

*Balázs Rigó*<sup>1</sup>

ELTE Eötvös Loránd University

ORCID: 0000-0003-0112-9546

## NORMS AND LEGAL PRACTICE OF PATRIARCHALISM ACCORDING TO JAMES II'S ADVICES TO HIS SON (1692)

### INTRODUCTION AND HISTORIOGRAPHY

As a consequence of William of Orange's successful landing at Torbay on 5 November 1688 and the desperate escape of James II, a vacuum of political power emerged in England, which resulted in anarchy breaking out in the streets of London. As a matter of fact, due to the James's escape and the prior desertion of the high officers of the army like John Churchill, later Duke of Marlborough to William, the "Liberator" achieved the throne of England. The constitutional crisis was solved by giving the throne jointly to Mary Stuart and William of Orange.

The House of Commons created the following narrative of the events:

That King *James* the Second, having endeavoured to subvert the Constitution of this Kingdom, by breaking the Original Contract between King and People; and, by the Advice of Jesuits, and other wicked Persons, having violated the fundamental Laws; and having withdrawn himself out of the Kingdom; has abdicated the Government; and that the Throne is thereby vacant<sup>2</sup>.

So the sententious narrative of James II's reign and fall, drafted by the Parliament, had the form of a parliamentary resolution. With this codification in mind, if we compare the contemporary baroque paintings with the historiography, not surprisingly we can conclude that from the light of the Glorious Revolution James received only a shadow. Particularly, a small number of works were devoted to

---

<sup>1</sup> Balázs Rigó, assistant lecturer, ELTE Eötvös Loránd University, Faculty of Law, Department of Roman Law and Comparative Legal History. E-mail: rigo.balazs@ajk.elte.hu.

<sup>2</sup> Gy. Borus, *Az angol-holland forradalom háttere (1660-1690)*, Budapest 2007, pp. 156-161; L. Kontler, *Az állam rejtelvei. Brit konzervativizmus és a politika kora újkori nyelvei*, Budapest 1997, p. 148. „House of Commons Journal” 28 January 1689, Vol. 10, <http://www.british-history.ac.uk/commons-jrnl/vol10/p14#h3-0010> (visited May 25, 2018).

James's life and reign<sup>3</sup>. James's four year reign is either the last episode of the restauration, or the introductory chapter of the Glorious Revolution. However, a large number of works on the long period of the English revolution (1603-1714), written during the subsequent three centuries, can be found in libraries.

Certainly, the highlights emphasized in the observed ages differ from time to time. In the Whig historiography (Macaulay, Trevelyan) the events of 1688-89 are regarded as the birth of the British Empire, and thereby the origin of the progress, the parliamentary democracy, and the liberalism that was founded in that very year. Such is the retrospection of their achievements from the perspective of the 19<sup>th</sup> century. James's reign, compared to his fall, receives only the status of an episode, and its causes are derived only from some short term internal political events. Another Whig topos is that James, copying his cousin Louis XIV, the Sun King, intended to introduce a Catholic absolutism or despotism, and only the dramatic<sup>4</sup> developments of the Glorious Revolution hindered this wicked intention.

The Marxist historiography (Hill, Morton etc.) analysed, instead of the Glorious Revolution, the period of 1640-1660, that of Cromwell, the civil war, and the interregnum. This phenomenon is easy to understand if we consider that the struggle of the classes could be revealed through the enlargement of the levellers' movement in that epoch. The Marxists disapproved the Whig teleological interpretation of history according to which the English history was a process of the extension of rights and liberties. They replaced it with another interpretation, i. e. the struggle of the progressing classes for power. However, they maintained the Whig myth of the Stuart absolutism as the last phase of the feudal regime.

The revisionist historiography (Kenyon, Pincus, Miller) revised the theories of the Whig historians, basically those of the last decades of the previous century, altered the traditional results and changed the general ideas about that period. They uncovered the effects of diplomacy, the continental wars, and the internal affairs of the Netherlands and France, connecting them to the acts of the monarchs. Moreover, they tinged the description of the causes and aims of James's deeds intended to establish a Catholic absolutism, and even came to a conclusion that James wanted to set up a true toleration for the Catholics without framing it into a Romanized despotism.

James's runaway and his exile of more than a decade, without which William of Orange could acquire the throne only with a bloody civil war if ever he was successful, caused hard times, according to the English popular belief. The rebellion of the Scots was put out in 1689 and that of the Irish near the Boyne in 1690.

---

<sup>3</sup> However, I must mention the works of G.M. Trevelyan, Ch. Hill, J. P. Kenyon, J. Miller, etc.

<sup>4</sup> The word "dramatic" is not a literal but a conceptual technical term in the Whig historiography.

Both ended up in bloodshed. James did not give up. He fought a maritime battle with the large French fleet in 1692, and lost it. He wrote his *Advices* in that year in case he got captured or died. *Advices* consist of four parts, devoted to the dangers of the sins<sup>5</sup>, the good principles of governance, the governments of the three kingdoms (England, Scotland, Ireland)<sup>6</sup>, and the settlement of the government.

