believed to be the expression of God's will, in effect, becomes the expression of the king's will.⁹⁶

⁹⁵Patriarcha, p. 100.

⁹⁶Cf. H. Grotius, De Jure Belli Ac Pacis Libri Tres, edited by James Brown Scott and translated by Francis W. Kelsey [and others] (London: Humphrey Milford, 1925), p.40, for an explanation concerning the nature of this power.

What is a tyrant? Milton, for one, distinguishes between a king and a tyrant by defining the latter as "he who hath the supreme power of the kingdom, and is accountable to none but God, and may do what he pleases, and is free from the laws",⁹⁷ and the former as "one to whom the people gave power to see that nothing be done against the law, and that he keep our laws, and not impose his own".⁹⁸ Apart from the problems already dealt with regarding this view, Filmer merely adds that it does nothing to change the nature of sovereign power. Power will remain absolute and arbitrary but, instead of being exercised by the king, it will be exercised by the people. From his logical extremist's stance, Filmer points out that "if it be tyranny for one man to govern arbitrarily, why should it not be far greater tyranny for a multitude of men to govern without being accountable or bound by laws".⁹⁹ If it be not tyranny, then surely it will be anarchy.

⁹⁷Obs. upon Milton, p. 251. Locke views tyranny in much the same light as Milton, for Locke defines it as "the exercise of Power beyond Right". This, in effect, means that the "Commands and Actions" of the ruler are directed to "the satisfaction of his own Ambition, Revenge, Covetousness, or any other irregular Passion", rather than "to the preservation of the Properties of his People". Second Treatise, Sec.199. One should also note that Milton's definition of a tyrant is synonymous with Filmer's definition of a king.

⁹⁸Obs. upon Milton, p. 255.

⁹⁹Obs. upon Milton, p. 254.

Both Milton and Locke tend to assume that an absolute ruler will govern to serve his own personal interests and ambitions rather than according to the law and in the interests of the governed. Filmer, on the other hand, is of the opinion that if a ruler governs in strict accordance with the letter of the law, rather than in accordance with his will, the regime will be more tyrannical. As he says, "if the penalties and forfeitures of all laws should still be exacted by all Kings, it would be found, that the greatest tyranny would be for a King to govern according to the law."¹⁰⁰

In reality a king, Filmer claims, cannot govern solely for himself; he must, by nature, rule in the best interest of his "children". The king is an inherent part of "one organism" and thus, in ruling for himself, he must necessarily rule for the whole.¹⁰¹ "Tyrant", he says, is but a name given to a ruler who does not rule according to

¹⁰⁰Ibid., p. 258.

¹⁰¹The influence of Roman law is quite apparent here. The corporate theory of the state makes it so "he [the king] is the Head and they are the Members, and he has the sole Government of them". Roman law may have enabled free men to "obtain representation of their rights in courts, councils, and assemblies" by helping them belong to corporate and quasi-corporate communities, but by the same token it also has aided the king in his efforts to subordinate local and individual rights to the public welfare of the community. Furthermore, it has given the king or the "corporate head" a legal right to demand loyalty and consent. See Kantorowicz, op.cit., pp. 27, 230, and Post, op.cit., pp. 565ff.

the whims of the multitude, ignorant of what is good for itself. In ruling, "the despotical power cannot be preserved, except the servant, or he in subjection, be also preserved".¹⁰² A king, therefore, cannot rule for himself and, as a result, cannot rightfully be called a tyrant. He must rule to preserve his subordinates for if he does not, over whom will he rule?

Rousseau, we find, is not so optimistic about the interests of the monarch. He feels it is nice to think that the king's absolute power will be solidified where his subjects are "flourishing and formidable", but the truth is that "the king knows only too well...that his personal interests will best be served when they are weak, wretched and incapable of resistance". He is also aware that the opposite is true (Filmer's view) but feels "it is only natural that princes should give precedence to the maxim which is of more immediate use to them".¹⁰³ Thus, it is quite conceivable that the king will not rule in the best interest of the governed.

Filmer is aware of the possibility of an answer such as Rousseau's and thus rises to the occasion by insisting that even in such cases his position will be the lesser of

¹⁰²Obs. upon Milton, p. 259, and Forms, p. 204.

¹⁰³Barker, Social Contract, op.cit., p. 237.

two evils: "Only in the comparative I maintain the mischiefs to a state to be less universal under a tyrant King...a King can never be so notoriously vicious but he will generally favour justice, and maintain some order, except in the particulars wherein his inordinate lust carries him away." Filmer will not "plead in the defence of their cruelties",¹⁰⁴ but does insist that there will be less disruption under a cruel king than in a situation where sovereign power is the property of the "people". A vicious king, insists Filmer, will only extend his cruelty to the particular men who offend him, and will do so usually only in the interest of the public good. Every tyrant "out of natural love to himself...desires to preserve the lives and protect the goods of his subjects, which cannot be done but by justice, and if it be not done, the Prince's loss is the greatest".¹⁰⁵ Thus, by nature, Filmer views the personal interests of the monarch as being synonymous with the public interest of the state. Where it is not, it is God who must judge, not the people. The alternative, of putting sovereign power in the hands of the multitude, will guarantee disruption and disorder over the width and breadth of the country. As Filmer states, "there

¹⁰⁴Patriarcha, pp. 91-2.

¹⁰⁵Ibid., p. 92.

is no tyranny to be compared to the tyranny of the multitude".¹⁰⁶ His motto is thus, "preservation of order and government at all costs to freedom".

As one can see, Sir Robert's prime concern, besides establishing the supremacy of the king's authority, is the preservation and maintenance of the divine order. The natural order consists in a hierarchy of being, as described in the second chapter, which has certain logical political implications. When these implications are bolstered with the notion of Bodinean sovereignty and with the authority of scripture, they spell out a case for absolute and divine rule by kings. The emerging system logically supports the absolute rule of the "one" and subsequently denies the possibility of mixed or limited monarchy. Such limitations become fancies of the imagination contrary to natural reason and without proof in the scriptures or elsewhere.¹⁰⁷

Within Filmer's system it is also obvious that the notions of freedom and equality have no place as he interprets them. Inequality and subjection are both viewed as part of the natural order and thus are to be maintained.¹⁰⁸

¹⁰⁶Ibid., p. 93.

¹⁰⁷Anarchy, p. 279.

¹⁰⁸It must of course be remembered that to Filmer freedom means the "right to do as one pleases", while equality means "the right of each person to an equal share of nature's gifts". The first, as Filmer sees it, leads to anarchy, while the second leads to the complete inability to govern. As such, neither is to be promoted by the king.

Furthermore, since he at the summit of the hierarchy holds his station by the will of God, enjoys sovereign power, and has no superior on earth, there can be no such thing as a tyrant. In terms of order theory, it simply means there is a particular order, wherein the king is absolute, which must, at all costs, be preserved until God commands otherwise.

It is obvious that, to Filmer, the best form of government on practical as well as theoretical grounds is pure and absolute monarchy. It is established by God and is therefore the only form of government under which the good life can be attained.¹⁰⁹ It preserves the natural order and guarantees a sovereign power which, like Rousseau's legislator, will rule in the best interests of the governed. Furthermore, history, says Filmer, reveals that peace and godliness can only be achieved under monarchical rule. It is true that in some Republics, such as in Venice and the Low Countries, peace has prevailed for some time, but, in Filmer's opinion, it is no real peace since it has existed in an atmosphere of fear, jealousy, mistrust, and where high taxes have been needed to pay foreign armies or mercenaries to preserve it - there is no godliness.¹¹⁰ As Filmer sees it, "the mischief

¹⁰⁹The good life of course can be attained under another form of government so long as that government rules with one will. But, as Filmer has indicated, this is a virtual impossibility.

¹¹⁰Forms, pp. 221-2.

of sedition necessarily waits upon all popularity", and thus the only way to preserve such a state would be by having "some powerful enemy near...for the common danger of an enemy keeps them in better unity than the laws they make themselves".¹¹¹

Simply then, Filmer is arguing for one extreme against another. The only alternative he sees to absolute monarchy is democracy which he in turn defines as a system of government where the "people" have sovereign power and are at liberty to do as they please with it. Considering his view of the people - uncertain, prey to passion, and incapable of reasoned behaviour - the theory he presents can be most appealing. It is a system essentially like Rousseau's, less the imaginary contract and a sovereign objective general will, where for a period of time there is a legislator, unresponsive to passions and particular interests, to guide the "people" who yet do not know what is good for them. The system is not aimed at the oppression of the people for the sake of oppression, but rather is intended to subordinate them to the will of the monarch for their own good - the good of the whole. It is a rather conservative and deterministic philosophy designed to consolidate the position of the king who rules for the common good. His basic assumptions and

¹¹¹Patriarcha, p. 90.

his conception of sovereignty combined with his logical extremist stance make it so the king, as opposed to the multitude, has to be the final judge as to what the common good is and how it best can be achieved.

CHAPTER VII

FILMER: LEGAL-HISTORICAL ARGUMENTATION

When Heatley spoke of seventeenth century England as an "age of acute antagonisms and savage polemics",¹ the savagery involved to a large extent centered around legal-historical arguments concerning the king's relationship to Parliament. In this area of argumentation Filmer set the stage for the next forty years of rivalry concerning the interpretation of English legal history. His ideas on the matter, at the outset, were influential as a basis for limiting the powers of the arbitrary Long Parliament, and subsequently as Tory ideology during the "Exclusion Controversy". Opposition to his views was plentiful but hardly effective until Locke appeared and removed argumentation from the plane of constitutional history.

Usually Filmer's opponents, the common lawyers and a few antiquarians, looked to ancient practices to establish principles of common law or fundamental law which could determine the actual seat of sovereignty - thought to be Parliament as representative of the people. England, they generally believed, was ruled by a common council of which

¹D. P. Heatley, Studies in British History and Politics (London: Smith, Elder and Co., 1913), p. 21.

the knights and burgesses (the Commons) were part of from time immemorial; i.e., from a time beyond memory. If this could be established, it would mean that their membership in the ruling body would not be dependent upon the king's will or upon a writ issued at the king's pleasure. Filmer rose to the occasion with his own interpretation of particular statutes, oaths and writs to illustrate that the elected knights and burgesses did not constitute a chamber of unlimited sovereign power, or for that matter of any power. The work was of particular importance to the royalists in 1680 since it pointed out the logical necessity and historical-legal basis of a sovereign legislative power in the office of the monarch without recourse to the notion of conquest (Hobbes) which was so unpopular among Englishmen.² His views, in fact, had an added appeal in that they dealt with the problem in terms which were of interest to all concerned; i.e., in terms of England's constitutional history.

In a nutshell, Filmer claimed that legal history clearly exhibited that the only real judge and legislator was the king and that Parliament merely expressed the power and majesty of the king without hindrance.³ He attempted

²As Pocock, op.cit., p. 53, said, "to admit conquest was to admit an indelible stain of sovereignty upon the English constitution".

³Patriarcha, p. 114.

to prove this by means of an explanation of the oath the king must take, by a study of the writ of summons, and by an examination of the forms in which legislation had been promulgated. In this way he found that the Lords and Commons were in ancient times summoned by the king's free will, and that when he did call them it was only to advise him, to present him with grievances and to consent to his decisions. More specifically, he was of the opinion that the only real advisors were the Lords and that the Commons were in fact outside of the common council; i.e., of Parliament. The latter group, in his estimation, had the very specific function, when commanded by the king, of presenting petitions to the king on behalf of their electors, and of passively consenting to decisions made by the monarch. While the Commons did perform other functions and did enjoy certain privileges, Filmer found these completely dependent upon the king's grace and goodwill. The Lords, as well, were viewed as deriving their existence, privileges and functions from the king.

