

Moral Reasoning 74:
The Theory and Practice
of Republican Government

Lecture 10:
The Reassertion of the English Constitution

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Major Themes

- I. Institutional conflict maps to religious conflict, and vice versa
- II. Odd space of the Convention
- III. Fictional yet powerful Status of the English Constitution
- IV. Looking Back: Resource Dependence of Crown in Stuart Development

Mapping Institutional Conflict to
Religious Conflict

Charles II: **Declaration of Indulgence (1672)**. Affront to parliamentary authority. Cavalier Parliament meets again in 1673: "Debate on the Declaration of Indulgence loosed two virulent strains of argument. The first was the predictable bigotry of the Anglican majority, though it was not focused more sharply on the Catholic menace. Rumours that the treaty with France was tied to Catholic toleration were pervasive. The second was expressed in the potent language of liberty. If the crown could suspend the law, then lives and property were in danger. Thus the Commons voted that only Parliament had the authority to invoke religious legislation and that Charles must withdraw the Declaration of Indulgence." [Kishlansky, 247]

Test Act (1673): Parliament's response

Religious Conflict

Popish Plot (1678):

“What gave Anglican and dissenters common cause was not royal policy but public hysteria: the uncovering of a Popish Plot to destroy the nation by murdering Charles II. ...the terror that gripped the nation for two years could not have been greater than if the plot had succeeded. The sophisticated and the simple genuinely believed that Britons were in imminent danger of being enslaved, that their lands would be occupied by the French, their treasure shipped off to Rome. This apprehension of danger necessitated political rather than legal remedies. No number of executions could save the nation from the international Catholic conspiracy – a conspiracy which could succeed only if a Catholic monarch ruled the nations of Britain.”

The Mapping: Identification of Catholic Threat with Arbitrary Government

“It was the Whigs, in their efforts to alter the succession, who revived the sovereignty of the people. The form in which they cast the arguments for it reflected both the cause in which they invoked it and the caution with which Englishmen now wished to limit the application of ideas that formerly justified not merely the exclusion but the killing of a king. Limitations on the monarch – Magna Charta, the Petition of Right – had been a distinguishing mark of the ancient constitution to which England had presumably returned in 1660. But in the hysteria induced by the Popish Plot, the Whigs feared that James or any other Catholic sovereign, once on the throne and backed by unscrupulous and sinister forces abroad, would sweep away any constitutional barriers to Catholicism and to the arbitrary government that went with it. When the king’s friends in Parliament pressed for the limitations he had suggested as an alternative to alteration, the Whigs treated the opportunity as a ruse: “I should be glad to be shown,” said Sir Nicholas Carew, “any bonds and fetters that a Prince, when he comes to the crown, shall not easily break.” [Morgan, *Inventing the People*, pp. 101-102]

Exclusion Crisis (1678-1681)

Parliamentary parties: Whigs v. Tories. Issue dividing them is whether James II can be excluded from throne.

Fear of Catholicism becomes identified with, mapped onto, the fear of monarchical power.

Question: Do the people, and do its Parliament, have the authority to alter the succession? Can they re-create the Crown?

II. Convention

Uneasy status:

- (1) Parliament needed a king to call it into being
- (2) But Convention was also supra-Parliament

“Never, wrote the Reverend Edmund Hiceringill of Colchester, had any Englishmen a greater Trust put upon them, not a greater Power put into their hands ... You have virtually in you, the power of all the Laws, and all the Kings and Parliaments that ever were or ever shall be again in England, to the World’s End.” “The Convention had “the Golden Opportunity to being a Crown in one hand, with their Terms and Conditions on the other.”” [Morgan, 108]

Convention nullifies James II

“That King James the Second, having endeavoured to subvert the Constitution of the 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 this Kingdom, has abdicated the Government, and that the Throne is thereby become vacant.” [reprinted in Morgan, p. 111]

III. Reassertion of the Constitution

Still a problem: How can a non-Parliament creates rights and liberties, which require granting of king (see Petition of Right, 1628)?

Declaration of Rights (1689). Presented not as new contract, not as condition for William’s accession, but as re-assertion of ancient English liberties (Magna Carta, Petition of Right, and some new ones).

IV. Fiscal Dependence of Crown

Morgan, p. 97: "A variety of circumstances saved England from going the way of France and insured the survival and eventual revival of popular sovereignty, however attenuated, as the nation's guiding political fiction. One was the mendacity of Charles II – as much a liar as his father.... Another was the foolhardiness of his brother James, when he ascended to the throne in 1685, in ignoring or underestimating the hostility not only of the general public, but of the ruling elite, to Roman Catholicism. But probably the crucial difference that distinguished English politics from French was the fact that the Restoration had restored Parliament and it was Parliament that had restored the king and continued to sustain him."

These events matter, but they also matter b/c the Protestant accession is stable.
