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Author(s): O. W. Furley

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## II. THE WHIG EXCLUSIONISTS: PAMPHLET LITERATURE IN THE EXCLUSION CAMPAIGN, 1679-81

By O. W. FURLEY

THE Exclusion Controversy of 1679-81 echoes many of the constitutional issues debated before and during the Civil War, just as it anticipates many of the arguments used to support the 1688 Revolution. If the attempt to exclude James, Duke of York, from the succession to the throne was abortive, it still provides an important key to contemporary opinion about the vital political problems of the century; and at this time when the structure, indeed the very existence of the early Whig and Tory parties is being questioned,<sup>1</sup> the Exclusion Controversy can be shown in one respect at least to have had a markedly unifying effect on the former party, as demonstrated in its literature. The attempt at Exclusion was the supreme effort of Shaftesbury to rally the early Whig party, and it was accompanied by an intensive propaganda campaign, issuing forth a steady stream of pamphlets, most of which are still extant. Some of the best of these have been printed in *Somer's Tracts*, *The Harleian Miscellany* and *State Tracts: A Collection of Treatises relating to the Government, Privately Printed in the Reign of Charles II*, 1693; while others are now very rare, and single copies may be found only in the British Museum or Bodleian Library, or in such repositories as the City Guildhall Library, London. Together with the Tory replies, they form a list of nearly two hundred titles, not as vast a collection as the Civil War produced, but one to compare favourably with the volume of pamphlets occasioned by the Restoration and the Revolution. An examination of these pamphlets, both for and against Exclusion, yields considerable information about the aims of the party in excluding James, their attempts to justify that policy, and their reasons for holding that it was 'lawful' and in accordance with their ideas of the ancient constitution. Some of these pamphlets were re-printed versions of the popular Civil War authors such as Hunter, Prynne and Lawson, while Sir Robert Filmer's works were revived to support the legitimists; but the vast majority of them were anonymous products of the moment, written in haste, and printed surreptitiously; something is known of their publishers, but very little of their authors, and although a few individual pamphlets are well-known for the excitement which their first appearance caused, the majority of them have received scant attention from historians. James Ralph, in his

<sup>1</sup> R. Walcott, in his *English Politics in the Eighteenth Century* (Oxford, 1956), does much to rectify the rigid division of all matters into Whig and Tory camps from the late 1670's onwards, and argues that the existence of parties on a national basis at this time was tenuous in the extreme.

*History of England* (1744), was one of the first to give party pamphlets a place in political history; Hume gives an account of exclusionist theory, but it is based on Parliamentary debates only; Macaulay is notorious for his neglect of political literature, and Ranke bases his sketch of Whig theory purely on Algernon Sidney's *Discourses Concerning Government*. Modern writers have paid more attention to the early party doctrines, in particular Professor Feiling in his *History of the Tory Party* (1924), but for the Whigs this subject is comparatively neglected.<sup>2</sup>

The Whig party at the time was, of course, only in its early stages of development, and the general elections of 1679 have been described as the first to be fought on party lines. In view of this it is surprising to find a pamphlet campaign so intense and well-organized by the 'Whigs', as they were soon called, and it is usually assumed that their propaganda writers were inspired and instructed by the great pioneer in party warfare, the first Earl of Shaftesbury. Certainly he was the leader of the Exclusionists, inside and outside Parliament; prominent at the Green Ribbon Club, and popular in the city, where he had several of his own parliamentary speeches printed and circulated as pamphlets; but unfortunately little is known of his control over the production of exclusion pamphlets. The Tories, naturally, asserted that he was the originator of every scurrilous broadside: Roger North speaks of the 'forlorn rout of hackney scribblers' attendant upon him,<sup>3</sup> Sir Robert Southwell thought that he had written, or at least reviewed, *Mr Smith's Narrative of the Popish Plot*,<sup>4</sup> and a Tory pamphlet claimed that he instigated the spate of pamphlets with the help of Robert Ferguson, his amanuensis.<sup>5</sup> Ferguson, 'the Plotter', was indeed one of the cleverest and most daring exclusionist writers, and his connexion with Shaftesbury was undoubtedly close,<sup>6</sup> but there is no evidence to lead us beyond that; Shaftesbury probably spurred on Ferguson and also 'the pitiful Care, Curtis, Smith and Harris with their Pacquets, Appeals, Intelligences and Vox Populis',<sup>7</sup> but it is a mere assumption, and the charge was denied by some: Elkanah Settle, for instance, was accused of consulting Shaftesbury about his pamphlets, yet in 1680, when he dedicated his play, *The Female Prelate*, to Shaftesbury, he confessed he was a stranger to him personally. It was only at the end of the campaign that,

<sup>2</sup> Valuable contributions on some aspects are: E. Lipson, 'The Elections to the Exclusion Parliaments, 1679-81', *E[nglish] H[istorical] R[evue]*, xxviii (1913); Mrs E. George, 'Elections and Electioneering, 1679-81', *E.H.R.* xlv (1930). For a general survey see Miss B. Behrens, 'The Whig Theory of the Constitution in the Reign of Charles II', *C[ambridge] H[istorical] J[ournal]*, viii, no. 1 (1941). None of these, however, deals specifically with Exclusion.

<sup>3</sup> *Examen* (London, 1740), 88.

<sup>4</sup> Southwell to Ormonde, Nov. 1679. *H[istorical] M[anuscripts] C[ommission]*, *Ormonde MSS.* iv, 560.

<sup>5</sup> *Memoirs of the Life of Anthony, Late Earl of Shaftesbury* (London, 1683).

<sup>6</sup> See J. Ferguson, *Robert Ferguson the Plotter* (Edinburgh, 1887), *passim*.