The opposition, as mentioned, appealed to the fundamental law of the kingdom to limit the king's power and to exalt Parliament's. Most of them, however, were on weak ground, historically and legally, when they asserted that the power and privileges of the Commons were based on law immemorial. Chrimes, for instance, described the struggle as one of "incompatible principles and points of view...Both sides in

the contest appealed to law and history, but it was the royalist side which then represented the modernist, progressive opinion, whilst the parliamentary opposition and the common lawyers looked to the good old days of the medieval constitution for precedents to support the supremacy of the Common Law.⁴ Lawyers such as Selden and Coke would simply search for evidence which would justify their politics. As far as they were concerned, "they were right and the king was wrong; they were defending liberty, he was aiming at tyranny".⁵ The royalist supporters, like Filmer, were in a much better position, for, by appealing to the letter of the law, it was not difficult to secure an interpretation which favored their position. Simply put, the line of argument was as follows: if laws were immemorial, they were not of the king's making, and if they were not immemorial the king made them and reigned supreme over them. It was obvious that, as long as the arguments followed such lines, the royalists, led by Filmer, had a decided advantage.

There were literally thousands of tracts concerning

⁴S. B. Chrimes, English Constitutional History (London: Oxford University Press, 1947), p. 141.

⁵Gough, op.cit., p. 66. There were others, however, such as Sir Robert Spelman (Archaeologus 1626), who visioned common law as perpetually evolving rather than as law immemorial, but they were not in the mainstream and thus were not involved in the struggle.

England's fundamental law, written during the time of the Long Parliament and later during the "Exclusion Controversy", but there were only a few that stood out. On the parliamentary side the more prominent writers were Edward Coke, John Selden, C. Herle, James Tyrell, Algernon Sidney and William Petyt, all of whom argued that the rights of the Commons were based on common law; i.e., law immemorial. Others meanwhile argued that the fundamental law, based either on antiquity or natural law, limited sovereign power. The best known of these were the Earl of Clarendon, John Whitehall, Richard Baxter, John Milton, William Prynne, John Lilburne and Richard Overton, all of whom were interested in limiting an absolute Parliament as well as an absolute king. Filmer, of course, was against all of those who in one way or another tried to limit the king's sovereign power but it is interesting to note that some of the latter group of writers used Filmer's arguments against parliamentary sovereignty, although for radically different purposes. While they were arguing for a fundamental law, Filmer was attacking the whole concept of fundamental law.

Edward Coke, it may be assumed, was most representative of the anti-royalists. He opposed the strong royal prerogative, characteristic of the Tudor era, and attempted to limit the king by appealing to the common or the fundamental law of the realm. In his opinion the underlying

principles of justice embodied in the common law could not be changed by the king, or by Parliament for that matter. It was further held that the assigning of powers, the fixing of standards, and the allocation of rights and duties among the various constituent parts of the kingdom were determined by common law.⁶ As Pocock said, "belief in the antiquity of the common law encouraged belief in the existence of an ancient constitution, reference to which was constantly made, precedents, maxims and principles from which were constantly alleged, and which was constantly asserted to be in some way immune from the king's prerogative action".⁷ Until Locke's time, legal-historical argumentation concerning the king's powers was to take place in these terms which, as we have mentioned, favored Filmer and his cohorts. The supporters of the parliamentary cause would indeed find it difficult to offer proof that the Commons was always part of the Common Council.

It was thus of paramount importance for Filmer to provide an exact date for the origin of the Commons, since,

⁶Of this assertion Filmer will say "it is a senseless thing to bid men assent to that which they already ordained; since ordaining is an assenting and more than an assenting". Freeholder, p. 136. Simply, this means that it will be ridiculous to even call Parliament if all these things have already been determined and are known to all.

⁷Pocock, op.cit., p. 46.

without it, his opponents could validly claim that its existence, functions and privileges were immemorial and, as a result, part of the ancient constitution. If, however, he could identify the exact year, then it could be claimed that the Commons owed its existence to a previously existing authority - the king. The question was indeed of importance to Filmer's position for if the Commons was not immemorial it would be difficult for his opponents to prove, in the accepted terms of argument, that they had any rights at all independent of the crown. Thus, he proceeded to prove the following: that at the outset the Common Council did not even include the Commons but only the king and the barons; that the Commons were not even called to Parliament until the time of Henry I; and that they were not "regularly elected by writ until Henry III's time".⁸

Before examining the evidence of English history, Filmer decided to inform us of the situation in France because it was from there that the name Parliament originated as a denotation of the General Assembly.⁹ Also the ancient English Parliament was thought to be an imitation of the French Assembly. Taking careful note of the activities in this Assembly, he explained how its members addressed the

⁸Freeholder, p. 136.

⁹Patriarcha, p. 113.

king on their knees thereby signifying their inferiority and humble obedience. From the evidence he examined, he concluded that, "the General Assembly was but an orderly way of presenting the public grievances and demands of the whole kingdom, to the consideration of the King".¹⁰ The other major function of the Assembly was to consent to the laws ordained by the king so that they might be strengthened. Principally, however, the Assembly merely served to facilitate the government of the king by eliminating the need to depend on "the eyes and ears of other men,"¹¹ to learn of and judge the grievances and demands of the people.

Scotland and Ireland, being under the dominion of England at that time, were also examined by Filmer with respect to their Parliaments. He found the case here to be quite similar to that in France as it was also the king who decided what would be discussed, when, and by whom. The Parliaments, he found, did discuss bills but since the king's ratification was needed "anything the king dislikes they rage it out before".¹² Thus, there was little doubt as to where sovereignty rested in these countries. It remained to determine what ancient practice in England revealed.

¹⁰Freeholder, p. 131.

¹¹Patriarcha, p. 114.

¹²Freeholder, p. 131.

Focusing his attentions on English history, Filmer began by explaining the history of Parliament. He pointed out, first of all, that the Parliament in existence at the time of the Saxons was by no means the same as the seventeenth century Parliament.¹³ It consisted solely "of the king, Prelates and Peers assembled", the latter two groups being classified as Barons. No mention whatsoever is made of the Commons for the simple reason that it was non-existent.¹⁴ This situation persisted until the brutal conquest of William the Conqueror in 1066. Prior to this time England was very diversified, having different laws and customs in different regions. In an effort to unify the country, William thought it best to call representatives from the districts so that he might confirm the differing customs into law with their (the Barons) consent. To claim that there were knights and burgesses at this time would have been frivolous, in Filmer's estimation, for surely if there were any, the king would have called them to inform him of the customs in the various regions.¹⁵ In fact, the only major difference from the Saxon era was that the Earls as well as the Barons were called to the Assembly.

¹³Patriarcha, pp. 113-4.

¹⁴In presenting his historical survey, Filmer seems to rely heavily on the authority of Camden's Britannia.

¹⁵Patriarcha, p. 116.

After the coronation of Henry I (1101-35) the people of the kingdom were called but not by writ of summons. It was clear, as Filmer saw it, that laws passed at this time were made and consented to independently of the so-called Commons. To support his case Sir Robert produced examples of numerous statutes passed by the assent of the Barons in the absence of the Commons. Thus, even at this time, it could not properly be said that the knights and burgesses were part of the Common Council, and certainly it could not be claimed that they had any legislative power.¹⁶

The next significant change, claimed Filmer, came during the reign of Henry III (1215-67) when in the forty-ninth year of his rule (49 H. III) he called the Commons to the Council by means of a writ.¹⁷ Even on this occasion they were not called to partake in the making of the law but solely to present petitions to the king for his consideration. At the time a few claimed that the Court was above the king

¹⁶In fact it was not until after 1832 that Parliament began "to legislate with great vigour". There were, however, a few cases where Parliament did legislate in the sixteenth century but, still, its primary function was to serve as a court. Gough, op.cit., pp. 24-8. Cf. also C. H. McIlwain, The High Court of Parliament and Its Supremacy (New Haven, Conn., 1910).

¹⁷Actually it was said that King John (1199-1215), in a time of crises, sent out a summons for his Council which included knights. The knights, however, were not elected and were only asked for consultation, and were not included as part of the Council. Cf. White, op.cit., pp. 77-8.

but actually, said Filmer, reference was being made to the Lords and not the Commons. Filmer did admit that, in a sense, the Court of Earls and Barons was above the king but "they must of necessity be understood to be superior, so far only as to advise, and direct the king out of his own grace and good will only".¹⁸ In support of his position Filmer quoted Henry Bracton, Chief Justice at the time of Henry III, as saying, "nor can any man put a necessity upon him the king to correct and amend his injury unless he will himself; since he hath no superior but God; it will be sufficient punishment for him, to expect the Lord an avenger".¹⁹ Thus, it might be said that at the time, the Court could only direct and advise him, and not compel him; for this only the Lord could do.

Filmer's study of the Parliaments of England during the reigns of Henry I, Richard I (1180-99), to Henry III revealed conclusively "that the ancientest and most usual summons was of earls and barons and that Kings did vary their summons at their pleasure".²⁰ He could find not one shred

¹⁸Freeholder, pp. 139-40.

¹⁹Ibid., p. 140. To Bracton's way of thinking the king, as vicar of God, was peerless on earth and, thus, while he was above the ordinary law, he was still below the law of nature. For a detailed analysis of how Bracton dealt with the notion of the king's "two bodies" see Kantorowicz, op.cit., pp. 143-92.

²⁰Patriarcha, p. 117. See also The Harleian Miscellany, Vol.I, pp. 246-7, and Vol.V, pp. 323-4.

of evidence, nor could he see how his opponents might, that the knights and burgesses were called by election before the time of Henry III (49 H. III). For good measure, he examined William Prynne's treatise entitled Treachery and Disloyalty ...,and presented it as further authority that the Barons and not the Commons formed part of the Parliament or Common Council of England in ancient times. Prynne's complaint, however, differed from Filmer's in that Prynne felt the Barons, being unrepresentative of the people, represented their own selfish interests and thus were disloyal.²¹

Common lawyers would often point to the reigns of Henry I and King John in support of their views that the Commons existed as a highly significant entity. Filmer's examination of Henry's rule did reveal that an element of the nobility was called in for consultation on important matters of state, and to give their consent to money laws

²¹Prynne, it should be noted, was by no means interested in supporting absolute monarchy. In fact, in 1643 he wrote a tract entitled The Sovereign Power of Parliaments and Kingdoms, wherein he voiced the opinion that sovereign authority rested with Parliament, and that the power of the king was ministerial. In 1648, however, he was one of a group of Presbyterian Members of Parliament ousted by Cromwell, and as a result became more interested in limiting the power of Parliament by appealing to an ancient constitution. Thus, although he later used many of Filmer's arguments against the authority of Parliament, their views were not at all synonymous. Having witnessed the subversion of the parliamentary structure, Prynne simply wished to establish grounds to prevent further subversion.

ordained by the king, but it also revealed that on many occasions laws were passed and consented to without the Commons. In fact the only reason Henry called the Commons (16 H. I) at all was to flatter them and at the same time consolidate his own position. His title to the throne was, at the time, far from secure due to competition from his elder brother Robert, Duke of Normandy and legitimate heir, and, thus, by calling the Commons, he could satisfy the various groups and thereby strengthen his hold on the crown.²² As Filmer said, "the King called the people to Parliament and granted them Magna Charta, that they might confirm to him the crown".²³

Under King John the identical situation prevailed. In 1204 he lost Normandy to the French Kings and later came under pressure from the popular element. To add to his displeasure his position was insecure due to competition from "Arthur Duke of Britaine", who was the legitimate heir to the throne. It was only under these circumstances of stress that the Commons was called and the Great Charter granted.

²²The Harleian Miscellany, Vol.VII, p. 257, and Vol.II, pp. 285-90.

²³Freeholder, p. 143. Filmer's history is admittedly poor on occasion as it is in this case. What he really is referring to here is the "Charter of Liberties" signed by Henry I, which was later to become the basis of Magna Charta.

