WHOSE SUPREMACY? KING, PARLIAMENT AND THE CHURCH 1530–1640

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In October 1993, I had to decide whether it was proper for me, as an unbeliever, to go to Parliament to vote in favour of a Church of England measure. Was it proper that laymen, not members of the church, not involved in the decisions taken, should be allowed to sit in Parliament to decide what the law of the church should be? After some discussion, I was persuaded it was proper, and cast my vote accordingly. In that decision, I recognized the triumph of one version of the Royal Supremacy over another. It is the triumph of Christopher St. German over Bishop Stephen Gardiner, of Sir Francis Knollys over Queen Elizabeth I, of Chief Justice Coke over Lord Chancellor Ellesmere, and of John Pym over Archbishop Laud. That triumph took a century to arrive after Henry VIII's Act of Supremacy, and, like many other triumphs, it threw out a promising baby with its mess of popish bath-water.

It was the result of a century of exploration designed to discover what King Henry VIII had done. Henry, like other politicians under pressure, was addicted to legislating on the hoof, and the legislation setting up the Royal Supremacy was directed to answering a number of urgent political questions. There were many other questions it did not answer because no one had yet thought of them, and many others to which its answers, because evolved on the spur of the moment by a team of people who did not always agree with each other, were internally inconsistent. It is the attempts to fill in those silences, and to resolve those inconsistencies, which provide the subject of this lecture. The Act of Supremacy of 1534 did not purport to make Henry head of the church: it declared that he already was so. It did not say (and its silence was crucial) by what authority he was already Supreme Head of the church.

Any answer to the question by what authority the King enjoyed the Royal Supremacy would go a long way to determine what sort of authority he enjoyed, and subject to what limitations. One might hold, for example, like the second canon of 1604, that the King enjoyed the Royal Supremacy because it had been enjoyed by godly kings among the Jews.[1] That view gave the Royal Supremacy authority rooted in divine right. It tended to emancipate the clergy from Parliamentary control, and to preserve the independence of clerical jurisdiction. However, it left wide open the question of the balance of power between the Crown and the clergy. In the version preferred by Thomas Hobbes, and by Queen Elizabeth I when dealing with Archbishop Grindal, it made the Crown the heir of Moses, and the Archbishop the heir of that thoroughly subordinate figure, Aaron. Yet there was another version of the Royal Supremacy by divine right which exalted the clergy into a position monarchs might find dangerously independent. According to the abortive canons of 1606, when God created civil authority, 'so did he also, according to the supernatural doctrine of the Gospel, not only ordain that there should be some likewise in his church to rule and govern it; but also gave them another kind of power, superiority and authority, which is termed ecclesiastical'.[2] In the light of the strong suggestion of clerical independence in this passage, it may not be surprising that it was rejected by James VI and I in 1606, but published, eighty-four years later, by the non-juring Archbishop Sancroft.

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[1] E. Cardwell. *Synodalia*. Oxford (1842). I. 166–7.

[2] *Gilbert Overall's Convocation Book* (1690), p. 5.

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In a quite different version of the King's authority, Sir Edward Coke, then Attorney General, wrote to Robert Cecil in 1606 that he had almost finished a book proving that the King enjoyed the Royal Supremacy by 'ancient laws', and not just by Act of Parliament.[3] It is perhaps not surprising that this book, like the Canons of 1606, did not appear. For Coke, this clearly meant that ecclesiastical power rested in the Crown by the authority of the common law. That view immediately reduced ecclesiastical courts and authority from a state of equality and independence to a state more like a modern University disciplinary tribunal—a subordinate sphere of authority answerable to the common law and controlled by it. It was a view which commended itself neither to Lambeth nor to Whitehall, however popular it might be in the Inns of Court. It was a view which threatened to deprive the clergy of any jurisdictional independence.

