The Political and Religious Thought of James I.

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THE POLITICAL AND RELIGIOUS THOUGHT OF JAMES I

by

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INTRODUCTION

In the spring of 1603 James VI of Scotland began his trip from Edinburgh to London to become James I of England. The first Stuart King of England was an alien with a foreign concept of politics coming into a strange land. His particular view of the Divine Right of monarchy, held also by the later Stuarts, was to produce in the seventeenth century certainly some of the greatest constitutional battles in English history. But besides revealing his thoughts on political matters -- the Divine Right theory, Parliament, and the Common Law -- this paper is also meant to investigate King James' views on religion, toleration, his plan for a union of England and Scotland, as well as to provide a clear insight into James the man and politician as well as James the King.

Since, unlike most kings, James also was an author, the main source for his political and religious thought, besides his Parliamentary speeches, is The Political Works of James I which was first published in 1616.
Part I

TUDOR AND STUART KINGSHIP
CHAPTER I

THE DIVINE RIGHT THEORY

In discussing the Divine Right theory, it is important to note that it was developed as an answer to Papal claims of temporal as well as spiritual power. According to James, the essence of the theory was the Divine origin of kingship, which could be traced back to the Bible, when in the Old Testament the Jews asked God to give them a king in the person of Saul. To the King of Scots it appeared that since Saul and monarchy were both ordained by God's will through the Holy Spirit, only God could remove a monarch, even a bad one. To the Stuart Samuel 9-20 showed that a bad ruler, although a curse of God, must be obeyed: "...and ye shall cry out at that day, because of your King, whom ye have chosen; and the Lord God will not heare you at that day." Only God, not a Pope or Puritan, could remove a king, even though he should prove to be a curse to his people. Since monarchy was Divinely ordained, so also were those persons who were kings. They were "Little Gods," as he told his son in Basilikon Doron; furthermore, they were absolute to the point of holding life and death over their subjects as God does. Their thrones were not solely theirs; it was God's throne that they sat on, and they were, in fact, his "Lieutenants" on earth, and were responsible only to Him for their actions. A second important element of the theory is the hereditary right of kingship;

to stress its importance the King in Basilikon Doron instructed his son, Henry, never to deny the right of accession to a throne to a legitimate heir. This part of the theory fitted in with the Scottish Ruler's own ambitions, since as a descendant of Margaret Tudor, he held the best claim by blood to the English throne after the demise of the childless Elizabeth. But there was a real danger that he would not inherit that Queen's crown, since the principle of hereditary succession was no longer sacred. This was due to the numerous marriages of Henry VIII and that King's power to name in his will the order of succession to the throne after his death. In fact, Elizabeth, according to her father's will, 28 Hen VIII, C. 7, S. 21, as well as by Common and Canon Law was a bastard, and as such could not inherit the throne of England. To confirm her title at the time of her accession, she had herself declared Queen by an act of Parliament. It was obvious to the King of Scots that it would be Elizabeth and this institution, not hereditary descent, that would determine the next ruler of England. It is interesting to note that the first Stuart, after arriving in England to become King, had Parliament, in the Succession Act of 1604 (I. Jac. I, C. I.) declare that he was King immediately upon the death of Elizabeth by his inherent birthright and not by any act of theirs.

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2 "Basilikon Doron," Works, p.28.
The third characteristic of this theory, and the one which
involved the King in his numerous controversies with Parliament and the
Courts of Common Law, was his claim that complete sovereignty was vested in
the king. In the Trew Law of Free Monarchies James described the monarch
as the "speaking law," and asserted that the crown could create law through
the use of its prerogative, a theory of the first Stuart which was quite
opposite to the Tudor view, which conceived the prerogative as an emergency
power. To James, since the king created law, he was above it, and any
statute or general law of Parliament could be interpreted or abrogated by
him. However, the Stuart admitted that the ruler should obey the laws of
the land in order to give a good example to his people to do the same; regal
obedience, however, was dependent on his goodwill. Significantly James
avoided the problem of Parliament's rights and the social contract theory
of monarch, as described in Samuel, by pointing out that England and Scot-
land were conquered by his ancestors (King Fergus in Scotland and William
the Conqueror in England). Since the two realms had in each case been over-
come by a superior power, they were the monarch's property and he could do
with them as he pleased; it was these two kings that had created Parliaments
and made laws, not vice versa. Therefore, the ruler had the power of life
and death and in his hands was vested ownership of all property through
right of conquest.5

In the Speech of 1606 he pointed out that Parliament was nothing
more than the King's High Court, and that its purpose was to interpret the
law and to make or abrogate only laws concerning "general matters;" it was

5"Basilikon Doron," Works, p. 28; "The Trew Law of Free Monarchies",
Works, pp. 62-63.
forbidden to discuss anything concerning regal rights. Since Parliament received all its power from the monarch, the two Houses were solely responsible to God.  

6 This concept of Parliament had been formed from the character of the Scottish Parliament, and was far different from that held by Englishmen. In Scotland it was a court and an advisory council which could debate only what was proposed by the monarch. James pointed out this fact at the prorogation of his first English Parliament on July 7, 1604. "In my government by-past of Scotland, I was heard not only as King, but, suppose I say it, as a counsellor. Contrary, here nothing but curiosity from morning to evening to find faults with my propositions."  

7 Thus, it is evident that his concept of Parliament was alien to Englishmen, a fact which James admitted in his Speech of 1605, when he stated that "it could not be possible for me at my first entry here, before experience had taught it me, to be able to understand the particular mysteries of this state."  

8 

In fact, it was with the publishing of The Political Works of James I that the Divine Right theory of kingship was completely elaborated in England, even though many of its essential elements were already accepted by most Englishmen. Also, the immense power claimed by the King under this theory had been partially achieved by the Tudors as a result of the growth of government, of the English Reformation which replaced the Pope with the King as the leader of the English Church, and of the need to have sovereignty placed in the hands of a strong monarch to protect Protestant England.

6 "Trew Law", Works, pp.60-61, 63, 68.  
8 "Speech of 1605", Works, p. 287.
from the Catholic Continent. This centralization of power in the hands of the English ruler was accomplished as a result of an alliance between the king, Parliament, and Common Law, all of which feared the thrust of the Catholic Reformation. However, it was not until the threat from this common enemy had been seriously diminished by the defeat of the Armada in 1588 that the differences between each of these essential elements of the English constitutional system would appear. In fact, Elizabeth in her last Parliaments encountered some of the same problems of finance and religion that were to plague the first Stuart after 1603.

CHAPTER II

TUDOR AND STUART THEORIES OF KINGSHIP

But even before the publishing of the Political Works of James I in 1616, there had been an attempt on the part of some Tudor and early Stuart writers to look into the origin of kingship. In this investigation and the debate that followed, there developed two conflicting arguments, propounded by two groups or blocs. In one were people such as Stephen Gardiner, the Bishop of Winchester, and William Tyndale, an early English Protestant writer; both men attempted to exalt the divine origin and absolute sovereignty of the monarchy in order to protect it from Papist attacks. Gardiner, for example, asserted that "He (God) hath set princes whom, as representatives of His Image unto men, he would have to be reputed in the Supreme and most high place and to excel among all other human creatures."10 Concerning the problem of obedience to a wicked king, Tyndale stated that even a king who was an infidel must be obeyed, and added that "The King is, in this world, without law and may at his lust do right or wrong and shall give accounts but to God alone."11 These arguments were later adopted by and expounded by such pro-Stuart writers as Sir John Hayward and Sir Thomas Craig, who along with James defended that Scottish ruler's right to possess the crown of England. Opposed to this line of argument stood such ultra-

montanists as the two contemporary Cardinals, Du Perron and Bellarmine, as well as the English Jesuit, Robert Parsons, who wrote under the pseudonym of R. Doleman. The purpose of the endeavors of these three was to prove the Divine-Right nature of the Papacy and to show that kings were subservient to the word of God as interpreted by the Catholic Church.

Perhaps the best exposition of these ultra-montanist arguments is contained in Robert Parson's *A Conference About the Next Succession to the Crowne of England*, published in 1594. Besides stating that the origin of kingship is human not divine, it was also asserted that an heir apparent did not become king until his coronation.\(^{12}\) This was opposed to the idea of hereditary succession; it was answered by John Hayward who argued that monarchy was a rule of nature and living imprinted on the human soul. Moreover, it arose everywhere in the world and was the best form of government; it stemmed out of man's need to be governed by one will, just as a family was governed by one person, the father. But, in fact, this was more than just an analogy; Hayward stated that the right of regal rule was passed from God through the family to the king (the Father of his subjects) and it then extended over tribes and finally even over countries.\(^{13}\)

Concerning succession, both Thomas Craig and John Hayward stated that once hereditary monarchy had been established it became absolute. The strongest argument for this form of rule was presented by Sir Thomas Craig.
in Concerning the Right of Succession to the Kingdom of England. While restating that monarchy was a natural institution, Craig claimed that only those persons who are next in line to the crown through descent of blood are really natural kings. Furthermore, anyone who succeeded to the throne by any other means, even if he be of royal birth and chosen by Parliament or the people, was not really a natural king and therefore an usurper. Actually, this argument for hereditary monarchy was an answer to Robert Parsons, who in the preface to his work about succession stated "that albeit the nearness of each's man succession in blood, were evidently known, yet were it very uncertain who should prevail, for that it is not enough for a man to be next in blood, thereby to pretend a Crown, but that other circumstances also must occur." And if an heir to the throne did not fulfill the requirements of his future office, the commonwealth could prevent him from inheriting the crown and pass it to another. In fact, even once a person became a king, he would only retain power if he continued to rule with equity, justice, and in accordance with the law and his coronation oath. Failure to do so would result in that person no longer remaining a true king since he would now become a tyrant, capable of being removed by his subjects. The reason a ruler could be replaced in this manner was tied, according to the Jesuit Parsons, to the very end and basis of monarchy itself, which was religious. It meant that a ruler had to direct all his actions toward leading men to God, but once he had become a tyrant he was no longer fulfilling this kingly duty. Therefore, it was inconceivable that subjects would have to obey evil commands spoken by even a hereditary ruler.

14 Thomas Craig, Concerning the Right of Succession to the Kingdom of England (London: 1703), pp.10, 56, 134.
15 Parsons, A Conference, Part I, Ch.VI, F.98, 112.
To stress this point, Father Parsons revealed how after Saul's death, God prevented that Jewish monarch's son from gaining the throne and instead appointed David. After citing numerous examples of similar situations in which hereditary heirs apparent were denied the throne, this Jesuit priest recounted how even in England this had happened in 1216, when the Barons had rejected King John and his son Henry, in favor of Louis, the Prince of France and son of Philip Augustus. In fact, it was further incorrectly claimed that Henry only became king after John's death when the sentence had been lifted. 16 It is a fact, that the Papal ban of excommunication on John had already been removed by Pope Innocent III and that this King's son was crowned Henry III within a few days after his father's death. 17

While not accusing the ruler of the Scots of any evil doing, Parson did use the religious basis of monarchy in an attempt to discredit the King's claim to the throne of Scotland. It was stated that "nothing in the world can so justly exclude an Heir apparent from his succession, as want of Religion." 18 But in fact this last phrase meant more, for it was asserted that a king had to be of the same religion as the people of his kingdom; if not, there would be factionalism and civil war. Therefore, Parsons concluded that since there was no one religion in England but many, there was no one clear heir to the monarchical inheritance claimed by James VI of Scotland. 19 Hayward in response argued that if the principles of hereditary descent were not followed, no other basis for succession could be established; the result would be that everyone would fight for the crown.

16 Ibid., Part I, Ch.IV, 63-64; Ch. VI, 115, 156, 162.
18 Parsons, A Conference, Part I, Ch.VI, 169-70.
19 Ibid.
creating the very violence that the Jesuit stated he wanted to avoid. If, however, an heir should prove to be incompetent, a protector could be appointed, thus establishing effective rule while also maintaining a legitimate hereditary monarchy. 20

Both Hayward and Craig answered Parson's assertion that the subjects of an evil king (a tyrant) might disobey his command and remove him from his regal office. Both did so by returning to the arguments of William Tyndale and Stephen Gardiner and by stressing the political necessity of maintaining the order and safety of the commonwealth. Perhaps the best statement of this view was the one rendered by Hayward in his work. While admitting that no person was obliged to obey evil, it was argued that when a person rebelled against a king he was in fact causing evil, since he was rebelling against the commonwealth. Besides, no prince was so sinister that his vices could be used as an excuse for the worst evil of all, a rebellion that would endanger the safety of the state. 21 It is interesting to note that Craig suggested that subjects, instead of overthrowing an unjust monarch, should not only obey him but also pray for him as the Jews had for Nebuchadnessar. Furthermore, while acknowledging that princes are often evil and should give a strict accounting of their actions, the writer asked the following question of the Jesuit. "But when and to whom?", and then responded himself, "To God only, and not to thee Dolman". 22

Finally, Hayward attempted to refute Parson's examples of two heirs apparent, the sons of Saul and King John, being denied the throne of

20 Hayward, An Answer, Ch.IV, 4L.
21 Ibid.
22 Craig, Right of Succession, pp.5, 10, 192.
their respective countries. First of all, it was pointed out that in Saul's case, it was God, not his subjects, that deprived him and his son of their position. Secondly, it was stated that King John was not deprived of his position by the Pope at the request of his subjects, but by the Archbishop of Canterbury. Furthermore, this defender of the crown claimed that the barons never disowned either John nor his son Henry. In conclusion, the author reaffirmed the arguments of Craig, that it would be better to be governed by a bad hereditary monarch than to replace him with another, thereby leading to civil war.\textsuperscript{23}

The early Tudors also were far from accepting an idea of complete regal sovereignty similar to that later enunciated by James I. Perhaps the best example of this can be seen in the writings of Thomas Smith, who conceived legislation as the joint product of the king-in-Parliament. For example, Smith in \textit{De Republica Anglorum}, 1583, asserted that the prince was the supreme authority in the country since it was in his person that the highest and supreme authority to control, to correct, and to direct all other members of the commonwealth resided. This supreme power, however, did not include the ability to legislate, since man could not legislate but only interpret the Divine Law through the High Court of Parliament. It was this body which was the most high and absolute power in the realm of England. But this definition of Parliament did not totally exclude the legislative, or as Smith saw it, the judicial power of the king, since there was no division or possibility of separation between the king and Parliament. It was the king's High Court and an essential component of its structure was the monarch.\textsuperscript{24}

\textsuperscript{23} Hayward, An Answer, CH.III, Hij-k; Ch.VI, 0.
\textsuperscript{24} Thomas Smith, \textit{De Republica Anglorum} (London: 1583), Ch.I, 4,6; Ch.III, 1,48-49.
This idea of the king acting in Parliament had been reinforced by the fact that Henry VIII had used this body in carrying out the English Reformation. In fact, the lack of distinction between the roles of the two can be seen in Smith, who could not envision the possibility of a conflict developing between them and the courts, since all three were really one unit of government, and also since their one function was to interpret Divine Law. Besides the subjects of England even the monarch was limited by the Divine Law as well as by the Natural Law of God. Surprisingly, even the first Stuart admitted to being limited by this Law, but qualified it by stating that in a controversy over the law neither he nor the complaining party could judge the matter. Rather, only an impartial third party, God, could reach such a decision. Thus, by adopting this argument the King hoped theoretically to place his power above the definition or limitation imposed on it by Parliament and the courts. A similar purpose is revealed when he refers to the Natural Law merely as the means by which a king becomes the father of his people. In fact, a patriarchal view of kingship was held by many Tudor and Stuart writers as well as by the Parliament. This institution saw the King as more than just a ruler; he was the father of the whole English commonwealth and all his subjects were his children. For this reason, the crown was often treated by the King as a personal possession belonging to him as the head of his family, England. And since he was the father, his children should obey his every wish.

26 Ibid.
Another possible limitation upon the power of an English ruler was his coronation oath. But once again, its limitation depended upon the nature of its definition. To Parsons, it must be remembered, it was the means by which an heir apparent gained succession to the crown; and if the king violated the terms of this contract, he no longer remained a king but became a tyrant.28 The Stuart King, however, felt that an heir apparent automatically gained the throne by hereditary succession and asserted that the oath was taken not to the people, but to God, since it was God that gave him his powers through hereditary succession.29 But in fact, this did not mean that the Stuart felt he had the authority to flaunt the traditions and laws of England. In the Speech of 1610 he commented that "every just King in a settled Kingdom is bound to observe that paction made to his people by his law...and that never King was in all time more careful to have his laws duly observed, and himself to govern thereafter, than I."30 Therefore while differing in the view of its nature, the Tudor and Stuart notion of the coronation oath remained the same when applied to the observations of previously established laws. In fact both were in agreement with the duties imposed upon the king by this Divine oath. All of these writers felt that the main regal duty was to lead men back to the laws of God; James described it in Basilikon Doron as leading one's people from vice to virtue.31

28 Parsons, A Conference, Part I, Ch.IV, 63-64.
29 "Trew Law", Works, pp.55, 68.
30 Ibid., p.53.
CHAPTER III

THE CONFLICT BETWEEN DIVINE RIGHT AND COMMON LAW

The most significant political fact during the reign of James I was the breakup of the alliance between the Monarchy, Parliament, and the Courts of Common Law. While the conflict between the crown and Parliament was to be the most serious and will be dealt with in a later section, the one between the first Stuart and the Courts of Common Law was most important in determining what legal principles would be the basis of the English constitution and legal system. The controversy centered on the relation of the Common Law to the other systems of law in England, among which were the prerogative law of the king's Courts as well as the Canon Law of the ecclesiastical judiciary. As a result of his Divine Right theory, James proclaimed a supremacy for regal law, while the advocates of the Common Law asserted that their system was the paramount legal system in England, and that it even limited the actions of the crown, which was under its jurisdiction. In response, the King asserted just the opposite; to the Stuart the monarch was the source of all law and thus only had to obey its dictates if he chose. But in fact, it will be shown that both sides were introducing innovations in the struggle for supremacy, since both systems of laws, as well as others, had existed in England for centuries.

The chief figures in this struggle besides James and the Lord Chief Justice Sir Edward Coke were also the Lord Chancellor Francis Bacon.

and the Archbishop of Canterbury, Richard Bancroft. Both of these men supported James' concept of the law in opposition to Coke and other Common Law lawyers. In the case of Francis Bacon and Edward Coke their hostility centered around other than just political matters. In fact, before the accession of James, Bacon was in alliance with those members of the Royal Court attached to the Earl of Essex, while Coke was closely connected with groups of court followers around Robert Cecil. A conflict for office began in 1593, when Coke was appointed Attorney-General despite the influence of Essex, who was attempting to secure that position for Bacon. This alliance between the Attorney-General and the Cecil family was further strengthened five years later when Coke married Burghley's granddaughter, Elizabeth Hatton; one of her disappointed suitors was none other than Francis Bacon. In 1606 Coke was appointed Chief Justice of Common Pleas, a position from which he undertook the most strenuous defense of Common Law principles and jurisdiction. Meanwhile, Bacon had also risen in political position; besides remaining an advisor to the crown, he had also been knighted by James in 1603. Until 1607, when he was appointed Solicitor-General, he labored, although unsuccessfully, in Parliament for the union of Scotland and England.33

A new conflict occurred between these two men in 1613 when, upon the advice of the Solicitor-General, Coke was transferred from the Chief-Justiceship of Common Pleas to that of King's Bench, where it was felt that

he would be able to do less mischief. The actual legal collision between these two occurred in Peacham's Case in 1615. Edmond Peacham was a clergyman from Somerset, amongst whose sermons was found one that was highly critical of the King; it stated that "the King might be stricken with death on the sudden, or within eight days, as Ananias or Nabol." (James reportedly was so frightened that he slept every night behind a barricade of feather beds.) Since this highly critical sermon was thought to be treasonable, the Council ordered Peacham's arrest and torture in order to discover if there were any treasonable plot or if others were involved. Even though there was no sign of conspiracy, the government decided to move against him and consulted the four judges of the King's Bench to see if the cleric's offense were treasonable or not. Such a move was normal procedure, but James decided to consult the four judges separately instead of in a group, in order to prevent Coke, the Chief Justice, from dominating the other three. To this unusual procedure the Chief Justice of the King's Bench strongly objected by stating that such a procedure was not in accordance with the customs of the realm. In fact, he feared that the King by doing so was attempting to influence the decisions of the judges, and he wanted to maintain the judicial branch as a separate and independent from the executive branch of the government.

