

## The Aspirations of James Stuart

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In 1636, a set of nine paintings was installed on the ceiling of the Banqueting Hall in Whitehall Palace. Three central and six side panels. They had arrived a year earlier, but installation was delayed on discovery that an English inch was different from a Flemish one. So there needed to be some trimming first. The set had arrived from the studio of Peter Paul Rubens in Antwerp. Quite how much Rubens was involved remains uncertain. The relatively modest cost, at £3,000, suggests that much of the work might have been completed by students.<sup>1</sup> The original contract lost, we can only surmise the various terms of the commission. It is generally agreed that the contract was probably drafted during Rubens's visit to London over the winter of 1628–1629; though it is possible that the idea was originally negotiated with a young Antony van Dyck, who had visited in 1621.<sup>2</sup> The subject of the commission, who died midway between these dates in early March 1625, was James Stuart, King of England, Scotland and, in his own mind at least, 'greater' Britain.

Having not met James in the flesh, Rubens was dependent on other artists for a likeness of the recently deceased king. Comparison of facial features suggests that Paul van Somers's 1618 portrait was the most likely source.<sup>3</sup> Fifty-two years old in the moment, van Somers's James looks as 'weary' as he commonly liked to complain.<sup>4</sup> The James that Rubens and

<sup>1</sup> For this surmise, and a broader account of the composition and installation of the set, see O. Millar, 'Rubens' Whitehall Ceiling', *The Burlington Magazine*, 147 (2007), 101–4.

<sup>2</sup> Van Dyck was at that time serving an informal apprenticeship at Rubens's studio, working more particularly on the decoration of the Jesuit Church of Saint Ignatius Loyola, the so-called 'Marble Temple'. Rubens had been commissioned by the order in 1620 to provide thirty-nine paintings for the church at a cost of 7,000 guilders. Amongst van Dyck's contributions was the beautiful *Coronation of Saint Rosalie*.

<sup>3</sup> It was apparently the portrait which Charles favoured, for reason of likeness. At James's insistence, van Somers painted him standing in front of the still half-built Banqueting Hall.

<sup>4</sup> Having, as one historian has suggested, a 'crusty weariness' about him: see W. Jones, *Politics and the Bench: The Judges and the Origins of the English Civil War* (London, 1971), 26.

his students conceived is spectacularly different. Still greying, still middle-aged, but otherwise every contested inch majestic, set against a predictably Rubensian backdrop of classical and Christian imagery. The themes for the three central canvasses were, of course, determined by the man who commissioned the set, James's son and heir, King Charles I. So, we have *The Apotheosis of King James*, *The Peaceful Reign of King James*, and *The Union of Crowns*. It may be as James wished to be remembered. It is certainly how Charles wished his father to be remembered. Our contention is that these three canvasses describe the associated kingly aspirations of James Stuart. And that, furthermore, each speaks to the matter of constitutional crisis; then, and now.

### Apotheosis

*The Apotheosis of King James I* is the centrepiece. James is seated in the middle, glancing up towards a laurel wreath held by the figure of Mercury. It will replace the symbols of his earthly authority, the crown and sceptre. His feet are planted on an eagle and an imperial globe, ready to be raised by Justice, escorted by Religion and Scriptural Truth. A slightly detached Victory flutters a nearby approval. James would have been flattered for sure. In part because he always fancied himself in the guise of a 'deified' Roman emperor, Augustus most particularly. His coronation pageant, back in 1604, had been soaked in Augustan imagery, his coronation medal bearing the inscription, in translation, 'James I, Caesar Augustus of Britain, Caesar heir of Caesars'.<sup>5</sup> All the best *princeps* are raised to the gods. But flattered also because the imagery chimes so obviously with the collateral, and defining, tenet of James's idea of kingship: that he ruled by divine right.

James had already ventured the idea in three treatises on kingship composed in the late 1590s, most obviously perhaps in *The Trew Law of Free Monarchies*, first published in Scotland in 1598, which opened in vaunting terms. Monarchy, 'as resembling Divinitie, approacheth nearest to perfection'.<sup>6</sup> In refining his thesis, James sought recourse to a mixture of scriptural and classical authority.<sup>7</sup> Thus the bold, and bald, statement,

<sup>5</sup> A. Kernan, *Shakespeare, the King's Playwright: Theatre in the Stuart Court* (New Haven, CT, 1995), 12.

<sup>6</sup> King James, *Political Writings*, ed. J. Sommerville (Cambridge, 1994), 63.

<sup>7</sup> See P. Monateri, *Dominus Mundi: Political Sublime and the World Order* (Oxford, 2018), 87–8.

reworked from *Psalms* 82:6 and 101: 'Kings are called Gods by the prophetical King David, because they sit upon God his Throne in the earth'.<sup>8</sup> Repeated invocations of patriarchy too: 'By the Law of Nature the King becomes a natural Father to all his Lieges at his Coronation' and 'the stile of *Pater patriae* was ever, and is commonly used to Kings'.<sup>9</sup> Classical authority in the shape of Ulpian's affirmation, written into Justinian's *Digest*, *princeps legibus solutus est*; 'the Emperor is not bound by law' (*Digest* 1.3.31). And again, *Quod principi placuit, legis habet vigorem*; 'what pleases the prince has the force of law' (*Digest* 1.4.1). The congruence between 'divine right' and the species of absolutism discovered in the writings of Bodin and other continental classicists may not be exact,<sup>10</sup> but it comes close.

