

Erskine May, Chapter III, pp. 175-184

The Regency Crisis 1788-9 (Part I)

The king's next illness was of longer duration, and of a more distressing character. It was the occasion of another Regency Bill, and of proceedings wholly unprecedented. In the summer of 1788, the king showed evident symptoms of derangement. He was able, however, to sign a warrant for the further prorogation of Parliament by commission, from the 25th September to the 20th November. But, in the interval, the king's malady increased: he was wholly deprived of reason, and placed under restraint; and for several days his life was in danger.⁽¹⁾ As no authority could now be [176] obtained for a further prorogation, both Houses assembled on the 20th November, though they had not been summoned for despatch of business, and no causes of summons could be communicated to them, in the accustomed manner, by a speech from the throne. These circumstances were explained in both Houses; and, on the suggestion of ministers, they agreed to adjourn for a fortnight, and to summon all their members, by circular letters, to attend at their next meeting. According to long-established law, Parliament, without being opened by the crown, had no authority to proceed to any business whatever: but the necessity of an occasion for which the law had made no provision, was now superior to the law; and Parliament accordingly proceeded to deliberate upon the momentous questions to which the king's illness had given rise.

In order to afford Parliament authentic evidence of the king's condition, his five physicians were examined by the privy council on the 3rd December. They agreed that the king was then incapable of meeting Parliament, or of attending to any business; but believed in the probability of his ultimate recovery, although they could not limit the time. On the following day this [177] evidence was laid before both Houses: but as doubts were suggested whether Parliament should rest satisfied without receiving the personal testimony of the physicians, it was afterwards agreed that a committee should be appointed, in each House, for that purpose. In the Lords the committee was nominated by ballot, each peer giving in a list of twenty-one names. Meanwhile all other business was suspended. In the Commons, the speaker even entertained doubts whether any new writs could be issued for supplying the places of members deceased: but Mr. Pitt expressed a decided opinion, 'that though no act could take place which required the joint concurrence of the different branches of the Legislature, yet each of them in its separate capacity was fully competent to the exercise of those powers which concerned its own orders and jurisdiction.' And in this rational view the House acquiesced.

Views of the Political Parties

The reports of these committees merely confirmed the evidence previously given before the privy council; and the facts being thus established, a committee was moved for, in either House, to search for precedents 'of such proceedings as may have been had in case of the personal exercise of the royal authority being prevented or interrupted by infancy, sickness, infirmity, or otherwise, with a view to provide for the same.' When this motion was made in the Commons, Mr. Fox advanced the startling opinion that the Prince of Wales had as clear a [178] right to exercise the power of sovereignty during the king's incapacity, as if the king were actually dead; and that it was merely for the two Houses of Parliament to pronounce at what time he should commence the exercise of his right. To assert an absolute right of inheritance during his father's life, in defiance of the well-known rule of law, '*nemo est haeres*

viventis,' was to argue that the heir-at-law is entitled to enter into possession of the estate of a lunatic; and while it amounted to a deposition of the king, it denied the constitutional rights of Parliament. Mr. Pitt, on the other hand, maintained that as no legal provision had been made for carrying on the government, it belonged to the Houses of Parliament to make such provision. He even went so far as to affirm, that, 'unless by their decision, the Prince of Wales had no more right—speaking of strict right—to assume the government, than any other individual subject of the country,'—a position as objectionable in one direction, as that of Mr. Fox in the other,(2)—and which gave great umbrage to the prince and his friends. And here the two parties joined issue.

When next this matter was discussed, Mr. Fox, being sensible that he had pressed his doctrine of right beyond its constitutional limits, somewhat receded from his first ground. He now spoke of the Prince having a [179] legal claim rather than a right to the regency; and contended that it was for Parliament to adjudicate upon that claim, which, when allowed, would become an absolute title to the exercise of all the rights of sovereignty, without any limitation. He declared that he spoke merely his own opinion, without any authority; but that if he had been consulted, he should have advised a message from the prince, stating his claim, to be answered by a joint address of both Houses, calling upon him to exercise the prerogatives of the crown. It was now his main position that no restrictions should be imposed upon the powers of the regent. But here, again, Mr. Pitt joined issue with him; and while he agreed that, as a matter of discretion, the Prince of Wales ought to be the regent, with all necessary authority,—unrestrained by any permanent council, and with a free choice of his political servants; he yet contended that any power not essential, and which might be employed to embarrass the exercise of the king's authority, in the event of his recovery, ought to be withheld. And as the question of right had been raised, he insisted that it ought first to be determined,—since if the right should be held to exist, Parliament having adjudicated upon such right, need not deliberate upon any further measures.

The Prince Disavows Fox's Doctrine

The same questions were debated in the House of Lords, where the Duke of York said that no claim of right had been made on the part of the prince, who 'understood too well [180] the sacred principles which seated the house of Brunswick on the throne, ever to assume or exercise any power, be his claim what it might, not derived from the will of the people, expressed by their representatives and their Lordships in Parliament assembled.' His Royal Highness, therefore, deprecated the resolution of ministers to press for any decision on that point,—in which the Duke of Gloucester concurred.

Meanwhile, the Prince, greatly offended by Mr. Pitt's conduct, wrote to the chancellor complaining that the premier had publicly announced so much of his scheme of regency, and was prepared, as he conceived, to lay it still more fully before Parliament, without having previously submitted it to his consideration. He desired that Mr. Pitt would send him, in writing, an outline of what he proposed. Mr. Pitt immediately wrote to the prince, explaining his own conduct, and stating that it was not his intention to propose any specific plan until the right of Parliament to consider such a plan had been determined; and that he would then submit to his Royal Highness the best opinions which his Majesty's servants had been able to give.