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34 Bowen, The Lion and the Throne, pp.340-41; D.N.B., I, 810.
35 Tanner, Constitutional Documents, p.188.
36 Bowen, The Lion and the Throne, pp.350-55; D.N.B., IV, 689.
Finally, the Chief Justice bowed to the regal demand and consented to the consultation and was questioned by the Attorney-General and the King. It is interesting to note, the other three judges separately agreed that Peacham's actions were treasonable, while Coke responded that this cleric's sermon was not an overt act and therefore did not constitute treason, maintaining the principle that a man cannot be prosecuted under the Common Law for thoughts, but only for acts. Angrily, James protested this decision by stating, "that his (Peacham's) writings of this libel is an overt act..., that it was made fit for publication, the form betrays itself; that he kept not these papers in a secret and safe fashion, but in an open and lidless casket... nay, he confess that in the end he meant to preach it." In fact the judges that tried Peacham were well instructed in their duty and he was duly convicted and sentenced to be executed. Fortunately for him, however, he died in prison before his sentence could be carried out.

This was not the first time the great lawyer had come into conflict with the monarchy. Previously, he and Chief-Justice John Popham of the King's Bench had reviewed the notorious Bate's case in a joint conference held in private; and while not objecting to the actual judgment in favor of the crown, they did disagree with Chief Baron Fleming about the extent of the King's power. "The King", they resolved, "cannot at his pleasure put any imposition upon any merchandise to be imported to this

37 Bowen, The Lion and the Throne, p. 354.
38 Tanner, Constitutional Documents, p.191.
39 Bowen, The Lion and the Throne, p.354; David Harris Willson, King James VI and I (London: Jonathan Cape Paperback, 1963), p.381.
kingdom, or exported, unless it be for advancement of trade and traffick, which is the life of every island, *pro bono publico.* 40

Another example occurred in 1610 when Coke was called to the Council in the hope that he might render a favorable judgment for the monarch in the matter of proclamations, a royal power through which the pronouncements of the king took on the force of law. Earlier that same year, the House of Commons had submitted an address to the King complaining of the frequency of proclamations, which they claimed were contrary to the law. Two cases were brought before Coke concerning whether or not the King might through this method prohibit the erection of new buildings around London and the making of starch from wheat. Even though he was strongly pressed by the Chancery as well as by Bacon to render a decision favorable to the crown's prerogative, Coke ruled against the use of proclamations which he felt did not have the binding effects of a law. 41

This decision, however, was contrary to the statute of Henry VIII, C.8, 1539, an Act that *Proclamations Made by the King Shall be Obeyed,* which conferred upon the monarch the right to issue proclama-tions in time of need without consent of Parliament and which provided that such laws "shall be obeyed, observed and kept as though they were made by act of Parliament for the time in them limited, unless the King's Highness dispense with them or any of them under his great seal." 42

40 D.N.B., IV, 688.
41 Bowen, The Lion and the Throne, pp.319-22; D.N.B., IV, 688.
In the same year as Peacham's case the Court of Chancery had by injunctions granted relief against two judgements obtained in the King's Bench. Now, the Court of Chancery was the custodian of the King's conscience, "tempering law with equity and justice with mercy." To the Stuart this was the ideal court in which to practice his concept of laws, which he felt should be rules of conduct and not, like the Common Law, a means of trapping good subjects; therefore, the law should be interpreted according to its meaning and not in its literal sense. This was a duty, he felt, the Court of Chancery as the Court of the King's conscience could perform. If complaints were to be issued against this royal court, then they should be brought to him, since the Chancery was an independent court under the crown. However, Coke and the other judges sitting on the King's Bench, instead of complaining to the sovereign, held that the interference of James' favorite court in the granting of injunctions was illegal. When two indictments of praemunire were brought against the parties involved in the previously mentioned cases both James and Bacon believed that this was done at the instigation of Sir Edward Coke. Fortunately for the crown, the Grand Jury refused to indict these two defendants and upheld the traditional power of the Chancery to issue injunctions. Earlier in 1609 in a speech delivered to a joint meeting of both Houses, the King had described his attitudes toward the jurisdiction of courts and the use of prohibitions. A distinction was drawn between the true and the wrong use of these legal procedures by the courts; James stated further...
that, "for my part I was never against Prohibitions, nor the trew use of them, which is indeed to Keepe every River within its own bounds and channels." But it was also cautioned that just as God contained the sea within its own bounds, so was it a kingly duty to maintain every court within its proper jurisdiction, and to prevent it from interfering with other judicial bodies.

In 1616 there arose the famous case of Commendams. This controversy resulted from the action brought against the Bishop of Coventry and Lichfield by the Exchequer Court in regard to that prelate's living in Commendam. During the case one of the counsels began arguing against the King's prerogative in issuing livings. Alarmed by such a discussion of his prerogative, James through Francis Bacon, the Attorney-General, issued an injunction forbidding a discussion of the matter further until the King had spoken to the interested parties. Coke, however, persuaded the other eleven judges to defy the injunction and to issue a letter stating the reasons for their discussion of the case; it was that Bacon's message was contrary to the law, and therefore obedience to its dictates would have violated their oaths as judges. Upon hearing of their refusal, James summoned them to the Council, where he angrily denounced their actions and tore up their letter. Then, along with the Attorney-General, he bluntly questioned them whether they might, in a case concerning the crown's interest, not stay the proceedings while he consulted them.

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47 Bowen, The Lion and the Throne, p.371; D.N.B., I, 816.
48 Bowen, The Lion and the Throne, p.371; D.N.B., 816.
twelve judges, eleven consented to the royal demand. But Sir Edward Coke abashed the Attorney-General and the King by stating that he would follow the course of a just and honest judge in deciding whether to accept or to reject such a royal request. 49

This decision, as well as others, and the refusal to appoint one of the candidates of George Villiers, the King's favorite, to a position in the Green Wax Office, led to his removal from the Council and a prohibition against his exercising judicial functions. Meanwhile, Bacon had risen to the position of Lord Keeper of the Privy Council, and it was in this position that he attempted to block the return to favor of Sir Edward Coke. Despite the anger previously shown to Coke, James was not a person who held grudges; and he had assured Coke after his dismissal that this one incident would not erase the fact that he was still esteemed as a good servant. The great Common Law lawyer had attempted to regain favor with the King through the marriage of his youngest daughter to the elder brother of the Duke of Buckingham. When Bacon attempted to block this action, the King prevented him and permitted the marriage to proceed. Coke subsequently returned to public life as a member of the Council of the Star Chamber, and of the House of Commons in 1620-21, in which he became a leader of what might be termed the popular side and attacked, along with other members of the Lower Chamber, the abuses of monopolies and pushed for war with Spain. 50

49Bowen, The Lion and the Throne, p.374; D.N.B., I., 690.
In 1621 he had some measure of revenge for past unhappy problems by serving on the committee of investigation that drew up the charges of impeachment against Francis Bacon. Sir Edward Conway, one of his contemporaries, commented in 1624 that "he (Coke) would die if he could not help ruin a great man once in seven years." This seems to have been a generally held reflection upon his arguments; that he had contempt for the arguments of others, making the law lean to his own opinion; and that he had too great a love of money. After this action, he realized that he could no longer hope to gain regal favor and continue as a member of the opposition in Parliament against James and Charles I.

Besides these personal and legal disputes with one another, Bacon and Coke also fundamentally differed about their view of the proper role of the crown and of the law of England. For in England at this time, there was more than just the Common Law. For example, over ten different types of laws and some of their corresponding court systems were listed by England's first Scottish King in his Speech in the Star Chamber, 1616. The most important of all laws were those of God and His Church. They came the laws of each country which were divided into Civil Law and Canon Law. Also there was the Common Law which was based on legal precedents and traditions. But in England, "besides the courts of Common Law, there was the court of Requests; the Admiraltie court (based on Roman Law); the court of the President and Councell of Wales, the President and Counsell

51 Bowen, The Lion and the Throne, p. 426; D.N.B., IV, 693.
52 D.N.B., IV, 693.
Three out of these last four were Prerogative Courts, while the bishops' courts were based on Canon Law. Then he added that "in West Minster Hall there are foure courts: Two that handle causes civill, which are the the Common-Pleas, and the Exchequer: two that determine causes criminaill, which are the Kings-Bench and the Starre Chamber, where now I sit"; and therefore prerogative courts as well as the courts of Equity and Chancery. Each court system was governed by its own legal procedures, which explained why the Chancery could use torture on Peacham in hope of obtaining a confession of guilt.

While the Chief Justice and his Common Law colleagues strove to gain for the Common Law a previously unknown predominance over these other systems of laws as well as to bring the throne from being above the law to being under it, Francis Bacon wished to confine it only to jurisdiction over legal matters while leaving political and prerogative affairs to the crown. The Judges should be "lions" in this function but they should not attempt "to check or oppose any points of sovereignty." Just the opposite was asserted by Coke, who claimed that the King himself was under the Common Law and had to judge in accordance with it; Coke also mentioned that the King was disturbed to find out that he was under the law and not absolute. For it must be noted, James and Bancroft argued that the monarch was absolute and above the law as he was above the judges. Furthermore the King

54 D.N.B., I, 814.
asserted that "seats of judgement are God's" and that kings are their vicegerents, and "as King's borrow their power from God, so judges from the King." The monarch, James further held, interpreted the Divine Law and made it the king's law; and it became the duty of the judges to exercise the power given to them by the crown to enforce the regal laws and to punish those who disobeyed them, but not to encourage them. James then stated that he was the sole source and origin of all judicial power and that it flowed from his person to the various courts; therefore he could remove any case pending before a particular court by revoking the power that the crown had extended to that judicial body. The great Common Law lawyer responded that while the King was Chief Justice, he could not relieve his "delegates," the judges, of cases and decide them himself. In further proof of his denial that the ruler had such powers, this eminent jurist asserted that there had not been a king since the conquest that had removed a case from the Court of Common Pleas. Even though he admitted that the King was Chief Justice, it was further stated the ruler was only so in his court, the House of Lords. Although Chief Justice the monarch could not really render judgments of his own, Coke further maintained, and he had to follow the Common Law precedents laid down by the regular law courts. This supremacy of the Common Law, according to the Common Law lawyer, also extended over the English Church and its courts. An opposite view was asserted by James, who felt that it was the Common Law,

57 Coke, The Reports, XII, pp. 64, 72.
not the regal and ecclesiastical law, that was limited; and further that the Common Law limited itself within its own bounds and could not infringe upon other laws and courts. The King saw the role of the monarch as the person who was "to keep every court within its owne bounds." 58

It is interesting that both the Judge and the King felt that they were limited by the Fundamental Law of the realm, but there was a difference in their interpretation of what was this law. To Coke "it was those principles of justice which the Common Law and its maxims were supposed to embody, and the Magna Carta to declare and affirm." Parliament, he felt, should not legislate against these principles, "the main pillars and supporters of the Fabric of the Commonwealth," but should judge by these principles. This legislature, however, did have the final say in determining the Fundamental Law, since it was the High Court of Parliament, the Supreme Court of England. It could not, however, by legislation, just as the King could not by proclamation, alter the principles of the Fundamental Law which were embodied in the Common Law and the Magna Carta. 59

The first Stuart also believed in a Higher Law, the Law of God, which guided the actions of both men and governments and was also the basis of all other systems of law. The King asserted that he too desired to rule according to its dictates, but his interpretation of this Higher Law was far different from the one expounded by Coke. They were the laws which supported the monarchy and which kept subjects in their proper places, and which allowed the King to make laws without Parliament.


In Scotland, according to James, they meant that succession to the regal crown was hereditary; and his coronation, he felt, bound him to support them. To both of the Houses of Parliament, however, the King was both under and limited by the Fundamental Law and was only supreme when acting in that legislative body. This fact can be seen in 1610, when the Commons in its debates over impositions asserted that direct taxes imposed without its consent violated the Fundamental Law since they infringed upon private property, which was one of the chief principles of the Magna Carta. No matter what was the interpretation of the Fundamental Law, it was valued by both the judges and the members of Parliament because it offered protection against kings and their claim of absolute power.

It is therefore evident that Sir Edward Coke, because of his great love of the Common Law, was attempting to establish an independent Common Law judiciary, whose laws and precedents limited both the King and the other courts. While such an accomplishment is fundamental to both the American and the English Constitutions, it should not be concluded that those who strove for monarchial absolutism were tyrannical and opposed to political and social progress. In fact, just the opposite was true in the conflict between James and Bacon on the one side and the Chief Justice and Parliament on the other. Bacon in his A View of the Differences in Question Betwixt the King's Bench and the Council in the Marches

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of 1606 upholds the theory that the King's prerogative as well as his crown are from God and are not derived from the Common Law; therefore, they are above the Common Law and not subject to debate. Also upheld was the idea that the only legitimate type of rule is monarchical and that no law or judge may limit the power of a king. 63 This great servant of the King, however, supported absolute monarchy for more than just theoretical reasons. In the same work, in a section entitled the "Reasons of Convenience or Inconvenience", Bacon saw that the supremacy of the monarchy was a means of carrying out legal reforms in Wales and England; besides it could be used as a check against nobles who would destroy individual English liberties by placing the King as well as the commoners under a legal system favorable to an oligarchy. In this work he pictured the House of Commons as being composed of lawyers and members of the gentry struggling for money and importance and lacking the experience and leadership that would enable them intelligently to guide the state. "All who knows these parts," he wrote, "must acknowledge that the power of the gentry is the chief fear and danger of the good subject there." 64 Thus, while Bacon and James struggled for the union of Scotland and England, for toleration, and for reform of the Common Law, Parliament and the courts frustrated their attempts and opposed reforms which would have aided England during that time and which later aided it very greatly. Both Francis Bacon and the first Stuart hoped both to reform certain malpractices in the Common Law and to return it basically to what they conceived to be a law reflecting

64 Ibid., 372.
Divine Law known through reason. Thus, the people of England would benefit by having a legal system that was both just and comprehensible and in which there would be removed malpractices introduced by judges. The King, in his desire to return England's Common Law to a reflection of the Law of God, which was "long lacking in England," was closer to the Tudor concept of law than that of the Chief Justice.

In fact, by the seventeenth century, the concept of Common Law had changed and was no longer a reflection of Divine Law known through reason. The great Chief Justice stated that "They (laws) are not to be decided by natural reason, but by the artificial reason and judgement of Law, which Law is an act which requires long study and experience." The whole of the legal code, therefore, was not based on Divine will, as James claimed, but on court precedents. The Common Law advocate then added that the monarch was under this system of law and must judge in accordance with it. And this tied in with his belief that an independent judiciary based on Common Law would be the best safeguards for English liberties.

In his Speech in the Star Chamber, 1616, James commented on this thesis, stating that the Common Law should be based on sound logic. "For though the Common Law be a mystery and skill best known unto yourselves, yet if your interpretation be such, as other men which have logick and common sense understand not the reason, I will never trust such an

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65 "Speech in the Star Chamber, 1616", Works, p. 331.
66 Coke, Reports, XII, 65.
67 Ibid.
interpretation." Instead, the Common Law must, like the municipal statutes of every other country, including Scotland, be in accordance with the higher law of God as well as comprehensible. Also, it should be written down in English, not in Law-French, so that people would comprehend its true meaning. "For lawes are ordained in rules of vertuous and social living, and not to be snares to trap you good subjects." Otherwise they will only serve "for enriching the advocates and clerkes, with the spoils of the whole country." 69

In answer to the charge that he wanted to model the laws of England after those of Scotland, which were based on Roman Civil Law, the first Stuart replied that just the opposite was his desire. First of all, Scotland was the lesser of his kingdoms and therefore its legal system would be subordinated to that of England. Also, in his Speech of 1607, it was mentioned that there was no regal desire to replace the Common Law, but only that it should be reformed. In fact, it was admitted by the Stuart that this system of Common Law was the best code of laws to be found in any country. But it is important to note that James did not place this system of law on the same plateau of importance assigned to it by Sir Edward Coke and other lawyers. Instead of being the ultimate system of law in England, it was viewed as a series of municipal statutes arising out of precedents, and whose use was confined to determining minor legal matters. 70 By this definition the King could claim that he had no

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desire to replace the Common Law, but it is obvious that his interpretation of its role in the English system was far different than the view of its importance which was taken by its advocates.

Eventually, however, antipathetic pressure from Parliament became so great that James felt it necessary to suppress the main legal book treating of Roman Law, John Cowell's *The Interpreter*. This was a law dictionary in which certain definitions explained how Civil Law was in accord with James' Divine Right theory. For example, in his definition of law, this author restated the Divine Right thesis that all laws and Parliament were a result of the conquest of England by William of Normandy. In both his definition of king and prerogative, it was explained that the monarch was a person above the Common Law as well as above Parliament. Furthermore, even the coronation oath of the king, which pledged the ruler not to change the laws of the land, might be altered so that the crown could "suspend any particular law that seemeth hurtful to the publique Estate." Even in the areas of subsidies -- traditionally reserved to Parliament's approval -- the king might make his own laws through the use of his prerogative powers, which placed him above any existing laws. Actually, James never intended to nor tried to go that far; he further stated that any king, except a tyrant, would obey the laws of past monarchs. Therefore, he accepted the right of the three estates to approve subsidies. In fact, it can be shown that the King was not even in secret sympathy with

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71 John Cowell, *The Interpreter: or Booke Containing the Signification of Words* (London: 1637), Definitions of Law, Pp; King, Qq; Prerogative, Ddd 3.
some of these more extreme statements contained in the Interpreter, as
some members of the Commons claimed. For on March 8, 1612 the Lord
Treasurer, the Earl of Salisbury, delivered a message from the throne
condemning certain parts of this book. It was stated that Cowell dealt
too harshly with the Common Law, which James, according to that author,
held to be necessary laws under which Englishmen must live. Also, the
assertion was castigated that the King might legislate without the Three
Estates. 73 Finally, the most serious reason for regal disapproval was
the attempt by that writer to define the King's prerogative, which the
Stuart asserted was indefinable, simply because it was infinite, and to
which was added the statement that "It is both a tender and dangerous
thing to submit the power of the King to definition, since to define a
subject was to limit it and to leave it no longer infinite." 74

73 Ibid., 49-50.
CHAPTER IV

THE KING AND PARLIAMENT

It is interesting to note that in Cowell's definition of Parliament we can see the inevitable struggle for supremacy that was about to take place between that institution and the crown. "And of these two one must be true, that either the King is above the Parliament, that is the positive lawes of his Kingdom, or else that he is not an absolute King."\(^75\)

This idea was consistent with James' views in Basilikon Doron, in which it was claimed that Parliament was nothing but the monarch's high court, and that its purpose was to make laws for the good of commonwealth, not just for the personal benefit of its members.\(^76\) Such views, it must be remembered, corresponded with the concept of Parliament and laws held by some of the early Tudor writers. But Coke's as well as Cowell's definitions, as we have seen, no longer reflected this traditional view of this institution, and reveal the extent that the balance between King and Parliament had been upset.

But in fact, Parliament in the seventeenth century was not the legislative body of today, and its convening and dismissal were dependent upon the will of the king. If the monarch could rule without summoning it, he was legally justified in doing so until the Triennial Act of 1641,

\(^{75}\) Cowell, The Interpreter, Definition of Parliament, Aaa 3.

\(^{76}\) Basilikon Doron", Works, p. 20.
which obliged the crown to convene that institution at least once every three years. However, it did have to meet in order for the king to obtain money through direct taxation. Therefore, Parliament's strength increased with the frequency of its calling, which depended on the economic necessities of the king and his government. Such need was especially acute during the reign of the first Stuart since there had been a general rise in prices resulting from an inflation that had depressed the real income of the crown, as well as that of the landowning class. Also, James inherited serious expenditures along with the English monarchy and which included the costs of Elizabeth's funeral and the war in Ireland. These expenses, together with the inflation and the increasing spending for the court and the numerous pensions granted to favorites seriously strained the economic resources of the government and raised the average peacetime expenditures from £220,000 a year under Elizabeth to £500,000 under James.

As Parliament's financial control over the monarchy increased, so did its demands for a greater role in the running of the English state, even to the point of interfering in matters traditionally reserved for the regal prerogative. Besides demanding the right of unlimited debate in the matters of war, royal marriage and foreign affairs, its members attempted to force the King to further reform the Anglican Church along Puritan lines.