Another view, favoured by Lord Chancellor Ellesmere under James, argued that the King enjoyed the Royal Supremacy by authority from the civil law, 'ye most common and universall law in all Christendom', and claimed that 'ye canon and civill lawes are more ancient than ye common law, both in themselves, and in this land'.[4] When Lord Herbert of Cherbury, the historian of Henry VIII, used this doctrine to claim for the King all the powers enjoyed by the Emperor Justinian, he hinted at a sort of caesaro-papism which might have become as terrifying to the clergy as it could ever be to a Parliament.[5]

In fact, the Royal Supremacy never developed in that direction. The King did not develop a claim to priestly powers. He did not administer Communion or Baptism, and I have only found one case of the King forgiving sins. In 1628 one William Baynton was pardoned ecclesiastial censures by the King incurred because he had married his former wife's sister's niece by the father and not the mother.[6] That is surely the proverbial hard case which made bad law, and there is no sign that Charles I appreciated the significance of what he had done. What these cases surely do illustrate is that the declaratory character of the Act of Supremacy necessarily led to a debate about the nature and origin of ecclesiastical law in England. If the King had always enjoyed the Royal Supremacy, it was necessary to discover by what authority he enjoyed it before it was possible to discover what sort of authority he enjoyed.

The Act of Supremacy gave Henry power to 'visit, repress, redress, reform, order, correct, restrain and amend all such errors, heresies, abuses, offences, contempts and enormities whatsoever which by any manner spiritual jurisdiction ought or may *lawfully* be reformed . . .'. Yet the ruthlessly repetitive exclusion of any other authority gave no guide to the meaning to be attached to the crucial word 'lawfully'.

The problem was more acute for the fact that the Act for the Submission of the Clergy of 1534 nominated a body of 32 people to decide which of the pre-Reformation canons should continue in force and which should not. Because that body reported to Mary Tudor, who did not want to implement its report, and because Elizabeth I resolutely pigeon-holed it, no decision was ever taken on which pre-Reformation canons were legally binding. That Act provided that no canons should be put into execution which were contrary to the King's prerogative 'or the customs, laws and statutes of this realm; anything contained in this Act to the contrary hereof notwithstanding'. That appeared to give the common lawyers what they wanted, and was many times quoted by Chief Justice Coke. It appeared to leave the country with one single system of law, controlled by the common law

[3] *Calendar of State Papers, Domestic 1603–1610*, vol. xiii, no. 61.
[4] Bodleian Library Ms Barlow 9, ff. 1–2.
[5] Public Record Office, S.P. 16/288/88.
[6] Birmingham Reference Library, Coventry Mss, Pardons, no. 6 (6 June 4 Car.).

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judges and by Parliamentary statute, in which the authority of the clergy was no more than a subordinate branch. The Act appeared, as its title suggested, to end the legislative and jurisdictional independence of the clergy.

Yet a passage in the Act in Restraint of Appeals of 1533, equally relied upon by Sir John Bankes, Charles I's Attorney General, could be quoted to a different effect. That said the King was supreme head of a body 'divided in terms and by names of spiritualty and temporalty', and declared that 'when any cause of the law divine happened to come in question or of spiritual learning, then it was declared, interpreted and shewed by that part of the said body politic called the spiritualty, now being usually called the English church, . . . which . . . is . . . sufficient and meet of itself, without the intermeddling of any exterior person or persons, to declare and determine all such doubts and to administer all such offices and duties as to their realms spiritual doth appertain'. The Act was no doubt worded the way it was in order to give the maximum appearance of judicial independence to the divorce Cranmer had pronounced: the motive was clearly political. Yet, read as a legal text, this Act went a long way to uphold the clerical vision of spiritual and temporal authority as two separate spheres of authority, administered by different people judging by different laws, each independent of the other, and united only under the supremacy of the King. It was a vision in which lay and ecclesiastical authorities were as independent of each other as Lords and Commons were before the Parliament Act of 1911. As Attorney General Bankes put it: 'soe in causes ecclesticall and spirituall (the conusans whereof belong not to the common laws of England) the same are to be decided and determined by the ecclesiastical judges accordinge to the kings ecclesiasticall lawes of this realme'.[7] What they did was no business of Parliament or common law judges: it was their own affair, and they were answerable only to the King in person.

