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# Sovereignty without State: God and Fathers in the Political Thought of Robert Filmer

Takuya Furuta

## **Abstract**

Robert Filmer is traditionally portrayed as a man who held that his contemporary English king has the absolute power and the primogenitary right of Adam by bloodline. However, this view depends on a misunderstanding of the nature and role of Filmer's patriarchalism and divine right theory. Filmer's patriarchalism does not mean that his contemporary kings have 'the right of Adam' according to bloodline. It was constructed to destroy the concept of 'natural liberty', on which, Filmer saw, his opponents' political theory depends. But if so, Filmer needed to explain how his contemporary kings acquire the right of Adam. I argue that it was his divine right theory that provided them with this right. In other words, his patriarchalism is concerned with the quality of political power, and his divine right theory is concerned with the source of legitimacy. In turn, I explain what this right of Adam is, comparing it with Bodin's concept of sovereignty. But although Bodin was an advocate of the sovereign's absolute power, he also emphasized the limitation imposed on it. Therefore, I compare Filmer's concept of 'the right of Adam' and Bodin's sovereignty in terms of limitations, and then clarify the features of Filmerian absolute and arbitrary power. By this comparison, I argue that Filmer succeeded in making the sovereign's power absolute and arbitrary, and free from almost all limitations posed on kings, but to do so, he failed to construct the concept of commonwealth or political society which presupposes its 'perpetuity'.

## **I. Introduction**

Robert Filmer has been known as one of the most fervent advocates of the absolute power of kings, and of 'the Currant Divinity of the Times'<sup>1</sup>, that is, one who holds that his contemporary English kings have the absolute power and the primogenitary right of Adam. But if we see Filmer merely as one who maintains such a curious doctrine, amongst other things, we incur the risk of overlooking other important arguments which he presents and in turn

overlooking the problem which he faces as a result of these arguments.

The view that Filmer endorses the primogenitary right of Adam has become dominant, partly because of the misinterpretation of the key words which have been used to describe his thought, namely 'patriarchalism' and 'divine right theory'. Therefore, in the first place, I discuss Filmer's account of patriarchalism, and the relationship between this idea and divine right theory in his thought. Next, I will argue how this relationship influences his theory of sovereignty, comparing this with the famous French lawyer Jean Bodin. Through this comparison, I will show that Filmerian sovereignty based both on patriarchalism and divine right theory is directed to destroying rather than constructing the theory of state or commonwealth<sup>2</sup>.

## II. Patriarchalism<sup>3</sup>

### 1. King and Father

'Man is born free; and everywhere he is in chains'<sup>4</sup>. Robert Filmer was born in 1588 and died in 1653. But if he had read this famous passage by Rousseau, we can assume that he would have responded, 'Man is *not* born free; and everywhere he is in chains'. If people are born free, nothing can justify these chains. As natural liberty is a self-evident truth for Rousseau, so it was for many thinkers in Filmer's age<sup>5</sup>. For example, John Milton declares that no one 'can be so stupid to deny that all men naturally were born free, being the image and resemblance of God himself'<sup>6</sup>. This view is held not only by the republicans like Milton; even many royalists 'admit it for a truth unquestionable'<sup>7</sup>.

Filmer's patriarchalism is constructed to destroy this natural liberty. However, why does he refuse to accept this natural liberty in the first instance? The reason is because he regards this liberty as the foundation of the contract theory, which was represented in this age by Catholic thinkers such as Francisco Suarez and Roberto Bellarmine<sup>8</sup>. The two thinkers argued that people are born free, and the power which a governor has is endowed to him by the free people. If a governor breaks the contract he made with the people, people may withdraw this power, or even change the constitution, for example, from monarchy to aristocracy<sup>9</sup>. But who should judge whether a contract has been breached? For Filmer, consistency required one to say that the judge must be the people themselves<sup>10</sup>, and so, this theory would mean that people would have the right to rebel against their governor at their pleasure. In other words, for Filmer, this was nothing short of anarchy.

In this way, Filmer identifies natural liberty as 'a liberty only to destroy liberty'<sup>11</sup>. All human beings are born and first live under parental control, and so, he argues, cannot have the natural liberty to do as they please. Of course, this was also self-evident for Filmer's opponents. Indeed they take paternal power in the family for granted, and admit that this power is derived directly from God<sup>12</sup>. However, like John Locke, and as the Scholastics, they distinguish political power from economical (paternal) power invoking Aristotle<sup>13</sup>. For

instance, Filmer quoted Suarez's following statement:

Political power did not begin until families began to be gathered together into one perfect community. Wherefore, as the community did not begin by the creation of Adam, not by his will alone, but of all them which did agree in this community, so we cannot say that Adam naturally had political primacy in that community<sup>14</sup>.

According to Suarez, Adam is the founder of his family, but not of political society, because political society was created by the union of families. When families are united into one political society, political power, unlike paternal power, was given to a governor or governors by the people's consent<sup>15</sup>. Therefore, Filmer needed to deny the distinction between these powers in order to deny the natural liberty of the people, because insofar as this distinction is maintained, it is possible to argue that people are born free in *political* terms.

To deny this distinction, Filmer needed to show that paternal power and political power are the same in terms of (a) the object, (b) the construction, and (c) the origin of these powers. Let us take these in turn.

Filmer's opponents relied on Aristotle to explain the object of these powers. Aristotle clearly distinguished between political and paternal (economical) powers in the first chapter of his *Politics*. According to Aristotle, while the household and economical power is necessary to live, the polis and political power is necessary to live *well*. These two spheres, household and polis, and correspondingly the powers necessary to each sphere, are different in *quality*. The household was understood as the mere economical precondition to participate in politics in that it gave citizens leisure time, while, as the political animals, human potential could be fully achieved only through the participation in the political activity. After all, only to live is proper for animals, not for human beings qua political animals.

But in fact, this teleology, by which Aristotle distinguished between the political and paternal power, leads Filmer to identify these two kinds of powers. This is because by Filmer's age, the object of politics had changed from self-perfection to peace and security<sup>16</sup>. If the ultimate object of politics is to realize peace and security (which, on Aristotle's account, is the object that belongs to 'only to live'), the boundary which divides the political and paternal power, and correspondingly the boundary which divides the political sphere and the economical sphere disappears<sup>17</sup>. It is true that Filmer wrote 'government is not a society only to live, but to live well and virtuously', like Aristotle. But for Filmer, unlike Aristotle, what is necessary 'to live well and virtuously' is 'religion toward God and peace toward men', and this does not require that citizens must participate in political activity to realize their potential<sup>18</sup>. As a result, Filmer concludes that there is no difference between a father in the household and a monarch in the kingdom in terms of the object of their task.

If we compare the natural duties of a father with those of a king, we find

them to be all one, without any difference at all but only in the latitude or extent of them. As the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct and defend the whole commonwealth. His wars, his peace, his court of justice and all his acts of sovereignty tend only to preserve and distribute to every subordinate and inferior fathers, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people<sup>19</sup>.

The image of the good father as a mirror of a good monarch was widely held in the early modern period. Luther and Calvin endorsed this view<sup>20</sup>, and the absolutists were also willing to accept it<sup>21</sup>. King James I, in his *The True Law of Free Monarchies*, explained the relationship between the king and his subjects as follows: '[A]s the Father of his fatherly duty is bound to care for the nourishing, education, and virtuous government of his children; even so is the king bound to care for all his subjects'<sup>22</sup>. For James, a king's obligation is to act as a good father over the whole community.

But not only did Filmer need to explain the similarity of the task of kings and fathers, but also he needed to show that (b) the two powers had the same construction. If the paternal power is the same as political, it follows that a father should have the right of punishment including the right to kill his children. Indeed, Filmer argued that fathers originally had such a right and gave examples to prove his argument, such as the case of ancient Rome to the effect that, if necessary, it is legitimate for fathers to kill their children<sup>23</sup>, and the story in the Bible to the effect that a father (Judah) sentenced his daughter-in-law to death<sup>24</sup>.

However, if fathers do have the power to kill their children, this creates a further problem<sup>25</sup>. That is to say, when a father wants to kill his son while the king wants to save him, how should this confrontation be solved? Filmer's answer, though not stated explicitly, is to appeal to the right of Adam. In fact, the right which magistrates have is not merely the right of fathers, but the right of the *supreme* father Adam<sup>26</sup>. Therefore, in this case, the natural father must concede, because the monarch who has the right of Adam is regarded as a 'father' of this natural father, and so we can infer the latter must obey the former.

Finally, the third point. (c) the origin of paternal and political power, depends on the interpretation of the nature of political society. As we have seen above, Suarez held that political society began when families gathered together into one society. Filmer rejected this view. For him, political society and family are coeval. Hence in the earliest age when there was no one but Adam, there would be no community. However, Filmer writes, '[c]ommunity did presently follow his [i.e. Adam's] creation and that by his will alone'<sup>27</sup>. How can Filmer explain this assertion?