77 Kenyon, The Stuart Constitution, p. 53.
as well as resorting to the impeachment of those officials of the crown that supported the royal will against the dictates of the Lower Chamber. In these actions, that legislative body was creating innovations in the traditional role between the monarchy and the Parliament and infringing upon prerogative matters traditionally reserved to the crown under the Tudors. With the illustration of their attempts to encroach upon his power we will see why James advised his son in Basilikon Doron to call as few Parliaments as possible and then allow them to make only a few laws. Unhappily, James was not able to follow his own fatherly advice.

This lack of unity between crown and legislature was well reflected in the beginning days of the first Stuart's first Parliament which opened on Monday, March 19, 1604. By the end of that week, the King had already encountered trouble in the form of the case of Sir Francis Goodwin, a member of the Commons who had been elected from Buckinghamshire. Unfortunately, the Sheriff certified Sir Francis as an outlaw, which rendered him unfit to serve in Parliament. The King through the Chancery refused to recognize Goodwin's election as valid and issued a new writ of election, which resulted in the election of Sir John Fortescue. The Commons, however, demanded the right to choose its own membership and denied that the King had a right to remove a person from the Lower Chamber. After a lengthy debate, a compromise was reached in which the King recognized the Lower Chamber's right to determine such a qualification, and to judge the election of its members. It is significant that in 1621 the Lower House

80 "Basilikon Doron," Works, p.20.
began to use this case as a precedent in awarding representation to many boroughs which had allowed their rights to lapse in the later Middle Ages. 81

Another serious problem which the King encountered in this as well as in his later Parliaments was the demand by that institution for a further purifying of the Church of England. In the Apology of 1604, as well as in 1610 and 1614, the Lower Chamber asserted its right to reform religious ceremonies. This was, indeed, a new assertion, since within the context of the English Reformation, the ruler alone held supreme authority in ecclesiastical affairs, which were reserved for the royal prerogative. Under Elizabeth for example, it was the royal policy to forbid the discussion of religious affairs in the House of Commons, and those who disregarded that great sovereign's wishes soon found themselves imprisoned in the Tower. Now, James was not opposed to certain reforms within the Church, since by belief he had a Calvinist theological background. In fact, earlier he had agreed with the clergymen and their suggestions in the Millenary Petition and at the Hampton Court conference about correcting the low standard of education among the English clergy, the abuse of pluralism and non-residence, as well as the need for certain changes and reform in the prayerbook, especially the rubrics, the tithes and the procedures in lesser ecclesiastical courts. 82 Nevertheless, the King, unlike some reformers, did want a centralized and hierarchical government of the Church with himself as its head, in order to cement that

82 Ibid., pp. 125-27, 132-33.
alliance between throne and altar, which he deemed so necessary in maintain-
taining his royal authority. It was therefore with great regal anger that
the Monarch reacted to this Parliament when it began incorporating the
substantial material of the Millenary Petition in bills, and the result
was that James prorogued that legislative assembly, and charging that
certain of its members were too jealous of his powers and were attempting
to introduce novelty by revolting against the order of the English Church.
The result was that the crown then adopted an orthodox policy in an
attempt to enforce conformity so that the Church, which supported the
Divine Right theory, would be safe from the attacks of both a Puritan
House of Commons as well as the courts of the Common Law. At the same
time the Church and its courts were also attacked by an alliance of lawyers
and Puritans since the latter opposed them because they enforced the
Civil Law, while the former resented their enforcement of conformity.

Perhaps the best example of this theocratic alliance can be
found in the Articuli Cleri of 1605 in which Richard Bancroft, Archbishop
of Canterbury, commented on the issue of regal prohibitions; it was
asserted that the King was the source at all jurisdiction, both temporal
and spiritual, and, therefore, could withdraw all cases concerning
ecclesiastical affairs from temporal courts and judge them himself.

At the same time, the Archbishop discussed the matter of the temporal
courts issuing prohibitions, and stated that it was not the courts and

83 Ibid., p. 134. "A proclamation enjoining conformity to the
form of the Service of God established 16 July 1604."
85 Tanner, Constitutional Documents, p. 178.
judges of the Common Law that should be allowed to determine whether the jurisdiction of case belonged to the temporal or ecclesiastical courts; instead the only one who could judge the matter was the King, who was supreme in both spiritual and temporal affairs. This was a result of the fact that power flowed from the King in two streams, one delegated to the Bishops, the others to the judges. Quite opposite to this view, which also reflected both the writings of James I and Cowell, was the answer rendered by Sir Edward Coke, the Chief Justice of Common Pleas, who argued that the issuance of prohibitions was established by ancient custom, and was therefore the law of the realm. And most important, was the statement that the King was under the law of the realm, both judicial and legislative, and that this law could not be changed but by Parliament. 86

Besides these encroachments by the Commons, perhaps the most serious was the attempt of that body to further extend its "purse-string" control over the crown by its attempts to eliminate the extra-Parliamentary sources of the King's finances. One source of income to the monarch besides the subsidies approved by Parliament was through indirect taxes and certain medieval privileges attached to the crown's prerogative powers, and included government control over marriages and wardships, purveyance, the sale of monopolies, and impositions. Through the Master of the Wards the monarch had the right to take the land of minors into his own temporary possession and to enjoy the profits from its use, as well as the right to arrange the marriage of an under-age heiress. Often these privileges were sold to greedy men who hoped to gain great profit from their posses-

86 Coke, Reports, XII, 72.
sion. Also of importance was purveyance, which originally was designed as an emergency power that was used by the crown during time of war, and which allowed the King and his officials to purchase materials and foodstuffs at a price determined by the government. It had been used by Tudors as well as by Stuarts in peacetime in order to secure provision for their needs. Another source was the sale of monopolies which not only benefitted the crown but also the people that purchased them. For example, two of the Duke of Buckingham's relatives, Sir Francis Mitchell and Giles Mompesson, received monopolies for the licensing of inns, ale-houses, and the manufacturing of silver and gold thread. The final indirect tax under discussion, impositions, was based on the monarchy's "right to levy import duties for the regulations of trade and the protection of English manufacturers." However, in 1601 Elizabeth placed impositions (duties) on currants and tobacco, not for the above purposes, but in order to gain revenue; James continued her policy.87

Naturally Parliament opposed these indirect taxes not only because of their misuse but also because they served as a threat to the purse-string control it could exercise over the monarchy. Under Elizabeth, these privileges were so recklessly used that the Lower Chamber attempted to abolish purveyance in 1589 and produced a full scale Parliamentary revolt in 1601. Even though the Commons failed to reform the use of purveyance and the issuance of monopolies, its members continued to attack the crown's use of them with increasing vigor in the Parliaments.

87 Kenyon, The Stuart Constitution, p. 54.
of James. For example in 1604 the Lower Chamber went so far as to deny that the crown had the right of purveyance at all and declined to substitute a tax grant to the crown in place of its use. Unfortunately for the first Stuart King, the aristocratic House of Lords at the same time rejected a proposal from Commons that would have provided financial compensation to the monarchy in place of its use of wardship. The result was a financial stalemate that forced the throne to continue the use of these traditional established rights, even though James was willing to submit to their reform. The desire for their correction can be seen in the King's answer to a group of grievances drawn up by the Lower Chamber in 1606 concerning monopolies, purveyance and impositions. In answer to a complaint against the Duke of Lennox's use of a patent for the selling of new draperies, the King's instructions, spoken by the clerk of the Higher House, were that "whensoever any abuse arising in the execution thereof shall appear it is intended that the same shall be severely punished." While defending the King's right and especially his need of purveyance, the clerk stated that James "was graciously pleased to continue the course he hath done, in punishing all that shall abuse the meanest of his subjects in execution thereof."

The King did, however, come close to solving his financial problems in 1610, when the Lord Treasurer, the Earl of Salisbury, proposed a "Great Contract," that would substitute the King's levying of impositions for a permanent land or excise tax. Unfortunately, Commons was unwilling

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89 Kenyon, The Stuart Constitution, p. 54.
90 Ibid., p. 67, from Commons Journal, I, 316-18.
91 Ibid.
to impose such a tax for fear of rebellion, while the crown was opposed to bargaining over its prerogative, which it felt was sacred and should not be defined or debated. To define it was to establish its limits and this was one of the reasons why Cowell's Interpreter had met with regal disapproval, since even for profit the surrender of prerogative powers was indeed a serious matter. Sir Julius Caesar, commenting on the "Great Contract," reflected this concern and stated that even though James would gain £85,000 a year, it would be done only "with the loss of such power and command over his subjects in so many high points of prerogative as never yet could be obtained from any of his progenitors." 

In this area of impositions the King, besides stating that his glorious predecessor, Queen Elizabeth, had used them, could claim their legality "standeth with the common justice of the realm", since Bate's case of 1606 placed the King's power of imposition on a definite legal basis. This case occurred when John Bate, a merchant, refused to pay an imposition that had been placed on currants by Queen Elizabeth, who had originally granted a monopoly to the Levant Company to carry on a trade in oil and currants with Venice. In return the company paid £4,000 a year to the crown and charged a custom of 5s.6d. a cwt. on currants and oil against these merchants who were not part of the company. When the corporation lost its charter, the monarchy collected the customs itself in order to make up for the loss of the £4,000 paid by the company.

92 Tanner, Constitutional Documents, pp. 345-47.
93 Ibid., p. 348.
This condition persisted until 1606 when John Bate, a merchant in currants, claimed they were illegal since they were direct taxes placed upon his goods without the consent of Parliament. Some merchants claimed that these impositions would ruin them, while others claimed that if the King were allowed to place this imposition, nothing would prevent him from using this as a precedent to impose as many illegal taxes as he desired. Thus he could negate Parliament's power to approve direct taxes. Eventually the case was tried before the Court of Exchequer, which rendered a favorable decision to the monarchy that was highly reflective of the doctrine of absolute regal power.

Baron Clarke upheld the prerogative power of the crown to levy impositions as fundamental to the powers that belonged to the crown as well as being necessary. This judge recognized the fact that the crown's status depended on its financial stability "so he (the monarch) is not a King without revenues, for without them he cannot preserve his dominions in peace, he cannot maintain war, nor reward his servants according to the state and honour of a King; and the revenue of the Crown is the very essential part of the Crown, and he who rendeth that from the King pulleth also the Crown from his head." It was further added that the prerogative should not be disputed and could not be limited by any precedents established by the courts. Also, the prerogative which might be limited by one particular king during his reign did not impose any limitation on his successor. According to Clarke, this was even true in the case of

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94 Ibid., p. 338.
95 Ibid.
the statute of 45 E.3 Cap.4, which had imposed certain limitations on
the issuance of new impositions on such products as wool. Therefore,
the regal right to levy customs was based on the theory that all the ports
of the realm belong to the crown, and that this precedent had been re-
affirmed in the Exchequer Court during the reign of Elizabeth. Another
of the judges, Chief Baron Fleming, also used this argument in his decision.
It stated that the tax was upon the currants at the time when they still
belonged to the Venetians and before they had come into the country;
therefore they were not a direct tax since they were not imposed on a
merchant but upon his goods. The real imposition would not be upon the
merchant but upon the customer, who the merchant would charge in order
to effect the custom duties. Further, in discussing this problem, the
Chief Baron drew a distinction between the "ordinary and absolute" powers
of the King. The ordinary power "is for the profit of particular
subjects and is limited by the Common Law and cannot be changed but by
Parliament." The absolute power of the King, however, was "applied to the
general benefit of the people," and therefore was not limited by the
Common Law, but only by the King's good wisdom. 96 It was also denied
that the King could misuse the decision rendered in Bate's case, and
several analogies were used to prove his point. For example, the crown
might pardon a felon but that did not mean, according to Fleming, that
the King would pardon all felons. Also, just as Queen Elizabeth had

\[96 \text{Ibid., p. 344.}\]
issued a safe-conduct to a stranger, that would not mean that all foreigners would be allowed to enter England. These examples, however, did not correspond to the reality of the situation, since James increased impositions as his financial problems became worse. Finally, opposition came to a head in the Parliamentary session of 1610, when the debates of the Lower House not only challenged the legality of impositions but also the prerogative of the King and freedom of debate. 97

Nicholas Fuller as well as other Parliamentarians on July 20, 1610 restated the argument that a king could not tax the "goods of the subjects but by Parliamentary and not by the King's absolute power." 98 In fact, Heneage Finch went so far as to assert that the King's use of his prerogative in obtaining taxes not only had to be approved by Parliament, but that this body's decision would even bind his prerogative. Both men rendered several reasons why the royal prerogative was limited. For example, Fuller maintained that the monarch's power was bound and measured by the laws of the land, which the King had promised to obey at the time of his coronation. Moreover, the only way these laws could be altered was through the legislative process of Parliament. Both Fuller and Finch in their debate drew upon the literary, but not the historical, precedents of Sir John Fortescue's De Laudibus Legum Angliae to prove their point. Another member, Christopher Brooke, added to this side of the debate by stating that while the prerogative of the King was great, it was not

boundless and was limited by justice and equity. On the other side of the controversy, Thomas Hedley argued that the prerogative was infinite and could not be defined. Nevertheless, an assertion was made by James Whitelock that impositions were not a traditional power of the crown and that none were imposed before Queen Mary's time except by Parliament.

In response, Dudley Carleton pointed out that the right of imposition was historical and went back to the reign of Henry VII, (30 H. 8.). James, this member of Commons maintained, was the inheritor of this right, and Parliament should be content with the previously unknown right of debating the King's prerogative, but should only do so with proper order and good sense.  

James, however, did not agree and even earlier had forbidden that institution to argue about the prerogative or any affairs concerning it by way of a debate on impositions. Nevertheless, Thomas Wentworth, who would later be Charles I's faithful servant, proposed that the courts as well as Parliament did have the right to dispute the prerogative, which was debatable. This was based on the fact that since the prerogative was discussed in the courts of justice at Westminster, it could also be debated by Parliament, the highest court of the land. Chief among those voicing opposition to this interpretation of that institution's powers was Sir Francis Bacon, who pointed out that since first entering Commons at the age of seventeen "he did observe that the Parliament had received

99 Heneage Finch and Nicholas Fuller, ibid., 36, 156-57, 242-43; Christopher Brooke, ibid., 163; Thomas Hedley, ibid., 94-95; James Whitelocke and Dudley Carlton, ibid., 222-23.

divers inhibitions from the Queen to restrain them from debating the matter in question." 101 While admitting the right of debate in cases concerning the commonwealth and individual liberties, it was denied that parliament had a similar privilege in regard to the royal prerogative; and in fact, it was argued that the Lower House always desisted in its debates once an inhibition had been received from the throne. 102 This defender of the crown was quite right in this description of the power of the monarch over the Tudor Parliaments. One need only think of the numerous times that the Queen forbade the Lower Chamber to discuss matters concerning religion, her possible marriage and succession.

Meanwhile in the House of Lords, the Lord Treasurer, Robert Cecil, the Earl of Salisbury, answered not only the legality of impositions, but also showed their benefit to both the crown and the country. First of all, it was shown that they were legal, since they had been established by precedent under the Tudors and through the courts by Bate's case. Furthermore, these indirect taxes were necessary because of the expenses incurred in subduing Ireland and in order to produce a healthy monarchy and a prosperous and safe kingdom. The complaints rendered by Bate and other merchants concerning the financial strain imposed by these custom duties was discounted by the Lord Treasurer, who felt they were just a few complaining parties out of the large majority of prosperous merchants.

102 Ibid.
Finally, the King, himself answered a joint meeting of the two houses in a speech on Monday, May 21, 1610, in which many principles of his Divine Right theory were reaffirmed. The prerogative of the King and what may or may not be done, he reminded them, was not lawful for them to dispute. Also, impositions were not only traditionally practiced by all monarchs in England, but by "all Kings, Christians and elective as well as successive." Therefore, the two Houses had no power to interfere with the King's prerogative and that "I dare affirm no act of Parliament deludes the King of power to impose." Even though he mentioned that he could be a tyrannical king and rule without their consent it was stated that he chose not to do so. For "many things I may do without Parliament, which I will do in Parliament, for good Kings are helped by Parliament not for power but for convenience that the work may seem glorious." Therefore, it can be seen that James' political theory, far from being divorced from reality and English political thought, was broad enough to conform to the practical necessities of ruling England. 104

On the following day Thomas Wentworth, James Whitelocke, Nicholas Fuller, and Sir Edwin Sandys answered this speech. First of all, Wentworth disagreed with James' assertion that it was seditious to discuss the royal prerogative, for "if be, all our law books are seditious." Also of importance was Nicholas Fuller's denial of the traditionality and legality of impositions. A far more constitutional view of the controversy was taken by James Whitelocke, who suggested that if the crown was

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104 Ibid., II, 102-105.
allowed to levy impositions, it would become a precedent that would allow
a regal edict to replace the proper constitutional role of Parliament in
approving legislation. Besides, this member felt that "the Supreme and
ultimate power in the state... in effect rests not in the King alone
but in Parliament." An attempt was then made by Sir Edwin Sandys to draw
a distinction between impositions and the King's prerogative. While
admitting that marriage, succession, war and peace were affairs reserved
to the King, impositions were not since they were a form of taxation
placed against a person's property, and therefore subject to Parliament's
approval and debate. This member then suggested that the Commons argu­
ments ought to be presented to James in the form of a petition, which
was done on May 23, 1610, when the Petition of Rights was delivered to
the King. It asserted that any aspect of the royal prerogative that
infringed on subjects' liberties was properly open for debate.105

Most likely, the main liberty that Whitelocke and other members
were afraid of losing was the financial necessity on the part of the
crown of calling Parliament into session; legally the King did not have
to convene that institution, unless he so desired, until the Triennial
Act. But it is important to note, that the crown did have to summon
it when it desired to levy a direct tax on its subjects; but this would
no longer remain the condition if James could replace his need of direct
taxes with impositions. No longer, it was argued, would the government

105 Thomas Wentworth, ibid., 108; Nicholas Fuller, ibid., 108;
James Whitelocke, ibid., 109; Edwin Sandys, ibid., 112; Kenyon, The
Stuart Constitution, p. 27.
have to obtain taxes by acting through Commons, which Whitelocke felt
was the proper constitutional procedure. In fact we can see the basis of
this fear in the admission of the Lord Treasurer, the Earl of Salisbury,
that there had been an increase of over one thousand new impositions in
the first Stuart's reign. 106 However, we must remember that James had
a legal as well as a traditional base for his action and that his use of
this source of revenue, as Elizabeth had done before him, was out of
necessity, not out of desire. Besides, the Lower Chamber had destroyed
their chance of placing England on a solid financial base by attempting
to bargain over the King's prerogative, which was sacred, and by fighting
among themselves on whom the levy would be placed, merchants or land-
owners. 107 Also, that House distrusted the King and felt that once the
money was appropriated for the government James would not keep his promises;
therefore, the only way he could be held to responsibility was if he were
to admit both being under and subject to Parliamentary law. The crux of
the problem was stated by the Earl of Huntington, who concluded that "the
King will not acknowledge his prerogative to be inferior to law, and there-
fore no good assurance and tie can be made but his prerogative will be
above it." 108 Therefore, it was not just the King, but also Parliament,
that created the road block to financial stability, and it was this that
plagued the first two Stuarts, leading to serious conflicts over the

107 Ibid., I, xvi-xxi.
108 Ibid., II, 393-94.
King's prerogative taxing powers. This same problem of finance led to the disastrous "Addled Parliament" of 1614 which lasted only two months and was dismissed in May, 1614, without passing a single measure. 109

In the next Parliament, that of 1621, which was convened because of the financial needs of the crown, it is possible to see some of the factors that united the Common Law lawyers and the Puritan members of the Lower House. Both groups felt that the King was not supreme and above the law, but instead was limited and under the "Fundamental Law." To the Puritans it was the Divine Law as reflected in their religious views, and to the Common Law lawyers it was the statutes and the precedents of the Common Law. Both felt that since the King's prerogative powers violated it, they must be limited. Since these men of law were extremely patriotic, they were able to unite against a most distasteful aspect of royal policy, that of attempting to reach an accommodation with Catholics abroad and at home. Thus, the Catholic threat as well as other issues were used as a means of encroaching upon the King's prerogative powers. 110

In the Parliament of 1621, members of the House of Commons attacked the proposed marriage between James' son, Charles, the Prince of Wales, and the Spanish Infanta. At this time, the King was also hoping to restore by means of diplomacy his son-in-law, Frederick, to his electorate of the Palatinate, which he had lost in the early stages of the Thirty Years' War. Even though James' policy eventually failed, the

109 Willson, James VI and I, p. 347.
Commons was, in terms of the time, exceeding its authority by debating a royal marriage, the King's diplomacy, and the supposed Catholic threat. Eventually, their protests led to a reprimanding speech by the first of the Stuarts, who informed Parliament of his complete right of freedom of action. According to James he summoned them and was the source of all their power, since his office existed prior to theirs. Reflecting the status of the Scottish Parliament, the King informed the Commons that they could only confer with him on such matters as he chose to permit to them, and that their duty was to petition him for laws, which he made and they ratified. They were not to censure him nor his policies nor to discuss the prerogative, either directly or indirectly.