### THE ADVICES TO HIS [JAMES II'S] SON (1692)

*Advices*<sup>7</sup> belong to the traditional mirrors of princes. This genre contains a remonstrance to educate a prince, a princely *parainesis* for the heir. The work remained in manuscript until 1816 when it was published in the book *The Life of James II* edited under the name J. S. Clarke. The author, or more precisely the editor, was presumably Dicconson, a Jacobite. *The Advice of 1692* is not to be mixed up with *The Advice of 1703* or *The Late King James Advice to His Son 1703*, a propaganda publication that was edited by the publisher on order of the widow queen, Mary Beatrice<sup>8</sup>. In this essay I only examine the earlier one, because even if the latter was compiled exclusively based on the original version and is an abbreviated text, it is still a propaganda and was written for other purpose than the education and the transmission of the experiences, and not by the late king.

### THE PATRIARCHALISM AS THE BACKGROUND IN THE HISTORY OF IDEAS

The mirrors of princes show ideas of the theory of state, while the remonstrances reflect those of the education. However, these characteristics determining the genre are mixed up in the *paraineses*. So it is worth to analyse to what

---

<sup>5</sup> We neglect James's meticulous detailed description of his sins as irrelevant in the theory of state. Protecting his son from the sins honestly, he confessed a true repentance for his former life.

<sup>6</sup> Due to the measurement requirements, we shall describe only the English government.

<sup>7</sup> The original title is *The Advice to His Son 1692* or in other form *For my Son the Prince of Wales 1692*.

<sup>8</sup> For the formation of the texts, their connection to each other, and the problems of the authorship see B. Rigó, *II. Jakab (1685–1688) két intelme fiához (1692, 1703) – Forrásközlemény*, B. Rigó (transl.), "Themis" 2018, issue 1, pp. 103-135, [https://www.ajk.elte.hu/media/cf/3e/9d2b86a14df0de8223223358be869b15481d14f8b9652ff725ea5143812d/Themis\\_2018\\_jun.pdf](https://www.ajk.elte.hu/media/cf/3e/9d2b86a14df0de8223223358be869b15481d14f8b9652ff725ea5143812d/Themis_2018_jun.pdf) (visited November 30, 2018).

extent the theses of patriarchalism are apparent in James's *Advices*, because the mixture of the peculiarities of the father and the monarch, i. e. of the patriarchal theory of state, is the frame within which any advice is drafted. The connection between the patriarchal theory of state and the James's person derives from the fact that the Parliament wanted to exclude him with an Act or resolution from the succession of the throne during the exclusion crisis (1679-81), either making his daughter Mary a regent and him a virtual, symbolical king, or making Mary directly succeed him on the throne after Charles II. This crisis of legitimacy, i.e. the doubts whether James had the right and title to the throne, was caused by his confession, made after passing the Test Act (1673), that he was baptized in 1668, and by the resulting English people panic and fear of a Catholic restoration led by Louis XIV. James's title to the throne was intended to be strengthened by himself and his Tory followers by the publication of Sir Robert Filmer's *Patriarcha* in 1679-80, that was only circulating in manuscript between the Tory gentry<sup>9</sup>.

Filmer argues that the monarch as the head of the people, that is considered to be a great family, has a political authority. Therefore, the head of the family and the monarch is united in one person. The reason for this is that Adam was not only the first head of the family but the premier, single, and therefore also the first king having an uncontrolled absolute power. Thus the subsequent monarchs inherited Adam's authority both as kings and heads of families. The most crucial argument of this theory, even for James, is the priority and the protection of the principles of primogeniture that originates in the divine right of the monarchs. The theory is based on the grounds of the state and not on the law of nature, since Filmer built his arguments upon the ancient, natural existence of the family that originated before all the civil and political society and authority. Filmer rejects the sovereignty of people and the theses of natural law, as well as the theories of social contract and the rights of people against the monarch. He denies the division of powers, because he argues that the will of the monarch, i. e. that of the executive, is the law, and the law that was made in the Parliament without the preliminary consent of the monarch can be in effect only by the grace of the monarch, and can be withdrawn at his pleasure any time. Upon the principle of "nobody can be judge in his own case" he denies that the people had any right for criticism or even resistance against the king. Moreover, due to the order "honour thy father" from the Bible, the people's sole obligation is obedience. Filmer himself is afraid of people, because if they had the right for resistance against the monarch, i. e. the divine authority, then the authority would lose all its power and *auctoritas*, the sentiments of the people would overrule, and as a consequence of such a radicalisation, England would sink into a state of a bloody civil war, and then into anarchy. As a consequence, the monarch is responsible for his deeds only to God,

---

<sup>9</sup> Gy. Borus, *Az angol-holland...*, pp. 78-108.

thus, there is no institution or human control that can limit his power<sup>10</sup>. Besides religion, we have to emphasize with G. Várkonyi that “the caring father was a pillar of the ethos of the 16<sup>th</sup> and 17<sup>th</sup> centuries. This care had to infiltrate into all the acts of the head of the family”<sup>11</sup>.