Jurisdictional disputes are usually manageable so long as there is no wide divergence between the judgements the competing authorities are likely to give. It is a quite different matter when the lines taken by the competing authorities diverge widely. The litigant may not much care who hears his case if both authorities are likely to give the same judgement, but if one is likely to send him to prison, and the other to let him off scot-free, the question who has the authority to hear the case becomes very interesting indeed. A dramatic example of this divergence arose at Northampton Assizes in 1600, when the High Commission sent a pursuivant to arrest one Simpson. Simpson, resisting arrest, killed the pursuivant. The Assize Judges decided that the arrest was unlawful and therefore that Simpson had acted in self-defence, and acquitted him on a charge of murder.[8] For Simpson, the conflict of jurisdictions had become very interesting indeed. Such divergence became frequent as the Reformation began to take hold in the later part of the reign of Elizabeth I, and Parliament and the common law courts tended to take a strong reformed line with which the Queen and her bishops were not always in sympathy.

The Act of Parliament of 1571 confirming the Thirty-Nine Articles is a typical example of this process. In what was almost Peter Wentworth's only Parliamentary victory, the Act required subscription only to such of the articles 'as do only concerne the confession of the true Christian faith and doctrine of the sacramentes'. Those words, according to the common subsequent Parliamentary reading, failed to confirm Articles 34, 'Of the Traditions of the Church', 35, 'Of the Homilies', and 36, 'Of the Consecration of Bishops and Ministers'. From then on, innumerable Parliamentary bills asserted that the church authorities could not require subscription without the authority of an Act of Parliament, while the church authorities claimed an independent right under the Royal Supremacy to

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[7] Dorset R.O., Bankes of Kingston Lacey Mss, vol. L, pp. 1–2.
[8] Sir Edward Coke, *Twelfth Report*, 50.

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require subscription whether Parliament gave them any authority or not. In this and many similar ways, the question whether the church had an independent and autonomous sphere of authority acquired an urgent practical importance.

A few examples may illustrate the opposite poles of the jurisdictional argument as it developed. A Parliamentary bill of 1610, sponsored by Nicholas Fuller, which passed the Commons and 'fell asleep' in the Lords, condemned the *ex officio* oath. By that oath, the Court of High Commission could make those who appeared before it take an oath to answer questions truly, before they knew what they were to be accused of. Fuller's bill recited Magna Carta to the effect that no one should be proceeded against save by the lawful judgement of his peers or by the law of the land, and forbade any bishop 'by any suspition conceived of his own fantasie' to put anyone on trial without due accusation and witness, and enacted that any ecclesiastical commissioners who made anyone take an oath to accuse himself should be guilty of *praemunire*. The penalty for *praemunire* was imprisonment during the King's pleasure, and loss of the accused's goods and chattels.[9]

This bill was stirring stuff, but it begged many of the interesting questions. While relying on Clause 39 of Magna Carta, the due process clause, it entirely ignored Magna Carta clause 1, which laid down that the English church should be free. In identifying the 'law of the land' invoked by Magna Carta exclusively with the common law, it begged the key question, whether ecclesiastical law was a separate branch of law with its own rules. In attempting to impose the full rigour of common law procedure on an ecclesiastical court, it attempted to spatchcock an alien procedure into a court unlikely to be able to accommodate it. Fuller's attitude to ecclesiastical law was painfully similar to his attitude to Scottish law: they both threatened English Parliamentary sovereignty.