Besides interfering with the proposed marriage, the Commons' action was also intruding upon another prerogative power, the monarchy's control over foreign affairs. The members of the Lower House hinted that they would not approve a subsidy until their advice was followed and that it would only be for the relief of the Palatinate. Their suggestions about the proper royal course of action was contained in the Petition of December 3, 1621 and implied that this subsidy would be approved if the King would accept this document and "give life by your royal assent to such bills as before that time shall be prepared for your majesty's honour and the general good of your people." They interfered also, in another

113 Kenyon, The Stuart Constitution, p. 46.
matter, Ireland, which was a foreign domain of the king of England with its own Parliament, but which was investigated by Commons. The supposed reason for doing this was that this country was Catholic and could be used for an invasion of England by Catholic powers. Sir John Jephson, a Privy Councillor for Irish affairs, testified on April 26, 1621 that if the Irish revolted, because of oppressive patents and monopolies, they would call in their coreligionists. The King responded to the intrusion by Commons by demanding that they leave these affairs alone and that he would look into their complaints.

The Lower House also attempted to expand its own power as a court of justice through religious fear. This Chamber had an established right to investigate and bring complaints against persons, but it had no right to sentence anyone, except its own members. By petition, it could request the House of Lords to punish specifically named offenders. But it now found an opportunity to expand its power while looking into the conditions of a London jail, the Fleet. During this investigation, a charge was made by one prisoner against another incarcerated there, Edward Floyd, a Catholic barrister, who had been imprisoned on the orders of the Privy Council. The complaint against Floyd was that he had made slanderous remarks about James' daughter, Elizabeth, and her husband Frederick, the Elector Palatine, reportedly having stated "I have heard that Prague is taken; and Goodman Palsgrave (Frederick) and Goodwoman Palsgrave (Elizabeth) have taken their heels; and as I have heard, Goodwife

114 Notestein, Commons Debates, 1621, III, 89-90.
115 Ibid., IV, 279-81.
Palsgrave is taken prisoner."¹¹⁶ While claiming to be protecting the King's family, the Lower Chamber was also extending its own power by trying and sentencing that accused Catholic. Even though its members realized that they were establishing an innovation "it was resolved that if there were no president rather to make a president than to let the offence slip out of their hands."¹¹⁷ In his speech of May 2, 1621, the King vigorously disagreed with Commons' assertion that it was a court of justice. The right to punish the defendant was not theirs, James felt, since the crime was not done in Parliament and therefore was out of the jurisdiction of Commons. Floyd had been sentenced to jail by the King and his case had been settled by the Privy Council. The first Stuart also questioned the procedure in convicting the Catholic lawyer, since Parliament had accepted evidence not obtained under oath. The Lower Chamber, it was asserted, had voided its chance of being a court, when it refused to judge a case under Henry IV. After revoking the sentence and turning the case over to the House of Lords, which was the High Court of Parliament, the King told that chamber not to meddle in his business. Understanding what the members of the Lower House were attempting to do, a royal warning was issued that asserted that if a single concession were granted, it would be stretched into new powers that would weaken his.¹¹⁸ Unfortunately for the accused, the Upper House on May 26 condemned him to be degraded from the estate of gentleman, branded, whipped, fined £5,000, and to be

¹¹⁶ D.N.B., VII, 343.
¹¹⁷ Notestein, Commons Debates, 1621, IV, 278.
¹¹⁸ Ibid., II, 337; III, 142, 155-58; V, 5-6, 134-35; VI, 400.
imprisoned in Newgate Prison for life. However, he was finally liberated from prison on July 16, 1621, but only after James had accepted a petition from the jail-keeper asking for a use of the royal prerogative power of pardon. 119

Ecclesiastical courts were also attacked by the alliance of lawyers and Puritans. Lawyers wanted to eliminate them because they enforced the Civil Law, while the Puritans resented their enforcement of conformity. Even though the King forbade Commons to receive or discuss petitions concerning ecclesiastical affairs, they did attempt to try the Chancellor of Durham for accepting bribes for the release of recusants and priests. Fortunately, he was saved by the fact that Convocation was in session, and Parliament could not try a member while that body was meeting. 120

Another attempted infringement against the King's ecclesiastical powers was Parliament's demands that the crown both enforce the existing laws against recusants and also strengthen those laws with new ones. This demand, by way of petition, was an attack on the prerogative position of the monarch, whose role in the English constitution was the enforcement of laws as well as the right to disregard penalties and to pardon those convicted. It was presented to the King on February 17 and called for the strict enforcement of anti-recusant laws, even to the point of ending

119 D.N.B., VII, 343.
120 Eusden, Puritans, Lawyers, and Politics, pp. 82, 92; Notestein, II, 369-71; III, 262-65.
the open exercising of religious practices.\textsuperscript{121} Lawyers especially were eager to have these ordinances enacted in order to collect fees resulting from the cases.\textsuperscript{122} Unfortunately for the non-conformists, James, because of the limitation of his financial position, had to agree to the enforcement of the demands, resulting in Commons being informed by King James that he needed no spur to enforce the true religion, but that the means which he used were his own choice. "As I give place to the matter of your petition, see leave me the latitude which belongs to me to chuse the means I best know how to execute."\textsuperscript{123} It was made clear that while he listened to the request of Commons, the enforcement of true religion belonged to the government, which should act against Puritans as well as Papists. Religion thus became entangled with the problem of absolute monarchy and was used as a means of attacking it. It was also used as an avenue to investigate Ireland and as a pressure point against the King in his enforcement of the law, and it was further used as a means of interfering in foreign affairs and in impeding the marriage negotiations between England and Spain.

It must be remembered that James' purpose in dealing with Spain in such pacific terms as diplomacy was, among his important reasons, to attempt to restore his daughter, Elizabeth, and her husband, Frederick, to the Palatinate without resorting to war and by arranging a marriage with Spain. Besides detesting war, the King also hesitated to take

\textsuperscript{121}Notestein, Commons Debates, 1621, V, 458-60.
\textsuperscript{122}Eusden, Puritans, Lawyers, and Politics, pp. vii-viii.
\textsuperscript{123}Notestlein, Commons Debates, 1621, IV, 71-74.
military action against the Hapsburgs over the problem of Bohemia, because of his Divine Right Theory of hereditary kingship. On January 30, 1621 he informed Commons that his son-in-law's title to the crown of Bohemia was illegitimate since it was not based on hereditary succession. Also by remaining out of the conflict, the Stuart felt that he could aid Frederick by being a mediator and by extending financial aid to his son-in-law through a subsidy, which he requested of Parliament. One of James' diplomatic weapons in dealing with Spain was the establishment of a marriage alliance between Charles and the Spanish Infanta, which also contained terms that would restore Frederick to the Palatinate. Reaction to this proposal by the Puritan and nationalistic Commons found expression in hatred and fear of Spain and of Catholicism. To allay such fears, King James promised Commons on January 30, 1621 that he would conclude no match except for the furtherance of true religion. A royal warning was then issued forbidding the Lower House to discuss such prerogative matters as marriage and diplomacy, and it was further suggested that Parliament should refrain from spending its time on fruitless speeches. Some members of the House of Commons, such as Sir Edward Coke, took a far different view of the King's attempt to limit debate. The former Chief Justice of the Common Pleas stated that he would fly to the Magna Carta to protect free speech and to leave it for posterity.

124 Ibid., IV, 5.
125 Ibid., II, 7; III, 3; VI, 224.
In order now to express that Chamber's views to the monarch, a petition was formed asking their sovereign to marry Charles to someone of the same religion. By placing their views in the form of a petition, it was pointed out, in December 1621, that they were not demanding, but only requesting, the crown to follow the proper course. To Sir George More, the correct English policy was not a marriage alliance with Spain but war, since diplomacy had failed to restore Frederick to his lands. An exception to this part of the petition was issued by Sir Edward Sackville, who felt that the King would reject the whole petition because of this one section and that "We have been careful all this Parliament not to touch the King's prerogative, but what greater prerogative is there than to make war, matches and alliances." Charles, he reasoned, was young and intelligent and would convert the Infants. Sir James Perrot, however, warned of the peril involved in marrying a Papist, by pointing to the case of a Catholic mother who murdered two of her four children so that they would not be raised as Protestants. How, he questioned, could such a marriage be for the glory of religion as James had promised. Answering Sackville's claim that Charles would convert his future Queen, Thomas Wentworth warned of the power women possess to allure and control men as well as to alter their decisions. He then commented on the analogy used by James to describe the relation between the roles of

126 Ibid., VI, 240.
127 Ibid., II, 491.
128 Ibid., II, 481-88.
129 Ibid., II, 488-89.
Parliament and the crown in the English government. The first Stuart had claimed that its relation to the monarchy was that of a body which obeyed the directives of its head, the King. Instead, Wentworth argued that just as the body provides for the safety of the head so must Parliament, which represented the body politic of the commonwealth, provide for the safety of the throne through the use of debate and petition. Therefore, the discussion about a royal marriage was a proper subject for discussion since from Charles' wife would come the future head of England. While commenting on this marriage, this member stated that it was proper to petition kings. He did so by using the King's own pronouncement on the Divine nature of kingship and by asking why it was not proper to petition "God's Lieutenants" on earth, since Christ instructed His followers to petition the Father by prayers whenever they were in need. Surely if man could petition God, they should be allowed to beseech those "Little Gods" that sat on the throne of England. This same argument was used later in the day by Mr. Noy and others, in order to reinforce the Lower House's claim that it had a right as well as a duty to discuss the proposed royal marriage with Spain. ¹³⁰ Nevertheless, all the members and officials of Parliament did not agree with the above arguments. The Chancellor of the Exchequer, Sir Richard Weston, pointed out that while it was good for the King in matters of war and marriage to confer with the Commons, it was not proper for that House to advise the crown. ¹³¹ The Recorder's comment on the matter was more

¹³⁰ Ibid., II, 490-91.
¹³¹ Ibid., II, 489.
blunt and direct; he felt that to discuss these matters was to disinherit the monarchy of its traditional rights. This was exactly what the House was attempting to accomplish and it was recognized by its own members. Sir Robert Pheilips, while claiming that the marriage of Philip and Mary had been debated in Parliament, stated that there was no need for precedent, since there was "no case like the growth of Catholics before."

While the Commons did not possess the power to force its views on King James, it did hold a purse-string control over his finances. An example of the economic pressure that was placed on the King can be seen in the statement issued by Sir George More on February 5, 1621, after James had informed Commons that they were called to grant subsidies, not to discuss matters of the prerogative. Freedom of speech and the right to hear grievances went, according to this member, hand-in-hand with subsidies. Actually, most members chose only to hint that subsidies depended upon the King following a policy favorable to the Commons; but this can be seen more evidently in the petition of December 3, 1621. The first Stuart on numerous occasions forbade the Lower Chamber to discuss these prerogative matters and to provide him with subsidies, but he had to view the economic power within the grasp of Commons with political realism. After ordering that Chamber not to discuss the content of the petition, Commons responded with a remonstrance claiming its

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132 Ibid., II, 493.
133 Ibid., II, 492-93.
134 Ibid., II, 2.
135 Ibid., II, 21.
right to deal with prerogative matters. While stating that he had refused to read their remonstrance, thus protecting his position of never recognizing Parliament's right to comment on his prerogative, the King did issue a letter in agreement with many of the demands contained in that document. However, James firmly reiterated that Commons could not debate any matter concerning his prerogative. It is evident that the King, while being forced to change his policy to suit Parliament, always attempted to do so without losing face, and the Lower Chamber also followed the same policy in most of its debates as well as in its petitions. An example of this political tactic can be seen in the argument used by Sir Edward Coke in support of a war with Spain. Instead of attacking the royal prerogative on matters of marriage and war, the former Chief Justice of Common Pleas asserted his position by defending the Monarch's rights. Every man is in charge of the marriage of his child; and "marriage and leagues, war and peace, they are *arcana imperii* and not to be meddled with. But on the other hand, Parliament should be allowed to petition the King for a change in his policies. This was allowable according to Coke, since a petition was only a request and not a demand; therefore, it did not encroach upon the royal prerogative. The King should follow a policy of war against Spain since it was that country that broke the peace; and if the first Stuart failed to do so, he would be abandoning his children, Elizabeth and her husband Frederick, to Spain's

136 Ibid., II, 500.
137 Ibid., II, 519.
aggression. Then quoting James' own words, this member finished by stating that an honorable war was preferable to a dangerous peace.\textsuperscript{138}

The conflict reached such a point that Commons on December 18, 1621 produced a protestation in which they claimed "the ancient and undoubted birth right and inheritance of the subjects of England," to debate affairs concerning the King, the state and defense of the realm, and the Church of England.\textsuperscript{139} The first Stuart was so angered that he tore the protestation out of the Journals of the Commons and dissolved Parliament. Under the pressure of Charles and the Duke of Buckingham, because the former had been rebuffed by the Infanta during their sojourn in Spain and now wanted war, James called a Parliament on February 19, 1624, and accepted many of their previous demands. "The properties and causes of calling a parliament, and so go the writs, are to confer with the King and give him their advice in matters of greatest weight and importance. For I assure you ye may freely advise me, seeing, of my princely fidelity, ye are entreated there unto."\textsuperscript{140} The Stuart, under the pressure of his two loves, Charles and Buckingham, had succumbed to the heavy-handed demands of Parliament, and thus had sacrificed both his policy of peace and his view of the undebatability of certain prerogative matters. His last Parliament ended with its members congratulating him on the abandonment of his lifelong policy of searching for

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{\textit{138}}Ibid., VI, 43.
\item \textsuperscript{\textit{139}}Kenyon, The Stuart Constitution, p. 47.
\item \textsuperscript{\textit{140}}Ibid., pp. 48-49 (taken from Lords Journal, III, 209-10.)
\end{enumerate}
\end{footnotesize}
peace. Once again, as in the cases of impeachment during the Parliaments of 1621 and 1624, Charles and Buckingham were creating a situation that would help lead to their own undoing.

In both these Parliaments, the House of Commons revived the practice of impeachment of non-members that had been unused since the fourteenth century and turned this power against the King's ministers. Originally the session of 1621 decided to bring an action of justice only against those persons who had misused the King's patent of monopolies. It was felt by the members of the Lower Chamber that it would be unwise to leave their trials to the Courts of Common Law, but at the same time they were troubled by the fact that Commons had never established its right as a court of first instance. In fact Sir Edward Coke and other lawyers, who were members of the Lower Chamber, held that the dispatching of Sir Francis Mitchell to the Tower, was only done because of his misconduct, due to a misuse of a patent, which was a violation of Parliamentary privilege. It was also maintained that his imprisonment was only valid while Parliament was in session, and that the accused should not be examined under oath. Instead, those members turned, through petitions, to the House of Lords, which did have such power, though unused since Lord Stanley's trial in 1459. It was claimed by Coke that the Lower House was in fact the Inquisitor - General of the

141 Tanner, Constitutional Documents, pp. 296-302.
142 Kenyon, The Stuart Constitution, p. 93.
143 Ibid., p. 101.
grievances of the kingdom, while the House of Lords was judge and jury. Normally the procedure in an impeachment was informal; first of all the Common's Committee on Grievances conferred with its counterpart in the House of Lords, to which it presented a statement of the grievances, of the evidence and of the witnesses against the accused. While this type of prosecution was only used against those who had misused patents, Sir Francis Mitchell and Sir Giles Mompresson, James offered no objections in his speech of March 26, 1621, in which he proclaimed that "nevertheless, since these things are now discovered by Parliament, which before I know not of, . . . . I will never be a wit the slower to do my part for the execution." In conclusion, the monarch stated that "Whatever the precedents in times of good government can warrant I will allow, for I acknowledge this to be the Supreme Court of Justice, wherein I am ever present by representation." 144

But in the same year Parliament also attempted to use the same procedure against the King's ministers, of which the first to fall victim was the Lord Chancellor, Francis Bacon, who was accused of accepting bribes and gifts. While such conduct is condemned in our day, it must be remembered it was not that extraordinary during Tudor and Stuart times. But after being indicted and examined by the Lords, Bacon finally had to confess his guilt to the Parliament and to beg for clemency, which he did in the words of Job. "I have not hid my sin as Adam, nor concealed my faults in my bosom. This is the only justification

I will use." Punishment was then rendered by that institution in the form of a fine, imprisonment to the Tower during the King's pleasure and by denying him any future office under the crown or membership in Parliament. Unlike the earlier cases, the King vigorously objected to this novelty, when the House of Commons moved against Lionel Cranfield, the Lord Treasurer, in the next Parliament in 1624. It was obvious to James, in this case, that the Lower Chamber was in alliance with the Duke of Buckingham. This royal favorite disliked the Lord Treasurer, since it was this frugal businessman from the lower class that stood in the way of the Duke's exploitation of the legal finances as well as his exertion of control over the royal ministers. On the other hand, Parliament also disliked this upstart and found common ground with the Duke and Charles in their desire to war against Spain. Because of this action against his loyal servant, the first Stuart vigorously protested that "before the last Parliament I never saw any precedent of this nature," and then warned the Lords to be careful of establishing any precedent that might be harmful to them and their successors. While admitting that they might deal with accusations of wrong brought to them, he cautioned that they were brought "by men that search and hunt after other men's lives and actions, beware of it; it is dangerous, it may be your own case another time." The wisdom of this prediction can be

145 Tanner, Constitutional Documents, p. 329.
146 Ibid.
seen in the Parliament of 1626, when King Charles had to dissolve that
session in order to save Buckingham from a similar fate. It is ironic
that Charles and the Duke of Buckingham had been instrumental in obtaining
these impeachments, since it was they as well as Thomas Wentworth and
Archbishop Laud that this procedure would be most effectively used
against.

Another reason for the King's financial troubles was his
reliance on unfit favorites. In Basilikon Doron, he told his son Henry
to choose the best of each country, the nobles, to be chief counselors
and to fill important positions with them; also, they should not be
quarrelsome and should be totally dependent on the king. Since the
people judged the monarch by his counselors he should choose them with
these points in mind. He then advised Henry to retain his father's
good servants once he was king; advice that seemed very admirable, but,
onece again, James did not follow his own instructions. Fortunately
for the first Stuart, his main advisor during the early part of his reign
was the hard-working Robert Cecil. But after his death, in 1612, the
King resolved to assume a more personal control of the government.
However, he was no Cecil and soon had to abandon the scheme of being
his own Principal Secretary, due, among other things, to the long periods
of time he spent hunting in the country. Finally, he had to agree to
appoint a Principal Secretary after the Commons complained about serious
delays due to the lack of vigor on the part of the King who "must daily

more and more intend his own health, and quiet."

This lack of vigor and health prevented James from ruling as effectively in England as he had in Scotland. There he had risen from being a small frightened Prince under the control of and the mistreatment of different groups of nobles (who had seized his person as a means of maintaining their control over both nobles and Parliament). By the time he had arrived in England, he was already prematurely aged and lacking in the drive that had characterized his earlier rule in Scotland. Instead of turning to such a talented man as Francis Bacon as advisor, he immediately entrusted himself to Robert Carr, a Scottish adventurer, who had come to England in 1603 to be a page running beside the royal coach. After having been dismissed from this position and after having traveled to France, he returned to England and attracted the attention of the King, when he was injured in a fall from his horse. James visited him during his recovery and afterwards made him a Gentlemen of the Bed Chamber. By 1611 he had risen sufficiently in the estimation of James that he was created Viscount Rochester, and thus became the first Scot whom the King appointed to the House of Lords. The King's fascination with Carr, as it would be later for Buckingham, was partially physical; both were handsome and attractive to the Stuart as well as to women. James' attention was not just confined to periods of privacy; "The Prince leaneth on his arm," wrote a courtier, "pinches his cheek, smooths

148 Willson, James VI and I, pp. 334, 378.
his ruffled garment, and when he looketh at Carr, directeth discourse to diverse others."  

