LORD CHIEF JUSTICE
OF ENGLAND AND WALES

AUTHORISED VERSION OF THE BIBLE

WESTMINSTER ABBEY

5 OCTOBER 2011

CHECK AGAINST DELIVERY

This is a wonderful anniversary. It is 400 years since the publication of the Authorised Version of the Bible. And before I come to address the ferment of legal and constitutional issues which were being played out here, in the heart of Westminster, contemporaneously with the preparation of the AV not only at Oxford and Cambridge, but here in the Jerusalem Chamber, perhaps I may be allowed to repeat a point that I have made before, and to do so at the beginning of the first of these lectures.

The men involved in the task of translating the Bible believed that they were translating the Word of God into English. The precise meaning of every word mattered. Without precision, as T.S. Eliot tells us the words would decay, slip, slide, and perish. For the Word of God that simply could not be. Precision of language always matters in any legal contract. But this was infinitely more important than that. It was about the immortal soul, and the destiny of the immortal soul. Ever since 1517, when Martin Luther had pinned his 95 theses to the door of the church at Wittenburg Castle, men and women had died horrible, agonising deaths because of endless disputes about whether in his letter to the Romans St Paul was saying that salvation could be achieved through faith, or through faith alone, exclusively through faith. But if faith alone, where stood "charity", the greatest of the great trilogy, faith, hope and charity? And if we were pre-destined, and the destiny of our immortal souls was already

fixed, did we have free will? In the discussion at Hampton Court on this very subject, it is recorded that the King himself wished that this doctrine should be handled "tenderly". And how many deaths followed the doctrinal dispute whether what happened in the sacrifice at the altar was consubstantiation or transubstantiation? Christendom is divided on this question to this day. Was it necessary for a priest or bishop or the Pope to intervene in any respect in the relationship between each immortal soul and his or her God? Men and women endured martyrdom over questions like these, not just here in London, but all over Christian Europe. To find the answers they sought inspiration from the Bible, the word of God. No wonder the precise meaning of each word in the Bible mattered. And if I may say so, and this is not my subject, so I say so with humility, unless we understand the religious context of the Authorised Version we have missed the real point that mattered to those who produced it. And no wonder it took seven years to produce.

At just the time when Lancelot Andrewes and his team were at work striving to make the Bible "shine as gold more brightly, being rubbed and polished", side by side, simultaneously, with this mammoth task another struggle was in the making. The results on our legal and constitutional affairs are with us to this day, and they have crossed the seas to continents which were then unexplored or undiscovered.

Between 1604 and 1611, and the years which followed, although this was not the sort of language used in those days, our constitutional arrangements were examined, discussed, argued, and eventually fought over. They culminated in the public trial of the King. We always think of Charles I and his dignity on that cold January day in 1649. Our image of him is cloaked in the story of his death, and the dignity with which he met it. We should not be grudging in our respect and admiration. At his trial the King argued that the court had no jurisdiction to try him. Legally, the point was seriously arguable. What was the lawful authority which permitted the anointed king to be put on trial? The answer was that the Commons of England assembled in Parliament had "constituted this court". Whatever the

inaccuracies in this assertion, it encapsulated the issue that had divided the country for nearly half a century. After the King was convicted and sentenced, in his sentencing remarks (as we now call them) Bradshaw, the President, told him that at "one blow you had confounded the liberties and the property of England". So the King was executed and some 40 years or so later, in 1688, his son James II, was, in effect, removed from the throne.

None of this was even in remote contemplation when Elizabeth I died in 1603, after a reign of 44 years. She was a lonely, companionless old woman. Her glory had gone and her achievements had faded in the public memory. The preparation of the defences against a succession of Armadas (the Armada of 1588 is the only one which we remember now) together with an unsuccessful campaign in Ireland and some shocking harvests had left the country impoverished. Her great speech at Tilbury was for the ages. But the speech illustrates something of her ability to understand, and to convey to her subjects that she understood their concerns. It is, I point out, also a remarkable piece of advocacy. We all know it, or some of it. But I cannot resist a quotation. Consider the beginning:

> "My loving people, we have been persuaded by some that are careful about our safety, to take heed how we commit ourselves to armed multitudes..."

Notice here, the royal, "we", and "ourselves". This was an anointed monarch speaking to her subjects. The speech could have gone on in this same way, conveying the same message, but if it had it would have lacked the inspirational quality which arose when she personalised her leadership.