As Hobbes argued that there is no private property in the state of nature, Filmer held that if there was no community, there would be no property; by contrast if property existed, then community would also exist<sup>28</sup>. Filmer moreover denied Grotius's argument that in the

earliest age people have everything in common<sup>29</sup>. Filmer's argument seems to proceed as follows. There was property as soon as God created humankind. Therefore, there existed a human community. But whose property is this world? This belonged to Adam as the first human being. Therefore, what Adam's posterity possessed is what Adam distributed<sup>30</sup>. This way of reasoning leads to the conclusion that the sovereign has the right to regulate his subject's property.

We have seen Filmer's argument concerning (a) the object, (b) the construction, and (c) the origin of political and paternal power. Arguing that in every aspect political power is the same as paternal power, he was able to discredit the view that people are born free, since every child has a 'father' or *Pater Patriae*.

But there remain two problems. Firstly, why in the first place does such a right exist, and why did Adam have such a power? What reasons underlie Filmer's belief in the right of Adam (the character of which will be discussed in the third section)? According to Ian Harris, by adopting Aristotelian concepts of causality and biology, and connecting it to the Scripture, Filmer was able to give an answer to this question and uphold the right of Adam. Aristotle argued that there are four types of causes (material, formal, efficient, and final), and explained the generation of children by using these different causes. Aristotle 'located the formal and efficient cause of procreation in the motion of male characteristics, and understood the female merely as the material receptacle in which male force was matured into an infant'. Therefore, in the generation of children, the man plays a more important role than the woman, and so the man, not the woman, has the right to rule their children. By the same token, because Adam was the father or cause of all human beings, he had the right to dominate all human beings<sup>31</sup>. Following Harris's interpretation of Filmer's reliance on Aristotle, Timothy Stanton observes: '[b]y Filmer's account Adam enjoyed authority over his family in part because he had generated them'<sup>32</sup>.

Harris's and Stanton's interpretations are undoubtedly correct in the point that Filmer believed in the superiority of man to woman, and thus the man, not the woman, firstly has the right to rule and direct his children. It is also highly plausible that Filmer accepted Aristotelian concept of causes and biology. But it is unclear whether this interpretation is the answer to our question: why does such a right exist, and why did Adam have such a power? For Filmer, the generation of children itself does *not* generate the right to govern children. He wrote: 'we know that God at the creation gave the sovereignty to the man over the woman, as being the nobler and principle agent in generation'<sup>33</sup>. Superiority of man to woman is not the reason for the man to have a primary authority over children, but the reason for God to choose the man to have that authority. Therefore, their interpretations must be a correct answer to the question why God chose Adam, not Eve, to have the right of government, but not to the question why such a right exists. For Filmer, such a right exists, simply because 'God gave to Adam...the dominion over the woman and the children'<sup>34</sup>.

The second problem concerns succession. If God granted the right of government to Adam, how is this right passed down to Filmer's contemporary monarchs? In the next sec-

tion, we will discuss the issue of succession, connecting it to Filmer's patriarchalism and divine right theory.

## 2. The Succession of 'The Right of Adam' and the Divine Right Theory

J.W. Allen argues that the core of Filmer's political theory lies in the assertion that supreme authority is necessary for any society and this authority is given to monarchs directly by God. Therefore, his patriarchalism is not only unnecessary, but also a particularly defective part in his theory, because by his patriarchal theory, Filmer himself confused the natural rights of the father, which cannot be inherited, with patriarchal sovereignty, which by contrast can be inherited, and so attracted Locke's subversive criticism. Thus Allen's interpretation of Filmer detaches the patriarchal sovereignty from Filmer's theory and in turn emphasizes Filmer's divine right theory<sup>35</sup>.

However given the importance of patriarchalism for Filmer, I do not think that we can remove it from his theory as Allen suggests. But, patriarchalism does not comprise the whole of Filmer's theory. Again as we have seen, based on his patriarchalism, Filmer argued that the authority of kings and fathers is the same in *quality*, and so, no one but Adam was born with natural liberty. Filmer wrote 'what was given unto Adam, was given in his person to his posterity'<sup>36</sup>. But then, who has this authority in his posterity? In other words, who is the king? Patriarchal theory alone cannot answer this question.

The answer that has been sometimes offered to this question is that the holder of the Adamic right is determined by rules of primogeniture or hereditary right. This is the view presented by two brilliant scholars, Peter Laslett and J. N. Figgis. Whereas Laslett regards an account of hereditary right as a natural consequence of Filmer's (and his contemporary) patriarchalism, Figgis regards it as the very essence of divine right theory. While Laslett concedes that Filmer used the term 'patriarch' only in a theological sense, he emphasized that we cannot fully understand Filmer's political idea until we take into consideration various forms of patriarchalism in that age<sup>37</sup>. The core of these various forms of patriarchalism is the view that the father is the head of his household, and other members of his family are subordinated to him. 'The patriarchal family is marked by the supremacy of the father, the inferiority of woman, rules of primogeniture and so on'<sup>38</sup>. This is the dominant view of the family in seventeenth century England. Born as the eldest son of the gentry, and living as the head of the family, Filmer must have shared this view. 'Filmerism was above all things the exaltation of the family; it made the values of domestic society into the principle of political science'<sup>39</sup>.

Examining Filmer's political idea in the context of his social background, Laslett regards the rule of primogeniture as an indispensable part of Filmer's patriarchalism. Even if Filmer could not present the evidence of the bloodline from Adam to Charles I, he must have presupposed the rule of primogeniture. For Laslett, patriarchalism determines not only the quality of sovereign power, which we discussed in the previous section, but also the

successor of the right of Adam. As a consequence, the role of Filmer's divine right theory becomes very small. The roles of God are restrained, firstly, to grant all social power of sovereigns to Adam, and secondly, to create 'the social order in which the continuance of the hierarchy founded by Adam was indispensable'.<sup>40</sup>

Opposed to Laslett's view, Figgis does not see patriarchalism as a necessary part of divine right theory, while the rule of primogeniture is<sup>41</sup>. In other words, for Figgis, the rule of primogeniture is not related to patriarchalism, but to the divine right theory. Figgis points out in his *The Divine Right of Kings*, four essential elements of this theory, one being '*hereditary right is indefeasible*'. He writes

The succession to monarchy is regulated by the law of primogeniture. The right acquired by birth cannot be forfeited through any acts of usurpation, of however long continuance by any incapacity in the heir, or by any act of deposition. So long as the heir lives, he is king by hereditary right, even though the usurping dynasty has reigned for a thousand years<sup>42</sup>.

In Figgis's view, Filmer was a divine right theorist. *Consequently*, he must have held that 'the succession to monarchy is regulated by the law of primogeniture'<sup>43</sup>.

It is true that Filmer himself used the term 'true heir', and it is fair to suppose this term indicated the successor by hereditary right. In addition, we can infer from the term 'true' that Filmer regarded the succession by hereditary right as the best way of succession. But, to say that succession according to bloodline is the *best* way is one thing, and to say that succession by bloodline is the *only* way is another. It is worth noting that in almost every occasion when he referred to the 'true heir', Filmer also mentioned alternative ways to the throne, such as election and usurpation. This may seem strange. But in fact, his identification of the Adamic right and king's governmental right prevented him from endorsing the rule of primogeniture as the only legitimate way of succession.

The succession according to bloodline must presuppose the possibility to trace the pedigree. For example, there is no difficulty in saying that Charles I succeeded James I by the rule of primogeniture, because Charles was the eldest son of James, when James died. But if Filmer adopted this rule, he inevitably put himself in a predicament, for he had to trace the royal bloodline from Charles back to Adam. Insistence on this rule leads his political theory into destruction, because no one can trace the primogenitary bloodline of Adam. Therefore, Filmer needed to include election and usurpation, even if these are not the 'true' way, in the ways of succession. In this regard, it seems fair to say that Filmer is not the advocate of hereditary right or the rule of primogeniture.

But against this view, some have argued that Filmer actually believed that Stuart kings were direct descendants of Adam. That is to say, he thought that it is *possible* to trace the Stuart bloodline back to Adam. According to W. H. Greenleaf, the combination of two 'his-



tories' made Filmer and his contemporaries believe the line between their king and the first man, Adam<sup>44</sup>. The first 'history' is the story contained in the Bible. This book tells us how God created human beings and how they spread all over the world. The most important individual in this story other than Adam was Noah. He survived the Flood and after this event his sons went to various places in the world. Therefore, if the Stuart pedigree could be traced back to Noah, we would find the line between Adam and the Stuarts.