Francis Osborne remarked that James stroked his favorites so fondly in public that he was not likely to restrain himself in private. This relationship, which was not uncommon between kings and favorites, at first was beneficial to the monarchy. Carr, under the tutelage of James, proved to be a loyal servant who furthered the interest of the crown, until he allowed himself to be engulfed in the party factions at the Court and forgot his dependency on the King. The beginning of his ruin occurred when he fell in love with Frances Howard, the daughter of the Earl of Suffolk, and wife of the young Earl of Essex. This affair resulted in an alliance with the pro-Spanish and pro-Catholic party of the Howards. James, who aided Lady Frances in obtaining a divorce in order to marry the young Scot, argued that he could find nowhere in Scriptures a direct condemnation of divorce, and therefore it was not wrong. 

However, a close friend of the favorite, Sir Thomas Overbury, opposed the marriage on the ground that it and the accompanying scandal would ruin the young Carr. In order to silence this opposition, Lady Frances and her future husband persuaded the King to send Sir Thomas to the Tower. In a most timely manner for the couple, ten days before the divorce the prisoner died; but in 1615, it was revealed that he had been poisoned by Lady Frances. The King through

150 Willson, James VI and I, p. 337.
151 Akrigg, Jacobean Pageant, pp. 181-82.
his strong sense of justice allowed both to be brought to trial, even though the former favorite threatened to blackmail him by releasing scandalous secrets. Both wife and husband were convicted and sent to the Tower, although it was shown that Carr did not know of the murder at the time of its commission. Some years later, in 1622, they were pardoned by the King. Besides hurting the Monarch's prestige, Carr also weakened James' financial position. The debt which Salisbury had reduced to £160,000 in 1610 had steadily risen under Carr's management to a point of £488,000 in 1614; meanwhile Carr had become a wealthy man. This condition was quite opposed to the type of rule which the King had advocated to his eldest son, Prince Henry, in Basilikon Doron, in which the Prince was advised to be moderate in spending as well as in the use of food, drink, and dress. Before his fall Carr had actually reached the point where he acted contemptuously in public to the King and practically threw temper tantrums when he did not get his way. James' advice had come true in the case of Carr: people were judging the sovereign by his advisors.

The first Stuart, however, made the same mistake with his new favorite, George Villiers, who was pushed forward by the enemies of the Howards as a counter to Carr. Villiers, later Duke of

152 Ibid., pp. 189-202.
153 Dietz, English Public Finance, pp. 149-50; Willson, James VI and I, p. 344.
155 Akrigg, Jacobean Pageant, p. 188.
Buckingham, had the allurement of both sexes with a combination of masculine strength and feminine delicacy. Once again James expressed his love openly by pawing and petting. In 1617, in the Council, the King declared that he loved Buckingham more than other men, and that there was nothing wrong with his actions since Jesus Christ had done the same. "Christ had his John, and I have my George." In the same manner James bent Scriptures to justify his actions with Buckingham as he previously had done to justify the divorce of Lady Frances from the Earl of Essex.

The first Stuart, however, hoped to avoid the same mistakes he had made with his earlier favorite when he now undertook to instruct Buckingham in matters of state, as he had once done with Carr. Soon, however, the old problems appeared again, and Buckingham gained in influence; in fact he secured almost a complete veto over the appointment of officials. Along with his mother, Lady Compton, the Duke strove to enrich their family while the King's debts mounted to £726,000 by September of 1617. The mother so dominated her son that she actually became a power in the Court and used her influence to arrange marriages for her daughters.

The Duke did cooperate with his sovereign in an attempt to reform the government, after a royal visit to Scotland in 1617 that seemed to revive James' vigor. Buckingham followed the royal lead and

inducted Lionel Cranfield into the office of Lord Treasurer. This brilliant financier had risen from the position of an apprentice to be one of London's leading merchants and now received high public office. In this position he was able to reduce the King's spending in the household, the wardrobe, the exchequer, the ordnance and in the administration of Ireland. The reduction of expenses as well as Cranfield's haughty attitude offended the upper-class hangers-on at the royal Court. But at the same time, the Lord Treasurer was not able to do so while the Duke maintained power to enrich himself and his family. Thus, besides preventing these reforms and alienating the King's subjects, the Duke, as well as Prince Charles, brought about the downfall of Cranfield in 1624; unfortunately for them at the same time they inaugurated an encroachment upon the crown's powers.

Originally, Charles, like his mother Queen Anne, showed jealousy at the Duke's domination over his father. The King, however, shrewdly was able to unite the two loves of his life into a friendship that eventually led to the final fall of the Howards and to trouble for James. It began in 1623 when the Duke accompanied the Prince to Spain to aid in securing his marriage to the Infanta. This proved to be a fiasco, and after its failure, Prince and Duke supported the English Parliament in its demand for war against Habsburg Spain. During the

158 Willson, James VI and I, p. 394.
159 Akrigg, Jacobean Pageant, pp. 207-09.
seventeenth century Spain was the champion of Catholicism. It furthermore had cooperated with the other branch of the Habsburg family, which ruled the Holy Roman Empire at the time when Habsburg forces were dispossessing James' son-in-law, the Elector Frederick, of the Palatine. Besides supporting Parliament's right to debate prerogative matters of state, foreign policy and the conditions for marriage of Charles to some foreign princess, in return for a subsidy to wage war against Spain, the Prince of Wales and the Duke also supported Commons' impeachment of Cranfield. The great Lord Treasurer was rewarded for his hard work by his ruin. The King attempted to save him, but when Buckingham refused to give up the impeachment, James said to him, "By God, Steenie, you are a fool and will shortly repent this folly and will find that in this fit of popularity you are making a rod with which you will bescourged yourself." Then turning to Charles he rightly predicted "that he (Charles) would live to have his bellyful of Parliaments."\[160\]

The King, due to premature old age, ill health, and constant pressure from all sides came to terms with Parliament and accepted the subsidy Act of 1624 (21 Jac. I, C. 33): An Act for payment of Three Subsidies and Three Fifteenths by the Temporality, which stated that the King could only spend money on the defense of England and Ireland, the navy and aid to the Dutch.\[161\] During the spring and summer Charles and Buckingham were busy preparing for war. Thus Parliament, in alliance

\[160\] Willson, James VI and I, p. 443.
\[161\] Kenyon, The Stuart Constitution, p. 73.
with the Prince and James' favorite, had succeeded in encroaching upon prerogative matters of state that would have been beyond their reach during the reign of Elizabeth. Such a discussion during her day would have resulted in the Speaker being sent to the Tower. Thus Parliament had by 1624 extended its authority over prerogative matters that many of its members had stated were reserved for the King in 1610. The King, however, did not live long enough to see his policy of peace destroyed by the combination of the two people he loved and the English Parliament. On March 27, 1625 he died at Theobalds.

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PART II

THE POLITICAL WORKS AND JAMES' ACTIONS
IN OBTAINING THE ENGLISH CROWN
CHAPTER V

THE POLITICAL WRITINGS OF JAMES USED AS PROPAGANDA

One of the greatest obstacles to the union of England and Scotland, fusing the two realms into one political entity, was the fear that the King would favor his Scottish subjects. While he denied such a charge, he did not help disprove it by his actions. One reason for this difference between theory and fact was because The Political Works were meant to be read and, therefore, were used for propaganda. Just as no general or statesman writing his memoirs would admit of any wrong doing or mistakes, so it was with James. In his introduction to Basilikon Doron in The Political Works he mentioned that he was never anti-English or ever opposed to Queen Elizabeth, and mentions his great love for her. Also, he tried to persuade the reader that when he was attacking the Puritans as "vile worms," who were attempting to put themselves above the king, he was really referring to Anabaptists (a group universally despised by the Catholics as well as by all Protestants).164

James' attempt to prove his loyalty and love for Elizabeth indeed need proving. He advised his son, Henry, to treat other rulers as brothers and sisters and to "bee plaine and trewthful, keeping ever

164 Ibid., p. 7.
that Christian rule, to doe as yee would bee done to; especially in counting rebellion against any other Prince, a crime against your own self." But in fact, the Stuart's policy in relation to Elizabeth and her relations with him were nothing like the above-mentioned golden rule. Before ascending to the English throne, the Scots ruler carried on correspondence with both the Earl of Essex and the Earl of Tyrone during their rebellions, while issuing proclamations against aid to the Irish rebel, which were in fact not enforced. In one letter between James and the Irish Earl, that rebel promised to aid the King of Scots with soldiers when the time should come to claim the English throne. But James was in fact only attempting to make contacts with all the different groups and persons that could either hinder or help him when the time came, after Elizabeth's death, to gain the English crown. Quite often these contacts angered the English government and proved embarrassing to both the Scottish King and Elizabeth. One such case occurred in the spring of 1598 when an English Catholic, Valentire Thomas, was arrested at the border for horse-stealing. This half-mad criminal, who had only been interviewed once by James, invented the story that he had arranged with the King for Elizabeth's assassination. Both Elizabeth and Cecil discounted his story and did not blame the Scottish King; they felt that the unbalanced Thomas was hoping to obtain his freedom

165 Ibid., p. 28.
166 Willson, James VI and I, pp. 148, 150-53.
by making accusations against important people. But with this and other rumors of James' treachery circulating in England, we can well understand why the Scots Ruler found it necessary to assert his love for Elizabeth in The Political Works.

In his attempt to secure the crown of England, James also carried on secret correspondence with English Catholics, with foreign princes and indirectly with Pope Clement VIII. To both English and foreign Catholics, the Scots sovereign held out the hope that he or his family might be converted. In 1599 James sent an Englishman of slight prominence, Henry Constable, on a mission to Rome, allegedly to promise Clement VIII that the King would become a Catholic. Most likely James offered the Pope toleration in return for the Pontiff's pledge not to support any other claimant to the English throne. Earlier he had presented a favorable picture to Rome by refusing to enforce anti-Catholic legislations and by employing some members of the Roman Church in high governmental positions. For example, after the Brig O'Dee Plot of 1589, James removed one of the conspirators, the Earl of Huntley, as captain of the King's Guard, only when Sir John Maitland, the Chancellor, threatened to resign. But still the King continued to use Catholics in his government. In 1598 when his Protestant secretary, John Lindsay, retired because of ill-health, James

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168 Willson, James VI and I, pp. 142-45.
169 Stafford, James VI of Scotland, pp. 233-34.
170 Ibid., pp. 41-43, 50.
appointed the Catholic James Elphinstone as his principle secretary. It was through this official that James could deal indirectly with the Papacy. All of these pro-Catholic actions were done in order to influence Pope Clement VIII, who was looking for a claimant to the throne who was equally independent of France and Spain. At the same time, both of these countries were hoping for an English King who would be favorable to them. James' diplomatic policy was to promise friendship as well as to hint at his conversion in his dealings with Catholic princes as well as with the Pope.

After gaining the throne, however, both Catholics and Puritans became disappointed with the first Stuart's failure to be converted to their religious views. In his Premonition James denied that he had ever promised Pope Clement that he was favorably disposed towards Catholicism or that he ever persecuted Puritans in Scotland, while another claim that he had to deny was that he had promised to raise his son, Henry, as a Catholic. But it is interesting to note that in 1602 the Pope through Sir James Lindsay sent a message to the Scottish King, promising him aid in securing the crown of England and money also, if he would educate his son as a Catholic. James' wife, Anne of Denmark, had been suggesting the same thing in her correspondence with the Papacy.

171 Ibid., p. 184.
172 Willson, James VI, p. 143; Stafford, James VI of Scotland, p. 147.
174 Willson, James VI, pp. 146-47.
175 Stafford, James VI of Scotland, pp. 238-39.
Anne of Denmark (1574-1619), daughter of King Frederick II of Denmark and Norway, was married by proxy to the Stuart monarch in 1584, but only after Elizabeth had removed her objections to the marriage.  

The English Queen had feared the possibility of a Scottish-Danish alliance that would diminish her control over Scotland and over the possible future King of England. In Scotland Anne had become a Catholic, possibly out of her dislike of Scottish Presbyterianism. Because of this and other reasons the relations between the King and the Queen were never very cordial, even after the birth of their first child, Prince Henry, whose education became a further conflict. The Danish-born Queen wanted her son raised as a Catholic while James insisted that his education should be as a Protestant.  

Even though she was part of the Catholic party, James treated her with restraint in domestic matters, but used her Catholic religion as a means of establishing friendly contacts with the Catholic powers in Europe. He found it convenient not to interfere with her beliefs since through her religion he found a means of securing Catholic support without actually involving himself.  

In Basilikon Doron he advised Henry never to allow a wife to meddle in any affairs that did not belong to her, but it is obvious that once again James was not following his own advice. This time, however, it was working to his advantage.  

176 Willson, James VI, pp. 85-95.  
177 Stafford, James VI of Scotland, pp. 166, 238, 265.  
178 Ibid., pp. 238, 266.  
Except for possibly the Elphinstone letter of 1599, which was sent by his Secretary, James Elphinstone, James never established direct correspondence with the Pope. When questioned by one of Elizabeth's representatives, the Northern Monarch claimed that two of his secretaries obtained his signature to it through deceitful means. In fact, a part of An Apologie For the Oath of Allegiance was also used to deny his correspondence, for "disparitie of Religion can permit no intelligence nor intercourse of messengers between mee and the Pope." The King of Scots, however, did not deny his indirect communication through Anne and others with the Papacy. In fact it was the Danish-born Queen who continued corresponding with Clement VIII. In 1601 she replied to the Pope's response to the Elphinstone Letter (which was unenthusiastic towards James) by stressing her fidelity to the Catholic faith, and further, by stating also that all her children would be raised as Catholics and that the King would extend liberty of conscience to English Catholics after he had gained England's crown. Her claim that the letter had been written with James' permission was probably true; it had been sent through her because if Elizabeth had learned about it, James' claim to the throne might have been endangered. While the Queen's religion was an asset in Scotland, it proved to be a liability in England. At

180 Stafford, James VI of Scotland, p. 232.
181 "Apologie", Works, p. 72.
182 Stafford, James VI of Scotland, p. 238.
her and her husband's coronation she refused to receive communion under the Anglican rite and until her death in 1619 she continued to correspond with Catholics. 183

Another one of the King's most important contacts in the Catholic world was with Ferdinand I, Grand Duke of Tuscany. The King of Scots hoped to form an alliance with this ruler, since both opposed the power of Spain: the Grand Duke was one of several secular Catholic princes who were hostile to Spanish influence in Italy, while the King of Scots feared that Philip II would hamper his chances of succeeding to the crown of England. 184 In order to deal with this Florentine ruler, Sir Michael Balfour of Burley was dispatched to that city in 1598 to discuss the succession question. In his reply, Ferdinand I suggested that James should seek alliances on all sides and that he should deal in secret with Philip II. The Grand Duke further offered his services as a mediator and go-between with Pope Clement VIII. After receipt of this reply in Scotland, Balfour of Burley returned to Florence in 1601 with instructions from the King to suggest an alliance and to propose the marriage of Prince Henry to one of Ferdinand's daughters. 185 It was also hinted that the Prince might be trained as a Catholic. 186 While these marriage negotiations did fail, it is a fact that the King had a further ulterior motive, which was to unite this ruler and other anti-

183 Willson, James VI, pp. 221-22.
185 Ibid., p. 245.
Jesuit and anti-Spanish Catholics, hopefully even the Papacy, in a reconciliation with moderate Protestants. Also, by his above-mentioned negotiations and his favorable actions in Scotland, James was hoping to win support among English Catholics. Besides tolerating Anne and the pro-Spanish element among the Scottish nobility, he continued to tolerate Catholics, and, as we have seen, hinted abroad that either he or his son might be converted. This policy was so effective that upon becoming King of England, the Jesuit Henry Garnet burnt a Papal breve denouncing the Stuart and advised Clement to negotiate with the new English King in order to convert him.

At the same time the King won English Protestant support by being a foil to Catholic claimants to the throne. Besides such English pretenders as Edward Seymour, foreign Catholics including both Philip II of Spain and Cardinal Edward Farnese, brother of the Duke Parma, claimed the throne through their common ancestor, John of Gaunt. The Cardinal, as well as Henry IV of France, hoped to marry Arabella Stuart, a Tudor and a Stuart through her ancestor, Margaret Tudor, by her second marriage to the Earl of Lennox. She was English born and thus not an alien like her cousin, the Scottish King. Even after he had gained the crown, she still posed a threat, and was believed by the King to be the person the Catholics had hoped to place on the throne, if the Gunpowder Plot

187 Ibid., p. 270.
188 Stafford, James VI of Scotland, p. 238.
189 Ibid., pp. 26-27.
190 Willson, James VI, p. 138.
had been successful. In 1610 upon hearing that she planned to marry William Seymour, a younger son of Lord Beauchamp and a descendant of the Tudors, the King forbade a union that would bring together the Suffolk and Stuart lines. Upon learning some months later that they were secretly married, he had Seymour sent to the Tower and Arabella placed in custody at Lambeth. An attempted escape to France failed when Arabella was captured, though Seymour reached the Continent. After being returned to the Tower she lost her sanity and died a miserable death in 1615.

We must also remember that Elizabeth had not been above violating the golden rule for the sake of practical politics. For example, the English Queen had kept James in line through the use of a pension and by not declaring him her successor, until probably shortly before her death. Most likely, she must have remembered too well her own experiences as the next in succession to the throne under her half-sister, Mary I. At that time, she too was willing to use religion as a means of gaining the throne; conformity in the form of Communion and Mass was a small price to pay for the crown. Besides the above-mentioned policies, the Queen even went as far as to toy with the idea in 1592 of forming an alliance with James' rebellious Catholic nobles after he failed to take her advice to curb their activities. Though

191 Ibid., p. 222.  
192 Ibid., p. 287.  
193 Stafford, James VI of Scotland, pp. 50, 109, 158, 186, 192-94.  
195 Stafford, James VI of Scotland, pp. 9, 82, 94.
Elizabeth never involved herself in anything like assassination, she did arrange the kidnapping of an Edmund Ashfield from Scotland in 1599. As a representative of several English Catholics he had gone to Scotland in the hope of working out some type of compromise between his group and the Scottish King. In fact, Ashfield was just one of the many English Catholics that James had contact with during these years before his accession. During this time such communication with a possible heir to the throne was quite normal. Even Robert Cecil, Elizabeth's trusted advisor, carried on secret correspondence with James through the Earls of Mar and Kinloss. Since Elizabeth had controlled James' actions by withholding her confirmation of him as her successor until the very end and through the granting of pensions, the Scot realized that in his position he had to refuse to take any actions against the Queen, even when his mother was executed in 1587. Thus, by his lack of action James attempted to show Elizabeth that he was her loyal ally and at the same time demanded recompense for the wrong she had committed against Scotland and the Stuart family.

196 Ibid., pp. 195-96.
197 Ibid., pp. 267-68.
198 Willson, James VI and I, pp. 156-58.
199 Ibid., pp. 54-55, 74, 79.
PART III

THE RELIGIOUS VIEWS OF JAMES I
CHAPTER VI

THE RELATION BETWEEN CHURCH AND STATE

Since in the sixteenth and seventeenth centuries the structure of the major states of Europe and the structure of the dominant religions recognized no separation between church and state either in theory or in fact, religion played a most important role. Both in Tudor absolutism and in the Divine Right theory the crown was supreme in ecclesiastical as well as in temporal affairs. But the main problem at the heart of the English religious settlement was that it proved in actuality to be more political than religious, since the position of Pope was replaced by that of King, while in liturgy and belief most remained nearly the same. The ideal that both Henry and Elizabeth hoped to achieve was a national church encompassing all Englishmen; and for this reason as well as due to the political nature of the English Reformation the Church remained ill-defined, containing many traditional practices. 200 Just as the English Catholics opposed royal usurpation of the spiritual rule of the Church, so also did the Puritans, who felt that any forms of ceremonies, trappings (such as vestments), as well as the hierarchical ecclesiastical structure of the English Church, manifested

200 Allen, A History of Political Thought, p. 171.
the Anti-Christ, the Roman Church. Both Catholics and Puritans, in order to be protected from regal control over religion, held that there was a separation between church and state, each being a totally separate entity. However, in a conflict between the two, the word of God was supreme over that of king or of Parliament.