> "...and therefore I am come amongst you, as you see, at this time, not for my recreation and disport, but being resolved, in the midst and heat of the battle, to live or die amongst you all, to lay down for my God, and for my kingdom, and for my people, my honour and my blood, even in the dust".

This is sublime advocacy. The "We" had become "I", and "Our" had become "My". Notice how her use of "I" was a message of inclusivety, universality. In effect, they were all in it together. In this moment of national emergency, she was both the crowned Queen and a

flesh and blood human being, like all her subjects, with a weak and feeble body, but the stomach of a king. I cannot help allowing myself to imagine that her shadow was hovering above Winston Churchill when he inspired the nation in the dark days of 1940.

This knack, this instinctive grasp of the politically possible, never deserted her, even when her Parliaments became difficult, as they did, even when she imprisoned members for discussing the succession, or the role, if any, to be played by Bishops. She agreed to "liberal but not licentious speech, liberty, but with due limitation". Nowadays we would deride the concept of any limitations, but in 16th century Europe this was an astonishing concession to be made by any monarch. This was the century of Thomas Hobbes. The Cortez in Spain and the Parlement in France were fast withering away. Parliament was, she said, "the body of the realm". And when after a heated debate in 1593 a subsidy was voted, she addressed the Commons personally saying:

> "The subsidy you give me I accept thankfully, if you give me your goodwill with it... if the necessity of the time of your preservations did not require it, I would refuse it".

It was now 1603. All that had gone. James I came to the throne of England, and he was greeted with jubilation. It is unfair to say that he was all things to all men, but all men believed that the arrival of the new King would give them something. Yet he had already written his Trew Law of Free Monarchies. His opinion was unequivocal. Kings were "the authors and makers of the Laws, and not the Laws of the Kings". There were Kings before there was law. The King was created by God "to sit on his throne and rule over other men". Subjects must never rebel, and even when oppressed by Nero should endure "without resistance, but by sobs and tears to God".

Obviously this was a very different king to Elizabeth, with a very different approach to the role of the monarch. Although he had declared his position, everyone was thrilled, everyone. Perhaps they did not understand what he had written, or appreciate how deeply he believed it. Perhaps however the very fact of a safe and peaceful succession, had relieved the

uncertainty in the mind of virtually everyone who was not involved in the careful preparation for the succession, and clouded judgment. And no one was later to remind the King that his Divine Right to rule meant that God had vested the arrangements for the succession to the throne of England in the hands of a somewhat surprising agent of the heavens, Robert Cecil.

The new king was generous. Immensely generous. It did not occur to anyone that he was generous with what nowadays would be described as the national assets. He spent money he did not have. Perhaps things do not change very much. And just as today, with a change of government, he was allowed a honeymoon period. The previous regime was gone. The new regime was exciting and vibrant. For example, the new king created an endless stream of knights, so much so that it began to be said that it was better to be a gentleman than a knight because knights had become so common. Francis Bacon, who was happy enough to accept his knighthood at a mass investiture of some 300, recorded that the title of knighthood was "almost prostituted". In the first year alone, 1000 knights were created, more knights than Elizabeth had created in her entire 44 year reign. And later James I created a new title of Baronet. This was not a mark of distinction or honour. All that was needed to be granted the hereditary title was the simple ability to afford to pay.

In all this glamour and excitement, there was one incident, which astounded even those observing events in the honeymoon period. On his way to London, at Newark, James I ordered that a thief should be hanged, without any trial or any hearing. John Harrington, one of Elizabeth's many godsons, and the man who had the distinction of inventing the water closet system, - he was a surprisingly handy man - made this well known observation:

> "I hear our new King hath hanged one man before he was tried; 'tis strangely done: now if the wind bloweth thus, why may not a man be tried before he hath offended?"

It is immensely pleasing to me, and I hope to you, that coming down the centuries to us, such a question was being raised in this country over 400 years ago. How can a man be sentenced

without trial? The idea was preposterous. If the incident had happened after the honeymoon was over it would have been more widely condemned.

And so to the great conference at Hampton Court. In the course of the discussions the King learned what puritans thought of his responsibilities as the Supreme Governor in Causes Ecclesiastical.

> "If you aim at a Scotch Presbytery, it agreeth as well with Monarchy as God with the Devil. Then Jack and Tom and Will and Dick shall meet and sensor me and my Council...I know what would become of my Supremacy, for no bishop, no King".