Greenleaf pointed out that there *was* an additional 'history' which connected Noah with the Stuarts. Greenleaf calls this 'history' 'national mythology'. Some antiquarian studies traced the ancestor of James I back to the last British king, Cadwallader and because this actual king, Cadwallader, was connected with the semi-legend king Arthur, James I was said to be the descendant of king Arthur. Moreover, antiquaries tried to connect Cadwallader with Brutus the Trajan, who was said to be the first British king, and beyond him, with Samothès, who was the grandson of Noah. One historical book's title eloquently expressed the connection of these two 'histories'. A part of the title of George Owen Harry's book is 'The Genealogy Of The High And Mighty Monarch, James, by the grace of God, King of great Brittain, &c. with his lineall descent from Noah, by diuers direct lynes to Brutus, first Inhabiter of this Ile of Brittain; and from him to Cadwalader, the last King of the Brittain blood...'<sup>45</sup>.

In addition, antiquarians who argued in such a way included Filmer's friends or his supposed friends. Thus, according to Greenleaf, Filmer must have known these 'histories'. Observing these facts, Greenleaf concluded that 'the national mythology joined hands with the scripture; and both were linked with Tudor and Stuart England'<sup>46</sup> and that 'much of the history with which Filmer was likely to have been familiar was of this kind'<sup>47</sup>. Although Filmer never tried to trace this line explicitly, he secretly presupposed it.

However, this interpretation has two problems. Firstly, although Greenleaf concedes that Filmer did not try to trace this line<sup>48</sup>, he supposes that Filmer *implicitly* accepted these two 'histories'. But in fact Filmer *explicitly* gave up such an inquiry. Filmer wrote 'we have enjoyed a succession of kings from the Conquest now near about 600 years'<sup>49</sup>. He admitted here that the bloodline can only be traced 600 years and did not extend it before the Conquest. In addition, the fact that Filmer knew the existence of the mystical national history through his friends but did not adopt it seems to prove, unlike Greenleaf's interpretation, either that Filmer did not believe the 'national mythology' or that he did not need such a mythology.

Secondly, For Filmer, Adam's right does not belong only to kings of England. The right of Adam was spread out since Noah divided the world between his sons, and so there were many kings who succeeded this right. So, unlike Greenleaf's interpretation, there is no necessity for Filmer to connect the two 'histories'. If England's king alone had the right of Adam, it follows that they must conquer all over the world, and should be the king of the world, as Adam himself. '[T]he assertion of the real authority of Adam's unknown heir', one commentator observed, 'must in principle subvert almost all constituted human author-

ity'<sup>50</sup>. But Filmer himself did not presuppose the sole successor of Adam<sup>51</sup>.

For these reasons, it can be said that Filmer did not believe such a history, and thus he did not think that he could trace the pedigree of his contemporary kings back to Adam and moreover did not think that it was necessary to do so.

His attitude towards the rule of succession, however, leaves behind a crucial problem. Filmer observed that '[i]n all kingdom or commonwealths in the world, whether the prince be the supreme father of the people or but the true heir of such a father, or whether he come to the crown by usurpation, or by election of the nobles or of the people, or by any other way whatsoever'<sup>52</sup>, is irrelevant to whether the ruler is legitimate or not<sup>53</sup>. But then, how does a king become king? The answer is surprisingly simple. Whatever the means to ascend the throne are, God uses these means in order to make one man or woman to be a king or queen. King is king by 'God's providence, who only hath the right to give and take away kingdoms'<sup>54</sup>. This is the divine right theory of Robert Filmer.

But how do subjects detect God's providence? This question was raised by John Locke. He wrote:

though the chief matter of his writings be to teach obedience to those who have a right to it, which he tells us is conveyed by descent, yet who those are to whom this right by descent belongs, he leaves like the philosophers stone in politics, out of the reach of any one to discover from his writings<sup>55</sup>.

Locke unconsciously or consciously misunderstood that for Filmer Adam's right is 'conveyed by descent'. Nevertheless, his question and criticism, 'to whom this right...belongs', is fully valid. Filmer never treated this problem in his early works<sup>56</sup>. But Filmer not only seemed to think of this absence to be unproblematic, but, as we shall see in the following section, he consciously neglected this problem. He boldly wrote 'it is still the manner of the government by supreme power that makes them properly kings, and not the means of obtaining their crowns'<sup>57</sup>. In other words, he who has supreme power is, at the same time, regarded as legitimate ruler. His divine right theory makes it possible to legitimate rulers *ex post facto*<sup>58</sup>.

But what is the supreme power? I discuss this in the next section.

### III. The Character of 'The Right of Adam'

As we have seen the in previous sections, for Filmer, the sovereign right or supreme power which his contemporary monarchs and other sovereigns enjoyed is the right of Adam. In the following sections, I focus on the contents of this right. Firstly, I treat Filmer's thought about this right, and then, I compare it with Bodin's concept of sovereignty. By comparing them, I will show that although both Bodin and Filmer emphasized *perpetual* sovereignty,

they differed about where to attribute perpetuity. On the one hand, Bodin attributed perpetual character to sovereignty in his definition, but in fact his sovereignty presupposes and depends on the perpetual commonwealth or state. Therefore, what is perpetual for Bodin is not sovereignty itself, but the commonwealth or state. On the other hand, Filmer attributed it to sovereignty itself, thus undermining the perpetual character of commonwealth or any human corporation.

### 1. Filmerian Sovereignty

We can divide Filmerian sovereignty into two parts: the right to make laws and the right to decide on the distribution of property. It is convenient to start with the former. Filmer has two slightly different ideas about the relationship between sovereign and law. On the one hand, he supposes that the sovereign's will *is* the law. On the other hand, he sometimes argues that the sovereign's will *can override* any law. The latter idea itself was, in fact, widely accepted by royalists as well as by the common lawyers<sup>59</sup>. They admitted that law is general and so it cannot be applied to unpredictable cases. In these cases, judges have to make a judgment according to their own reason<sup>60</sup>. Filmer criticized those who rejected such a power of judges for failing to understand the danger of their arguments, because '*Summum jus summa injuria* (law pushed to extremes is extreme injustice)', and the 'greatest tyranny would be for a king to govern according to law'<sup>61</sup>. These judges, however, are not independent of the sovereign. On the contrary, their right to judge is delegated by sovereign power. It is the sovereign himself who is the highest judge, for 'it is most reasonable that the lawmaker should be trusted with the application or interpretation of the laws'<sup>62</sup>. Here the concept of king as the highest judge is connected to the concept of king as a lawmaker.

On this point, Filmer's argument developed in a different way from constitutional royalists<sup>63</sup>. They accepted that the king must have the prerogative to judge, but they did not regard the king as a sole lawmaker. Against their moderate description of a king, Filmer declared in the first paragraph of his *Anarchy* which was published in 1648:

We do but flatter ourselves, if we hope ever to be governed without an arbitrary power. No, we mistake. The question is not, whether there shall be an arbitrary power, but the only point is who shall have that arbitrary power... There never was, nor ever can be any people governed without a power of making laws, and every power of making law must be arbitrary. For to make a law according to law, is *contradictio in adjecto*<sup>64</sup>.

Filmer consciously identified 'absolute' with 'arbitrary' against the prevailing terminology in his age. Many of his contemporaries argued that even if the king has absolute power, he does not have arbitrary power<sup>65</sup>. For example, one of the Filmer's friends, Peter Heylyn, did not hesitate to say that the king in England has both absolute and limited pow-

er<sup>66</sup>. For him, the king with arbitrary power is not a king, but a tyrant. Filmer is quite unusual in that he identified ‘absolute’ with ‘arbitrary’, and used these words approvingly. This unusual terminology leads James Daly to conclude ‘there can be little doubt that *the Anarchy of a limited or mixed monarchy* was intended as Filmer’s declaration of independence from Civil War royalists’<sup>67</sup>.

As Filmer abandoned the discrimination between the absolute monarchy and arbitrary monarchy, he likewise abandoned the distinction between monarch and tyrant after his writing *Anarchy*. He admitted that a monarch can be a tyrant in *Patriarcha*. He counted Nero and Caligula as examples of tyranny<sup>68</sup>. The criterion of this distinction is a kind of natural law. All kings are ‘bound to preserve the lands, goods, liberties and lives of all their subjects, not by the municipal law of the land, but by the natural law of the father’<sup>69</sup>. As fathers have duty to foster their children, so the monarchs their subjects. Though Filmer did not allow the subjects to rebel on the pretext of the neglect of the king’s duty, he admitted that there might be a tyrant distinguishable from the true monarch or king.

But after *Anarchy*, he gave up the concept of tyrant. Filmer complained in *Anarchy* that ‘in these days’ there were many people who ‘maintain that an arbitrary or absolute monarch not limited by law is all one with a tyrant’<sup>70</sup>. According to the argument in *Patriarcha*, he would have replied that even the arbitrary monarch is the true monarch unless he had violated the fatherly law of nature. But in *Anarchy* and his works after it, he replied that there is no such a man as tyrant. In other words, he fully abandoned the concept of tyrant. Filmer also gave up referring to the limitation of the sovereign by the natural law, to which in *Patriarcha* he referred. It is true that he sometimes stated even after *Anarchy* that good government is previously contained in the meaning of ‘government’<sup>71</sup>, or the government to destroy the whole people is impossible<sup>72</sup>, but he never referred to the fatherly law of nature as a limitation on king’s power after *Anarchy*.