Debate on the Regency

On the 16th December, the House resolved itself into a committee on the state of the nation, when Mr. Pitt again enforced the right of Parliament to appoint a regent,—fortifying his position by reference to the report of [181] precedents, which had then been received,—and arguing ably and elaborately that neither law, precedent, nor analogy could be found to

support the claim which had been urged on behalf of the Prince of Wales. He concluded by moving three resolutions; affirming, firstly, that the personal exercise of royal authority was interrupted; secondly, the right of the two Houses to supply this defect of the royal authority in such manner as the exigency of the case may seem to require; and, thirdly, the necessity of 'determining the means by which the royal assent may be given to bills passed by the two Houses respecting the exercise of the powers of the crown, during the continuance of the king's indisposition.'

Mr. Fox argued, ingeniously, that the principles maintained by Mr. Pitt tended to make the monarchy elective instead of hereditary; and that if Parliament might elect any one to be regent, for whatever time it thought fit, the monarchy would become a republic. Nor did he omit to seek for support, by intimations that he should be Mr. Pitt's successor, under the regency.

On the report of these resolutions to the House, Mr. Pitt explained,—in reference to his third resolution,—which had not been clearly understood, that he intended, when the resolutions had been agreed to by both Houses, to propose that the Lord Chancellor should be empowered by a vote [182] of the two Houses, to affix the great seal to commissions for opening the Parliament, and for giving the royal assent to a Regency Bill. The propriety of this singular course of proceeding was much questioned: but, after long debates, the resolutions were agreed to, and communicated to the House of Lords at a conference. In that House the same questions were debated, and Lord Rawdon moved as an amendment, an address to the Prince of Wales, praying him 'to take upon himself, as sole regent, the administration of the executive government, in the king's name.' Lord Chancellor Thurlow,—though faithless to his colleagues, and intriguing, at the very time, with the queen and the Prince of Wales,—supported the ministerial position with great force. In answer to Lord Rawdon's amendment, he 'begged to know what the term "regent" meant? where was he to find it defined? in what law-book, or what statute? He had heard of *custodes regni*, of lieutenants for the king, of guardians, and protectors, and of lords justices: but he knew not where to look for an explanation of the office and functions of regent. To what end, then, would it be to address the prince to take upon himself an office, the boundaries of which were by no means ascertained? What was meant by the executive government? Did it mean the whole royal authority? Did it mean the power of legislation? Did it mean all the sovereign's [183] functions without restriction or limitation of any kind whatsoever? If it did, it amounted to the actual dethroning of his Majesty, and wresting the sceptre out of his hand.'⁽³⁾ All the resolutions were agreed to: but were followed by a protest signed by forty-eight peers.

Death of the Speaker

The perplexities arising out of the incapacity of the sovereign,—the constitutional source and origin of authority,—were now increased by the death of Mr. Cornwall, the Speaker of the House of Commons. His Majesty's leave could not be signified that the Commons should proceed to the election of another speaker; nor could the new speaker, when elected, be presented for the king's approval. But the necessity of the occasion suggested an easy expedient: and both these customary formalities were simply dispensed with, without any attempt to assume the appearance of the royal sanction.

All these preliminaries being settled, Mr. Pitt now submitted to the Prince of Wales the plan of regency which he intended to propose. The limitations suggested were these:—that the care of the king's person and [184] household, and the appointment of officers and servants should be reserved to the queen:—that the regent should not be empowered to dispose of the real or personal property of the king, or to grant any office in reversion, or any pension or office, otherwise than during pleasure, except those which were required to be granted for life, or during good behaviour; or to bestow any peerage except upon his Majesty's issue, having

attained the age of twenty-one. These limitations were suggested, he said, on the supposition that the king's illness would not be of long duration, and might afterwards be revised by Parliament.

Footnotes.

1. Tomline's Life of Pitt, ii. 363; Lord Auckland's Corr., ii. 240-298 ; Madame D'Arblay's Diary, iv. 275, et seq.; Moore's Life of Sheridan, ii. 21. At such times as these, political events pressed heavily on the king's mind. He said to Lord Thurlow and the Duke of Leeds, 'Whatever you and Mr. Pitt may think or feel, I, that am born a gentleman, shall never lay my head on my last pillow in peace and quiet as long as I remember the loss of my American colonies.'—Lord Malm. Corr., iv. 21. On a later occasion, in 1801, the king's mind showed equally strong feelings as to the supposed dangers of the Church.
2. Lord John Russell says, 'The doctrine of Mr. Fox, the popular leader, went far to set aside the constitutional authority of Parliament, while that of Mr. Pitt, the organ of the Crown, tended to shake the stability of the monarchy, and to peril the great rule of hereditary succession.'—Fox Mem., ii. 263.
3. Parl. Hist., xxvii. 885. The office of regent, however, does not appear to be wholly without recognition, as contended by the chancellor and others. On the accession of Henry III., a minor, the great council of the nation, assembled at Bristol, appointed the Earl of Pembroke regent, as '*Rector Regis et Regni*' (Matthew Paris, Wats' 2nd Ed., p. 245; Carte's History of Eng., ii. 2); and when the Duke of York was appointed protector by the Parliament during the illness of Hen. VI., it is entered in the rolls of Parliament that the title of regent was not given him, because '*it emported auctorite of governaunce of the lande*.'—Rot. Parl., v. 242, A.D. 1454 ; Rymer's Foedera, v. 55

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