As Adam Nicholson, explains in his wonderful, readable, The Power and the Glory:

> "The beauty of the Church of England, with its full panoply of bishops and archbishops, was its explicit acceptance of the King at its head...but a king without bishops, subject to a presbytery, was always in danger of being removed."

During the discussions an issue was raised whether the cross should be present in baptisms. This was followed by the further question, "how far the ordinance of the church bindeth, without impeaching Christian liberty?".

The response of the monarch to the suggestion that every man is to be left to his own liberty was stark:

> "I will have none of that. I will have one doctrine, one discipline, one religion, in substance and in ceremony".

In other words, in accordance with the Peace of Augsburg, some 50 years earlier,

> "cujus regio, ejus religio", which meant that the man who ruled the country could dictate its religion to his subjects – or as the French expressed it:

> "un roi, une loi, une foi".

And so to his first Parliament of 1604. James I declared that a righteous king was ordained for his people, and not his people for him. But he was given a very simple message, and he never took notice of it. The Commons refused to rubber stamp his argument that now the two Kings of Scotland and England were united, that he was Emperor of Britain, and then that he should adopt the title of King of Great Britain by proclamation. In essence the argument was simple. On one view, allegiance to the king was a personal matter between the subject and his monarch. The contrary view, maintained in the Commons, was that allegiance was owed not to the person of the individual king, but to the Crown and the law. Probably with Robert Cecil's advice, the King did not pursue the point further at that stage. He did later succeed in the course of Calvin's Case. When the court was persuaded that a man born in Scotland after his accession was a natural subject of the king, and thus could hold land in England of which James was the king.

The Divines went off to produce the Authorised Version, and then came the Gunpowder Plot, which demonstrated once and for all to the public mind that two religions could not live together. Of course the Plot represented a direct physical risk both to the King and to the members of both Houses, and for a while perhaps the fact that they had all been subject to the same risks obscured the potential for difficulty between them.

In 1606, Sir Edward Coke was appointed Chief Justice of the Common Pleas. It is worth emphasising that he had, among many different aspects to his life, been a Commons man, and indeed its Speaker. The motto displayed on his rings was significant. "Lex est tutissima cassis", that is, the law is the safest shield. Contrast this with James himself writing shortly afterwards in 1607 that "before any parliaments were...or laws made", there were Kings. He was very rude about Parliament. Parliaments were a trial laid on by the Almighty as plagues were laid on by Pharaohs. He did not need to be rude about judges. Judges only held office for as long as they behaved themselves, that is, for as long as the King thought

they were behaving themselves. In his judgment in Calvin's Case, his Lord Chancellor asserted that "lex est rex loquens", the law is the King speaking. In the dispute in the Privy Council between the judges and the bishops, the Archbishop of Canterbury, Bancroft asserted that "judges are but delegates under the King". There is not much room in this analysis for an independent judiciary.

Edward Coke however, consistent with the motto on his rings, asserted that "the King is under God and the law" and that the "the common law hath admeasured the King's prerogative". In their different ways these observations encapsulated the burning issue. Was the King above the law, or subject to it? James himself had no doubt. In 1609 he told Parliament that the Monarchy "is the supremest thing upon earth". No room there for the supremacy of the law. Even God himself spoke of Kings as Gods. Throughout the declamation he described the laws as "my" laws, adding that "never King was in all his time more careful to have laws duly observed...than I". I asked you to notice the way Elizabeth had personalised herself. So did James. But in his "I" his claim was not all embracing, all encompassing: this was divisiveness, separation. And he asserted a claim that, just like God, Kings had power to "judge all, and to be judged or accountable to none". Again, no doubt about that message.

Elizabeth would have appreciated how tactless and confrontational, and ultimately provocative, such sermonising from the royal throne in Parliament would have been. In her entire reign she had never sat in judgment nor claimed the right to do so. If she had done so, one wonders whether it would have been questioned. But to acquiesce in the idea that the King could sit as a judge in accordance with his claim, allowed legitimacy for his further observation that he was accountable to no one. The honeymoon was over. In the Commons His Majesty's loving subjects perceived that their common and ancient right and liberty had much declined and been infringed "in these late years...". This was not a trumpet sounding a charge to battle: it was not the full Verdi. That lay ahead with the Petition of Right in 1628,

one of the great constitutional documents of our so-called unwritten constitution. Rather it was a delicate tune written perhaps by Haydn, utterly compelling to those with ears to hear. James was not listening.