The comparison of the thesis of patriarchalism with *Advices* poses several questions of which we are examining four: What principles does James take from patriarchalism? Can James be indeed regarded as a patriarchal monarch? In what is James’s patriarchalism detectable? To what extent is true the Whig myth, as well as the Marxist statement in historiography, that James intended to build a French and a sort of Filmerian type of Catholic<sup>12</sup> absolutism?

### THE COMPARISON OF THE *ADVICES* AND THE THESIS OF PATRIARCHALISM

James begins the very first sentence of *Advices* with the responsibility of the kings who are accountable for their actions only to God and themselves<sup>13</sup>. The responsibility to God appears in *Advices* several times later. “Remember always that Kings, Princes and all the great ones of the world, must one day give an account of all their actions before the great tribunal, where every one will be judged according to his doings”<sup>14</sup>. The reference to divine judicature appears especially in the detailed expounding of the sin of the flesh, the adultery, and the debauch. „May all that have the misfortune to fall into any of those enormous crimes, remember and immitat his true and hearty repentance, and do not forget the punishment and troubles God brought on him in this world, that he might spare him in that to come”<sup>15</sup>. James, however, extends and generalizes the kings’ political-legal accountability to God into a religious-ethical responsibility. “Do but consider that you are a Christian, and the obligations you ly under for so great

<sup>10</sup> S.R. Filmer, *Patriarcha*, (in:) J.P. Sommerville (ed.), *S.R. Filmer, Patriarcha and Other Writings*, Cambridge 1991, pp. 1-34; L. Kontler, *Az állam...*, pp. 109-111; B. Rigó, *II. Jakab...*, pp. 66-75.

<sup>11</sup> G. Várkonyi, *Az atyák hatalma*, (in:) G. Várkonyi, *Ünnepek és hétköznapok*, Budapest 2009, p. 84.

<sup>12</sup> Filmer himself was not a Catholic, however, he published an abbreviation of Bodin’s *De Republicque* and was a true theoretician of the absolutism or the legitimation of the divine right of the kings.

<sup>13</sup> J. S. Clarke, *The Life of James II*, London 1816, p. 619.

<sup>14</sup> *Ibidem*, p. 619.

<sup>15</sup> *Ibidem*, p. 622.

a blessing, and the recompense you are sure of, if you live like one [i.e. true Christian], and the miserable condition you will be in, if you dy in Sin"<sup>16</sup>.

The key point in the examination of the monarch's responsibility is the monarch's guide and exemplary behaviour that appears as the leitmotiv in the mirrors of princes. The cause of it is that more is expected from persons of higher rank, and that the people copy the elite by their demand for imitation of the models created by the upper classes of the society<sup>17</sup>. James himself refers to the role model of the great men several times in *Advices*. "Princes must be more on their guard than others"<sup>18</sup>. "Remember, more is expected from persons in eminent stations than from others, their Example does much and will be followed, whatsoever it be"<sup>19</sup>. "It has pleased God to let you be borne what you are, for the greater men are, the more they are exposed, especially if they enjoy peace, plenty and quiet"<sup>20</sup>.

The monarch's accountability to God can be realized, besides the obvious Christian and Biblical theses, because the authority of the kings, according to the theories of absolutism and certainly those by Filmer, derives from the will of God and not from the consent of people, i. e. is established by the divine right and not by the natural law. "Consider you come into the world to serve God Almighty, and not only to please yourself, and that by him Kings reign, and that without his particular protection nothing you undertake can prosper"<sup>21</sup>. In James's thoughts certainly appears Filmer's main thesis, and that of patriarchalism as well, which states that the monarch is a head of the family of the reign and that he rules with fatherly power over the population. The obligation to assure physical protection and care, and to provide welfare derives from that fatherly authority, however, the price of the care as the main obligation of the fatherly monarch is obedience. "And as tis the duty of Subjects to pay true allegiance to him, and to observe his Laws, so a King is bound by his office to have a fatherly love and care of them"<sup>22</sup>. "Remember a King ought to be the Father of his people, and must have a fatherly tenderness for them"<sup>23</sup>. In these statements can be detected an embryonic form of a broad interpretation of patriarchalism, i. e. going beyond the Filmerian concepts of father, monarch, society, family, political and patriarchal authority, the patriarchal legitimacy of the political authority, thus practically its legitimacy by emotions.

The emotions appear in *Advices*, they are obviously visible in any advices or mirrors of princes through their addressees. "Of which number [i.e. the subjects]

<sup>16</sup> *Ibidem*, p. 623.

<sup>17</sup> See further N. Elias, *A civilizáció folyamata*, Budapest 1987.

<sup>18</sup> J.S. Clarke, *The Life...*, p. 629.

<sup>19</sup> *Ibidem*, p. 620.

<sup>20</sup> *Ibidem*, p. 622.

<sup>21</sup> *Ibidem*, pp. 619-620.

<sup>22</sup> *Ibidem*, p. 619.