Yet, as Filmer pointed out, "even where such liberties are granted, they are liberties of grace from the King, and not the liberties of nature to the people."²⁴ Furthermore, they could hardly be claimed to be a matter of custom where such an exact date of their appearance could be given.²⁵

It was thus Filmer's opinion that history clearly revealed that the Commons were not called to Parliament by writ of summons²⁶ until 49 H. III. Using the authority of a book entitled The Privilege and Practice of Parliaments, he went on to say that even when the king did issue a writ of summons he was free to call whomever he wished. In this way the monarch could receive the wisest and more learned men of the realm, and avoid the more turbulent and seditious elements.²⁷ As to the relationship between king and Commons, an examination of the writ itself, claimed Filmer, was very revealing. It was issued from the king to the sheriff of a

²⁴Patriarcha, pp. 117-8. Commenting on the reigns of Henry I and King John, Filmer uses the authority of Sir Walter Raleigh's The Prerogative of Parliament (1628).

²⁵It could, however, be argued that these liberties were a matter of custom and that they were only confirmed into law in 1215.

²⁶Precedent for such a writ can be found "in Romano-canonical court and ambassadorial procedure" as well as "in the convocation of imperial and papal assemblies in Italy". See Post, op.cit., p. 108.

²⁷Freeholder, pp. 143-4.

particular county and bestowed upon the freeholders a right to elect someone "fit" and "discreet" to represent them before the king. One section of the writ, usually misunderstood or ignored because it was written in Latin, clearly expressed the duties, obligations, and powers of those elected "Knights, Citizens and Burgesses". Thus, so that the relationship might be fully understood, Filmer translated the section and kindly provided us with an interpretation of its significance.²⁸

In the first place, it reveals that it is the king alone who has the power of issuing the writ of summons. As a result, the presence of the Commons is totally dependent upon his grace and good will. In the second place, it leaves little doubt that the Commons are not to be included as part of the Common Council of the kingdom. Rather they are given but "sufficient power to perform: and to consent to those things" ordained by the Common Council.²⁹ They are summoned simply to present petitions and to give obedience for there is no mention made of a power to dissent. Thus, "they had no right to cripple the right of the king to make the final decision".³⁰

²⁸See Freeholder, pp. 133-6, for Filmer's translation and interpretation.

²⁹Ibid., p. 135.

³⁰Post, op.cit., p. 408.

Many were of the opinion that the representatives limited the royal prerogative but this was an error caused principally by the modern conception of representation. As Post pointed out, the royal writ of summons specified that representatives with full powers be sent "to consent to whatever should be ordained by the king in his court and council".³¹ As representatives with full powers³² their consent bound their constituents, but the tradition of Roman law, which put the public right above the private right, made it possible for the king to claim superior jurisdiction for the common good. If the king wanted tax money or if he wished to pass a law for the common good the representatives could not withhold consent.³³ The knights and burgesses, then, were simply there to represent their constituents and to

³¹Ibid., p. 91.

³²Some applied the concept of plena potestas to the notion of "full powers" and thereby considered it as "one of the roots of the legal sovereignty of Parliament". Post, however, made it clear that "it was interpreted by the royal court and was subordinated to the prerogative". He then went on to explain that it actually gave the king the right and power "to summon, ask information and demand consent". Post, op.cit., p. 161.

³³As Post sees it, by applying the "Romano-canonical principles of necessity, public utility and quod omnes tangit, and the Romano-canonical procedure of corporate representation by agents bearing full powers [*i.e.*, they bound their constituents]" the king is unifying the kingdom and is gravitating power towards himself. Post, op.cit., pp. 153ff.

plead in their cause if they believed the king was levying too heavy a tax burden. Thus, as Post said, consent "was consultative and judicial, not voluntary and democratic".³⁴ It should, therefore, be obvious that Filmer's account of ancient or medieval parliamentary practice in England was much more accurate than that of his opponents.

The "English Justinian", Edward I (1272-1307), was actually the first king to reinforce his Council with knights and burgesses; i.e., to include them in the Common Council. This he did principally because he believed that by co-operating with the common people his own position would be strengthened.³⁵ Filmer, however, would not agree even at this time that they were part of the Common Council. His position was based on the strength of a writ of summons issued in 33 Edw. I which read as follows: "Our Lord the King commands the Sheriff to summon Nicholas Segrave to appear before our Lord the King in the next parliament, to hear the will of the Lord our King himself, and to perform

³⁴Post, *op.cit.*, p. 117. As the author says elsewhere, "consent...was not a democratic reflection of the will of the people", and thus it did not make the king a "glorified chairman" as many anti-royalists claimed. *Ibid.*, p. 567.

³⁵Edward's beliefs reflected themselves in the model Parliament of 1295 which included two knights from each shire and two burgesses from each town. Cf. White, *op.cit.*, p. 83 and The Harleian Miscellany, Vol. I, pp. 303-5.

and receive what the King's Court shall further consider of the premises."³⁶ To Filmer, it was clear that the writ did not read as if the Commons had any significant role in the proceedings of the Council. It in fact left little doubt that the king was supreme. Thus, when the anti-royalists asserted that the Commons was always part of the Common Council, they were expressing a desire rather than a fact. The writ of summons clearly did not "express a calling of the Knights, Citizens and Burgesses to be part of the common council of the kingdom".³⁷

Few scholars will question Filmer's assertions concerning the king's relationship with the Common Council in the feudal phase of English history. It is a well known fact that political society was organized "with the king at its head and a whole hierarchy of vassals ranged in ranks beneath him", and that the king "ruled through his Council, which was entirely his creature and creation...it had no existence apart from him...it existed not to decide what the king ought to do, but to enable him to do what he ought".³⁸ As it is put elsewhere, "English society was structured hierarchically, where every man and woman had a definite place...at the apex of this pyramid stood the monarch, the

³⁷Ibid., p. 136.

³⁸White, op.cit., pp. 48, 82-3.

symbol of the nation as a whole, and as the representative of which he was, after his coronation, the Lord's anointed."³⁹ Filmer's thought on the matter, however, tends to be more static and rational than dynamic and historical for he neglects some of the complexities of the medieval structure and fails to take historical change into account. However, as long as his opponents argue with the same "lack of historical sense", the case for an ancient constitution is definitely a case for the crown.

Filmer meanwhile still had a case to present. While Henry III was the first king to issue a writ calling for the election of representatives, those who followed him did, in Filmer's opinion, regulate the election upon writs by means of statute law. How could these kings have done this in the absence of the Commons if the latter had any legislative power, or control over the king's actions? Filmer produced several examples from the reigns of Edward II (1307-27), Edward III (1327-77), Richard II (1377-99), Henry IV (1399-1413), and Henry V (1413-22) which left little doubt that the king had the power to issue the writ at will, that he

³⁹Petrie, op.cit., p. 13. It is significant that Petrie specifies that the king becomes the Lord's anointed only "after his coronation" or "consecration" for it reflects that the king is "human by nature and divine by grace". It in effect acknowledges the existence of the king's "two bodies" and allows for a distinction to be made between his office and his person. See Kantorowicz, op.cit., pp. 42-65.

was not bound by precedent, that he had a power of commanding and lawmaking in the absence of the Commons, and that even in the presence of the Commons he was in no way limited by them. The Commons, in fact, could not even give advice freely; it had to be asked.⁴⁰ Furthermore, we find that Filmer's vigilant perusal of English history, of the complaints and grievances submitted by the Commons, and of the answers given by the king convinced him that the king's power extended over what was known as common law. The king was viewed as its immediate "author, moderator and corrector".⁴¹ Common law, like statute law, thus, was viewed as being completely dependent upon the king's will.

On the other side, we find the avid parliamentarian, Edward Coke, going so far as to claim that the king was not even part of the Parliament of England. As he saw it, Parliament consisted of the Lords Spiritual and Temporal, and the Commons with the king being their servant. How he concluded that this arrangement was part of the fundamental

⁴⁰See Freeholder, pp. 144-50. On practical grounds Sir Robert lacks accuracy on this matter for actually the rule of Henry IV, the first of the Lancastrians, was considered as a "period of premature constitutional government", and is now usually referred to as the "Lancastrian Experiment". Technically, however, Filmer was right since there were no explicit limits to the king's power. "Government was still the king's business and it was not for the Commons to meddle with matters of State and high policy." Cf. White, op.cit., pp. 90-97.

⁴¹Patriarcha, pp. 110-12.

law of the realm or part of the ancient constitution is difficult to conceive. History tended to reveal quite conclusively that the Lords and Commons neither did sit together nor vote in one body. In cases where they were in the same chamber with the Lords, it was merely to listen to the debates and not to vote or advise the king.⁴² The Commons, it was true, did elect a Speaker, but it was equally true that their choice could be disallowed by the king at will.⁴³ Thus, Coke's view, concerning the nature of Parliament, was supported neither by history nor by legal precedent.

Having established the king's relationship with the Commons, Filmer goes on to inquire into his association with the Lords. If it is found that they are identical there will be little difficulty in determining where the ancient constitution intends sovereign power to be situated. Here again Filmer will examine the writ of summons to the Peers and base his conclusions on its interpretation.⁴⁴ The

⁴²Filmer actually thought it trifling to claim that the Commons were equals with the Barons; the fact that they must "stand bare with their hats in their hands", while the Lords "sit covered" testified that they were not "fellow-commissioners" or "fellow counsellors". Freeholder, p.135.

⁴³Freeholder, p. 148.

⁴⁴The Latin version of the writ along with its English translation is given by Filmer in the Freeholder, pp. 151-2. See also The Harleian Miscellany, Vol.I, p. 245.

Lords, generally speaking, served in a deliberative and consultative capacity but their major function is to serve as a judicial body. As counsellors, Filmer insists, they have absolutely no power to command their consultation to be implemented,⁴⁵ while as judges they merely represent the king in his absence. As Filmer states, "regularly a counsellor hath no power but in the king's presence and a judge no power but out of his presence".⁴⁶ Thus, when the Lords do issue commands or pass judgment, it is only to carry out the king's will with which they are supposed to be familiar as a result of their consultative function. The king, being the author of the laws, will naturally know how to apply them best but, as a matter of expediency, he lets his justices do it for him. Thus, in actuality, "the King and nobody else ought to give judgment if he were able, since by virtue of his oath he is bound to it. Therefore the King ought to exercise power as the vicar or minister of God."⁴⁷

⁴⁵While consultation was required in matters concerning "the state of the realm", the king still made the final decision. See Post, op.cit., p. 408.

⁴⁶Freeholder, p. 153. As mentioned Parliament never really came into its own as a legislative body until the nineteenth century. Thus, when Coke spoke of Parliament's supremacy he no doubt was referring to its judicial function and not its legislative function. As such, his arguments would take on a different appearance. See Gough, op.cit., pp. 13, 25, 32-48.

⁴⁷Patriarcha, p. 109, and Freeholder, p. 154.

In the same way that the king ought to carry out the will of God, the Lords ought to enforce the will of the king, the major differences being that the will of the king is much more explicit than the will of God - although they are supposedly the same - and that, on earth, the Lords are immediately subject to correction and punishment whereas the king is not.

To support his case, Filmer examines several precedents. In so doing he finds proof that the Lords always wait for word from the king before carrying out punishment in doubtful cases, and that they always beg forgiveness from the king in cases where they have acted or judged contrary to his will. This, in Filmer's estimation, provides conclusive proof as to what arrangement exists between king and Lords. It leaves little doubt as to where sovereign power is situated. In concluding after his perusal of interminable precedents,⁴⁸ he says, "the inference from these precedents is that the decisive or judicial power exercised in the chamber of Peers is merely derivative, and subservient to the supreme power, which resides in the King, and is grounded solely upon his grace and favour...The difference between a Peer and a Commoner is not by nature

⁴⁸The precedents examined can be found in the Freeholder, pp. 144-56.

but by the grace of the Prince."⁴⁹ Thus, all judicial, legislative and consultative functions or rights are viewed as being dependent upon the good will of the prince by right of the ancient constitution.