<sup>7</sup> These publishers are coupled with Shaftesbury in *The Present Interest of England* (London, 1683).

to divert the attack from himself, Settle claimed that Shaftesbury had re-touched the second edition of his *Character of a Popish Successor* to make it more vitriolic.<sup>8</sup> Again, John Locke, supposed to be the author of the *Letter from a Person of Quality* (1675), was commonly accused of helping Shaftesbury to write exclusion pamphlets, and of writing others himself,<sup>9</sup> but it is very uncertain that he was responsible for any exclusion pamphlets, in spite of his official connexions with Shaftesbury during the campaign. In any case he suffered even for his mere connexion with Shaftesbury and 'subversive' literature, forfeiting his Studentship at Christ Church as he was accused of being the author of the third part of *No Protestant Plot*: an example of the risks involved in publishing this kind of material. It thus remains an open question whether Shaftesbury exercised any immediate control over the exclusionist pamphleteers, and, of course, it is not likely that much evidence of this would remain: the only indication that he was personally concerned in some of these pamphlets is the existence among his papers of a manuscript draft of the 1681 *Instructions* to Members for their conduct in Parliament, and a manuscript draft of a petition, to be circulated through the counties, protesting against the summoning of the 1681 Parliament to Oxford.<sup>10</sup> This, by itself, proves little, and the precise relationship between Shaftesbury and his 'hackney scribblers' remains a matter for speculation.<sup>11</sup>

Nevertheless, the influence of the presiding genius was strong, for in all matters the party followed close at his heels: in the present survey, certain general patterns in the campaign may be discerned, and the types of argument used can be clearly analysed; indeed, the uniformity of Whig propaganda is remarkable, and most of the views here presented may be taken as typical of the whole party. Most pamphlets owned a common construction, consisting first of simple, personal arguments against James as heir to the throne, then proceeding to more complex theories to prove that Exclusion was 'constitutional' and not innovatory. For the pamphleteers' task was not merely to calumniate James and forecast disaster if he succeeded: they had also to show that Exclusion was legally and morally right, and that those who supported the Bill were not attacking the monarchy but striving to safeguard it.

First and foremost, the Whig attack was against James, because he was a Catholic, and because he was implicated in the Popish Plot: both the first and second Exclusion Bills were not primarily intended as a new law perpetually to exclude Catholic heirs from the throne, they were directed only

<sup>8</sup> See the notice of Settle in *Dictionary of National Biography*.

<sup>9</sup> Le Clerc, *Life and Character of Mr. John Locke* (London, 1706), 8; *Letters of Humphrey Prideaux* (London, Camden Society, 1875), 115.

<sup>10</sup> *Shaftesbury Papers*, P[ublic] R[ecord] O[ffice], Bundle VI, B. 399 and 392.

<sup>11</sup> I am indebted to Mr P. Laslett for pointing out that Shaftesbury's name may be connected with the publishing in 1680 of William Lawrence's *Marriage by the Moral Law*, and particularly with the third part of it, 'The Right of Primogeniture' (London, 1681), a book justifying Monmouth's illegitimate succession, which Lawrence sent to Shaftesbury with an accompanying letter, 25 Oct. 1680 (*Shaftesbury Papers*, P.R.O. Bundle VI, A. 355).

against James, and the pamphleteers followed suit in making their claims specifically against the Duke; the usual label, 'a Popish Successor', could refer to only one person. Without the Popish Plot and the menace of Catholic France, the exclusionist thunder would have sounded faint indeed, for the whole basis of the attack was his supposed association with militant Catholicism and the French King. The Bill, said a Tory writer, was not a general one, but was against James alone: 'it was the effect of the malice and revenge of some particular persons against the Duke's person',<sup>12</sup> and the author could well point to the long-standing hostility of Shaftesbury and his party towards James: it was a personal antagonism. Shaftesbury's indictment of the Duke at Westminster Hall as a Catholic recusant, and the Commons' resolution that his being a Papist, and that hopes of a Popish successor had encouraged the Popish Plot, are examples of this kind of direct attack, and later Shaftesbury went even further in his speech of December 1680, when he claimed that James had aimed at the Crown in 1660; he had always dictated policy to Charles; the Popish Plot had been headed by him; and his purpose in Scotland was to raise an army for a Catholic rising.<sup>13</sup> How could his supporters counter such attacks? Tories like Sir Roger L'Estrange did their best to point out James's excellent record with the Navy, and made out that his honesty and patriotism were beyond question, but the Whigs shook their heads over his 'disdain and antipathy towards Parliaments', and his 'perverse and stubborn haughtiness'; and asked what chance justice would have when he was King, if already he perverted the law so much in his present position?<sup>14</sup> His influence at Court was notorious: he was regarded not only as the enemy of Parliament, but as the future military despot, now busy raising a standing army and planning the overthrow of Protestantism with the help of France. Charles had hitherto been the object of the 'Country' party's suspicions here, but now his treachery was forgotten in the campaign against James: the younger brother would govern by an army, wrote Ferguson in the *Appeal from the Country to the City* (1679), and his principles were known to be destructive to the laws.<sup>15</sup> He should be excluded, as another writer put it, 'on evident notoriety of intending the subversion of the Kingdom'.<sup>16</sup>

All this was dependent on the current belief that a Catholic King was not only intolerant and absolutist in his religion, but also in secular government; Louis XIV was the supreme example of the Catholic King who sneered at the thought of Parliaments, and attacked Protestantism on the continent; and it

<sup>12</sup> *Plain Dealing is a Jewel* (London, 1682).

<sup>13</sup> Printed as a pamphlet: *A Speech Lately Made by a Noble Peer*. W. D. Christie, *Life of Anthony Ashley Cooper, 1st Earl of Shaftesbury* (London, 1871), II, App. VI, no. 7.

<sup>14</sup> Elkanah Settle, *The Character of a Popish Successor* (London, 1681).

<sup>15</sup> Ferguson was usually taken to be the author of the *Appeal*, a fact which is not certain, but probable.