So, with Lancelot Andrewes and his team were beavering away, an immensely serious issue arise between the common law courts and Ecclesiastical High Commission. The Commission represented long established principles that the Church should govern in matters spiritual and clerical. In one sense the problems were encapsulated in the name. The Commission was now calling itself the Court of High Commission. The question was whether it was a Court at all. And although the issues were extremely complex, and this brief summary cannot do justice to the refinements of the arguments, what brought the dispute to a head was that personal inquiries about troublesome areas of conscience in question of religion were no longer being directed at Catholics (who by virtue of any loyalty to the Pope were regarded as potential traitors in any event – the word Papist, was not intended as a compliment) - but to Protestants and Non-Conformists, whose loyalty to the King was not diminished by possible loyalty to any external authority. The Court asserted that it was entitled to examine Non-Conformists on their oath about their beliefs. Parliament challenged this jurisdiction, and the Court of Common Pleas asserted that a man should not be examined on his private beliefs. We take that principle for granted now, but this was a new declaration. What is more, it added that the Ecclesiastical Court, if it was a court at all, was not entitled to exercise any jurisdiction in lay as opposed to ecclesiastical matters. And so, when the Court of High Commission exercised what it believed was its jurisdiction in circumstances which Common Pleas regarded as an improper exercise, orders of prohibition were issued. In our secular age, it is difficult to comprehend the importance of these questions. If this dispute happened in the modern age, can you imagine the collection of reporters who would be standing outside the Royal Courts of Justice or for that matter the Supreme Court just over the road.

The situation was complicated in the public eye at any rate, when a barrister, Nick Fuller, appearing on behalf of Puritans who were trying to avoid fines for not conforming asserted in his submissions that bishops were "popish" – an allegation which was close to treasonous, and one which would have had Lancelot Andrewes surging forward out of the Abbey straight into Westminster Hall in a volcanic explosion. Fuller went on that Bishops were under the jurisdiction of "anti-Christ" and that they embezzled the fines paid by Non-Conformists. So the Court locked him up for contempt. Isn't it strange how counsel then, as now, did not always appreciate that there occasions when the rapier is a much more powerful weapon that the bludgeon?

Common Peas issued a prohibition on the basis that the barrister's conduct in any court was a lay matter, to be tried at common law. Bancroft asserted the contrary. Fuller was convicted in the Ecclesiastical Court and imprisoned. The case was discussed in Parliament. The Commons took Fuller's side. The Ecclesiastical Court did not have the power to imprison. This was seen by James as an attack on his Supremacy over the Church. In essence, if the authority of the Ecclesiastical Court was criticised, then by implication at any rate the King as head of the Church was also being criticised. More important, his supremacy was being criticised. And this had what we would call political implications. If there was no equivocation about the king's supremacy in matters of religion, his supremacy on secular matters would follow ineluctably.

We must leave Nick Fuller. The upshot of the widespread use in the common law courts, to curb the powers of the Ecclesiastical Court, and the response of the Commons, of prohibitions led to a meeting of the Privy Council to which the judges and bishops were summoned. The King sat to decide the argument. What on earth was he doing? It was not merely that Elizabeth had never sat is judgment, a great fifteenth century Chief Justice, Fortescue, declared in his praise of the Laws of England that it was not "customary for the Kings of England to sit in court or pronounce judgment themselves". Judges against

bishops. The mind boggles. But the real issue was the position of the head of the Church of England. The meeting was tumultuous. The judges made a simple point. Ecclesiastical courts have jurisdiction over ecclesiastical but not temporal issues. When a temporal issue arose it must be transferred to the common law courts. The King interrupted. Patience was not one of his qualities, and he knew the answer any way. It was contended that judges were "but delegates of the King, and that the King may take what causes he shall please from the determination of the judges and may determine them himself". Unsurprisingly, Bancroft agreed. "This was clear in divinity that such authority belongs to the King by the word of God". Louis XIV himself could not have put the matter more clearly. Coke asserted that "the King in his own person cannot adjudge any case...(cases) ought to be determined and adjudged in some court of justice according to the law and custom of England".