Giving up these distinctions and limitations of the natural law, he could refute one of the grounds of the resistance theory. The resistance theorists of his age (Monarchomachs) needed to reconcile their resistance theory with the words of the Epistle to the Romans which bans resistance against governors. One of the strategies to do so is to insist that if a monarch betrayed their subject’s trust and so become an arbitrary monarch, he, then, is no longer a monarch but become a tyrant, and a tyrant is not a governor. Therefore, subjects can rightly resist him without violating the Epistle’s prescription<sup>73</sup>. But for Filmer, there is no such a man as a tyrant against whom subjects can lawfully resist. Resistance against a tyrant means nothing other than rebellion against a legitimate monarch. Monarchomachs made a mistake: What should be banished is not a tyrant himself, but a *concept* of tyrant.

Besides the supreme power to make laws, Filmer added the right to decide the distribution of private property and community of goods to the right of Adam; ‘the grounds of dominion and property’<sup>74</sup>. This right is no less important, because in that age, ‘the grounds of dominion and property’ became the subject of heated debate. One of the representative cases was ‘The Putney Debates’ held during the Civil War. On the second day of this debate,

Henry Ireton observes ‘[t]he Law of God doth not give me property, nor the Law of Nature, but property is of human constitution... Constitution founds property’<sup>75</sup>. Against the social radicals, who would found a whole new constitution according to only the natural law and divine law, Ireton argued that although the natural law teaches us the general precept, it does not mention about the individual property: Who should have what. For Ireton, property is regulated by the immemorial law, not the natural law<sup>76</sup>.

Filmer would have partly agreed with Ireton, but must have disagreed on the treatment of the immemorial law. For Filmer, the immemorial law and the ancient constitution, on which property depends for Ireton, are merely the production of the king’s will. Therefore, Ireton’s argument means that property depends on the king’s will, that is to say, property must be regulated by the right of Adam. This is the direct conclusion of Filmer’s view of family and human community, which is mentioned in the first section of this article: When there is private property, human community exists. Adam having God-given dominion over all world, then ‘[n]one of his posterity had any right to possess anything but by his grant or permission, or by succession from him’<sup>77</sup>. Adam had everything, and he had the right to decide his children’s property. So, Filmer’s contemporary monarchs, who succeeded the Adamic right, also have the right to regulate property within their territories. In The Putney Debates, Rainborough replied to Ireton ‘Sir, I see that it is impossible to have liberty but all property must be taken away’<sup>78</sup>. This is what Filmer wants to say.

## **2. Filmer’s Treatment of Limitations and ‘Perpetuity’ of the Commonwealth<sup>79</sup>**

Although it was often said that Filmer’s concept of sovereignty is the same as Bodin’s<sup>80</sup>, recent commentators have pointed out the difference between them<sup>81</sup>. But there has been no attempt to clarify the features of Filmer’s position by comparing their arguments. So, I compare them in terms of the divine law, natural law, and the constitution, and shed light upon Filmer’s thought, in particular his attribution of ‘perpetuity’<sup>82</sup>.

Firstly on the limitation of the divine law, Bodin repeatedly emphasized that no sovereign can make a law which breaches the divine law. Like him, Filmer conceded that a sovereign is restrained by this law. In *Patriarcha*, he observed that according to ‘the direction of the New Testament’, ‘our ‘Saviour’ was ‘limiting... royal power.’<sup>83</sup> ‘We must obey where the Commandment of God is not hindred; there is no other Law but Gods Law to hinder our Obedience’. Here he did not take up any example of the conflict between the divine law and a sovereign’s order. But elsewhere, where he discussed the relationship between law and command, he took up the example of master and servant from which we can infer his posture toward the limitation on sovereignty by the divine law. In fact, it is here that we readily find that the divine law of Filmer hardly deserves to be called a limitation. He asks: ‘The sanctifying of the Sabbath is a Divine Law, yet if a master command[s] his servant not to go to church upon a Sabbath day’, should this servant obey his master’s command? In other words, if the divine law and human authority give contradicting orders, to which command

should people give priority? Filmer's answer is 'the servant must obey this [master's] command', because 'in such a cases the servant's not going to church becomes the sin of the master, and not of the servant'<sup>84</sup>. That is to say, people should give priority to the human authority's command over the divine law when they are conflicting. If a sovereign's decree is at odds with the divine law, God will punish this sovereign, not the subjects who obey the sovereign. Therefore, subjects must obey the sovereign's commands regardless of whether it is consonant with the divine law or not.

Secondly, on the limitation of the natural law, Bodin argued that the most important obligation according to this law is to keep promises. A sovereign must keep the promises that he makes, even the promises made to his subjects. Let us turn our eyes to Filmer. His posture to the law of nature changed from his *Patriarcha* to *Anarchy*. In *Patriarcha*, as I noted above, Filmer argued that there are duties of kings under the name of the 'fatherly law of nature'. But in *Anarchy*, published after the Civil War, he applied this 'fatherly law of nature' to the issue of promises in a different way than in his previous work.

If the safety of the people—*salus populi*—requires a breach of the monarch's promise, then the sin, if there be any, is rather in the making, than breaking of the promise. The safety of the people is an exception implied in every monarchical promise<sup>85</sup>.

We can regard this 'safety of the people' as the 'fatherly law of nature', and a sovereign is restrained by this law. So, it seems that Filmer did not change his mind on this theme. But in fact, Filmer turned this law to quite a different direction. Here '*salus populi*' is used to justify the sovereign's act which breaks promises, and to keep the promise is, for Bodin, the most important content of the law of nature. We can find that Filmer used the 'fatherly law of nature' in order to break the widely accepted 'law of nature'.

The third limitation, limitation by constitution, is of greater importance than the previous two to understand the difference between Filmer and Bodin, because it is here that the relationship between the legitimacy and the absolute power of Bodin's and Filmer's sovereign, and also their different posture to 'perpetuity' is elucidated. By limitation by constitution, Bodin does not mean limitation by custom. For him, customs are merely admitted by sovereign's tacit consent. But rather he means the fundamental law, the law to guarantee the succession of kings (in France, the Salic law<sup>86</sup>), which even the legitimate sovereign cannot abolish or change<sup>87</sup>.

The fundamental laws regulate the succession. In other words, it is the fundamental laws that guarantee the legitimacy of a sovereign. Upon this law 'sovereign majesty is founded and supported'<sup>88</sup>. Therefore, to abolish the fundamental law means to abolish the foundation of the sovereign's legitimacy. Bodin takes an unyielding stand to monarchs who lack legitimacy. Against the 'tyrant in deed', who have legitimacy but commit atrocities, Bodin said, subjects must endure the tyrant's deed and expect the divine benevolence<sup>89</sup> or

the ‘humanitarian intervention’ by other foreign monarchs<sup>90</sup>. But against the ‘tyrant by usurpation’, who lacks legitimacy, all subjects are said to have the right to kill the tyrant without any trial<sup>91</sup>. The different treatment indicates that he distinguishes the power of the sovereign with its legitimacy, and integrated them without contradiction.

In addition to these limitations, a monarch is said to have a duty not to invade his subject’s property and not to abolish public treasure. He observed ‘a commonwealth is a just government, with sovereign power, of several households and of that which they have in common’<sup>92</sup>. But for him ‘several households and that which they have in common’ are not a sovereign’s private property. The main implication of the former is that a monarch cannot levy taxes without subjects’ consent. ‘[T]here is no prince in the world who has the power to levy taxes on the people at his pleasure any more than he has the power to take another’s goods’<sup>93</sup>. As well as subject’s private property, the Bodinian sovereign does not have the property right of the treasure of a commonwealth. Bodin argued that a sovereign possesses only the usufructuary right of this treasure. Of course, this does not mean that a sovereign does not have his own property. But we are warned not to confuse ‘the private patrimony of the prince with the public treasure’<sup>94</sup>. A commonwealth possesses its own treasure. However, since a commonwealth is ‘always considered to be a minor’<sup>95</sup>, a sovereign may use its treasure qua the commonwealth’s guardian. What a sovereign has is not a property right of the treasure of the commonwealth, but merely a usufructuary right of it<sup>96</sup>.

In comparison with Bodin, what is the feature of Filmer’s treatment of the constitution and the fundamental law? On the contrary to Bodin, Filmer argued that subject’s private property is regulated by the sovereign’s will, that is to say, there is no property which can be defended against sovereign’s will, because the right to decide the subject’s property belonged to Adam, and therefore to the sovereigns, who have ‘the right of Adam’. In addition, he did not distinguish between a sovereign’s property and the treasure of a commonwealth. In Filmer’s thought, there is no room for the commonwealth which Bodin described, but only monarch and subjects. In other words, he did not have the idea of the impersonal state or commonwealth.