On the other side, Lord Chancellor Ellesmere, in his *Observations* on Coke's Reports, insisted on the claim that ecclesiastical law was an autonomous branch of the law of the land. He accused Coke of weakening the power of ecclesiastical courts, 'as if they were not absolute in themselves in iurisdictions naturally belonging to them, but subordinate to the iudges of the common law to be controlled in things that fall not within ye levall of the common lawe'. He said the judges were treating ecclesiastical courts 'as if in things meerely concerning the church they had other eyes over them save the kinges only'.[10] This too was stirring stuff, but this too left out something crucial, in this case the passages of the Act for the Submission of the Clergy which said ecclesiastical laws could not be contrary to statute or common law. Other defenders of the church went even farther: Francis Bacon said that 'the church of England is the greatest franchise or libertie both by the fundamental lawe of the kingdome and by Magna Charta'. This is a claim that would have made Thomas Cromwell's hair stand on end. Attorney General Hobart in 1609 went even further, and claimed that the King's spiritual jurisdiction was 'substituted' in place of the Pope's, 'and as large as that was'.[11] Before we give in to stereotypes, it is worth remembering that the authors of all three of these passages were common lawyers.

When we talk about 'the common lawyers', the man we in fact mean is usually Sir Edward Coke, Chief Justice first of Common Pleas and then of King's Bench under James I. What Coke seems to have been developing is a claim to judicial review, as it would now be called, of the proceedings of ecclesiastical courts. Judicial review is a jurisdiction which depends on the notion of the principles of natural justice. A judicial review of a decision will assess whether it has followed due process, whether the decision is *ultra vires*, whether both parties have been

[9] *H.M.C. House of Lords*, vol. XI, pp. 125–6.
[10] L. A. Knafla, *Law and Politics in Jacobean England*, Cambridge (1977), p. 301.
[11] Ms Barlow 9, ff. 28, 36.

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heard, whether the authority concerned has been judge and party in his own cause, and a succession of similar questions. A judicial review does not, or should not, attempt to re-open the merits of the decision reviewed, but only whether it has been correctly and fairly reached. What is clear in the doctrine of judicial review is the claim of the common law courts to have an oversight of the fair and reasonable exercise of power by any authority in the land: it has a distinct echo of the pre-Reformation papal *plenitudo potestatis*. Nothing is immune from it.

In the case of Convocations, concerned with the power of the Convocations of Canterbury and York, Coke began from the Act for the Submission of the Clergy, that they should not make any canons contrary to statute, custom or common law. He quoted a case of 1498 to argue that this had been the law before Henry VIII's reign. He argued that in cases which did not change the common law, Convocation could make canons to bind the spirituality, because they were represented and consenting, but not to bind the laity, because they were not represented or consenting. The law, he argued, could not be altered but by Act of Parliament.[12] In Langdale's Case, he issued a prohibition to the Court of High Commission to stop it considering a case of alimony, claiming that 'the common law was a prohibition in itself'.[13] In the High Commission case, the one in which a man had killed the person trying to arrest him, Coke ruled that the High Commission was acting *ultra vires*, because the power to imprison had been conferred by delegated legislation. The Elizabethan Act of Supremacy had given the Queen power to constitute the court by letters patent, and it was the letters patent, not the Act, which conferred the power to imprison on the High Commission. Coke said 'the king by his commission cannot alter the ecclesiastical law, nor the proceedings of it'.[14] It was a powerful argument, but it happened to contradict a case of 1591, in which Coke had been Attorney General, and published the case in his Reports. There he had decided that because the Royal Supremacy continued an old power rather than creating a new one, no new creation of power was needed, but that in such cases 'the conusance of which belong not to the common laws of England, the same are to be determined and decided according to the King's ecclesiastical laws of this realm'.[15] Such inconsistency could and did drive Coke's critics wild, yet both views could be sustained within the scope of the statutes which were the only clear authorities in the case.