It is difficult nowadays to appreciate the seriousness of the argument and what was at stake. The potential consequences for Coke when the King told the Chief Justice that he "spoke foolishly", - that was insult enough – but that he had made a "traitorous speech", were alarming. Coke was not yet beaten. He responded: "The Laws and Customs of England, protected His Majesty in safety and peace". The King was even more offended. If this was right it would mean that the King was "under the law – which it is treason to affirm." Coke replied with a quotation from Bracton, a medieval legal philosopher, who had written The Laws and Customs of England, that the King should not be under any man, but "sed sub Deo et Lege", under God and the laws. Contemporary records tell us that in his fury the King raised his fist and shook it at Coke. What a moment. There is some dispute whether Coke fell flat on his face, or to his knees. But at the very least he knelt down. The Tower beckoned. No one knew better than Coke how little evidence was required to prove treason. Or how a traitor was executed. For now the debate – as a debate - was over. Coke was not deprived of his office. That came later. So did his period of imprisonment in the Tower. What is remarkable is the courage involved in the issue on the following day of a new prohibition out of the common law courts against the Court of High Commission.

The Commons were concerned about another matter, the use of a royal proclamation, issued after the assassination of Henry IV of France in May 1610 which required every subject to take the Oath of Allegiance. Look at it from the King's point of view. The assassination of his fellow king was what we would now describe as a terrorist situation, demanding to be addressed urgently by the exercise of the widest possible powers. At such times, as we know to this day, the argument is attractive. But even the tyrannical Henry VIII had not asserted the right to rule by proclamation, at any rate without the express sanction of Parliament which was given in 1539 in the notorious Act of Proclamation. This Act was repealed on his death and has never been renewed, although the tendency to govern by proclamation has – or vesting powers in the government of the day to do so – has certainly come under consideration in our country in recent years. I discovered that during the parliamentary session up to 10 November 2009 "around 70 such powers" were contained within legislation. And between 10 November and the end of the parliamentary session 2008-2009, there were an additional 53 such clauses. Thus in one very recent parliamentary session there were over 120 Henry VIII clauses.

Let me return to 1610. The Commons presented an address to the King. The language was courteous but unequivocal. Different forms of proclamation were identified. For us, perhaps the most interesting complaints were directed against proclamations made shortly after the session of Parliament in relation to "matter directly rejected in the same session"; (it is obvious, is it not, that if the King could by proclamation in effect set aside the decision of Parliament, parliamentary government would be at an end). The address turned to other forms of proclamation "appointing punishment to be inflicted before lawful trial and conviction"...perhaps a reference to the mindset of a King who was prepared to hang the thief at Newark, and others complained of "...referring punishment of offenders to courts of arbitrary discretion..." James summoned the judges before him so that he could consult whether the power to issue such proclamations was not vested in him. This was the moment when judges were supposed to do their duty. James knew what the answer should be. So did

his Lord Chancellor. Without this power, James suggested that the king would be no better than the Duke of Venice. Coke asked for time for thought, expressing his preliminary view that without Parliament the King could not change any part of the common law or create any offence which had not been an offence before. After an adjournment the judges expressed the view that the King could not alter the law by proclamation. Such proclamations did not form part of the law of England. Then more boldly they added, "the King hath no prerogative but that which the law of the land allows him". This is mighty stuff, ladies and gentlemen. Judges supporting the Commons against the King. In other words the concerns expressed by the Commons were in the view of the judges entirely justified. Perhaps it was just as well that when this view was expressed, James himself was out hunting in the country.

There are perhaps two or three significant points to notice here. First, that the Commons and the judges led by Edward Coke were making common cause. The Commons was filled with lawyers, or those who had been trained in the Inns of Court. And the physical proximity of the Commons to the courts in Westminster Hall meant that there was ample time for gossip and discussion among them all. Coke in particular had been a Commons man. After he was deprived of office, he resumed his role as a Commons man. All the events I am describing happened in a very small tight geographical area, say a mile radius from where we are today. Imagine in those years, even before the telephone, the gossip, the chat, the way in which what we now describe as "public opinion" was being formed.

Second, Coke was extremely troubled, and together with the judges asked the king and Council that they should not constantly be summoned to express views about issues which might arise for decision in court. The point eventually struck home, but not before a different device was tried. After the Authorised Version was published, in 1615, poor old Mr Peacham was charged with treason when his house was broken in to and his papers searched, and a draft sermon – never preached – was found which suggested that there are

circumstances in which subject became entitled to resist his sovereign who sought to reduce his liberties. This did not look like a very strong case: unspoken words written on a piece of paper. So the papers were sent to Coke, in effect, to obtain an opinion from him in advance of the proceedings. It was reported that Coke using words "more vehement" than the writer dared to repeat, that this taking of judicial opinions one by one was "new and dangerous". And so it was. And so it would be to this day.