<sup>16</sup> *The Great and Weighty Considerations relating to the Duke of York . . . Considered* (London, 1680).

was never doubted that James would follow his example. The cry 'popery and arbitrary government' did great service for the Exclusionists, and in their zeal for the cause of Protestantism they turned the campaign almost into a crusade. 'If the said Duke should succeed to the Imperial Crown of this Realm, nothing is more manifest than that a total change of religion within these Kingdoms would ensue', it was declared in the preamble to the second Exclusion Bill,<sup>17</sup> and the pamphleteers chorused their agreement. A Catholic who was true to his religion could not succeed to the throne of a Protestant country except to exterminate his subjects, they said, and he would consider himself absolved from his Coronation Oath to a heretical people. It was England's duty to lead the Protestant countries of Europe against the Catholic states, for Protestantism was in grave danger: 'I am sure, separate but once England from a hearty espousal of the Protestant interest, and it must necessarily sink, and, without a miracle, be supplanted in all other places', wrote a *Gentleman in the City to One in the Country* (1680): 'So that as matters stand, we should by admitting a Popish Prince to succeed His Majesty, not only lose the Protestant religion from ourselves and our posterity, but through abandoning of that profession abroad, we should be a means of making all the world vassals again to the Romish yoke.' Elkanah Settle, in one of his best-known pamphlets, *The Character of a Popish Successor, and What England may expect from such a One*, prophesied that James would obtain money from the Pope and the French King, and so dispense with Parliaments: a Popish King could not help being the worst enemy of England. Finally, all agreed that subjects obeyed a King partly as a matter of religious conscience, and the bonds of obedience would be broken if the religion of the King was not the same:

It is impossible that a Prince should signify anything towards the support of the people's religion, being himself of another; nor would it ever be believed if he could; and how can that government subsist, where the people are unanimously possessed with a belief, that the Prince is incapable of protecting them in that which, for the most part, they value above all other considerations?

So wrote the author of *Reasons for His Majesty's Passing the Bill of Exclusion* (1681).

Great emphasis was also laid on the prophesy that the political power of the nobility and gentry would be lost, and *The Case of the Protestants in England under a Popish Prince* (1681) paints a particularly dismal picture: heresy was treason in Catholic eyes,

so that all the lords and commons in England would be by law (while they are Protestants) debarred from having any place in Parliament, and all the Freeholders from choosing any; and that by a law paramount to any Civil Law, or national constitution: and this alone would be enough to ruin and enslave those, or any people whose liberty depends on Parliaments.

<sup>17</sup> H.M.C. *House of Lords MSS.* 1678-88, 195.

Protestants would lose their estates, property and rank, it goes on: 'Our nobles are sentenced to be peasants, and our peasants to be no better than slaves.' Such a warning was very common: *An Address to the Honourable City of London* (1681) declared that popery brings tyranny and poverty, and when government by Parliaments was replaced by government by the sword, the nobility and gentry 'would soon be resolved into the body of the commonalty'.

There was a more subtle threat to the gentry than this, introduced in pamphlets probably for the first time by the ingenious Ferguson, in the *Appeal from the Country to the City*: a re-conversion of England would be accompanied by a restitution of monastic and abbey lands confiscated at the Reformation, for, by the laws of Rome, no Church lands could be alienated,

so that if any men, who have estates in abbey-lands, desire to beg their bread, and relinquish their habitation and fortunes to some old greasy bald-pated Abbot, monk or friar, then let them vote for a popish successor and popery; for when once that religion is established amongst us, these canons will come into play, and the Pope will then tell you, (whatsoever he may pretend at first) that his predecessor had no right to give away what belonged to the Church.

This idea took root immediately: the Duke himself, in a speech he made in the City,<sup>18</sup> gave his earnest assurance that his interest was to defend and protect property, and Tory pamphleteers did their best to confirm the safety of present landowners, but still the Whigs made enormous capital out of the suggestion. If freeholders elect Papists to Parliament they will soon no longer be freeholders, once a Papist Prince gets hold of their lands, warned one writer, and another held that 'The surest champions of our religion against the Papacy are our abbey-landed men, for notwithstanding the registered dispensation to Henry VIII from the Pope, for the seizing of those monasteries and lands, yet of late they pretend that the Pope had not power to alien them from the Church'.<sup>19</sup> The Tory Colonel Legge, afterwards Earl of Dartmouth, referred in the House of Commons to this fear, as did several others: he declared he would stand by the Duke in spite of the fact that he owned Church lands, and therefore had as much reason to apprehend popery coming in as other men;<sup>20</sup> this was eloquent testimony to the force of such propaganda. Roger North, in fact, maintained that the factious country gentry were motivated by 'interest', and supported the Whig party mainly because they had been persuaded their estates were in danger.<sup>21</sup>

Lastly, there was one more popular notion entertained by the Whig writers which deserves mention before we pass on to their more fundamental arguments. This was the accusation that many of the Anglican clergy were Papists

<sup>18</sup> At the Merchant Taylors' Hall, Oct. 1679. Newsletter, H.M.C. *Le Fleming MSS.*, 163.

<sup>19</sup> *A Seasonable Memento for All that have Voices in the Choice of a Parliament* (1681), and *An Address to the Honourable City of London* (1681).

<sup>20</sup> A. Grey, *Debates [of the House of Commons]* (London, 1763), VII, 446-59.

<sup>21</sup> Roger North, *Lives of the Norths* (London, 1890), III, 160.

in disguise, or at least inclining that way, waiting for James's accession in the hope that they might become Catholic bishops. These were the 'Tantivies', who came under fire from the less serious of the Whig pamphleteers, in an attempt to discredit Tory Anglicanism; in fact it was a subject more for the cartoonist than the pamphleteer, and the British Museum has many of those panoramic views of chaos, such as the broadsheet entitled *A Prospect of a Popish Successor*, which depicts 'Tantivy' parsons and bishops riding astride a Church roof, invoking the Church of Rome, while below, 'True Protestants' are being ejected from the door by a 'Church Papist'. This was, of course, only the beginning of the Whigs' hatred and scorn for the High Churchmen: it was part of the Exclusion Campaign, but not peculiar to it, and unlike the fear for Church lands, a great deal more was heard of it in the next reign.