The absence of this idea in Filmer is clearly exemplified both by his misrepresentation of Bodin and his misinterpretation of Hobbes’s *Leviathan*. Filmer extracted some passages from Bodin’s *The Six Bookes of a Commonweale*<sup>97</sup> and published these extracts in 1648, under the title of *The Necessity of the absolute power of all Kings: And in particular of the King of England*. The difference in their titles is important, not least because it clearly shows the difference of their intentions. What Bodin focused on is the *commonweal* or *République* including sovereignty, but what Filmer exclusively focused on is *the absolute power of all kings*, and not the commonwealth.

In addition, his misinterpretation of *Leviathan* helps us to understand the absence of the theory of commonwealth in Filmer’s thought. Filmer wrote:

It seems Mr. Hobbes is of the mind that there is but one kind of govern-

ment, and that is monarchy. For he defines a commonwealth to be one person... This his moulding of a multitude into one person is the generation of his great Leviathan, the king of the children of pride. Thus he concludes the person of a commonwealth to be a monarch<sup>98</sup>.

This is Filmer's comment on Hobbes's theory of person and representation<sup>99</sup>. Hobbes held that a multitude becomes 'one person' by authorizing one man or an assembly of men. This person is the commonwealth and the commonwealth itself is represented by the sovereign<sup>100</sup>. For Hobbes, insofar as there is the sovereignty, the difference in regime (monarchy, aristocracy, democracy) is not important, at least in theory. Therefore his effort is directed to explaining the nature of the commonwealth, not to classifying its kind. But Filmer (consciously or unconsciously) misinterpreted it and regarded Hobbes as an advocate of one regime, monarchy.

As for the fundamental law, unlike Bodin, Filmer understood it as merely the customary law. But because 'many points of the common law *de facto* have; and *de jure* any point may be taken away', Filmer does not admit it to be fundamental<sup>101</sup>. Moreover, longtime custom does not automatically become customary law. 'It is the approbation of the supreme power that gives a legality to the customs'<sup>102</sup>. Thus ancient customs cannot be fundamental law. Therefore, though Filmer did not explicitly criticize Bodin, Filmer's arguments can be interpreted as a criticism against Bodin's concept of fundamental law. As I noted above, Bodin's fundamental law is not customary law, but the law from which a sovereign derives his legitimacy. For Filmer, *every* law is the expressed will of a sovereign. Therefore, there is no 'fundamental law' which cannot be removed by a sovereign. In addition, unlike Bodin, the Filmerian sovereign does not derive his legitimacy from any law of a commonwealth. For Bodin, to abolish the fundamental law means to abandon the legitimacy of a sovereign, and so even an absolute sovereign is not permitted to abolish this law. By contrast, for Filmer, the legitimacy of a sovereign is already guaranteed by God, and so an absolute sovereign can abolish any law.

Filmer's radical approach to the issue of legitimacy from the angle of the direct divine right theory makes a sharp contrast with Bodin himself and his contemporary or later divine right theorists. As for Bodin, it is scarcely necessary to adopt this theory to endorse the absolute sovereignty. He endorses, it is true, that God endowed kings with governmental right and the king is the image and lieutenant of God on earth<sup>103</sup>. What Bodin emphasized is, however, the limitation rather than enhancement of sovereign's power<sup>104</sup>. His legal argument is enough for Bodin to support the absolute power of kings, and so, referring to God, he imposes the limitation on sovereign to avoid excess of sovereign power. But, unlike Bodin, his contemporary or later divine right theorists found it useful to adopt this theory in order to enhance the king's power against pope. For example, David Du Rivault argued that the king's power was derived immediately from God, *although* God had chosen this king by causing this king to be born in the royal family<sup>105</sup>. In the seventeenth century, Charles



Loyseau also upheld direct divine appointment of king and king's superior being, *although* kings were superior by being born in the superior bloodline<sup>106</sup>.

On the one hand, these writers upheld that sovereigns derive their governmental right immediately from God. But on the other hand, they endeavor to reconcile the divine right theory to the French law which regulates the succession of kings. In other words, they endeavor to keep objective criteria to judge who is to be the king, like the royal family or the superior bloodline. No one can overlook the difference between Filmer and these French theorists. In addition, it is also clear that the divine right theory and the absolute and arbitrary power of kings, when pushed to extremes, cannot be compatible with the rule of primogenitary or hereditary succession. For extreme absolutist argument, even the rule of succession is seen as a limitation. Once this rule is regarded as immutable, it means that there is at least one fundamental law which is not changeable even by the sovereign. It is this conclusion that Filmer wanted to avoid at all costs. To avoid this conclusion, he traced this reasoning conversely. In order to reject such a thing as fundamental law, every law must be changeable by the sovereign, and so there is no law of succession which in definition cannot be changed by the incumbent king. Filmer's divine right theory is to make up this absence of the regulation of succession and to legitimate incumbent sovereign *ex post facto*. Therefore, it is fair to say that his divine right theory is shaped to fit his argument of absolute power of kings.

Filmer pursued the absoluteness of sovereign and then set its power free from all limitation, beside the highly unreliable divine and natural law. Filmer's divine right theory and the right of Adam to make law make the sovereign free from the laws which regulate the succession and thus guarantee its legitimacy. Attributing Adamic patriarchal right to decide private and common property to incumbent sovereigns, Filmer abolished the distinction between patrimony and fisc. As a consequence to his divine right and patriarchal theory, he, consciously or unconsciously excluded from his political idea, so to speak, 'immortal' state or commonwealth. That is to say, in his theory, there is no room for the idea of a state that has continuity and 'survived the individual prince'<sup>107</sup>.

To understand this view, again it is convenient to compare Filmer with Bodin, who defined sovereignty as 'the absolute and perpetual power of a commonwealth'<sup>108</sup>. As for the 'succession', this issue appears in Bodin's theory as the relationship between 'perpetual' sovereignty and mortal prince. He wrote 'if perpetual power were taken to mean that which never ends, sovereignty would not exist except in aristocracies and democracies, which never die'. In the case of monarchy, insofar as a sovereign is a mere human being, he must die, and so, in this case, Bodin believes that 'perpetuity' means 'for the life of him who has the power'. But we should not interpret this statement as that the incumbent monarch itself has perpetuity. On the contrary, this means that, as we have seen, there must be the fundamental law, which regulates the succession and unchangeable even by monarchs, and thus perpetual, to connect the previous sovereign to the next one. Even an absolute sovereign is given legitimacy by this law. In other words, Bodin's sovereign is legitimized only when

he is settled in the continuity of the state.

Filmer's political idea is scarcely related to such a concept as the perpetuity or continuity of state. Instead, Filmer attributed perpetuity to sovereignty itself. Commenting on Grotius's argument that monarchs who recover territory do not recover their former right to govern but create a new right to do so, Filmer wrote, 'a just war doth only put the conqueror in possession of his old right, but not create a new'<sup>109</sup>. That is to say, the right of Adam which belonged to these monarchs before their territory was conquered. Filmer also laid emphasis on the perpetuity of this right, by observing 'there is, and always shall be continued to the end of the world, a natural right of a supreme father over every multitude'. What is suggested here is that every sovereign has the same and perpetual right. But because not the commonwealth but the right of Adam itself is perpetual, Filmer's perpetuity, unlike Bodin's, cannot guarantee continual succession which human beings can discern. The next sovereign is decided, neither by the fundamental law and the pedigree, but by 'the secret will of God'<sup>110</sup>.

As for the fisc, this means that there is the distinction between sovereign's private property and public property, which is exemplified by territory. The German expatriate historian Ernst H. Kantorowicz observes that late medieval Roman lawyers articulated the theory concerning 'immortality' to the effect that 'only to the "throne", which is called immortal being, the right to dispose the congruently "immortal" fisc can be attributed'<sup>111</sup>. This was highly developed in England as the theory of 'king's two bodies'<sup>112</sup>. Filmer again implicitly rejected this theory<sup>113</sup>. In so far as king has the property right over everything in his territory, or has the right to decide subject's private property and commonwealth, not only the concept of fisc but also of continuity of state cannot be sustained, at least in theory. Absolute state is incompatible with absolute sovereign, and theorists of state must be advocates of the limited sovereign power. It is clear when we remember the difference between Filmer, a theorist of absolute sovereign, and Bodin, a theorist of commonwealth.

#### IV. Conclusion

Focusing on his patriarchalism and divine right theory, I have tried to illuminate Filmer's political thought. His patriarchalism is not merely to project the image of fathers on kings, but to translate the right of Adam into political sovereignty. This right is succeeded by Filmer's contemporary sovereigns not through the bloodline of Adam. The gulf between past and present is filled by the divine will. Sovereigns derive their right of government directly from God, regardless of how they ascend to the throne. Even if this right is succeeded according to the bloodline, it is not by the right of primogeniture but by the direct endowment of God that monarchs get their title of the successor of Adam. This almighty theory of legitimacy is, as Locke clearly indicated, *ex post facto* legitimacy, that is, the disappearance of legitimacy. People cannot know who the next monarch is or should be in advance.