<sup>23</sup> *Ibidem*, p. 621.

you being the first, I look on myself as obliged to give you these following *Advices*, considering your age, my own, and the present posture of my affairs”<sup>24</sup>. By the clause “you are the first”, James gives the identical answer to a problem Filmer did not even mention, namely, he states who should be the successor if the first-born heir to the throne is a girl and only the following one is a boy. Such was the English practice until 1689. Both parties agreed that James’s son, James Francis Edward, should succeed to the throne after his father, ahead of Mary and Anne. Thus, strictly speaking, both James and the Parliament disapproved the concept of primogeniture. The great concern was James’s bigoted Catholicism and the fear of a perpetual Catholic dynasty, based on *Advices* as guideline to the Christian education of the heir. Yet, agreeing with J. P. Kenyon, we must emphasize that until the birth of James Francis Edward, James, whatever ambiguous acts he made, never doubted his daughter’s Mary’s title to the throne. Moreover, he even assured several times her right to his husband, William of Orange<sup>25</sup>.

James, however, only regarded the unlawful children as a great trouble, because the close and far relatives took advantage of their kinship to exploit the monarch as the father of the illegitimate children<sup>26</sup>. “For the most part, those gentlemen as well Mistresses seldome consider the true interest of their Masters, but sacrafise that to enrich or preserve themselves when in danger to be fallen on by Parliament, or some great competitor”<sup>27</sup>. The children “are never satisfyd, except they have the places of the greatest honor or profit”<sup>28</sup>. Moreover, besides the obvious overhead expenses of the treasury, the granting of titles “disatisfys many great and deserving men, since it takes almost from them the hopes of being advanced, and finding their accounts under the government”<sup>29</sup>.

### **THE WHIG MYTH OF JAMES’S AIM TO INTRODUCE CATHOLIC ABSOLUTISM. THE PRINCIPLES OF GOVERNANCE IN THE *ADVICES* AND ITS PRACTICE**

As a consequence of one of the main theses of patriarchalism, the assurance of care and protection is the prime obligation of the monarch. James does not

<sup>24</sup> *Ibidem*, p. 619.

<sup>25</sup> J.P. Kenyon, *Stuart England*, London 1980, p. 235; Borus, *Az angol-holland...*, 2007, p. 138.

<sup>26</sup> James II and Charles II could be regarded as the true fathers of the English aristocracy, with a slight exaggeration and wit, because of their illegitimate and lawful children (altogether three dozen).

<sup>27</sup> J.S. Clarke, *The Life...*, pp. 631-632.

<sup>28</sup> *Ibidem*, p. 632.

<sup>29</sup> *Ibidem*.

even recognize this duty, but observes that the monarch and the people live in mutual dependency, so none can be in welfare without that of the other<sup>30</sup>. “No King can be happy without his Subject be at ease, and the people cannot be secure of enjoying their own without the King be at his ease also, and in a condition to protect them and secure his own right”<sup>31</sup>. The preservation of the well-being, the protection of property is certainly possible only if the monarch uses his rights, the prerogatives for the sake and not for the disturbance of it. “Therefore preserve your prerogative, but disturbe not the Subject in their property, nor conscience”<sup>32</sup>.

The protection of property is in danger especially during war. By his constant and growing sense of fear James was preparing both for waging war and for avoiding it. Contrary to his grandfather, James I, he was an acknowledged brave soldier, who several times fought in the battlefields of the continent as well as in the sea. “Live in peace and quiet with all your Neighbours, and know that Kings and Princes may be as great robbers as thieves and pirats, and will receive their punishment for taking any thing unjustly from them, at the great tribunal, and be not carried away by Ambition or thoughts of Glory in this world, (...) and never be persuaded to go about to enlarge your territorys by unjust acquisitions, be content with what is your own”<sup>33</sup>. James condemns the offensive war upon the moral and Christian principles. However, the defensive war is the greatest obligation of the monarch, because these two measures, “do not hinder Kings and States from preserving and defending what is justly theirs by taking arms and repelling force by force, they owe that to themselves and to their Subjects, but tis a terrible thing to begin an unjust War”<sup>34</sup>. Louis XIV and William of Orange tried to make James to get alliance vain. The reason for this is that though James put out two revolts in the beginning of his reign, due to the experiences of his military past service he was truly aware of the weakness of the militia. Namely, that it is worthless even in the internal fight against rebels, not to mention the external warfare, and the professional regiments were rare in the territory of England. James was able to expand his armed forces up to 20 thousand troops just because of those two rebellions. However, by this huge standing army that is the *sine qua non* of absolutism,

---

<sup>30</sup> Even the concept of happiness appears in his sentence which was widely used in the 17<sup>th</sup> century, it returns in the text of the U.S. Declaration of Independence, and disappears in the French Declaration of The Rights of the Man and Citizen.

<sup>31</sup> J.S. Clarke, *The Life...*, pp. 620-621.