The narrower juridical implication was spelled out in James's account of the 'law of equitie', which 'so mixeth Mercy with Justice, as it preserves men from destruction'. And 'thus (as I before told you) is the King's Throne established by Mercy and Justice'.<sup>11</sup> The logic is simple enough: to secure the law, a king must be above it. This does not mean that a 'good king' will do other than 'frame all his actions to be according to the Law'. But it does mean that, being 'above the law', he is not 'bound thereunto'.<sup>12</sup> James Cowell, Regius Professor of Civil Law at Cambridge, was moved to clarify the situation, for any of James's new subjects unfamiliar with the *Trew Law*. The king ruled *supra legem*, 'by his absolute power', in both his realms.<sup>13</sup>

A fresh reprint of the *Trew Law*, within months of James arriving in London, was evidently purposed to lend further clarity, at least regarding the kind of kingship James preferred.<sup>14</sup> How apposite it might be was

<sup>8</sup> King James, *Political Writings*, 64.

<sup>9</sup> *Ibid.*, 65, 76. James made similar recourse to the patriarchal analogy in his 1610 address to Parliament: *ibid.*, 182–3.

<sup>10</sup> See here C. Russell, *The Causes of the English Civil War* (Oxford, 1990), 147, thinking the term 'absolutism' rather too encompassing, and G. Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven, CT, 1996), 17–21, 31–3, 63–6, 93–6.

<sup>11</sup> King James, *Political Writings*, 214.

<sup>12</sup> *Ibid.*, 75. For a commentary, see I. Evrigenis, 'Sovereignty, Mercy, and Natural Law: James VI/I and Jean Bodin', *History of European Ideas*, 45 (2019), 1073–88, at 1082.

<sup>13</sup> Cowell was the author of a best-selling primer for law students, civil and common, entitled *The Interpreter*, wherein could be discovered numerous similar assertions. For commentaries on Cowell and his *Interpreter*, see J. Sommerville, *Politics and Ideology in England 1603–1640* (London, 1986), 121–2; and Monateri, *Dominus Mundi*, 90.

<sup>14</sup> The spring 1603 republication 'flooded the market', according to J. Wormald, *James VI and I: Collected Essays by Jenny Wormald* (Edinburgh, 2021), 36.

another matter. The spring 1603 reprint of the *Trew Law* was also accompanied by a first look, for some, at a second of James's treatises. This was a *specula* piece entitled *Basilicon Doron*, within which could be found similar commentary regarding James's idea of kingship – not least in the opening sonnet which advised the 'argument' of the essay: 'God giues not Kings the stile of Gods in vaine, / For on his Throne his Scepter doe they sway'.<sup>15</sup> We will return to the *Basilicon* shortly.

The third of the treatises, which James had completed a couple of years before, was entitled *Daemonology*. Inspired by his personal involvement in the 'discovery' of a coven in North Berwick in 1590, *Daemonology* was written as contribution to a burgeoning genre of witch-hunting manuals. Alongside various bits of practical advice on how to spot a witch, James thought fit to reaffirm the existence of certain 'mysterious' prerogatives which he enjoyed by reason of his divine appointment.<sup>16</sup> All part, as James later affirmed in his 1608 *Apologie for the Oath of Allegiance*, of being 'The Lords anoynted, Sitting in God's throne', and doing His work<sup>17</sup> – a belief from which he never wavered. 'The mysteries of the Kings power is not lawfully to be disputed', he reminded Star Chamber in 1616, for it 'would be to take away' the 'mystical reverence that belongs unto them that sit in the Throne of God'. To do so, indeed, was a form of 'atheisme and blasphemy'.<sup>18</sup> Put simply, the 'presence of the Devil' legitimates a prince's 'occult' prerogatives.<sup>19</sup>

James's new subjects did not dispute much of what could be read in *Daemonology*, or the urgency of the situation. After all, England was a 'land full of witches', as Lord Chief Justice Anderson had soberly observed just a year before James's succession.<sup>20</sup> For which reason, England was lucky to acquire a king like James, so evidently skilled in the matter of 'discovering' witches. Rather less settling was the collateral

<sup>15</sup> King James, *Political Writings*, 1.

<sup>16</sup> See Wormald, *James VI and I*, 27–8; and P. Elmer, *Witchcraft, Witch-Hunting and Politics in Early Modern England* (Oxford, 2016), 64–5.

<sup>17</sup> King James, *Political Writings*, 128. The *Apologie* was written in rebuttal of a 'letter' sent by Cardinal Bellarmine which advised English Catholics to nominally subscribe to a fresh oath of allegiance imposed following the discovery of the Gunpowder Plot. Precisely how much of the *Apologie* was James's work remains a matter of conjecture.

<sup>18</sup> King James, *Political Writings*, 213.

<sup>19</sup> Monateri, *Dominus Mundi*, 98–9, 138.

<sup>20</sup> J. Sharpe, *Instruments of Darkness: Witchcraft in Early Modern England* (Philadelphia, PA, 1997), 216.

insinuation, that the ‘occult’ prerogatives necessarily lay beyond the margins of the common law. But again hardly unfamiliar, at least to readers of the *Trew Law* and the *Basilicon Doron*. Particularly disconcerted were all the common lawyers, whose serried ranks dominated the House of Commons. And for good reason, as it transpired, since much of the first part of James’s reign would be consumed by an enervating squabble between King James and Sir Edward Coke, chief justice of Common Pleas (1606–1613), then lord chief justice of King’s Bench (1613–1616), over the reach of Crown prerogative. Culminating in the ‘year to consecrate justice’, as Francis Bacon famously termed it<sup>21</sup> – that year being 1616. As for the consecration, Bacon was alluding to the famed *Case of Commendams*.