In other words, Filmer's effort was directed towards making the independent divine

right theory. But this was an effort in vain, and the disappearance of legitimacy is the natural consequence of this direction. God endows someone with right of government from above, and people acknowledge this endowment from below. But there must be the bridge between God and the people. It may be the fundamental law, primogeniture, or election, but anyway it must be the objective criteria which are independent of incumbent sovereign power. It is these criteria that Bodin accepted but Filmer rejected. But the absence of these criteria leads to a complete *ex post facto* theory, and at the same time, the most extreme mode of the divine right theory without any human criterion. The blend of the divine right and the Adamic right cannot but abolish the concept of state which has continuity or perpetuity. Filmer, it is true, used the word ‘commonwealth’ or ‘commonweal’, but in his thought, these words have no substantial meaning<sup>114</sup>. Robert Filmer was the theorist of sovereignty without state.

The independent divine right theory, without which he cannot construct his theory of sovereignty, is thus the indispensable constituent of Filmer’s political thought. He did not detach theology from politics. Indeed, at first glance, Filmer learned and derived from the Bible his theses that human beings do not have natural freedom, and that there is the immutable right of Adam in the world. But what is more important is his anxiety and fear of what occurs in politics by its anti-theses, the fear of anarchy, and the means to avoid it, the absolute power of kings. It may be the reflection of his naïve understanding of politics<sup>115</sup>. But he is, in this sense, not a theologian of ‘the Currant Divinity of the Times’ but a political theorist.

## Notes

<sup>1</sup> John Locke, *Two Treatises of Government*, Peter Laslett (ed.), Cambridge: CUP, 1988, p. 138. (preface)

<sup>2</sup> In this paper, I do not discuss Filmer’s last political pamphlet, *Direction*. It is because in *Direction* he gave up his previous posture toward sovereignty and divine right theory. See, Gordon J. Schochet, *Patriarchalism in political thought: the authoritarian family and political speculation and attitudes especially in seventeenth-century England*, New York: Basic Books, 1975, p. 119, Johann Sommerville, ‘Absolutism and Royalism’, in *Cambridge History of Political Thought 1450-1700*, J. H. Burns and Mark Goldie (ed.), Cambridge: CUP, 1991, pp. 366-7. My intention in this article is to shed light upon the relatively consistent part of Filmer’s theory from *Patriarcha* to *Aristotles Politiques*. On Filmer’s ‘inconsistency’ which is found even from *Patriarcha* to *Aristotles Politiques*, see Furuta, Takuya ‘Naze Patoriaka ha shuppan sarenakattaka: Robaat Fuiruma no ikkansei to hi-ikkannsei’ (why did Filmer not publish *Patriarcha*?: The consistency and inconsistency in Robert Filmer), (forthcoming).

<sup>3</sup> Here I willingly admit that in many points I owe my description of Filmer’s patriarchalism, especially the relationship between it and Scholastic political theorists, to J. P. Sommerville’s works and articles, which I mention in following footnotes.

<sup>4</sup> Jean-Jacques Rousseau, *The Social Contract*, trans. G. D. H. Cole, New York: Cosimo Classics, 2008, p. 14.

<sup>5</sup> Quentin Skinner, *Liberty before Liberalism*, Cambridge: CUP, 1998, p. 19.

<sup>6</sup> John Milton, *The Tenure of Kings and Magistrates*, in *Political Writings*, Martin Dzelzainis (ed.), Cambridge: CUP, 1991, p. 8. I quote this passage from *Liberty before Liberalism*, p. 19.

<sup>7</sup> Robert Filmer, *Patriarcha*, in *Patriarcha and Other Writings*, Johann Sommerville (ed.), Cambridge: CUP, 1991, p. 3. In this essay, I use Sommerville's edition, when I cite from and refer to Filmer's works.

<sup>8</sup> Cesare Cuttica, 'Anti-Jesuit Patriotic absolutism: Robert Filmer and French ideas (c. 1580-1630)', *Renaissance Studies* Vol. 25, No. 4, p. 79, Cesare Cuttica, 'Reputation versus context in the interpretation of Sir Robert Filmer's *Patriarcha*', *History of Political Thought*, Vol. 33, No. 2, 2012, pp. 237-43.

<sup>9</sup> J. P. Sommerville, 'From Suarez to Filmer: A Reappraisal', *The Historical Journal*, Vol. 25, No. 3, 1982, p. 540. As for Suarez's own posture, that is, whether or not he is an advocate of 'popular sovereignty', there are discussions. While Quentin Skinner argues that his theory has the tendency toward absolutism (Quentin Skinner, *The Foundations of Modern Political Thought*, Vol. 2, Cambridge: CUP, 1978, the section titled 'the absolutist perspective', pp. 178-84), Annabel Brett argues that scholastic political theory 'both resists and is obscured by the antithesis between "constitutionalism" and "absolutism"' (Annabel Brett, 'Scholastic political thought and the modern concept of the state' in *Rethinking the Foundations of Modern Political Thought*, Annabel Brett and James Tully (ed.), Cambridge: CUP, 2006, p. 139). But for Filmer's eyes, he must have been the theorist of 'popular sovereignty' or 'constitutionalism'.

<sup>10</sup> *Patriarcha*, p. 6.

<sup>11</sup> *Patriarcha*, p. 4.

<sup>12</sup> J. P. Sommerville, 'introduction' to Robert Filmer *Patriarcha and Other Writings*, p. xv.

<sup>13</sup> 'From Suarez to Filmer', p. 526.

<sup>14</sup> *Patriarcha*, p. 15.

<sup>15</sup> Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, Atlanta: Scholars Press, 1997, pp. 308-11.

<sup>16</sup> Sasaki, Takeshi, *Kindai Seiji Shiso no Tanjo*, (*The birth of the modern political thought*), Iwanami Shoten, 1981, p. 194.

<sup>17</sup> Naruse, Osamu, *Zettaishugi kokka to Mibunsei Shakai*, (*The absolute state and the class society*), Yamakawa Shuppan sha, 1988, pp. 54-5.

<sup>18</sup> Robert Filmer, [1652], *Observations upon Aristotles Politiques*, in *Patriarcha and Other Writings*, p. 236.

<sup>19</sup> *Patriarcha*, p. 12.

<sup>20</sup> Tanoue, Masanaru, *Shoki Karubuan no Seiji Shiso*, (*The political thought of Jean Calvin in his early age*), Shinkyō Shuppan Sha, 1999, pp. 127-30.

<sup>21</sup> Sommerville, 'Absolutism and Royalism', p. 359.

<sup>22</sup> King James I and VI, *Political Writings*, J. P. Sommerville (ed.), Cambridge: CUP, 1994, p. 65.

<sup>23</sup> *Patriarcha*, pp. 18-9.

<sup>24</sup> *Patriarcha*, p. 7.

<sup>25</sup> R. W. K. Hinton, 'Husbands, Fathers, and Conquerors', *Political Studies*, 15, 1967, pp. 249, 300. This is Hinton's criticism of Filmer. As a whole, this criticism is not valid, for the reason in following argument. But it is also true that Filmer himself carelessly quoted Jean Bodin's argument which is not compatible with his own and confused his argument. Here, Filmer quoted

Bodin's statement that fathers in ancient Rome have the right to kill their children, even if it is against magistrate's order. But so far as we see the other parts of Filmer's text, he regard Adamic right which king has as superior to other father's right. (On this discussion, see also Somerville's 'Introduction' to *Patriarcha and Other Writings*, p. xxii).

<sup>26</sup> *Patriarcha*, p. 10. And see, Nojima, Ichiro, 'Fuiruma Shukenron ni okeru Kafuchokenron no Igi', ('the significance of patriarchalism in Robert Filmer's sovereignty'), *Shigaku Kenkyu*, No. 193, 1991, p. 70.

<sup>27</sup> *Patriarcha*, p. 19.

<sup>28</sup> 'Fuiruma Shukenron ni okeru Kafuchokenron no Igi', (the significance of patriarchalism in Robert Filmer's sovereignty), pp. 70-1.

<sup>29</sup> Robert Filmer, [1652] *Observations concerning the Originall of Government*, in *Patriarcha and Other Writings*, p. 234.

<sup>30</sup> *Patriarcha*, p. 32.

<sup>31</sup> Ian Harris, 'FILMER, Robert (c. 1588-1653)', in *The Continuum Companion to Locke*, London: Continuum, 2010, p. 57.

<sup>32</sup> Timothy Stanton, 'Hobbes's Redefinition of the Commonwealth', in *Causation and Modern Philosophy*, T. Stoneham and K. Allen (ed.), London: Routledge, 2011, p. 108.