<sup>32</sup> *Ibidem*, p. 621. James basically did not interfere in the property of people, however, in the English legal system some offices like the mastership of a university were freehold, so the position in such an office was the property of a person. Thus the nomination of the Catholic clerks into positions like these, which was followed consequently by the dismissal of the non-Catholics, undeniably hurt the right of property. J.P. Kenyon, *Stuart England...*, pp. 232-234; G. Borus, *Az angol-holland...*, pp. 127-129.

<sup>33</sup> J.S. Clarke, *The Life...*, pp. 621.

<sup>34</sup> *Ibidem*, p. 633.



James could start to save his reign from strong positions<sup>35</sup>. “Be never without a considerable body of Catholic troops without which you cannot be safe, then people will thank you for Liberty of Conscience”<sup>36</sup>.

James’s Catholic faith and his short-term narrow-minded unstrategic tactics of supporting the Catholics just strengthened the fear that he intended to introduce absolutism into England<sup>37</sup>. However, that was not the case James’s fall and the fear of the people was the result of his ambiguous and stubborn policy. The ambiguity consisted in joining the Catholicism with the French Papist arbitrary rule<sup>38</sup>. Even if he acted within the framework of the constitution<sup>39</sup>, James was not even unaware of the constitutional controversy of his intention, but he did not understand that his religion was also terrifying people who were convinced of direct life threat. Even after his downfall, James believed that this fear was only a simulation caused by the fraud of the party politics. The factions that are to be mastered and controlled with courage, judgement and wit by a great king “drove so violently against him [Charles II] and the Monarchy, under the pretence of excluding me and the fears they affected to have of being overrun with Popery”<sup>40</sup>.

To the contrary, James was convinced that he only ensured equal rights and toleration for the Catholics, and believed naively that mass reconversion to the Catholic faith is just a question of time and patience<sup>41</sup>. “Be not persuaded by any to depart from [the Liberty of Conscience]; our blessed Saviour whipt people out of the Temple, but I never heard he commanded any should be forced into it: tis a particular grace and favour that God Almighty shews to any, who he enlightens so as to embrace the true Religion, tis by gentleness, instruction, and good example, people are to be gained, and not frightened into it, and I make no doubt if once Liberty of Conscience be well fixed, many conversions will ensue”<sup>42</sup>.

The confusion of the army and religion is not a coincidence. During James’s reign, the conflicts started when he announced in the Parliament that he is not at all willing to dismiss his Catholic officers from the army. Moreover, he

<sup>35</sup> G.M. Trevelyan, *The English Revolution 1688-89*, London 1938, pp. 55-56.

<sup>36</sup> J.S. Clarke, *The Life...*, pp. 621.

<sup>37</sup> K. Kisteleki, *Az abszolút monarchia teoretikus gyökerei*, (in:) Gy. Képes, *Az abszolút monarchia*, Budapest 2011, pp. 69-105.

<sup>38</sup> Gy. Borus, *Az angol-holland...*, pp. 109-111, 131.

<sup>39</sup> James followed the constitution and the legal customs throughout his whole miserable efforts to alter and eliminate the Test Act. He was preparing for an election campaign, he accepted the decisions of the municipalities, the courts etc. However, it is undeniable that he canvassed these bodies by placing there the proper persons, yet, after that either being successful or not, he accepted their resolutions. Moreover, he did not settle any parallel institutions like Louis XIV did, so that not to render them meaningless.

<sup>40</sup> J.S. Clarke, *The Life...*, pp. 627.

<sup>41</sup> Gy. Borus, *Az angol-holland...*, pp. 230, 238-239.

<sup>42</sup> J.S. Clarke, *The Life...*, pp. 621-622.

exercised his right of dispensation contrary to the norms of the Test Act<sup>43</sup>. “As many Catholics as can be in the Army, some Ch[urch] of Eng[land] and Dissenters”<sup>44</sup>. Undeniably, the monarchs had the right of dispensation in the interest of the state, they could resolve individuals if they did it rarely. However, James intended to use his right on a large scale to resolve the Catholic officers by nominating them, and this was equal to the whole suspension, i.e. the repeal of the Test Act, which was unlawful. Thus, James did not content himself with the alteration of the penal laws aimed against Catholics, which the Parliament and the public opinion would even accept from him<sup>45</sup>. His main enemy was the Test Act, but its repeal was equal to the attack against the Parliament and the English constitution. However, James was clearly aware that the religious toleration provided by a royal decree would no longer be effective after his death, therefore, he made all his efforts to summon a new obedient Parliament.

James started an unprecedented electoral campaign to ensure the desired result which was setting up of an unconditionally obedient Parliament. He acknowledged the rules of the election, he even undertook and approved the result whatsoever unfavourable it should be. He invited or ordered judges, officers, clerks, candidates to come for personal conversations and interviews in his private chamber (*closetting*), he even made a meticulous survey about the constituencies that was not repeated until 1792, however, unsurprisingly, these means were pushing the envelope of the English constitution<sup>46</sup>. The aim of this pressure was to ensure James’s point of view was accepted, i.e. the religious toleration was introduced by the repeal of the Test Act thanks to the desired composition of the legislature, courts and municipalities. The Parliament, the priority of laws, rights and liberties, the authority of the courts and municipalities, the binding force of the judgments were not endangered. James accepted the frames of the Constitution, he himself was undertaking the electoral campaign, and was thinking about the repeal of the Test Act by Parliament. He did not even try to introduce and declare the Filmerian devices “the will of the monarch is the law” or “the Parliament is summoned by the grace of the monarch”.