Not, at first glance, a case which intimated constitutional crisis, *Commendams* moved around the capacity of the king to intervene in a dispute regarding tithing arrangements in a vacant ‘living’. But a crisis it became, ultimately leading an exasperated king to descend on his judges, much as Shakespeare imagined his Jupiter descending from Olympus to sort out the ‘mangled’ laws of *Cymbeline*’s Britain, ‘thunderbolt’ at the ready<sup>22</sup>:

And as no King can discharge his accompt to God, unlesse he make conscience not to alter, but to declare and establish the will of God: So Judges cannot discharge their accompts to Kings, unlesse they take the like care, not to take upon them to make the Law, but joyned together after a deliberate consultation, to declare what the Law is. For as Kings are subject unto God’s Law, so they to mans Law. It is the Kings Office to protect and settle the trew interpretation of the Law of God within his Dominions: And it is the Judges Office to interpret the Law of the King, whereto themselves are also subject.<sup>23</sup>

The admonishment was targeted particularly at his lord chief justice, Sir Edward Coke, and was the product of a long imagining.

It was portended a decade earlier in the famous *Case of Prohibitions*, in which a barrister of ‘schismatical and factious humour’ named Nicholas Fuller challenged his detention by order of the High Commission, a

<sup>21</sup> For a compelling account of the case, see J. H. Baker, *The Reinvention of Magna Carta 1216–1616* (Cambridge, 2017), chapter 10.

<sup>22</sup> *Cymbeline*, Act 5, Scene 4, stage direction at lines 92–3. For a commentary on the jurisprudential significance of the direction, see P. Raffield, *The Art of Law in Shakespeare* (Oxford, 2017), 188–9.

<sup>23</sup> King James, *Political Writings*, 206.

prerogative court established to govern Church discipline.<sup>24</sup> Fuller had compared the Commission to the Jesuit Inquisition. Coke, then chief justice of Common Pleas, had closed his judgment in support of Fuller with a judicious bit of Bracton: 'The king ought not to be under any man but under God and the law'. A principle which, Coke added, surely 'delights the honour of the king, whose person they represent as they sit in justice'.<sup>25</sup> Not that James seemed particularly delighted, muttering darkly that his chief justice was too 'full of craturity'.<sup>26</sup> And he was probably not much surprised either, especially if he had noted Coke's opinion in *Roper's Case* a few months earlier: An 'ecclesiastical court is like a fountain of sweet water to refresh all the earth, but if that fountain does not contain itself within its banks it will flood the lower lands'. For which reason it is an incumbent duty of the common law to 'reduce it within its channel when it runs over'.<sup>27</sup>

Battle continued in a series of high-profile 'constitutional' cases, including the *Case of Proclamations* in 1608, *Bonham's Case* in 1610, and the *Earl of Oxford's Case* and *Glanvil's Case*, both in 1615. Each tested the jurisdictional reach of the prerogative and its 'grinding courts', as John Milton termed them.<sup>28</sup> In *Proclamations*, it was the legal status of certain royal proclamations which were purposed to replenish the Exchequer. This was an opportunity for Coke to remind James that a 'King cannot change any part of the common law, nor create any offence by his proclamations, which was not an offence before, without Parliament'. It was, he affirmed, 'resolved that the King hath no Prerogative, but that which the Law of the Land allows him'.<sup>29</sup> In *Bonham's Case* it was the authority granted by royal charter to the College of Physicians to award licences.<sup>30</sup> In the *Earl of Oxford's Case*, it was the role of Chancery in adjudging the enforceability of an order

<sup>24</sup> See S. Wright, 'Nicholas Fuller and the Liberties of the Subject', *Parliamentary History*, 25 (2006), 176–213 at 192–3; D. Smith, *Sir Edward Coke and the Reformation of the Laws: Religion, Politics and Jurisprudence* (Cambridge, 2014), 194f.

<sup>25</sup> *Case of Prohibitions* (1607) 12 Co. Rep. 63; 77 E.R. 1342. See also Smith, *Sir Edward Coke*, 249; Baker, *Reinvention of Magna Carta*, 367–8.

<sup>26</sup> I. Ward, *The Trials of Charles I* (London, 2023), 18.

<sup>27</sup> *Roper's Case* (1607) 12 Co. Rep. 45; 77 E.R. 1327.

<sup>28</sup> In *Of Reformation*: see J. Milton, *Complete Prose Works*, ed. D. Wolfe (New Haven, CT, 1953–62), 1.520–3.

<sup>29</sup> *Case of Proclamations* (1610) 12 Co. Rep. 74; 77 E.R. 1352.

<sup>30</sup> *Bonham's Case* (1610) 8 Co. Rep. 113b; 77 E.R. 638. The licensing power granted by statute in 1540, and then reaffirmed in 1553, touched a collateral common law nerve, that of prospective Crown monopolies.

regarding the conveyance of former Crown property.<sup>31</sup> That was a moment for Lord Chancellor Ellesmere to articulate a pointed defence of his office, as a place where ‘any error or defect in judgment’ might be corrected ‘for the hard conscience of the party’;<sup>32</sup> and an inspiration for Bacon, as Attorney General, who was invited to draft a royal declaration on the subject, published amidst the fall-out from the *Commendams* in July 1616: ‘For inasmuch as Mercy and Justice be the true Supporters of our Royal Throne, and that it properly belongeth unto us in our Princely Office to take care and provide, that our Subjects... should not be abandoned and exposed to perish under the Rigor and Extremity of our Laws.’<sup>33</sup>

*Glanvil’s Case* was different again. A conman tried to avoid gaol by convincing the now lord chief justice that his detention would threaten the very future of the English Reformation, as well as the common law.<sup>34</sup> And he succeeded, a splenetic Coke berating a disobliging jury as a bunch of ‘varletts and knaves’ and giving ‘faire warning’ that his hand would ‘fall heavy’ on any who attempted to interfere with the run of a King’s Bench writ. ‘We must looke about or the common lawe of England will be overthrown’, he screeched to a close.<sup>35</sup> How startled everyone was, is a matter of conjecture. Coke was commonly furious. But it is fair to say that as the year ‘to consecrate justice’ dawned there was not much of the *pax Jacobus* about Westminster Hall.