These were some of the more immediate and superficial arguments against James; by their side appeared the more fundamental ideas of the Exclusionists, and in these may be seen how they reconciled their proposal to exclude the lawful heir, with their avowed acceptance of the monarchy and 'ancient constitution', and it is here, in the theory of Exclusion, that pamphlets prove to be the fullest and most valuable source of information.

First of all, they set great store by the fact that some previous heirs had been excluded by King and Parliament, and some kings had even been deposed by Parliament: it appeared that hereditary right could easily be set aside in an emergency, and even the King could be removed from office in certain circumstances, and another elevated to his place. They coupled this belief with the sanguine hope that an illegitimate member of the royal family would be a perfectly suitable choice to substitute as heir, and in forwarding the claims of their own champion, the Duke of Monmouth, they produced scores of precedents, culled from very dusty pages of history, to show that a legitimate heir had often been replaced by an illegitimate one. Lord Keeper North was made well aware of the Whigs' fondness for historical research when he too investigated parliamentary history:

He found that the factious lawyers, and particularly Mr. Paul Foley, were very busy in ferreting the musty old repositories, with design to produce in Parliament what they thought fit, to the prejudice of the Crown and its just prerogatives. And they accordingly did so; for they conferred with the bellwethers of the party in the House of Commons, and frequently alleged passages in the records of Parliament and certain exotic cases, extracted chiefly from those in irregular times, when the Crown had been distressed or imposed upon; and done not only partially but untruly, and always defective. By which means they sustained their anti-monarchic insinuations and pamphlets. The other party were not so well able to deal with them at these weapons, because they were not so industrious.<sup>22</sup>

Certainly, historical accuracy was not required, and there has probably never been a time when English history was so twisted to suit a purpose: according

<sup>22</sup> *Ibid.* 1, 354-5.



to the Whig versions, the English throne had seldom been sat on by an eldest son succeeding his father, and lamentably few of those who did sit on it could claim an honourable birth. Nor did the investigators confine themselves to English history, for they sought precedents in Ancient and Biblical history as well: Samuel Johnson's *Julian the Apostate* met with great success in 1682, telling of the rightful opposition of the early Christians to the succession of the apostate Emperor Julian; while a very popular example of Exclusion in more recent times was found in the case of Henry IV of France, who was denied the succession until he turned Catholic: 'Let those assertors of Divine Right tell me, if in France, at this day the most absolute monarchy in Europe, and where the succession is held most sacred, a Protestant Prince would be admitted to the Crown?' challenged the author of *Reasons for His Majesty's Passing the Bill of Exclusion* (1681). But most writers concentrated on English history, and were not averse to going back as far as Alfred for their material: there was an 'Old English' constitution which allowed that an unsuitable heir might be excluded, and this constitution was still the real agreement by which the king ruled: hence the Whigs' insistence that the Norman Conquest had not been a conquest imposing a new hereditary monarchy on the people, but William had only been allowed to succeed on his acceptance of the usual conditions imposed by them. John Somers' *Brief History of the Succession* (1681) was a most elaborate list of precedents for Exclusion which won him fame early in his career, and it is probably the best of pamphlets on this subject. It had always been agreed, he wrote, that Parliament could limit, restrain and qualify the succession, and according to him, the succession of bastards was quite a common thing in English history; but even Somers is not so outspoken as Algernon Sidney, who in his *Discourses*, written in 1680-1, but then unpublished, always outstripped the most radical of his Whig colleagues, and wrote that no king could claim the throne merely by hereditary right: this right could come only from the original consent of the people, and kings were in fact elected by them. He cited many heirs whose claims had been rejected, others being elected in their place, many of them illegitimate: William I was a bastard, so was Richard, and John, and so were many more recent kings. All these precedents were repeated endlessly in pamphlets, and it is clear that they had more than a merely academic appeal: the value of precedent was rated very high, and it was in vain that the Tory pamphleteer pleaded that 'no precedent can alter the nature of an unjust action, or make it allowable now, because contrary to right it was done some hundred years ago'.<sup>23</sup> The chief precedent on which the Whigs relied was not, however, made in some dim and remote age, but in the reign of Elizabeth, already looked on as the most glorious reign in English history. The Treasons Act of 1571, designed to exclude possible Catholic successors, and the Act of 1585

<sup>23</sup> *An Answer to A Character of a Popish Successor* (London, 1681).

legalizing an 'Association' set up to protect the Queen's life from the assaults of claimants, were constantly invoked by the Whigs. They wished to take similar precautions; thus they said that their own Exclusion Bill and the proposed 'Protestant Association' had been firmly established as constitutional in Elizabeth's reign. The former of these Acts, 13 Elizabeth cap. I, was 'the Palladium of the Excluders', said the Tory author of *Jovian, An Answer to Julian the Apostate* (1683), and it was certainly useful to them in virtually declaring it High Treason to say that an Act of Parliament was not of sufficient force and validity to limit and bind the inheritance of the Crown.

It was, of course, one of the chief concerns of the Whigs to prove that Acts of Parliament were indeed capable of altering the succession, and they not only pointed to Acts regulating the succession in the time of Henry VIII or Elizabeth, they also maintained that the powers of Parliament in such matters were unlimited: Parliament represented the whole nation, it was the voice of the people, and it could therefore decide who should be king. Although they admitted that an Act of Parliament required the sovereign's consent as well as that of the two Houses, they held that the people, through Parliament, had this fundamental right which the present King could not ignore.