Formally, he acted within the frames of the English constitution, since all his efforts undertaken to introduce the religious toleration were meant to be lawful and he had the exclusive right to appoint judges, though he appointed them according to the principle “during the good pleasure [of the king]” (*durante bene placito*) instead of the more constitutional one “during good behaviour” (*quamdiu se*

<sup>43</sup> Gy. Borus, *Az angol-holland...*, pp. 127-130.

<sup>44</sup> J.S. Clarke, *The Life...*, pp. 642.

<sup>45</sup> Even Trevelyan approves James’s title for that. G.M. Trevelyan, *The English...*, pp. 57-67, 73-74.

<sup>46</sup> J.P. Kenyon, *Stuart England...*, pp. 236-242; Gy. Borus, *Az angol-holland...*, pp. 133.

*bene gesserint*) which came into effect after 1689<sup>47</sup>. His right for dispensation was declared by a judgement in the case of Godden vs. Hales. It is true, however, that James had canvassed the juries and courts. It was the bishops' case, which was the direct cause of his downfall because the bishops were released. When the judges were under the pressure of public opinion, besides that of James, he just dismissed two judges, and did not send them to prison like his predecessors did<sup>48</sup>.

## THE SETTLEMENT OF THE GOVERNANCE

In the early modern age, the state administration made its way to professionalism<sup>49</sup>. The circumstances and conditions of the selection of officers, the career of the officers, the more and more precisely codified authority of the offices, the documentation and codification of the cases, even the role of information, all that appear in James's *Advices*<sup>50</sup>. Certainly, the flatterers, "never considering any thing but themselves" and constantly appearing as the pernicious and parasitic persons in the mirrors of princes, were numerous among the professional officers. Since James had a weak personality, he could fall into their trap rather easily<sup>51</sup>. "And that you may not be imposed on by Flatterers on the one side, nor by those who would lessen the power and authority of the Crown, make it one of your business to know the true Constitution of the Government, that you may keep yourself as well as the Parliament within its true bounds"<sup>52</sup>. Apart from regretting for the sins of flesh, throughout whole *Advices* James showed true repentance for yielding to flatterers.

The safeguards against abuse of power of the state take the form of the patriarchal care and the emotions. "Be very carefull that none under you oppresse the people, or torment them with vexations, su[i]ts, or projects"<sup>53</sup>. The selection of the officers "[t]will make you beloved by all good men"<sup>54</sup>. Naturally, these assurances remain within the framework of the absolutistic regime of the early modern age

<sup>47</sup> G.M. Trevelyan, *The English...*, p. 46; J.P. Kenyon, *Stuart England...*, pp. 245.

<sup>48</sup> Ch. Hill, *The Century of Revolution, 1603–1714*, London, New York 2002, p. 237; G.M. Trevelyan, *The English...*, p. 90-91.

<sup>49</sup> M. Kelemen, *Kormányzás és közigazgatás – a közigazgatás történeti kialakulása, fogalma*, (in:) A. Földi (ed.) *Összehasonlító jogtörténet*, Budapest 2016, pp. 191-210.

<sup>50</sup> M. Kelemen *Az igazgatás személyi állománya és a közszolgálati jog történeti fejlődése*, (in:) A. Földi (ed.) *Összehasonlító jogtörténet*, Budapest 2016, pp. 231-253.

<sup>51</sup> G.M. Trevelyan, *The English...*, p. 61.

<sup>52</sup> J.S. Clarke, *The Life...*, p. 634.

<sup>53</sup> *Ibidem*, p. 621.

<sup>54</sup> *Ibidem*, p. 638.

and are not a sort of proto-modern constitutional settlements, since their objective is to protect the rights of the monarch so that no officer could do any harm to his authority. Therefore, strictly speaking, the officers have only the right to the true execution of the monarch's will. This is a debate on the question whether it is the monarch or the Parliament who, with their the legislation, control the executive branch in the early modern state. Moreover, James came to a very dangerous opinion that if the execution is perfect, it is carried out based on the proper and sufficient laws, and then even the Parliament itself becomes superfluous. "Not to have need of a Parliam't do all things that are truly popular, let not your Ministers or those in your pay, whether Civil or Military, oppress or domineir over their fellow subjects, or make use of your authority, or the power put into their hands by you, to do it, and where you find any of them failing, lay them aside and punish them yourself, that ill men, and a republican spirit in a Parliament may not have a pretence to teare them from you, and by that means weaken your power and discourage honest men from serving you faithfully"<sup>55</sup>. James, however, does not deny the very sense of existence of the Parliament in this explanation. Indeed, he recognizes that the Parliament has the immanent right to displace persons (like by bill of attainder). A great problem arises for him when the Parliament impeaches someone based on the motives of party politics and the intrigues. Thus, James's real concern expressed in this statement is the memory of the exclusion crisis. The idea that the Parliament is unnecessary because there are good laws, is only a naive childish idea that no one can take seriously.