### A Peaceful Reign

The *pax* is the theme of the second of our Rubens canvasses, *The Peaceful Reign of James I*, in which James again takes centre-stage. He is seated, shielding Peace and Plenty, whilst Minerva casts down Mars, the god of war. The goddess of wisdom, Minerva was the obvious support for a king

<sup>31</sup> *Earl of Oxford’s Case* (1615) 1 Ch. Rep. 1; 21 E.R. 485. For an interesting contextual account of the case, see G. Watt, *Equity Stirring: The Story of Justice Beyond the Law* (Oxford, 2009), 67–72.

<sup>32</sup> (1615) 1 Ch. Rep. 1, 6–7, 10.

<sup>33</sup> *Case of Commendams* (1616) 1 Ch. Rep. 49; 21 E.R. 65.

<sup>34</sup> The facts of the case involved the sale of paste jewellery, and the attempt of the gulled purchaser to secure rescission of contract in Chancery. Glanvil was attached by Chancery order for his refusal to repay the money and sent to the Fleet. Coke, in King’s Bench, ordered his release. The lord chancellor then ordered his rearrest. And so it went on. For an account, see Ward, *Trials of Charles I*, 23–4.

<sup>35</sup> *Glanvil’s Case* (1615) Cro. Jac. 343; 79 E.R. 294.



who so prided himself on his intellect. And it was an abiding cultural motif, the aligned supposition being that it was James's wisdom which elevated him above princes of a more martial inclination. Shakespeare dressed his wizard-king Prospero in this guise in *The Tempest*. Thomas Middleton imagined similarly in his play *The Peace-Maker*: James as Solomon, the 'great' king to whom all the bickering princes of Europe would come for counsel and conciliation.<sup>36</sup> Daniel Mytens's portrait of James, completed in 1621, works the same theme, placing his subject before a tapestry embossed by the Tudor rose with the words *beati pacifici*, 'blessed are the peacemakers'. At pretty much the same moment Bacon was conceiving his *New Atlantis*, and its brilliant founder, King Solamona: A man of 'large heart, inscrutable for good', and 'wholly bent' to 'make his kingdom and people happy'; a 'lawgiver' too, who designed his laws so that they 'preserved all points of humanity'.<sup>37</sup> Atlantis had not needed to fight anyone for as long as memory served.

The *Trew Law* and the *Basilicon Doron* were testament to James's intellectual vanity. The latter, as already noted, was written as a contribution to the presently fashionable *specula* genre, intended to provide a 'mirror viue and faire' of good kingship.<sup>38</sup> Thus all the advice on dressing sensibly, eating a balanced diet, and learning to write good poetry, meaning 'rich in quicke inventions', rather than merely rhyming 'right'.<sup>39</sup> Not everyone was sure of the 'wisest fool in Christendom', as the Duc de Sully famously disparaged the new King of England.<sup>40</sup> Certainly not the diplomat Antony Weldon, whose physical description of James is notorious: Thin of beard, thick of speech, a man 'naturally of timorous disposition', his 'eyes large, ever rolling after any stranger that came into his presence', forever 'fiddling about his cod-piece'.<sup>41</sup> Nor Lady Anne Clifford, who famously railed against a court 'grown scandalous'. Nor

<sup>36</sup> The authorship of the play, which first appeared in 1618, is generally ascribed to Middleton. There were plenty more flattering references to James's 'union', as an exemplar of how peace might be secured between nations, along with a sub-text on the dangers of alcohol-induced disorder at home.

<sup>37</sup> F. Bacon, *The Advancement of Learning and New Atlantis*, ed. A. Johnston (Oxford, 1974), 228 (first published in 1605).

<sup>38</sup> King James, *Political Writings*, 1.

<sup>39</sup> *Ibid.*, 55.

<sup>40</sup> The precise derivation of the quote is contested. An alternative suggests that it might have been Sully's king, Henry IV of France.

<sup>41</sup> A French ambassador attested to similar, during a visit to Edinburgh in 1584; 'his gait is bad, composed of erratic steps': see A. Stewart, *The Cradle King: A Life of James VI and I* (London, 2003), 75, 270.



Sir James Harington, who left a withering description of the Bacchanalian festivities which greeted the visiting King Christian of Denmark in 1606 – an inspiration for Shakespeare's *Antony and Cleopatra* perhaps. Sir James imagined himself in 'Mahomet's paradise', rather than the court of a Christian prince.<sup>42</sup>

But there was more to it than rolling eyes and drunken orgies. James disappointed because he was not Elizabeth. Solomon replacing Gloriana was always going to be a tough sell. His predecessor was no less keen to display her princely wisdom but had always taken care to decorate herself in a variety of martial poses. Thus the 'valiant' Britomart, the Redcrosse Knight's Amazonian bodyguard, who bestrides the third book of Spenser's *Faerie Queene*; and the renowned speech given at Tilbury as the Spanish Armada hove into view in August 1588: 'I know I have the body but of a weak, feeble woman; but I have the heart and stomach of a king, and a king of England too'. Affirming her trust 'under God' and having placed 'my chiefest strength and safeguard in the loyal hearts and good-will of my subjects', the armoured Elizabeth is ready for battle.<sup>43</sup> James never had to give a speech like this, and that was the problem. In his *Inquiry into the Literary and Political Character of James I*, published in 1816, Isaac D'Israeli supposed that it was the *pax Jacobus* that did for James Stuart. Lacking 'military character', too determinedly unheroic, too dull.<sup>44</sup>