Such a claim was based on the high authority Parliament derived from its antiquity and its supposed origins in the very remote past. The popular historian for the Whigs was William Petyt, whose pamphlet on *The Ancient Rights of the Commons of England* (1680) provoked angry Tory replies to the effect that Parliament's rights were comparatively recently established; indeed, the controversy reveals a significant aspect of Whig thinking, for they claimed that Parliament was as old as any part of the constitution: it was not created by kings, and was therefore not subject to them.<sup>24</sup> Much of this sprang from their reading of the great pioneer in the field of Parliamentary claims, Sir Edward Coke, to whom an indignant Tory referred as 'their darling'.<sup>25</sup> The further back they took the origin of Parliament, the more they stressed that Parliament was the embodiment of the whole English people, and was therefore endowed with special powers. Furthermore, when it came to preserving the nation from ruin, it is clear that most Whigs thought that the King could not oppose the will of Parliament, because it was inconceivable that the King could deny something that was desired by the whole people. Members of Parliament in 1680 and 1681 claimed that they spoke for the people of England in voting for Exclusion, implying that their plea was irresistible: to them Parliament and people were one and the same. The Tory answer was first to point out that Parliament derived its authority solely from the King, and secondly, to explode the myth of 'the people in Parliament' by

<sup>24</sup> See J. G. A. Pocock, 'Robert Brady, 1627-1700. A Cambridge Historian of the Restoration', *C.H.J.* x, no. 2 (1951), for a survey of Whig and Tory versions of history on this question.

<sup>25</sup> *A Short Way to a Lasting Settlement* (1683).

a few practical observations. It was impossible, they replied, to know the will of the people for certain, for Parliament was not the representative of them all: literally speaking, the Members did not represent the people at all, this was a 'fiction of law', most suitable in passing legislative acts, but it could not hold if Parliament sought to overthrow the government; the King would never summon Parliament to destroy the monarchy, but only to aid it. Thus Parliament had no such high-flown authority: the Commons in fact, represented only one-sixth of the nation—a common Tory estimate—and even then the distribution was recognized as very unfair; London returned only four Members, 'when an old borough with a shepherd and a dog sends half as many'.<sup>26</sup> The Whigs were equally aware of the anomalies in the electoral system, and talked of them at all other times but this, preferring instead to let fiction pass for reality: Parliament was the people, and *vox populi vox dei*.

To the Whigs, in fact, Parliament was infallible: it could do no wrong; and here they came nearest to the vague seventeenth-century idea of a supreme power in the state. It is hard to reach a definition of sovereignty as it was understood at this point in the seventeenth century, for it was mixed with the theory of 'Natural Law' inspired by Grotius and others, and where Statute or Common Law proved obstructive, Natural Law tended to take precedence, as will be shown later. The Exclusionists, however, tried to adhere to purely legal arguments in this matter, and the demand for an Exclusion Bill forced the Whigs to acknowledge that there must be a supreme power, which was capable of altering the succession. This is clear in the Parliamentary debates: Secretary Jenkins said the Exclusion Bill was unlawful, but, Colonel Titus replied, 'can he prove it unlawful? Can King, Lords and Commons do an unlawful act? Must we not have a supreme power? To limit it to something is to say it is not supreme.'<sup>27</sup> Some similar assertions were made in Parliament, but this was unfamiliar language, and we do not find that many of the pamphleteers were so bold. Most of them were confused about where sovereignty lay, and took care to avoid the implication that King, Lords and Commons could actually abolish monarchy and set up another form of government; their specific claim was that the King in Parliament, as the highest authority in the land, could alter the succession for the sake of preserving the community. The institution of monarchy, it seemed, was to be left untouched, although the person of the monarch might be changed. An heir could be excluded, a king deposed, but there were very few references to what had already happened in one instance: Charles I had been executed and with him fell the monarchy. Might not the Whigs be encouraging a similar catastrophe by excluding James? Not according to the party, for they said the Bill raised no such issue; most Whig followers would probably have

<sup>26</sup> *Captain Thorogood: His Opinion of the Point of Succession* (London, 1679), and *Three Great Questions concerning the Succession* (1680).

<sup>27</sup> MS. transcript of speeches in Jan. 1681, British Museum, 816, m. 2 (2).

agreed with the eminently moderate friend of Locke, Sir James Tyrrell, whose refutation of Filmer, *Patriarcha Non Monarcha* (1681), is outstanding for its well-reasoned argument. He wrote to show that absolute power did not exist: the power wielded by a king was always conditional and could be taken away. The same applied to hereditary succession, yet at the time he insisted that he wrote 'in the defence of the government as it is established, and the just rights and liberties of all true Englishmen'. He appeared to regard the constitution as something fixed and ideal, which the divine right of kings threatened to uproot. Similarly, the Exclusion Bill was presented by the Whigs as a defensive measure, not to destroy the monarchy, but to preserve it: 'The King, Lords and Commons have a power to dispose of the succession as they shall judge most conducive to the safety, interest and happiness of the kingdom, and he is His Majesty's heir and successor, upon whom the whole legislative power shall think meet to settle the inheritance of the Crown.'<sup>28</sup> This, they continually averred, was quite in accordance with the custom of the constitution, and in no way altered the character of the monarchy.