Each group, however, felt that the word of God was contained in the teachings of their own particular religion; all other religions and their teachings were the work of the devil. In this sense the Catholics and the Puritans were in agreement, but each maintained that its particular brand of Christianity was the only true Church, and therefore the only one that ought to be practiced. They especially disapproved of the assertion by the King that he alone, or in Parliament, could determine the form of worship and of ecclesiastical organization. Such a situation posed the problem that a denial of a religious doctrine established by the government also meant a denial of Tudor absolutism and of Stuart Divine Right, therefore constituting a civil offense. An acceptance of the government's legal claim backed by its power meant the recognition of the monarch's power exercised either as an individual or in Parliament to legislate the law of God. The King's and Parliament's laws would then be placed above the decisions of Popes, and of Protestant divines as well as above the Scriptures. While on the one hand the English Reformation had placed immense power in the hands of the monarchy

201 Ibid., pp. 173-77, 222.
(spiritual control of England), it had also opened an avenue of attack by both Catholic and Protestant against Tudor absolutism and Stuart Divine Right theory.

A Catholic example of this spiritual attack can be seen in Cardinal William Allen's *A True, Sincere and Modest Defense of English Catholics*, 1584. In it that ecclesiastic stated that when a government disobeyed the laws of God or stood in the way of its subjects achieving salvation, the Church had the right to correct the government by all means possible. And just as in the case of Saul, the executors of his will were prophets and priests who delivered the Divine dictates to the people. This same argument can be seen in the disappointed Protestants who felt that the English Church was not truly reformed. Thomas Cartwright in his *Reply to an Answer*, 1574, stated that while subjects should be obedient to the civil magistrates who govern the Church of God through the power of their office, the magistrates must govern as servants of God and by His dictates. If they violate God's rules, they must "throw down their crownes before the Church and lick the dust off the feet of the Church" in order to obtain God's forgiveness. A temporal ruler would according to these theories be limited and not supreme in matters of religion, even to the point that a King who

202 Ibid., p. 183.
violated the laws might be removed. A harsher view of the Anglican Church can be seen in Anthony Gilby, who while in exile in 1558 published An Admonition to England and Scotland to call them to repentance. It stated that the English Church was no better than the anti-Christ Church of Rome, since Henry VIII and his successors had replaced Christ as its true Head.

The English religious settlement had created a church that was unsuitable to certain elements among the subjects of the realm. It was this controversy that the first Stuart inherited along with the English crown. The danger of such a situation was reflected in the attempt of some Catholics in the Gunpowder Plot of 1605 to destroy King and Parliament. Earlier Anti-Catholics could also point to the attempts on Elizabeth's life and the murder of Henry III of France by a fanatical Catholic friar. This argument over whether the spiritual or the temporal would dominate in Christian kingdoms was not a new situation created by the Reformation; however, it became complicated by that great alteration since there was now more than one religion claiming to be true with which a monarch had to contend. The controversy besides being waged on the battlefields of Europe was also conducted in intellectual debates, in which James and his writings took a leading role, especially in debate with Continental Catholic writers.

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In his *An Apologie for the Oath of Allegiance* and his *A Defence of the Right of Kings*, the King went as far as to defend his oath of allegiance, as well as a similar French one proposed by the Third Estate, against the attacks of the two Cardinals, Du Perron and Bellarmine. The English King stated that he chose to defend the French monarchy "because France being now reduced to so miserable terms, that it is now a crime for a Frenchman to stand for his King; it is necessary duties of her neighbors to speak in her cause."\(^{206}\) In fact what had happened was that in the meetings of the Estates-General of 1614-1615 the Third Estate had introduced an oath of fidelity similar to the one introduced by James in England in 1606.\(^{207}\) In purpose both were similar; they were to protect the monarchies of both countries against the assertions of certain Jesuits, such as Mariana, and Protestants who claimed that Kings could be deposed and even murdered if they interfered with God's word. It was to be sworn to by all officers, ecclesiastics as well as others, condemning the Papal doctrine of the right to depose, rebel against, or kill the King, as "impious, detestable, contrary to truth, and against the establishment of the French State, which derived its power directly from God.\(^{208}\) It was foremost an attempt to refute the ultra-montanist arguments of Cardinal Bellarmine and others who subordinated the powers of the crown to that of the Papacy. They reasoned that there are two

\(^{206}\) "A Defence of the Right of Kings", Works, p. 175.


\(^{208}\) Ibid., p. lxvi.
kingdoms on earth, one spiritual and ruled by the Pope and the other
temporal and ruled by kings. However, the spiritual realm was the more
important since man's primary duty was to obey God and to gain salvation.
Moreover, the temporal power of kings, unlike the power of the Church, did
not come directly from God but indirectly through the Pope as well as
the monarch's subjects. Therefore, when a conflict developed between
the Church and the crown of a particular country, the spiritual kingdom
in the person of Pope had the authority to overrule and even to remove
any king whose rule interfered with the dictates of the Church. 209 This
document was so important that the Cardinal asserted that it was a
matter of faith and that the Oath of Fidelity, which denounced it, was
heretical. 210 To condemn this oath and Gallicanism, the ultramontanist
clergy chose Jacques Davy, Cardinal DuPerron, to address the Third Estate.
He was one of the greatest orators of his day, and besides being himself
a convert from Protestantism, he had been instrumental in the conversion
of his close friend, Henry IV. While accepting the two parts of the
oaths—that the assassination of a king was not permissible and that a
king's power over temporal matters came directly from God—this prelate
declared that it had been a traditional practice of Church councils and
Popes to deprive a heretical or evil prince of the loyalty of his subjects
by way of excommunication. 211 Therefore the taking of this oath would be

209 Ibid., pp. lIx-lxI.
210 Cardinal Bellarmine, a letter "to the Very Reverend Mr.
George Blackwell, Arch-Priest of the English Catholics," in An Apologia
for the Oath of Allegiance", Works, p. 84.
anathema since it was contrary to a traditional power of the Church and would allow laymen to determine the word of God: to both DuPerron and Bellarmine the oaths were more than just civil matters, since they transgressed on the Church's power of excommunication. Furthermore, DuPerron stated that instead of protecting the safety of the King such oaths would endanger him and the country by creating a schism in the Church and a continuation of the religious and civil wars that had long plagued that country. Besides they felt that the imposition of such an oath by a king was an unchristian act, thereby making that ruler a tyrant, who no longer had the right to command his subjects' loyalty. Cardinal DuPerron then warned the Third Estate that it might be drifting into heresy as England and its church had done under James' oath, which called heretical "this damnable doctrine and position, that Princes which be excommunicated or deprived by the Pope, may be deposed or murdered by their subjects or any other whatsoever." It is significant that DuPerron's opponents used the same argument as James did in defending the English oath; both claimed that the oath was a civil affair and not a religious one. James himself took the lead in responding to DuPerron with his Apologie for the Oath of Allegiance and the Remonstrance for the Right of Kings. In fact nearly three-fourths of the systematic political writing of James I consist of a defense of this one administrative measure in dealing with this Catholic problem, the Oath of Allegiance.

The King began his criticism of DuPerron by blaming the

212"An Apologie", Works, p. 74.
213"A Defence", Works, p. 246.
assassination of Henry III and the civil wars in France on the clergy and their belief "that Clerics are exempted from the condition of subjects to the King." Then he challenged DuPerron's declaration that the taking of the oath was a condemnation of a doctrine that had been practiced in the Church for eleven hundred years, showing that just the opposite was true; that Emperors, as in the case of Henry II of the Holy Roman Empire in 1007, deposed three Popes. It was then pointed out that there were several instances in history in which the Papacy misused its powers of excommunication for non-religious reasons, as was the case when King John of England and later Philip the Fair of France attempted to prevent the clergy from paying Rome for the purchasing of benefices. Besides these economic motives, James cited other examples of Popes releasing subjects from their royal allegiance. These ranged from such infractions as divorce (Philip I) to the desire for political power (Henry IV and Frederick Barbarossa). As for DuPerron's argument that only heretical princes are deprived of their subjects' allegiance, it was pointed out that the Popes could declare anything, including an orthodox doctrine, to be heretical. "Hath not Pope Boniface VIII declared in his proud letters all those to be heretiques, that dare undertake to affirm, the collating of Prebends apperteyneth to the King." Furthermore, DuPerron, as the Stuart ruler pointed out, held "that a Prince condemned by unjust sentence of the Pope, ought never the

215 "Defence," Works; p. 177.  
216 Ibid., p. 193.  
217 Ibid., pp. 180-81.  
218 Ibid.
19. The King denied that the Pope had the power to take away a prince's kingdom since it was a ruler's private property granted to him by God and not by the Bishop of Rome; God, he added, gave no command to Peter to take away a person's private property. To prove his point James used an example from his own native Scotland. For when Robert Bruce was imprisoned in England and his mortal enemy, Wallace, held sway over Scotland, he never assumed the title of king, which rightfully belonged to the prisoner of the English but only that of Governor of the Kingdom. The reason was that "Hee had not been brought up in this new doctrine and late discipline, whereby the Church is endowed with power to give and to take away crownes." In the Ancient Church, according to the first Stuart, there was never a subject freed of allegiance to his king by the Church. James did admit that when a ruler's commands are opposed to those of Divine Law a subject may disobey them, but in all other temporal matters the subject must adhere to the King's orders and not try to oppose them, just as DuPerron would acknowledge the Holy Father to be Pope even if they disagreed whether or not the Papal command differed from the law of God. The King of Scots then attacked the Cardinal's assertion that the Church disapproved of a ruler being removed by regicide by showing that once a monarch was removed from his throne by a ban of excommunication, he was no longer a king. When a monarch was

219 Ibid., p. 207.
220 Ibid., pp. 188, 203, 204.
221 Ibid., p. 188.
222 Ibid., p. 217.
223 Ibid., p. 262.
in this position he no longer had the means of securing his safety from his once loyal subjects and would be destroyed by "that limme of Satan, which murdered Henry the III then un-Kinged by the Pope." He then questioned "For to kill a King, once unking'd by deposition, is not killing of a King?" If the Pope was really opposed to regicide he should impose some severe censures upon the book of Mariana and other Jesuits who advocated regicide and not extend praise to regicides as the Papacy had done towards Henry III's murderer. Besides failing to protect the monarch a refusal to take the oath would also lead to civil wars. The Pope's pronouncement would result in two factions developing within a country, "one part of the people may cleave to the Popes Faction, another may hold and stand out for the King's rightful cause, and civil wars may be kindled by the splene of those two sides." The Church itself would be divided because of this debate over the Pope's temporal powers. This disagreement in fact had nothing to do with the Pope's spiritual supremacy and therefore was not a matter of faith. The result would be that the people would be exalted above their king since they could remove their rulers. They as well as the Pope had no right to do so since the monarch received his right to rule before he came to power and his coronation oath was not a social contract made to either his subjects or to the Pope, but a promise made to God.

22 Ibid., p. 216.
223 Ibid., p. 247.
226 Ibid., pp. 207, 236.
227 Ibid., pp. 226-27.
CHAPTER VII
THE FIRST STUART'S CONCEPT OF THE PROPER ROLE
AND COMPOSITION OF THE CHURCH

James' concept of his role in the Church was similar to his view of the ruler's position in the state. In both cases he was the head, and the members of church and state composed the body.\(^{228}\) In such circumstances, according to James, it would be impossible for the members of a human body to remove the head for any reasons, just as it would not be possible to remove a king from his temporal and spiritual position. Since he was placed in his office by God, only God could remove him. It should be noted in this connection because of its significance, that the first Stuart still believed that he was a Catholic and a member of the Universal Church, which made him closer to Henry VIII than many of the Anglican clergy.\(^{229}\) Like the Tudor, James attempted to base the government of the English Church on that of the Ancient Church, in which the Emperor was both supreme in temporal and spiritual affairs. The first Stuart King further believed in a visible Universal Church composed of many different communions. Some of these, however, were better than others because they were more reformed of impurities.\(^{230}\) The only problem

\(^{228}\) Ibid., p. 234.  
\(^{229}\) Ibid., p. 240.  
\(^{230}\) Ibid.
with such a situation had been earlier pointed out by Cardinal William Allen and others during the reign of Queen Elizabeth. If there were no head of the Universal Church on earth except the sovereigns of each country there would be no common authority to bind the Church together in a common Christian faith. Royal supremacy would and had resulted in Christian division and the rise of numerous religious sects.\textsuperscript{231}

In such a Church the Pope enjoyed a position of prime spiritual preeminence. With this in mind James stated in his \textit{Premonition} "I would with all my heart' give my consent that the Bishop of Rome should have the first Seate. I being a westerne King would go with the Patriarch of the West."\textsuperscript{232} He further viewed the Catholic Church as his own Mother Church as well as the Mother Church of all Christian religions. The problem was that certain corruptions and novelties had entered the Roman Church that were not part of its ancient doctrines. That institution, in his judgment, was infected like a sick man; but, instead of killing the patient, he wished to cure it by reform.\textsuperscript{233}

With these views, it is possible to understand why James believed in a reconciliation between moderate Protestants and Catholics and called for a General Council in his \textit{Speech of 1603-1604}.\textsuperscript{234} It was hoped that such a meeting might reunite both moderate and Catholic monarchists who opposed the attacks of both the ultra-montanists and radical Protestants against the authority of kings.

\begin{bibliography}
\bibitem{231}Allen, \textit{A True, Sincere and Modest Defense}, p. 69.
\bibitem{232}"A Premonition to All Christian Monarchies," \textit{Works}, p.172.
\bibitem{233}"Speech of 1603-1604," \textit{Works}, p. 274.
\bibitem{234}Ibid.; Mackie, "Negotiations," 271.
\end{bibliography}
As a "Catholic Christian" James stated that he believed in the three great creeds, the Nicaean, the Athanasian, and that of the Apostles. He also recognized the first four great councils of the Church. Furthermore, the Fathers of the Church he respected with the greatest reverence, especially St. Augustine, who advised, in case of theological uncertainty, to judge opinions according to Scripture. Therefore, the Bible, which was the word of God, was superior to the novelties of canon law. Among the other novelties he disagreed with were prayers to the saints and Mary, the worshipping of the cross and images, private masses, transubstantiation, elevation for adoration and some other non-traditional ceremonies. He agreed that Mary and the saints were holy, though he discounted some of their legends, believing that it was better to pray directly to God or His Son than through intermediaries. This was a reflection of the Protestants' hatred of superstitious abuses connected with crosses, images and relics. The bones of saints, James believed, would best be honored by their burial. Anything that was not found in Scriptures, such as purgatory, could not be proved or disproved and therefore should not be debated. 235

In these views the King was quite close to the ideas of many of the clergy who had requested reform through the Millenary Petition and at the Hampton Court Conference of 1603. 236 In this Petition the

236 Kenyon, The Stuart Constitution, pp. 132-34.
reformers who had signed it had asked for a discontinuance of such practices and trappings as the cross and marriage, the bowing at the name of Jesus, an exaggerated use of the oath ex-officio and of excommunication, and reform in the livings given to ministers as well as an upgrading of their education. In these demands, especially the last one, the King was far from being ill-disposed and agreed to hold a conference at Hampton Court to discuss the grievances of the petitioners, who had appealed to James "neither as factious men affecting a popular parity in the church, nor as schismatics aiming at the dissolution of the state ecclesiastical."237 At the Hampton Court Conference James showed that while he was not opposed to reform, it had to be accomplished within certain limits. First of all, the King stated that intricate questions of doctrine and tradition should be avoided. From the royal point of view, this was necessary in order to prevent any new innovations from entering the Anglican Church, thus further separating it from the ancient Catholic Church, a situation which was completely contradictory to his plan of Christian reunification.238

The first of the Stuarts was also conscious of the need to maintain both religious control and conformity in order to prevent an attack upon royal absolutism, and to secure unity in the Church. In the royal viewpoint bishops were divinely ordained as also were kings, in order to protect both the hierarchical structure of the Church, and the

237 Ibid., p. 132.
monarch's control, and without bishops, 'so ran the famous dictum, there would be no king. When Doctor Reynolds, the leading speaker of the reformers at the Hampton Court Conference, suggested that certain points of doctrine should be determined by a bishop and his presbytery in an episcopal synod "his majesty was somewhat stirred, yet which is admirable in him, without passion or show thereof; thinking that they aimed at a Scottish presbytery, which saith he, as well agreed with a monarchy as God and the Devil. Then Jack and Tom and Will and Dick shall meet, and at their pleasures censure me and my council." 239

This same desire to maintain unity and peace in the Church as well as royal supremacy can be seen in his actions after the Conference, when, in September 1604, he licensed the orthodox canons drawn up by Convocation. 240 This was done after James had prorogued Parliament in July, 1604 for attempting to interfere in religious matters. In its Form of Apology and Satisfaction to be Presented to his Majesty, that institution had claimed that it was not the King alone who possessed the right to alter the religion of England; rather, this right belonged with it. 241 Parliament thus was attempting to infringe upon the spiritual supremacy of the monarch, which since Henry VIII's day had been left up to the King and Convocation. Elizabeth's policy had been to forbid the

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241 Tanner, Constitutional Documents, p. 217.
discussions of religious matters by Parliament and to maintain a loosely defined comprehensive Church. Her successor attempted to follow the same policy by refusing to accept Parliament's assertion of spiritual control in 1604, as well as in 1610, 1614, and 1621, and also by enforcing conformity of ritual upon the Church's clergy. Conformity, however, was not only for religious reasons, but also for practical and political reasons. In his proclamation he warned against "certain ministers who under pretended zeal of reformation, are the chief authors of divisions and sects among our people," and he emphasized his great desire to maintain the Church's tranquility, through a universal conformity that "may be wrought by clemency and by weight of reason, and not by rigour of law." James thus hoped to establish, as Elizabeth had attempted to do, an outward conformity that did not tax the conscience of the individual, but at the same time did protect the religious-political power of the state. The King rationalized such obedience by arguing that matters such as altars, surplices and various ceremonies and objects were things indifferent (unimportant) to the main body of their religious belief, and since they were unimportant they should be accepted because of a subject's duty to obey the law. 


243 "Basilikon Doron," Works, pp. 16-17.
CHAPTER VIII

THE KING AND THE HIERARCHY OF THE CHURCH

In his discussion about the Catholic Church, James felt that its chief fault was the usurped powers of the Cardinals and the Pope, who placed themselves above princes in temporal affairs and above General Councils in spiritual matters. Their meeting in conclave further encroached on a purpose of the Councils, which were the traditional method through which the Ancient Church made religious decisions and even deposed Popes. Bishops, he felt, were members of an apostolic institution and received their power directly from God, not from the Bishop of Rome. Their purpose in the spiritual hierarchy was to maintain order without which the English Reformation might degenerate into chaos as it had in Scotland; for even hell as well as heaven were governed by a hierarchical order of angels. According to the King, the Cardinals and the Papacy were not a traditional part of the Church; rather, they were originally only bishops who had usurped the traditional powers of the General Councils, and through their new powers they had attempted to set themselves, as well as the people, above their king, in order to promote treason and sedition. James claimed that the Pope had asserted the right to depose heretical princes and free their subjects from obedience, for even baptism was asserted by Cardinal Bellarmine to

244 "Premonition," Works, pp. 126, 151.
245 Ibid., p. 153.
imply a secret oath of obedience to the Pope. In the case of the Gunpowder Plot, the oath of confession was used as an excuse by the Jesuit Garnet for not revealing it.