Instead of joining in the murderous 'wars of religion' that were presently raging across the continent, James aspired to be their honest broker. An idea that impelled him towards seeking a *rapprochement* with Catholic Spain; another hard sell. More so still when details of Prince Charles's bizarre attempt to press the so-called Spanish 'match' became popular knowledge in 1623. Donning false beards, Charles and his best

<sup>42</sup> Letter to Secretary Barlow, in *Nugae Antiquae, being a collection of original papers in prose and verse, written in the reigns of Henry VIII, etc., by Sir J. Harrington and others, selected by H.H.*, 2 vols. (1779), 2.126–30. For accounts of the event, see G. Blakemore Evans, *Elizabethan-Jacobean Theatre: The Theatre in Its Time* (London, 1988), 201–2, and Stewart, *The Cradle King*, 236–7.

<sup>43</sup> A horse-backed Elizabeth was reported to have been wearing a shiny cuirass and waving a sword about. There are various accounts of the speech, the original version of which appears to have been recorded by a subaltern attached to the camp of the Earl of Leicester. The possibility that Elizabeth wrote the speech herself is considered in J. Green, "'I My Self': Queen Elizabeth I's Oratory at Tilbury Camp", *The Sixteenth Century*, 28 (1997), 421–45.

<sup>44</sup> See I. Ferris, 'The "Character" of James the First and Antiquarian Secret History', *The Wordsworth Circle*, 37 (2006), 73–6.

mate, George Villiers, prospective Duke of Buckingham, had travelled incognito to Madrid to see the Infanta dance. She had not disappointed, at least not in her footwork. But Charles did.<sup>45</sup> A collateral casualty of the fated 'match' was Sir Walter Raleigh. Released from the Tower, where he had been held since 1603 on suspicion of treason, Raleigh had set off on an expedition of the Orinoco, with his king's grudging approval and on one condition, that he must not attack any Spanish colonies. Which was ignored. On arriving back in summer 1618, Raleigh was promptly returned to the Tower and a couple of months later executed at the behest of the Spanish ambassador, Count Gondomar.

By this time, James had eagerly taken up an invitation, conveyed by the same Count, to 'interpose himself for the accommodating of the business on Bohemia'. The 'business' related to an incident during which a couple of imperial officials had been defenestrated in Prague. The consequence was a stand-off between imperial forces and those of the protestant Duke of Savoy. At first glance this was a highpoint in the *pax Jacobus*, except that James was being played. His 'vanity', as Gondomar confirmed to his king, was 'so great'. This was something the Venetian ambassador appreciated too, noting how much James liked to pass himself off as 'the chief of a great union in Europe'. But also how the English invariably 'resolve upon nothing', never seeming sure whether they want to be in Europe, or out.<sup>46</sup>

James's endeavours, such as they were, were anyway overtaken by events, as the Bohemians chose to 'elect' a new king. Their choice, Frederick, already Elector Palatine, was James's son-in-law. Not that James was impressed; kings were chosen by God, not by electorates. The event threatened 'to set all Christendom by the ears'.<sup>47</sup> Worse still, Frederick promptly started negotiating an alliance with the Ottoman empire. Meanwhile the rest of Europe cogitated on the possibility that James was a Machiavellian mastermind, who had used Frederick as a guise for inviting the Turkish hoard to ransack Rome. A year later, Frederick was ousted, following defeat at the battle of the White Mountain. A 'sad and grieved' James did have a prospective military

<sup>45</sup> Maria Anna was reputed to be the finest dancer in Europe. But she had no intention of marrying outside the faith, and her father King Philip IV was not much enamoured of the idea either. In the end, she married King Ferdinand of Hungary-Bohemia. Charles meanwhile travelled back via Paris, where he spied a consolation prize, Princess Henrietta Maria.

<sup>46</sup> For an account of the affair, and James's naivety, see Stewart, *The Cradle King*, 297–300.

<sup>47</sup> In the person of Frederick, already Elector Palatine.

intervention in Bohemia priced up, but the sum was prohibitive.<sup>48</sup> The king, it was reported, was disinclined to 'meddle' further in 'the affairs of Bohemia'.<sup>49</sup>

### Union of Crowns

The final canvas is *The Union of Crowns*. It depicts Mars ushering two female figures into James's presence. Representing England and Scotland, they hold two crowns above the head of an infant, there in turn to represent the nascent 'union'<sup>50</sup>; the *dominus* of James Stuart and his progeny. James's imperial aspiration was layered. There was the 'inner' empire already carved out in the Reformation settlement. The Act in Restraint of Appeals 1532 had confirmed that 'whereas by divers sundry and authentic histories and chronicles it is manifestly declared that this realm of England is an empire, and so hath been accepted in the world, governed by one supreme head and king, having the dignity and royal estate of the imperial crown the same'.<sup>51</sup> Only a proper empire, the inference ran, could extricate itself from Rome.

And then there was an 'outer' empire still being sketched by an assortment of early-day global entrepreneurs and obliging pirates.<sup>52</sup> All part of the same ambition of course: to make Britain 'world-beating'. As Bacon confirmed, in 'the great frame of kingdoms and commonwealths, it is in the power of princes or estates to add amplitude and greatness to their kingdoms'.<sup>53</sup> Better still to establish 'plantations' – in Ireland, the Bermudas, wherever. Not just an 'heroical' and godly enterprise, but also profitable.<sup>54</sup> James, invariably short of money, cleaved to profit. The various constitutional cases in which he became embroiled were commonly about it. *Proclamations* moved around 'fines' levied for

<sup>48</sup> £200,000 to raise, £1 million a year to keep an army in the field. Parliament offered a one-off subsidy of £160,000.