No agreement was likely to be reached with the Tories on this point, because the two parties differed fundamentally on the character of the monarchy and its origins. The Whigs expounded at length their ideas of an original contract; indeed, the years 1688–90 are usually taken as those in which the contract theory made its real début, with Locke as its gentle and discreet chaperone, but 1679 or 1680 saw the emergence of a theory almost as complete as that which was acclaimed so widely at the Revolution. Locke's general theory of government has its counterpart in most exclusion pamphlets, and although his *Second Treatise of Government* was first published in 1690, the suggestion that he wrote it much earlier, during the Exclusion Contest, would certainly be supported by the marked similarities between his ideas and those of the Exclusionists current at the time.<sup>29</sup> The various writings of Sir Robert Filmer, supporting his thesis of divine kingship based on patriarchal authority, most of which were published by the Tories in 1679–80, provided the Whigs with a common target. He was attacked not only by writers of the calibre of Locke, Tyrrell and Sidney, but also by a surprisingly large number of exclusionist pamphleteers, nearly every one of whom felt bound to refute the patriarchal theory of monarchy and insist on the contract in its place. Far from agreeing that an unjust or tyrannical ruler was a judgment of God on the people, not to be resisted or disobeyed, they held that the ultimate purpose of government was for the safety and protection of the people, so that it was in accordance with the principles of 'natural justice and right reason' that any

<sup>28</sup> *An Impartial Account of the Nature and Tendency of the Late Addresses* (London, 1682–3).

<sup>29</sup> Mr P. Laslett has set out to prove that Locke wrote his *Second Treatise* in the years 1679–81: see his article, 'The English Revolution and Locke's Two Treatises of Government', *C.H.J.* XII, no. 1 (1956).

government which did not serve that end could be rejected. A Catholic heir certainly would not serve that end, so he could be rejected in advance.

Such a theory was, of course, familiar from the literature of the Civil War, and from continental writers such as Grotius and Pufendorf. These were quoted freely, along with the English Philip Hunton, Parker, Prynne and their fellows. The result was that most exclusionist writers presupposed an entirely secular and utilitarian view of monarchy, very similar to Locke's in his *Second Treatise*, though not so comprehensive, and in particular, without his account of the various circumstances in which the contract was broken and the government dissolved. But once the contract was postulated, there could be few variations of the Whig ideal: a contract was always implied by the very nature of government, they said, and although few contracts were apparent in recorded history, they must have existed once: 'they are not dreams, but real things', Sidney insisted in his *Discourses*, and a contract could be annulled or revised. Hence the idea was vital to the Exclusionists, and to quote from one pamphlet on this point is to quote from them all: according to *A Letter from a Gentleman in the City to One in the Country, Concerning the Bill for Disabling the Duke of York to Inherit the Imperial Crown* (1680) there was nothing in the Exclusion Bill which was not justified by the chief end of government, for no government was either designed by God or erected by men except for self-preservation. All human laws, whether concerning types of government or ways of succession, supposed an antecedent right in men to protect their lives and liberties—a proposition with which Locke would certainly have agreed. 'Therefore as all government is founded in trust and settled in such a person and limited to such a family, for the safety and advantage of the people as well as of the ruler, so there can be supposed no private agreements in reference to such and such links of succession, where the ruin of the people is unavoidable without a break in the chain.' Trimming the contract in this way was the remedy that appealed to most writers: it would be a lesser evil to remove one heir from the hereditary line than to ruin the monarchy by adhering to the Duke of York. Elkanah Settle, in *The Character of a Popish Successor*, put the question forcibly:

Can it be the duty of either Englishmen or Christians, to have that zeal for a corrupted leprous branch of royalty, that we must ruin both religion, government, and Majesty itself, to support him? How much more consistent would it be with the honest, prudent and lawful means of a nation's preservation, to take out one link of the whole chain of succession, than by preserving that, to break the whole to pieces?

Ferguson, if indeed he was the author of *A Just and Modest Vindication of the Last Two Parliaments* (1681), made the same point in warning that the nation should always be more careful to preserve the government inviolate than to favour personal claims to the throne.

The Tories were fully aware of the implications of this (to them) patently

hypocritical doctrine, and quickly made one of their most telling points against Exclusion: that the Bill would indeed alter the nature of monarchy, for in the scramble to find a new heir, the Crown would become elective. It was essential for them to dislodge the Whigs from their perch as 'defenders of the constitution', and this was done with some effect by these prophecies. The Exclusion Bill, they said, 'tends absolutely to the dissolution of the ancient hereditary monarchy, in that it puts it in a mere state of election: for the very act of excluding one heir imports the election of another'. Again, succession to the Crown was by Divine Right, and could not be barred by law, as in the case of a private person: it was from God, and the people never gave it, and so could not take it away. If Parliament may exclude one heir, then they may exclude all the line, depose the present lawful possessor, and so destroy the monarchy itself.<sup>30</sup> The Exclusionists, they believed, were not serious even in their championship of the Duke of Monmouth as a substitute for the Duke of York: their real aim was not an alternative king at all, but the rejection of all claimants and the institution of a republic. Hence the cries that the Whigs were all 'Commonwealth's men', descended politically from the Regicides, striving 'to make '81 outdo '48'; they were Fanatics and Levellers, who would 'cry all breeding down', and 'level each degree'.<sup>31</sup> Shaftesbury himself was widely accused of being a republican: Monmouth was regarded as being too weak to stand up to him: a mere puppet in his hands, to be discarded at will.

It is hardly necessary here to emphasize that the great weakness in the Exclusionists' case was their adherence to Monmouth; how could they expect the nation to accept an illegitimate son, and why did they not choose a more promising candidate? No good answer to either question can be found in their pamphlet literature, and the significant fact is that Monmouth's name was hardly mentioned at all. Many pamphlets, as we have seen, urged that it was not impossible for a bastard to succeed, and precedents were produced for it; but the *Appeal from the Country to the City* was practically the only one to recommend him by name as successor, and few ventured into print on Monmouth's behalf until such works as *Azariah and Hushai* appeared in 1682, being an answer to Dryden's *Absolom and Achitophel*. The attempt to prove that Monmouth was a legitimate son by means of evidence in the mysterious 'Black Box' was a feeble one: Ferguson strove hard with his notorious *Letter to a Person of Honour concerning the Black Box* (1680) and his *Letter to a Person of Honour concerning the King's Disavowing His Having Been Married to the Duke of Monmouth's Mother* (1680), but not many supporting

<sup>30</sup> See *Some Remarks upon a Late Piece called 'Julian the Apostate'* (1682), and *A Letter from a Gentleman of Quality in the Country to his Friend, upon His Being Chosen a Member to Serve in the Approaching Parliament* (London, 1679).