Third, on behalf of my judicial colleagues, perhaps I am allowed to say that when James tried his hand as a judge he summarised how difficult the exercise of our responsibilities can be. The problem was that you had to listen to both sides, a fairly elementary part of the judicial function. He said

> "I could get on very well hearing one side only, but when both sides have been heard, by my soul I know not which is right".

In the absence of the King, the Privy Council accepted that the King could not by proclamation create an offence which had not been an offence before the proclamation, and that his proclamations formed no part of the law of England. The King himself did not raise the point again. It was a victory of the greatest possible importance to our constitutional developments. Without it, our Parliament would have gone the way of the Cortez and the Parlement.

I must now come to a piece of litigation. In 1610 the famous decision in Bonham's case was reached. Bonham was a doctor. He practiced medicine without a certificate from the Royal College of Physicians. The college was entitled, by the Statute of Incorporation, to "regulate all London physicians and punish infractions with fine and imprisonment". So Bonham was arrested and put into prison. He brought an action for false imprisonment. It was all very simple. The College should win. But there was a problem. Half of any fine imposed by the College was paid to the College. Bonham won. The main reason for his victory was the

common law maxim, derived from Roman Law, which continues to this date, that no man should be a judge in his own cause. The College was both the party to the case, and the judge of it, and the beneficiary of any conviction and fine. That was unacceptable. The statute, which was regulatory only, was insufficient to bypass this essential principle. So far, so good. And that should have been the end of the case.

The historic interest of Bonham's case arose from an observation which was but a discarding comment by Coke that the common law was entitled to control an act of parliament if such an act was against "common right and reason, or repugnant, or impossible to be performed". For all the subsequent publicity, and importance attached to this comment, at the time it attracted no particular interest. It was a throw away line, obiter dictum, not relevant to the case, if you like a judicial whimsy, although judges should not indulge in whimsicalities Certainly Coke thought nothing of it, nor did his contemporaries, nor most important of all, did Parliament, and the observation was handed down in Westminster Hall adjacent to Parliament. Perhaps more important, Coke would never have imagined for one moment that Parliament was capable of passing an Act which was against common right and reason. From his point of view the concept was a contradiction in terms.

Nevertheless, not withstanding years of scorn poured on the observation by subsequent Chief Justices, the time for this obiter dictum was to come. Go forward 150 years to New England. The Stamp Act of 1765 was passed in Parliament. The Massachusetts Assembly declared that the Act was invalid because it was against Magna Carta and the natural rights of Englishmen, and therefore, according to Lord Coke null and void. John Adams, the second President, and one of the founding fathers of what we now call the United States of America, expressed himself determined to die of the opinion that acts of parliament could be null.

There is here a crucial point. In our constitutional arrangements, the sovereignty of Parliament remains the essential principle. It was through the parliamentary processes that our constitutional arrangements were discussed argued and eventually established. The absolutism of a monarch was curbed by the authority and power vested in Parliament. For the colonists their problem was Parliament itself. In the Stamp Act it was enacting legislation that took away the liberties which had been successfully established by Parliament in the previous century.

May I emphasise that Bonham's case was decided while the Authorised Version was being translated, and that while it was being translated, a year or two earlier in 1606, the charter for the new colony in Virginia was settled. It was effectively drafted by Edwin Sandys a barrister, and Commons man who, like Coke, and Eliot, and Valentine, and Holles, all Commons men to whom with many others we are indebted for our liberties, ended up in the Tower. But in 1618 he, in effect, wrote and was granted the "Great Charter for Virginia". And by this Charter the settlers and any of the children born in the new colony and plantations were to have "and enjoy all liberties, franchises and immunities to all intents and purposes as if they had been abiding and born within this our realm of England". The Charter provided guarantees of "self-government, freedom of speech, equality before the law, and trial by jury". These were all believed to be principles applicable in England, or at any rate, when Sandys declared them to be established, they were at least on the aspirational agenda. They were being transported across the Atlantic. The language of this Charter was later to be repeated, as colony after colony was established, from Maryland in 1632 all the way to Massachusetts Bay in 1691.