To claim that in the formative years the legislative power (sovereign power) came to be divided in Parliament between the Lords and the Commons⁵⁰ was frivolous. It was, in Filmer's opinion, contrary to "the constant ancient declaration of the kingdom"⁵¹ as well as contrary to the nature of monarchical rule. Laws might have been made by the Parliament but, as we have seen, this simply meant that the king ordained, the Lords advised, and the Commons consented. The king "presided over the assembly, not as a mere president or chairman, but as the highest administrator, judge, and legislator representing the public good".⁵² Sovereignty was obviously an attribute of the monarch for, surely, consenting and advising were no such power as ordaining. How the parliamentary supporters could appeal to

⁴⁹Freeholder, p. 156.

⁵⁰See The Harleian Miscellany, Vol.II, pp. 128-36, Vol.V, pp. 194, 264, and Vol.VI, pp. 300-4, where the opinion is expressed that the Parliament, in the absence of the king, is the "fountain of our laws", but its prerogative is "usurped" and "abused by Kings".

⁵¹Freeholder, p. 157.

⁵²Post, op.cit., pp. 115-6.

ancient practice was something Filmer could not fathom since ancient parliamentary practice and statutes were laden with examples of how the king "commandeth", "hath established", "hath ordained", and "hath willed".⁵³ It was only too clear that "the king enjoyed in his public office as head of the realm, and in his prerogative, the final right to interpret, to judge, and to decide what belonged to the public law of the State".⁵⁴ Thus, legal history, it was plain, could only support Filmer's assertion that the king was master over both Lords and Commons - that he exercised sovereign power.

As further proof, Filmer points to the ancient statutes which always referred to "the King in his Parliament". To Sir Robert, this could mean only that the king could direct Parliament as he wished. He presented as evidence several cases where both Houses of Parliament were overruled by the king, and by his council or judges acting on his behalf. There was also more than enough evidence supporting the view that the king could add or delete sections of legislation at will, and indicating that he was final judge in all matters.⁵⁵ Thus, in terms of the letter of the law, Filmer's claim that

⁵³Freeholder, pp. 158-63.

⁵⁴Post, op.cit., p. 566.

⁵⁵For the evidence he presents see Patriarcha, pp. 119-26.

the ancient constitution reflected the king's sovereign power was sound.⁵⁶

Lastly, Filmer's opponents often stressed the immemorial nature of parliamentary privileges. They, in effect, claimed that such privileges always existed, were firmly embodied in the ancient constitution, and as such were beyond the scope of the king's power. Filmer, on the other hand, was of the opinion that these "privileges are granted with a condition implied that they keep themselves within the bounds and limits of loyalty and obedience".⁵⁷ While the members had a special protection from arrests and lawsuits, and had special privileges of speech and taxation, "none of these privileges or protections do give any power; they are not positive but privative...they do but serve as a dispensation against law, intended originally, and principally for the expediting of the King's business".⁵⁸ As such they were entirely dependent upon the grace and good will of the king.⁵⁹

⁵⁶Actually the king was limited on theoretical grounds by "the public welfare of the corporate body of the State". This meant that he could not pass any laws or alienate any of his public rights where such action would have an adverse effect upon the welfare of the State. It was, however, an empty limit since in his "body politic" he had the right to determine what was in the interest of the State. Cf. Post, op.cit., p. 567.

⁵⁷Patriarcha, p. 118.

⁵⁸Freeholder, p. 175.

⁵⁹See The Harleian Miscellany, Vol.I, p. 242, where the opinion is stated that the king "may freely give and bestow honours".

Once again, Filmer produces legal evidence to make his point. Several precedents as well as the writ with which privileges are granted substantiate the view that "privileges are derived from the bounty or indulgence of the king".⁶⁰ Using the maxim, "that which gives the form, gives the consequences of the form", he can say, "the King by his writ gives the very essence and form to the Parliament: therefore, privileges, which are but consequences of the form, must necessarily flow from Kings".⁶¹

The only alternative Filmer could see was the granting of such privileges to the members by the freeholders. Yet, this was impossible for how could someone under the law dispense others from the law? If they themselves had no privileges of speech and taxation or protection from arrests, how could they bestow such rights on others? You could not give away that which you did not have yourself. The king alone was above the law, according to Filmer, and thus it was only he who could grant privileges or dispensation from the law. The right of granting privileges "is by so

⁶⁰Patriarcha, p. 118. See Freeholder, pp. 175-83, for the precedents he examines to support his case.

⁶¹Freeholder, p. 183. Privilege, it is true, did evolve from the king's will but not really his free will. From the time of Henry I there was often competition for the throne as well as rebellious popular elements which virtually forced the king to grant privileges. As it was, resistance in the name of privilege was to pave the way for resistance in the name of liberty.

ancient a prescription as that it may justly be said to be from God alone, and that no power on earth can dispute it".⁶² Thus, in the end, Filmer could in no way understand how the supporters of Parliament could justify their claims by appealing to an ancient constitution or to law immemorial.

Filmer, as one can see, never tired from stressing his arguments and convictions concerning the nature and necessity of a sovereign power. As far as he was concerned sovereign power, as a possession of the king's, was absolute and arbitrary and any arguments aimed at limiting it would always be futile due to the nature of things. Nature demanded that there be a sovereign power and, as he saw, there were but two alternatives as to where it could be situated. If it resided with the king we had order and if it resided with the people we had anarchy.

The unusual aspect of his legal argumentation, however, was that to someone unacquainted with his other views it might pass more as a treatise on constitutionalism than absolutism. Considering that his Patriarcha was not published during the "Interregnum" it could be assumed that very few were familiar with his patriarchal theory or with the implications of his doctrine of political sovereignty.

⁶²Cf. Gough, op.cit., p. 150, where he quotes from the writings of Daniel Finch, a royalist, who wrote in 1680.

It thus was understandable that Filmer became quite influential as a result of his legal arguments in the Freeholder. As Pocock says, "it inaugurated debate for the following forty years".⁶³ It must be remembered, however, that almost any attempt to limit Parliament's power after 1649 was welcomed in most circles. By this time Parliament had taken upon itself sufficient power to subvert the whole governmental system. It, for instance, claimed that it could put the king on trial, abolish the monarchy, abolish the Lords and expel its own members by majority vote.⁶⁴ Under such circumstances Filmer's attack on parliamentary sovereignty could easily be allied with the general resistance movement.

The Levellers and the Diggers, the two prominent resistance groups, had their own versions of the fundamental law,⁶⁵ but, like Filmer, they were dissatisfied with the existing arrangement where Cromwell and his associates ran the country with a free hand. While the views of both these resistance groups centered around the notions of consent, equality and limitation by fundamental law, Filmer was more

⁶³Pocock, op.cit., p. 151.

⁶⁴See Gough, op.cit., pp. 98-116, where these claims and the resistance to them are explained.

⁶⁵See Sabine, op.cit., pp. 479-95.

interested in juxtaposing sovereign power. That is, his attack against parliamentary sovereignty was aimed, not at abolishing such power, but at transferring it to the king. Thus, while his arguments against parliamentary absolutism were welcomed, his doctrine was not. Yet, even absolute monarchy was not rejected readily for, "if the divine origin of kingship were expressed in terms of ancient English custom rather than of scriptural warrant, it became plain that the immemorial monarchy was the best guarantee of the immemorial law".⁶⁶ To Englishmen of the seventeenth century, absolute monarchy, tempered somewhat in practice by custom, was much more appealing than a dictatorial Protector such as Cromwell. As Bagehot said, "the Cromwellian republic and the strict puritan creed were utterly hateful to most Englishmen". They were "the sole revolutionary force in the entire State and were hated as such".⁶⁷ In an atmosphere such as this it was not surprising that even Filmer's reactionary ideas advocating absolute monarchy found some measure of acceptance.

Filmer's legal-historical argumentation, as we have seen, was intent on tracing the origin of the Commons to a particular date (49 H. III). Through his interpretation of

⁶⁶Pocock, op.cit., p. 156.

⁶⁷Bagehot, op.cit., p. 260.

the writ of summons and his perusal of innumerable precedents he was able to conclude that its existence, rights, and privileges were all dependent upon the king's grace and good will. At the same time he was able to bring the Commons within the bounds of an ancient constitution rather than under the king's will; although this ultimately meant the same thing. Paradoxically, his argument was based on the fundamental law of the realm; yet his thesis was aimed at destroying the whole concept of immemorial law. While using immemorial law as a basis for attacking the views of his opponents, he at the same time defined the law as an expression of the sovereign's will. Where law was the expression of the king's will it could hardly be called immemorial.

On the whole, the encounter between Filmer and the common lawyers revealed that Sir Robert had a decided advantage. He simply stated that all laws had to come from somewhere or somebody. By arguing in terms of immemorial law, his opponents were put in a position where they had to prove that such law existed before England or even before the Creation. Unless you illustrated this, it would prove difficult to assert that a law was immemorial; especially a law which made the Commons part of the Common Council. Filmer provided an answer by claiming that in the beginning law came from one man empowered by God. It was certainly quite logical to say that law originated at some point in

time and that it had a particular author. How else could it become law except where it was allowed or expressed by the will of a man? From here it could take two directions: it could be said that it came from the wills of all men (general will), or it could be said that it came from natural law. If the latter approach were taken, as it was by Filmer⁶⁸ and by Locke, argumentation would virtually be removed from the plane of history.

There were principally four ways in which Filmer might have been countered in his constitutional argumentation. These were: the way he was countered before Locke, the way Locke did answer him, the way Hobbes might have approached the problem, and the way a few scholars of the age might have opposed him by arguing from custom. Before Locke, we had seen how the common lawyers argued in untenable terms. By appealing to immemorial law rather than custom they would be met on their own ground, as they were, and exposed to logical criticism. Hobbes, meanwhile, probably would have acknowledged the Conquest and argued from the absolute right of a conqueror. Law would remain the expression of the king's will, but by right of conquest rather than by right of an ancient constitution.

⁶⁸Filmer is essentially a natural law theorist but he will not hesitate to use historical argumentation, as he does in this case, if it will serve his purpose.

Thirdly, it could have been argued, that common law was the product of custom. Over the years a series of wordless decisions could have resulted in accepted law which, due to the gradual process, could not be identified with a particular date. Common law as such would not be a body of unchanging custom but "a living and changing organism, deriving its binding force from the fact that the king and people willingly accepted it".⁶⁹ The scholars who argued from this point of view would search for meaning beyond the letter of the law, would attempt to understand the feudal phase of English history and account for the changes, and would view the Commons as coming into being through a gradual historical process too complex to be the result of the king's will. The more prominent antiquarians who approached the common law in this way were Sir Henry Spelman, Sir Matthew Hale and Robert Brady.⁷⁰ Although their views were not used to oppose Filmer, it is certain he would have

⁶⁹Gough, op.cit., p. 14.

⁷⁰Spelman wrote his Archaeologus in 1626 but the thought it projected was not really understood and thus not used until much later. Hale, a Chief Justice of the King's Bench, is known for his History of the Common Law written just before he died in 1675, a few years before the "Exclusion Controversy". Brady, meanwhile, picked up where Spelman left off and wrote several books between 1681 and 1686. After him the year 49 H. III lost much of its relevance as he virtually nullified the importance of medieval practice to the politics of the day. See Pocock, op.cit., pp. 90-130, 170-81, 191-215.

found some way to oppose them. We saw earlier how Filmer thought custom to be as dependent upon the king's will as statute law. Custom, he said, would have never been allowed had it not been sympathetic to the king's will.