<sup>31</sup> See *The Wine Cooper's Delight* (London, 1681), and *The Power of Parliaments in the Case of Succession* (1681).

pamphlets are in evidence, and probably few Exclusionists took it seriously.<sup>32</sup> Monmouth remained their greatest problem, and there seemed to be no answer to the fear that Exclusion was 'a remedy worse than the disease', as a Tory put it. The whole Exclusion movement was against the Duke of York, and not for the Duke of Monmouth—a fact which can be seen in the two Exclusion Bills, where the choice of a substitute heir was left an open question, to be hotly debated. Indeed, the controversy over the wording of the Bills shows the stalemate which had already been reached: Parliament and the nation might conceivably accept the exclusion of the Duke of York, but never at the price of Monmouth's succeeding to the Crown.<sup>33</sup> Shaftesbury was clearly losing the support of the more moderate members of his party, who turned to favour the scheme of 'limitations' on James's prerogative when he succeeded, a scheme which Charles had been prompt to offer Parliament as soon as Exclusion was suggested.

This scheme grew more and more popular as the controversy progressed, and in 1680 and 1681 it was fast becoming accepted as the natural alternative to the extreme measure of Exclusion. But if the Whig pamphleteers were timid in advancing the claims of Monmouth, they had no hesitation in damning all schemes of limitations. Naturally they were quick to point out the practical difficulties of securing such limitations when James became King, and said that a Bill of Limitations depended on the fallacy that Acts of Parliament could necessarily bind for the future, and on the pious hope that James would abide by Parliament's decision. Shaftesbury, according to Sir William Temple, expressed such views in Council: limitations or 'expedients' would have no force once James succeeded; there could be no security against him when he gained possession of the Crown, as he would soon find a means of restoring his prerogatives.<sup>34</sup> A pamphlet purporting to be *A Speech from the House of Commons, on Reading the Bill against the Duke* (1679) referred to the scheme of limitations as an attempt to bind Samson with cords, and in reply to the argument that James would be dependent on Parliament for money, and so rendered harmless, the author pointed to the dangers of bribery and a packed Parliament. Elkanah Settle, in *The Character of a Popish Successor Complete* (1681), amusingly 'dished' the Tories with the comment that if Exclusion was against Divine Right, then so were limitations:

How came the proposition of making a popish successor but a nominal Prince, and settling the administration in Protestant hands? If that may be, then here's *Jus Divinum* quite laid aside: for Divine Right of birth entitles a Prince to the power as well as the name of a King, and if that right be sacred and inviolable, no one part of it more than another ought or can lawfully be alienated. But if the greatest part

<sup>32</sup> There is, however, one curious attempt to credit Monmouth with kingly healing powers: see *His Grace the Duke of Monmouth Honoured in his Progress in the West of England, in an Account of a Most Extraordinary Cure of the King's Evil* (London, 1680).

<sup>33</sup> See Grey, *Debates*, VII, 425–59.

<sup>34</sup> *Memoirs of Sir William Temple: Works* (London, 1770), II, 501–2.

of it be by the greatest authority allowed justly alienable by Act of Parliament, there's an end of all Divine Right, and a concession of the jurisdiction of Parliaments, insomuch that if they may legally take away the kernel, and leave only the husk of succession, by the same authority they may as well take away both; and a total Exclusion is no more repugnant to honour and conscience than an Exclusion in part.

Exclusion was presented as a measure more in keeping with the constitution than a Bill of Limitations, and the Whigs found themselves here in the happy position of defending the Crown's true prerogatives. It was a seemingly endless controversy, apparently insoluble, because, as Halifax observed, the Whigs said Acts of Parliament would secure nothing they did not like, and everything they did like: thus 'an Act for excluding the Duke is all-sufficient. An Act for limiting him is impossible. An Act of Exclusion will secure all. All other laws are but cobwebs, not to be relied upon.'<sup>35</sup>

The truth was that the Whigs realized Exclusion might well lead to civil war on the death of Charles, as the Tories prophesied, and they acknowledged that an Exclusion Bill would be insufficient unless a Bill of Association were passed as well. Exclusion did not appear safe or durable without the precaution of setting up a nation-wide military guard. Although much discussed in Parliament, the proposed Association received little encouragement from pamphlets: one or two sought to reassure the public by likening it to the Protestant Association of Elizabeth's reign, but that was all. The Tories, on the other hand, vilified it as 'the Covenant revived', under which sovereignty would devolve on the House of Commons, or on a standing army, which would make government more arbitrary than any sort possible under James. The Association, they prophesied, would try to enforce universal religious toleration, which in turn would lead to civil war and confusion, out of which Popery might well triumph.<sup>36</sup> The proposal for an Association, they said, was evidence that even the Whigs knew Exclusion would entail war. What about Scotland, they asked: the Exclusion Bill did not apply to the Kingdom of Scotland, and would not James set up there and wage war on England? It was inevitable that he would fight. The moment Exclusion was applied, wrote the author of *A Seasonable Address to Both Houses of Parliament concerning the Succession* (1681), James would be at liberty to recover his right by violence.

This suggests the last important question that exclusion pamphlets can help to decide: were the Whigs prepared to go to war for the sake of the Exclusion Bill? Clearly the majority of them were not willing to go to the length of carrying the actual Bill by force, otherwise they would have staged a rebellion when the Oxford Parliament was dissolved in March 1681, or they might have constrained Parliament to continue sitting. But, on the other hand, the Exclusionists up till that time had been loud in proclaiming that if

<sup>35</sup> *Observations upon a Late Libel* (1681), ed. H. Macdonald (Cambridge, 1940). His attribution of authorship to Halifax is reasonable.