<sup>33</sup> *the Originall of Government*, p. 192.

<sup>34</sup> *the Originall of Government*, p. 187.

<sup>35</sup> As for Allen's argument in this paragraph, see J. W. Allen, 'Sir Robert Filmer', in *The Social and Political Ideas of Some English Thinkers of the Augustan Age, A.D. 1650-1750*, F. J. C. Hearnshaw (ed.), London: G. G. Harrap & company Ltd, 1928, pp. 43-6.

<sup>36</sup> *Anarchy*, p. 138. Ian Harris lays emphasis on the importance of this statement of Filmer. According to Harris, this statement shows us his assumption that 'God had made Adam the political representative of mankind'. Adopting this motif, his contemporary theologian explained the reason why Adam's sin fell upon all mankind. They held that all his posterity is represented in Adam, and so 'the punishment of his transgression fell upon all'. Filmer is said to transform this theological motif into a political one. 'With the representative theory Adam receives and transmits punishment for sin. With Filmer he obtains and transmits political power. The logic is the same'.

Certainly, by this motif '[t]he function of explaining that regal power was inheritable was fulfilled', but it is not clear that this is Filmer's motif, because this motif would completely undermine his thesis. If the representative theory and Filmer's theory are the same, the right of Adam was shared with all mankind, as Adam's sin was. For Filmer, on the contrary, Adam enjoyed the right of government as a private person. Filmer's words, 'what was given unto Adam, was given in his person to his posterity', simply mean that when Adam died, the right of Adam did not die, and there was a successor to this right (Of course, whether or not his thesis itself is supported by an enough evidence is another problem). See Ian Harris, *The Mind of John Locke: A study of political theory in its intellectual setting*, Cambridge: CUP, revised edition, 1998, pp. 233-6.

<sup>37</sup> Peter Laslett, 'Introduction' to Robert Filmer, *Patriarcha and Other Political Works of Robert Filmer*, Peter Laslett (ed.), Oxford: Blackwell, 1949, pp. 22-3.

<sup>38</sup> 'Introduction' to *Patriarcha and Other Political Works*, p. 22.

<sup>39</sup> Peter Laslett, 'Sir Robert Filmer: The man versus Whig myth', *The William and Mary Quarterly*, 3rd series, v, 1948, p. 544.

<sup>40</sup> ‘Introduction’ to *Patriarcha and Other Political Work*, p. 18.

<sup>41</sup> J. N. Figgis, *The Divine Right of Kings*, Cambridge: CUP, 1896, p. 8.

<sup>42</sup> *The Divine Right of Kings*, p. 5.

<sup>43</sup> Opposed to Figgis, recent commentators (correctly) tend to detach the hereditary right from divine right theory, and discuss respectively. For example, see, J. P. Sommerville, *Royalists and Patriots: Politics and Ideology in England 1603-1640*, 2nd ed., London: Longman Pub Group, 1999, pp. 24-9.

<sup>44</sup> Following discussion is the brief summary of W. H. Greenleaf, ‘Filmer’s Patriarchal History’, *The Historical Journal*, Vol. 9, No. 2, 1966, pp. 158-66.

<sup>45</sup> I quote this title from ‘Filmer’s Patriarchal History’ p. 166.

<sup>46</sup> ‘Filmer’s Patriarchal History’, p. 160.

<sup>47</sup> ‘Filmer’s Patriarchal History’, p. 163.

<sup>48</sup> ‘Filmer’s Patriarchal History’, p. 163.

<sup>49</sup> *Patriarcha*, p. 33.

<sup>50</sup> John Dunn, *The Political Thought of John Locke*, Cambridge: CUP, 1969, p. 105. Of course, there is no doubt that Locke saw Filmer’s argument as such as Dunn states here.

<sup>51</sup> *the Originall of Government*, p. 216. Here Filmer wrote on ‘international politics’. ‘Where there is supreme power that extends over all or many nations but only God himself, there can be no laws made to bind nations, but such as are made by God himself’.

<sup>52</sup> *Patriarcha*, p. 11.

<sup>53</sup> *Patriarcha*, p. 44.

<sup>54</sup> Robert Filmer, [1648] *The Anarchy of a Limited or Mixed Monarchy*, in *Patriarcha and Other Writings*, p. 144.

<sup>55</sup> *Two Treatises*, pp. 220-1, (I-109).

<sup>56</sup> James Daly stated ‘Filmer never discussed the English succession, since it was not at issue of his lifetime’ (James Daly, *Sir Robert Filmer and English Political Thought*, Toronto: University of Toronto Press, 1979, p. 42). It may be true that the English succession in a narrow sense never become the subject of debate even after the execution of Charles I. But in so far as the issue of succession is closely connected to legitimacy, and legitimacy is one of the most important issues discussed in this period, it seems exaggeration to say ‘it was not at issue of his lifetime’.

<sup>57</sup> *Patriarcha*, p. 44.

<sup>58</sup> I might be criticized for adopting the unusual term ‘*ex post facto*’, not ‘*de facto*’. It is true that Filmer’s argument can be described as *de facto* theory in that as a consequence to his divine right theory, he cannot but argue that an incumbent sovereign must be a legitimate sovereign. But although in his last pamphlet, he was evidently attracted by the *de facto* theorists, who insisted that ‘*protection and subjection are reciprocal*’ (*Direction*, p. 285), he does not suppose that the existence of protection alone is enough to legitimate sovereignty. As Hobbes required consent as the sole source of legitimacy, Filmer required the divine right as the sole source of legitimacy. Even if Filmer’s argument reaches the same result as the *de facto* theorists *in the end*, the route to this result is different. Therefore, I do not call Filmer (and Hobbes) a *de facto* theorist.

<sup>59</sup> Doi, Yoshinori, *Igirisu Rikkenshugi no Genryu: Zenki Sutiuiato Jidai no Touchi to ‘Korai no Kokusei’ Ron*, (*The origin of English Constitutionalism: The early Stuart government and ‘the ancient constitution’*), Bokutaku Sha, 2006, pp. 432-34. Even John Locke treated this right as king’s ‘prerogative’. (*Two Treatises*, p. 375, (II - 160)) . For the importance of ‘prerogative’ to

understand Locke's political ideas, see, *The Political Thought of John Locke*, chapter 11.

<sup>60</sup> *Patriarcha*, p. 46.

<sup>61</sup> *the Originall of Government*, p. 206.

<sup>62</sup> *Patriarcha*, p. 47.

<sup>63</sup> As for the difference between constitutional royalists on the one hand and Filmer and other absolute royalists including Hobbes on the other hand, see David L. Smith, *Constitutional Royalism and the Search for Settlement c. 1640-1649*, Cambridge: CUP, 1994, pp. 244-55, especially pp. 247-8.

<sup>64</sup> *Anarchy*, p. 132.

<sup>65</sup> Daly, *Sir Robert Filmer*, pp. 50-1. Of course, it does not mean that every royalist writer in that age distinguished between 'absolute' and 'arbitrary'. For example, Henry Ferne identified an absolute power with an arbitrary power, thus rejecting both of them (J. W. Allen, *English Political Thought, 1603-1660*, London: Methuen, 1938, p. 495). What I am saying here is that even if they identify 'absolute' with 'arbitrary' or even if they did not adopt the term, 'arbitrary', they did *not* hold that the king is entitled to do whatever he wills, the king's will always becomes a legitimate law, and the king is always free from every law. (see, for example, Perez Zagorin *A history of political thought in the English Revolution*, London: Routledge, 1954, pp. 193-4. Glenn Burgess, *Absolute Monarchy and The Stuart Constitution*, New Haven and London: Yale University Press, 1996, pp. 20-22, and Harris, *The Mind of John Locke*, p. 195).

<sup>66</sup> James Daly, 'The Idea of The Absolute Monarchy in Seventeenth-Century England', *The Historical Journal*, Vol. 21, No. 2, 1978, p. 241. Despite of the difference between Filmer's and Heylyn's view of limitation on the sovereign's power, Heylyn praised (or flattered) Filmer in his *Certamen Epistolare*, 1659, London, p. 208, a part of which was used as the preface to the first edition of Filmer's *Patriarcha* published in 1680. On Heylyn himself, see Anthony Milton, *Laudian and Royalist polemic in seventeenth-century England: the career and writings of Peter Heylyn*, Manchester: Manchester University Press, 2007. On the difference between Filmer's and Heylyn's view on sovereign power, see Daly, *Sir Robert Filmer*, p. 178.

<sup>67</sup> Daly, *Sir Robert Filmer*, p. 52.

<sup>68</sup> *Patriarcha*, p. 31.

<sup>69</sup> *Patriarcha*, p. 42.

<sup>70</sup> *Anarchy*, p. 147.

<sup>71</sup> *the Originall of Government*, p. 223.

<sup>72</sup> *the Originall of Government*, p. 206.