The traditional role of the Bishop of Rome according to James, was not to act as Supreme Head in spiritual and temporal affairs, but instead as a bishop subservient to king and emperor. Therefore, the papal claims of supremacy and infallibility were novelties since they were not based on Scriptures. While admitting that Peter had been given power over kings, James stated that the Bishop of Rome was not alone supreme over rulers, since Christ had given this power to all His Apostles. Furthermore, it was Christ, represented through the Holy Spirit, who possessed this power, since it was the Son of God, not the Pope, who was the head of the Christian Church. It was argued that it was not till three hundred years after Christ that Pope Boniface first claimed such power. Before that, the opposite had occurred, since it was the Emperors and General Councils who had deposed Popes. Pope John XXII and Pope Honorius, it was stated, were condemned as heretical by Church Councils. Furthermore, Charles the Great had possessed the right to choose Popes. Therefore, if Popes could be condemned as heretical, what right would they and other heretical Popes have in deposing orthodox rulers? The King then questioned why an orthodox ruler might not be

247. Works, p. 163.
248. Ibid., pp.126-27.
249. Ibid., p. 128.
allowed to remove a heretical Pope. Furthermore, nothing could be more novel than denying a monarch his throne, the allegiance of his subjects, and his life, as in the case of Henry III of France. Besides, the Pope had no power over a king's crown, since it was God alone that gave the throne, and only He could take it back. The Papacy in times past had been under the control of kings and emperors. Therefore Popes should now give obedience to temporal rulers; for even Christ gave unto Caesar what was Caesar's. Furthermore, it was argued that if Christians and Popes obeyed Caesar and Julian the Apostate, they should also obey a Christian king like James. And very cogently, the Popes had no claim to temporal power, because Christ had said that His kingdom was not of this world. Why then should the Pope claim what Christ and his Apostles had refused? It was pointed out that such a claim in fact was quite dangerous to Catholics in England as elsewhere. For James stated that "Doeth not his holiness by this means draw persecution upon the backs of my Papists as upon rebels, and expose their life as it were upon the open stall, to be sold at a very easie price."

In his Premonition, the King answered Cardinal Bellarmine's charge that he was the Anti-Christ by proving from St. Paul that the Papacy was really the "man of sin." First of all, Paul had stated that the anti-Christ was to come in a time of a defection from the true

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251 Ibid., pp. 193, 220.
253 Ibid., pp. 223, 228.
Church, which James felt had occurred because of the novel doctrines of the Papacy. The most odious of these, according to the King, was the right claimed by the Papacy to take away the crowns of kings. A second proof from Paul was that Apostle's description of the seat of the anti-Christ as being in the Temple of God, where he shall place himself above all others including God. The Papacy did this by pardoning sins, redeeming souls, defining faith, controlling and judging men, while giving account to no one except itself, not even to God. Also, the seat of the Anti-Christ, which Paul stated was in Babylon, was interpreted by the King to really mean Rome. "And yet that Rome is called Babylon, both in Saint Peters Epistle, and in the Apocalypse." The two witnesses who were to combat the "man of sin" were not really Elias and Enoch, but symbolic personifications of the Bible and Protestantism. This was the reason why the Catholic Church had suppressed the Scriptures for hundreds of years, so that its members would be kept in blind ignorance of the fact that the Papacy was really the "man of sin." Just as Paul stated that the two witnesses would be destroyed by the Anti-Christ, so were Scriptures replaced by Catholic superstitions, by legends of saints and by Papal pronouncements of faith. The mark of the Anti-Christ was the failure of Catholics to take an oath of allegiance to their kings; instead they gave their loyalty to Rome. But now the two prophets would

256 Ibid.
257 Ibid., p. 137.
258 Ibid., pp. 142-44.
rise again in Protestantism and destroy this "Beast of evil," the Papacy. James then repeated Paul's description of the Anti-Christ as a "Whoore sitting upon that many head beast." 259 A successive number of Popes were interpreted to be this "adultrous spouse" sitting on the Head of Christ's false Church. Furthermore, the seven heads of the Beast were really the seven hills of Rome. 260 In fact "two Popes reckoned among the best of the whole packe, namely, Adrian the IV and Marcelline the II have been so open-hearted and so tongue-free, to pronounce that Popes, the keybearers of Heaven and hell, cannot be saved." 261

After using the greater part of the Premonition to prove this charge against the Pope, the King finished by saying: "and in this opinion no Pope can ever make me to recant; except they first renounce any further meddling with Princes, in anything belonging to their Temporall Jurisdiction." 262 This challenge was in response to Cardinal Bellarmine's and the Jesuits' arguments that kings were chosen by the popular voice of the people. 263 While this view might seem to be democratic, it was in fact an argument upon the part of certain Catholics to justify Papal supremacy and the Pontiff's right to have kings removed. They argued that the Pope received his commission directly from God, while the monarch received his indirectly from the people. Therefore a king might be replaced by his subjects, but a Pope could only be removed by God. It

259 Ibid., p. 146.
260 Ibid., pp. 130, 140.
261 "Defence," Works, p. 256.
was this Divine Right argument for the supremacy of the Papacy that led to the Divine Right theory of kingship as a response to its challenge. The Stuart King countered Bellarmine's arguments by pointing out that in times past the College of Cardinals cast lots and did not depend on the intervention of the Holy Spirit to elect Popes; and that in St. Cyprian's time the Bishop of Rome was chosen by the popular consent of the people. With this statement we can see the political side of his religious policies. For James seemed quite ready to reach an accord with the Pope if he ceased asserting his temporal power. Then this first Stuart further claimed that he had done a better job of fastening the title of Anti-Christ on the Pope than Bellarmine had done in proving the Pope's temporal power.

265 Ibid., p. 149.
CHAPTER IX

RELIGION AND POLITICS

In an era when toleration was a new and unaccepted idea, conformity was a necessity. For this reason, throughout The Political Works James stressed his orthodoxy and belief to the doctrines of the English and the Catholic Churches, while also he pointed out that he had established a Scottish Church based on the English model. Besides affirming royal supremacy in temporal and spiritual affairs, the establishment of an episcopal-based Church in Scotland showed to Queen Elizabeth and her Parliaments that James was neither Catholic nor Puritan and would be acceptable to the religious-political conditions of England. This political reality corresponded to his advice in Basilikon Doron that a king should be of the same religion as his people.²⁶⁶

²⁶⁶ "Basilikon Doron," Works, p. 35.

In The Political Works we can see that the King considered practical politics more important than religious issues. For example, the purpose of his Premonition, which was dedicated to the Holy Roman Emperor, Rudolph II, was to warn other kings, both Catholic and Protestant, of the dangers from both Puritan and Pope. It warned him and other monarchs that if they were not careful they would be led to slaughter
by the keeper of their flock, the Pope. To support this charge, the first Stuart pointed to the assassination of Henry III, the conspiracies against Elizabeth, and the Gunpowder Plot against his own life. In writing in defense of the French monarchy, it was stated that Protestants, as well as Catholics had to obey their king, even though he might be of a different religion. It is evident that monarchy was placed above religion, but the King was not merely a political animal using religion for political power. For religion and politics were one both in theory and in fact, and thus impossible to divide. His position as head of his country's Church was part of his Divine-Right theory. Thus, if he believed in such a theory, which was the basis of his political power, he also had to believe in his religious role. And we must note that James' religious views and especially his desire for a religious reconciliation appear to have been genuine. For instance, even after succeeding to the English throne, he still called for a Church Council on Christian reunification in his Speech of 1604. It is possible today for us to see how James' views subsequently developed into the Laudianism and the Catholicism of the later Stuarts; this is of historical significance even though in many points such as approving of an educated clergy, and in opposing many of the presumably superstitious practices of the Catholic Church, he was an orthodox Calvinist. But he was not willing

to place the crown of England under the influence of either Protestant divines or the Catholic Church. To have done so would have resulted in a religious persecution by whatever intolerant religion would eventually have dominated the government.
PART IV

TOLERATION AND UNION
CHAPTER X

STUART TOLERATION

The King's sincerity can best be seen in his views on toleration and in his proposed union of England and Scotland. By extending toleration, James hoped to remove the conflict between being a Catholic and also being a loyal Englishman. Unfortunately, instead of being aided by the Parliament and the courts the first of the Stuarts was seriously hindered by their efforts. In fact, toleration was especially difficult to achieve in the sixteenth and seventeenth centuries because of the interconnection between church and state. Uniformity in the civil sphere was considered necessary in order to protect the integrity of the state; since many divergent religious views would lead to conflicts because each person would live as he chose. Besides, if a sect challenged the religious leadership of the commonwealth, it would also be challenging the government of the kingdom. The result, as many feared in England, would be the same as the mass destruction that had occurred in France and Germany during the religious wars. Factionalism was, therefore, more than just a religious matter; it was politically a danger to the government of the commonwealth and must therefore be treated as

a civil matter. Conformity was a matter of loyalty and those who violated it committed an act of treason. This was pointed out by William Cecil, Lord Burghley, in his *The Execution of Justice in England*, 1583. In it he defended the government against charges of religious persecution by stating that there were many different religious views in England and that "none of this sort are for their contrary opinions in religion persecuted or charged with any crimes or pains of treason, nor yet willingly searched in their consciences for their contrary opinions, that savour not of treason." In this statement was reflected the English principle that in both religious matters and Common Law practice a man's thoughts were his own private affair for which he could not be punished. In fact, what both Elizabeth and Cecil desired was an external conformity to the church and government of England. Along with James, they held an Erastian view of politics and no longer believed that the elimination of heresy was a spiritual function of the state.

The theory of royal supremacy and the ill-defined doctrines of the English religious settlement aided in establishing toleration in England. For royal supremacy implied the use of religion for political ends and one of the most important of these was the need, gradually realized, to maintain order through toleration. Also, the ill-defined nature of the English Church contributed to this situation by providing few doctrines

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that Christians, Catholics or Puritans, could disagree with. And since the crown was supreme in matters of religion, it could determine what was heresy and what could or could not be tolerated. For this reason, Elizabeth attempted to prevent theological discussions. It was hoped by the Queen that lack of definition and dogma within the Church would allow many religiously divergent elements to remain loyal to both the crown and the Tudor religious settlement. Unfortunately for the first Stuart, doctrinal ambiguity no longer satisfied the reformers in the English Church, who wanted a Protestant Church similar to the ones on the continent. This demand for a more purified Church can be seen in both the Millenary Petition and at the Hampton Court Conference.

During the same period, the forces of the Catholic Counter Reformation were advancing in Continental Europe and many Jesuits were arguing for the supremacy of the Pope over kings even to the point of asserting that the Papacy had the right to depose monarchs and to release subjects from their allegiances. Parliament, especially the Lower House, was developing a Puritan Party that was attempting, as a matter of right, to reform the English Church along lines more congenial to them. It is important to note that Commons was far from being tolerant, and its attitude can be seen in the Commons Petition, December 3, 1621, in which it asked James to enforce the anti-Catholic laws. It warned

274 Allen, Political Thought, pp. 206-08.
that "It (the Catholic religion) hath a restless spirit, and will strive
by these gradations: if it once get but a connivancy, it will press for
a toleration; if that should be obtained, they must have an equality;
from thence they will aspire to superiority, and will never rest till
they get a subversion of the true religion."\textsuperscript{275} While each of the
various established religions asked for their own views to be tolerated,
they were quite intolerant of any other religious group; the problem
with effecting toleration was to get these different groups to live
with one another. In fact many groups demanded toleration for the
reason that they believed that they alone constituted the only true
religion and therefore should not be persecuted. With this point of
view, it is easy to understand how a persecuted religion might, once it
had gained political power, use this same argument to persecute other
religious groups. It is a sad commentary that during this time not
even the persecuted could envision a humanistic toleration towards those
persons or groups that held divergent theological doctrines. Eventually,
but only through toleration, English Papists and Protestants would
peacefully live together after they had realized the need for mutual
liberty of conscience so as to prevent the great destruction caused by
religious wars such as had been visited upon Germany. For this reason
Elizabeth had sought to maintain a policy of quasi-freedom of religion
and James further extended it.\textsuperscript{276}

\textsuperscript{275} Tanner, \textit{Constitutional Documents}, p. 277.
\textsuperscript{276} Jordan, \textit{Development of Religious Toleration, 1603-1640},
The King's policy of toleration was not just politically motivated as often charged, but in fact often went against the policies of a practical politician. For example, in 1590 James, instead of following Elizabeth's advice and punishing the Catholic Earl of Huntley for his part in the Brig O'Dee Plot, defended the Earl in Court. 277 Twenty years later, he was still refusing to enforce anti-Catholic legislation that had been passed as a result of the Gunpowder Plot; instead the King believed in "mercy" and only enforced these laws in times of danger and when forced to do so by Parliament. 278 This policy was difficult to follow since the fear of the Counter Reformation and of the Thirty Years War were threatening to involve England in the conflict. 279 Besides, religious prejudice had by now become fused with national fears as well as with politics, since the Puritan bloc in the House of Commons was using it as a weapon against absolute monarchy. 280 Because of this attitude, Parliament prevented James from establishing a settlement freeing loyal Catholics from fines. The two Houses unfortunately were unable to make a distinction between the loyal English Catholics and the Jesuit missionaries. 281

This attitude was well reflected in the Parliaments of the first Stuart. In that of 1621 some of the accusations made by the

277 Staffor, James VI of Scotland, pp. 41-44, 57.
279 Notestein, Commons Debates, 1621, II, 7; III, 3; IV, 5; VI, 224.
280 Ibid.
281 Notestein, Parliamentary Proceedings, 1621, IV, 434.
different members give a good example of the fears stirred up by the fear of a Catholic danger coming from continental Europe and the purported intrigues of a handful of English Jesuits. On February 7, while complaining about the lack of enforcement of laws against recusants, Sir Robert Phelips claimed that 6,000 papists from Spain had been dispersed in England and held masses out in the open. Also, they were even so bold, according to Thomas Crew, that they set statues outside of their dwellings in London to affront good Protestants, such as himself, as they walked by. Sir James Perrot, previously on November 28, 1621, had warned Parliament that English Catholics were in the practice of sending their children to Catholic countries to be trained as Jesuits. Once their education had been completed, they returned to England in order to plot against the King and his government. This same member then warned James that his mercy towards Catholics was abused, just as the Catholics misused their money to hurt England; therefore, both should be taken away. Actually, these claims were far out of proportion to any real threat on the part of the English Catholics, most of whom were loyal and willing to defend England against a Catholic invasion.

Besides these suspected crimes, Parliament also charged that Catholics printed books in secret and that they avoided the payment of recusant fines through having their lands valued at less than their true

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282 Ibid., II, 37.
283 Ibid., 23.
284 Ibid., 461-64.
285 Ibid., 461-64.
worth. Sir Edward Coke further complained that Catholics went to Mass in the Spanish Ambassador's house. To most members of Parliament, the Catholic problem was a result of James' failure to enforce these laws. In fact, Sir James Perrot claimed on the same day that their lack of enforcement not only endangered England, but also led to a decline in royal revenue. For if the fines were collected, the subsidies that the King wanted for the Palatinate and for governmental expenses would be unnecessary. Beside the enforcement of the old laws, Parliament wanted newer and stronger laws against recusants; Sir James Perrot, for one, suggested that they ought to be banished from London as well as having their property seized.

Some members felt that there were enough laws against recusants, but that the government refused to enforce them. In fact, many of the priests and Jesuits that were convicted were pardoned by the crown if they agreed to leave England; at least twenty-seven of them had gone to the Continent in the March of 1621. Beside a large number of reprieves and exemptions, the King eliminated the practice of giving rewards to informers, a move which brought criticism from Parliament. Unfortunately, the members of Commons had no similar belief in the rectitude of the first Stuart's clemency, which was an integral part of his prerogative powers. In fact, James rather chose "to wink"

28: Notestein, II, 38.
287 Ibid., 37.
288 Ibid., 27, 97, 462; V, 256.
289 Ibid., II, 37-40.
290 Ibid., VI, 283.
291 Ibid., VI, 150.
at those Catholics that were not followers of the Jesuits, and unlike Parliament, was able to make a distinction between loyal and disloyal Catholics. On February 17, 1621, he informed Parliament that "A difference is to be made betwixt Papists, those that maynteyene the oath of allegiance and such other Traitors as refuse it. Herein I must do a work of charity." Whenever Parliament challenged the first Stuart's supremacy in matters of religion, which was traditionally considered to be a part of his prerogative, the King denied their right to debate such matters. On January 30, 1621, he informed the Commons not to interfere in religion or in other matters of state. Those that did so, he referred to as "busy-bodies" that did the work of the devil. Furthermore, Parliament was called to grant subsidies, not to discuss prerogative matters. James also differed with Parliament about the purpose of the recusancy laws, which he felt were "not to compel men's consciences (for that I ever protested against) but to obey the laws of the Kingdom." This was a far different attitude than expressed by those who demanded new laws against recusants.

Like Elizabeth, the Stuart was not a religious fanatic, and his toleration of the Catholics was a result of a philosophy very similar to a present-day ecumenical view of religion. While still in Scotland, he had written to Cecil and bragged that no person in Scotland

\[292\] Ibid., IV, 72.
\[293\] Ibid., II, 6; IV, 2, 7; VI, 372.
had ever died for his religious beliefs during his reign. He also reasserted his belief that the Catholic Church was the Mother Church; he further stated "that I did ever holde persecution as one of the infallible notes of a false Churche." Thus, we must conclude that the King's policy toward Catholics was similar to William Cecil's and Elizabeth's early policy. Both attempted to draw a distinction between those who practiced the Roman faith and accepted the spiritual supremacy of the Pope and those who adhered to the political power of the Papacy.

However, during Elizabeth's time the Act of Supremacy and the Act of Uniformity theoretically prevented a good Catholic from also being a loyal English subject. But it was not until the Catholic plots against Elizabeth and England, the Pope's excommunication, and the papal ban on Catholics conforming to the Anglican Church that the position of the Catholics in England became difficult.

James even went a step further in attempting to extend toleration, while at the same further dividing the Catholics in England by his Oath of Allegiance. It was a direct result of the Gunpowder Plot, most likely it was the work of Archbishop Richard Bancroft, who had proposed a similar one in 1597, only to have it rejected by Elizabeth. The Oath and the Papal breves denouncing it clearly divided English Catholics into the obedient and the non-obedient Papists. Of these two groups, the King said, "I can love the person of a Papist being other-

297. Allen, Political Thought, p. 283.
wise a good man and honestly bred, never having known any other Religion, but the Person of an Apostate Papist, I hate." 298 By an "Apostate Papist," the first Stuart was referring to those Catholics who recognized Papal supremacy in temporal matters. The purpose of the Oath was to single out this group and to force them to swear that they would never forsake their allegiance to the crown nor consort with enemies foreign or domestic in denying the throne to James or his successors. He who swore the Oath stated "And I doe further sweare, that I doe from my heart abhorre, detest and abjure as impious and heretical, this damnable doctrine and position, that Princes which be excommunicated or deprived by the Pope, may be deposed or murthered by their subjects or any other whatsoever." 299 This formula allowed Catholics to grant spiritual allegiance to the Pope and only denied the Papacy's power to remove an excommunicated king.

Pope Paul V responded to the oath on September 22, 1606 with a Papal Breve commanding that no Catholic ought to take the oath and comforting them in what he considered to be a persecution that they were enduring in England for the true religion. They were forbidden both to submit to the services of a heretical Church and to take the oath, for


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"Such an oath cannot be taken without hurting of the Catholic Faith and salvation of your soules; seeing it contienes many things which are flat contrary to faith and salvation."\textsuperscript{300} What the Papacy was stating, what was later restated by Cardinal Bellarmine in his letter condemning the acceptance of the Oath of Allegiance by the Arch-Priest, George Blackwell (the head of the English Catholics, who refused to publish the Papal Breve condemning the Oath), was that anything dealing with the supremacy of the Pope was a matter of faith and any attempt to diminish that power was contrary to Catholic belief.\textsuperscript{301} James answered the Breve by stating that a subject pledging allegiance was not acting and had never acted contrary to faith, and in the past Christians had even served pagan rulers. He further pointed out that the Papal claim to be supreme in temporal affairs was contrary to Christian doctrine since Christ stated that His Kingdom was not of this world. The Stuart King stated that it was ver\textsuperscript{302} strange for a shepherd, the Pope, to call down persecution upon his flock. Elizabeth, according to James, never punished anyone for religious reasons, but only those that rebelled against her. Besides, he had exceeded her policy of clemency by allowing freedom of conscience to Catholics, and in his protection of priests against those in England who wanted them prosecuted under existing laws.\textsuperscript{303}

\begin{footnotes}
\item\textsuperscript{300} Ibid.
\item\textsuperscript{301} Ibid., p. 84.
\item\textsuperscript{302} Ibid., pp. 71, 79.
\item\textsuperscript{303} Ibid., p. 76.
\end{footnotes}
Pope Paul responded to these arguments by issuing a second Breve demanding that his original Breve be enforced and calling the Oath "the work of the Devil."  Cardinal Bellarmine also sent a letter to the Archpriest Blackwell, criticizing him for taking the Oath and for his advice to English Catholics to do likewise. The Cardinal charged that there was no need to take the Oath since the Pope never ordered a prince to be murdered; and in fact, the Oath was an attempt by the first Stuart to transfer the primacy of the Church from the Pope to the crown. According to Bellarmine the Oath attacked one of the bases of the Catholic religion, since it challenged the principal head of the Catholic faith, the Pope. The Papacy's authority could not be limited nor could it be compromised in any little matter. He quoted Basil the Great, who openly avowed that "the very last syllable of God's divine Trewth is not to bee corrupted, though many torments were to be endured, and death it selfe set before you."  The King answered Bellarmine's letter by stating that the Cardinal had confused his Oath with the one of Henry VIII's, which placed a difference between that King and his Catholic subjects by claiming spiritual supremacy. It stated: "That the King's Highness is the only Supreme Governour of this Realme, and all other his Highnesses Dominions and countries, as well in all Spirituall, or Ecclesiasticall things or causes, as Temporall."  