<sup>36</sup> *A Plea for Succession, in Opposition to Popular Exclusion* (London, 1682).



a Popish successor did reach the throne, rebellion would be the natural and justifiable outcome. In theory, they had not the slightest hesitation in advocating civil war as a last resort. The right of the people to resist unlawful acts by the government had been a popular theme in the days of the Civil War, but since that time little had been heard of it, until the Exclusionists began threatening to meet the introduction of Popery with violence. Like Locke, they held that a subject could defend his life, liberty, religion and property against unlawful incursions, and this right forms an integral part of the Exclusionists' doctrine; so much so that their propaganda would have served equally well in 1688, and if there is a break in tradition between the Whig party of Charles's reign and that of William's, as some historians claim, then it is very hard to see in their pamphlet literature. The Exclusionists justified resistance on very similar grounds to those used by the apologists of the Revolution, for 'reason' was the basis of their argument in both cases, although in the Exclusion Campaign they still preferred to talk of the 'Laws of Nature' or even the 'Laws of God', as the touchstone by which the limits of political obedience could be judged. Since government was set up to serve a purpose, reason dictated that it could be resisted if it did otherwise: there was a natural instinct in the people for self-preservation, the Whigs declared; loyalty was owed to the King 'so long as he lives and intends the public good, but when he declines from that, query, for then I am bound patiently to let him cut my throat if he will, which is repugnant to the Law of Nature, which commands my preservation'. Thus it was affirmed in *The Case of Succession to the Crown of England Stated* (1679), and to many, tired of the extravagances of the Courtiers, this must have seemed the voice of common sense. Every possible attempt was made to prophesy a righteous war if James was allowed to succeed: a popish successor was even given the title of invader in order to justify resistance to him: Elkanah Settle, in his *Character of a Popish Successor*, made out that James's accession would mean a new monarchy set up by arbitrary means, and 'If a new monarchy, then a new conquest; and if a conquest, Heaven forbid we should be subdued like less than Englishmen, or be debarred the common right of all nations, which is, to resist and repel an invader if we can.' An even more illuminating passage in the *Just and Modest Vindication of the Proceedings of the Last Two Parliaments* (1681) makes it clear that war could be expected, and the Whigs wished to exonerate themselves from the charge of being 'rebels' when it came. The Exclusion Bill would do this: the Bill itself would not make a war, as the King's *Declaration* said it would, but 'if there must be a war, let it be under the authority of law: let it be against a banished, excluded Pretender'. The same idea was expressed in Parliament, when a Bill of Association was proposed, and Sir Francis Winnington wanted to add a clause, 'that any man may take arms against a Popish successor'.<sup>37</sup>

<sup>37</sup> Grey, *Debates*, VIII, 167.

In the Whig view of kingship this was no new or revolutionary idea; and the right to resist was regarded as a natural corollary of the contract theory: kings had always been limited in this way, and would be so in the future. But of course the Tories were horrified to see the re-emergence of such a doctrine, and realized that 'lawful resistance' to a Popish successor could also mean 'lawful deposition' of a king; in *The Fugitive Statesman* (1683) one of the last attacks on Shaftesbury, it was claimed that the Whigs were then spreading the rumour that the present government was going to introduce Popery, and that they were asserting that

in case of such a change and innovation, it was lawful for the people to oppose and divert by main force of arms all paces and efforts that tended thereunto; and if by any circumstances it should be surmised, that the government persevered in such a design or resolution, that then it was lawful for the people to depose and kill such a Prince, and alter the government be it what it will.

Yet, in reality, how far the Whigs were from implementing their own theory of resistance! With the dissolution of the Oxford Parliament the Exclusionist party broke up, and all political activity was left either to Shaftesbury's supporters in the City of London, or to the extremist plotters against the King's life. The majority of them had been put to rout by Charles's sudden *coup* at Oxford, bringing with it its own reward of the 'Tory Reaction' for the last years of his reign, and after the flight and death of Shaftesbury, the factious printing presses were silent; hardly a single exclusionist pamphlet appeared, and it is significant that even in those pamphlets vindicating Shaftesbury's career, his attempt to pass the Exclusion Bill receives barely a mention.<sup>38</sup> When the time arrived for barring James's way when Charles died, no attempt was made to do it, and the enemy of the people and the Protestant religion was accepted with fortitude and the usual optimism.

Why did the Whigs not suit actions to their words? The conclusion is surely that, for the majority of the party, their bolt had been shot when they failed to obtain a Parliamentary Exclusion: they had no desire to foment civil war, and they were not enemies to the traditional form of monarchy as they conceived it; thus they left the plotters to their own devices, they remained silent at James's accession, and when Monmouth finally presented himself as a rival king, notably few former Exclusionists went to his aid in the west. This conclusion is borne out by the general party doctrine presented in exclusion pamphlets: while the attack against James knew no bounds in its violence and exaggeration, the attack on the monarchy was in fact presented as a defence of it: the Tories were made out to be the innovators, with their theories of

<sup>38</sup> The pamphlets published during Shaftesbury's trial or at his death make fascinating reading, and deserve some space in any future biography of the Earl; the only reference I have found to Exclusion is in *Rawleigh Redivivus* (London, 1683). It mentions the second Exclusion Bill, and modestly describes Shaftesbury as 'one of those lords who voted for it in the House of Lords'.

Divine Right. The Whigs were defending a constitution based on reason and utility, which they thought was the traditional one: their insistence on precedents and the legality of the proposed Exclusion indicates this, and, if some of them dreamed of a republic, there are few hints of it in their literature. Their ideas of government, tempered though they were in the fierce heat of the Exclusion Contest, became the norm for the Whig party of the future, and the Whig apologists of the Revolution found that they could add little.