<sup>73</sup> *The Foundations of Modern Political Thought*, Vol. 2, chapter 7, titled 'the duty to resist'.

<sup>74</sup> *Observations upon Aristotles Politiques*, p. 236.

<sup>75</sup> A. S. P. Woodhouse (ed.), *Puritanism and Liberty*, 3rd ed., London: Everyman's Library, 1986, p. 69.

<sup>76</sup> J. G. A. Pocock, *The Machiavellian Moment: The Florentine Political Thought and the Atlantic Republicanism Tradition*, Princeton: Princeton University Press, 1975, rept, 2003, p. 376.

<sup>77</sup> *Observations upon Aristotles Politiques*, p. 236.

<sup>78</sup> *Puritanism and Liberty*, p. 71.

<sup>79</sup> In this paper, I use commonweal and commonweal interchangeably. But it is noteworthy that as a criticism of Hobbes, Filmer insisted that Hobbes's *Leviathan* should not be called commonwealth but commonweal, because the term 'commonwealth' implies 'a popular government, wherein wealth and all things shall be common' (*The Originall of Government*, p. 186. On the

importance of this criticism, see Stanton, ‘Hobbes’s Redefinition of the Commonwealth’). But it is also noteworthy that Filmer himself used commonwealth and commonweal interchangeably in *Patriarcha* and *The Free-holders Grand Inquest*, (in *Anarchy*, he scarcely used both terms). In his later works, Filmer came to reject democracy and aristocracy as a form of government, though he admitted them as legitimate forms of government in *Patriarcha* or as illegitimate forms of government (but a form of government) in *Anarchy*. Therefore, his change of terminology corresponds to his change of view on the form of government. In my article, I intend to shed light upon his consistency. Hence I use both terms in the same meaning. On Filmer’s changing on forms of government, see Furuta, Takuya ‘Naze Patoriaka ha syuppan sarena-kattaka: Robaat Fuiruma no ikkansei to hi-ikkansai’ (why did Filmer not publish *Patriarcha*?): The consistency and inconsistency in Robert Filmer), (forthcoming).

In addition, the fact that Filmer used the term commonwealth or commonweal itself does not undermine my argument that these terms have no substantial meaning (see my conclusion). My argument is that even if he uses these terms, he does not attribute ‘perpetuity’ to commonwealth (like Bodin or Hobbes) or any human community as an association (like Hooker or Althusius), but to the right of Adam itself, and as a consequence to it, theoretically speaking, he cannot make such a statement as state or commonwealth has sovereignty, or people as a whole have sovereignty. (Richard Hooker, *The Works I*, R. W. Church and F. Paget, (ed.), New York: Georg Olms Verlag Hildesheim, 1888, reprinted, 1977, p. 246, Johannes Althusius, *Politica*, Frederick J. Carney (ed. and trans.), Indianapolis: Liberty Fund, 1995, (firstly published by Beacon Press in 1964), pp. 13-4).

<sup>80</sup> For example, Peter Laslett, ‘Introduction’ to *Patriarcha and Other Works*, p. 17.

<sup>81</sup> *Daly, Sir Robert Filmer*, p. 22.

<sup>82</sup> I cannot but discuss these limitations very concisely. As for the detail explanations, see Julian Franklin, *Jean Bodin and the Rise of Absolutist Theory*, Cambridge: CUP, 1973, chapter 5, pp. 70-92, and Sasaki, Takeshi, *Shuken, Teikouken, Kanyou: Jan Bodan no Kokka Tetsugaku, (Sovereignty, Right of resistance, and Toleration: Jean Bodin’s Philosophy of State)*, Iwanami Shoten, 1973, pp. 118-122.

<sup>83</sup> *Patriarcha*, p. 38.

<sup>84</sup> *Patriarcha*, pp. 43-4.

<sup>85</sup> *Anarchy*, p. 149.

<sup>86</sup> William F. Church, *Constitutional Thought in Sixteenth Century France*, Cambridge: Harvard University Press, 1941, p. 233.

<sup>87</sup> On Bodin’s concept of fundamental law, see also J. H. Burns’s short but illuminating article, J. H. Burns, ‘Sovereignty and constitutional law in Bodin’ *Political Studies*, Vol. 7, Issue. 2, 1959, pp. 174-7.

<sup>88</sup> *On Sovereignty*, p. 18.

<sup>89</sup> *On Sovereignty*, pp. 116-7.

<sup>90</sup> *On Sovereignty*, p. 113. Of course, Bodin himself did not use the words ‘humanitarian intervention’. So, this is the undoubtedly anachronistic expression. But what Bodin said here, it seems to me, can best be described by this expression.

<sup>91</sup> *On Sovereignty*, pp. 110-1.

<sup>92</sup> *On Sovereignty*, p. 1.

<sup>93</sup> *On Sovereignty*, p. 21.

<sup>94</sup> *On Sovereignty*, p. 42.



<sup>95</sup> *On Sovereignty*, pp. 41-2.

<sup>96</sup> According to Kiyosue, this explanation of the relationship between the treasure of a commonwealth and a monarch's private property is not only Bodin's original one, but had been traditionally accepted as 'the crown theory' since the thirteenth century. Therefore, Bodin was one of the theorists settled in the long tradition of this theory. Takao, Kiyosue, *Jan Bodan to kiki no jidai no Fransu (Jean Bodin and his contemporary France in crisis)*, Bokutakusha, 1990, p. 141.

<sup>97</sup> *Les Six Livres de la République* was translated by Richard Knolles, and published in 1606 under this title. Filmer's *Necessity* depends on this translation.

<sup>98</sup> *the Originall of Government*, p. 193.

<sup>99</sup> Thomas Hobbes, *Leviathan*, Richard Tuck (ed.), Revised Student Edition, Cambridge: CUP, 1991, chapter 16, especially p. 114.

<sup>100</sup> Quentin Skinner, 'The Sovereign State: A Genealogy' in *Sovereignty in Fragments*, Hent Kalmo and Quentin Skinner (ed.), Cambridge: CUP, 2011, pp. 36-7.

<sup>101</sup> *Anarchy*, p. 153.

<sup>102</sup> *the Originall of Government*, p. 216.

<sup>103</sup> *On Sovereignty*, p. 46.

<sup>104</sup> For instance, see, *On Sovereignty*, p. 45, 'if justice is the end of law, law the work of the prince, and the prince the image of God; then by this reasoning, the law of the prince must be modeled on the law of God'.

<sup>105</sup> *Constitutional Thought in Sixteenth Century France*, pp. 308-9.

<sup>106</sup> *Constitutional Thought in Sixteenth Century France*, pp. 316-7.

<sup>107</sup> Ernst H. Kantorowicz, 'Kingship under the Impact of Scientific Jurisprudence', in *Selected Studies*, New York: J. J. Augustin, 1965, p. 157.

<sup>108</sup> *On Sovereignty*, p. 1.

<sup>109</sup> *the Originall of Government*, p. 229.

<sup>110</sup> *Patriarcha*, p. 11.

<sup>111</sup> Ernst H. Kantorowicz, 'Cristus-Fiscus', in *Synopsis, Festgabe für Alfred Weber*, Heidelberg, 1948, p. 228. (my translation).

<sup>112</sup> Ernst. H. Kantorowicz, *King's Two Bodies: A Study in Mediaeval Political Theology; with a new preface by William Chester Jordan*, Princeton: Princeton University Press, 1997, pp. 20-3.

<sup>113</sup> By the reason I discussed above, Cesare Cuttica's view on this point would be untenable. In his recent excellent article, he insists that Filmer shared the idea of Patriotic absolutism, and their presupposition of 'king's two bodies' with some French absolutists (Cesare Cuttica 'Anti-Jesuit Patriotic absolutism', section 2). On the contrary, comparing Filmer and Bodin, we can interpret Filmer's political idea as one devoted to *rejecting* the idea of king's two bodies. As I noted above, it is because this theory implies that the body politic, i.e, the constitution, is superior to the body natural, and so king is restrained by the constitution.

<sup>114</sup> It might be argued that Filmer has the idea of commonwealth without sovereignty, because he insists that when the sovereign dies, power goes back to heads of families, and they create a new sovereign (*Patriarcha*, pp. 10-1). Here, the commonwealth seems to exist without a sovereign at least for a while, and correspondingly Filmer seems to have the idea of commonwealth. But we can interpret it as that when the sovereign dies, commonwealth dissolved into several families whose heads are new sovereigns (But it is unclear that this thesis plays any significant role in Filmer's thought). In addition, I do not deny that he have any image of commonwealth at all. He must have it. But what I deny is that he had any theoretical foundation of commonwealth,

which Bodin and his successor had emphasized.

<sup>115</sup> On the problem to see authority as the antithesis of freedom, especially to read Locke with this understanding of authority and freedom, see, Timothy Stanton, 'Authority and Freedom in the Interpretation of Locke's Political Theory', *Political Theory*, 2011, 39 (1), pp. 6-30.