Finally there were James Tyrell (Patriarcha non Monarcha), Algernon Sidney (Discourses on Government), William Petyt (The Ancient Right of the Commons of England Asserted),⁷¹ and John Locke, all eminent Whig spokesmen. All but Locke were seventeenth century traditionalists in the sense that they countered Filmer's constitutional arguments on historical grounds. As a result, their successes, like those of their predecessors, were limited. Locke, meanwhile, approached Filmer from an entirely different angle. In fact he only questioned Filmer's patriarchal arguments and provided alternatives to his other propositions, while completely neglecting his constitutional arguments. As one writer said, "he answered him on the plane of the sacred, not national history".⁷² Locke was quick to recognize that constitutional history had no sympathy with his position and thus, rather than attempt to re-interpret history, he chose simply to remove all argumentation from the historical plane.⁷³

⁷¹See Gough, op.cit., pp. 151-3, and Pocock, op.cit., pp. 180 ff.

⁷²Pocock, op.cit., p. 235.

⁷³The possibility exists, however, that the last portion of Locke's works do meet Filmer's constitutional arguments, but it seems unlikely.

Locke, like Filmer had done earlier, based his argument on natural rights. Unlike Filmer, however, the basis of his system was the natural rights of the individual rather than the natural rights of a father or a king. As such, law was not seen as the expression of a single arbitrary sovereign will, but as ultimately deriving from the laws of nature and reason. By nature men were proclaimed free and equal and thus by natural right all had a voice in the setting up of machinery to govern over them. In this way their natural right to "life, liberty and property" would not be put at the mercy of an arbitrary sovereign power. Thus by appealing to the principles of nature and reason, Locke was able to find an ultimate guarantee against an arbitrary sovereign will outside of constitutional history. Since law was not seen as being completely dependent upon an arbitrary will, precedents of such a nature lost much of their importance. The past, while not totally discounted, was no longer seen as being so relevant to the present. In short, political rationalism virtually suppressed the idea of an ancient constitution which determined rights, duties and privileges. Natural rights were now to serve as the foundation of all government.⁷⁴

⁷⁴The above reflects the "radical" part of Locke's thought for a close examination will no doubt reveal that deep down he is actually a conservative who dislikes revolutionary and violent change and who respects historical decisions.

While Locke minimized the importance of constitutional history he by no means completely neglected it. We have, for instance, seen him examine biblical history in tedious detail in an effort to refute Filmer's patriarchal arguments, and we have seen him speak of the Conquest as well as of the historicism of the state of nature. However, since history only revealed what was, rather than what ought to be, he could not attach to it the importance that most Englishmen did. As he saw it, nature and reason, rather than history, determined what the proper relationships should be between men. Thus, while Locke's approach differed radically from that of the traditionalists, it no doubt accounts for his importance in democratic political philosophy.

Filmer, we may finally conclude, takes an approach which is more philosophical than historical. His constitutional argumentation, we find, is guided principally by his basic assumptions and his conception of sovereignty. That is, the legal-historical facts he presents are merely being incorporated into the metaphysically based political theory of order. As a result, law, whether it be statute or common law, always remains as the expression of the sovereign will of the "one". Ancient or medieval law, as it was, favoured the royalists and thus as long as the supporters of Parliament appealed to immemorial law their arguments could hardly

stand. Thus, if nothing else, Filmer at least forced his opponents to revise their arguments on the matter or to take an altogether new approach.

CHAPTER VIII

CONCLUSION: FILMER IN SUMMARY AND PERSPECTIVE

Having examined Filmer's cosmological assumptions, and his scriptural, philosophical and historical positions, we must now synthesize them so that we may arrive at a conclusion with respect to his thought. The chapter dealing with his basic assumptions left little doubt as to the direction his thought would take and made it plain as to how he would argue his case on most occasions. The various arguments and accompanying explanations have made it clear, it is assumed, where he has stood with respect to the major issues of politics. It is also hoped that the reader can distinguish between the essentials of his thought and that which is not absolutely essential. If so, it should have been realized that the scriptural element, so frequently attacked and ridiculed, has been by no means the sole basis, nor the most important aspect, of his thought. If the reader has kept in mind the basic assumptions outlined in the second chapter, he no doubt will have recognized that, in most of its essential aspects, Filmer's thought has been quite rational and logical within the framework of order theory.

Apart from synthesizing Filmer's arguments and summarizing his thoughts, it will also be necessary in this

conclusion to outline in very general terms the subsequent development of political thought so that he may be put in proper perspective. In this way it no doubt will be found that his thought merely represents a rejected phase in the development of political thought, or as Hegel would say, a necessary moment in the process of actualization.

Filmer's Patriarcha, it is true, is a somewhat rambling and incoherent survey which, for the most part, lacks a purposeful direction and clear cut conclusions. At first glance it seems to consist of little more than a series of dictums and statements concerning natural subjection, Adam's power, the power of kings, the evils of democracy, and the excellency of monarchy. Such propaganda-oriented statements presented in this form are easy prey to Locke's keen mind. Yet, by examining the Patriarcha in conjunction with Filmer's other works, we have discerned both positive and negative propositions, firmly based on order theory and historical evidence, which Locke totally ignores in his castigation. The soundness of these propositions, we have found, depends to a large extent upon the accepted relevancy of historical evidence and the acceptance of certain assumptions concerning the nature of the universe. While constitutional history lost much of its importance after Locke, and while the conception of the universe as a "great chain of being" lost much of its popularity, we have presented

evidence indicating that, in Filmer's time, both have been widely accepted. On the basis of this, we must consider his thought to be sound so long as his historical evidence is accurate and so long as his reasoning is compatible with order theory.

What was political society? We have found that Filmer, like many medievalists before him and like the nineteenth century idealists, such as Kant and Green, after him, thought political society to be a natural phenomenon. That is, he thought it to be based on a natural bond rather than the intellectual bond that the social contract theorists assumed.¹ Furthermore he thought political society to be hierarchically ordered,² naturally, with all power concentrated at the acme in the office of the king. The rule of one, accepted as a natural tendency in all creatures, was thought to be ordained by God and thus hardly needed

¹It should be pointed out that the contract theorists, in a sense, viewed political society as a natural phenomenon. That is, they believed states developed naturally in response to the natural needs of men living in a world basically motivated by passions. Thus they saw it developing in response to a lower naturalness. Filmer, however, could conceive of only one level of naturalness - the natural law ordained by God - and thus felt political society was ordered in accordance with God's will, not the natural needs of men. See Post, op.cit., pp. 495-560.

²The idea of a hierarchically ordered society continued to flourish in some circles long after Filmer's time; especially in social Darwinist and modern absolutist thought.

justification. Filmer, however, went further by trying to justify it scripturally, historically and philosophically. His conception of patriarchalism emerged from scripture and history, and his idea of absolute and arbitrary rule surfaced from Bodin's conception of sovereignty and his basic assumptions. Filmer's originality, ultimately, consisted in combining the popular notion of sovereignty with his patriarchalism in such a way as to present a unified whole of what was previously a series of unrelated statements. The unified whole, of course, depended on his basic assumptions which, if not accepted, would signify the rejection of his theory. This, essentially, was what happened with Locke who merely questioned Filmer's biblical evidence without recognizing the cosmological assumptions upon which most of the propositions were based.

On the negative side, Filmer's attack on the contractual school was quite sound and followed logically from his basic assumptions. However, his lack of concern for a practical system of politics, signified by his logical extremist stance, made his criticisms somewhat barren and insignificant, except as propaganda; yet, empirically and historically, he was on firm ground. It was, for instance, quite evident, in his day as well as in antiquity, that very few, if any, governments were strictly based on the principle

of consent.³ Furthermore, where government was to some degree based on the consent of the people, faction and disorder seemed to be the rule.

The notion of a social contract, meanwhile, seemed just as ludicrous to Filmer as it was to be later for David Hume and T. H. Green. In view of historical and empirical evidence, the social contract, he could conclude, had its origin in the imagination of those who believed in it, and was designed for the express purpose of flattering the people and stripping the king of his natural power. Thus, as far as Filmer was concerned, the basing of political obligation on his idea of a patriarchal sovereign power was no more foolish than basing it on the principle of consent and the imaginative notion of a social contract.

What was to be said of natural freedom and equality? Unfortunately we seldom differentiate between the notions of equal and unequal, and same and different. Since the first is answered deductively and the second inductively or empirically, confusion can result if a distinction is not made.⁴ Filmer, we find, approaches it from both directions.

³Hume's historical survey, we find, led him to conclude that all governments were based more on force than consent. See Barker, *Social Contract*, *op.cit.*, pp. 148ff.

⁴A. Hacker, *Political Theory: Philosophy, Ideology, Science* (New York: Macmillan Comp., 1961), pp. 39-40.

Empirically it is an easy task for him to illustrate that men are not all the same and that they are not free to do as they please. On the deductive side, alternate viewpoints can always be reduced to ultimate values or basic assumptions which cannot be proved or disproved. The ancients, for instance, found slavery to be "an inescapable premise of civilization", while the moderns have usually presupposed natural freedom.⁵ In both eras rational justification, it was believed, existed for the dominant point of view. We cannot, unfortunately, agree with both if we agree with one; yet we should be able to understand both. Filmer's assumptions, as we have found, are essentially ancient and thus on this matter he must be so classified. However, we must realize that if we reject his assertions on the matter, we are merely rejecting his assumptions in much the same way that Hitler and other modern despots have rejected Locke's assumptions.

What was the purpose of government? While Locke thought government to be a mere convenience, Filmer, like T. H. Green, looked upon it as a necessity with a specific purpose. That is, he saw it as existing principally to

⁵A.N. Whitehead, Adventures of Ideas (New York: Macmillan Comp., 1933; Mentor Book Edition), pp. 1, 25-6. Furthermore, Canon Law theorists of the Middle Ages believed that "inequality was part of the divinely ordained order". See Wilks, op.cit., p.59, and D'Entrevies, Aquinas: Selected Political Writings, op.cit., pp. 99-104.

promote the good life, a life of peace and godliness, which could only be attained where the natural order - the order ordained by God - was preserved. Thus, if the individual was to realize his moral perfection, anarchy, or divergence from the divine order, had to be avoided at all costs.

Considering Filmer's assumptions concerning the natural order, along with his notion of sovereignty, it was certainly logical for him to insist that the system could be maintained effectively only where an absolute and arbitrary monarch reigned, and where a natural subjection existed to guarantee absolute obedience. Since monarchical government was, in Filmer's opinion, God's choice, and since it was also the most stable and efficient form of government, there was no question of an alternative. Filmer virtually assumed that a king, like a father, would act in the best interests of his subjects (children), and thus would make every effort possible to promote justice and maintain God's ordering. The alternative, popular government, he had illustrated could lead only to self-destruction since it divided sovereign power and virtually invited each part to act in its own interest, thereby promoting sedition, faction and rebellion.

Since the natural order had to be maintained at all costs, Filmer had to advocate a system characterized by the complete subjection of subordinates to superiors. If the ruler was to promote the general interest of the community

in an effective way, absolute obedience was a necessity. He thus believed strongly in the existence and need for a strong moral authority in government if anarchy was to be avoided, and peace and harmony achieved. The people, he believed, only provided an indefinite amount of coercive power and thus it was necessary that a moral sense of obligation exist: for government to be truly effective. We have seen Filmer insist that where a contract amongst the people constituted the basis for obedience, government would have to be based on force and fear, which could hardly provide a stable foundation for the sacred institution of government.⁶ Where man thought himself to be the creator of political society and the ultimate source of sovereign power he would feel less obliged to obey his rulers, and there always would be a threat of disorder.