<sup>49</sup> Stewart, *The Cradle King*, 308–10.

<sup>50</sup> It has been speculated that the baby is modelled on the future Charles II. See Millar, 'Rubens' Whitehall Ceiling', 103.

<sup>51</sup> 24 Henry VIII, c. 12. A statement reaffirmed, the following year, in the Act of Supremacy 1534: 26 Henry VIII, c. 1. For a comment on the significance of Henry's imperial assertion, and the extent to which it served to develop a more conscious, and confident, 'England', see L. Greenfield, *Nationalism: Five Roads to Modernity* (Cambridge, MA, 1992), 30–5, 50–1.

<sup>52</sup> Or privateers as they were called, operating under Crown licence, or 'letters of marque'.

<sup>53</sup> F. Bacon, *The Essays* (London, 1985), 155.

<sup>54</sup> *Ibid.*, 162.

building regulation and starch manufacture, *Bonham's Case* around licensing regimes for physicians, the *Commendams* around tithe income. Regardless of what legal nicety his chief justice dreamt up, James wanted his cut. The idea of a global empire was born of the same venality. Along, of course, with the collateral assurance that 'discovering' faraway lands, and then taking them over, was doing God's work.

James's most cherished concern, however, was discovered in sealing the 'inner' empire, more especially the union of his two crowns. An aspiration which Jonson had carefully flattered in the coronation pageant back in summer 1604. The very first 'triumphal' arch, at Fenchurch, was precisely on message. '*Orbis Britannicus, Divisus ab orbe*', to 'shew that this empire is a world divided from the world'.<sup>55</sup> James had already assured his Scottish Privy Council that the case for a 'perfect and sincere union' was now unarguable.<sup>56</sup> On arriving in England, he had established a Commission on Union, headed by Bacon and Ellesmere, to look into the practicalities of union.<sup>57</sup> It had returned three recommendations: abrogate 'hostile lawes', create a uniform commercial law, and establish a kind of common citizenship. At the same time, James issued a *Proclamation on the Post-Nati*. A *post-nati* was someone born in Scotland after James had succeeded to the English throne. Such a person, the proclamation confirmed, should acquire rights in English, as well as Scots, law, by virtue of their birth. James also asked Parliament to approve a statutory change of title, so that he might restyle himself King of 'Great Britain'.

To which the answer was no. England was a name of 'ancient reverence', as opposed to the dark age murkiness of 'Briton'. Undaunted, James issued a proclamation declaring himself King of 'Great' Britain and citing, by way of reason, cultural and religious commonality: 'A communitie of language, the principall meanes of civil societie. An unitie of Religion, the chieftest band of heartie Union, and the surest knot of lasting Peace.'<sup>58</sup> The proclamation had also confirmed that there would be some shiny new coins celebrating the new 'union', starting with a twenty-shilling piece, called the 'Unite'. 'James by grace of God King of Great Britain, France and Ireland', the obverse read. The reverse was inscribed with a no less hopeful bit of scripture. From *Ezekiel* 37:22, 'I will make them one nation'.

<sup>55</sup> Wormald, *James VI and I*, 355.

<sup>56</sup> Stewart, *The Cradle King*, 209.

<sup>57</sup> The Commission comprised forty-eight Englishmen and thirty-one Scots.

<sup>58</sup> In Wormald, *James VI and I*, 244.

Parliament retaliated by rejecting two bills proposed by the Commission. A first would have added statutory heft to the *Proclamation on the Post-Nati*. The second was intended to naturalise the *ante-nati*. By way of compensation, it would agree to a new flag; to become known as the 'Union Jack'.<sup>59</sup> But that was all Parliament was prepared to concede. The mood was uncompromising. Gervase Holles bemoaned a London full of swaggering Scotsmen sporting 'beggarly bluecaps'.<sup>60</sup> John Hoskyns regretted the £100,000 that James had gifted the same. No wonder the new King was broke.<sup>61</sup> Sir Christopher Pegge managed to get himself suspended from the House for claiming that there 'was as much difference between an English and a Scots man as between a judge and a thief'.<sup>62</sup>

James kept trying. The 'union' as an 'eternal agreement' between the two 'crowns' would seal the security of the realm, he advised Parliament in March 1607, and its prosperity in 'perpetuitie'. It would also help to further the cause of a broader legal 'reformation'.<sup>63</sup> Bacon advised his fellow members to reread their Livy. Was it not the case that classical Rome was 'best state of the world', and the happiest? 'Posterity' supposes that 'greatness' is scaled.<sup>64</sup> Shakespeare conceived *King Lear* in poetic support. At a mild tangent, James recommended that his critics peruse the 'mappes' of 'great Antiquitie', where the isle of 'greater' Britain was clearly 'described'.<sup>65</sup> All well and good. Ultimately, though, the fate of the prospective union would depend on politics not poetry. And by now attention was anyway turning to the courts, and more particularly a case involving a deracinated infant named Robert Colville.

Robert was just three years old, the grandson of an otherwise much more interesting man, James Colville, the famed 'Laird of Wemyss', mercenary, privateer, diplomat, and prime mover in helping to secure the succession of James Stuart. Robert's life was nothing like as exciting.

<sup>59</sup> Jack after *Jacobus*.

<sup>60</sup> Meaning woollen bonnets. The occupants of the Bedchamber were always a matter of peculiar concern, in every sense of the word.

