“MY BITTER COMEDIE”: THE TREASON TRIAL OF SIR NICHOLAS THROCKMORTON AND THE RULE OF LAW IN TUDOR ENGLAND*

Narasingha P. Sil

Introduction

Contrary to an influential thesis that Tudor treason trials and investigative interrogations are the manifestation of a pervasive paranoia characteristic of a “despotic regime” and the accused a bunch of bungling idiots,¹ a closer look at the treason trial of Sir Nicholas Throckmorton (Throgmorton or Frogmorton, 1515–71) in 1554 suggests a different conclusion in respect of the rule of law and its alleged violators. This paper, thus, seeks to argue on the basis of the Throckmorton case that the law of treason in Tudor England was first and foremost an aspect of the rule of law. Even though treason trials were based on the “accused speaks” theory (a pretty dicey situation for the defendant in case he refused or failed to respond to the incriminating evidence against him) rather than the “testing the prosecution” theory, the law, nevertheless, was designed “to afford the accused an opportunity to reply in person to the charges against him.”² It was, of course, almost universally assumed

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that the accused would use this opportunity to make a public confession of his guilt. Sir Nicholas, however, did something quite unexpected; he pleaded innocent and survived a potentially perilous situation by virtue of his acute knowledge of statute laws and the trial procedure as well as by his sheer forensic skill. It should be noted here that Throckmorton’s success at the trial owed as much to his luck and pluck as to the legal and political tradition of his society. His eloquence could work for him only within an established legal framework of a constitutional monarchy guided by a long respected tradition of the rule of law tempered with mercy or clementia, that “was considered an essential part of sovereignty, both a necessary and legitimate adjunct to justice.”

Rule of Law

It is reasonably fair to hold that Tudor monarchy, mutatis mutandis, was personal, authoritarian, even tyrannical, but never absolute or arbitrary. Long before the celebrated royal physician cum physiocrat philosopher François Quesnay (1694–1774) advised the French King Louis XV (1715–74) that an ideal polity is ruled by law rather than by the ruler, the most despotic Tudor monarch Henry VIII (1509–47) had learnt as early as 1532 that “the king could not use his subjects contrary to the law, for instance by imprisoning them without trial.” Admittedly, his government under Thomas Cromwell (1485–1540) was essentially despotic in that the judiciary and the legislature had to bend to royal will. Yet even when an officer of state was executed as a traitor to the government primarily because he had offended his king, as was the case with Sir Thomas More (1478–1535), the procedural

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4 K.J. Kesserling, *Mercy and Authority in the Tudor State* (Cambridge: Cambridge University Press, 2003), 3 (see also 1–22). The Roman statesman and scholar Lucius Annaeus Seneca’s (c. 4 B.C.–A.D. 65) *De Clementia* influenced Renaissance humanists who wrote on the virtue of mercy as “an instrument of state power and an obligation of rule.” Ibid., 18.