The moral authority of government, thought by Filmer to be necessary for the continued existence of an ordered society, in effect would be destroyed if the notions of freedom, consent and contract were accepted.⁷ Subjects,

⁶It is of interest to note that Locke accuses Filmer of making government "the product only of Force and Violence". Second Treatise, Sec. 1. Locke's accusation is based on arbitrary sovereign power being concentrated in the person of the king, while Filmer's accusation stems from the fact the arbitrary sovereign power is made the property of the multitude.

⁷The nineteenth century idealists, especially the German philosophers, it could be noted, instead of rejecting the sacred notion of freedom, manipulated around it by speaking of objective or true freedom within the almighty State.

he claimed, had to feel from the receptacles of their hearts that it was necessary to obey if they wished to remain free of sin and if they hoped to realize the good life. It was this sense of the duty of obedience which was the priceless legacy "bequeathed by Filmer to our age".⁸ It was this feeling of allegiance to government, so often absent in the modern age, which was necessary for effective and orderly government. However, unless it was tempered by utilitarian and ideological considerations, it also could be a very dangerous thing. In Germany, for instance, a deep sense of moral obligation made it "inevitable that they would follow him [Hitler] blindly, like dumb cattle but also with a touching faith and even an enthusiasm that raised them above the animal herd".⁹ Filmer no doubt recognized the dangers associated with blind obedience but was committed into

⁸Figgis, op.cit., p. 266.

⁹W.L. Shirer, The Rise and Fall of the Third Reich (New York: Simon and Schuster, 1966), p. 1082. Several observations made by Shirer concerning the individual's duty to obey are relevant since they reflect to some extent what Filmer is advocating. Shirer points out, for instance, that the Germans "were taught not only by the kings and the drill sergeants but by the philosophers that their role in life was one of obedience, work, sacrifice and duty". The result was that "the people were little more than cogs in the machinery...acceptance of autocracy, of blind obedience to the petty tyrants who ruled as princes, became ingrained in the German mind...blind obedience to temporal rulers [was] the highest virtue of Germanic man". Ibid., pp. 93, 92, 1081.

believing that kings would treat their subjects as their children, and would act in accordance with God's just laws.

In view of the above propositions, it was quite understandable for Filmer to conclude that there was no such thing as a tyrannical government. A king remained a king regardless of how he came to the throne and no matter what he commanded. Filmer, of course, limited him by the law of nature and reason, but it was obviously a dubious limit since the sovereign prince was the official interpreter of such law, and was exempt from punishment on earth. Law remained the expression of the sovereign will whether one called this sovereign a king, a despot or a tyrant.

Sovereign power was by nature indivisible and all-inclusive, and, thus, where it was divided, as in democracies and aristocracies, stability was a virtual impossibility. Filmer admitted that such crude forms of government could subsist temporarily, but insisted that peace and godliness could never flourish therein and that individuals could never realize moral perfection. Historically, Filmer was on firm ground but, if we believed that history supplied all the answers to our problems, we would, in effect, be denying the possibility of the progress and perfection of human organization through human efforts. History may have much to teach us but we must still question the past and attempt to build

on it if we are to progress.¹⁰

While Filmer is hesitant in admitting it, he no doubt is quite aware of the fact that his assertions add up to a "bone fide" case for despotic government. His king or sovereign, in effect, resembles "a superior intelligence which can survey all the passions of mankind, though itself exposed to none: an intelligence having no contact with our nature, yet knowing it to the full: an intelligence, the well-being of which is independent of our own, yet willing to be concerned with it...[and which] will labour in one century to reap its reward in another".¹¹ This is a description of Rousseau's legislator or, more properly speaking, of a god. This is Filmer's absolute ruler who, in his "body Politic", knows what is good for the society and its members, and will rule accordingly. Upon taking office the ruler sheds the imbecility of his earlier years and suddenly his potential knowledge becomes actuality.

Apart from the above explanation Filmer views his king as having the same emotion and goodwill towards his subjects as a father will have towards his children. As a

¹⁰Parkinson, op.cit., p. 316. Filmer's thought, in attaching so much importance to the maintenance of a static divine order, is obviously anti-humanist and anti-progressive.

¹¹Barker, Social Contract, op.cit., pp. 204-5.

result he simply cannot conceive of rulers consistently twisting the law so as to make it a vehicle for their personal ambition. The way he sees it, a king has a fatherly responsibility, of which he is fully aware, towards his subjects which he will naturally strive to meet.

History may have revealed that there are many responsible rulers striving for the good of their subjects, but it has also illustrated that there are far too many irresponsible sovereigns. Commentators, as a result, very seldom share Filmer's confidence in the virtuousness of absolute rulers and the advantages of absolutist rule. One author, for instance, commenting on John Stuart Mill says, "Mill cannot conceive of rulers so steeped in virtue and wisdom that they may always be counted on to understand the problems of those they govern".¹² Having faith in the virtue and wisdom of rulers may guarantee orderly government but it could hardly be considered as an assurance of good government. A present day writer, meanwhile, claims that if you treat a man as a god he will soon begin to act as a god in pursuit of his own interests. He goes on to say that, "absolute power not only corrupts but it invites paranoia".¹³

¹²Hacker, op.cit., p. 575.

¹³Time Magazine, March 29, 1968, p.82. From a review of T.H. White's book entitled Caesar at the Rubicon: A Play About Politics. It is of interest to note that in 1910 Wilhelm II of Germany stated that the royal crown was "granted by God's grace alone and not by parliaments, popular assemblies and popular decision....Considering myself an instrument of the Lord, I go my way." See Shirer, op.cit., p. 95.

Likewise, Shirer, using Mussolini as an example of an arbitrary ruler, says, "like all dictators he was carried away by power, which, as it inevitably must, corrupted him, corroding his mind and poisoning his judgment".¹⁴

There are others, meanwhile, who display little confidence in the advantages of absolute and arbitrary rule. Edward Crankshaw, a present day authority on Russian politics, we find, claims that such government breeds inefficiency and corruption, and leads to "a lack of initiative and to sycophancy". The resultant political stagnation, he says, may eventually lead the regime to destroy itself.¹⁵ At the same time, Filmer's goal of a perfectly ordered society is also considered as undesirable. Karl Jaspers, we find, recognizes the inherent dangers of attempting to build well-ordered states, such as Filmer's, and pleads on the basis of Germany's recent disastrous experience that the idea be abandoned. As an alternative he suggests that the state be based on individual political and moral responsibility.¹⁶

¹⁴Shirer, op.cit., p. 997.

¹⁵Crankshaw, op.cit., pp. 61, 69, 224-5. The author in this instance is speaking of arbitrary government in the absence of a moral authority which Filmer, as we have seen, insists must exist in the State.

¹⁶Time Magazine, Jan. 19, 1968, p. 6. From a commentary on Jasper's book entitled The Future of Germany.

One must sympathize with his plea, for a perusal of W. L. Shirer's The Rise and Fall of the Third Reich will reveal how closely some of Filmer's ideas resemble Hitler's, and how similar the ordering of pre-war Nazi Germany was to Filmer's well-ordered state. In fact, Hitler's views on equality, freedom, law, the type of rule, and the nature of power and authority were virtually the same as Filmer's. Like Filmer's absolute ruler, Hitler felt he was carrying out the will of God. By no means, however, would Filmer have sanctioned Hitler's reign of terror totally devoid of moral responsibility; although he may have tolerated it if he thought anarchy to be the only alternative. Thus, while his intentions were noble, his thought, like that of most idealists and organic theorists, had a definite tendency towards totalitarian government.

"God forbid", warned Voltaire, if the people ever came to possess sovereign power. He, like many others, however, came around to sympathize with democratic principles once he realized that the virtue and wisdom required to promote desired ends belonged more to gods than to enlightened rulers.¹⁷ Filmer's mind, however, was not susceptible to change for too deeply ingrained in his mind was the notion

¹⁷W. Durant and A. Durant, Rousseau and Revolution (New York: Simon and Schuster, 1967), pp. 143-4.

that the masses, totally ignorant of what was good for them, needed an absolute ruler to guide and order them. He certainly did recognize the possibility of this guide, the king, becoming despotical, but, even so, felt that it was more advantageous to tolerate a tyrant than to succumb to democratic government. A despot, he believed, certainly would have a greater interest in preserving the existing structure, and thus, by the same token, despotical government would be less destructive to the natural order. It was also obvious to Filmer that a tyrant would only revenge his enemies or those acting contrary to his law and as a result would not subvert the whole system. One wonders if Sir Robert ever conceived of a tyrant like Hitler who had so many enemies and who passed so many absurd laws - written and unwritten. His concern with maintaining order and preventing discord probably left him little time to wonder about such things.

One can hardly deny that history supported Filmer's assertions concerning the orderliness of monarchical governments as compared to democratic states. There seemed to be little doubt, if the maintenance of order were the criterion, that experiments in democracy in and prior to the seventeenth century failed miserably in most cases.¹⁸ Equally true was

¹⁸See Guicciardini, *op.cit.*, where evidence was given indicating that the Italian city-states failed miserably in their experiments with democratic government.

the fact that, where absolute monarchs ruled, disorders were kept to a minimum. It should, however, be realized that the people were not always oppressed when exposed to absolutist rule. In fact the opposite was nearer the truth in England prior to Filmer's time. When Parliament was stronger, it meant that the privileged class had considerable local power with which they usually suppressed the lower classes. Thus, when this power was transferred to the king, it actually widened the scope of freedom for the oppressed.¹⁹

The crux of the problem, it seemed, was the absence of a mechanism whereby peaceful change could take place. So long as this situation persisted a change in governmental form could only come about through violent means, which usually meant revolution. Witness for example the French, American and Russian revolutions. The bloodshed and anarchy, so apparent in these instances, was essentially what Filmer feared and wished to prevent. It was why we found him pursuing such a conservative, deterministic, anti-progressive and anti-humanist philosophy. Similar philosophies were to appear a century and one-half later with du Bonald and de Maistre for precisely the same reasons. They, like Filmer, pursued reactionary doctrines because they believed lasting institutions could only be built on a religious foundation.

¹⁹Parkinson, op.cit., p. 118.

As ultra-conservatives, however, their doctrines, like Filmer's, were too far removed from reality. Human nature might have its neophobic (fear of change) side but it also had its neophilic (desire for change) character. As a result we would always find human beings who were curious, who desired new things and who were always exploring and accepting new ideas.²⁰ Let us hope that we have progressed to the point where change need not be accompanied by revolution.

Whenever a political theorist is trying to make a point, he usually conceives of everything as being black or white, for, to admit of a grey zone, will be to admit uncertainty. Filmer is no exception as he moves from one extreme to the next in his assessment of issues. For instance, when there is general agreement that the aim of political society is to seek the common good, disagreement arises as to what constitutes the common good and how it should be achieved. Decisions thus are required and, as we have seen, in matters of decision there are but two possibilities as far as Filmer is concerned. That is, decisions can be made only by the sovereign prince or by the sovereign multitude. In demonstrating the impossibility of a general

²⁰D. Morris, The Naked Ape (London: Jonathan Cape, 1967), pp. 129-45.

will and thus the inability of the people to arrive at decisions, he feels he is making a good case for absolute monarchy. The choice with which he leaves us - between anarchy and monarchy - as a result is hardly a choice. One mind, it is logical to conclude, can act much more effectively than a multitude of minds interested only in particular causes. Thus, unless the possibility of a general will can be demonstrated, he feels he has little choice but to argue for absolute monarchy.