<sup>61</sup> The King's 'cistern has sprung a leak', as Hoskyns put it to fellow Members of Parliament. Around £90,000 in gifts and a further £10,000 in pensions. Not to be repeated, James tried to assure Parliament. See Wormald, *James VI and I*, 47.

<sup>62</sup> Stewart, *The Cradle King*, 215.

<sup>63</sup> King James, *Political Writings*, 164.

<sup>64</sup> See Bacon, *Essays*, 3.94–6, making pointed comparison with Sparta, and its reluctance to extend rights of naturalisation, and also 3.313.

<sup>65</sup> In Wormald, *James VI and I*, 381.

Except, perhaps, to legal historians, for it was in Robert's name that the legal action was launched which would become known as *Calvin's Case*.<sup>66</sup> Little Robert was a *post-nati*, and the legal contention moved around whether, by reason of birth, he might thereby enjoy the legal rights of an Englishman. This was the precise issue which James had treated in his *Proclamation on the Post-Nati*. The converse argument supposed that he was an 'alien', whose status in English law would be dependent on some other form of naturalisation. This mattered, because if an 'alien' did not acquire this 'personality', Robert could not by right own or inherit property in England.

It was, Coke opined, the 'greatest' case 'that ever was argued in the hall of Westminster'.<sup>67</sup> And, for once, he was in obliging mood, agreeing with Attorney General Bacon that the 'law of nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; and this is *lex aeterna*, the moral law, called also the law of nature', and it is by this law that the 'faith, ligeance, and obedience of the subject is due to his Sovereign or superior'.<sup>68</sup> Regardless of the disparity between respective legal systems, James embodied the supervening unity of his two crowns.<sup>69</sup> In his 1610 address to Parliament, an approving James revisited the same reasoning, to confirm that a 'generall union' of laws would not infringe the authority of English common law.<sup>70</sup> The applause was presumably polite. But there was no give. A decade on, James would write a *Meditation upon the 27, 28, 29 Verses of the xxvii Chapter of St Matthew*. Predictably doleful, the 'epistle dedicatory' confirmed that he was by now 'weary of controversies'.<sup>71</sup> And no controversy had been more wearying than that which attended the proposed union of crowns.

### Resonances

History is always tempted by resonance. It may not repeat, as Mark Twain is said to have said, but it commonly rhymes. Four centuries have

<sup>66</sup> Calvin being an English-ised corruption of Colville.

<sup>67</sup> Preface to volume 7 of *Coke's Reports*, at iii.

<sup>68</sup> (1608) 7 Co. Rep. 1b–28a; 77 E.R. 377, 392.

<sup>69</sup> See here P. Price, 'Natural Law and Birthright Citizenship in *Calvin's Case*', *Yale Journal of Law and Humanities*, 96 (1997), 100–2, 123–8, gesturing towards a species of 'general' jurisprudence.

<sup>70</sup> King James, *Political Writings*, 173–4.

<sup>71</sup> In Wormald, *James VI and I*, 66.

passed since James Stuart died, in March 1625. It might be reasonably supposed that much has changed since then, and it has. There again we might also recall another aphorism, more familiar still: *Plus ça change, plus c'est la même chose*; the more things change, the more they stay the same. These were the words of Jean-Baptiste Alphonse Karr, minor French novelist of the nineteenth century, and renowned dahlia cultivator. Karr would not have been surprised to discover that pretty much the same constitutional stresses which agitated Jacobean England are those which agitate us today.

Starting with the idea of kingship. Successions tend to unsettle, so it is an apposite moment to contemplate, once again, the institution of monarchy; as the most recent King Charles settles into his role. Following a Queen Elizabeth, as we have already supposed, is never easy. At least James could fall back on the idea of 'divine right'. The idea of a God-given king is less credible today, in a godless age. So what are the alternatives? At his trial in January 1649, the last King Charles demolished the idea that his crown was 'elective'.<sup>72</sup> No one had elected him king. And no one has elected Charles III king either. The idea that the crown is legitimated by the constitution is plainly circular and gets us nowhere. At which point we are obliged to fall back on more prosaic possibilities, chiefly functional.

Walter Bagehot famously spotted an oddly consonant couple, apathy and entertainment. So long as the 'charmed spectacle' of the monarchy keeps us entertained, we will put up with it.<sup>73</sup> This is a rationale which intimates how we might spot the end of the British monarchy. Whilst astrologers of old would peer at the sky in the hope of spotting an ominous meteor, or pore over the entrails of slaughtered poultry, all we need to do is read the papers. We will know the end of the monarchy has finally arrived the first week that passes without a picture of Princess Kate adorning the front-pages of the tabloids, or the second week that we have lost track of what Harry and Meghan are doing – the measure of our 'childish' fascination with all things royal, as Bagehot put it.<sup>74</sup>

The second theme painted by Rubens was the 'peaceful reign'. Britain's place in Europe, or maybe just outside. James sensed the need to improve relations with his European neighbours because of the difficulties which had attended England's attempt to break with Rome seventy years earlier.

<sup>72</sup> See Ward, *Trials of Charles I*, 104–5.

<sup>73</sup> W. Bagehot, *The English Constitution*, ed. P. Smith (Cambridge, 2001), 30–1.

<sup>74</sup> Bagehot, *English Constitution*, 37.



The English Reformation had proved strangely hard to get 'done'. Or maybe not that strange, according to Bacon. In his *History of the Reign of King Henry VII*, Bacon supposed that the Henrician Reformation did 'so much busy the world' because nobody had thought through its consequences.<sup>75</sup> But then Henry VIII was not, by nature, a planner. His Brexit was a vanity project, necessitated by the fact that he wanted rid of his first wife, and was short of cash. And there was no surprise in discovering that when the difficulties became starkly apparent, Henry cast around for someone else to blame: all the 'remainers', as he tearfully asserted in his last speech to Parliament in 1547.<sup>76</sup> They had messed up England's Reformation, not him.