This is a moment of the greatest possible importance to the eventual widening of the common law world. When the colonists in the United States were arguing their case in 1776 for "no taxation without representation", they were simply echoing what they believed were the constitutional rights which had been established in the mother country. For what it is

worth, I believe that they were right. And that message was carried by young Thomas Wentworth, born in a convict ship on the way to Australia, the first man to describe himself as a native of Australia, who, from studying the way in which the colonies in the United States had established their independence, foresaw that one day the same common law principles would be established in Australia.

So Coke's dictum in Bonham's case was much more influential in the United States than it ever was in this jurisdiction. Its significance was not appreciated while the Authorised Version was being translated, and the Charter of Virginia hardly merited any attention when that new colony was settled. But the constitutional arrangements for the new United States after the War of Independence was won gave to the Supreme Court authority over the constitution which our House of Lords, now Supreme Court, does not have. In this jurisdiction the sovereignty of Parliament remains the essential principle. I have digressed, but only in this limited sense. I have sought to highlight the tiny judicial acorn discarded on to apparently stony ground while the Authorised Version was being translated from which a mighty oak was to grow.

Let me briefly return to 1611. The Authorised Version was produced. It was to have its own glorious history. Others in this series of lectures will speak of all that. But while the work was being done by Lancelot Andrewes and the team, issues of the greatest importance to what we now call constitutional matters were in full flow. It is perhaps worth emphasising because of the way in which history actually happened, that in 1611 the overwhelming majority of the Commons and the judges and the lawyers believed in the monarchy. One of the legal scholars, John Seldon, another man incarcerated in the Tower, made the simple point that "a King is a thing men have made for their own sakes, for quietness' sake". The wonderful pugnacious John Eliot, made of more heroic clay than Seldon, and who was to die in the Tower, was to say later if "false glasses did not stand between us and the King, our privileges and his prerogative might both have been enjoyed". As I have said before, James

was not a great listener. This is symbolised in the Star Chamber in 1616 when before a large crowd of lawyers and parliamentarians James declared that:

> "Kings are properly judges and judgment properly belongs to them from God: the Kings sit in the throne of God whence all judgment is derived...it is presumption and high contempt in the subject to dispute what a King can do, or say that a King cannot do this or that..."

He ordered them not to meddle with things "against the King's prerogative or honour" adding that "if judges permitted these matters to be argued then those who argue it and the judges who allowed it to be argued would suffer".

It was increasingly difficult to find an acceptable compromise, and the clash of views continued unabated. The King asserted that parliamentary privilege "derived from the grace and commission of our ancestors and us, for most of them grow from precedence, which shows rather a toleration than inheritance". On the other hand in the Commons the counter contention was that:

> "The privileges of this House is the nurse and life of all our laws, the subject's best inheritance...when the King says he cannot allow our liberties of right, this strikes at the root".

And so ladies and gentlemen its all in your history books, the protestation, which the king tore out of the records. The accession of Charles I. If James was a poor listener, Charles I was utterly deaf, and notwithstanding his dignity at the moment of his death, devious. Then came a series of issues, including the Petition of Right, the imprisonment of the 5 knights and their release, the long period when there was no Parliament. And then the worst of all wars, the Civil War. Anyone who troubles to read about these events, and the way they unfolded, and pauses for a moment to remember that the history book which is being read is telling the story of real people, of real individuals, subject to all the frailties and concerns that people have today, will never believe that history is boring.

Once the monumental task of completing the Authorised Version was over and it was published, that was an end of it. But alongside the activities of Lancelot Andrewes to try, as accurately as possible, to translate the word of God into English, for the benefit of men's immortal souls, the struggle for the new constitutional arrangements, to govern our lives on this earth, had begun. Principles which we now take for granted were not established beyond argument during these 7 years, and some of them had still to be fought over, but the ferment of ideas represented ideas whose time had come. Our constitution is not fixed. It retains an element of flexibility. But whenever we consider it, or consider changing it, we are unconsciously at any rate influenced by these early struggles. And so it is that, in the first few years of the reign of James I, we were blessed by the Authorised Version of the Bible and I believe we should simultaneously recognise that it was produced during a seminal period in the history of this country, which influences the way in which it is governed to this day, and the way in which we ourselves as a nation are content to be governed.

From start to finish the essential issue remained the same. Was the king above the law? The answer eventually forged in conflict is simple. In the words of Thomas Fuller, "Be ye never so high, the law is above you". Constitutional monarchy was established. Kings were not little Gods. They played an important, indeed a crucial part of the constitutional arrangements. But not above the law. And as John Locke was to declare at the end of this same century, "Where law ends, tyranny begins". That remains true to this day.