Filmer could have presented an excellent theoretical case for absolute monarchy on an historical and philosophical basis but, as his patriarchal theory illustrated, he chose to go further. His basic assumptions, his conception of sovereignty and his historical evidence could have been used quite successfully in making his case. He pursued the point further, however, since he had the good sense to realize that a state, if it was to be stable, had to rest on a sense of moral obligation. That is, he saw that a system of belief was essential if the society was to be integrated. Thus, rather than simply appealing to the ancient rights of fathers and kings, he ascribed divinity to kings via the naturalness of the fatherly power. According to his formula, he believed that if kingship could be proven to be a divine institution it would automatically be labelled as natural. In this way he could base his theory on the immutable founda-

tion of natural law. It was thus essential that he presented evidence demonstrating God's approval of monarchy. Hence we found him developing his patriarchal theory by inductive method. The use of this method of reasoning, as we saw, led to his biblical exegesis on which Locke concentrated his attack. Yet, even on his interpretation of the Bible, Filmer could not be denied outright. Who, after all, was an absolute authority on the interpretation of the Bible? It was so nebulous in many places that justification would be found for nearly any belief. In fact, if one examined modern bibles closely, he would find that they have often been reworded or revised by way of explanatory footnotes so as to guard against undesirable interpretations. Thus, while Locke's interpretation of the Bible might be more acceptable to most people, including this writer, this did not necessarily mean that he was right and Filmer wrong. Biblical history, in fact, supported many of Filmer's political views. It was for this reason, amongst others, that the Bible has been abandoned as a textbook on politics.

Does this mean that Filmer also should be abandoned? This must be answered in the negative for, apart from whether or not we accept his biblical interpretation, we should recognize that it was not the sole basis of his thought. In fact, it was not even absolutely essential that he elaborate on the grants to Adam or Noah, but, of course, had

he not there would be nothing special about Filmerism. Whether or not Filmer really believed that Adam was granted absolute authority and that this power descended intact to his successors, no doubt would have made little difference with respect to his ultimate position.

To understand the above, we must look at the whole of the Filmerian case rather than at the separate points of argumentation. In this way it will be seen that all of the different forms of argumentation find their synthesis in his basic assumptions concerning the nature of things. That is, they are all based, to one extent or another, on the political theory of order. In other words, the theory of order serves as a conceptual framework and all the arguments he presents can be considered "as a step towards the completion of a systematic structure of which the general plan was known in advance...."²¹ Thus, nearly everything he says is evidence used to confirm the implications of the philosophy of order. Other arguments he presents are merely logical deductions from the theory of order. From this point of view all of his arguments, from those presented in his patriarchal theory to those put forth in legal-historical terms, find their synthesis within this conceptual framework.

We find, as a result, that Filmerian thought stands

²¹Greenleaf, op.cit., p. 108.

ultimately on two points. First, it depends on the acceptance of his conceptual framework and the accompanying mode of argumentation, and, secondly, on the validity of the evidence presented to confirm the structure.²² The first establishes the rationality and cogency of his argumentation, while the second serves as an empirical support. The frame of reference in effect has explained to us the correspondence drawn between father and king, the relationship between superiors and subordinates, the inequality and subjection of man, the impossibility of alternate forms of government to monarchy, and the nature and seat of sovereign power. We may not accept as authoritative, the correspondences drawn between the known and the unknown, such as analogies between a colony of ants or bees and political society, or between the human body and the body politic, but, as we have demonstrated, such a mode of reasoning was considered as acceptable in Filmer's age. We have now found other means to fill gaps in our knowledge but, still, there are a number of researchers who continue to search for explanations of human organization by studying non-human forms of organization. The late Carl Gottfried Hartman, for instance, has said, "I have learned to observe many lower forms of life in order to understand

²²For the most part the two points are mutually exclusive in that disproof of the evidence presented need not mean rejection of the conceptual framework.

the higher ones".²³

As to the second point, we find that most of Filmer's historical evidence is quite sound. One can hardly question that kingship originates in the fatherhood and that fatherly authority has been absolute. Historically, sociologically and economically, his patriarchalism is well founded, for as Parkinson, commenting on early kingship, says, "the king had, basically, the paternal authority of the tribal or district chief; he was the arbitrator in cases of dispute, the father of his people. To this he added the authority of the priest, the god-descended immortal, the embodiment of god, and (finally) the god on earth...that paternal rule is a fact is as clear as that the theory of contract is only a theory."²⁴ Apart from this, in the seventeenth century, English political society, family forms and economic attitudes have been essentially patriarchal. The country had been ruled by an assemblage of aristocratic families with large households which had been headed by fathers who wielded extensive authority. Thus, from this point of view, Filmer makes a good deal of sense.

The scriptural evidence he presents is another matter for, as a theory of the origin of kingship and the state, it

²³Time Magazine, March 8, 1968, p. 80.

²⁴Parkinson, op.cit., pp. 53, 85.

has many questionable features which Locke attacks so deftly. Filmer, it seems, may have recognized this for we find that the works he had published during his lifetime tend to appeal more to history, utility, and the theory of sovereign power than to Adam's grant and subsequent biblical history. His later works, in fact, seem to have made clear that he is more interested in establishing the nature of kingship than in tracing its origin. From this point of view much of the biblical exegesis can be eliminated without sacrificing the naturalness of kingship. It may have weakened his position in the empirical sense but by the same token it will have been strengthened philosophically. In this way, kingship could have retained its divinity and that important sense of moral obligation, so necessary for the maintenance of the order, would have been preserved.

The importance of that sense of moral duty to obedience instituted by divine right and advocated by Filmer became apparent in the following century. To Sir Robert it was clear that an enlightened monarch would lack the prestige and power of a king who derived his authority from God. The eighteenth century monarchies, as a result, were doomed to failure as soon as an efficient king was replaced by one who was less efficient. Government had to have a moral authority to command obedience if it was to be stable. Others recognized this, but unlike Filmer, they considered it simply

as a tool or as a means for demanding obedience. Filmer, however, in recognizing it as an essence, or as an essential prerequisite for effective government, had something to contribute to political theory.

Every epoch in history, to one extent or another, is characterized by the acceptance of certain implicit assumptions with the result that the fundamental problems of politics are continuously being answered in different ways. On account of this we find that what is considered as rational in one generation may be thought of as absurd in the next generation. Thus, whether we consider Filmer to be a rationalist or an irrationalist ultimately will depend on our definitions. Actually all political philosophy is rational in the sense that it fits human experience into a logical pattern, but distinctions, nonetheless, are drawn between rationalists and irrationalists. The former, it is said, assume that the human mind is capable of understanding and answering all of the problems of the universe, while the latter, generally speaking, feel that insight and intuition are more important as instruments of understanding.²⁵ In this sense, Filmer, with a metaphysical foundation to his thought and a clear dependence on the supernatural, can definitely be classified as an irrationalist. Yet, as we

²⁵Lancaster, op.cit., pp. 265-7.

have often mentioned, it is still possible to consider his arguments to be rational within the framework of the political theory of order.

Some, meanwhile, have criticized Filmer for presenting a series of unrelated propositions rather than a coherent theory of politics.²⁶ We however have seen that his many assertions are, for the most part, integrally related within the context of the philosophy of order. Although Laslett's observation may have some validity, it is actually a somewhat shallow criticism for the fact remains that there are very few political theorists who have presented what may be called "a coherent theory of politics". The political treatises of Locke and Rousseau, for instance, are laden with inconsistencies and are based on assumptions far from proven, but they are still considered as important. They, like Filmer, are "codifier[s] of conscious and unconscious prejudice",²⁷ but, unlike Filmer, their views are not so dependent on this prejudice. That is, like all political theorists, they are partisans, but since they have something to contribute beyond their partisanship, their philosophies do not ultimately stand or fall upon their prejudices. With Filmer, on the

²⁶Laslett, Patriarcha and Other Political Works, op. cit., p. 11.

²⁷Ibid., p. 42.

other hand, the cogency of his argumentation depends far too much on the acceptance of his basic assumptions. We find that the absence of an explicit epistemology and a relative ignorance of man's nature and capabilities, lead him to construct an idealist system on a foundation too far removed from reality to build a practical system of politics upon. Yet his basic assumptions and the many propositions he presents are not so absurd and feeble as to justify calling him "a vicious wretch" and "a court flatterer" with all the faults of "Bawds, Whores, Buffoons...and other base people".²⁸

One, we find, may question the validity and the acceptability of Filmer's assumptions and mode of reasoning even in the seventeenth century, since the age witnessed the emergence of rationalism as well as the growth of empirical science. Evidence of the acceptability of such assumptions and his mode of reasoning has been given in an earlier chapter, but a few more words will still be helpful. Change between eras is gradual, thereby making for what is generally called an age of transition.²⁹ All ages, of course, may be viewed as ages of transition but some, no doubt, are moreso

²⁸Ibid., p. 10, and Sabine, op.cit., p. 515, where the authors quote from Algernon Sidney's Discourses Concerning Government written between 1680 and 1683.

²⁹Cf. Chap. III of this thesis where the transition between the medieval and early modern eras is discussed.

than others. Filmer, as we have noted, lived in such an age where old ideas were gradually being rejected and new ones accepted.

Authors, we found, were continually seeking dates which signified the dichotomy between different eras. None were ever conclusive but, nonetheless, one such date of interest to us is 1662, the year Charles II incorporated the "Royal Society of London". According to one writer, this action gave impetus to the rise of modern empirical science. More specifically, the date signified "the transference of interests from the final truths of theology and metaphysics to the provisional explanations of empirical science". The same author, quoting the words of nineteenth century historian John Richard Green, said, "between modern thought and the thought of men before the Restoration 1660 there is a great gulf fixed".³⁰ Felix Raab, as well, was of the opinion that the rise of humanism signified a break from the truths of theology and metaphysics. More specifically, he felt that the influence of Machiavelli on English politics resulted, by 1660, in "an emerging consciousness of politics as a self-sufficient area of human activity, with the corollary of political aims defined in exclusively human terms".³¹ Thus, he too believed that there was a consider-

³⁰White, op.cit., p. 164.

³¹Raab, op.cit., p. 256.

able difference in the thought of men before and after the Restoration.

The opinions given above can be of importance to us, for if we think back it will be recalled that Filmer wrote before 1660, and was attacked only during and after the "Exclusion Controversy". Thus both of the above authors no doubt will consider Filmer to be an "ancient", and his opponents "moderns". As such the values, assumptions, modes of reasoning and criteria of acceptability of his opponents are bound to differ as are their conclusions. Under these circumstances reform was inevitable but still, we must always remember that "the final introduction of a reform does not necessarily prove the moral superiority of the reforming generation".³² Thus, while Filmer differed from Locke and other moderns, this did not necessarily make him inferior or absurd, although it may have made him less acceptable and less important. This, however, is a fate suffered by all of the vanquished. Filmer may have been an ancient in many respects but still his attempt to build a theory of politics upon the immutable basis of natural law did provide a valuable stepping stone into the future.

Finally we must draw conclusions on Filmer's thought in terms of political theory in general. As we have seen,

³²Whitehead, op.cit., p. 29.

political theory consists primarily in answering certain fundamental questions concerning what ought to be the right relationships between men. As such it is closely related to ethical theory, which usually abstracts individuals from their environment and decides what is good and evil for them. Thus, as part of moral philosophy, political theory becomes a very incomplete science. In fact, it is principally in passing moral judgments that the political theorist parts company with the economist and the chemist. It is true that at times this passing of moral judgments makes political philosophy somewhat abstract and barren, but it nonetheless can be very rewarding when handled with a common sense attitude towards real social values. As opposed to Locke who has "a strong vein of sterling common sense",³³ Filmer, as the reader is no doubt aware, is, with his logical extremism, somewhat too abstract to contribute much to a practical system of politics. Whatever the case, we will always find in political theory certain morally based assertions being made on the strength of a writer's personal values or the accepted values of an age. Some examples are: man is born free, might is right, the general will is always right, men are by nature equal, and so on. While empirical evidence may be sought to justify or support such assertions,

³³Laslett, Patriarcha and Other Political Works,
op.cit., p. 42.

they all are based ultimately on a system of values or beliefs. Thus, although they may be rendered more or less convincing, they cannot be conclusively proved or disproved. It is for this reason that we find one author concluding that, "in ethics and politics you cannot in the last resort, prove your opponent to be wrong".³⁴ Wrong and right are usually determined by prevalent criteria, but as is obvious, there is a lack of general consensus in political theory as to what these criteria should be. This is one reason, amongst others, why we must conclude the Filmer-Locke encounter to have been indecisive. Ultimately, what we consider as acceptable will depend on what we accept as knowledge.