The monarchs of the early modern period constantly struggled with insufficient income and revenues. The fiscal deficit was caused by the extensive administration and the size of the army<sup>56</sup>. However, James was always very keen on financial issues. "Besides consciencious reasons in point of government, and police (...) a King of England ought to be careful to live within his revenue, and not to let himself be carryd away to exceede his income, by flatterers or ill Ministers, who designedly would run one in debt to betray him to a Parli[amen]t"<sup>57</sup>. In order to pursue a prudent fiscal policy, James advises that the Ministers were not allowed to collect fees for their own sake and he forbids the purchase of the offices that was so widespread and even cultivated by the monarchs in the early modern period. He insists on running a documentary office and keeping a book of entry where the authentic copies of the treaties, letters and any other documents could and should be held. The investigation of the income and expenditure was so crucial to James that even a treaty of alliance failed with Louis XIV due to his prudence<sup>58</sup>.

<sup>55</sup> *Ibidem*, pp. 633-634.

<sup>56</sup> E. Sashalmi, *Az emberi testtől az óraműig. Az állam metaforái és formaváltozásai a nyugati keresztény kultúrkörben, 1300–1800*, Pécs 2015, pp. 198-203.

<sup>57</sup> J.S. Clarke, *The Life...*, pp. 633.

<sup>58</sup> J.P. Kenyon *Stuart England...*, p. 240; Gy. Borus *Az angol-holland...*, p. 109.

The selection of officers is certainly the key point in the governance, and should remain entirely in the hands of the monarch. However, besides the undeniable right of the king to nominate candidates to the offices, the king, as well as the nominee or the officer, shall be aware of the king's grace. "Be Sensible they [the Ministers, officers] owe them [favours, graces and offices] wholly to yourself, and not to others, or their owne importunity"<sup>59</sup>. The requirements for the Ministers are obviously those of Christianity. "They must not only be men of good Sence, and sound judgment, but of great probity and well founded as to Christianity, and that it appear by their way of living"<sup>60</sup>. The role of the information without which a monarch can be easily misled is emphasized in *Advices*. "Let your eares be open to such as you know to be good men, that you may be truly inform'd of all truths, which others might not be willing you should be informed of"<sup>61</sup>. The professionalism and the avoidance of the concentration of power is provided by the advice that "a Chancellor [should be] no Lawier, a Nobleman, or Bishop"<sup>62</sup>.

Even after his fall, James advised an intractable promotion of Catholics into important positions. "Commissioners of the Treasury five, three Curch of Eng'd, one Catholic, and one dissenter. (...) Secretarys of State [should be], one of them Catholic the other Protestant, Secretary War Catholic, Secretary of the Navy Protestant. (...) Army, Household, Bed Chamber, (should be) most Catholics"<sup>63</sup>.

## CONSEQUENCES

James's *Advices* are pervaded by the theses of patriarchalism, but the decades that passed between the creation of *Patriarcha* and *Advices* and the framing of the constitution modified James's point of view as compared to that of Filmer. Filmer wrote his book at the time when the theories of absolutism were only nascent, while James did it when they reached their peak. Therefore, in the light of his ideas, James can be regarded as an absolutistic monarch in a very strict sense. However, the examination of his attitude towards the members of family, friends, close acquaintances demonstrates that he is the most patriarchal ruler of all the Stuarts<sup>64</sup>. The expeditious Whig accusation that he was framing a Catholic absolutism is to be revised or even rejected because several key characteristics of the

<sup>59</sup> *Ibidem*, p. 638.

<sup>60</sup> *Ibidem*.

<sup>61</sup> *Ibidem*.

<sup>62</sup> *Ibidem*, p. 641.

<sup>63</sup> *Ibidem*, pp. 641-642.

<sup>64</sup> It is true even if he disinherited his daughters after they deserted to William and denied the legitimacy of the heir, James Francis Edward. James even exclaimed that his daughters betrayed

contemporary instruments of building arbitrary power were missing in it or had a totally different purpose than it was believed. He did rule with the Parliament even if it was prorogued and finally dissolved, but James himself made obligatory for him to summon one, and that is why he was preparing for the elections. He did not collect any taxes without the consent of the Parliament. He did not eliminate and wind up the prerogatives and liberties of any institutions or people. He built the standing army as a consequence of two rebellions against him at the beginning of his reign. Appointing Catholics to the influential positions was aimed at toleration and equalization. There was no deprivation of the liberty of conscience or any state approval coercion towards religion. He did not create parallel boards of jurisdiction or committees for the execution like Louis XIV did. He even did not execute judges and officials or university teachers, though he could learn such a lesson from the Tudors.