As always in these disputes, argument about the relationship between the church and the common law gave rise to new debate about the relationship between the common law and the king. Since the claim of the church was that ecclesiastical and secular law were two equal spheres of authority united only under the jurisdiction of the king, it was natural for them to reply to a claim that the common law should control disputes between courts by claiming instead that the King should do it. In 1608, Chief Justice Coke and Archbishop Bancroft argued out the issue of prohibitions before the King, and Bancroft claimed that 'upon the statute of 1 Elizabeth concerning the High Commission, or in any other case in which there is not express authority in law, the King himself may decide it in his royal person; and that the judges are but delegates of the King, and that the King may take what causes he shall please to determine, from the determination of the judges, and may determine them himself. And the Archbishop said, that this was clear in divinity, that such authority belongs to the King by the word of God in Scripture'.[16] Coke had been outmanoeuvred, and the marginal note in his Reports '*en sycophantem*' which might be freely translated as 'you creep!', if it is his, indicates that he realized it.

The King's desire to sit on the bench himself and do his own judging was well

[12] Coke, *Twelfth Report*, 73.
[13] *Ibid.*, 60.
[14] *Ibid.*, 50.
[15] Sir Edward Coke, *fifth Report*, 9.
[16] Sir Edward Coke, *Twelfth Report*, 64.

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known, and the common law judges, led on this point by Lord Chancellor Ellesmere, had been resisting it for a long time. Coke, by leading with his chin, had offered James a chance to reassert his claim, and by doing so, to assert the supremacy of his own authority over that of the common law. Moreover, by claiming that James enjoyed this power by Scripture, Bancroft had raised the spectre of a divine right Royal Supremacy which the law could not attempt to control.

Coke, at a severe disadvantage, replied by stating the authority of the law over the King in terms even more extreme than he normally used. Having asserted roundly that the King in person could not try any case, he answered James's claim that, having reason, he could try cases as well as the judges. This is when he produced his famous statement that cases were not tried by natural reason, 'but by the artificial reason and judgment of law, which law is an act which requires long study and experience before a man can attain to the cognizance of it; and that the law was the golden metwand and measure to try the causes of the subjects, and which protected his Majesty in safety and peace'. 'With which', Coke tells us, 'the king was greatly offended, and said, that then he should be under the law, which was treason to affirm, as he said'. If fighting Coke was a form of bullfighting, Bancroft had shown himself a highly skilled picador, and had sent Coke charging straight on the sword of the royal matador. Finding his claim for the universal authority of his own court challenged, Coke was driven back, as judges so often are when they want more power, on invoking the authority of Parliament, and claiming it was Parliament's job to decide the limits between courts. Since Parliament had no time to take on any such responsibility, the claim was useless.

In 1616, when James at last dismissed Coke from the office of Chief Justice, it was Bancroft's arguments he brought out. He complained that civil and canon law had been encroached upon since his coming to the Crown, and added: 'speaking of the common Lawe, I meane the common lawe kept within her own limits, and not derogating from these other lawes, which by longer custome have beene rooted here, first the lawe of God and his church, and next the lawe civill and canon, which in many cases cannot be wanting'. He said he was sworn to maintain 'lawes, especially the common-law'. He had explicitly accepted the ecclesiastical claim that the common law was only one of the many branches of the law of the land.[17] He also explicitly accepted Bancroft's argument that judicial review was his responsibility, not that of the common law courts: 'it is a special point of my office to procure and command, that amongst courts there be a concordance, and musicall accord; and it is your part to obey, and to see this kept'.[18]

One part of the clerical case to which royalty was always susceptible ran in terms very much like the modern argument for academic freedom, whose clerical roots have always been acknowledged. It was argued that ecclesiastical matters should be decided by those who were learned in them and therefore capable of deciding them. Sir Thomas Egerton, later Lord Chancellor Ellesmere, argued in Parliament in 1587, 'an especial part of Christian society for everye one to contayne him selfe within the bounds of his own vocation'. He said ecclesiastical matters pertained to the learned doctors and great fathers of the church'.[19] Sir Robert Cotton, in 1607, argued that the power to make ecclesiastical laws did not belong to Parliament, and ought to go back to churchmen, 'who knoweth best what belongs thereto'.[20] Attorney General Hobart trumped the argument of members of the Commons and the judges about the Act of 1571 about subscription to the Thirty Nine Articles. He said that in interpreting that Act, 'the judges of the common lawe or jurie do

[17] C. H. MacIlwain, *The Political Works of James I*, Cambridge (Mass.) 1918, p. 331.
[18] *Ibid.*, p. 335.
[19] S.P. 12/199/2.
[20] Bodleian Ms Tanner 280, f. 64.