Not, of course, that James wanted to rejoin Catholic Europe, or at least he was not going to say as much. So instead, as we have noted, he decided to hover around the edges, offering himself up as an honest broker. This was the role that attracted Winston Churchill three and a half centuries later in recommending the formation of a European 'united states' after the Second World War. Britain would not join this incipient union of course; far too many foreigners. But it would lend a hand where it could. It took a generation to appreciate Churchill's misperception. The economic imperatives were unarguable, and Britain would have to join the 'common market'. Much as it took a generation for Stuart England to appreciate the futility of James's aspiration. Being on the edge of something means that you are part of it, not outside it. England's 'war of religion' finally broke out in spring 1640.<sup>77</sup>

Shakespeare's John of Gaunt famously declared England to be:

This fortress built by Nature for herself  
Against infection and the hand of war . . .  
This precious stone set in a silver sea,  
Which serves it in the office of a wall,  
Or as a moat defensive to a house,  
Against the envy of less happier lands.

(*Richard II*, Act 2, scene 1:43–4, 46–9)

But it is not. The English are just as likely to be visited by plague as anyone else, bubonic or coronaviral. And nor are they much 'happier'; certainly not now. Brexit Britain is a consummately poorer place, as well

<sup>75</sup> Bacon, *Essays*, 171.

<sup>76</sup> For commentaries here, see D. MacCulloch, *Thomas Cranmer* (New Haven, CT, 1996), 348; and J. Scarisbrick, *Henry VIII* (New Haven, CT, 1997), 471.

<sup>77</sup> J. Morrill, *The Nature of the English Revolution* (London, 1993), ch. 3.

as more fractious; its economy has sustained a 4 per cent retraction in GDP since exiting the Union, including an estimated £40 billion a year loss in tax take. It will probably rejoin the European Union at some point, for financial reasons if no other. Not yet though. It is the fate of a 'chosen' people to suffer, for a while at least.

And so to the third of Rubens's painterly themes, the 'union' of crowns. Not readily extricable, of course, from the first two. The rationale for a 'union' was, in considerable part, to make England more secure, or so James liked to counsel his critics. The building of an 'inner' empire providing the foundation, hindsight supposes, for an 'outer'. It would also serve to refurbish the idea of monarchy. Whilst there would be Acts of Union in 1707 and then again in 1800, the constitutional realisation of empire would have to wait until the passage of the Royal Titles Act in 1876, a sop intended to cheer up Queen Victoria and entice her to assume a more active role in public life.<sup>78</sup> It was in the same year that the Indian National Association was founded, the first step in a journey to independence which was realised in 1947. Most of the rest of Britain's 'outer' empire has gone the same way over the last century, leaving just a few scattered colonial outposts, alongside a loose confederation of 'commonwealth' countries, lots of nostalgia, and a fair bit of xenophobia.

And the 'inner' empire? Time will tell if Brexit strengthens the still-just-about United Kingdom, or conversely accelerates its fragmentation. Only the English voted to leave the Union, and the enactment of the European Union (Withdrawal) Act 2018 prompted motions of censure in each of the devolved assemblies. It is possible to discern the first signs of a prospective break-up of modern Britain, even before Brexit, in the passage of the 1998 devolution statutes. There again it is equally possible to argue that the same statutes are designed to stabilise the union. As James Stuart supposed, the entire point of a statutory 'union' of crowns was to secure the *imperium* of 'greater' Britain. It was not in the moment especially prescient, since the 'war of three nations' began when a Scottish army crossed the Tweed in summer 1640.

Arguments for independence continue in each of the constituent parts of the United Kingdom. But whilst they remain essentially sentimental in Scotland and Wales, Brexit has added a further, barely tractable,

<sup>78</sup> 39 & 40 Vict., c. 10. After an extended retirement following the death of Prince Albert in 1860. Amongst those concerned that the retirement might result in the end of the British monarchy was Walter Bagehot. The chapters on monarchy in his *English Constitution* were written as a caution: see Bagehot, *English Constitution*.

dimension in Northern Ireland; working out a way of securing an 'internal' market within the United Kingdom, whilst respecting the *acquis communautaire* of the European single market, and not compromising the terms of the 1998 Good Friday Agreement. The original withdrawal treaty included a specific protocol purposed to facilitate trade across the Irish 'border' with minimal customs intervention. Which the UK government almost immediately sought to renegotiate, along the way threatening an 'internal markets' bill designed to force the issue. The situation remains fluid, a newly devised 'Windsor framework agreement' only eventually helping to facilitate the reopening of the Northern Ireland Assembly in Stormont.

Brexit is not, of course, the sole cause of our present constitutional crisis. The role of the Crown, questions of executive accountability, the state of the 'union', each has a critical life aside from Britain's latest attempt to break with Rome. But Brexit is an accelerator, a constitutional Hadron collider. And it is at such moments that we incline to question the integrity of our constitution, and indeed our public life, more closely. Hindsight supposes that this was the case in 1616 when James fired his lord chief justice and set his nascent 'union' on the road to civil war – a Whiggish hindsight, of course. If we like our history to have an ironic twist, we might just project forward to the early afternoon of 30 January 1649, and imagine James's second son, Charles, taking a last glance at Rubens's ceiling before stepping through a Banqueting Hall window, and onto a specially constructed scaffold, to greet his executioner, and his own apotheosis.