It is also true that all the James's acts were perceived as ambiguous and frightening by the people. Even if he did not intend to harm them, he in fact achieved the opposite effect. His fall was the result of overlapping the ambiguity of his actions and the fear they aroused. And it is apparent from *Advices* that he never in his life understood the causes of his downfall. However, taking this into consideration, we can observe that two phenomena which occurred during the events of 1688-89, could easily collide with each other, namely, that the more power the state has, the more people fear it, and that James failed to regard people's emotions, especially that of fear. At first, William and the Parliament did not want to replace James but his power collapsed immediately. William assumed the throne of England as won Fortinbras and the rest was the silence of the splendid isolation.

## BIBLIOGRAPHY

- Borus Gy. *Az angol-holland forradalom háttere (1660-1690)*, Budapest 2007  
 Clarke J. S., *The Life of James II*, London 1816  
 Elias N., *A civilizáció folyamata*, Budapest 1987  
 Hill Ch., *The Century of Revolution, 1603–1714*, London, New York 2002  
 Filmer S. R., *Patriarcha*, (in:) J.P. Sommerville (ed.), *S.R. Filmer, Patriarcha and Other Writings*, Cambridge 1991  
 Kelemen M. *Az igazgatás személyi állománya és a közzolgálati jog történeti fejlődése*, (in:) A. Földi (ed.) *Összehasonlító jogtörténet*, Budapest 2016  
 Kelemen M. *Kormányzás és közigazgatás – a közigazgatás történeti kialakulása, fogalma*, (in:) A. Földi (ed.) *Összehasonlító jogtörténet*, Budapest 2016  
 Kenyon J. P., *Stuart England*, London 1980

---

him, which was true. J.P. Kenyon, *Stuart England...*, pp. 232-250; G. Borus, *Az angol-holland...*, pp. 155-156.

- Kisteleki K., *Az abszolút monarchia teoretikus gyökerei*, (in:) Gy. Képes, *Az abszolút monarchia*, Budapest 2011
- Kontler L., *Az állam rejtelmei. Brit konzervativizmus és a politika kora újkori nyelvei*, Budapest 1997
- Rigó B., *Sir Robert Filmer patriarchális államelméletének gyökerei a kora újkori eszméáramlatok tükrében*, „Jogtudományi Közlöny” 2017, issue 2, pp. 66-75
- Rigó B., *II. Jakab (1685–1688) két intelme fiához (1692, 1703) – Forrásközlemény*, B. Rigó (transl.), “Themis” 2018, issue 1, [https://www.ajk.elte.hu/media/cf/3e/9d2b86a14df0de8223223358be869b15481d-14f8b9652ff725ea5143812d/Themis\\_2018\\_jun.pdf](https://www.ajk.elte.hu/media/cf/3e/9d2b86a14df0de8223223358be869b15481d-14f8b9652ff725ea5143812d/Themis_2018_jun.pdf) (visited November 30, 2018)
- Sashalmi E., *Az emberi testtől az óraműig. Az állam metaforái és formaváltozásai a nyugati keresztény kultúrkörben, 1300–1800*, Pécs 2015
- Trevelyan G. M., *The English Revolution 1688-89*, London 1938
- Várkonyi G., *Az atyák hatalma*, (in:) G. Várkonyi, *Ünnepek és hétköznapok*, Budapest 2009

## Summary

James II inherited the throne from his elder brother Charles only because there was not any male heir. Even the Parliament wanted to exclude him from succession, that was the exclusion crisis of 1679-1681. The Tory propaganda published Sir Robert Filmer's *Patriarcha* to argue for the primogeniture principle, i.e. for the James's title to the throne. That work introduced patriarchalism in which overlap the concepts of family and society and the authority of a father and the monarch. Therefore the monarch as the father of the nation ruled over the society that was considered to be a great family. He demanded unconditional obedience from the society just as the father demands it from the members of his family.

Since Sir Robert Filmer's name was connected to James's right to the throne and to the conservative royalist Tory propaganda, my incentive was to examine whether James himself applied patriarchalism and the Filmer's concepts in his political writings. This is the law (norms) in books if we apply the terms of the law in effect to the past. However, the aim of this article is to compare these norms with the practice found in the James's declarations, proclamations, and deeds. The result of this comparison would be the law in action.

Thus, the aim of this comparison is to reveal patriarchalism in James's writings and after that to examine whether any characteristics of it can be found in his deeds and decrees of his administration. I mean especially three deeds: his coronation, the cure of the King's evil (scrofula), and the practice of giving mercy to victims. Among the decrees I mean particularly the decrees issued during putting out the revolts against his reign. In the first two cases he was successful, however, he lost the throne to William of Orange and was expelled from it.

**KEYWORDS**

Sir Robert Filmer, James II, William of Orange, patriarchy, English Civil War, Glorious Revolution, early modern political thought, early modern theory of the state

**SŁOWA KLUCZOWE**

Sir Robert Filmer, Jakub II, Wilhelm Orański, patriarchalizm, rewolucja angielska, Chwalebna rewolucja, wczesnonowoczesna myśl polityczna, wczesnonowoczesna teoria państwa