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take upon them to determine what concerns faith or sacraments, what not, wherein they ought to judge according to the judgements of the church of England'.[21] Sir John Bennett, an ecclesiastical judge, attacked the claim of the common law judges that only they could interpret statutes, saying they took upon them power to determine 'those things mentioned in such statutes, which are out of their element, and pertaining only to spiritual learning, wherein their predecessors, judges of the law in former times, have ingeniously confessed their own ignorance'.[22] He backed this up with the passage from the Act of Restraint of Appeals about the competence of the spiritualty to determine spiritual questions. He said judges could not expound statutes if they did not know the matter.

The biggest success of this line of argument was in excluding Parliament and common lawyers from authority over doctrine. In 1539, when the Act of Six Articles reaffirmed some points of traditional doctrine, it did not introduce them with the traditional enacting clause: 'by authority of the King's most excellent majesty, and the Lords spiritual and temporal and Commons in Parliament assembled, be it enacted that:' Instead the Act said it was 'resolved, accorded and agreed', scrupulously refraining from saying that any of these things were true doctrine by authority of Parliament. When the Elizabethan Settlement was brought in, there was no settlement of doctrine in 1559. Instead it waited until 1563, until the first Protestant Convocation under the new settlement. Perhaps a unique exception to this concession to the clergy of authority in doctrine was John Pym in 1629. Ironically, his prize example was the Act of Attainder of Thomas Cromwell, on the ground that only Parliament could have decided authoritatively that the men Thomas Cromwell was condemned for favouring were heretics.[23]

Up to 1640, it seemed that the clergy might be equally successful in the other two more bitterly controverted areas of jurisdiction and clerical legislative power. James I dismissed one Chief Justice, and Charles I dismissed three. So long as the executive power of patronage could be this brutally used to control the judiciary, there was very little chance that it could achieve long-term control over powers the King did not wish it to control. The judges, moreover, were swimming against the tide of a reaction against the Henrician Reformation which seems to have been particularly intense in the years between about 1600 and 1640. Robert Cecil was the grandson of Henry VIII's Yeoman of the Robes, and it seems Henry was no exception to the rule that no man is a hero to his valet. Robert Cecil said that 'I love not to look upon anything that H.8 did, for he was the child of lust and man of iniquity'.[24] Archbishop Bancroft said: 'H 8 and the state misliked the clergy in anno 29(1529). The king that now is, loveth his clergy as ever any.'[25] It was because Bancroft was on the whole right that the attempt to control the clergy by means of the judiciary fell some way short of success.

For some while, attempts to control clerical independence through the Parliamentary route were no more successful. We are perhaps unduly impressed by the way bills on subscription or the ex officio oath sailed through the Commons in Parliament after Parliament. This makes it tempting to see them as representing the views of a mythical collective entity called 'the Commons'. They provoked very little debate, but when there was debate, it was by no means entirely on one side. People like Dudley Carleton, to name only one, were quite capable of speaking against the politically correct tide on which such bills floated. Perhaps the reason why they went through so easily was revealed by Sir Thomas Vavasor, knight mar-

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[21] Bodleian Ms Barlow 9, f. 51.
[22] Ms Barlow 9, f. 53.
[23] Conrad Russell, *Parliaments and English Politics 1621–1629*, Oxford (1979), p. 411.
[24] Elizabeth Read Foster, *Proceedings in Parliament 1610*, New Haven (1966), I, 231–2.
[25] *Ibid.*, I, 221.