If we went back to the early modern era we would find that opposing views began to emerge in concrete forms and that opinion began to differ markedly as to what constituted knowledge. Problems which were at first solved within a theological framework now began to be dealt with metaphysically. Natural law remained primarily within the theological-philosophical framework until Grotius secularized it and opened the door to what is generally known as

³⁴Brown, op.cit., p. 6. It is of interest to note that for this particular reason one author refers to such assertions as "mere claptrap...and rubbish...they are all, and without exception, drivel". He, of course, is a strong believer in scientific method. See Parkinson, op.cit., pp. 309-16.

rationalism. Reason alone, he claimed, was sufficient to grasp the natural law, thereby eliminating the need for a supernatural aspect to it.³⁵ This, in effect, opened the way to such human artifacts as the social contract within the context of the natural law. At about the same time metaphysical doctrine began to be challenged by the rise of individualism and empirical science. It thus became clear that metaphysically based propositions would no longer be accepted as knowledge with the same vigour that it had been.³⁶

³⁵A. P. D'Entreves, Natural Law: An Introduction to Legal Philosophy (London: Hutchinson University Library, 1951), pp. 52-72, and McGovern, op.cit., pp. 41-8. It was obvious that Grotius' thought had little influence on Filmer for whom the natural law remained as something rigid and supernatural. To Sir Robert it remained as the law of God incapable of being interfered with by humans; that is, except by the king in his "body Politic".

³⁶It should be pointed out that Auguste Comte, a spokesman for the Positivist School of thought, was of the opinion that all knowledge passed through three stages. The first he called the theological or fictitious, and explained that it was characterized by the belief that all natural events are caused, directed or moulded by some supreme being. The second he labelled the metaphysical or abstract stage wherein causes were sought "in certain abstract innate qualities in things or in certain inherent and invariable principles of the abstraction 'nature'." The third and final stage he called the positive or scientific level wherein nothing was assumed about final or ultimate causes. In this final stage, cause and effect were viewed "as an invariable sequence of two phenomena", and the laws of nature are induced from what is learned from these sequences. Comte went on to explain that many branches of knowledge had not yet reached the final stage. Farrell, op.cit., pp. 182ff.

We find, in line with the above, that theological-metaphysical doctrine, often referred to as medievalism,³⁷ supplied the immediate answer to the problem of political obligation with the theory or doctrine of the divine right of kings. It was not long, however, before individualists, such as Locke, and atomists, such as Isaac Newton, challenged the doctrine with their novel epistemologies. In fact, Protestant individualism, with its doctrine of the equality of the individual soul, scientific individualism, which rejected ethical theory and viewed individuals as atoms, and capitalistic individualism, which attached importance to the individuality of owners, combined to reject the theory of divine right and pushed metaphysical doctrine into the background at least temporarily.³⁸ As a result, the Filmerian ideas of co-ordination, harmony and order were, for the most part, replaced by the emerging individualist notions of progress and competition. Individualism, however, carried to the extreme with its competitive spirit, gave rise to industrial slavery and other social evils and thus gradually gave way to a philosophy of utilitarianism. The latter

³⁷Murray, op.cit., p. xii.

³⁸Lindsay, op.cit., pp. 73-90. See also Felix Raab, op.cit., whose whole book is aimed at exposing the gradual triumph of Machiavellian secularism over theological doctrine in England.

philosophy retained the ancient ideas of harmony and coordination within the framework of liberal democracy and thus, while it provided a poor foundation for morals and religion, it provided a good basis for a working government. Liberal democracy next found its philosophical justification within the semi-etatist philosophy presented by T. H. Green, and seems to have remained there ever since.

In the process of the development of political theory along the above lines of thought, opposing views emerged clearly. More specifically, we find authoritarianism opposing democracy and etatism opposing individualism. Authoritarianism, which demanded absolute and arbitrary rule, and etatism,³⁹ which subordinated the individual to the State were justified in different ways at different times. At first they were defended by writers, such as Filmer, principally upon theological and metaphysical grounds; then later their supporters merely stressed the pragmatic and utilitarian virtues of enlightened absolute rule. Modern absolutism, on the other hand, was defended principally by the German

³⁹Etatists, it should be mentioned, subordinated the community, the family and the individual to the State in that order of importance. Thus they believed that the State should limit the individual and advocated a policy of what was best for the State. As such etatism need not be associated necessarily with absolutism for if laissez-faire or democracy were viewed as being best for the State, they could very well exist within the context of statism. See McGovern, op.cit., pp. 16-27.

idealists, the more important ones being Kant, Fichte, Schelling and Hegel. Some were more radical than others, but all, to one extent or another, had something to contribute to modern absolutism in their attempts to undermine the whole framework of the liberal creed.⁴⁰ Rather than denying freedom or liberty, they merely spoke of "objective" or "true" freedom within the State. In this way they escaped widespread criticism from a populace which considered freedom as something sacred. They were, of course, representative of an emerging breed of true political philosophers. Unlike Filmer and other early theorists, they all had explicit epistemologies and deeper insights, it seemed, into fundamental problems.

With Filmer we found a somewhat different personality. He simply was interested in a particular state of affairs and was motivated principally by personal values with the result that his thought seldom went beyond or deeper than this. It is usually said that the political tradition in every society develops in response to particular needs and desires.⁴¹ In this sense Filmer's thought merely reflected the realities of an age where the Bible and religion were important, where

⁴⁰For a thorough analysis of modern absolutist thought see McGovern, op.cit., pp. 130ff.

⁴¹M. Oakeshott, Rationalism in Politics (London: Methuen and Co., 1962), p. 168.

order was important, and where natural law and political propaganda were important.⁴² Under these circumstances, Filmer's doctrine defending absolute monarchy hardly could be viewed as foolish or absurd. His thought might not have been as profound or complete as that of the German idealists, but we should realize that if it were, Filmer would have surely lost his importance in seventeenth century controversy which demanded argumentation which could be understood.

Locke, we found, wrote some thirty years after Filmer under somewhat different circumstances with the result that he arrived at totally different conclusions working from the same basis; i.e., natural rights. In effect, his conclusions merely reflected the growth of rationalism and the individualistic attitude of the day. Although Locke's evidence and reasoning might be more acceptable than Filmer's, both began from first principles which could be neither proved nor disproved, thereby making one ultimately as valid as the other on scientific grounds. Do such irreconcilable points of view make political theory insignificant? Parkinson might believe it does in so far as it ignores the strict rules of scientific procedure, but actually such differing viewpoints

⁴²It is essentially for this reason that one writer says, "no belief could be more a child of circumstances than that in the Divine Right of Kings". Figgis, *op.cit.*, pp. 15-6 and *supra*, pp. 56-7.

could provide for stimulating intellectual activity which could lead to greater heights. For instance, democracy and totalitarianism with their new and sophisticated philosophical justifications, cannot really be reconciled at present, yet this does not make a study of them meaningless. A study of them need not be reduced to a mere exercise in comparative politics; rather it may be fruitful in our search for a higher synthesis.

In the above manner, Lockean and Filmerian ideas can be and were used in conjunction to seek higher and more stable ground. Ultimately, their thought may be seen simply as representative of two phases in the world historical process of seeking final answers to the vital questions of politics. Final answers to the major questions in political theory may never be achieved, although history has taught us that "the assumption of a finality reached seems to be the illusion common to almost every age".⁴³ Still we must continue to seek such answers if we are to progress, or at least if we are to avoid stagnation. The problem of political obligation, for instance, has been dealt with theologically, metaphysically and empirically but never to the satisfaction of everyone.⁴⁴ In much the same way, both the thought of

⁴³Parkinson, op.cit., p. 303.

⁴⁴A. Sesonske, Value and Obligation (New York: Oxford Univ. Press, 1964), pp. 68ff.

Locke and that of Filmer will continue to find its supporters and its opponents.

It may be true that "Filmer was not a deep and acute thinker like Hobbes and Locke", and that "he has neither added to the sum of human knowledge, or directed thought along new and true lines",⁴⁵ but saying this will be merely expressing a value judgment.⁴⁶ Metaphysical efforts may not extend man's scientific knowledge but the pictures of reality which they draw certainly help to "satisfy the needs of man". In fact, "vigorous metaphysical reflection is both an essential sign of cultural growth and an essential condition of institutional and personal self-correction".⁴⁷

Besides this, we must realize that, ultimately, all points of view, reasonably coherent, help us in one way or another to understand the intricacies of the universe. As Oakeshott

⁴⁵Farrell, op.cit., p. 146.

⁴⁶In fact, value judgments which are favorable to Filmer can often be found. It has, for instance, been said that, "he seems well entitled to a niche in the temple of Fame, as a man of great learning, and as a very various writer; however warped he may occasionally be by prejudice and bigotry of opinion", and that, "so affable was his conversation, his discourse so rational, his judgment so exact in most parts of learning, and his affections to the Church so exemplary in him, that I never enjoyed a greater felicity in the company of any man living than I did in his". See The Harleian Miscellany, Vol.X, p. 105.

⁴⁷H. D. Aiken, The Age of Ideology (Boston: Houghton Mifflin Co., 1956), pp. 269-70.

sees it, human experience or knowledge can be considered analogous to a conversation. Each voice in the conversation considers human experience from a point of view entirely irrelevant to the other voices because of differences in language; yet, each voice contributes in some measure to the whole of the conversation. The important thing is to recognize that the expressions of each language are inapplicable to the others. Thus, instead of dismissing Filmer as foolish and absurd, the intelligent man will make an effort to understand him. This, in fact, has been the principal purpose of this thesis.

If political philosophy is to progress, intellectual activity must be stimulated by conflicting points of view. Witness, for example, the relative stagnation of political theory in the early part of the Middle Ages, so characterized by the absence of vigorously expressed conflicting points of view on essential questions. On the other hand, a study of the Filmer-Locke encounter leaves little doubt that the latter's political thought is a direct result of his castigation of Filmerian ideas. This seems especially true in view of Laslett's recent investigation into the writing of Locke's Two Treatises of Government. Through a tedious process he has found that the Second Treatise, for the most part, has been written before the First Treatise, and that it has been written specifically to refute Filmer. If this

is so, it is quite conceivable that Locke may not have written what he has had it not been for Filmer. Thus, in a somewhat indirect way, Filmer may have contributed to the development of democratic political theory.

Finally, let it be said that where there is a conflict of ideas concerning the same phenomena and the same problems, one viewpoint will ultimately win out. Filmer, we found, lost out principally because of the triumph of Whig principles and institutions, the rise of individualism, the growth of rationalism, his lack of a "sterling vein of common sense", and the rejection of metaphysical doctrine and theological evidence. Although his assumptions and his mode of reasoning are no longer accepted, we nevertheless have found that much of what he says makes a good deal of sense on both practical and theoretical grounds. If we do accept his assumptions, then, as we have seen, his position is tenable. It has been said by John F. Kennedy in the aftermath of the Bay of Pigs that "victory has a hundred fathers and defeat is an orphan". In this case Filmer is the orphan, but we must still remember that orphans, in one way or another, have something to contribute to the total of our understanding; besides, if there are no orphans there will be no victors. Ultimately then, Filmer, and the thought he represents, constitutes but a necessary moment, as valid as all others, in the historical development of political theory. As such

his thought is not feeble and absurd, but merely rejected due to its inconsistency with later values, circumstances, needs, and epistemologies. It is hoped that the materials presented in the preceding pages have made this view plausible.

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