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305 Ibid., pp. 83-84.
306 Ibid., p. 86.
In fact, the first Stuart saw his own Oath as a condemnation of the Oath of Supremacy, since it did not claim spiritual supremacy, thereby placing no difference between being a loyal Englishman and a Catholic. It did not even deny that the Papacy had the power to excommunicate princes, but only refused to accept that the Bishop of Rome possessed the power to remove kings from their thrones. It was not novel, since Church Councils had in the past composed similar documents affirming the allegiance of a king's subjects. This was the case in the fourth and fifth Councils of Toledo, which drew up oaths in support of the King of Spain. A denial of the Oath meant that James was not the legitimate King and that the Papacy had a right to remove a monarch. The Stuart went further and charged again that the Papacy was not opposed to the practice of regicide. Pointing to Pope Sixtus V, who had delivered an oration in praise of the Friar who had murdered Henry III of France, James stated that here was no difference between stirring up factions to murder a prince and the actual murder itself; that the Papacy was doing this by refusing the allegiance of a subject to his king. Also, to deny that Popes may depose princes was no doctrine of faith and it was even denied by the Archpriest Blackwell. In his Premonition he pointed out to Cardinal DuPerron, that he was willing to revise any objectionable words or phrases. In fact, he even had Commons amend their first draft of the Oath so that the Pope's power to excommunicate princes

307 Ibid., pp. 87-88.
308 Ibid., p. 93.
309 Ibid., p. 100.
would not be denied and only stated "that no excommunication of the Popes, can warrant my subjects to practice against my Person or State." A warning was then issued to other Christian kings, Protestants as well as Catholics, that if churchmen are exempted from the power of earthly monarchs, the Papacy will not be satisfied with less than a third of every king's subjects and dominions. Besides denying that he had ever made a promise to Pope Clement concerning his conversion, the King also refuted Bellarmine's charge that he was a heretic. James was thus, like Elizabeth, concerned with political allegiance and the protection of his two crowns. Both wanted, as Elizabeth had said, "to make no windows into men's souls." This attitude was especially reflected in James' Oath of Allegiance. The failure of the first Stuart's plans were a result of the uncompromising nature and hatred manifested by both sides of the religious controversy.

But in fact, the King's greatest hatred was directed not against the Catholics, but against the Puritans, whom he described in such derogatory and insulting terms as "vile worms." They, too, attempted to place the Word of God as contained in their particular religion above the ruler. While James frequently spoke of reconciliation with the Catholic Church in The Political Works, he showed no such inclination

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311 Ibid., pp. 116-17.
towards the Puritans. His adamant attitude towards this group was a result of his experiences in Scotland. While he never knew his mother, he showed a strong antipathy toward those who defamed her. In his discussion of mercy in Basilikon Doron, he told his son, Henry, that the defaming of one's ancestors is the sole sin that is unpardonable. While still under a regency, he had been subjected to overbearing treatment by both the Presbyterian Lords and by his tutors, including George Buchanan. Some of the ministers, for instance, had taught him that he was a bastard, and claimed that David Rizzio, not Lord Darnley, was his real father. The sins of his mother were continually drilled into James by John Knox and others. With this background it is possible to understand his hatred of Puritanism or of a Calvinist polity. It was this fear of such a reformation occurring in England as it had in Scotland by ministers and petitions, that made it impossible for him to discuss any type of liturgical reform with English Puritans.

314 Willson, James VI and I, pp. 20, 50.
CHAPTER XI

THE PLAN OF UNION

James' adamrant attitude on religious reform also hurt his plans for a union of laws, religion and people between England and Scotland. In his discussion of it in *The Political Works* James revealed a clear understanding of the benefits such a union would bring to both countries: especially, to the backward Scots the union would bring a more mature culture. From James' description of them in *Basilikon Doron*, he apparently believed they needed it; the "Highlanders," and especially, the "Islelanders," were described as "barbaric." He then advised his son, Henry, in this book, that the only way to handle such persons was to establish plantations of more civilized Scots among them; this plan was a precursor of later Irish policies. And of especial importance through union, the lawlessness of the border areas between England and Scotland would be eliminated. 315

In commenting on the Scottish Church and the nobility, we can well understand why he was anxious to inherit the crown of England. The Scottish Reformation, which caused him and his mother so much trouble, was described as disorderly and chaotic because it was not

accomplished from on top by the head of the Church, the monarchy. 316

Besides these Puritan preachers, James also had to contend with the Scottish nobility whom he called "conceited." They were so warlike that the King advised Henry not to allow them to carry anything but ornamental weapons to court; all swords, knives and guns should be banished in order to prevent open fighting in the royal chambers. And, most serious in James' eyes because it was a general fault of all the Scottish people, was that, unlike the English, they spoke rashly of their King. 317

In the area of economics, union and the resulting increase of trade between the two countries would result in a flourishing economy. It would also provide English goods in Scotland, which were cheaper and of better quality than those supplied at that time by Scottish merchants and craftsmen. The trade between both countries would mutually produce, "Peace, Plentie, Love, free Intercourse and common society of two great Nations." 318 England, besides solving the age-old border problem and also gaining the above-mentioned benefits, would further gain predominance over Scotland, because London would be the center of the government and Scotland would have to obey English laws and policies. The government at Westminster would thus be secure from both the Scots and their French alliance, and would increase its strength by this union. 319 These

316 Ibid., pp. 22-23.
benefits were some of the ones underlining the same proposals for the union a hundred years later, when it succeeded.

There were three steps to the Stuart plan of union as stated in the Speech of 1607. First, the English Parliament would have to rescind its hostile laws against Scotland and establish in their place a uniform system of laws for both realms. Second, ethnic unity would be accomplished by increased commerce and communication. Third, the people of Scotland would have to be naturalized. 320 The King's plan had proceeded so far by 1604 that he hoped to establish a common coinage, to repeal the hostile laws of both countries against one another, and to improve border justice and extradition. Richard Bancroft, a noted theologian and canonist, was selected to be the King's very competent choice for Primate of Great Britain and a new flag was devised which would impose the cross of St. George upon that of St. Andrew. All these plans failed in James' first two Parliaments, 1604 and 1606, except for the improvement of border justice. 321 In the records of these Parliaments we can see that the motives of the members for preventing the union ranged from legitimate fear to selfishness and hatred of their Northern neighbors.

On April 14, 1604 at a conference with the House of Lords James proposed that he assume the title of King of Great Britain and

321 Willson, James VI and I, pp. 253-54.
that a commission be established to study the best means of accomplishing the union. While the Lords did not object to this proposal, the Commons did so in the person of Sir Edwin Sandys, who in joint conference with the House of Lords, stated that the problems of commerce and unity of laws should come first before the title was adopted. For if the title and the name of Great Britain was adopted, these other problems might be settled before Parliament could investigate the manner in which they would be achieved. Legally, James felt that England and Scotland were united in his person when he ascended the English throne. His description of this union reflected some of his favorite analogies of king and state: "What God hath conioyned than let no man separate. I am Husband and the whole Isle is my lawful wife; I am the Head, and it is my Body; I am the Shepherd and it is my flock." But instead of pushing his claims and title, the King on April 26 asked Parliament to defer the matter of title and to establish a commission to study the problems of union.

Sir Edwin Sandys and others still continued to attack the proposed change of name and asked some constitutional questions in a speech on April 26, in which they reflected their fears of the Divine-Right Monarch. There was no precedent, according to Sandys, for a change

322 Commons Journal, I, 172-73, 950.
324 Commons Journal, I, 186.
of England's name to Great Britain; if this were accomplished the old kingdom and its law would disappear. It would not be able to give its laws to Britain since it was but part of the whole. Furthermore, it was feared that a uniform system of laws for both countries would be based on Roman Civil Law. If this were the case, the Common Law would sink to the insignificant role of the municipal and general laws of Scotland, and the English Parliament would become similar to the Scottish Parliament, a feudal court ruled, as James said, by "his pen" from England. In it no man could speak without the chancellor's approval and would be silenced if he uttered any seditious or unwelcome speech. The right to propose as well as to veto legislation was also left to the prerogative of the King. Because of their opposition, James, upon the advice of Sir Francis Bacon, was only able to assume the title of King of Great Britain by royal proclamation, and was only able to use his title on non-legal documents.

The Lords, however, did not fear such a union and felt like the first Stuart that it was a fait accompli since James was the King of both countries. On May 1 a joint session of both Houses agreed to the establishment of a commission to discuss the matter of union and to present a report at the next session of Parliament; its membership was

325 Ibid., 186-87.
327 Willson, James VI and I, p. 252.
determined by the House of Commons. The report was unfavorable to union as also were later ones. The union, however, was not rejected because of the legal question alone, but also because of economic reasons. These factors were reflected in the Parliamentary debates of 1606. One part of the King's program which especially angered English merchants was the proposal that free trade should be established between the two kingdoms. On December 9, 1606 a report was issued by the committee considering the union. It stated that if free trade were established, "it would be to the decay of English shipping and soe danger to the Kingdom in dashing the grett ship." The Scottish, it was their obvious fear, would build and operate ships cheaper than the English merchants. Another fear was that England would be despoiled by her northern neighbors, who would migrate into the richer of the kingdoms and then return North with their newly obtained fortunes, thereby robbing England of her wealth. Sir Edwin Sandys claimed that Scots would inherit English revenue and then remove it to Scotland, where they would be immune from English laws and the legal complaints of Englishmen. Furthermore, they would abuse any wardships granted to them by the King. For this reason Sandys suggested both that no English wards should be allowed to be brought into Scotland, and also that the House of Lords must approve any wards given to the Scots dwelling in England. The

330 Willson, Parliamentary Diary, p. 203.
331 Ibid., p. 208.
number of offices which Scots had obtained through their naturalization and the condition under which they could gain such offices should also be limited, according to this member. No Scot should obtain an ecclesiastical appointment unless he had graduated from an English university. Further, Scots should also be refused the privilege of becoming chancellors and should be excluded from masterships of colleges in Cambridge, Oxford, Eaton, Winchester, Westminster and Manchester. 332

These limitations reflected longstanding English hostility towards their northern neighbor. The contemporary attitude of an Englishman can be seen in a letter written by Sir Anthony Weldon from Leith to a friend in England, in which he stated that Scottish nobles treated their wives no better than slaves, that horses were their masters, and that swords were their judges. The women of Edinburgh in his description were "whores," who looked like men. His letter concluded by questioning how such a great prince as James could "be born in so stinking a town as Edenborough in lowsy Scotland." 333

It was nobles from this country that the first Stuart naturalized in England and introduced into the Privy Council, much to the dislike of the native English. One of these, Robert Carr, became the King's chief advisor and obtained a seat in the House of Lords, upon being made the Viscount Rochester. The English hostility to this influx

332 Ibid., p. 223.
333 Akrigg, Jacobean Pageant, p. 48.
of beggarly Scots was reflected in a children's song of the time:

"Hark! Hark!
The dogs do bark,
The beggars have come to town.
Some in rags,
And some in tags,
And some in velvet gowns." 334

Ben Jonson reflected this hostility in literary form in a play, *Eastward Ho*, produced in 1604. Its first performance ridiculing these circumstances resulted in his commitment to the Tower upon the King's orders. It was only through the influence of some cautious Court members that his release was obtained. 335

A far more serious matter was the possibility of bloodshed, especially since there were two incidents in 1612 which almost resulted in riots. One of these occurred at the Croydon races when a Scots' favorite of the King, Patrick Ramsay, slapped the Earl of Montgomery after a bet was lost on a race. If the usually hot-tempered Montgomery had returned the blow, London would have been swept by anti-Scottish riots. 336 Later that year another incident occurred so frightening to the Scots that three hundred of their number fled across the border to their native land for safety. It concerned a Scottish usher, who removed a disruptive member of the Inner Temple from a court function by pulling him out by his earring. During both of these happenings the

334 Ibid., p. 48.
335 Ibid., pp. 50-51.
336 Ibid., pp. 51-53.
King behaved in an impartial manner. After the unfortunate affair at Croydon, the first Stuart forced Ramsay to apologize to Montgomery, and the same policy was followed after the second incident. 337

English hostility was also a result of the "auld alliance" existing for centuries between France and Scotland. Sandys felt that this was an impediment to the union and stated that "we cannot love a nation that still loves France," and demanded an end to special privileges granted to the Scots by the French monarchy. 338 James' answer to such charges stated that alliances were made between kings and not people, and that the "auld alliance" no longer existed since he was King of both countries. 339 The Commons, however, saw these limitations as a means of securing Scotland's loyalty. Sandys felt that the less that was given to them the more they (the Scots) would be drawn to England. 340 If all privileges of Englishmen were granted to them, Sir Herbert Croft felt that the Scots "will gain everything and give us nothing," neither obedience nor allegiance. 341 Instead he believed that there should be a perfect union with one Parliament, a union in which Scotland would be subject to the laws of England. What Croft and Sandys were advocating by a perfect union was one in which Scotland would be dominated by England, but without the privileges of English citizens. In Sandys'

337 Ibid.
338 Willson, Parliamentary Diary, p. 226.
340 Willson, Parliamentary Diary, p. 219.
341 Ibid., pp. 246-47.
view they should not gain privileges without first obeying English laws. For if those privileges were granted without bringing Scotland completely under English influence, they would not move towards a perfect union. This process could only be completed by time and not through legislation. Until the Scots had proved themselves through this test of time, they should be content to receive those few benefits that Parliament was willing to grant. 342

A far different policy was advocated by James and Sir Francis Bacon. In a speech on March 7, 1606 the King stated that he wanted a full union instead of a perfect one; through such a full union London would become the center of the two kingdoms. In answer to the fears of the Commons about the "auld alliance", the King had pointed out earlier that the union would add a strong realm to England. In fact, he even offered either to rotate capitals, or to establish a new one at York, or to ride circuit like the judges, if it would aid in establishing such a united kingdom. 343 Sir Francis Bacon argued that union was necessary for the protection of England. Once it was accomplished Scotland would never be able to be severed from England and again become its enemy. The difference between the laws of the two countries, which Bacon felt were minimal, should be worked out after union. Instead of having the Scots prove themselves before the granting of privileges,

342 Ibid., pp. 219, 225.
Bacon pointed out that "no bride or beast is taught anything before you feede him." Scotland should be made to love England by kind treatment and the granting of citizenship to her people.

In the problem of citizenship, the Scots were divided into two categories, post-nati (those born after James' accession) and the ante-nati (those born before his accession). James felt that the former, the post-nati, automatically were citizens. This view was upheld by Sir Edward Coke and the Common Law in Calvin's case of 1606. Robert Couville or Calvin had been born on March 25, 1603, some hours after Elizabeth's death. The question in the suit was whether he was an English citizen, and thereby able to inherit English property, since his Scottish King was now also the King of England. It was brought before the Exchequer Court and a majority of the judges, including Sir Edward Coke, upheld the Scottish Calvin's claim to English citizenship. They decided that anyone born within the dominions of the King was his natural-born subject, and therefore not an alien in either of his kingdoms, even though the laws of the countries differed.

While the Lords agreed with James and the Courts about the case of the post-nati, the Commons did not. Sir Edwin Sandys felt that

344 Wilson, Parliamentary Diary, pp. 247-48.
346 Ibid., p. 257.
for the security of England the post-nati and the ante-nati must be treated as one "for all those ante-nati will be passed and gone in an age, but the post-nati are to have continuance forever." In disagreeing with the courts in a speech of March 7, 1606, he stated that in this matter the courts were inferior to Parliament and were "only assistants to the Lords in Parliament." The Courts, he further noted, also delivered their opinions before they had heard Commons' views.

It was this same Parliament, not yet to be dissolved for some years, which also had defeated a bill to naturalize the ante-nati, and had defeated James' other plans for union. Even though the Calvin Case of 1606 established the right of naturalization for post-nati subjects, James' great plan of union was not realized until 1707. If his plan of unification as well as his policy of religious toleration had been accepted by the English Parliament and people, many of the problems that plagued England for the next one hundred years might have been solved sooner. James' arguments on union were as valid one century later in 1707 as his arguments on toleration were over two centuries later, in 1829.

347 Willson, Parliamentary Diary, p. 231.
348 Ibid., pp. 218-19.
349 Willson, James VI and I, pp. 296-97.
350 Tanner, English Constitutional Conflicts, p. 268.
CONCLUSION

Thus far we have seen in *The Political Works* and the royal speeches many sides of James I—his views on politics, religion, law, toleration, union and his desire for a religiously united Europe living in peace. In all these matters, James showed not only his great intelligence, but a visionary approach to these problems, a view which was not shared by Parliament or the Common Law Courts. Despite the Stuart's personal weaknesses, such as his infatuations with favorites and his premature old age, England would have been greatly improved if the Courts and Parliament had cooperated with the monarch and his policies. It is worthwhile to question what greater heights England could have achieved, if by 1624 she had been united with Scotland, tolerant towards Catholics and other loyal dissenters, possessed of a reformed Common Law, and not tending to be involved in a Continental war. These reforms, unlike the ones in our century, could have been achieved only through the triumph of royal absolutism. Unfortunately, the monarchy's strength was being reduced by the Courts of Law and by Parliament during the first Stuart's reign. It was they, not the King, who were infringing upon the traditional constitution and standing in the way of enlightened reforms. These two institutions were neither democratic nor progressive and in this last characteristic were quite the opposite in comparison to the King. His speeches might seem to imply that he was an uncompromising monarch steeped in the theories of Divine Right; but in fact he was
willing to compromise, as in the case of Goodwin, and was not vindictive toward those who opposed him—for instance, toward such men as Coke. Unlike his son Charles, James knew, apparently intuitively, when to compromise and what his own limits were in dealing with Parliament and the Courts. To advocate Divine Right was one thing, but to allow it to be the sole guide to royal actions when it was opposed to political realities was not a mistake made by the first Stuart King.

In all of these matters we have seen a person who was a politician as well as a King, deeply interested in his subjects, both English and Scottish. This interest in his subjects can clearly be seen in the last speech in The Political Works, his Speech in the Star Chamber, delivered in 1616. Besides mentioning his desire for law reform, toleration and union, he also gave what could be viewed as a modern state of the Union address. He mentioned his concern about the over-abundance of alehouses, and of the problem of rogues and beggars in the kingdom. It also seems that London was, not unlike a modern city, suffering from a deterioration of the inner city. King James' solution was to persuade gentlemen to return to the core of the city from the ever-expanding suburbs. Bridge construction and highway building and their necessity for the well-being of the country were also reflected in the speech. Just as today, a greater amount of contributions were needed for these projects; also, the King pointed out the need for more hospitals and schools. His concern for his subjects was made manifest when he said: "I protest, that
as my heart doeth ioy in the erection of schools and hospitals."

With this aspect and side of the King's character we finish. To view the first Stuart in one and not in all of his aspects is to miss what really was the personality of James I. He was, as an ultimate judgment, a unique and complex ruler with characteristics of both greatness and weakness.

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The thesis submitted by John Joseph Kerrigan has been read and approved by the Department of History.

The final copies have been examined by the director of the thesis and the signature which appears below verifies the fact that any necessary changes have been incorporated, and that the thesis is now given final approval with reference to content, form, and mechanical accuracy.

The thesis is therefore accepted in partial fulfillment of the requirements for the Degree of Master of Arts.

May 29, 1970
Date

Signature of Advisor