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shal of the Household, who said 'he cared not what they did in the lower House—he knew there would be a stop above'.[26] Sir Thomas Holcroft, who heard him say this, very rashly reported it to the House of Commons, and thereby drew attention to its weakness.

Passing a bill through the Commons under James I was like passing a bill through the Lords now: it did not guarantee it entry to the legislative pipeline in the other House. Over and over again, the Commons' ecclesiastical bills were allowed one reading in the Lords, and then quietly left to 'fall asleep'—a sleep from which they never woke. Just as today opponents of a privately sponsored bill in the Lords do not bother to kill it because they know it will fall asleep in the Commons, even so it is likely that Sir Thomas Vavasor was right that opponents of bills in the Commons did not bother to kill them in the Commons when they knew they would fall asleep in the Lords. James's long first Parliament was not that unanimously puritanical a body: in the vote on whether to sit on Ascension Day in 1604, the nearest thing to a party vote on religion, the majority in favour of sitting was only 137 to 128, which is less than overwhelming.[27] If this is a good indication of the strength of rival religious groupings, it means that if these religious bills had been fought out in the Commons, it would have been touch and go whether they had passed. If this is an accurate assessment, it would give another reason why their opponents did not fight them there. There is no point in risking the severe loss of face of a possible defeat in order to stop a bill which is certain to fail anyway.

There was, moreover, an occasional hint of self-doubt in the Commons. Sir Edwin Sandys, who was the son of an Archbishop, and committed to the bill to legalize clerical marriage in 1604, introduced a bill in 1606 for the establishing and assurance of true religion. That bill provided that no 'substantial point of religion' should be altered but by 'Parliament with the advice and assent of the clergy in convocation'. He said each man should be advised withal and direct in his own profession and that if convocation were not included, 'the papists would saie, not without shew, that we professed only a statut religion'.[28] The House decided not to proceed in the bill.

Up to the end of James's reign, then, the legislative and jurisdictional independence of the clergy appeared fairly safe. It was securely defended by the King, and it was as strong as the King was. However, it is not only in our own century that there is truth in the rule that it is not good for any government to have too big a majority. Charles I, feeling secure in his power, used it in many ways which maximized the number of his enemies. Finally, he brought the Scottish army into England, and they represented a creed in which clerical independence meant first and foremost their independence of the King. The condemnation of the canons of 1640, the final suppression of the independence of the clergy, was carried through in December 1640, while the Scottish Commissioners were in London, and dominating its politics. In his weakened state, the King was unable to defend his clergy, and they fell before the omnipotent power of Parliamentary sovereignty.

Even then, the Commons were not unanimous, and in the final great debate on the legislative independence of the clergy, the two great speeches, one on each side, were both made by men who had been Hampden's counsel in the Ship Money trial, Robert Holborne and Oliver St. John. The arguments were familiar. Holborne said that 'surely the church ought to be governed by itself, and lay men not to intermeddle with it'.[29] St. John, on the other side, said 'we are now all one bodie, and

[26] *C.J.*, i. 1010.
[27] *C.J.*, i. 972.
[28] *The Parliamentary Diary of Robert Bowyer*, ed. D. H. Willson, Minneapolis (1931), p. 52.
[29] *The Journal of Sir Symonds D'Ewes*, vol. I, ed. Wallace Notestein, New Haven (1923), p. 152.

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must be all bound by consent in Parliament'.[30] St. John's view prevailed, and that is why, when the Church of England wants to pass a Measure through Parliament, unbelievers such as myself have to go to the House to vote for it. When, as happened a few years ago, Parliament votes down a Church of England Measure, the Measure falls. Parliamentary sovereignty prevailed in the end, but it took a lot longer to do so than we are usually told, and now that it has prevailed, it has shown that it is as capable as the Pope ever was of enjoying its plenitude of power.

[30] *Ibid.*, p. 155.

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